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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**FOR**

**PEBBLE CREEK TOWNHOMES**

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THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PEBBLE CREEK TOWNHOMES is made this 22nd day of September, 2025, by Pebble Creek Property Fund LLC, an Idaho limited liability company.

**ARTICLE 1**  
**DEFINITIONS**

1.1 Defined Terms. The following capitalized terms shall have the specific meanings set forth below:

1.1.1 “Articles” means the Articles of Incorporation of the Association, as amended from time to time.

1.1.2 “Assessments” means the Common Expense Assessments and Special Assessments levied and assessed against each Unit pursuant to Article 7.

1.1.3 “Assessment Lien” means the lien granted to the Association to secure the payment of Assessments, monetary penalties and other charges owed to the Association.

1.1.4 “Association” means Pebble Creek Property Owners Association, Inc., an Idaho nonprofit corporation, and its successors and assigns.

1.1.5 “Board” means the board of directors of the Association.

1.1.6 “Bylaws” means the Bylaws of the Association, as amended from time to time.

1.1.7 “Common Areas” means all portions of the Project other than the Units and portions of the Project, such as roads, that have been dedicated to the public. The Common Area shall be owned by the Association for the common use and enjoyment of the Unit Owners. Upon completion of the Project the Common Area shall be transferred from Declarant to the Association.

1.1.8 “Common Expenses” means expenditures made by or financial liabilities of the Association, together with any allocations to reserves, including, without limitation, (i) the cost of inspection, maintenance, management, operation, repair and replacement of the Common Areas and all Improvements thereon, including private streets, parking areas, and driveways and those

parts of the Units, if any, which the Association has the responsibility of maintaining, repairing and replacing, including but not limited to the Unit Exterior described in Section 5.1 which is to be maintained by the Association; (ii) the cost of sewer, centrally metered utilities and trash removal which serve the Units and/or the Common Areas; (iii) the cost of insurance premiums for fire, liability, workers' compensation, errors and omissions and directors, officers and agents liability, and any other insurance that may be required for the Association or the Project or that the Board determines advisable to obtain, the costs of any fidelity bonds, and the cost of compensation, wages, materials, services, supplies and other expenses required for the administration, operation, maintenance and repair of the Project, including landscape renovation and maintenance; (iv) the costs of rendering to the Unit Owners all services required to be rendered by the Association under the Townhome Documents; (v) such other funds as may be necessary to provide general operating reserves and reserves for contingencies and replacements deemed appropriate by the Board; and (vi) the cost of any other item or items incurred by the Association, for any reason whatsoever in connection with the Project, for the common benefit of the Unit Owners.

1.1.9 "Common Expense Assessment" means the assessment levied against the Units pursuant to Section 7.2.

1.1.10 "Common Expense Liability" means the liability for Common Expenses allocated to each Unit by this Declaration.

1.1.11 "Declarant" means Pebble Creek Property Fund LLC, an Idaho limited liability company, and its successors and any person or entity to whom it may transfer any Special Declarant Right.

1.1.12 "Declarant Party" or "Declarant Parties" means collectively the Declarant, its builders, general contractors or brokers, or their agents or employees.

1.1.13 "Declaration" means this Declaration of Covenants, Conditions and Restrictions, as amended from time to time.

1.1.14 "Development Rights" means any right or combination of rights reserved by or granted to the Declarant in this Declaration to do any of the following:

- (i) Add real property to or withdraw real property from the Project;
- (ii) Create Units, Common Areas or Limited Common Areas within the Project;
- (iii) Subdivide Units, convert Units into Common Areas or convert Common Areas into Units, including but not limited to platting the parking garages (individually or in bulk) as Units;
- (iv) Grant easements within the Project;

(v) Amend the Declaration during the Period of Declarant Control to comply with applicable law, or to correct any error or inconsistency in the Declaration if the amendment does not adversely affect the rights of any Unit Owner; and

(vi) Amend the Declaration during the Period of Declarant Control to comply with the rules 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, including, without limitation, the Federal National Mortgage Association (“FNMA”), the Federal Home Loan Mortgage Corporation (“FHLMC”), the Federal Housing Administration (“FHA”) or the Veterans Administration (“VA”).

(vii) Amend the Plat and/or Declaration during the Period of Declarant Control to add all or any portion of the Undeveloped Additional Property to the Property subject to the Declaration and to create additional Units and Common Area in the Undeveloped Additional Property which shall be governed by and subject to the Declaration.

1.1.15 “Eligible Insurer or Guarantor” means an insurer or governmental guarantor of a First Mortgage who has requested notice of certain matters in accordance with Section 11.1.

1.1.16 “Eligible Mortgage Holder” means a First Mortgagee who has requested notice of certain matters from the Association in accordance with Section 11.1.

1.1.17 “First Mortgage” means any mortgage or deed of trust on a Unit with first priority over any other mortgage or deed of trust on the same Unit.

1.1.18 “First Mortgagee” means the holder of any First Mortgage.

1.1.19 “Improvement” means any physical structure, fixture or facility existing or constructed, placed, erected or installed on the land included in the Project, including, but not limited to, private drives, walkways, pools, spas, paving, fences, walls, monument signs, gates, hedges, plants, trees and shrubs of every type and kind.

1.1.20 “Limited Common Areas” means portions of the Common Areas specifically designated in this Declaration for the exclusive use of one or more but fewer than all of the Units. Limited Common Areas shall include, but not be limited to, the trim around exterior windows and doors, corner siding of a Unit, corner siding around garages, and corner siding around parking stalls assigned to a Unit.

1.1.21 “Member” means any Person who is or becomes a member of the Association.

1.1.22 “Ownership Interest Percentage” means the percentage allocated to each Unit, which shall be equal to a fraction, the numerator of which shall be one (1) and the denominator of which shall be the total number of Units in the Project.

1.1.23 “Period of Declarant Control” means the time period commencing on the date this Declaration is recorded with the County Recorder of Madison County, Idaho, and ending ninety (90) days after: (i) the conveyance of ninety percent (90%) of the Units (including any additional Units which may be created in the Undeveloped Additional Property and made subject to this Declaration) to Unit Owners other than the Declarant, and (ii) Declarant no longer owns any portion of the Undeveloped Additional Property which has not been converted to Units and/or Common Area subject to this Declaration.

1.1.24 “Person” means a natural person, corporation, partnership, limited liability company, business trust, estate, trust, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

1.1.25 “Plat” means the plat of Pebble Creek – Phase No. 1, recorded September 19, 2023, as Instrument No. 458441, in the Office of the County Recorder of Madison County, Idaho, and any amendments, supplements or corrections thereto, together with the plat(s) of any further or future phases of Pebble Creek as may hereafter be recorded and added to the Project in accordance with the provisions hereof.

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

1.1.27 “Property” means the land described in Exhibit A attached hereto, together with the land of any further or future phases of Pebble Creek as may hereafter be added to the Project, and together with all Improvements located thereon, all easements and rights appurtenant thereto and all personal property intended for use in connection therewith or for the use, benefit or enjoyment of the Unit Owners.

