

Instrument # 449619
REXBURG, MADISON, IDAHO
5-8-2022 12:26:09 PM No. of Pages: 35
Recorded for : **EAGLE ROCK ENGINEERING**
KIM H. BURR Fee: 112.00
Ex-Officio Recorder Deputy



**DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS
FOR
BRIGHAM MILL APARTMENTS**

IMPORTANT NOTICE

THE FOLLOWING IS AN IMPORTANT DOCUMENT WHICH EACH AND EVERY POTENTIAL BUYER AND OWNER OF A UNIT WITHIN BRIGHAM MILL APARTMENTS. SHOULD READ AND UNDERSTAND. THIS DOCUMENT DETAILS THE OBLIGATIONS, RESPONSIBILITIES, AND PROHIBITIONS IMPOSED UPON ALL OWNERS AND UNITS LOCATED WITHIN BRIGHAM MILL APARTMENTS. BRIGHAM MILL APARTMENTS IS A UNIQUE RESIDENTIAL ENVIRONMENT. EACH POTENTIAL OWNER IS ADVISED TO MAKE FULL AND COMPLETE INQUIRY ABOUT BRIGHAM MILL APARTMENTS. BEFORE ACQUIRING A UNIT. EACH OWNER ACKNOWLEDGES AND UNDERSTANDS THAT THE UNITS WILL BE SUBJECT TO ASSESSMENTS LEVIED BY BRIGHAM MILL APARTMENTS OWNERS ASSOCIATION, INC. THE DECLARANT, AS DEFINED IN THIS DECLARATION, EXPRESSLY DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, STATEMENTS, OR INFORMATION NOT SET FORTH HEREIN OR IN ANY WRITTEN DOCUMENT EXECUTED BY THE DECLARANT. POTENTIAL OWNERS ARE ADVISED TO REVIEW THIS DECLARATION PRIOR TO ACQUIRING A UNIT.

**DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS
FOR
BRIGHAM MILL APARTMENTS**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BRIGHAM MILL APARTMENTS (this "Declaration") is made effective as of the 2nd day of MAY, 2022, by Sweetwater Properties, LLC, an Idaho limited liability company (the "Declarant"), pursuant the provisions of Title 55, Chapter 15, Idaho Code (the "Act").

**ARTICLE 1
RECITALS**

1.1. Property Covered. Declarant is the owner of certain real property located in the City of Rexburg, Madison County, Idaho, and legally described on Exhibit A attached hereto, which is made subject to this Declaration (the "Property"). The Declarant shall have the right to incorporate and include other property into this Declaration by the execution and recordation of an amendment or supplement to this Declaration declaring such lands to be included within and subject to this Declaration and setting forth the revised Ownership Percentages.

1.2. Multi-Family Residential Development. Brigham Mill Apartments is a multi-family residential condominium project which Declarant intends to develop in accordance with existing zoning ordinances and development approvals obtained by Declarant from the City of Rexburg, Idaho.

1.3. Purpose of Declaration. The purpose of this Declaration is to provide for condominium ownership of the Property pursuant to the Act, designate Common Area, create the Association, and set forth the restrictions, covenants, limitations, easements, conditions, and equitable servitudes that shall apply to the Property and this condominium ownership regime that are unique to the Property and the condominium ownership regime. This Declaration is designed to preserve the Property's value, desirability, and attractiveness; to ensure a well-integrated, high-quality development; and to guarantee adequate maintenance of the Common Area and the Improvements located thereon in a cost effective and administratively efficient manner

1.4. Creation of Plan for Condominium Ownership. The Declarant hereby declares its intent to and does hereby create the separate ownership of the Units together with an undivided interest in the Common Area. All such ownership shall be governed by and be subject to both the provisions of this Declaration and all amendments that may hereafter be made hereto and the Act as in effect on the date of the recording of this Declaration

**ARTICLE 2
DECLARATION**

Declarant hereby declares that the Project and every Unit or interest therein shall be held, sold, conveyed, encumbered, hypothecated, used, occupied, and improved subject to the provisions

of this Declaration, each and all of which are hereby declared to be in furtherance of a general plan for the creation, maintenance, and sale of an ownership in fee simple of separate interests in Units and for co-ownership with others, as tenants-in-common, of the Common Area, all pursuant to the Act. All provisions hereof shall be deemed covenants running with the land or as equitable servitudes and shall constitute benefit and burdens to the Owners and all Persons hereafter acquiring or owning any interest in the Project, however such interests may be obtained. Each Owner of a Unit, including Declarant, is subject to all of the rights and duties contained within this Declaration. Notwithstanding the foregoing, no provision of this Declaration shall be construed as to prevent or limit Declarant's right to complete the development of the Project and to construct Improvements thereon, nor Declarant's right to maintain model, construction, sales, or leasing offices or similar facilities (temporary, or otherwise) on any portion of the Property, including the Common Area or any public right-of-way; nor Declarant's right to post signs incidental to construction, sales, or leasing; nor Declarant's right to modify plans for the Project.

ARTICLE 3 DEFINITIONS

“Act” means the Condominium Property Act of the State of Idaho, Title 55, Chapter 15, Idaho Code, as the same may be amended from time to time.

“Annual Budget” means the annual budget for the Association determined as provided in Section 8.6 of this Declaration.

“Articles” means the Articles of Incorporation of the Association or other organizational or charter documents of the Association, as the same may be amended or revised from time to time.

“Assessments” means those payments required of Owners, including Regular, Special and Limited Assessments. The Association shall have the right to require Assessments from its Members.

“Association” means Brigham Mill Apartments Owners Association, Inc., an Idaho nonprofit corporation, its successors and assigns. A certified copy of the Articles of Incorporation of the Association is attached hereto as Exhibit B.

“Board” or “Board of Directors” means the Board of Directors or other governing board or individual, if applicable, of the Association.

“Building” means the building to be constructed on the Property, in compliance with this Declaration and all applicable zoning and building codes, for the exclusive use and possession of the Owners of the Units.

“Bylaws” means the Bylaws of the Association, as the same may be amended or revised from time to time.

“Common Area” means the entire Project not located within the Unit boundaries as described in Section 4, including but not limited to (i) all areas designated on the Plat for access,

parking, landscaping and ponds and all utility lines and facilities located within the Common Area; (ii) all portions of the Building and other improvements outside the Units; (iii) easements through each Unit for conduits, ducts, plumbing, wiring, and other facilities for furnishing utility services to other Units or the Common Areas; (iv) easements for lateral and adjacent support in every portion of the Project which contributes to the support of the Building; (v) the fixtures and installations required for access and utility services to more than one Unit or Common Area; and (vi) all elevators, walkways, and stairwells serving the Project.

“Common Expenses” means all costs and expenses incurred by the Association for management, utilities, insurance, improvements, maintenance, repair, and replacements, together with any necessary reserve funds with respect to the Common Area, including but not limited to all landscaping maintenance and snow removal, and any and all other costs and expenses, including legal, accounting, and other professional fees, incurred to conduct the business and affairs of the Association. Common Expenses shall also include legal fees and costs incurred by the Association to defend any claim, suit, or other action against the Association, including but not limited to any claim, suit, or other action brought by any Owner, which shall be paid by the Owners (including the Owner bringing such claim, suit or other action) in accordance with this Declaration.

“Declarant” means Sweetwater Properties, LLC, an Idaho limited liability company, or its successors in interest, or any Person to whom the Declarant expressly transfers its rights under this Declaration, in whole or in part, other than transfers of Units to individual Owners.

“Declaration” means this Declaration of Covenants, Conditions and Restrictions for Brigham Mill Apartments, as it may be amended or supplemented from time to time.

“Improvement” means any Building and any other structure, facility, system, or other improvement or object, whether permanent or temporary, which is erected, constructed, placed upon or allowed on, under, or over any portion of the Property, including, without limitation: fences, streets, drives, parking areas, sidewalks, curbs, landscaping, walls, hedges, plantings, trees, rocks, signs, lights, mail boxes, electrical lines, pipes, pumps, grading, road construction, or utility improvements. Improvements include both original improvements existing on the Property on the date hereof and all later changes and Improvements.

“Limited Assessments” means charges against a particular Owner and its Unit directly attributable to the Owner, equal to the cost incurred by the Association in connection with corrective action or maintenance, repair, replacement, and operation activities performed pursuant to the provisions of this Declaration, including without limitation, damages to or maintenance, repair, replacement, and operation activities performed for any Common Area or the failure of an Owner to keep the Owner’s Unit in proper repair, and including interest thereon as provided in this Declaration.

“Member” means each Owner holding a membership in the Association, including Declarant.

“Mortgage” means any first-lien mortgage, deed of trust, or other security instrument by which a Unit or any part thereof is encumbered.

“Mortgagee” means any Person, bank, savings and loan association, established mortgage company, or other entity chartered under federal or state laws, or any successor to the interest of such, named as mortgagee, beneficiary, or creditor under any Mortgage, as Mortgage is defined above.

