

RECORDING REQUESTED BY AND
AFTER RECORDING RETURN TO:

New Peak Construction Company, LLC
Attn: Jared
663 Dry Creek Trl
Driggs, ID 83422

Instrument # 455035

REXBURG, MADISON, IDAHO

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KIM H. MUIR

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Ex-Officio Recorder Deputy



**CONDOMINIUM DECLARATION
OF
YELLOWSTONE HEIGHTS**

A condominium project in
Rexburg, Madison County, Idaho

Tax Parcel No. RPR6N40E176103

Executed as of the 1 day of March, 2023

TABLE OF CONTENTS

ARTICLE 1	DEFINITIONS	1
ARTICLE 2	DESCRIPTION OF LAND, BUILDING AND UNITS.....	3
ARTICLE 3	OWNERSHIP INTERESTS	4
ARTICLE 4	GENERAL COMMON ELEMENTS	5
ARTICLE 5	LIMITED COMMON ELEMENTS.....	6
ARTICLE 6	DECLARANT'S RESERVED RIGHTS AND POWERS	6
ARTICLE 7	MANAGEMENT OF THE REGIME	7
ARTICLE 8	MAINTENANCE, ALTERATION AND IMPROVEMENT	9
ARTICLE 9	RESTRICTIONS ON OWNERSHIP, USE, AND ENJOYMENT.....	10
ARTICLE 10	INSURANCE AND CASUALTY	12
ARTICLE 11	MORTGAGEE PROTECTIONS.....	15
ARTICLE 12	CONDEMNATION.....	16
ARTICLE 13	TERMINATION	16
ARTICLE 14	MISCELLANEOUS.....	17

EXHIBITS

EXHIBIT A	Legal Description of Property
EXHIBIT B.....	Plat
EXHIBIT C	Articles of Incorporation
EXHIBIT D	Bylaws
EXHIBIT E.....	Rules and Regulations
EXHIBIT F.....	Building Plans
EXHIBIT G	Description of Units and Ownership Interest

**CONDOMINIUM DECLARATION
OF
YELLOWSTONE HEIGHTS**

THIS CONDOMINIUM DECLARATION ("**Declaration**") is made and executed as of the 1 day of MARCH, 2023, by NEW PEAK CONSTRUCTION COMPANY, LLC, a Wyoming limited liability company ("**Declarant**"), pursuant to the provisions of the Idaho Condominium Property Act, Title 55, Chapter 15, Code of Idaho (2020), as amended (the "**Act**").

RECITALS

A. Declarant is the owner of certain real property located in Rexburg, Madison County, Idaho, commonly known as tax parcel number RPR6N40E176103, as more particularly described in Exhibit A attached hereto and incorporated herein by reference (the "**Property**").

B. Declarant intends to construct upon the Property certain residential dwelling units, a standalone parking structure, and related improvements to be known as "Yellowstone Heights" (the "**Project**").

C. Declarant desires to divide the Project into Condominiums (as defined in the Act and herein) and to sell and/or lease the same to various purchasers and/or tenants pursuant to the provisions of the Act, and to impose upon said Property mutually beneficial restrictions, covenants, and conditions.

D. Declarant desires and intends by filing this Declaration to submit the Property and the Project, together with all appurtenances related thereto, to the provisions of the Act as a portion of the Condominium Regime (as defined herein).

AGREEMENT

NOW, THEREFORE, the Declarant does hereby publish and declare that the Property is held, and shall be held and conveyed, subject to the following covenants, conditions, uses, limitations and obligations, all of which are declared and agreed to be in furtherance of a plan for the improvement of said Property and the division thereof into Condominiums and shall be deemed to run with the Property and shall be a burden and a benefit to Declarant, its successors and assigns and any person acquiring or owning an interest in the Property and improvements, their grantees, successors, heirs, executors, administrators, devisees and assigns.

**ARTICLE 1
DEFINITIONS**

1.1 "**Articles**" shall mean and refer to the Articles of Incorporation of the Association as filed with the Idaho Secretary of State, as amended from time to time, a true and correct copy of which is attached as Exhibit C.

1.2 "**Assessment**" shall mean that portion of the cost of maintaining, improving, repairing, operating and managing the Project which is to be paid by each Owner as determined by the Association.

1.3 "**Association**" shall mean and refer to the Yellowstone Heights Condominiums Owners Association, an Idaho nonprofit corporation, and its successors, the Members of which shall be the Owners of Condominiums in the Project.

1.4 “**Board**” or “**Board of Directors**” shall mean and refer to the governing body of the Association.

1.5 “**Building**” or “**Buildings**” shall mean and refer to each and all of buildings located on the Property containing residential dwelling units, individual parking garages, and other improvements within the Condominium Regime.

1.6 “**Building Plans**” means that the building plans attached as Exhibit F to this Declaration.

1.7 “**Bylaws**” shall mean and refer to the Bylaws of the Association, as amended from time to time, attached as Exhibit D.

1.8 “**Common Elements**” shall mean and refer collectively to General Common Elements and Limited Common Elements as defined in Sections 4.1 and 5.1, respectively.

1.9 “**Common Expenses**” means and includes the actual and estimated expenses of operating the Common Elements, any reasonable reserve for such purposes as found and determined by the Board, and all sums designated as Common Expenses by or pursuant to the Condominium Documents.

1.10 “**Common Interest**” means the proportionate undivided interest in the Common Elements that are part of each Condominium as set forth in this Declaration.

1.11 “**Condominium**” shall mean the entire estate in the real property owned by any Owner, consisting of an undivided interest in the Common Elements and ownership of a separate interest in a Unit.

1.12 “**Condominium Regime**” shall mean the entire parcel of real property described in Exhibit A, to be divided into Condominiums, including all structures thereon.

1.13 “**Condominium Documents**” shall mean this Declaration, as amended from time to time, the exhibits attached hereto, together with the other basic documents used to create and govern the Project, including the Plat, the Articles, the Bylaws, the Rules and Regulations, and the Building Plans.

1.14 “**Declarant**” shall mean and refer to New Peak Construction Company, LLC, a Wyoming limited liability company, and any successor or assign that expressly assumes the rights and duties of the Declarant hereunder in a recorded written document.

1.15 “**Declaration**” shall mean and refer to this instrument by which the Project is established as provided under the Act, and shall include any amendments or supplements to this Declaration.

1.16 “**Foreclosure**” shall mean and refer to the legal process by which the mortgaged property of a borrower in default under a mortgage is sold, and the borrower’s interest in such property is sold, pursuant to Idaho law.

1.17 “**General Common Elements**” shall have the meaning as defined in Section 4.1.

1.18 “**Limited Common Elements**” shall have the meaning as defined in Section 5.1.

1.19 “**Member**” shall mean and refer to a person entitled to membership in the Association as provided herein.

1.20 “**Mortgage**” shall include a deed of trust as well as a mortgage.

1.21 “**Mortgagee**” shall include a beneficiary of a holder of a deed of trust as well as a mortgagee.

1.22 “**Mortgagor**” shall include the trustor or a deed of trust as well as a mortgagor.

1.23 “**Owner**” or “**Owners**” shall mean and refer to the record holder, or holders of title to a Condominium in the Project. This shall include any person having fee simple title to any Condominium, but shall exclude persons or entities having any interest merely as security for the performance of an obligation. If a Condominium is sold under a contract of sale and the contract of sale is recorded, the purchaser, rather than the fee owner, shall be considered the Owner from and after the date the Association receives written notice of the recorded contract.

1.24 “**Person**” means a natural person, a corporation, a partnership, a trust, or other legal entity.

1.25 “**Plat**” means that site plan attached as Exhibit B to this Declaration.

1.26 “**Project**” shall mean and refer to all of the real property described on Exhibit A and all improvements thereon. The Project is also shown on the Plat attached as Exhibit B.

1.27 “**Rules and Regulations**” shall mean those Rules and Regulations attached as Exhibit E to this Declaration, as may be amended, as well as other rules adopted from time to time by the Association.

1.28 “**Unit**” shall mean and refer to one or more separately designated units in the Project which are not owned in common with the Owners. Collectively, “**Units**” means to the Residential Units and Parking Units, as defined in Section 2.3. The boundary lines of each Unit are the interior surfaces of its perimeter walls, bearing walls, floors, ceilings, windows and window frames, doors, and door frames, and trim and includes the portions of the Building so described and the air so encompassed.

ARTICLE 2 DESCRIPTION OF LAND, BUILDING AND UNITS

2.1 **Description of Land.** The real property submitted to the Condominium Regime is located in Rexburg, Madison County, Idaho, and is legally described on Exhibit A.

2.2 **Description of Buildings.** The Condominium Regime will consist of (i) four (4) residential Buildings containing three (3) stories each and a total of forty-two (42) residential dwelling Units, and (ii) one (1) standalone, single-story parking structure with ten (10) individual parking garages. The location of the Buildings is shown on the Plat and the Building Plans.

2.3 **Description of the Units.** The Condominium Regime will consist of (i) forty-two (42) individual residential dwelling Units (the “**Residential Units**”) and (ii) ten (10) individual parking garage Units (the “**Parking Units**”). Residential Units are to be used as residential dwelling units only. Parking Units are to be used for vehicular and storage purposes associated solely with the Residential Units. Units are described as specified on Exhibit G. Each Unit will be entitled to the number of vote(s) in the Association specified on Exhibit G, and each Unit will pay the percentage of the Common Expenses and other assessments as specified on Exhibit G.

2.4 **Parking.** Surface parking for the Buildings is as depicted on the Plat.

2.5 **Easement Reserved Over Common Elements.** Declarant reserves to itself, its successor and assigns, an easement on, over, under and across the Common Elements for the construction, maintenance, replacement and operation of the Buildings, Units, and all utilities, landscaping, improvements and amenities included in the Plat and Building Plans.

ARTICLE 3 OWNERSHIP INTERESTS

3.1 **Exclusive Ownership and Possession by Owner.** Each Owner shall be entitled to exclusive ownership and possession of its Unit. Ownership of a Parking Unit shall only be held by an Owner of a Residential Unit. Each Owner shall be entitled to an undivided interest in the Common Elements. Said percentage of the undivided interest in the Common Elements shall not be separated from the Unit to which it appertains and shall be deemed to be conveyed or encumbered or released from liens with the Unit even though such interest is not expressly mentioned or described in the conveyance or other instrument. Each Owner may use the Common Elements in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other Owners.

An Owner shall not be deemed to own the utilities running through its Unit which are utilized for, or serve, more than one Unit, except as a percentage of an undivided interest in the Common Elements. An Owner, however, shall have the exclusive right to paint, repaint, tile, wax, paper or otherwise refinish and decorate the interior surfaces of the walls, floors, ceilings, windows and doors bounding its Unit.