1.1.28 “Purchaser” means any Person, other than the Declarant, who by means of a voluntary transfer becomes a Unit Owner, except for a Person who purchases a Unit and then leases it to the Declarant for use as a model in connection with the sale of other Units, or a Person who, in addition to purchasing a Unit, is assigned any Special Declarant Right.

1.1.29 “Rules” means the rules and regulations adopted by the Association, as amended from time to time.

1.1.30 “Special Declarant Rights” means any right or combination of rights reserved by or granted to the Declarant in this Declaration to do any of the following:

- (i) Exercise any Development Right during the Period of Declarant Control;
- (ii) Maintain sales offices, management offices, models, and signs advertising the Project;
- (iii) Appoint or remove any member of the Board or any officer of the Association during the Period of Declarant Control.

1.1.31 "Townhome" shall mean any residence existing on a Unit as of the recording date of this Declaration and any residence thereafter constructed on a Unit in accordance with the terms and conditions set forth in this Declaration.

1.1.32 "Townhome Documents" means this Declaration, the Articles, the Bylaws and the Rules.

1.1.33 "Unit" means each of the Units shown on the Plat. Units that have not been developed with a Townhome are referred to herein as "Undeveloped Units", and Units that have been developed with a Townhome for which a certificate of occupancy has been issued are referred to herein as "Developed Units".

1.1.34 "Unit Owner" means the record owner, whether one or more Persons, of legal title to the fee simple interest of a Unit. Unit Owner shall not include Persons having an interest in a Unit merely as a tenant or lessee, or as a mortgagee or deed of trust beneficiary, or otherwise as security for the performance of an obligation. Unit Owner shall include a purchaser under a land sale installment contract, a contract for deed, an installment land contract or any similar contract where the purchaser receives a deed upon payment of the final installment on the purchase price. Unit Owner shall not include a purchaser under a purchase and sale agreement, earnest money agreement, escrow instructions or similar executory contracts which are intended to control the rights and obligations of the parties pending the closing of a sale or purchase transaction.

1.1.35 "Undeveloped Additional Property" means the any property, now owned or hereafter acquired by Declarant, that is adjacent to the Property.

## **ARTICLE 2**

### **SUBMISSION OF PROPERTY; PROJECT NAME; ASSOCIATION NAME; UNITS; ALLOCATIONS OF COMMON AREAS, LIMITED COMMON AREAS AND VOTES**

2.1 Name of Project. The name of the Project created by this Declaration is Pebble Creek Townhomes.

2.2 Name of Association. The name of the Association is Pebble Creek Property Owners Association, Inc.

2.3 Legal Description 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 Areas 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:

Lot \_\_\_, Block \_\_\_, Pebble Creek – Phase No.  
\_\_\_\_\_, in the City of Rexburg, Madison County,

Idaho, according to the plat thereof recorded in the Office of the Recorder of Madison County, Idaho.

**2.4 Unit Boundaries.**

2.4.1 Each Unit consists of the entire property enclosed with the unit boundary lines shown on the Plat, including the land lying beneath and all improvements thereon. The exterior Unit lines surrounding the building run along the foundation wall. The interior lines dividing said Units runs through the interior gap in the party walls.

2.4.2 All spaces, interior partitions and other fixtures and Improvements within the boundaries of a Unit are part of the Unit.

2.4.3 The physical boundaries of a Unit shall be considered to be the proper boundaries regardless of the settling, rising or lateral movement of the building encompassing the Unit and regardless of any variances between the boundaries shown on the Plat and the actual physical boundaries. In the event of any inconsistency or conflict between the provisions of this Section and the Plat, this Section shall control.

**2.5 Allocation of Common Areas.** The Common Areas will be owned by the Association.

**2.6 Allocation of Limited Common Areas.** The following portions of the Common Areas are Limited Common Areas and are allocated to the exclusive use of one Unit as follows:

2.6.1 Any chute, flue, pipe, duct, wire, conduit, bearing wall, bearing column or other fixtures (including, but not limited to, heating and air conditioning units and related equipment and gas, cable television, water and electric pipes, lines or meters), whether located within or outside of the boundaries of a Unit, which serve only one Unit are a Limited Common Area allocated solely to the Unit served;

2.6.2 If a chute, flue, pipe, duct, wire, conduit, bearing wall, bearing column or other fixtures (including, but not limited to, heating and air conditioning units and related equipment) lies partially within and partially outside the designated boundaries of a Unit, the portion serving only the Unit is a Limited Common Area allocated solely to the Unit, the use of which is limited to that Unit and any portion serving more than one Unit or a portion of the Common Areas is a part of the Common Areas;

2.6.3 Any shutters, stairs, awnings, window boxes, doorsteps, stoops, porches and exterior doors and windows or other fixtures designed to serve a single Unit, located outside the boundaries of the Unit, are Limited Common Areas allocated exclusively to the Unit served;

2.6.4 Any electric, water or other utility service meter which serves less than all Units is allocated to the Unit or Units it serves as a Limited Common Area; and

2.6.5 That portion of the Common Area allocated to each Unit as parking space in the parking lot. Such allocation is made by the Board as provided in Section 4.12.

2.7 Allocation of Votes in the Association. The total votes in the Association shall be equal to the number of Units. The votes in the Association shall be allocated equally among all the Units with each Unit having one (1) vote.

## ARTICLE 3 EASEMENTS

3.1 Utility Easement. There is hereby created an easement upon, across, over and under the Common Areas for reasonable ingress, egress, installation, replacement, repair or maintenance of all utilities, including, but not limited to, gas, water, sewer, telephone, cable television and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment on the Common Areas, but no sewers, electrical lines, water lines, or other utility or service lines may be installed or located on the Common Areas except as initially designed, approved and constructed by the Declarant or as approved by the Board. This easement shall in no way affect any other recorded easements on the Common Areas.

3.2 Easements for Ingress and Egress. There are hereby created easements for ingress and egress for pedestrian traffic over, through and across sidewalks, paths, walks, streets, roadways and lanes that from time to time may exist upon the Common Areas. There is also created an easement for ingress and egress for pedestrian and vehicular traffic over, through and across such streets, roadways, lanes, driveways and parking areas as from time to time may be paved and intended for such purposes except that such easements shall not extend to any Limited Common Areas. Such easements shall run in favor of and be for the benefit of the Unit Owners and occupants of the Units and their guests, families, tenants and invitees and in favor of and for the benefit of the Declarant and its guests, affiliates, tenants and invitees.