“Owner” means the record owner, whether one or more Persons, including Declarant, holding fee simple interest of record to a Unit which is a part of the Project, and buyers under executory contracts of sale, but excluding those Persons having such interest merely as security for the performance of an obligation, unless and until such Person has acquired fee simple title pursuant to foreclosure or other proceedings. If Ownership of a Unit is held by one or more Persons, the multiple Owners of that Unit shall be deemed a single Owner for purposes of voting in meetings of the Association.

“Ownership Percentage” means each Owner’s percentage ownership interest in the Common Area. Each Unit shall be allocated the same Ownership Percentage as each other Unit.

“Person” means any individual, partnership, corporation, trust, estate or other legal entity, including Declarant.

“Plat” means any condominium plat covering any portion of the Property, including without limitation, the condominium plat for Brigham Mill Apartments, recorded or to be recorded with the Madison County Recorder, as the same may be amended by duly recorded amendments thereof. Upon recording any Plat of the Property, or any portion thereof, the Declarant shall have the right to execute and record an amendment or supplement to this Declaration setting forth the revised Ownership Percentages.

“Project” means the Units and the Common Area located on the Property.

“Property” means the real property described on Exhibit A, and such other property, if any, subsequently incorporated into this Declaration pursuant to Section 1.1.

“Property Manager” shall mean that Property Manager, if any, retained by the Association pursuant to Section 7.10.

“Regular Assessments” means charges for Common Expenses levied against the Units by the Association pursuant to the terms of this Declaration.

“Special Assessments” means charges for capital improvements and replacements and a reasonable reserve therefor, equipment purchases and replacements and a reasonable reserve therefor, and shortages in Regular Assessments which are levied against the Units by the Association pursuant to the terms of this Declaration.

“Unit” means a Unit within the Project as described in Section 4 below and as specified or shown on the Plat. For voting, membership and assessment purposes herein, “Unit” shall not include any Unit designated as Common Area.

ARTICLE 4
NATURE OF UNITS

4.1. Unit Boundaries. Each Unit shall include all parts of the Building that lie within the following boundaries:

4.1.1. Upper and Lower Boundaries. The upper and lower boundaries of the Unit are the following boundaries, extended to their planar intersections with the perimeter boundaries:

- (A) Upper Boundaries. The horizontal plane of the unfinished lower surface of the structural ceiling of the Unit. The unfinished lower surface includes all paint, hardware, light fixtures, vents, and other materials constituting part of the interior surfaces of the ceiling.
- (B) Lower Boundaries. The horizontal plane of the unfinished upper surface of the concrete floor or subfloor of the Unit.

4.1.2. Perimeter Boundaries. The perimeter boundaries of the Unit shall be the vertical planes of the unfinished interior surfaces of the walls bounding the Unit, extended to their planar intersections with each other and with the upper and lower boundaries. For purposes hereof, the unfinished surface is defined as including but not limited to all paneling, tile, wallpaper, paint, molding and other materials constituting part of the interior surfaces of those walls.

4.1.3. Apertures. Where there are apertures in any boundary, including but not limited to, windows and doors, the Unit boundaries shall extend to the interior, unfinished surfaces of such apertures, including all frameworks thereof, exterior surfaces made of glass or other transparent materials, exterior doors of any type, including the locks, hinges, and other hardware, and all framing and casings thereof.

4.1.4. Additional Items Included within the Units. All of the following items are included within each Unit (some of which items may not necessarily be provided to Owners by the Declarant), if such items are wholly or partially located within a Unit and designed and installed to serve only such Unit.

- (A) All non-load bearing walls and partitions, doors, door frames, door hardware, windows, windowpanes, window frames, and window screens;
- (B) All kitchen equipment and fixtures, including without limitation, ovens, refrigerators, freezers, sinks, ranges, cabinets, dishwashers, exhaust fans, and waste disposal units;
- (C) All bathroom, lavatory and plumbing fixtures and equipment, including, without limitation, sinks, tubs, showers, toilets, vanities, exhaust fans, and cabinets;

- (D) All electrical and lighting fixtures, including without limitation, outlets, switches, lamps, bulbs, outlet boxes, switch boxes, telephone outlets, circuit breakers, and circuit breaker panels; and
- (E) All floor and wall coverings, including, without limitation, carpeting, tiling, wallpaper, and paint.

4.1.5. Items Excluded from the Units. All pipes, ducts, vents, wires, conduits, and other facilities, equipment, or fixtures running through any interior wall, or horizontal or vertical portion of a Unit for the furnishing of any utility service, heating, cooling or ventilation to any other Unit or Common Area are excluded from the Units.

In cases not specifically covered in this Section 4.1, or in any case of conflict or ambiguity, the graphic depictions of the Unit boundaries set forth on the Plat shall control in determining the boundaries of a Unit, except the provisions of Sections 4.1.3., 4.1.4., and 4.1.5. above shall control over the Plat.

4.2. Legal Descriptions of Units. For purposes of conveying, mortgaging, or otherwise affecting title, any Unit may be legally described by its identifying number as shown on the Plat. Such legal description shall be construed to describe the Unit and the appurtenant undivided interest in the Common Area and to incorporate all the rights and limitations incident to the ownership of a Unit in the Project. Such legal description shall be substantially as follows:

Unit No. _____, Brigham Mill Apartments, a subdivision of the City of Rexburg, Madison County, Idaho, according to the duly recorded plat thereof.

4.3. Conveyances and Form of Holding Units. The Units in the Project may be conveyed and recorded as individual properties capable of independent usage, each having its own exit to the Common Area of the Project. Each Unit may be held in any traditional form of holding real property interests including, but not limited to, community property, tenancy in common and joint tenancy with right of survivorship. The Owners of the respective Units shall have the absolute right to lease the areas within each Unit provided the lease is made subject to the rules and regulations made by the Board

4.4. Subdivision into Additional Condominium Units. The Declarant shall have the right to subdivide Units into additional Units. In such event, the Declarant shall determine if the ownership in the Common Area shall be diluted to reflect the additional ownership interests or if only the ownership interest of the original Unit being subdivided shall be divided. Further, the Declarant shall determine what percentages of the Common Expenses shall be attributable to and payable by the new Units.

ARTICLE 5 NATURE OF OWNERSHIP

5.1. Ownership of Common Area. Each Owner shall own an undivided interest in the Common Area as a tenant-in-common with all the other Owners in accordance with their

Ownership Percentages. Except as otherwise limited in this Declaration, each Owner shall have the right to use the Common Area for all purposes incident to the use and occupancy of its Unit and all other incidental uses permitted by this Declaration, which right shall be appurtenant to and run with the Unit.

5.2. Covenants Appurtenant to Units. All rights or interests and all obligations or restrictions of an Owner created hereunder shall be deemed appurtenant to the Owner's Unit and shall not be separable therefrom. Any conveyance or encumbrance of a Unit shall also be deemed a conveyance or encumbrance of those appurtenant rights or interests even though such rights or interests are not expressly referred to in such conveyance or encumbrance.

5.3. Covenants to Run with the Land. This Declaration and all covenants, restrictions, limitations, easements, conditions, and uses as herein provided for shall constitute covenants to run with the land hereby included within the Property and shall be a burden and/or a benefit to the Declarant, its successors and assigns, and to any Person acquiring any interest in the Project, and to their heirs, executors, administrators, personal representatives, successors or assigns.

ARTICLE 6 RIGHTS AND EASEMENTS

6.1. Rights of Use and Enjoyment. Every Owner shall have a nonexclusive right for the use and enjoyment of the Common Area, which shall be appurtenant to and shall pass with the title to every Unit, subject to the restrictions set forth in this Declaration, as supplemented from time to time.

6.2. Delegation of Use and Enjoyment. Any Owner may delegate, in accordance with the Declaration, its right of use and enjoyment in the Common Area, to its tenants, employees, family, guests, or invitees.

6.3. Recorded Easements. The Property, and all portions thereof, shall be subject to all easements shown on any recorded Plat affecting the Property, or any portion thereof, and to any other easements of record or of use.

6.4. Easements for Encroachment and Support. There shall be reciprocal appurtenant easements of encroachment as between each Unit and such portion or portions of the Common Area adjacent and subjacent thereto or as between adjacent and subjacent Units due to the unwilful placement or settling or shifting of the Improvements, including, without limitation, structures, beams, stairwells, pillars, load-bearing walls, walkways, and sidewalks constructed, reconstructed, or altered thereon in accordance with the terms of this Declaration. Easements of encroachment shall be valid only so long as the encroachments exist, and the rights and obligations of Owners shall not be altered in any way because of encroachments, settling, or shifting of the Improvements; provided, however, that in no event shall a valid easement for encroachment occur due to the willful act or acts of an Owner. In the event a structure on any Unit is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Unit agree that minor encroachments over adjoining Units that existed prior to the encroachment may be reconstructed pursuant to the easement granted by this Section. Every portion of a Unit which contributes to the structural

support of the Building shall be burdened with an easement of structural support for the benefit of all other Units and the Common Area.