3.2 **Appurtenances.** There shall pass with the ownership of each Unit as a part thereof, whether or not separately described, all appurtenances to such Unit. No part of the appurtenant interest of any Unit may be sold, transferred or otherwise disposed of except in connection with the sale, transfer or other disposition of such Unit itself or of all Units in the Condominium Regime.

3.3 **Undivided Fractional Interest.** An undivided interest in the land and other Common Elements of the Condominium Regime, regardless of whether such elements are General or Limited Common Elements, shall be appurtenant to each Unit. The undivided interest appurtenant to each Unit is as shown on Exhibit G. Each Unit will bear a fractional share of the obligation for payment of assessments, taxes and insurance and other expenses assessed by the Association. The fractional share of said expenses and assessments shall be same as the undivided interest shown on Exhibit G.

3.4 **General Common Elements.** Appurtenant to each Unit shall be a right to use and enjoy the General Common Elements.

3.5 **Limited Common Elements.** The exclusive use by Owners of the Limited Common Elements shall be deemed an appurtenance of the Unit for which said elements are reserved, provided such use and enjoyment shall be limited to the uses permitted by this Declaration and other Condominium Documents.

3.6 **Association Membership and Voting Rights.** Appurtenant to each Residential Unit shall be membership in the Association and the number of vote(s) in the affairs of the Association and of the Condominium Regime as specified on Exhibit G; provided, however, that the exercise of such voting and membership rights shall be subject to the applicable provisions of the Articles and Bylaws of the Association and of the other Condominium Documents. No voting rights shall appertain to a Parking Unit. The action of such Association shall be deemed the action of the Owners, and such action, when taken in accordance with the Bylaws of the Association and this Declaration, shall be final and conclusive upon all Owners.

3.7 **Cross-Easements.** Appurtenant to each Unit shall be easements from each Owner to each other Owner and to the Association, and from the Association to the respective Owners as follows:

- a. For ingress and egress through the Common Elements and for maintenance, repair, and replacement of the same as authorized;
- b. Through the Units and common facilities for maintenance, repair and replacement or reconstruction of Common Elements, but access to Units shall be only during reasonable hours except in case of emergency;
- c. Every portion of a Unit contributing to the support of the Building in which such Unit is located is burdened with an easement of such support for the benefit of all such other Units in such Building; and
- d. Through the Units and Common Elements for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility or other services to the other Units or in the Common Elements.

ARTICLE 4 GENERAL COMMON ELEMENTS

4.1 **General Common Elements.** As used in this Declaration, “**General Common Elements**” means all portions of the Condominium Regime not included within any Unit except such portions of the Condominium Regime which are defined as Limited Common Elements in Article 5. The General Common Elements also include, but are not limited to, the following:

- a. The land on which the Buildings are erected, as described in Exhibit A;
- b. The foundations, floors, exterior walls of each Unit and of the Buildings, ceilings and roofs, and entrances and exits or communication ways, and in general all devices or installations existing for common use, except as limited in Article 5;
- c. Installations for public utilities, including electric, cable TV, telephone, gas, sewer and water for common use;
- d. Front, side, and rear yards;
- e. Surface parking lots;
- f. Plantings and all landscaping;
- g. Trash enclosures and receptacles unless the same are separately provided for the benefit of each Unit;
- h. Private streets, sidewalks, and parking spaces which have not been assigned to a Unit, except as otherwise provided or stipulated;
- i. The entryway signage for the Condominium Regime;
- j. Community open space or park areas, including any amenity located thereon; and

- k. Areas designed for storm water collection and/or snow storage.

ARTICLE 5

LIMITED COMMON ELEMENTS

5.1 **Limited Common Elements.** As used in this Declaration, “**Limited Common Elements**” means those Common Elements which are reserved for the use of one or more Unit(s) by this Article and amendments hereto and such reservation shall be to the exclusion of any other Unit.

5.2 **Reservation.** The following Common Elements are reserved and shall constitute the Limited Common Elements:

- a. All walls and partitions separating Units from other Units, interior load bearing walls and all other elements which are structural to a Unit are reserved for that Unit (or Units where partitions separate two or more Units contained in a Building);
- b. Mailboxes and storage areas, if any, designated to a particular Unit;
- c. That part of all sewer, water, electrical, gas, telephone and other utility or service lines, wiring, ducts, conduits, piping, facilities, systems, fixtures and attachments serving just one Unit and located entirely within that Unit. Electrical rooms shall be appurtenant to the Units they serve;
- d. Interior sprinklers, sprinkler pipes and sprinkler heads which protrude into the airspace of a Unit and other built-in fire protection devices and equipment;
- e. The air conditioner pads, compressors and equipment appurtenant to each Unit;
- f. The immediate entrances, stairwells and hallways leading to each Unit are reserved for those Units;
- g. Any patio or balcony adjacent to an individual Unit; and
- h. The doors and windows, including any pane glass, sliding glass door or window set in the wall of a Unit.

5.3 **Exception.** Notwithstanding the reservations made by this Article, the design of the Buildings, grounds to be submitted and the integrity and appearance of the Condominium Regime as a whole are the common interests of all Owners and, as such, shall remain a part of the General Common Elements.

5.4 **Right of Association.** The reservation of the Limited Common Elements herein shall not limit any right the Association and its agents may otherwise have to alter such Limited Common Elements or enter upon such Limited Common Elements for maintenance or repair.

ARTICLE 6

DECLARANT’S RESERVED RIGHTS AND POWERS

6.1 **Declarant’s Activities.** Declarant is irrevocably and perpetually empowered, notwithstanding any use, restriction or other provisions hereof to the contrary, to sell, lease or rent Units to

any person and shall have the right to transact any business relating to construction, repair, remodeling, sale, lease or rental of Units, including but not limited to, the right to maintain signs, employees, independent contractors and equipment and materials on the premises, and to use Common Elements to show Units. All signs and all items and equipment pertaining to sales or rentals or construction and any Unit furnished by the Declarant for sale purposes shall not be considered Common Elements and shall remain separate property. Declarant retains the right to be and remain the Owner of completed but unsold Units under the same terms and conditions as other Owners, including membership and voting rights in the Association, save for its right to sell, rent or lease. Declarant retains the right to divide the Units into additional Units.

6.2 **Easements.** Declarant expressly reserves perpetual easements for ingress, egress and utility purposes as may be required across and under the land submitted hereby for the maintenance, repair or construction of Units, Buildings or Common Elements. Declarant also reserves for itself the exclusive right and power to grant and record such specific easements as may be necessary, in Declarant's sole discretion, in connection with the orderly development of the Property. The Association shall join in such easement agreement if requested to do so by Declarant. The Declarant may assign this right to the Association.

6.3 **Designation of Association Directors.** Declarant shall have the right to name all members of the Board of Directors of the Association until the earlier of five (5) years after the first Residential Unit in the Condominium Regime has been conveyed to an unaffiliated, third-party Residential Unit purchaser, or until the Declarant waives this right, at which time Members of the Association shall select the Board of Directors as provided by the Bylaws. Thereafter, the Board of Directors shall be selected in the manner specified by the Bylaws of the Association.

6.4 **Declarant's Right to Amend.** The Declarant reserves the following rights to amend the Declaration without the consent of any Owner for the following purposes and in the following manner:

a. To revise the legal description of the Property, Plat, or Building Plans or any other portion of this Declaration in order to correct scrivener's or other errors that do not affect any Owner's interest in its Unit or any appurtenance thereto.

b. So long as Declarant has the right to name all members of the Board of Directors of the Association as provided for herein, Declarant may, in its sole discretion, amend the Articles, Bylaws or Rules and Regulations of the Association.

6.5 **Adjustments in Plans.** Declarant will have the authority to make adjustments to the Building Plans set forth in this Declaration until such time as title to the Unit has been conveyed.

ARTICLE 7 MANAGEMENT OF THE REGIME

7.1 **Association.** Declarant shall operate the Condominium Regime and manage the Common Elements until the earlier of five (5) years after the first Residential Unit in the Condominium Regime has been conveyed to an unaffiliated, third-party Residential Unit purchaser, or until the Declarant assigns its rights to the Association, at which time the operation of the Condominium Regime and the management of the Common Elements shall be by the Association. Whenever a vote or other action of Owners as a group is required the mechanics of conducting such a vote or taking such action shall be under the control and supervision of the Association. The action of the Association shall constitute the action of the Owners whenever such action is permitted or required herein or by the Act.

7.2 **Compliance.** All Owners, tenants, families, guests and other persons using or occupying the Condominium Regime shall be bound by and strictly comply with the provisions of the Bylaws of the Association and applicable provisions of other Condominium Documents, and all agreements, regulations and determinations lawfully made by the Association and its directors, officers or agents shall be binding on all such Owners and other persons. A failure to comply with the Bylaws or the provisions of the other Condominium Documents or any agreement or determination thus lawfully made shall be grounds for an action to recover sums due for damages on the part of the Association or any Owners, as applicable, which damages shall include costs and attorney's fees, or injunctive relief or for any other relief authorized by law or in the Condominium Documents, without waiving any other remedy.

7.3 **Powers of Association.** Each Owner agrees that the Association has and shall exercise all powers, rights and authority granted unto it and the Owners as a group by the Idaho Nonprofit Corporation Act, Title 30, Chapter 30, Code of Idaho, and the Act, and such as are more particularly set forth in the Condominium Documents, including but not limited to the making of assessments chargeable to Owners and the creation of a lien on Units thereof, imposing fines against Owners or tenants for failure to comply with any provision in the Condominium Documents and the creation of a lien on Units thereof, and to acquire a Unit at foreclosure sale and to hold, lease, mortgage or convey the same. Each Owner hereby waives any rights to delay or prevent such foreclosure by the Association which it may have by reason of a homestead exemption. However, no Unit shall be assessed until construction of the Unit has been completed and an occupancy permit for the Unit has been issued by the City.

7.4 **Partition.** All Owners shall be deemed to have waived all rights of partition, if any, in connection with such acquisition.

7.5 **Membership, Voting Rights.** The members of the Association shall consist of all of the record Owners of the Residential Units. Membership shall be held and voting rights shall be determined as set forth in the Articles and Bylaws.

7.6 **Restraint Upon Assignment.** The share of a Member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to its Unit.

7.7 **Board of Directors.** The affairs of the Association shall be conducted by a Board of three (3) directors who shall be designated in the manner provided in the Bylaws.

7.8 **Discharge of Liability.** All Owners shall promptly discharge any lien which may hereafter be filed against its Condominium.

7.9 **Limitation on Association's Liability.** The Association shall not be liable for any injury or damage to property caused by or on the Common Elements or by another Owner or person in the Condominium Regime or by any other means unless caused by the gross negligence of the Association. No diminution or abatement of Common Expense assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements of the Common Elements or from any action taken to comply with any law, ordinance or orders of a governmental authority.