### 3.3 Unit Owners' Easements of Enjoyment.

3.3.1 Every Unit Owner shall have a right and easement of enjoyment in and to the Common Areas, which right and easement shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

(i) The right of the Board to adopt reasonable rules and regulations governing the use of the Common Areas;

(ii) The right of the Association to convey the Common Areas or subject the Common Areas to a lease, mortgage, deed of trust, other security interest or easement;

(iii) All rights and easements set forth in this Declaration including, but not limited to, the rights and easements granted to the Declarant by Sections 3.4 and 3.5; and

(iv) The right of the Association to suspend the right of a Unit Owner and any occupant of such Unit Owner's Unit to use the Common Areas (other than the right of a Unit Owner and any occupant to use the streets which are part of the Common Areas for ingress and egress to the Unit Owner's Unit) for any period during which the Unit Owner is in violation of any provision of the Townhome Documents.

3.3.2 If a Unit is leased or rented, the lessee and occupants of the Unit shall have the right to use the Common Areas during the term of the lease, and the Unit Owner shall have no right to use the Common Areas (other than the right of a Unit Owner to use the streets which are part of the Common Areas for ingress and egress to the Unit Owner's Unit) until the termination or expiration of the lease.

3.3.3 The guests and invitees of any Unit Owner or other person entitled to use the Common Areas pursuant to Subsection 3.3.1 or of any lessee who is entitled to use the Common Areas pursuant to Subsection 3.3.2 may use the Common Areas provided they are accompanied by a Unit Owner, lessee or other person entitled to use the Common Areas pursuant to Subsection 3.3.1 or Subsection 3.3.2. The Board shall have the right to limit the number of guests and invitees who may use the Common Areas at any one time and may restrict the use of the Common Areas by guests and invitees to certain specified times.

3.3.4 A Unit Owner's right and easement of enjoyment in and to the Common Areas shall not be conveyed, transferred, alienated or encumbered separate and apart from a Unit. Such right and easement of enjoyment in and to the Common Areas shall be deemed to be conveyed, transferred, alienated or encumbered upon the sale of any Unit, notwithstanding that the description in the instrument of conveyance, transfer, alienation or encumbrance may not refer to such right and easement.

3.3.5 The provisions of this Section 3.3 shall not apply to any of the Limited Common Areas that are allocated to one or more but less than all of the Units.

#### 3.4 Declarant's Rights and Easements for Sales and Leasing Purposes.

3.4.1 The Declarant shall have the right and an easement to maintain sales or leasing offices, management offices and models throughout the Project and to maintain one or more marketing, directional or advertising signs on the Common Areas while the Declarant is selling Units in the Project. The Declarant reserves the right to place models, management offices, and sales and leasing offices in any Units owned or leased by the Declarant and on any portion of the Common Areas in such number, of such size and in such locations as the Declarant deems appropriate.

3.4.2 The Declarant may from time to time relocate models, management offices and sales and leasing offices to different locations within the Project. Upon the relocation of a model, management office or sales and leasing office constituting a Common Area, the Declarant may remove all personal property and fixtures therefrom.

3.4.3 So long as the Declarant is marketing Units in the Project, the Declarant shall have the right to restrict the use of the parking spaces which are not allocated as Limited Common Areas. Such right shall include reserving such spaces for use by prospective Unit purchasers, the Declarant's employees and others engaged in sales, leasing, maintenance, construction or management activities.

3.4.4 The Declarant reserves the right to retain all personal property and equipment used in the sales, management, construction and maintenance of the Project that has not been represented to the Association as property of the Association. The Declarant reserves the right to remove from the Project any and all goods and improvements used in development, marketing and construction, whether or not they have become fixtures.

3.4.5 In the event of any conflict or inconsistency between this Section 3.4 and any other provision of the Townhome Documents, this Section 3.4 shall control and prevail over such other provisions.

### 3.5 Declarant's Rights and Easements with respect to Units and Common Areas.

3.5.1 The Declarant shall have the right and an easement on and over the Common Areas to construct the Common Areas and the Units shown on the Plat and all other Improvements the Declarant may deem necessary, and to use the Common Areas and any Units owned by the Declarant for construction or renovation related purposes, including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work in the Project.

3.5.2 The Declarant shall have the right and an easement on, over and under the Common Areas for the purpose of maintaining and correcting drainage of surface, roof or storm water. The easement created by this Subsection expressly includes the right to cut any trees, bushes, or shrubbery, to grade the soil or to take any other action reasonably necessary.

3.5.3 The Declarant shall have an easement through the Units for any access necessary to complete any renovations, warranty work or modifications to be performed by the Declarant.

3.5.4 The Declarant shall have the right and an easement on, over and through the Common Areas as may be reasonably necessary for the purpose of discharging its obligations and exercising Special Declarant Rights.

3.5.5 In the event of any conflict or inconsistency between this Section 3.5 and any other provision of the Townhome Documents, this Section 3.5 shall control and prevail over such other provisions.

3.6 Easement for Support. To the extent necessary, each Unit shall have an easement for structural support over every other Unit, the Common Areas and the Limited Common Areas, and each Unit and the Common Areas shall be subject to an easement for structural support in favor of every other Unit, the Common Areas and the Limited Common Areas.

3.7 Easement in Favor of the Association.

3.7.1 The Common Areas and Unit Exterior (as defined in Section 5.1) shall be subject to an easement in favor of the Association and the agents, employees and independent contractors of the Association for the purpose of the inspection, maintenance, repair and replacement of the Common Areas and Unit Exterior and for the purpose of exercising all rights of the Association and discharging all obligations of the Association.

3.7.2 Each Unit shall be subject to an easement in favor of the Association and the agents, employees and contractors of the Association for the purpose of performing such pest control activities as the Association may deem necessary to control or prevent the infestation of the Project by insects, rodents or other pests or to eradicate insects, rodents or other pests from the Project.

3.8 Common Areas Easement in Favor of Unit Owners. The Common Areas shall be subject to the following easements in favor of the Units benefitted:

3.8.1 For the installation, repair, maintenance, use, removal or replacement of pipes, ducts, heating and air conditioning systems, electrical, telephone and other communication wiring and cables and all other utility lines and conduits which are a part of or serve any Unit and which pass across or through a portion of the Common Areas;

3.8.2 For the installation, repair, maintenance, use, removal or replacement of lighting fixtures, electrical receptacles, panel boards and other electrical installations which are a part of or serve any Unit but which encroach into a part of a Common Area adjacent to such Unit; provided that the installation, repair, maintenance, use, removal or replacement of any such item does not unreasonably interfere with the common use of any part of the Common Areas;

3.8.3 For the maintenance of any lighting devices, outlets, medicine cabinets, exhaust fans, ventilation ducts, registers, grilles and similar fixtures which serve only one Unit but which encroach into any part of the Common Areas; and

3.8.4 For the performance of the Unit Owners' obligation to maintain, repair, replace and restore those portions of the Limited Common Areas that the Unit Owner is obligated to maintain under Section 5.3.