6.5. Easements for Access. Declarant expressly reserves for the benefit of all the Property reciprocal easements of ingress and egress for all Owners to and from their respective Units for installation and repair of utility services; for drainage of water over, across, and upon the Common Area resulting from the normal use of the Units; and for necessary maintenance and repair of any Improvement including, without limitation: fencing, retaining walls, lighting facilities, mailboxes, sidewalk abutments, trees, and landscaping. Such easements may be used by Declarant, and by all Owners, their guests, tenants, and invitees, residing on or temporarily visiting the Property, for pedestrian walkways, vehicular access, and such other purposes reasonably necessary for the use and enjoyment of a Unit or Common Area. All Owners shall have an easement over the Common Area for access, ingress, egress, and parking. Such easements may be used by Declarant and all Owners, their guests, tenants, and invitees, while occupying a Unit, or portion thereof, or temporarily visiting the Property, for pedestrian or vehicular access and such other purposes reasonably necessary for the use and enjoyment of a Unit, or portion thereof.

6.6. Easements for Utilities. All Owners shall have an easement over the Common Area for access, ingress, and egress to and from their respective Units for installation and repair of utility services; for the drainage of water over, across and upon the Common Area resulting from the normal use of adjoining Units or Common Area; and for necessary maintenance and repair of any Improvement including fencing, retaining walls, lighting facilities, mailboxes, sidewalk abutments, trees, landscaping, and irrigation systems. Notwithstanding anything expressly or implied contained herein to the contrary, this Declaration shall be subject to all easements heretofore or hereafter granted by Declarant for the installation and maintenance of utilities and drainage facilities that are required for the development of the Project. In addition, Declarant hereby reserves for the benefit of the Association the right to grant additional easements and rights-of-way over the Property, as appropriate, to utility companies and public agencies as necessary or expedient for the proper development of the Project until close of escrow for the sale of the last Unit to a purchaser.

ARTICLE 7 ASSOCIATION GOVERNANCE AND ADMINISTRATION

7.1. Organization. The Association shall be a nonprofit corporation under the applicable provisions of Idaho law and shall be charged with the duties and invested with the powers prescribed by law and set forth herein. Declarant may, in its discretion, grant to the Association a revocable, non-exclusive license to use the name "Sweetwater Properties." Neither the Articles nor the Bylaws shall be adopted, amended, or otherwise changed or interpreted so as to be inconsistent with this Declaration. Each Owner shall abide by and benefit from the provisions, covenants, conditions, and restrictions contained herein. The Association shall not engage in politics or pursue any political purpose.

7.2. Purpose. The purpose of the Association shall be to:

7.2.1. Maintain, repair, and replace all Improvements in the Common Area; including, without limitation: all streets, sidewalks, parking, stairwells, landscaping, and other Improvements;

7.2.2. Aid and cooperate with the Owners in the enforcement of all conditions, covenants, and restrictions on or appurtenant to their property; and

7.2.3. Exercise any and all power that may be delegated to it from time to time by the Owners.

7.3. Membership. Each Owner, by virtue of being an Owner and for so long as such ownership is maintained, shall be a Member of the Association. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of the Unit. The memberships in the Association shall not be transferred, pledged, assigned, or alienated in any way except upon the transfer of Owner's title to a Unit and then only to the transferee of such title. Any attempt to make a prohibited membership transfer shall be void and will not be reflected on the books of the Association.

7.4. Membership Voting. The Association will have two (2) classes of memberships:

7.4.1. Class A Members. Owners other than Declarant shall be known as Class A Members. Each Class A Member shall have equal voting power and shall be entitled to one (1) vote for each Unit. When more than one Person holds an interest in any Unit, all such Persons shall be Members. The vote for such Unit shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Unit. Fractional votes shall not be allowed.

7.4.2. Class B Member. Declarant shall be known as the Class B Member and shall be entitled to two (2) votes for each Unit owned. The Class B Member shall cease to be a voting Member in the Association when all of Declarant's Units have been sold or leased.

7.5. Association Meetings. Meetings of the Association shall be called and held in accordance with the Bylaws.

7.6. Board of Directors and Officers. The Association's affairs shall be governed by a Board composed of not fewer than three (3) persons elected in accordance with the Bylaws. The foregoing to the contrary notwithstanding, the Declarant shall have the right to appoint all Board members until the Declarant has sold or leased all the Units or has waived its right of appointment in writing. Each Board member must be an Owner of a Unit or a representative of an entity owning a Unit. Members of the Board, as such, shall not receive any stated salary or compensation; provided, that nothing herein contained shall be construed to preclude any member of the Board from serving in any other capacity and receiving compensation therefor. The officers of the Association shall be elected in accordance with the Bylaws. No compensation shall be paid to the officers for their services as officers unless otherwise authorized by a resolution of the Board. The Board may require that all officers and employees of the Board handling or responsible for funds

provide adequate fidelity bonds. The premium on such fidelity bonds shall be a Common Expense payable by the Association.

7.7. Powers of Board. The Project and business of the Association shall be managed, operated, and maintained by the Board, subject to approval of Declarant on any and all matters as long as Declarant has the right to appoint the Board pursuant to Section 7.6. The Board may exercise all such powers of the Association and do all such lawful acts and things as are provided for by this Declaration, or by operational rules of regulations as may be adopted from time to time. These powers shall specifically include, but not be limited to the following:

7.7.1. To determine and levy Assessments to cover the cost of Common Expenses.

7.7.2. To collect, use, and expend the Assessments collected to maintain, care for, and preserve the Common Area.

7.7.3. To enter into and upon the Units in connection with the maintenance, care, and preservation of the Common Area and the Property.

7.7.4. To open bank accounts on behalf of the Association and to designate the signatories to such bank accounts.

7.7.5. To insure and keep insured the Common Area in accordance herewith.

7.7.6. To collect delinquent Assessments by suit or otherwise, to abate nuisances, and to join or seek damages from the Owners for violations of any rules and regulations so adopted by the Board.

7.7.7. To make reasonable rules and regulations and to amend the same from time to time, and such rules and regulations and amendments shall be binding upon the Owners when the Board has approved them in writing. A copy of such rules and all amendments shall be delivered to each Owner upon request.

7.7.8. To employ property managers, workmen, janitors, and gardeners; to purchase supplies and equipment; to enter into contracts; and generally to have the power of management in connection with the matters hereinabove set forth.

7.7.9. To bring and defend actions by or against more than one Owner and pertinent to the operation of the Association.

7.7.10. To acquire Units in foreclosure or as a result of abandonment and to take any and all steps necessary to repair or renovate any Unit so acquired and to vote as an Owner, offer such Unit for sale or lease or take any other steps regarding such Unit as shall be deemed proper by the Board.

7.7.11. To maintain, repair, manage, construct, reconstruct, and perform all other acts necessary and/or pertaining to the Common Area.

7.7.12. To be indemnified and held harmless by the Association against all costs, expenses, and liabilities whatsoever, including, without limitation, attorneys' fees reasonably incurred in connection with any proceeding because of membership therein. Said expenses shall be Common Expenses and be limited to the extent such liability, damage, or injury is covered by any type of insurance.

7.7.13. To maintain, repair, care for, and preserve the exterior of buildings, improvements, and landscaping on the Common Area.

7.7.14. To grant easements where necessary in the Common Area for underground utilities to serve the Project.

7.7.15. To collect, use, and expend the Assessments collected to maintain, care for, and preserve the Common Area.

7.8. Rights and Obligations. Without limiting the foregoing powers, the Board shall have the following specific rights and obligations:

7.8.1. Recordation Requirements. The Board shall record in the office of the Madison County Recorder all instruments affecting the Property or in which any Owner waives any right under the provisions of the Act and all amendments to this Declaration or to any of the previously mentioned documents.

7.8.2. Repair and Maintenance. The Board shall have the authority to employ and compensate personnel or contractors necessary for the operation, repair, and maintenance of the Common Area, including, but not limited to: landscape maintenance, snow removal, and parking lot and street maintenance; to employ and compensate necessary legal and accounting services; and to purchase materials and supplies for the operation, maintenance, repair, and/or replacement of any part of the Common Area. The Association shall incorporate low volume irrigation systems throughout the landscaped areas of the Common Area.

7.8.3. Real Property Taxes and Assessments. The Association shall not be responsible for the payment of any real property taxes and assessments. Real property taxes and assessments levied on the Units shall be paid by the respective Owners. Real property taxes and assessments levied on the Common Area shall be paid by the Owners in accordance with their Ownership Percentages.