7.10 **Indemnification of Directors and Officers.** Every director and every officer of the Association shall be indemnified by the Association against all expenses and liabilities, including counsel fees, reasonably incurred by or imposed upon him or her in connection with any proceeding to which he or she may be a party, or in which he or she may become involved, by reason of his or her being or having been a director or officer of the Association, or any settlement thereof, whether or not he or she is a director or officer at the time such expenses are incurred, except in such cases wherein the director or officer is

adjudged guilty of willful misfeasance or malfeasance in the performance of his or her duties; provided that in the event of a settlement the indemnification herein shall apply only when the Board of Directors approves such settlement and reimbursement as being in the best interests of the Association. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such director or officer may be entitled.

7.11 **Agent to Receive Service of Process.** The Articles set forth the registered agent and registered office in Idaho to receive service of process upon the Association. The Association may change the registered agent and registered office of the Association without the necessity of amending this Declaration.

ARTICLE 8 MAINTENANCE, ALTERATION AND IMPROVEMENT

8.1 Maintenance by Association.

a. The Association shall maintain all Common Elements, whether Limited or General, and shall make assessments therefor as a Common Expense except where maintenance has been specifically made the responsibility of each Unit as set forth below.

b. The Association shall repair and maintain all easement areas, whether located on-site or off-site that serve and benefit the Condominium Regime or that are otherwise required to be maintained by the Declarant pursuant to separate agreement with the City.

c. The Association shall repair incidental damage caused to a Unit through maintenance by the Association and shall assess the cost thereof as a Common Expense.

d. If a Unit defaults on its responsibilities of maintenance, the Association shall assume such responsibilities and shall assess the cost thereof against the Unit of such Owner and such assessment shall be collectible as if it were an assessment for Common Expenses.

e. The Association may, in its discretion, assume responsibility for any maintenance project which requires reconstruction, repair, rebuilding, conservation, restoration or similar work to more than one Unit and the cost thereof may be in the discretion of the Association either assessed against each Unit on which such costs were incurred or assessed against all Units as a common expense according to the circumstances.

8.2 Maintenance by Owner.

a. Each Owner, at its sole own expense, shall maintain the interior, including the boundary surfaces, of its Unit and its equipment, shall keep such interior in a clean and sanitary condition, shall do all redecorating, painting and other finishing which may at any time be necessary to maintain its Unit, and shall be responsible for the maintenance of all personalty including carpets, furnishings, and appliances within such Unit.

b. The Owner of each Unit shall be responsible for maintaining the plumbing fixtures within the Unit and heating and air conditioning serving such Unit and all other utilities or portions thereof located within the boundaries of its Unit. The Owner shall also, at its own expense, keep its Unit in a clean and sanitary condition.

c. The Owner shall maintain, at its expense, any improvement or other alteration made by it.

d. The Owner of each Unit shall promptly report to the Association any defects or other maintenance needs which are the responsibility of the Association.

8.3 Alterations or Improvements by Owner. No Owner shall make or permit to be made any structural alteration to a Unit or to any Building without first obtaining written consent of the Board of Directors (which consent may be given by a general rule or regulation) which shall determine the proper insurance of such improvement or other alteration, and the effect of such improvement or alteration on insurance of other property of the Condominium Regime. The Board of Directors shall arrange with such Owner for the payment of the cost of any additional insurance required thereby. Alterations to the exterior of a Building or to the Common Elements shall not be made if, in the opinion of the Board of Directors, such alteration would be detrimental to the integrity or appearance of the Condominium Regime as a whole. Such Owner shall do no act or work which will impair the structural soundness or integrity of a Building or safety of the Property or impair any easement. The improvement or alteration of a Unit shall cause no increase or decrease in the number of ownership interests appurtenant to such Unit.

8.4 Alterations or Improvements by the Association. Whenever in the judgment of the Board of Directors the Common Elements shall require additions, alterations or improvements, the Board of Directors shall proceed with such additions, alterations or improvements and shall assess all Owners for the cost thereof as a common charge.

8.5 Definitions. As used in this Article 8, “**maintenance**” or “**repair**” shall mean the act of maintaining, repairing, restoring, renovating, reconstructing, replacing, rebuilding and similar work necessary to preserve a Unit or the Property in its original condition as completed; “**improvement**” shall mean the addition of a new structure, element or facility, other than a structure, element or facility otherwise provided for by this Declaration or any amendment thereto.

ARTICLE 9 RESTRICTIONS ON OWNERSHIP, USE, AND ENJOYMENT

9.1 Property Subject to Certain Provisions. The ownership, use, occupation, and enjoyment of each Unit and of the Common Elements of the Condominium Regime shall be subject to the provisions of the Articles, the Bylaws, Rules and Regulations and this Declaration, and the Condominium Documents, all of which provisions irrespective of where set forth or classified shall have equal status and shall be enforceable and binding as a covenant, condition, restriction, or requirement running with the land and shall be binding on and enforceable against each and all Units and the Owners thereof and their respective assigns, lessees, tenants, occupants and successors in interest.

9.2 Use of Property. The use of the Property shall be in accordance with and subject to the following provisions:

a. All Residential Units shall be used and occupied for residential dwelling purposes only, except that the Declarant may use a Residential Unit owned by Declarant as a model space or leasing office.

b. All Parking Units shall be used and occupied for parking and storage purposes associated with the Residential Units. No Parking Unit shall be owned and/or occupied by any Person other than Declarant, an Owner of a Residential Unit, or a tenant of a Residential Unit.

c. A Condominium may be rented or leased by the Owner or its lessee, provided the entire Unit is rented and the lease is in writing. The minimum lease term shall be thirty (30) days. Nightly

or weekly rentals are prohibited. No lease shall relieve the Owner as against the Association and other Owners from any responsibility or liability imposed by the Condominium Documents. All Owners who lease their Units shall promptly notify the Secretary of the Association in writing of the names of all tenants and members of tenants' family occupying such Condominium and shall provide the Secretary of the Association of the address and telephone number where such Owner can be reached.

d. Nothing shall be altered in, constructed in, or removed from the Common Elements except upon written consent of the Board of Directors, which may be given through regulations of the Association, and further provided that any holder of a first mortgage which acquires possession of a Unit by foreclosure or by deed in lieu of foreclosure shall have the right to post signs for the sale or rental of such Unit until such Unit is sold or a lease is entered into.

e. No activity shall be allowed which unduly interferes with the peaceful possession and use of the property by the Owners nor shall any fire hazard or unsightly accumulation of refuse be allowed.

f. No Owner, guest or invitee thereof shall block vehicular access to a Building's parking by parking vehicles or placing objects within that portion of a driveway which provides direct access to said parking. No Owner shall be allowed to install additional parking slabs on any part of the Property. Each Owner's guests or invitees will park their own vehicles only on the parking spaces provided within the Condominium Regime doing the same in such a manner as to not violate the provisions of this subparagraph. No vehicles may be permanently parked on the unreserved parking spaces within the Condominium Regime. Vehicles parked on unreserved parking spaces must be moved at least once every twenty-four (24) hours. Parking of vehicles shall only be allowed in garages and on unreserved parking spaces as provided herein.

g. Nothing shall be done or kept in any Unit or in the Common Elements which will increase the rate of insurance on the Common Elements, without the prior written consent of the Association. No Owner shall permit anything to be done or kept in its Unit or in the Common Elements which will result in the cancellation of insurance on any Unit or any part of the Common Elements, or which would be in violation of any law.

h. The Association shall have the authority to adopt Rules and Regulations governing the use of the Condominium Regime and such rules shall be observed and obeyed by the Owners, their guests and invitees. The initial Rules and Regulations are attached to this Declaration as Exhibit E. The adoption of such Rules and Regulations shall not be considered an amendment to the Condominium Declaration unless such rule(s) is inconsistent with other provisions of the Declaration, in which case an Amendment to the Declaration will be required. The Association shall have the authority to impose fines against Owners or their tenants for failure to comply with such Rules and Regulations, and such fines, if not timely paid, shall become a lien against the Unit, as provided in the Bylaws.

i. Agents of or contractors hired by the Association may enter any Unit when necessary in connection with any maintenance, landscaping, or construction for which the Association is responsible, provided such entry shall be made with reasonable advance notice to the Owners and with as little inconvenience to the Owners as practicable.

j. An Owner shall give notice to the Association of every lien against its Condominium other than permitted Mortgages, taxes, and Association Assessments, and of any suit or other proceeding which may affect the title to its Condominium, within ten (10) days after the lien attaches or the Owner receives notice of such lien.

k. An Owner shall be liable to the Association for the expense of any maintenance, repair, or replacement rendered necessary by its acts, neglect, or carelessness, or by that of its guests, employees, agents or lessees, which liability shall include any increase in insurance rates resulting therefrom.

9.3 **No Waiver.** Failure of the Association or any Owner to enforce any covenant, condition, restriction or other provision of the Act, this Declaration, the Articles, the Bylaws, or the Rules and Regulations adopted pursuant thereto, shall not constitute a waiver of the right to enforce the same thereafter.

ARTICLE 10 INSURANCE AND CASUALTY

10.1 **General Liability and Property Damage.** Comprehensive general liability and property damage insurance shall be purchased by the Association as promptly as possible following its election, and shall be maintained in force at all times, the premiums thereon to be paid by assessments. Prior to the organizational meeting, such insurance shall be procured by Declarant. The insurance shall be carried with reputable companies authorized to do business in the State of Idaho in such amounts as the Board may determine. The policy or policies shall name as insured all the Owners and the Association. Declarant shall be named an additional insured on such policy or policies until such time as Declarant shall have conveyed all of the Units in the Condominium Regime. The policy or policies shall insure against loss arising from perils in both the Common Elements and the Units and shall include contractual liability coverage to protect against such liabilities as may arise under the contractual exposures of the Association and/or the Board.

10.2 **Fire and Casualty.** Fire and other hazard insurance shall be purchased by the Association as promptly as possible following its election and shall thereafter be maintained in force at all times, the premiums thereon to be paid out of Association assessments. Policies shall provide for the issuance of certificates or such endorsement evidencing the insurance as may be required by the respective Mortgagees. The policy, and certificates so issued, will bear a mortgage clause naming the Mortgagees interested in said property. The policy or policies shall insure against loss from perils therein covered to all of the improvements (known as "all-in" condominium coverage) in the Condominium Regime with a maximum deductible of Two Thousand Five Hundred and No/100 Dollars (\$2,500.00) per claim. Such policy or policies shall contain a Special Form endorsement. The improvements to be insured under this clause shall be continually insured to value, and the policy or policies shall contain replacement cost insurance. If reasonably available, the policy or policies shall contain a stipulated amount clause, or determinable cash adjustment clause, or similar clause to permit a cash settlement covering specified value in the event of destruction and a decision not to rebuild.