3.9 Units and Limited Common Areas Easement in Favor of Association. The Units and the Limited Common Areas are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

3.9.1 For inspection of the Units and Limited Common Areas in order to verify the performance by Unit Owners of all items of maintenance and repair for which they are responsible;

3.9.2 For inspection, maintenance, repair and replacement of the Common Areas or the Limited Common Areas situated in or accessible from such Units or Limited Common Areas;

3.9.3 For correction of emergency conditions in one or more units or Limited Common Areas or casualties to the Common Areas, the Limited Common Areas or the Units;

3.9.4 For the purpose of enabling the Association, the Board or any other committees appointed by the Board to exercise and discharge their respective rights, powers and duties under the Townhome Documents; and

3.9.5 For inspection, at reasonable times and upon reasonable notice to the Unit Owner, of the Units and the Limited Common Areas in order to verify that the provisions of the Townhome Documents are being complied with by the Unit Owners, their guests, tenants, invitees and the other occupants of the Unit.

3.10 Easement for Unintended Encroachments. To the extent that any Unit or Common Area encroaches on any other Unit or Common Area as a result of original construction, shifting or settling, or alteration or restoration authorized by this Declaration or any reason other than the intentional encroachment on the Common Areas or any Unit by a Unit Owner, a valid easement for the encroachment, and for the maintenance thereof, exists.

## **ARTICLE 4 USE AND OCCUPANCY RESTRICTIONS**

4.1 Residential Use. All Units shall be used, improved and devoted exclusively to residential use. No trade or business may be conducted on any Unit or in or from any Unit, except that a Unit Owner or other resident of a Unit may conduct a business activity within a Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Unit; (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Project; (iii) the business activity does not involve the door-to-door solicitation of Unit Owners or other residents in the Project; (iv) the use of the Unit for trade or business shall in no way destroy or be incompatible with the residential character of the Unit or the surrounding neighborhood; (v) the trade or business shall be conducted only inside the Unit, and shall not involve the viewing, purchase or taking delivery of goods or merchandise at, to, from or in any Unit; (vi) no more than twenty percent (20%) of the total floor area of the Unit shall be used for trade or business; (vii) the Unit used for trade or business shall not be used as a storage facility for a business conducted elsewhere; (viii) the volume of vehicular or pedestrian traffic or parking generated by such trade or business shall not result in congestion or be in excess of what is customary in a residential neighborhood; (ix) a trade or business shall not utilize flammable liquids or hazardous materials in quantities not customary to a residential use; and (x) a trade or business shall not utilize large vehicles not customary to a residential use. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to Persons other

than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (a) such activity is engaged in full or part time; (b) such activity is intended to or does generate a profit; or (c) a license is required for such activity. The leasing of a Unit by its Unit Owner shall not be considered a trade or business within the meaning of this Section.

4.2 Antennas. No antenna, satellite television dish or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors on any portion of the Project whether attached to a Unit or structure or otherwise, unless approved in writing by the Board, unless applicable law prohibits the Board from requiring such prior approval. Even if applicable law prohibits the Board from requiring prior approval of certain types of antennas, any such antennas must be installed or constructed in accordance with such rules and regulations as the Board may adopt.

4.3 Utility Service. Except for lines, wires and devices existing on the Project as of the date of this Declaration and maintenance and replacement of the same, no lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon the Project unless they are installed and maintained underground or concealed in, under or on buildings or other structures permitted under this Declaration. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures permitted under this Declaration.

4.4 Improvements and Alterations. Any Unit Owner may make nonstructural additions, alterations and improvements within such Unit Owner's Unit without the prior written approval of the Board, but such Unit Owner shall, to the extent permitted under applicable law, be responsible for any damage to other Units and to the Common Areas which results from any such alterations, additions or improvements. No Unit Owner shall make any structural additions, alterations or improvements within a Unit, unless prior to the commencement of each addition, alteration or improvement, the Unit Owner receives the prior written approval of the Board and a licensed architect or engineer certifies that such addition, alteration or improvement will not impair the structural integrity of the building within which such addition, alteration or improvement is to be made. The Unit Owner shall, to the extent permitted by applicable law, be responsible for any damage to other Units and to the Common Areas which results from any such additions, alterations or improvements. Notwithstanding the foregoing, no addition, alteration or improvement within a Unit or within any Limited Common Area allocated to the exclusive use of a Unit, whether structural or not, which would be visible from the exterior of the building in which the Unit is located or from the exterior of the Limited Common Area (including, but not limited to, the enclosing of any patio or balcony), shall be made without the prior written approval of the Board, which approval shall only be granted if the Board affirmatively finds that the proposed addition, alteration or improvement is aesthetically pleasing and in harmony with the surrounding Improvements. No Unit Owner shall make any addition, alteration or improvement to the Common Areas without the prior written approval of the Board.

4.5 Trash Containers and Collection. No garbage or trash shall be placed or kept on the Project except in sanitary, covered containers of a type, size and style which are approved by

the Board. In no event shall such containers be maintained so as to be visible from any neighboring property except to make the same available for collection and then only during the period beginning at 5:00pm on the day before garbage collection and ending at noon on the day following garbage collection. Following two (2) notices of noncompliance given by the Board to a Unit Owner who violates the forgoing the container visibility prohibition, the Board may fine a Unit Owner \$50.00 (or such other amount as the Board may determine) upon the third violation and any subsequent violation. All rubbish, trash or garbage shall be removed from the Project and shall not be allowed to accumulate thereon. Each Unit owner shall be responsible for subscribing to a trash service for collection and removal of garbage and trash. The Association may adopt and promulgate rules and regulations regarding garbage, trash, trash containers and collection. No incinerators shall be kept or maintained in any Unit.

4.6 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon the Project except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of buildings, Improvements or structures which are within the uses permitted by this Declaration, and except that which the Declarant or the Association may require for the construction, operation and maintenance of the Common Areas.

4.7 Animals. No animals, fowl, poultry or livestock shall be maintained or kept in any Units or on any other portion of the Project, except that no more than two (2) Permitted Pets may be kept or maintained in a Unit. Permitted Pets may be kept or raised solely as domestic pets and not for commercial purposes. For purposes of this Section, a "Permitted Pet" shall mean a domestic dog, domestic cat, household bird or other generally recognized household pet. No feral animal or animal exhibiting vicious tendencies may be kept. The Board is authorized to determine, in its discretion and on a case-by-case basis, whether any particular animal or pet is to be considered as a "generally recognized household pet," and the Board may on a case-by-case basis allow one or more Unit Owners or other occupants to keep more than two (2) Permitted Pets if in the sole discretion of the Board the increased number of Permitted Pets will not negatively impact other Unit Owners or other occupants, taking into account the size and type of animal or pet, the total number of Permitted Pets of the applicable Unit Owner or other occupant, the noise of the animal or pet and any other relevant considerations. The approval by the Board of an increased number of Permitted Pets by a Unit Owner or other occupant shall not be construed as approval to any other Unit Owner or other occupant. No Permitted Pet shall be allowed to make an unreasonable amount of noise, cause an odor, or to become a nuisance or annoyance to other Unit Owners or occupants. All dogs shall be kept on a leash not to exceed six (6) feet in length when outside a Unit or any Limited Common Areas allocated to the Unit (except within a rear yard enclosed by a wall), and all dogs shall be directly under the Unit Owner's or other occupant's control at all times. Any person bringing a dog onto the Common Areas shall keep the same on a leash and shall immediately remove any feces deposited on the Common Areas by the dog. Any Unit or Limited Common Area where a Permitted Pet is kept or maintained shall at all times be kept in a neat and clean condition. No structure for the care, housing, confinement or training of any animal or pet shall be maintained on any portion of the Common Areas or in any Unit so as to be visible from the exterior of the building in which the Unit is located. Upon the written request of any Unit Owner, the Board shall determine whether, for the purposes of this Section, a Permitted Pet is a nuisance or is making an unreasonable amount of noise or causing an odor. The Board