7.8.4. Payment of Expenses. The Board may make all expenditures authorized in the Annual Budget. All payment vouchers shall be approved by the Board and, after such approval, shall be paid by the Association. Further, it shall be the duty of the Board to bill, collect, and receipt the collection of all monthly Assessments and to enforce the collection thereof. Upon ten (10) days' notice to the Board and upon payment of a reasonable fee therefor, the Board shall furnish to any Owner a statement of its account setting forth any unpaid Assessment or other charges due and owing from such Owner. The Board shall have the affirmative obligation to enforce all provisions of this Declaration and shall retain the services of an attorney when

necessary to do so. Anything in this Declaration to the contrary notwithstanding, prior to submitting the first Annual Budget to the Association, the Declarant is authorized to make reasonable and necessary expenditures on behalf of the Association.

7.8.5. Mortgagor Default. The Board may give to any Mortgagee, which has furnished to the Board its name and current address, written notification of any default by the mortgagor of performance of such mortgagor's obligations under this Declaration or any duly adopted rules or regulations pertaining to the Project which default has been demanded to be corrected by the Board and which default has not been cured within thirty (30) days.

7.8.6. Liability of the Board and Owners. Any contract, agreement, or commitment made by the Board is made as agent for the Association and no member of the Board nor individual Owner shall be liable under such contract, agreement, or commitment. The Board shall have no liability to the Owners in the management of the Association except for willful misconduct or bad faith.

7.8.7. Retention of Declarant for Administrative Assistance. The Board may reimburse the Declarant for expenses incurred by the Declarant for administrative assistance provided to the Board (e.g., secretarial services, postage, photocopies, etc.); provided that such reimbursement shall be no more than \$500.00 per year.

7.8.8. Accounting. The books and accounts of the Association shall be kept under the direction of the Board and in accordance with reasonable standards of accounting procedures. At the close of each accounting year, the books and records of the Project shall be examined by a person or firm approved by the Association. A report of such examination shall be prepared and submitted to the Owners at or before the annual meeting of the Association. Financial reports, such as are required to be furnished, shall be available at the principal office of the Board for inspection at reasonable times by any Owner. Any Mortgagee shall, upon request, be entitled to inspect the books and records of the Project during normal business hours and receive the most-recent annual financial statement of the Association.

7.9. Committees. The Board may designate one or more committees, each of such committees to consist of at least one director, which may exercise the powers of the Board in the management of the business and affairs of the Association. The Board may expressly delegate the authority to execute all documents to complete and confirm any business or affairs so delegated to the committee. Committees established by resolution of the Board shall keep regular minutes of their proceedings and shall report the same to the Board as required.

7.10. Property Manager. The Board may retain a Property Manager to manage the operations, business, and affairs of the Association, including all of the Board's rights, obligations, and duties under this Declaration. The terms of the employment, rights, responsibilities, and compensation of the Property Manager shall be as determined by the Board. The compensation of the Property Manager shall be a Common Expense.

ARTICLE 8 ASSESSMENTS

8.1. Assessments; Creation of Lien and Personal Obligation. Each Owner of any Unit, by acceptance of a deed therefor (whether or not it shall be so expressed in such deed), is deemed to covenant and agree to pay to the Association the Regular, Limited, and Special Assessments to be fixed, established, and collected from time to time as hereinafter provided. The Regular, Limited, and Special Assessments, together with interest, costs of collection, and reasonable attorney's fees, shall be a charge on the Unit and shall be a continuing lien upon the Unit against which such Assessment is made. Each such Assessment, together with interest, costs of collection, and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Unit at the time when the Assessment fell due.

8.2. Regular Assessments. The Association shall levy Regular Assessments against the Owners and their Units for all Common Expenses.

8.3. Limited Assessments. The Association may levy a Limited Assessment against a particular Owner and its Unit in an amount equal to the cost incurred by the Association in connection with corrective action or maintenance, repair, replacement, and operation activities performed pursuant to the provisions of this Declaration that is directly attributable to the Owner, including interest and, without limitation: damages to any Common Area; maintenance, repair, replacement, and operation activities performed for any Common Area; or the failure of an Owner to keep the Owner's Unit in proper repair.

8.4. Special Assessments. In addition to the Regular Assessments authorized above, the Association may levy, in any assessment year, Special Assessments applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement for the Common Area, including fixtures and personal property related thereto, provided that any such Assessments shall have the assent of two-thirds (2/3) of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose. Any such Special Assessments shall be payable over such a period as the Board shall determine. "Improvements" as used in this Section shall be limited to include only capital expenditures exceeding the sum of \$5,000.00. Expenses less than said amount are deemed to be normal repairs and not within the provisions of this Section.

8.5. Exempt Property. The following property shall be exempt from the Assessments created herein:

- 8.5.1. All property expressly dedicated to and accepted by a local public authority;
- 8.5.2. All Units owned by the Association;
- 8.5.3. All Units owned by Declarant, until transferred or leased to an Owner or occupant; and
- 8.5.4. All property designated as Common Area.

8.6. Annual Budget. Subject to Section 8.8 below, the Board shall, from time to time, but at least each fiscal year, fix and determine a proposed budget representing the sum(s) necessary and adequate for the continued operation, management, maintenance, repair, insurance, liabilities, renovations, legal and accounting fees, any necessary reserve funds, and other Common Expenses of the Association for the next fiscal year and shall send a copy of the proposed budget and any supplement thereto to every Owner. The proposed budget shall then be presented at a meeting of the Association at least one (1) month before the commencement of the budgeted-for year. Unless disapproved by two-thirds (2/3) of the votes of all the Owners at such meeting, the proposed budget shall become the Annual Budget for the upcoming fiscal year.

8.7. Assessments to Owners. Subject to Section 8.8 below, all portions of the Annual Budget shall be assessed to the Owners (except the Declarant) in accordance with their Ownership Percentages. Owners shall pay the Assessments when due without any deduction on account of any set-off or claim of any nature whatsoever which an Owner may claim to have against the Association.

8.7.1. Such Assessments shall be payable, at the Board's discretion, in either (i) one (1) annual payment due in advance on January 2nd of each year or (ii) twelve (12) equal monthly installments due in advance beginning on January 2nd and thereafter on the first day of each calendar month of each year.

8.7.2. Provided, however, that no Unit shall be responsible for Regular Assessments until the earlier of (i) the issuance of a certificate of occupancy for a Building on the Unit; or (ii) one (1) year after Declarant's sale of the Unit.

8.8. Initial Assessments. As long as Declarant has the right to appoint the Board pursuant to Section 7.6, the Annual Budget shall not be required and the Owners' responsibility for Regular Assessments shall be reasonably determined by Declarant, which may not be consistent with the Ownership Percentages. Each Owner's Regular Assessments during such period shall not exceed the amount of \$300.00 per month, and Declarant shall contribute to the Association all moneys required to fully pay all Common Expenses in excess of the amounts collected pursuant to the foregoing sentence.

8.9. Adjustments. The Board may at any time and from time to time until the close of the budget year, increase or decrease the amount previously fixed as the Annual Budget and adjust the annual payment or the monthly installments assessed against each Owner accordingly.

8.10. Costs of Collection. Each Owner shall pay all Assessments when due. Any part or all of an Assessment not paid within ten (10) days of its due date shall bear interest thereon at eighteen percent (18%) per annum until paid. All costs of collection, including reasonable attorneys' fees, costs of suit, and costs of establishing a lien, or of foreclosure of a lien, shall be payable by said Owner.

8.11. Collection by Lien and Foreclosure. The lien for any unpaid Assessments and costs of collection may be recorded and foreclosed in accordance with Idaho Code Section 55-1518, as amended or superseded.

8.12. Statement of Common Charges. Upon the written request of any Owner or Mortgagee of any Unit herein, the Board shall promptly furnish a written statement of the unpaid Assessments due from such Owner. Any Mortgagee may pay any amount shown and thereby shall have a lien on such Unit for the amounts paid.

8.13. No Exclusions. No Owner shall be exempt from liability for contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Area, or by abandonment of its Unit. The Owners shall not by act or omission seek to abandon the status of the Project except as provided hereinafter or as allowed by the law.

8.14. Reserve Fund Upon Transfer. If an Owner transfers its Unit to another, its interest in any reserve fund or funds shall be deemed to also have been transferred to the new Owner as an appurtenance to the transferred Unit.

8.15. Buyer Liable. The buyer of a Unit shall be jointly and severally liable with the seller for all unpaid Assessments owed by the Seller at the time of the conveyance, but such liability shall be without prejudice to the buyer's rights to recover from the seller the amounts paid by the Buyer therefor.

8.16. Priorities. If a Mortgagee or other purchaser obtains title by reason of a foreclosure of a Mortgagee encumbering a Unit, such purchaser, and its successor or assigns, shall not be liable for any Assessment, a notice of assessment for which was recorded in the Madison County Recorder subsequent to the date when such Mortgage was recorded in that office. It is understood, however, that the above shall not be construed to prevent the Board from claiming and recording liens to secure the payment of such Assessments and from foreclosure on such liens as provided by law, but such lien shall be subordinate to such prior recorded Mortgage.