The policy or policies shall name as insured all of the Owners, the Association and Declarant, so long as Declarant is the Owner of any of the Units in the Condominium Regime. The Declarant shall notify the insurance carrier of any change in ownership of a Unit until such time as the organizational meeting of the Owners is held, at which time it shall be the responsibility of the Association to notify the insurance carrier of a change in the ownership of any Unit. The policy or policies shall also cover personal property owned in common, and shall further contain waiver of subrogation rights by the carrier as to negligent owners.

10.3 **Fire and Casualty on Individual Units.** Except as expressly provided in this clause and in Section 10.4 herein, no Owner shall separately insure its Unit or any part thereof against loss by fire or other casualty covered by the insurance carrier under Section 10.2 herein. Should any Owner violate this provision, any diminution in insurance proceeds resulting from the existence of such other insurance, shall

be chargeable to the Owner who acquired such other insurance, who shall be liable to the Association to the extent of any such diminution and/or loss of proceeds.

10.4 Personal Liability on Individual Units. An Owner may carry such personal liability insurance, in addition to that herein required, as it may desire. In addition, the personal property of the Owner shall be separately insured by such Owner to its full insurable value, such insurance to be limited to the type and nature of coverage often referred to as "Condominium Unit Owners Insurance". All such insurance separately carried shall contain waiver of subrogation rights by the carrier as to negligent Owners.

10.5 Additional Coverage. The Association may purchase and maintain in force, at the expense of the maintenance fund, debris removal insurance, fidelity bonds, and other insurance and/or bonds that it deems necessary. The Association shall purchase insurance for every director and officer of the Association and maintain workmen's compensation insurance to the extent that the same shall be required by law respecting employees of the Association. The Board may also maintain "special risk" insurance coverage on the Condominium Regime to insure against water damage, including back up on sewers and drains as well as flood insurance and like kind casualties.

10.6 Loss Adjustment. The Board is hereby appointed as the attorney-in-fact for all Owners to negotiate loss adjustment on the policy or policies carried by the Association.

10.7 Association as Trustee for Proceeds. In the event of damage or destruction by fire or other casualty affecting a Unit or Units, and/or if any portion of the Common Elements is damaged or destroyed by fire or other casualty, all insurance proceeds paid in satisfaction of claims for said loss or losses shall be segregated according to losses suffered by each Unit or Units and/or the Common Elements, and shall be paid to the Association as trustee for the Owner or Owners and for the encumbrancer or encumbrancers, as their interest may appear. Said insurance proceeds, and the proceeds of any special assessment as hereinafter provided, whether or not subject to liens of mortgages or deeds of trust, shall be collected and disbursed by said trustee through a separate trust account on the following terms and conditions:

a. Partial Destruction of Common Elements. If the damaged improvement is a Common Element, the Board of Directors of the Association may without further authorization contract to repair or rebuild the damaged portion of the Common Element substantially in accordance with the original plans and specifications thereof.

b. Partial Destruction of Units and Common Elements. In the event of damage to, or destruction of, any Unit or Units with accompanying damage to the Common Elements but the total destruction or damage does not represent sixty percent (60%) or more of the Buildings and the cost of repairing or rebuilding said damaged area does not exceed the amount of available insurance proceeds for said loss by more than Fifteen Thousand and No/100 Dollars (\$15,000.00), the Board of Directors of the Association shall immediately contract to repair or rebuild the damaged portion of the Unit or Units and the Common Elements substantially in accordance with the original plans and specifications. If the cost to repair or rebuild exceeds available insurance by Fifteen Thousand and No/100 Dollars (\$15,000.00), the Owners of the individual Units, by vote of not less than a majority of those present and entitled to vote, in person or by proxy, at a duly constituted Owners' meeting held within thirty (30) days from the date of such damage or destruction, shall determine whether the Board of Directors shall be authorized to proceed with repair or reconstruction.

c. Total Destruction. In the event of sixty percent (60%) or more damage to, or destruction of, the Buildings by fire or other casualty, the Owners of the individual Units, by vote of not less than a majority of those present and entitled to vote, in person or by proxy, at a duly constituted Owners'

meeting held within thirty (30) days from the date of such damage or destruction, shall determine whether the Board of Directors shall be authorized to proceed with repair or reconstruction, or whether said Project shall be sold; provided, however, that such determination shall be subject to the express written approval of all record owners of Mortgages upon any part of the Condominium Regime.

In the event of a determination to rebuild or repair, the Board shall have prepared the necessary plans, specifications and maps and shall execute the necessary documents to effect such reconstruction or repair as promptly as practicable and in a lawful and workmanlike manner.

In the event of a determination not to rebuild, the Board shall offer the Project for sale forthwith, at the highest and best price obtainable, either in its damaged condition, or after damaged structures have been razed, the net proceeds of such sale, and the proceeds, if any, of insurance carried by the Association, and/or by the Owners as a whole on the Project, including coverage on the Units and the Common Elements, except for Unit coverages under Section 10.4 herein, shall be distributed proportionately to the Owners in the same proportion that the Unit in which they have an interest shares in the Common Elements, except that where there is a mortgage of record or other valid encumbrance on any one Unit then, and in that event, with respect to said Unit the Association will distribute said proceeds which would otherwise have been distributable first to the record owner of mortgages upon Units and Common Elements in the Condominium Regime in satisfaction of the balance currently due on said encumbrances and then the remaining proceeds, if any, to the Owner of record.

d. Deficiency. In the event that the Common Elements are repaired or reconstructed pursuant to the provisions of Subsections a-c above and there is any deficiency between the insurance proceeds paid for the damage to the Common Elements and the contract price for repairing or rebuilding the Common Elements, the Board shall levy a special assessment against each Owner in proportion to its percentage of ownership in the Common Elements to make up such deficiency. If any Owner shall fail to pay said special assessment or assessments, within thirty (30) days after the levy thereof, the Board shall make up the deficiency by payment from the maintenance fund, and the remaining Owners shall be entitled to the same remedies as those provided in Article 8 of this Declaration, covering a default of any Owner with respect to the Owner's responsibility for maintenance.

e. Arbitration. In the event of a dispute among the Owners and/or Mortgagees respecting the provisions of this clause, any such party may cause the same to be referred to arbitration in accordance with the then prevailing rules of the American Arbitration Association.

In the event of arbitration, the party requesting the arbitration will give immediate notice thereof to the Board, which shall notify all other Owners and Mortgagees as promptly as possible after the reference to arbitration is made, giving all such parties an opportunity to appear at such arbitration proceedings. The decision of the arbitrator in this matter shall be final and conclusive upon all of the parties. The arbitrator may include in his or her determination an award for costs and/or attorney fees against any one or more parties to the arbitration.

10.8 Abatement of Common Expenses. The Board is authorized to provide coverage for payment of maintenance charges which are abated hereunder on behalf of an Owner whose Unit is rendered uninhabitable for a peril insured against.

10.9 Review of Insurance Needs. Insurance coverages will be analyzed by the Board, or its representative, at least every year from the date hereof and the insurance program revised accordingly.

ARTICLE 11 MORTGAGEE PROTECTIONS

11.1 **Right to Mortgage.** Each Owner shall have the right, subject to these provisions, to grant separate Mortgages for its Unit together with the respective ownership interest in the Common Elements. No Owner shall have the right or authority to make or create or cause to be made or created from the date hereof any Mortgage or other lien on or affecting the Project or any part thereof, except only to the extent of its own Unit and the respective ownership interest in the Common Elements appurtenant thereto.

11.2 **Lien Subordination.** The lien for Common Expenses payable by an Owner or fines assessed against an Owner shall be subordinate to the lien of a prior recorded first Mortgage on the interest of such Owner. This Section shall not be amended, changed, modified, or rescinded without the prior written consent of all Mortgagees of record holding a lien against all or a part of the Project.

11.3 **Mortgagee's Rights.** Upon written request provided to the Association, any Mortgagee, or insurer or guarantor of any first Mortgage will be entitled to:

- a. Inspect the books and records of the Association during normal business hours;
- b. Receive a financial statement of the Association within ninety (90) days following the end of any fiscal year of the Project; and
- c. Receive written notice of all meetings of the Association and designate a representative to attend all such meetings.

11.4 **Insurance Proceeds Upon Damage.** In the event of substantial damage to or destruction of any Unit or any part of the Common Elements, the Mortgagee of a Unit will be entitled to timely written notice of such damage or destruction, and no provision of this Declaration or any other document establishing the Project will entitle the Owner or other party to priority over such Mortgagee with respect to the distribution of any insurance proceeds. Any proceeds from settlement shall be payable to the Association, for the benefit of the Owners and their Mortgage holders, as more specifically set forth in Article 10.

11.5 **Condemnation.** If any Unit or portion thereof or the Common Elements or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise thought to be acquired by a condemning authority, the Mortgagee of a Unit will be entitled to timely written notice of any such proceeding or proposed acquisition, and no provisions of this Declaration or any other document establishing the Project shall entitle the Owner or other party to priority over such Mortgagee with respect to the distribution of the proceeds of any award or settlement. Any proceeds from settlement shall be payable to the Association, for the benefit of the Owners and their Mortgage holders.

11.6 **No Right of First Refusal.** The right of an Owner to sell, transfer, or otherwise convey the Owner's Unit will not be subject to any right of first refusal or any similar restriction in favor of the Association.

11.7 **Rights of Mortgagees Under Foreclosure.** Each Mortgagee who takes possession of a Unit 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 the Unit free of any claims for unpaid assessments and charges against the Unit which accrue prior to the time such holder takes possession of the Unit, except for claims for a pro rata reallocation of such assessments or charges to all Units including the mortgaged Unit.

11.8 **Notice to Mortgagee.** Upon written request of the Mortgagee, the holder of a first Mortgage shall be entitled to prompt written notice from the Association of any default in the performance of any obligation under this Declaration, the Articles, the Bylaws, or the Rules and Regulations of the Association, which default is not cured by the Owner within thirty (30) days' notice of lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association, and any proposed action that requires the consent of a specified percentage of eligible Mortgage holders.

ARTICLE 12 CONDEMNATION

12.1 **Condemnation; General.** If all or part of the Project is taken or threatened to be taken by condemnation, the Board shall act on behalf of the Association, to represent the Owners in any proceedings, negotiations, settlements, or agreements. Each Owner hereby appoints the Association as attorney-in-fact for this purpose. The expense of participation in such proceedings by the Board shall be a Common Expense. The Board may obtain and pay for such assistance from attorneys, appraisers, architects, engineers, expert witnesses, and other persons as the Board deems necessary or advisable to aid or advise it in matters relating to such proceedings. All damages or awards for any such taking shall be deposited with the Board, acting as trustee, and such damages or awards shall be applied or paid as provided herein.