shall have the right to adopt, amend and repeal rules and regulations governing the keeping of Permitted Pets in the Project, and such rules and regulations may include limitations on the height and/or weight of Permitted Pets. Following two (2) notices of noncompliance given by the Board to a Unit Owner who violates the forgoing dog leashing requirement, the Board may fine a Unit Owner \$25.00 (or such other amount as the Board may determine) upon the third violation and any subsequent violation.

4.8 Temporary Occupancy. No trailer, tent, shack, and no temporary Improvement of any kind shall be used at any time as a residence either temporarily or permanently.

4.9 Laundry Facilities. Outside clotheslines or other outside laundry facilities shall not be erected, placed or maintained on the Project.

4.10 Mineral Exploration. No portion of the Project shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth, or any earth substance of any kind.

4.11 Diseases and Insects. No Unit Owner shall permit any thing or condition to exist upon the Project which could induce, breed or harbor infectious plant diseases or noxious insects. Each Unit Owner shall perform such pest control activities as may be necessary to prevent insects, rodents and other pests from being present in the Unit.

4.12 Vehicles. Although not currently assigned, the Association may hereafter assign individual parking spaces to individual Units. Except as otherwise provided in this Section, all Vehicles (as defined below) must be parked, kept, maintained, or stored, only within a designated parking area. For purposes of this Section and Section 4.13 below, the terms "Vehicle" and "Vehicles" include cars, trucks and vans of all sizes, motorcycles, motorbikes, mopeds, mini-bikes, motor scooters, all-terrain vehicles, off-road vehicles, motor homes, recreational vehicles, trailers, travel trailers, tent trailers, camper shells, detached campers, boats, boat trailers, mobile homes, or other similar machinery or equipment, whether motorized or not, whether wheeled or not and whether or not in operating condition. The Board may adopt rules or regulations relating to the number or frequency of guest or visitor Vehicle parking, if it determines, in its discretion, that such rules or regulations are necessary. Except for emergency repairs, no Vehicle shall be repaired, constructed or reconstructed within the Project. Vehicles which are not registered or are not operable may not be stored on the premises except for temporary storage in a designated parking area for a period of no more than ten (10) days, unless permission is obtained from the Board for longer storage.

4.13 Towing of Vehicles. The Board has the right, without notice, to have any Vehicle which is parked, kept, maintained, constructed, reconstructed or repaired in violation of the foregoing restrictions or the Townhome Documents towed away at the sole cost and expense of the owner of the Vehicle. Any expense incurred by the Association in connection with the towing of any Vehicle must be paid to the Association upon demand by the owner of the Vehicle. If the Vehicle is owned by a Unit Owner (or by an occupant of a Unit Owner), any amounts payable to the Association will be secured by the Assessment Lien against that Unit Owner's Unit, and the

Association may enforce collection of those amounts in the same manner provided for in this Declaration for the collection of Assessments.

4.14 Patio Furniture and Porch Decorations. All patio furniture kept on porches or other Limited Common Areas must be kept neat, tidy, and in good repair and working order. No grills may be stored or used on front porches. When in use, grills must be mobile and must be operated outside of a garage and within four (4) feet of the garage. Front porches that are part of the Limited Common Area of a Unit may be decorated by the Unit Owner provided that such decorations do not constitute a nuisance, are maintained in good condition and repair, and otherwise comply with the rules and regulations adopted by the Board from time to time. Decorative lighting may be used as part of front porch decorations, provided that all such lighting is turned off during the hours of 11:00pm until 6:00am. Following two (2) notices of noncompliance given by the Board to a Unit Owner who violates the forgoing lighting restriction, the Board may fine a Unit Owner \$100.00 (or such other amount as the Board may determine) upon the third violation and any subsequent violation.

4.15 Signs. No signs (including, but not limited to, "For Sale" or "For Rent" signs) shall be permitted on the exterior of any Unit or building, or in the interior of a Unit if the signs would be visible from the exterior of the building in which the Unit is located, or on any other portion of the Project without the prior written approval of the Board, except signs required by legal proceedings.

4.16 Lawful Use. No offensive or unlawful use shall be made of any part of the Project. All valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction over the Project shall be observed. Any violation of such laws, zoning ordinances or regulations shall be a violation of this Declaration.

4.17 Nuisances and Offensive Activity. No nuisance shall be permitted to exist or operate upon the Project, and no activity shall be conducted upon the Project which is offensive or detrimental to any portion of the Project or any Unit Owner or other occupant of the Project or is an annoyance to any Unit Owner or other occupant. No loud music or other loud noises originating from inside or outside a Unit shall be allowed if such music or noise disturbs neighboring Unit Owners, and no exterior speakers, horns, whistles, bells or other sound devices, except security or other emergency devices used exclusively for security or emergency purposes, shall be located, used or placed on the Project without the prior written approval of the Board.

4.18 Window Coverings. No reflective materials, including, but without limitation, aluminum foil, reflective screens or glass, mirrors or similar items, shall be installed or placed upon the outside or inside of any windows of a Unit without the prior written approval of the Board. No enclosures, drapes, blinds, shades, screens or other items affecting the exterior appearance of a Unit or any Limited Common Areas allocated to the Unit shall be constructed or installed without the prior written consent of the Board.

4.19 Open Spaces and Recreational Spaces. The open spaces and recreational spaces within the Project, designated on the Plat as C.A., are part of the Common Area to be used and enjoyed by the Unit Owners and their guests in accordance with rules and regulations adopted

from time to time by the Board. Except when approved in advance by the Board, such open spaces and recreational spaces shall not be used between the hours of 10:00pm and 7:00am.

4.20 Recreational Structures. No permanent basketball goal, pole or backboard, soccer or hockey goal or net, or other such recreational structure or equipment, may be installed on any portion of the Project unless installed by the Declarant or Association as a component of the recreational facilities, and no temporary basketball goal, pole or backboard, soccer or hockey goal or net, or other such recreational structure or equipment may be used or placed on or within the Project except in accordance with such rules and regulations as the Board may adopt from time to time, which may include without limitation rules and regulations governing hours of permitted use and limiting the length of time such equipment or structures may be left outside without being stored away.