8.17. Assignment of Rents. If any Owner who is renting its Unit shall default for a period of one (1) month in the payment of any Assessments, the Board may, at its option, and for so long as such default shall continue, demand and receive from any tenants thereof any portion of the rent due or becoming due, and to the extent such rent is paid to the Association such tenant shall be discharged of liability to the Owner.

ARTICLE 9 RULES AND REGULATIONS

9.1. Administrative Rules and Regulations. The Board shall have the power to adopt and establish by resolution, such building, management, use, and operational rules and regulations as it may deem necessary for the maintenance, operation, management, occupation, and control of

the Project, subject to the approval of Declarant as long as Declarant has the right to appoint the Board pursuant to Section 7.6. The Board may adopt the initial regulations governing the use of the Project by the Owners without giving notice to the Owners; however, subsequent regulations shall be adopted only after due notice of the proposed regulation or regulations are given to the Owners, and the Owners are given an opportunity to present arguments for or against such regulations. Such regulations shall not be inconsistent with the provisions of this Declaration but may otherwise deal with any matters that are a general concern to all Owners. When an amendment, alteration, or replica of a regulation is furnished in writing to the Owners, it shall become effective

9.2. Obligation of Owners to Comply. All Owners shall comply with all provisions of this Declaration and the administrative rules and regulations pertaining to the Project and shall require such compliance from their tenants, guests, employees, and any other person whom they invite upon the Property. All agreements, decisions, and determinations lawfully made by the Board shall be deemed to be binding on all Owners and shall inure to their benefit. Unless otherwise provided in this Declaration, each Owner, any group of Owners, or the Board shall have standing authority to enforce by any legal means, including suit for specific performance, injunctive relief or damages, the provisions of this Declaration, and any duly adopted decisions or resolutions of the Association or Board

9.3. Owner's Obligation to Maintain and Repair. Each Owner, at its expense, shall keep its Unit (exclusive of Common Area) in good order, condition, and repair and in a clean and sanitary condition, and shall do all maintenance and redecorating which may at any time be necessary to maintain the good appearance of its Unit. Owner shall repair all injury or damages to the Property caused by the deliberate, negligent, or careless action or inaction of such Owner, its agents, employees, tenants, guests, and/or invitees and all such repairs, maintenance, and redecorating shall be of a quality and kind at least equal to the original work.

9.4. Neglect. No Unit or Common Area or portions thereof shall be neglected or permitted to fall into an unsightly, displeasing, or unattractive state, or permitted to be overgrown with weeds or strewn with rubbish. The Association shall have the power and shall be authorized at its discretion and at the request of any other Owners in such properties, to remove or to take any other action upon premises to remove rubbish, garbage, overgrown weeds, or such other unsightliness without responsibility or liability to the complaining Owners, and at the expense of the failing or neglecting Owners.

9.5. Garbage and Refuse Disposal. No Unit, Common Area, or portion thereof, included within these properties shall be used or maintained as a dumping ground for rubbish. No machinery, appliances, or unsightly materials will be used or stored in or around any Unit. Trash, garbage, and other waste materials shall be deposited only in dumpsters meeting the requirements of the sanitation ordinances of the City of Rexburg, Idaho, and the regulations of the State of Idaho health authorities. The Declarant shall determine the locations of all dumpsters and/or trash bins to be located on the Property, which shall be screened from the public right-of-way on days of no trash service in the neighborhood.

9.6. [Reserved].

9.7. Temporary Structures. No structure of a temporary character, trailer, basement, shack, garage, barn, or other outbuilding shall be used on the Property at any time as a residence whether temporarily or permanently.

9.8. Leasing of Units. The Owners of the respective Units shall have absolute right to lease or rent out the Unit or any portion thereof. However, any such lease shall be subject to the covenants and conditions of this Declaration and any rules and regulations made by the Association. Any breach of these covenants and conditions or of these rules and regulations shall constitute a default under the lease or rental agreement.

9.9. Common Area. Subject to the limitations contained in this Declaration, each Owner shall have the nonexclusive right to use and enjoy the Common Area. The Common Area shall be used only for the purposes for which they are intended, i.e., the furnishing of services and facilities for the enjoyment of the adjacent Units.

9.10. No Nuisance. No use or practice shall be permitted on the Property that is a source of annoyance to the residents or that interferes with the peaceful possession and proper use of the Project by its Owners. All parts of the Property shall be kept in a clean and sanitary condition, and no rubbish, refuse, or garbage shall be allowed to accumulate nor any fire hazard to exist. No Owner shall permit any use of its Unit or of the Common Area that will increase the rate of insurance upon the Property. No immoral, improper, offensive, or unlawful use shall be made of any part of the Property. Without limiting the generality of any of the foregoing provisions, no external speakers, horns, whistles, bells, or other sound devices, except used exclusively for security purposes, shall be located, used, or placed upon any Unit or Common Area.

9.11. Signs. Until the Declarant no longer owns any Unit in the Project, Declarant shall determine the use of any monument signs on the Project, and no signs or advertisements shall be displayed on or from any Unit without the prior written approval of the Declarant. Once Declarant no longer owns any Unit in the Project, the Board shall determine the use of any monument signs on the Project, no signs or advertisements shall be displayed on or from any Unit or the Common Area without the written approval of the Board.

9.12. Parking. The access and parking areas of the Common Area shall only be used for operating and parking vehicles by the Owners and their tenants, employees, guests, and invitees. All parking in the Common Area shall be on a first come, first served basis.

9.13. No Partition. Idaho Code Section 55-1511(c) shall have no application to the Project. A Unit shall not be partitioned as between Persons having an interest therein, but if grounds for such partition exist at law or in equity, the Unit shall be sold as a Unit and the proceeds divided in accordance with law.

9.14. Communication. All Owners shall designate a single person to communicate with the Board or Property Manager on matters relating to the operations, business, and affairs of the Association, including, but not limited to, matters related to the operation, maintenance, and repair of the Common Area. All communications by the Owner and its employees, agents, and tenants to

the Board or Property Manager shall be through such designated person. In the event that a Property Manager has been retained, the Owners agree to communicate all issues relating to the operations, obligations, business, and affairs of the Association to the Property Manager directly, and the Owners shall not communicate on any matter related to the operations, business, and affairs of the Association, including, but not limited to, the maintenance or operation of the Common Area, to the individual Board members, the Declarant or any contractors or workers on the Property unless specifically directed otherwise by the Board, the Declarant or Property Manager. The Owners agree that the provisions of this Section are a material consideration in their decision to acquire a Unit in the Project, and repeat violations of the provisions of this Section shall be deemed to be a nuisance subject to recovery of damages or for negative or affirmative injunctive relief.

ARTICLE 10 ARCHITECTURAL CONTROL

10.1. Architectural Control. Until the last Unit has been transferred to an Owner, the Declarant shall have the sole right to exercise the rights, obligations, and powers of the Board set forth in this Section 10.1. Subject to the provisions of Section 10.2.1, no alteration of any existing Improvements shall be made, until the plans and specifications showing the nature, kind, shape, configuration, height, materials, location, and such other detail as the Board may require, shall have been submitted to and approved in writing by the Board as to the harmony of the external design and location in relation to surrounding structures and topography and as to conformity with requirements of this Declaration. In the event the Board fails to approve, disapprove, or specify the deficiency in such plans, specifications and location within thirty (30) days after submission to the Board in such form as they may require, it shall be deemed approved.

10.1.1. Design Requirements. The exterior surfaces of each Unit shall have such colors as may be approved by the Board.

10.1.2. Discretion of the Board. The Board shall have the right to refuse to approve any design, plan, or color for Improvements, construction, or alterations which, in its opinion, are not suitable or desirable for any reason, aesthetic or otherwise. The Board may not approve any such design, plan, or color if it violates any provision of the City Code of the City of Rexburg. In so passing on such design, the Board shall have the privilege in the exercise of its discretion to take into consideration the suitability of the proposed structure or alteration, the materials of which it is to be built, and the exterior color scheme in relation to the site upon which it is proposed to be erected. The Board may also consider whether the design of the proposed alteration is in harmony with the surroundings, the effect of the alteration when viewed from the adjacent or neighboring property, and any and all other factors which, in the Board's opinion, shall affect the desirability of such proposed Improvement or alteration. Actual construction shall comply with the plans and specifications approved.

10.1.3. Rules. The Board is hereby authorized to adopt rules and regulations to govern its procedures and the requirements for making submissions and obtaining approval as the Board deems appropriate and in keeping with the spirit of due process of law. The Board is further hereby empowered to adopt such rules and regulations as it shall deem appropriate, consistent with the provisions of this Declaration, pertaining to matters of design, materials, colors, and aesthetic

interests. Any such rules and regulations may be amended from time to time, in the sole discretion of the Board. The failure of the Board to adopt any such rules and regulations shall not form the basis for an attack upon the exercise of Board's discretion, it being the intent of this Declaration to provide the Board with as broad discretion as is permissible under the law.