12.2 **Condemnation of Common Elements.** If any action is brought to condemn a portion of the Common Elements, the Board shall have the sole authority to determine whether to defend or resist such action, to make any settlement with respect thereto, or to convey such property to the condemning authority in lieu of condemnation. After the damages or awards for such taking are determined, such damages or awards shall be paid to each Owner in proportion to its ownership interest. The Board may call a meeting of the Association, at which meeting the members by a majority vote may decide whether to replace or restore insofar as possible the Common Elements so taken or damaged.

12.3 **Payment of Awards and Damages.** Any damages or awards paid to or for the account of any Owner by the Board, acting as trustee, shall be paid to the Association, for the benefit of the Owners and their Mortgage holders. Any awards shall be applied first to the payment of any taxes or assessments by governmental authority past due and unpaid with respect to that Unit; secondly, to amounts due under any Mortgages; thirdly, to the payment of any unpaid common expenses, fines or special assessments charged to or made against the Unit; and finally to the Owner.

ARTICLE 13 TERMINATION

13.1 **Procedure.** The Condominium Regime may be terminated in the following manner, in addition to the manner provided by the Act:

a. **Destruction.** In the event it is determined in the manner elsewhere provided that all Buildings shall not be reconstructed because of major damage, the Condominium Regime will be thereby terminated in compliance with the provisions of the Act.

b. **Agreement.** The Condominium Regime may be terminated at any time by the approval in writing of all of the Owners and by holders of all liens affecting any of the Units by filing an instrument to that effect, duly recorded, as provided in the Act. It shall be the duty of every Owner and its respective lien holder to execute and deliver such instrument and to perform all acts as in a manner and form as may be necessary to effect the sale of the Project when at a meeting duly convened of the Association, the Owners of 100% of the voting power, and all record owners of Mortgages upon Units in the Condominium Regime, elect to terminate and/or sell the Project.

c. Certificate. The termination of the Condominium Regime in either of the foregoing manners shall be evidenced by a certificate of the Association executed by all Members of the Association and their respective holders of all liens affecting their interest in the Condominium Regime, certifying as to facts effecting the termination, which certificate shall become effective upon being recorded in the office of the Madison County Recorder.

13.2 Form of Ownership after Termination. After termination of the Condominium Regime, the Project will be held as follows:

- a. The Property shall be deemed to be owned in common by the Owners.
- b. The undivided interest in the Property owned in common which shall appertain to each Owner shall be the percentage of undivided interest previously owned by such Owner in the Common Elements and facilities.
- c. Any liens affecting any of the Units shall be deemed to be transferred in accordance with the existing priorities to the undivided interest of the Owner in that property.
- d. After termination, the net proceeds of sale, together with the net proceeds of the insurance on the Property, if any, shall be considered as one fund and shall be divided among all the Owners in a percentage equal to the percentage of undivided interest owned by each Owner in the Common Elements after first paying out of the respective shares of the Owners, to the extent sufficient for that purpose, all liens on the undivided interest in the property owned by each Owner.

ARTICLE 14 MISCELLANEOUS

14.1 Amendment to Declaration. While Declarant has the right to name the Board of Directors, Declarant may amend this Declaration without any consent and/or approval required. At such time as Declarant no longer possesses the right to name the Board of Directors, and except as otherwise provided in this Declaration, this Declaration may be amended and such amendment shall be made in the following manner:

- a. Notice. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is considered. Upon written request of a Mortgagee, holders of a first Mortgage of record shall receive notice of such proposed amendment as provided in the Bylaws of the Association.
- b. Resolution. A resolution adopting a proposed amendment may be proposed by either the Board of Directors or by any Member of the Association. The resolution must be adopted by at least sixty-seven percent (66%) of all Owners entitled to vote, in person or by proxy, and fifty-one percent (51%) of the Mortgagees who have requested notice of such amendment and who have outstanding or unreleased Mortgages secured by Units.
- c. Bylaws. In the case of an amendment to this Declaration by reason of an amendment to the Bylaws, then in the manner specified in such Bylaws.
- d. Execution and Recording. An amendment adopted pursuant to Subsections b or c above shall be executed by an officer specifically delegated to do so with the formalities required by the

Act. Upon the recordation of such instrument in the office of the Madison County Recorder, the same shall be effective against any persons owning an interest in a Unit or the Condominium Regime.

14.2 **Amendment of Ownership Interest.** No amendment shall change the percentage of ownership in the Common Elements appurtenant to a Unit, nor increase the Owner's share of the Common Expenses unless the record Owner of the Unit concerned and all record owners of Mortgages thereon shall affirmatively join in the adopting of such amendment.

14.3 **Notices.** Upon acquisition of title to a Unit, each Owner shall provide written notice to the Declarant or Association of such Owner's address for purposes of furnishing notices in connection with this Declaration and if no such address shall have been provided, then the address used by Madison County for the mailing of real property tax statements for such Unit shall be used for such notice. The Declarant or Association shall maintain a record of the current notice addresses furnished by the other Owners, if any. All notices to be given pursuant to this Declaration shall be sufficient if given by personal service, by guaranteed overnight delivery service or by being mailed postage prepaid, certified or registered mail, return receipt requested, to the prescribed address. Any time period provided in the giving of any notice hereunder shall commence upon the date of personal service, the date after delivery to the guaranteed overnight delivery service or two (2) days after mailing by certified or registered mail.

14.4 **No Merger.** The easements, covenants, restrictions and other provisions contained in this Declaration shall remain in full force and effect despite the fact that any portion of the Property may be owned by the same persons from time to time.

14.5 **No Third-Party Beneficiary.** This Declaration has been executed and recorded for the benefit of Declarant, the Association, and the Owners. Unless otherwise set forth herein with specificity which shall include the name of the party which shall be intended to be benefitted by a specific provision of this Declaration, no other party shall be construed to be an intended third-party beneficiary of any of the rights, duties or obligations set forth herein and no party other than Declarant, the Association or an Owner shall, therefore, have the right to enforce any provision hereof, unless such right shall be specifically set forth herein.

14.6 **Liberal Interpretation.** The provisions of this Declaration shall be liberally construed as a whole to effectuate the purpose of this Declaration.

14.7 **Captions.** The titles, headings and captions used herein are for convenience only and are not a part of this Declaration and shall not be considered in construing, nor shall same be used to limit or amplify the terms and provisions hereof.

14.8 **Invalidity of Provision.** If any provision of this Declaration as applied to any circumstance shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way affect (to the maximum extent permissible by law) any other provision of this Declaration, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of the Declaration as a whole.

14.9 **Exhibits.** All exhibits to this Declaration are incorporated herein by this reference.

14.10 **Governing Law.** This Declaration and the exhibits attached hereto shall be governed by and construed under the laws of the State of Idaho.

14.11 **Plural and Gender.** Whenever the context so permits or requires, the singular shall include the plural and the plural the singular, and the use of any gender shall include all genders.

IN WITNESS WHEREOF, Declarant, as the record owner of the Property, and pursuant to Idaho Code § 55-1504(c)(iii), has executed this Declaration the day and year first above written.

DECLARANT:

NEW PEAK CONSTRUCTION COMPANY, LLC,
a Wyoming limited liability company

By: [Signature]
Name: Jared Killpack
Its: Manager

IDAHO
STATE OF ~~WYOMING~~)
) ss:
COUNTY OF MADISON)

This instrument was acknowledged before me on the 1st day of March, 2013 by Jared Killpack, Manager of New Peak Construction Company, LLC, a Wyoming limited liability company.

Brenda L. Stoor
Notary Public

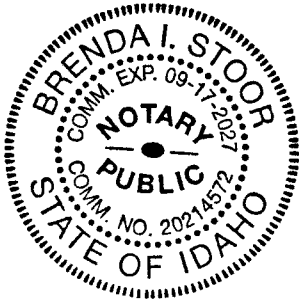


EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Beginning at a point that is N00°11'06"W 1159.37 feet and N89°35'15"E 420.47 feet from the Southwest corner of Section 17, Township 6 North, Range 40 East of the Boise Meridian, Madison County, Idaho and running thence N89°35'15"E 142.74 feet; thence S00°08'08"E 495.01 feet; thence S89°35'15"W 374.00 feet to a point on a curve having a radius of 1850.00 feet and a chord that bears N23°25'48"E 431.90'; thence to the right along said curve a distance of 432.89 feet thru a central angle of 13°24'25"; thence N30°10'00"E 116.11 feet to the point of beginning, containing 3.087 acres.

EXHIBIT B

PLAT

See attached.

EXHIBIT C

**ARTICLES OF INCORPORATION
OF
YELLOWSTONE HEIGHTS CONDOMINIUMS OWNERS ASSOCIATION**

TO THE SECRETARY OF STATE OF THE STATE OF IDAHO:

In compliance with the requirements of the Idaho Nonprofit Corporation Act, Title 30, Chapter 30, Code of Idaho, as amended, the undersigned acting as incorporator of a nonprofit corporation hereby adopts the following Articles of Incorporation.

Article 1

Name and Principal Office

The corporation shall be known as **Yellowstone Heights Condominiums Owners Association** and its principal offices shall be located in Rexburg, Madison County, Idaho.

Article 2

Corporate Existence

The corporate existence of this corporation shall begin upon the date these Articles are filed with the Idaho Secretary of State, and the period of its duration is perpetual.

Article 3

Purposes and Powers

A. The purpose and objective of the corporation is to provide an entity to conduct the business and affairs of, and to act as or for, the co-owners of that certain condominium project created and submitted pursuant to the provisions of the Idaho Condominium Property Act, Title 55, Chapter 15, Code of Idaho (2020), as amended, known as "Yellowstone Heights" (the "**Condominium Regime**") and to be located on certain portions of real estate situated in Rexburg, Madison County, Idaho.

The corporation shall have all powers and purposes granted or implied to a council of co-owners as are granted or implied by the Condominium Declaration establishing said Condominium Regime, and all of such powers shall likewise constitute lawful purposes of the corporation. In addition, the corporation shall have all powers and purposes granted or implied to a nonprofit corporation under the Idaho Nonprofit Corporation Act, Title 30, Chapter 30, Code of Idaho, and all of such powers shall likewise constitute lawful purposes of the Association.

B. The purposes of the corporation are exclusively not for private profit or gain and no part of its activities shall consist of carrying on political propaganda or otherwise attempting to influence legislation, and the corporation shall make no distribution of income to its members, directors or officers, although members, directors, or officers may be reimbursed for expenses incurred while conducting the affairs of the corporation. No dividends shall be paid to members at any time.

C. In maintaining property, the corporation may join with the management of any other Association(s) maintaining similar properties in securing or providing services or facilities common in whole or in part to both or all, and in discharging the expense thereof.