4.21 Limitation on Leasing of Units. No Unit Owner may lease less than his, her or its entire Unit. With the exception of Approved STR Units (defined below), no Unit may be leased for a period of less than thirty (30) days. All leases shall be in writing and shall provide that the lease shall be subject in all respects to the provisions of the Townhome Documents, and any failure by the lessee to comply with the terms of the Townhome Documents shall be a default under the lease. Upon leasing a Unit, a Unit Owner shall promptly notify the Association of the commencement date and termination date of the lease and the names of each lessee or other person who will be occupying the Unit during the term of the lease. The provisions of this Section do not apply to the Declarant's use of any Unit owned by (or leased to) Declarant as a model or as a sales, marketing or other office, or for marketing purposes. At any given time, Units within the Project may be leased for a periods of less than thirty (30) days ("Short-Term Rentals") upon compliance with the provisions of this Section 4.21 and other applicable provisions of this Declaration. Before a Unit may be used for Short-Term Rentals, the Member who owns the Unit must first submit the application described herein for approval by the Board and receive the written approval of the Board. The application shall include such information as the Board may require, such as the name, address, and telephone number of the Member, the platform proposed to be used by the Member (such as VRBO, Airbnb, etc.), and the form of rental agreement. All rental agreements shall be subject in all respects to the provisions of the Townhome Documents, and any failure by the renter to comply with the terms of the Townhome Documents shall be a default under the rental agreement. The Board may proscribe an application form to be used for such purposes. If the Board approves the application, the Unit will be an "Approved STR Unit" for the period specified in the Board's approval or until approval is revoked by the Board due to violations of this Declaration by the Member or the Member's renters. The Board may deny any application on the basis that there are no available Approved STR Units at the time in question.

4.22 Variances. The Board may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article 4 if the Board determines in its discretion that: (a) a restriction would create an unreasonable hardship or burden on a Unit Owner or occupant or a change of circumstances since the recordation of this Declaration had rendered such restriction obsolete; and (b) the activity permitted under the variance will not have any substantial adverse effect on Unit Owners and occupants and is consistent with the high quality of life intended for occupants of the Project. The Rules may set forth requirements with respect to the submission to

the Board of applications for variance, including but not limited to the payment of an administrative fee in connection with any such application.

4.23 Notice of Violation. The Association shall have the right to record a written notice of a violation by any Unit Owner of any restriction or provision of the Townhome Documents. The notice shall be executed and acknowledged by an officer of the Association and shall contain substantially the following information: (i) the name of the Unit Owner; (ii) the legal description of the Unit against which the notice is being recorded; (iii) a brief description of the nature of the violation; (iv) a statement that the notice is being recorded by the Association pursuant to this Declaration; and (v) a statement of the specific steps which must be taken by the Unit Owner to cure the violation. Recordation of a Notice of Violation shall serve as a notice to the Unit Owner and to any subsequent purchaser of the Unit that there is a violation of the provisions of the Townhome Documents. If, after the recordation of such notice, it is determined by the Association that the violation referred to in the notice does not exist or that the actual violation referred to in the notice has been cured, the Association shall record a notice of compliance which shall state the legal description of the Unit against which the Notice of Violation was recorded, the recording data of the Notice of Violation, and shall state that the violation referred to in the notice of violation has been cured, or if such be the case, that it did not exist.

## **ARTICLE 5** **MAINTENANCE AND REPAIR OF COMMON AREAS AND UNITS**

5.1 Duties of the Association. Except as otherwise provided in Sections 5.3 and 5.4, the Association shall inspect, maintain, repair and replace all: (i) Common Areas (including, but not limited to, snow removal and irrigation), (ii) Limited Common Areas, whether located inside or outside the Units and (iii) any portion of any Unit which constitutes the "Unit Exterior" (as hereinafter defined). For purposes of this Declaration the term "Unit Exterior" shall include any portion of the Unit which extends beyond the interior surfaces of the perimeter walls, floor, ceiling, doors and windows of the Unit. Unit Exterior shall include the roof, siding, and rear lighting of Units, but shall not include garages, doors, windows, lath furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces of the walls, floor and ceiling of a Unit. The cost of all such inspection, maintenance, repairs and replacements shall be a Common Expense and shall be paid for by the Association, but the Association may assess the cost of any maintenance, repair or replacement of a Limited Common Area that is allocated exclusively to the use of one Unit to the Unit Owner thereof.

5.2 Duty to Inspect. It shall be the duty of the Board to have the Common Areas inspected periodically.

5.2.1 Purpose of Inspection. The purpose of the inspection shall be to (i) determine whether the Common Areas are being maintained adequately in accordance with commercially reasonable standards, (ii) identify the condition of the Common Areas, including the existence of any hazards or defects, and the need for performing additional maintenance,

refurbishment, replacement or repair, and (iii) recommend preventive actions which may be taken to reduce potential maintenance costs to be incurred in the future.

**5.2.2 Scope of Inspection.** The Common Areas and Improvements thereon, including, but not limited to, the exterior and structural integrity of all structures, gates, walls, walkways, irrigation systems, landscaping and drainage devices, but excluding any portion of the Common Areas for which access through the interior of Units or through walls is required (subject to the rights of inspection set forth in Subsection 3.7.1), shall be inspected.

**5.2.3 Experts and Consultants.** The Board may employ such experts and consultants as are necessary to perform the inspection and make the report required by this Section 5.2.

**5.2.4 Report to Unit Owners.** The Board shall cause to be prepared a report of the results of the inspection of the Common Areas required by this Section 5.2. The report shall be furnished to Unit Owners along with the summary of the budget as set forth in Subsection 7.1.2. The report shall include at least the following:

(i) A description of the condition of the Common Areas, including a list of items inspected, and the status of maintenance, repair and need for replacement of all such items;

(ii) A description of all maintenance, repair and replacement planned for the ensuing fiscal year and included in the budget;

(iii) If any maintenance, repair or replacement is to be deferred, the reason for such deferral;

(iv) A summary of all reports of inspections performed by any expert or consultant employed by the Board to perform inspections;

(v) A report of the status of compliance with the maintenance, replacement and repair needs set forth in the inspection report for the preceding year; and

(vi) Such other matters as the Board deems appropriate.

**5.3 Duties of Unit Owners.** Each Unit Owner shall maintain in good order and repair and replace, at that Unit Owner's own expense, all portions of that Unit Owner's Unit, except the Unit Exterior which is maintained by the Association. In addition, each Unit Owner shall be responsible for the daily maintenance (i.e., sweeping and/or washing) of any patios, balconies, or entryways assigned to the Unit as a Limited Common Area.