10.1.4. Fees. The Board may establish, by its adopted rules, a fee schedule for an architectural review fee to be paid by each Owner submitting plans and specifications for approval. No submission for approval will be considered complete until such fee has been paid. Such fee shall not exceed such reasonable amount as may be required to reimburse the Board for the costs of professional review of submittals and the services of a consultant to administer the matter to its completion, including inspections which may be required.

10.1.5. Waivers. The approval of any plans, drawings, or specifications for any Improvement, alteration, or for any matter requiring the approval of the Board, shall not be deemed a waiver of any right to withhold approval of any similar plan, drawing, specifications, or matters subsequently submitted for approval.

10.1.6. Non-Liability of Board Members. Neither the Board nor any member thereof, nor its duly authorized Property Manager or Board representative, nor the Declarant, shall be liable to the Association or to any Owner for any loss, damage, or injury arising out of or in any way connected with the performance of the Board's duties hereunder, unless due to the willful misconduct of the Board. The Board shall review and approve or disapprove all plans submitted to it for any proposed Improvement, alteration, or addition solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and to the Project generally. The Board shall take into consideration the aesthetic aspects of the architectural designs, placement of building, landscaping, color schemes, exterior finishes, materials, and similar features, but shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of any plan or design from the standpoint of structural safety or conformance with building or other codes.

10.2. Improvements by the Declarant.

10.2.1. Exemption from Architectural Control. Any Improvement, sign, or landscaping commenced, built, constructed, placed, or maintained on the Property or any Unit by the Declarant shall be exempt from the requirements of Section 10.1.

10.2.2. Deviation from Plat and Plans. Declarant shall have the right to add to, delete from, modify, or otherwise deviate from the project development plans as contemplated by any Plat and/or any site improvement plans, upon obtaining the approval of the City of Rexburg, Idaho.

10.2.3. Declarant's Limited Warranty for Common Area Improvements. The Declarant shall warrant that each Improvement commenced, built, constructed, or placed in the Common Area by or on behalf of the Declarant shall be free from defects in the original materials and workmanship, as hereinafter defined, for one (1) full year from the date said Improvement was substantially complete (the "Limited Warranty"). Defective materials and/or workmanship shall

be materials or workmanship not substantially in accordance with the construction standards commonly used in the industry. The Declarant shall have the right to determine that materials and methods to be used in making repairs under the Limited Warranty and to determine whether an Improvement should be repaired or replaced. THE LIMITED WARRANTY IS THE ONLY WARRANTY PROVIDED BY DECLARANT. NO OTHER WARRANTY, GUARANTEE, OR UNDERTAKING, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE IMPROVEMENTS AND CONSTRUCTION THEREOF SHALL BIND OR OBLIGATE THE DECLARANT. ALL OTHER WARRANTIES, GUARANTEES, AND UNDERTAKINGS ARE HEREBY EXPRESSLY DISCLAIMED. SPECIFICALLY, BUT WITHOUT LIMITING THE FOREGOING, DECLARANT HEREBY EXPRESSLY DISCLAIMS THE IMPLIED WARRANTIES OF HABITABILITY, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. The Limited Warranty does not include remedies for damage to the Improvements caused by normal wear and tear during normal usage, casualty, acts of God, use for a purpose for which the Improvements were not intended, improper or insufficient maintenance, modifications performed by others, or abuse. The Limited Warranty does not include damage or injury of any kind or nature whatsoever resulting from mycotoxins, mold, fungal spores, or volatile organic compounds. The Declarant shall assign all manufacturer's warranties related to the Common Area Improvements to the Association.

10.2.4. Construction Activities by Declarant. The Declarant shall have the right and easement to use the Common Area (including, but not limited to, the parking areas) for construction staging and construction activities. The Declarant shall have the right to restrict the Owner's access to or use of any Common Area so used when necessary, in the Declarant's opinion, for safety, security or convenience. The Owners understand and agree that the Declarant will conduct construction activities on the Property during normal business hours and the Owners waive any claim of nuisance or disruption from such activities. Declarant shall have the right to use all Common Area power and water for its construction, repair, and maintenance activities without reimbursement to the Association. The Association and Declarant shall also have the right to use any exterior water spigot or power outlet on any Unit for construction, repair, and maintenance activities without reimbursement to the Owner, provided that such use is not, in the Board's sole discretion, excessive or wasteful.

10.2.5. Remedies Limited to Association Only. The Association shall have the exclusive right and power to enforce the provisions of this Section 10.2, and no Owner, or anyone claiming by or through an Owner, shall have the right to enforce the provisions of this Section 10.2 except through the Association. The Association shall only have the right to enforce the obligations in this Section 10.2 against the Declarant and shall have no right to enforce such obligations against the Declarant's members, managers, officers, agents, employees, or contractors.

ARTICLE 11 INSURANCE

11.1. Types of Insurance. The Association may obtain and keep in full force and effect at all times the following insurance coverage provided by companies duly authorized to do business in Idaho. The provisions of this Article shall not be construed to limit the power or

authority of the Association to obtain and maintain insurance coverage in addition to any insurance coverage required hereunder in such amounts and in such forms as the Association may deem appropriate from time to time. The Association may secure and maintain at all times the following insurance and bond coverage:

11.1.1. The Association may obtain a property insurance policy covering any Association owned property, providing as a minimum fire and extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location, and use on a replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based upon replacement cost).

11.1.2. The Association may obtain a commercial general liability insurance policy covering all of the Association owned facilities in an amount not less than \$1,000,000.00. Such insurance policy shall contain a severability of interest endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners. The scope of coverage must include all other coverage in the kinds and amounts required by private institutional mortgage investors for projects similar in construction, location and use.

11.1.3. The Association may obtain liability insurance affording coverage for the acts, errors and omissions of its directors and officers, including members of any committees as may be appointed from time to time by the Board in such amount as may be reasonable in the premises.

11.1.4. The Association may purchase workmen's compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association in the amounts and in the forms now or hereafter required by law.

11.1.5. The Association may obtain bonds and insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to the protection of the Property, including any personal property of the Association located thereon, its directors, officers, agents, employees, and association funds.

11.2. Insurance Provisions. The following additional provisions shall apply with respect to all insurance policies obtained by the Association:

11.2.1. Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Owners or their Mortgagees.

11.2.2. Each policy of insurance obtained by the Association shall, if possible, provide a waiver of the insurer's subrogation rights with respect to the Declarant, the Association, the Owners and their respective owners, officers, servants, agents and guests; that it cannot be canceled, suspended, or invalidated due to the conduct of any agent, officer or employee of the Association without a prior written demand that the defect be cured; that any other insurance clause therein shall not apply with respect to insurance held individually by the Owners.

11.2.3. All policies shall be written by a company licensed to write insurance in the State of Idaho and all hazard insurance policies shall be written by a hazard insurance carrier holding financial rating by Best's Insurance Reports of Class VI or better.

11.2.4. All policies shall name the Declarant as an additional insured.

ARTICLE 12 DAMAGE OR DESTRUCTION

12.1. Association as Attorney in Fact. Each and every Owner hereby irrevocably constitutes and appoints the Association as its true and lawful attorney-in-fact in its name, place, and stead for the purpose of dealing with the Improvements on the Common Area upon damage or destruction as provided in this Section or a complete or partial taking as provided in the next Section below. Acceptance by any grantee of a deed or other instrument of conveyance from Declarant or from any Owner shall constitute appointment of the attorney-in-fact as herein provided. As attorney-in-fact, the Association shall have full and complete authorization, right, and power to make, execute, and deliver any contract, assignment, deed, waiver, or other instrument with respect to the interest of any Owner which may be necessary or appropriate to exercise the powers granted herein to the Association as attorney-in-fact.

12.2. Estimate of Damages or Destruction. As soon as practical after an event causing damage to or destruction to any part of the Common Area, the Association shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction of that part of the Common Area so damaged or destroyed. "Repair and reconstruction" as used in this Section shall mean restoring the damaged or destroyed Improvements to substantially the same condition in which they existed prior to the damage or destruction.

12.3. Repair and Reconstruction. As soon as practical after obtaining estimates, the Association shall diligently pursue to completion the repair and reconstruction of the damaged or destroyed Improvements. As attorney-in-fact for the Owners, the Association may take any and all necessary or appropriate action to effect repair and reconstruction, and no consent or other action by any Owner shall be necessary. Assessments of the Association shall not be abated during any period of insurance adjustments and repair and reconstruction.

12.4. Funds for Repair and Reconstruction. The proceeds received by the Association from any property insurance shall be used for the purpose of repair and reconstruction. If the proceeds of the insurance are insufficient to pay the estimated or actual cost of such repair and reconstruction, the Association may assess and collect in advance from all Owners a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. Further Assessments may be made in like manner if the amounts collected prove insufficient to complete such repair and reconstruction.