Article 4
Registered Office and Agent

The address of the initial registered office of the corporation is 663 Dry Creek Trl Driggs, ID 83422 , and the name of its initial registered agent at such address is Jared Killpack.

Article 5
Board of Directors

The number of directors constituting the initial Board of Directors of the corporation is three (3), and the names and addresses of the persons who are to serve as the initial directors are:

<u>Name</u>	<u>Address</u>
Jared Killpack	663 Dry Creek Trl Driggs, ID 83422
Aaron Jensen	6225 S 440 E Murray, UT 84107
Joe Killpack	4708 Big Loop Trl Cheyenne Wy, 82009

The initial Board of Directors shall be subject to removal only by New Peak Construction Company, LLC acting by and through its Manager until their term expires as provided in the Bylaws, but thereafter a Director may be removed from office at a special meeting of the members of the corporation in such manner as may be provided by the Bylaws.

Article 6
Bylaws

The initial Bylaws of the corporation shall be adopted by its initial Board of Directors, but the power to thereafter alter, amend, or repeal the same or adopt new Bylaws is reserved to the members of the corporation.

Article 7
Members and Voting

Persons or entities owning Units submitted to the Condominium Regime shall be the members of the corporation, all of which and the rights and obligations thereof shall be governed by the provisions of the Bylaws. The voting rights of the members shall be fixed, limited, enlarged, or denied to the extent specified in the Bylaws.

Article 8
Execution of Written Instruments

All instruments executed by the Association shall be deemed sufficient if executed as provided by specific resolution of the Board of Directors as certified by the president, vice president or secretary of the Association.

Article 9
Dissolution

The Association may be dissolved with the assent given in writing and signed by not less than two-thirds (2/3) of the members. Upon dissolution of the Association, other than incident to a merger or consolidated, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other organization to be devoted to such similar purposes.

Article 10
Exemption of Members from Personal Liability

The private property of all members of the Association shall be wholly exempt from liability for any and all debts, obligations and liabilities of the Association.

Article 11
Amendment

Amendment of these Articles shall require the assent of two-thirds (2/3rds) of the entire membership.

Article 12
Incorporator

The name and address of the incorporator is:

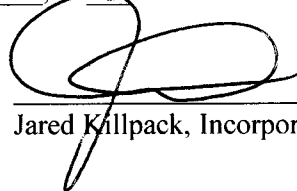
Name

Jared Killpack

Address

663 Dry Creek Trl
Driggs, ID 83422

IN WITNESS WHEREOF, for the purpose of forming this corporation under the laws of the State of Idaho, the undersigned, being the sole incorporator of this Association, has executed these Articles of Incorporation this 1st day of MARCH, 2023.



Jared Killpack, Incorporator

EXHIBIT D

BYLAWS OF YELLOWSTONE HEIGHTS CONDOMINIUMS OWNERS ASSOCIATION

These are the Bylaws of Yellowstone Heights Condominiums Owners Association (hereinafter referred to as “**Association**”), a corporation organized pursuant to the Idaho Nonprofit Corporation Act, Title 30, Chapter 30, Code of Idaho, as amended (the “**Act**”), for the purpose of administering Yellowstone Heights, a condominium project established pursuant to the Idaho Condominium Property Act, Title 55, Chapter 15, Code of Idaho (2020), as amended, located on certain portions of the real property located in Rexburg, Madison County, Idaho. Any capitalized term used but not otherwise defined herein shall have the meaning given to such term in the declaration executed for the purpose of governing said condominium project (the “**Declaration**”).

I. MEMBERS AND VOTING RIGHTS.

1. Only the Owners of each Residential Unit shall constitute the Members of the Association and membership shall automatically cease upon termination of all interests of such Owner in the Condominium Regime. Declarant shall be and have the rights of Members with respect to unsold Residential Units.

2. An Owner of record shall be recognized as a Member in the Association without further action for so long as it holds an ownership interest in a Residential Unit. If ownership is acquired but not of record, or if acquired other than by way of conveyance or other formal instrument of transfer (such as by death, judicial act or dissolution), the person acquiring or succeeding to ownership shall present to Board of Directors of the Association evidence satisfactory to it of facts evidencing lawful ownership status prior to exercise of any rights of membership in the Association (failure to provide such evidence shall not, however, relieve an Owner of its ownership obligations). A fiduciary or other official acting in the representative capacity shall exercise all membership rights and privileges of the Owner which it represents.

3. If more than one person is the Owner of the same Residential Unit, all such Owners shall be Members and remain jointly and severally liable for all membership obligations. In such cases, or if more than one fiduciary or other official is acting in the premises, the votes entitled to be cast by the Owners of that Unit shall be cast by the person named for that purpose on a certificate signed by all such Owners or fiduciaries or other officials and filed with the Secretary of the Association and such person shall be deemed to hold an ownership interest to such Unit for purposes of voting and determining the representation of such ownership interest at any meeting or for purposes otherwise provided herein. If such certificate is not executed and filed with the Secretary, such membership shall not be in good standing and the votes for that Unit shall not be considered in considering a quorum or a vote or for any other purposes until this bylaw is complied with.

4. The Owner of each Residential Unit shall be entitled to one vote on all matters to be determined by the Members of the Association either as Owners or as Units or as contemplated by the Act, as amended, pursuant to the Declaration, including any supplements or amendments thereto, submitting the property to the Condominium Regime. Votes of a single Residential Unit may not be divided. Declarant shall be entitled to one vote for each Residential Unit it owns.

II. MEMBERS' MEETINGS.

1. The organizational meeting of the Members of the Association to elect successors of the initial Board of Directors shall be held on the earlier of five (5) years after Declarant conveys the first Residential Unit in the Condominium Regime to an unaffiliated, third-party Residential Unit purchaser, or after Declarant has turned over control of the Condominium Regime to the Association.

2. A special meeting shall be held whenever called by the President or, in his or her absence or disability, by the Vice-President, or by any one Member of the Board of Directors.

3. The Secretary or his or her designate shall give written notice to each Member of the annual meeting or a special meeting called pursuant to Section II.2 hereof. Whoever requests the special meeting shall give like written notice of such special meeting. All notices shall set forth the time and place and purpose or purposes for which the meeting will be held. No action shall be taken at a special meeting which is not directly related to the purpose or purposes stated in the notice of such meeting.

4. The Secretary shall fix the record date for membership votes prior to any membership meeting. The record date for determining the Members entitled to notice of a meeting is the close of business on the day preceding the mailing of the notice of that meeting. The record date for determining the Members entitled to vote at a meeting is the date of the meeting.

5. After fixing a record date for notice of a meeting, the Secretary shall prepare an alphabetical list of the names of its Members who are entitled to notice of the meeting. The list shall show the address of each Member and the number of votes each Member is entitled to cast at the meeting. The Secretary shall also prepare on a current basis through the time of the membership meeting a list of Members, if any, who are entitled to vote at the meeting but were not entitled to notice of the meeting at the time notice was given.

6. Notice of a Members' meeting shall be given by mailing or delivering the same not less than ten (10), but not more than thirty (30) days, prior to the date of the meeting. Notice shall be deemed to be given if mailed by first class mail to the Member at the address of his or her Residential Unit within the Condominium Regime, unless at the time of giving such notice such Member has given written direction delivered to the Secretary specifying a different mailing address to be carried on the rolls of the Association. If more than one person is the owner of the same Residential Unit or if more than one fiduciary or one official is acting in the premises, notice to such person shall be deemed to have been given, when in accordance with this paragraph to the person named in the certificate filed with the Secretary in accordance with Section I.3. Notice of any meeting may be waived in writing by the person entitled thereto.

7. A quorum at a Members' meeting shall consist of two-thirds (2/3) of the Owners of all of the Residential Units. The acts carried or approved by a majority vote of all Owners of the Residential Units represented at a meeting at which a quorum is present shall constitute the acts of the membership unless a different rule is provided herein or by the Articles, the Declaration or other agreement to which the Association is a party. The President, or, in his or her absence or disability the Vice-President, shall preside at each Members' meeting; if neither the President nor the Vice-President is able to preside, a chairman shall be elected by the Members present at such meeting.

8. At a membership meeting, a person holding a member's proxy to vote shall be permitted to cast such Member's vote on all questions properly coming before such meeting, provided such proxy must be in writing and signed by a Member or other person entitled to cast votes, and shall set forth the Residential Unit with respect to which such rights are pertinent, and the period in which the proxy is to be

in force and effect. Decision of the Board of Directors as to the sufficiency of any proxy for recognition shall be final and not subject to appeal to the members.

9. At all meetings, the order of business shall consist of the following:

- (a) Election of Chairman, if required.
- (b) Calling of roll and certification of proxies.
- (c) Proof of notice of meeting or waiver of notice.
- (d) Reading and disposal of any unapproved minutes.
- (e) Reports of officers, if applicable.
- (f) Reports of committees, if applicable.
- (g) Election of Directors, if applicable.
- (h) Unfinished business.
- (i) New Business.
- (j) Adjournment.

Robert's Rules of Order shall govern unless the Chairperson prefers to utilize another method to facilitate the meeting.

III. BOARD OF DIRECTORS.

1. The affairs of the Association shall be managed by an initial Board of three (3) Directors. The initial Board shall consist of such persons as the Declarant may appoint pursuant to the Declaration and need not be Members of the Association. The initial Board shall serve until the first annual Members' meeting. From and after the first annual meeting of members, the Board of Directors shall be selected from the members of the Association. An officer or designated agent of a partnership or corporate member shall qualify to serve as a Director.

2. At the first annual Members' meeting and at each meeting thereafter three (3) Directors shall be elected and the term of office of each Director shall extend until the next annual meeting of the members and thereafter until their successors are duly elected and qualified or until removal in the manner as elsewhere provided.

3. Each Director shall be elected by ballot (unless such requirement is waived by unanimous consent) and by a plurality of the votes cast at the annual meeting of the members of the Association. Each person entitled to vote shall be entitled to vote for as many nominees as there are vacancies to be filled by election and each Director shall be elected by a separate ballot unless provided otherwise by unanimous consent of the members.

4. Except as provided in Section III.5, vacancies on the Board of Directors may be filled until the date of the next annual meeting by a vote of the remaining Directors regardless of whether those remaining constitute a quorum.

5. The initial Directors shall be subject to removal only by the Declarant. Thereafter, a Director may be removed by concurrence of three-fourths (3/4) of the Members at a special meeting called for that purpose. The vacancy on the Board of Directors so created shall, be filled by the persons entitled to vote at the same meeting.

6. The initial Directors as well as any other Directors appointed by the Declarant shall serve without compensation. Directors elected by the Members shall receive such compensation and expenses as may be approved by the persons entitled to vote at any annual or special meeting.

7. An organization meeting of a newly-elected Board of Directors shall be held within ten (10) days of their election at such place and time as shall be fixed by the Directors at the meeting at which they were elected. No further notice of the organization meeting shall be necessary.