**5.4 Repair or Restoration Necessitated by Unit Owner.** Each Unit Owner shall be liable to the Association, to the extent permitted by applicable law, for any damage to the Common Areas or the Improvements, landscaping or equipment thereon which results from the negligence or willful misconduct of the Unit Owner. The cost to the Association of any such repair,

maintenance or replacements required by such act of a Unit Owner shall be paid by the Unit Owner, upon demand, to the Association. The Association may enforce collection of any such amounts in the same manner and to the same extent as provided for in this Declaration for the collection of Assessments.

5.5 Unit Owner's Failure to Maintain. If a Unit Owner fails to maintain in good condition and repair such Unit Owner's Unit or any Limited Common Area which such Unit Owner is obligated to maintain under this Declaration and the required maintenance, repair or replacement is not performed within fifteen (15) days after written notice has been given to the Unit Owner by the Association, the Association shall have the right, but not the obligation, to perform the required maintenance, repair or replacement. The cost of any such maintenance, repair or replacement shall be assessed against the nonperforming Unit Owner pursuant to Subsection 7.2.4.

## **ARTICLE 6** **ASSOCIATION; RIGHTS AND DUTIES, MEMBERSHIP**

6.1 Rights, Powers and Duties of the Association. The Association shall be organized as a nonprofit Idaho corporation. The Association shall be the entity through which the Unit Owners shall act. The Association shall have such rights, powers and duties as are prescribed by law and as are set forth in the Townhome Documents together with such rights, powers and duties as may be reasonably necessary in order to effectuate the objectives and purposes of the Association as set forth in this Declaration and the Townhome Documents. The Association may engage a management company to carry out any one or more of the Association's duties and responsibilities hereunder. The Association shall have the right to finance capital improvements in the Project by encumbering future Assessments if such action is approved by the written consent or affirmative vote of Unit Owners representing more than sixty-seven percent (67%) of the votes in the Association. Unless the Townhome Documents specifically require a vote of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board. Notwithstanding anything herein to the contrary, so long as the Declarant owns any Unit, the prior written consent of the Declarant shall be required to any decision by the Association to establish self-management when professional management previously had been in place. The Association has the specific duty to make available to the Declarant, Eligible Mortgage Holders, Unit Owners, and Eligible Insurers or Guarantors, current copies of the Declaration, Bylaws, Articles, Rules and other books, records and financial statements of the Association as may be requested from time to time by such parties. Such requests shall be in writing, and the Association shall have the right to charge for reasonable copying expenses.

### **6.2 Directors and Officers.**

6.2.1 During the Period of Declarant Control, the Declarant shall have the right to appoint and remove the members of the Board and the officers of the Association, who do not have to be Unit Owners.

6.2.2 Upon the termination of the Period of Declarant Control, the Unit Owners shall elect the Board which must consist of at least three (3) members, all of whom must be Unit Owners. The Board elected by the Unit Owners shall then elect the officers of the Association.

6.2.3 The Declarant may, by a specific written instrument delivered to the Board, voluntarily surrender its right to appoint and remove the members of the Board and the officers of the Association before termination of the Period of Declarant Control, and in that event the Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or the Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

6.3 Rules. The Board, from time to time and subject to the provisions of this Declaration, may adopt, amend, and repeal the Rules. The Rules may, among other things, restrict and govern the use of any area by any Unit Owner, by the family of such Unit Owner, or by any invitee, licensee or lessee of such Unit Owner; provided, however, that the Rules may not unreasonably discriminate among Unit Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Rules as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Unit Owner and may be recorded.

6.4 Composition of Members. Each Unit Owner shall be a Member of the Association. The membership of the Association at all times shall consist exclusively of all the Unit Owners. A Unit Owner (including the Declarant) of a Unit shall automatically, upon becoming the Unit Owner thereof, be a Member of the Association and shall remain a Member of the Association until such time as such Unit Owner's ownership ceases for any reason, at which time, such Unit Owner's membership in the Association shall automatically cease.

6.5 Personal Liability. Neither the Declarant, nor any member of the Board or any officer of the Association or any member of any committee of the Association, nor any manager or other employee of the Association, shall be personally liable to any Member, or to any other person or entity, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Declarant, the Association, the Board, the manager, any representative or employee of the Association, or any committee, committee member or officer of the Association, but the limitations set forth in this Section do not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct.

6.6 Implied Rights. The Association may exercise any right or privilege given to the Association expressly by the Townhome Documents and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association by the Townhome Documents or reasonably necessary to effectuate any such right or privilege.

6.7 Voting Rights. Subject to Section 6.8, each Unit Owner of a Unit, including the Declarant, shall be entitled to cast one (1) vote for each Unit owned by such Unit Owner, on any Association matter which is put to a vote of the membership in accordance with this Declaration, the Articles and/or the Bylaws.

6.8 Voting Procedures. No change in the ownership of a Unit shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided satisfactory proof thereof. The vote for each such Unit must be cast as a unit, and fractional votes shall not be allowed. In the event that a Unit is owned by more than one (1) Person and such Unit Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Unit, it will thereafter be conclusively presumed for all purposes that such Unit Owner was acting with the authority and consent of all other Unit Owners of the same Unit unless objection thereto is made at the time the vote is cast. In the event more than one (1) vote is cast by a Member for a particular Unit, none of the votes shall be counted and all of the votes shall be deemed void.

6.9 Transfer of Membership. The rights and obligations of any Member other than the Declarant shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of a Unit Owner's Unit, and then only to the transferee of ownership to the Unit. A transfer of ownership to a Unit may be effected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage or deed of trust of record, or such other legal process as now in effect or as may hereafter be established under or pursuant to applicable laws. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Unit shall operate to transfer the membership appurtenant to said Unit to the new Unit Owner thereof. Each Purchaser of a Unit shall notify the Association of its purchase within ten (10) days after becoming the Unit Owner of a Unit.

6.10 Suspension of Voting Rights. If any Unit Owner fails to pay any Assessments or other amounts due to the Association under the Townhome Documents within fifteen (15) days after such payment is due or if any Unit Owner violates any other provision of the Townhome Documents and such violation is not cured within fifteen (15) days after the Association notifies the Unit Owner of the violation, the Board shall have the right to suspend such Unit Owner's right to vote until such time as all payments, including interest and attorneys' fees, are brought current, and until any other infractions or violations of the Townhome Documents are corrected.

6.11 Architectural Committee. The Board may establish an Architectural Committee consisting of not less than three (3) members appointed by the Board to regulate the external design, appearance, use and maintenance of the Project and to perform such other functions and duties as are imposed upon it by the Townhome Documents or by the Board. The Rules may set forth requirements with respect to the submission to the Architectural Committee of requests for approval, including but not limited to the payment of an administrative fee in connection with any such request.