12.5. Disbursement of Funds for Repair and Reconstruction. The insurance proceeds held by the Association and the amounts received from the Special Assessments constitute a fund for the payment of the costs of repair and reconstruction after casualty. It shall be deemed that the

first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to the contributions each Owner made as a Special Assessment to the Association under this Section or, if no Special Assessments were made, then in equal shares per Unit, first to the Mortgagees and then to the Owners, as their interests appear.

12.6. Decision Not to Rebuild. If Owners representing at least two-thirds (2/3) of the total allocated votes in the Association and two-thirds (2/3) of the Mortgagees (based upon one (1) vote for each Mortgage owned) of the Units agree in writing not to repair and reconstruct and no alternative Improvements are authorized, then and in that event the damaged Common Area shall be restored to its natural state and maintained as an undeveloped portion of the Common Area by the Association in a neat and attractive condition, and any remaining insurance proceeds shall be distributed in equal shares per Unit, first to the Mortgagees and then to the Owners, as their interests appear.

12.7. Damage or Destruction Affecting Units. In the event of damage or destruction to any Improvements owned by any Owner, the Owner thereof shall promptly repair and restore the damaged Improvements to their condition prior to such damage or destruction. If such repair or restoration is not commenced within one hundred eighty (180) days from the date of such damage or destruction, or if repair and reconstruction is commenced but then abandoned for a period of more than ninety (90) days, then the Association may impose a fine of not less than \$50.00 per day on the Owner of the Unit until repair and reconstruction is commenced, unless the Owner can prove to the reasonable satisfaction of the Association that such failure is due to circumstances beyond the Owner's control.

ARTICLE 13 CONDEMNATION

13.1. Rights of Owners. Whenever all or any part of the Common Area shall be taken or conveyed in lieu of and under threat of condemnation by the Board acting as attorney-in-fact for all Owners under instructions from any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice of the taking, but the Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

13.2. Condemnation; Distribution of Award; Reconstruction. The award made for such partial or complete taking shall be payable to the Association as trustee for all Owners to be disbursed as follows: If the taking involves a portion of the Common Area on which Improvements have been constructed, then, unless within sixty (60) days after such taking Declarant and Owners representing at least two-thirds (2/3) of the Members shall otherwise agree, the Association shall restore or replace such Improvements so taken on the remaining land included in the Common Area to the extent lands are available therefor, in accordance with plans approved by the Board. If such Improvements are to be repaired or restored, the provisions in the Section above regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any Improvements on the Common Area, or if there is a

decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be distributed in equal shares per Unit, first to the Mortgagees and then to the Owners, as their interests appear.

ARTICLE 14 AMENDMENT

14.1. By the Association. Except as set forth in this Declaration with respect to amendments and supplements by the Declarant, and except where a greater percentage is required by express provision in this Declaration, the provisions of this Declaration may be amended, modified, clarified, supplemented, added to (collectively, "amendment") by an instrument in writing signed and acknowledged by the President and Secretary of the Association certifying and attesting that such amendment has been approved by the vote or written consent of Owners representing a majority of the voting power of the Association, and such amendment shall be effective upon its recordation with the Madison County Recorder. Notwithstanding the foregoing, any amendment to this Article 14 shall require the vote or written consent of Members holding two-thirds (2/3) of the voting power of the Association. Such amendments may add to and increase the covenants, conditions, restrictions, and easements applicable to the Property but shall not prohibit or unreasonably interfere with the allowed uses of any Unit which existed prior to the said amendment. No amendment shall modify or diminish the rights of the Declarant hereunder without the Declarant's written consent.

14.2. Effect of Amendment. Any amendment of this Declaration approved in the manner specified above shall be binding on and effective as to all Owners and their respective Units notwithstanding that such Owners may not have voted for or consented to such amendment and as to all Mortgagees and other holders of a lien or security interest in any portion of the Project.

14.3. Mortgage Protection. Notwithstanding any other provision of this Declaration, no amendment of this Declaration shall operate to defeat or render invalid the rights of a Mortgagee under a Mortgage made in good faith and for value and recorded prior to the recordation of such amendment; provided, however, that the foreclosure of any such Mortgage shall not affect the validity or enforceability of this Declaration, as amended.

ARTICLE 15 RIGHTS TO REPURCHASE UNITS

15.1. Right of First Refusal.

15.1.1. If an Owner makes or receives a bona fide offer for the purchase and sale, conveyance, or other transfer of any Unit, the Owner shall first offer the Unit, in writing, to Declarant on terms and conditions set forth in the offer. Declarant shall have thirty (30) days after the transmission of such offer to notify the Owner, in writing, that it either (i) agrees to purchase the Unit on the terms of the offer, or (ii) declines to purchase the Unit. If Declarant declines to purchase the Unit or fails to notify the Owner, in writing, that it agrees to purchase the Unit within

such thirty (30) day period, then the Owner shall be free to sell the Unit to the buyer and on the terms and conditions set forth in the offer for a period of three (3) months after expiration of such thirty (30) day period. Upon the Owner's request, Declarant agrees to confirm, in a mutually acceptable writing with acknowledgment, its decision not to purchase the Unit or its failure to notify the Owner of its decision within the thirty (30) day period set forth above. If the Unit is not sold pursuant to the offer within such three (3) month period, the Owner shall again offer the Unit to Declarant pursuant to this Section 15.1 in connection with the same offer and any future offers with respect to the Unit.

15.1.2. The parties intend that the first right of refusal set forth in this Section 15.1 shall not fail as a result of an Owner extending an offer which, by its terms, cannot be matched by Declarant, such as an exchange. Therefore, if Declarant is unable to perform under any of the terms (except for the payment of money) of any offer extended by the Owner, then Declarant shall have the right to purchase the Unit for cash at a price that is the cash equivalent of said offer. The "cash equivalent" is the cash price that fairly represents the fair market value of the Unit as evidenced by the offer in question and as determined by the parties, or if no agreement, then as determined by an independent appraisal by an appraiser mutually acceptable to the parties, or if no mutually acceptable appraiser is found, then one appointed by a court of competent jurisdiction.

15.1.3. This Section 15.1 shall not apply to any transfer of a Unit to any third party related to the Owner through blood or marriage or to any entity owned (in whole or in part) and controlled by the Owner.

15.1.4. Declarant shall have the right to assign its rights under this Section 15.1 for any particular offer to the Association or any Member at any time.

15.1.5. Notwithstanding anything in this Declaration to the contrary, any right of first refusal set forth in this Declaration shall not and may not adversely affect the rights of a Mortgagee to:

- (A) foreclose or take title to a Unit pursuant to the remedies in the Mortgage.
- (B) accept a deed or assignment in lieu of foreclosure in the event of default by the mortgagor of a Mortgage or the successor in interest or assignee of any such mortgagor.
- (C) sell or lease a Unit acquired by a Mortgagee.

15.2. Closing; Further Actions. In the event of the exercise of any of the rights set forth in this Article 15, the Declarant and Owners agree to proceed to the closing of such transaction in good faith and agree to take such steps and extend such courtesies as may be commercially reasonable to facilitate such closing. The parties shall take such further actions reasonably necessary to complete or confirm the transactions contemplated, including but not limited to the execution any and all documents necessary to consummate the closing of the transaction with acknowledgment or affidavit, if necessary.

**ARTICLE 16
RIGHTS OF MORTGAGEES**

16.1. Notification to Mortgagees. Upon receipt by the Association of a written request from a Mortgagee or insurer or guarantor of a Mortgage informing the Association of its correct name and mailing address and number or address of the Unit to which the request relates, the Association shall provide such Mortgagee or insurer or guarantor with timely written notice of the following:

16.1.1. Any condemnation loss or any casualty loss which affects a material portion of the Project or any Unit on which there is a Mortgage held, insured or guaranteed by such Mortgagee or insurer or guarantor.

16.1.2. Any delinquency in the payment of Assessments or charges owed by a Unit Owner subject to a Mortgage held, insured or guaranteed by such Mortgagee or insurer or guarantor or any other default in the performance by the Unit Owner of any obligation under this Declaration, the Articles or Bylaws, which delinquency or default remains uncured for the period of sixty (60) days;

16.1.3. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

16.1.4. Any proposed action which requires the consent of a specified percentage of Mortgagees as set forth in Section 16.2.

16.2. Approval Required for Amendment to Declaration, Articles or Bylaws.

16.2.1. In addition to any other approvals or consents required elsewhere in this Declaration, no addition of or amendment to any material provisions of this Declaration, the Articles or Bylaws which establish, provide for, govern or regulate any of the following shall be effective unless approved by Mortgagees holding Mortgages on at least fifty-one percent (51%) of all Units which are subject to Mortgages:

- (A) Voting rights;
- (B) Assessments, assessment liens or subordination of assessment liens;
- (C) Reserves for maintenance, repair and replacement of Common Areas;
- (D) Insurance;
- (E) Responsibility for maintenance and repairs;

- (F) Expansion or contraction of the Project, or the addition, annexation or withdrawal of property to or from the Project;
- (G) Boundaries of any Unit;
- (H) Reallocation of interests in the Common Areas or rights to their use;
- (I) Convertibility of Units into Common Areas or of Common Areas into Units;
- (J) Imposition of any restrictions on a Unit Owner's right to sell or lease his Unit;
- (K) Restoration or repair of the Project (after a hazard damage or partial condemnation) in a manner other than that specified in this Declaration, the Articles and Bylaws;
- (L) Any action to partition or sell the Project after substantial destruction or condemnation occurs; or
- (M) Any provisions which expressly benefits such Mortgagee or insurer or guarantor.