8. By a majority vote, the Directors may set the time and place for regular meetings of the Board and no notice thereof shall be required until such resolution is modified or rescinded. Special meetings of the Directors may be called by the President, Vice-President, or any Director, provided not less than two (2) days' notice shall be given, personally or by mail, telephone, or telegraph, which notice shall state the time, place and purpose of the meeting.

9. A quorum at a Directors' meeting shall consist of two of the three Directors. The acts approved by a majority vote of those present at a meeting duly called at which a quorum is present shall constitute the acts of the entire Board of Directors, except where approval by a greater number of Directors is required by the Declaration or these Bylaws.

10. The presiding officer of a Director's meeting shall be the President, or in his or her absence, the Vice-President.

11. The Board of Directors, by resolution approved by all Members thereof, may designate from among its members such committees as it deems advisable and by resolution provide the extent and manner to which the same may have and exercise the authority of the Board.

12. Board of Director's meetings must be open to all Owners except for meetings between the Board and its attorney with respect to proposed or pending litigation where the contents of the discussion would otherwise be governed by attorney-client privilege. Notice of each Board of Director's meeting must be mailed or delivered to each Owner at least seven (7) days before the meeting. Minutes of meetings of the Board of Directors must be maintained in written form or in another form that can be converted into written form within a reasonable time. The official records of the Board of Directors must be open to inspection and available for photocopying at reasonable times and places. Any action taken by the Board of Directors at a meeting that is in violation of any of the provisions of this subsection is not valid or enforceable. Notwithstanding the above, the Board of Directors may conduct a meeting in an emergency situation subject to the ratification of any Board action at a subsequent meeting held in compliance with this Section.

IV. POWERS AND DUTIES OF THE BOARD OF DIRECTORS.

All of the powers and duties of the Association shall be exercised by the Board of Directors, including those existing under the common law and statutes, the Articles, and the Condominium Documents. Such powers and duties of the Directors shall be exercised in accordance with the provisions of the Declaration and, in addition to those elsewhere provided, shall include but not be limited to the following:

1. The collection of Assessments against Members for all Common Expenses;
2. Use of the proceeds of Assessments in the exercise of its powers and duties;
3. The maintenance, repair, replacement, and operation of the Project including all Common Elements, and the making or providing for payment for all such work and approving or delegating to the officers authority to approve vouchers therefor;

4. The reconstruction, repair, restoration, or rebuilding of the Project and of any Units as applicable after casualty; construction of new improvements or alterations if approved; to make and amend regulations respecting the use and occupancy of the Project and to permit or forbid an action or conduct within the discretion committed to them in the Declaration, Bylaws, and resolutions of the members;

5. The enforcement by legal means of the provisions of the Act, the Articles, the Bylaws, the Declaration, and the Rules and Regulations for the use of the Property; and to take legal action in the name of the Association and on behalf of the Members;

6. To contract for management of the Condominium Regime and to delegate to such manager any or all powers and duties of the Association except such as are specifically required by the Declaration, Bylaws or resolutions of the Members to have approval of the Board of Directors or the membership of the Association;

7. To employ, designate, and discharge personnel to perform services required for proper operation of the Condominium Regime;

8. To carry insurance on the Property and insurance for the protection of Owners, occupants, and the Association;

9. To pay the cost of all power, water, sewer, and other utility or other services rendered to the Condominium Regime and not billed directly to the Owners of the individual Units;

10. To conduct all votes or determinations of the Members other than at a membership meeting;

11. To borrow money from banks, lending institutions or agencies for the use and benefit of the Association and to secure loans by pledge of the assets of the Association, and from time to time renew such loans and give additional security; and

12. To do such other acts as are necessary and proper to effect the purpose of the Condominium Regime as stated in the Declaration and these Bylaws, provided such acts are not otherwise prohibited.

V. OFFICERS.

1. The officers of the Association shall be the President who shall be a Director, a Vice-President who shall be a Director, a Treasurer, who need not be either a Director or a member, and a Secretary, who need not be either a Director or member. All such officers shall be elected annually by the Board of Directors and may be peremptorily removed and replaced by the vote of two-thirds (2/3) of the Directors at any meeting. The initial officers and their successors shall be chosen by the initial Board of Directors and shall serve until the organizational meeting of the Members. The Board of Directors may from time to time create and fill other offices and designate the powers and duties thereof. Each officer shall have the powers and duties usually vested in such office, and such authority as is committed to the office by the Bylaws or by specific grant from the Board, but subject at all times to the provisions of the Bylaws and to the control of the Board of Directors.

2. The President shall be the chief executive officer of the Association. He or she shall preside at all membership meetings and meetings of the Board of Directors and shall have power to appoint committees from among the Members to assist in the conduct of the affairs of the Association and the Condominium Regime.

3. The Vice-President shall preside over the membership meetings in the absence or disability of the President, and shall otherwise exercise the powers and duties of the President in the event of the absence or disability of the President and shall generally assist the President and exercise such other powers and duties as are prescribed by the directors.

4. The Secretary shall keep the minutes of all proceedings of membership meetings and Directors' meetings and shall have custody and control of the Minute Book of the Association and shall keep or be in charge and control of the records of the Association.

5. The Treasurer shall have control of the funds and other property of the Association and shall keep the financial books and records thereof.

6. The compensation of all officers and employees shall be fixed by the Directors. This provision shall not preclude the Board of Directors from employing a Director as an employee, nor the contracting with a Director for management of the Condominium Regime.

7. Any instrument affecting an interest in real property may be executed by the President or Vice-President and one other officer upon authorization of the Directors or in such manner as the Directors may otherwise direct.

VI. FISCAL MANAGEMENT.

1. The Board of Directors shall adopt a budget for each fiscal year (which shall be the same as the Association's fiscal year for income tax purposes) which shall include the estimated funds required to defray the Common Expenses and to provide and maintain funds for the following accounting categories according to good accounting practices:

(a) Current expenses which shall include all funds and expenditures to be made for the year for which the funds are budgeted, including a reasonable allowance for contingencies and working funds, except expenditures chargeable to reserves or to additional improvements. The balance of this fund at the end of each year shall be applied to reduce the assessments for current expense for the succeeding year;

(b) Reserve for deferred maintenance, which shall include funds for maintenance items which occur less frequently than annually; and

(c) Reserve for replacement, which shall include funds for repair or replacement required because of damage, destruction, depreciation or obsolescence.

2. The Board of Directors shall assess against each Unit, and the Owners thereof shall be liable for, a share of the items in the budget adopted pursuant to Section VI.1 equal to such Unit's pro rata share of Common Expenses as set forth in the Declaration. Such share shall be assessed annually in advance for the fiscal year for which the budget was prepared, and notice of such assessments shall be mailed or delivered not less than thirty (30) days prior to the first day of such fiscal year. Such assessment shall be due and payable from the respective Owner or Owners in twelve (12) equal installments, each installment being due and payable the first day of each calendar month, within such fiscal year. In the event notice of such assessment is not timely given, the amount of such assessment will not change but the due date for each installment which would otherwise be due and payable less than thirty (30) days from the giving of such notice, shall be due and payable on the due date of the first installment which is due after thirty (30) days from the date such notice was mailed or delivered. In the event the annual assessment proves to be insufficient, the budget and assessments, therefore, may be amended at any time by the Board of Directors.

Such amended budget may be adopted at a special Directors' meeting upon an affirmative majority vote of the Directors. The additional amount so budgeted shall be assessed to each Unit in the same manner as assessments for the annual budget and shall be prorated among the remaining installments due and payable in such year. Notwithstanding the above, Declarant shall not pay any assessments for Units it owns until such time as an occupancy permit is received for that Unit, it being the intention that the Declarant shall not pay assessments for any Unit until construction of the Unit is completed.

3. Assessments for Common Expenses for emergencies and extraordinary expenditures, which cannot be paid from the annual assessments for Common Expenses and maintenance funds shall be made only after notice of the need thereof to the Owners. After such notice and upon approval in writing by persons entitled to cast more than one-half (1/2) of the votes in the Condominium Regime, the assessments shall become effective, and shall be due in such manner as the Board of Directors may require after thirty (30) days' notice thereof. In the event any expenditure for repair or replacement of any Unit or Common Elements cannot be paid from annual assessments but can be at least ninety percent (90%) paid from insurance proceeds therefor, such expenditures may be made upon approval of the Board of Directors without approval of the members and an amended budget and assessment may be made therefor if necessary.

4. The Board of Directors may assess against any Unit, and the Owner thereof shall be liable for, any judgment obtained against the Owner by the Association, including the Association's reasonable attorney's fees. Such assessment shall be due and payable from the Owner in twelve (12) equal installments, each installment being due and payable the first day of each calendar month. Notice of said assessment shall be given to the Owner by the Association at least thirty (30) days prior to the due date of the first installment.

5. The Board of Directors may assess against any Unit, and the Owner thereof shall be liable for, any fine levied by the Board of Directors for a violation of the Rules and Regulations.

6. If an Owner shall be in default of an installment payment upon an assessment, the Board of Directors may accelerate the remaining installments of the assessment upon notice thereof to such Owner, and thereupon the unpaid balance of the assessment shall become due upon the date stated in the notice, but not less than ten (10) days after delivery thereof to such Owner either personally or by registered or certified mail. Interest shall be computed and due on balances due under this paragraph but unpaid on such due date at the maximum rate of interest allowable by law from the date such balance becomes due and payable in accordance with the preceding sentence; such interest shall be in addition to any other payments for which said owner is liable.

7. The holder of a mortgage on any Unit, upon its filing written request with the Association, shall be given written notice by the Association of the nonperformance of a mortgagor's obligations under these Bylaws, the Declaration or other Condominium Documents, which is not cured within thirty (30) days.

8. All sums assessed but unpaid, including but not limited to, interest, with respect to a Unit or against an Owner shall constitute a lien on such Unit prior to all other liens except:

- (a) Tax liens on the unit in favor of any assessing Unit and special district; and
- (b) All sums unpaid on the first mortgage of record.

Said lien may be foreclosed by the Association in the manner and with the consequences provided in the Act, in which event the Owner shall be required to pay a reasonable rental for the Unit. In the event

the Association forecloses on any lien, the Owner or Owners of such Unit, by their membership in this Association, specifically waive any rights to delay or prevent foreclosure which he, she or they may have against the Association by reason of any homestead exemption provided for under law. The Association may sue for money judgment for unpaid assessments and interest or sums due without foreclosing or waiving any lien which it holds.

9. If a mortgagee or purchaser of a Unit obtains title as a result of foreclosure of a first mortgage, neither such mortgagee nor purchaser nor their successors or assigns, shall be liable for the assessments chargeable to such Unit due prior to the acquisition of title, and such unpaid assessments shall thereafter be deemed to be Common Expenses collectible from all Owners including the mortgagee or purchaser, and their successors and assigns. The Owner of a Unit pursuant to a voluntary conveyance or by inheritance or devise shall be jointly and severally liable with the grantor or prior Owner for all unpaid assessments against the grantor or prior Owner, but without prejudice to the rights of such grantee or devisee to recover from the grantor the amounts paid therefor. The grantee or other successor in interest of an individual subject to a levy of an assessment on account of default shall be liable for any such special assessment.

10. The depository of the Association shall be such bank or banks as shall be designated from time to time by the Directors and in which the moneys of the Association shall be deposited. Withdrawal of moneys from the accounts shall only be by checks signed by such persons as are authorized by the Directors.

11. An audit of the accounts of the Association may be made annually by a certified public accountant and if such audit is made a copy of the report shall be furnished to each member not later than sixty (60) days after the close of the fiscal year for which the report is made.

VII. AMENDMENT.

1. These Bylaws may be amended, altered, repealed or new Bylaws adopted by the Members at a regular or special meeting of the Members upon the affirmative vote of sixty-seven percent (66%) of all votes entitled to be cast.

2. No amendment may be adopted at either a special or regular membership meeting not included in the notice thereof, except if notice of the proposed amendment has been given, an amendment relative to the same subject may be adopted by those present, in person or by proxy and possession of the requisite percentage of membership and voting interests; provided further, no vote by proxy may be counted unless the proxy expressly provides for such contingency. Notice referred to herein shall be given in the manner prescribed in Section II.3 and shall be given to the persons described in Section II.4, and the holder of any first mortgage of record which has notified the Association of its interests not more than fifty (50) days nor less than thirty (30) days before the date such meeting will be held. More than one proposed amendment may be included in the notice of a meeting.

3. To the extent provided by the Act, no modification or amendment to these Bylaws shall be effective unless set forth in an amendment to the Declaration, executed and recorded in the manner set forth in the Declaration and an amendment to these Bylaws shall constitute an amendment to the Declaration as provided for by law. Upon such recording, said amendment shall be effective against all persons having an interest in a Unit or the Condominium Regime regardless of whether said person had such interest at the time said amendment was adopted.

VIII. MISCELLANEOUS PROVISIONS.

1. The invalidity of any portion or provision of these Bylaws shall not affect the validity of the remaining provisions or portions hereof.

2. The Association shall not have or employ a corporate seal.

3. The Board of Directors may require fidelity bonds from all Directors, officers, or agents handling or responsible for Association funds and the expense of such bonds shall be common expense of the Association.

4. The Association shall promulgate such rules and regulations as it deems to be in the best interest of all Owners within the Regime. The initial Board of Directors shall adopt the initial rules and regulations which may be added to, amended, modified or subsequently altered by the Board of Directors. Such Rules and Regulations, as amended, shall be binding upon all members, guests, and agents of members. An amendment to the Rules and Regulations shall not constitute an amendment to the Declaration and shall be valid and enforceable upon adoption without recording the same as an amendment to the Declaration.

5. The Association shall at all times maintain separate and accurate written records of each Unit and Owner and the address of each, and setting forth the status of all assessments, accounts and funds pertinent to that Unit and Owner. Any person other than an Owner may rely on a certificate made from such records by an officer or agent of the Association as to the status of all assessments and accounts.

6. Each Member shall have the obligations as such member as are imposed on him or her by the Condominium Documents as an Owner, and no member shall have any power or authority to incur a mechanic's lien or other lien effective against the Regime property except as the same may attach only against his or her interest therein.

7. The Board of Directors may, in its discretion, issue written evidence of membership, but the same shall be evidence thereof only and in no manner shall be transferable or negotiable, and the share of the Member in the assets of the Association cannot be assigned, hypothecated, or transferred in any manner except as appurtenant to such assignment, hypothecation or transfer of the Unit.

8. Each Owner or lessee of his or her Unit, as applicable, shall have a right to use and enjoy the Common Elements provided that such use shall be limited to the uses permitted by the Declaration and the Condominium Documents.

9. The Association, through its Board of Directors and officers, shall make available to all members during ordinary business hours copies of the Declaration and an exhibits thereto, including the Articles, Bylaw, minutes of special or annual meetings of the Association, and copies of periodic financial statements of the Association.

10. If any Owner shall violate or attempt to violate any of the provisions of the Declaration, Bylaws or Rules and Regulations, it shall be lawful for the Association or any other Owner to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such provisions and either prevent said person or persons from so doing or to recover damages or other remedies for such violation. The prevailing party in such action may be allowed to recover costs, expenses and reasonable attorney's fees from the other party. If the proceedings are prosecuted by the Association, any judgment recovered against the Owner, including reasonable attorney's fees, may be assessed against the Owner's Unit, as provided in Section VI.4 herein and may be foreclosed as provided in Section VI.7 herein.



Jared Kilpack, President & Secretary

EXHIBIT E

RULES AND REGULATIONS FOR YELLOWSTONE HEIGHTS CONDOMINIUMS OWNERS ASSOCIATION

1. Automobiles may be parked only in the areas provided for that purpose, and shall not be parked on the private streets or in such a manner as to impede or prevent ready access to any entrance to or exit from the Buildings by another vehicle. Furthermore, except as within a Parking Unit, no boats, snowmobiles, trailers, recreational vehicles, motor homes, or semi-trailer trucks shall be parked or stored anywhere in the parking areas or on the premises of the Condominium Regime.

2. For each Building in the Condominium Regime, the Declarant may install a satellite dish Central Antenna System ("CAS") to serve and benefit the Owners located in the Building. Each Owner in the Building benefited by the CAS shall use the CAS and refrain from installing an individual Antenna within any Unit or any portion of the Common Areas. The CAS for the Building shall be maintained by the Association as a Limited Common Element. For purposes of this paragraph, "Antenna" shall include any over-the-air device used for the receipt of direct broadcast satellite services; the receipt or transmission of fixed wireless signals; the receipt of video programming services via multi-point distribution services; or the receipt of television broadcast signals. Antenna shall also include any accompanying accessories necessary for the proper installation thereof, including, but not limited to, masts, cabling, supports, guy-wires, fastening hardware, and wiring.

3. Exterior name places and mailboxes will be installed in a manner uniform and consistent with that of the other Units and approved by the Association.

4. Owners are reminded that alteration and repair of the Building is the responsibility of the Association, except for the interior of the Units. No work of any kind is to be done upon the exterior building walls or upon the interior boundary walls without first obtaining the approval of the Association. This includes any landscaping or gardening of any nature within the General Common Elements of the Condominium Regime.

5. No Owner shall make or permit any disturbing noises in the buildings, or do or permit anything to be done therein which will interfere with the rights, comforts, or conveniences of other Owners. No Owner shall play upon or suffer to be played upon any musical instrument or operate or permit to be operated a phonograph, CD player or radio or television or other loudspeaker in such Owners' Unit between the hours of 12:00 Midnight and the following 6:00 A.M., if the same shall disturb or annoy other occupants of the Buildings or adjacent Units.

6. Each Owner shall keep his or her Unit in a good state of presentation and cleanliness and shall not sweep or throw or permit to be swept or thrown therefrom, or from the doors or windows thereof, any dirt or other substance. Each Owner will keep the areas immediately in front of and in back of his or her Unit free and clear of all trash, papers and debris.

7. No animals or reptiles of any kind shall be raised, bred, or kept in any Unit or in the Common Elements, except that a dog, cat or other household pet approved in writing by the Board of Directors of the Association, may be kept in a Unit, provided that it is not kept, bred or maintained for any commercial purpose; and provided further that any such pet which in the opinion of the Board of Directors of the Association is causing or creating a nuisance shall be permanently removed from the property upon three (3) days written notice from the Board of Directors of the Association. No Unit shall house more than one (1) pet, except as approved by the Board of Directors. Pets may be outside only if accompanied by an

Owner or lessee and shall only be allowed in areas designated for pets by the Association. Any person within the project keeping a pet shall immediately clean and remove any messes created or caused by said pet. Further, no unleashed pets whatsoever shall be allowed upon the Limited or General Common Elements.

8. Any consent or approval given under these Rules and Regulations may be added to, amended or repealed at any time by resolution of the Board of Directors of the Association.

9. No one may use an outdoor fireplace or fire pit of any type.

10. Trash compactors or common trash receptacles are located in designated areas within the development and are for Owners' refuse disposal. All refuse must be placed in these areas for periodic pickup. No refuse shall be placed in building entryways, stairwells, curbside, or any other common area not specifically designated for such use.

11. Minor vehicle repairs, such as changing spark plugs, tires, and batteries will be allowed in the Common Elements and Parking Units. Tires, batteries, etc., must be promptly removed from the site and disposed of properly. Oil Changes, muffler replacements, brake, transmission, engine and body refinishing work will not be permitted in the Common Elements.

12. Owners shall not store any personal property in the common entryways, stairwells, or balconies of the Building. Customary tables and chairs are permitted on balconies.

13. There shall be no smoking within any Unit or Building within the Condominium Regime.

14. A Condominium may be rented or leased by the Owner or its lessee, provided the entire Unit is rented and the lease is in writing. The minimum lease term shall be thirty (30) days. Nightly or weekly rentals are prohibited. No lease shall relieve the Owner as against the Association and other Owners from any responsibility or liability imposed by the Condominium Documents. All Owners who lease their Condominiums shall promptly notify the Secretary of the Association in writing of the names of all tenants and members of tenants' family occupying such Condominium and shall provide the Secretary of the Association of the address and telephone number where such Owner can be reached.

15. The Association may levy a fine against any Owner for violating the Condominium Documents. The procedure for levying fines shall be as follows:

a. Demand. Upon the complaint of any two Owners or upon the complaint of any two Directors of the Association outlining an alleged violation of the Condominium Documents, an officer of the Association shall give the alleged violator written demand to cease and desist any alleged violation. The written demand shall specify (1) the alleged violation; (2) the action required to abate the violation; and (3) (i) if the violation is a continuing one, a time period not less than seven days during which the violation may be abated without further sanction, or (ii) if the violation is not a continuing one, a statement that any further violation of the same nature may result in the imposition of a fine after notice and a hearing.

b. Notice. Within twelve (12) months of such demand, if the violation continues past the period stated in the demand for abatement without penalty, or if the same violation subsequently occurs, the Board shall serve the violator with written notice of a hearing to be held by the Board. The notice shall be served via U.S. Mail, regular delivery or by personal service. The notice shall contain the nature of the alleged violation, the time and place of the hearing, which shall be not less than seven (7) days from the giving of the notice, an invitation to attend the hearing and produce any statement, evidence, and witnesses on its behalf, and the proposed fine to be imposed.