16.2.2. Any action to partition or sell the Project for after substantial destruction or condemnation of the Project or for other reasons must be approved by Mortgagees that represent at least fifty - one percent (51%) of the Units that are subject to Mortgages.

16.2.3. Any Mortgagee who receives a written request to approve additions or amendments to the Declaration, Articles or Bylaws, which additions or amendments are not material, who does not deliver or mail to the requesting party a negative response within sixty (60) days shall be deemed to have approved such request. Any addition or amendment to the Declaration, Articles or Bylaws shall not be considered material if it is for the purpose of correcting technical errors or for clarification only. The notice referred to in this subparagraph must be sent certified or registered mail, with a return receipt requested.

16.3. Right of Inspection of Records. Any Unit Owner, Mortgagee or insurer or guarantor of a Mortgage will, upon written request be entitled to: (i) inspect the current copies of this Declaration, the Articles and Bylaws and the books, records and financial statements of the Association during normal business hours; and (ii) receive written notice of all meetings of the Members of the Association and be permitted to designate a representative to attend all such meetings.

16.4. Prior Written Approval of Mortgagees. Except as provided by statute in case of condemnation or substantial loss to the Units or the Common Areas, unless at least fifty - one percent (51%) of all Mortgagees (based upon one vote for each Mortgage, owned) or Unit

Owners (other than the Declarant or other sponsor, developer or builder of the Project) of the Units have given their prior written approval, the Association shall not be entitled to:

16.4.1. By act or omission, seek to abandon or terminate this Declaration or partition or sell the Project;

16.4.2. Change the pro rata interest or obligations of any individual Unit for the purpose of: (i) levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each Unit in the Common Areas;

16.4.3. Partition or subdivide any Unit;

16.4.4. By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Areas shall not be deemed a transfer within the meaning of this Subsection;

16.4.5. Use hazard insurance proceeds for losses to any Units or the Common Areas for any purpose other than the repair, replacement or reconstruction of such Units or the Common Areas.

Nothing contained in this Section, or any other provisions of this Declaration shall be deemed to grant the Association the right to partition any Unit without the consent of the Unit Owners thereof. Any partition of a Unit shall be subject to such limitations and prohibitions as may be set forth elsewhere in this Declaration or as provided under applicable law.

16.5. Liens Prior to First Mortgage. All taxes, assessments, and charges which may become liens prior a Mortgage under local law shall relate only to the individual Unit and not to the Project as a whole.

16.6. Condemnation or Insurance Proceeds. No Unit Owner, or any other party, shall have priority over any rights of any Mortgagee of the Unit pursuant to its mortgage in the case of a distribution to such Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of Units and/or Common Areas.

16.7. Limitation on Partition and Subdivision. No Unit shall be partitioned or subdivided without the prior written approval of any Mortgage on such Unit.

16.8. Unpaid Dues. Any Mortgagee who obtains title to a Unit pursuant to remedies in a Mortgage or through foreclosure will not be liable for more than six months of the Unit's unpaid regularly budgeted dues or charges accrued before acquisition of the title to the Unit by the Mortgagee. If the Association's lien priority includes costs of collecting unpaid dues, the Mortgagee will be liable for any fees or costs related to the unpaid dues.

16.9. Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Article 16 and any other provision of this Declaration, the Articles or Bylaws, the provisions of this Article 16 shall prevail; provided, however, that in the event of any conflict or inconsistency between the different Sections of this Article or between the provisions of this Article and any other provision of this Declaration, the Articles or Bylaws with respect to the number or percentage of Unit Owners, Mortgagees, or insurers or guarantors of Mortgages that must consent to (i) an amendment of the Declaration, Articles or Bylaws, (ii) a partition or sale of the Project, or (iii) certain actions of the Association, the provision requiring the consent of the greatest number or percentage of Unit Owners, Mortgagees, or insurers or guarantors of Mortgages shall prevail; provided, however, that the Declarant without the consent of any Unit Owner being required, shall have the right to the extent authorized by other provisions of this Declaration to amend this Declaration, the Articles or the Bylaws in order to (i) comply with the Condominium Act or any other applicable law if the amendment does not adversely affect the rights of any Unit Owner, (ii) correct any error or inconsistency in this Declaration, the Articles or the Bylaws if the amendment does not adversely affect the rights of any Unit Owner, (iii) comply with the requirements or guidelines in effect from time to time of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments, or (iv) the rules or requirements of any federal, state or local governmental entity or agency whose approval of the Project, the Plat or this Declaration or the Articles or Bylaws is required by law or requested by Declarant.

ARTICLE 17 MISCELLANEOUS

17.1. Notices. Any notices permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after the same has been deposited in the United States mail, postage prepaid, addressed to any Person at the address given by such Person to the Association for the purpose of service of such notice, or to the residence of such Person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association, as provided in this Section.

17.2. Enforcement and Non-Waiver.

17.2.1. Right of Enforcement. Except as otherwise provided herein, any Owner of any Unit shall have the right to enforce any or all of the provisions hereof against any property within the Project and Owners thereof.

17.2.2. Violations and Nuisances. The failure of any Owner of a Unit to comply with any provision hereof, or with any provision of the Articles or Bylaws of the Association, is hereby declared a nuisance and will give rise to a cause of action in the Declarant, the Association, or any Owner for recovery of damages or for negative or affirmative injunctive relief or both. However, any other provision to the contrary notwithstanding, only Declarant, the Association, the Board, or a duly authorized agent of any of them, may enforce by self-help any of the provisions hereof only if such self-help is preceded by reasonable notice to the Owner.

17.2.3. **Violation of Law.** Any violation of any state, municipal, or local law, ordinance, or regulation pertaining to the ownership, occupation, or use of any property within the Project is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth in this Declaration and any or all enforcement procedures in law and equity.

17.3. **Remedies Cumulative.** Each remedy provided herein is cumulative and not exclusive.

17.4. **Non-Waiver.** The failure to enforce any of the provisions herein at any time shall not constitute a waiver of the right to enforce any such provision.

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

17.6. **Restrictions Construed Together.** All of the provisions hereof shall be liberally construed together to promote and effectuate the fundamental concepts of the development of the Project as set forth in the recitals of this Declaration.

17.7. **Restrictions Severable.** Notwithstanding the provisions of the foregoing Section, each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision herein.

17.8. **Singular Includes Plural.** Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each including the masculine, feminine and neuter.

17.9. **Captions.** All captions and titles used in this Declaration are intended solely for convenience of reference and shall not affect that which is set forth in any of the provisions hereof.

17.10. **Successors and Assigns.** All references herein to Declarant, Owners, the Association, or Person shall be construed to include all successors, assigns, partners, and authorized agents of such Declarant, Owners, Association, or Person.

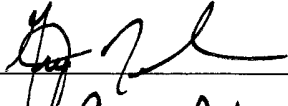
17.11. **Declarant's Discretion.** Any time this document calls for the exercise of discretion by the Declarant, Declarant shall not be required to act reasonably in the exercise of such discretion.

17.12. **Written Approval Required.** In each instance where the approval of Declarant, the Association, the Board, or any governmental or other authority is required herein, "approval" shall mean the prior written approval of such Person.

IN WITNESS WHEREOF, the Declarant has caused its name to be hereunto subscribed as of the date first set forth above.

DECLARANT:

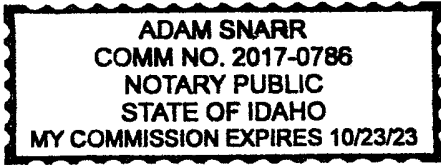
SWEETWATER PROPERTIES, LLC


By: 
Name: Greg Nelson
Title: Member

STATE OF IDAHO)
)ss.
County of BONNEVILLE)

This record was acknowledged before me on the 2nd day of MAY, 2022, by GREG NELSON, as Manager of Sweetwater Properties, LLC.

(stamp)




Signature of Notary Public
My Commission Expires: 10-23-23

G:\WPDATA\PDC\17990-008 Sweetwater-Sale Brigham's Mill\Condo Declaration v05.docx

EXHIBIT A

BRIGHAM MILL APARTMENTS

Legal Description of the Property

Brigham Mill Apartments, a subdivision of the City of Rexburg, Madison County, Idaho, according to the duly recorded plat thereof.

EXHIBIT B

BRIGHAM MILL APARTMENTS

Articles of Incorporation of
Brigham Mill Apartments Owners Association, Inc.

[to be inserted]