6.12 Conveyance or Encumbrance of Common Areas. The parking garages located in the Common Areas, individually or collectively, may be leased, conveyed or subjected to a mortgage, deed of trust or security interest either (i) by the Declarant, during the Period of Declarant Control; or (ii) by the Association if approved by the Board. Other than the parking garages, the Common Areas shall not be leased, conveyed or subjected to a mortgage, deed of trust or security interest without the prior written consent or affirmative vote of Unit Owners representing at least sixty-seven percent (67%) of the votes allocated to Unit Owners other than

the Declarant. In addition, any conveyance, encumbrance, judicial sale or other transfer (whether voluntary or involuntary) of an individual interest in the Common Areas shall be void unless the Unit to which that interest is allocated also is transferred.

## ARTICLE 7 ASSESSMENTS

### 7.1 Preparation of Budget.

7.1.1 At least sixty (60) days before the beginning of each fiscal year of the Association commencing with the fiscal year in which the first Unit is conveyed to a Purchaser, the Board shall adopt a budget for the Association containing an estimate of the total amount of funds which the Board believes will be required during the ensuing fiscal year to pay all Common Expenses including, but not limited, to: (i) the amount required to pay the cost of inspection, maintenance, management, operation, repair and replacement of the Common Areas and those parts of the Units, if any, which the Association has the responsibility of inspecting, maintaining, repairing and replacing; (ii) the cost of wages, materials, insurance premiums, services, supplies and other expenses required for the administration, operation, maintenance and repair of the Project; (iii) the amount required to render to the Unit Owners all services required to be rendered by the Association under the Townhome Documents; and (iv) such amounts as may be necessary to provide general operating reserves and reserves for contingencies and replacements. The budget shall separately reflect any Common Expenses to be assessed against less than all of the Units pursuant to Subsections 7.2.4 and 7.2.5.

7.1.2 Within thirty (30) days after the adoption of a budget, the Board shall send to each Unit Owner a summary of the budget and a statement of the amount of the Common Expense Assessment assessed against the Unit of the Unit Owner in accordance with Section 7.2. The failure or delay of the Board to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of a Unit Owner's obligation to pay such Unit Owner's allocable share of the Common Expenses as provided in Section 7.2, and each Unit Owner shall continue to pay the Common Expense Assessment against such Unit Owner's Unit as established for the previous fiscal year until notice of the Common Expense Assessment for the new fiscal year has been established by the Board.

7.1.3 The Board is expressly authorized to adopt and amend budgets for the Association, and no ratification of any budget or amended budget by the Unit Owners shall be required.

### 7.2 Common Expense Assessment.

7.2.1 For each fiscal year of the Association commencing with the fiscal year in which the first Unit is conveyed to a Purchaser, the total amount of the estimated Common Expenses set forth in the budget adopted by the Board (except for the Common Expenses which are to be assessed against less than all of the Units pursuant to Subsections 7.2.4 and 7.2.5) shall be assessed against each Unit in proportion to the Unit's Ownership Interest Percentage. The

amount of the Common Expense Assessment assessed pursuant to this Subsection 7.2.1 shall be in the sole discretion of the Board. If the Board determines during any fiscal year that its funds budgeted or available for that fiscal year are, or will, become inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessments by Members, it may increase the Common Expense Assessment for that fiscal year and the revised Common Expense Assessment shall commence on the date designated by the Board.

7.2.2 The Common Expense Assessments shall commence as to all Units on the first day of the month following the conveyance of the first Unit to a Purchaser. The first Common Expense Assessment shall be adjusted according to the number of months remaining in the fiscal year of the Association. The Board may require that the Common Expense Assessments or Special Assessments be paid in installments.

7.2.3 Except as otherwise expressly provided for in this Declaration, all Common Expenses including, but not limited to, Common Expenses associated with the maintenance, repair and replacement of a Limited Common Area, shall be assessed against all of the Units in accordance with Subsection 7.2.1.

7.2.4 If any Common Expense is caused by the misconduct of any Unit Owner, the Association shall assess that Common Expense exclusively against such Unit Owner's Unit.

7.2.5 Assessments to pay a judgment against the Association shall be assessed in proportion to each Unit's Common Expense Liabilities.

7.2.6 The Common Expense Assessment for any Unit on which construction has not been substantially completed shall be an amount equal to twenty-five percent (25%) of the Common Expense Assessment for Units which have been substantially completed.

7.2.7 All Assessments, monetary penalties and other fees and charges levied against a Unit shall be the personal obligation of the Unit Owner of the Unit at the time the Assessments, monetary penalties or other fees and charges became due. The personal obligation of a Unit Owner for Assessments, monetary penalties and other fees and charges levied against such Unit Owner's Unit shall not pass to the Unit Owner's successors in title unless expressly assumed by them.

7.3 Special Assessments. In addition to Common Expense Assessments, the Association may levy, in any fiscal year of the Association, a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement of the Common Areas, including fixtures and personal property related thereto, or for any other lawful Association purpose, provided that any Special Assessment (other than a Special Assessment levied pursuant to Section 9.1 as a result of the damage or destruction of all or part of the Common Areas) shall have first been approved by Unit Owners representing fifty-one percent (51%) of the votes in the Association who are voting in person or by proxy at a meeting duly called for such purpose. Unless otherwise specified by the Board, Special Assessments shall be due thirty (30) days after they are levied by the Association and notice of the Special Assessment is given to the Unit Owners.

7.4 Effect of Nonpayment of Assessments; Remedies of the Association.

7.4.1 Any Assessment, or any installment of an Assessment, which is not paid within five (5) days after the Assessment first became due shall be deemed delinquent and shall bear interest from the date of delinquency at the rate of interest established from time to time by the Board.

7.4.2 All Assessments, monetary penalties and other fees and charges imposed or levied against any Unit or Unit Owner shall be secured by the Assessment Lien as provided for in the Townhome Documents. The recording of this Declaration constitutes record notice and perfection of the Assessment Lien, subject to the recording of a Notice of Assessment pursuant to the Townhome Documents.

7.4.3 The Association shall have the right, at its option, to enforce collection of any delinquent Assessments, monetary penalties and all other fees and charges owed to the Association in any manner allowed by law including, but not limited to: (i) bringing an action at law against the Unit Owner personally obligated to pay the delinquent amounts and such action may be brought without waiving the Assessment Lien securing any such delinquent amounts; or (ii) bringing an action to foreclose its Assessment Lien against the Unit. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Units purchased at such sale.

7.5 Subordination of Assessment Lien to Mortgages. The Assessment Lien shall be subordinate to the lien of any First Mortgage. Any First Mortgagee or any other party acquiring title or coming into possession of a Unit through foreclosure of a First Mortgage, purchase at a foreclosure sale or trustee sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure, shall acquire title free and clear of any claims for unpaid Assessments, monetary penalties and other fees and charges against the Unit which became payable prior to such sale or transfer. Any delinquent Assessments, monetary penalties and other fees and charges which are extinguished pursuant to this Section may be reallocated and assessed to all Units as at Common Expense. Any Assessments, monetary penalties and other fees and charges against the Unit which accrue prior to such sale or transfer shall remain the obligation of the defaulting Unit Owner.

7.6 Exemption of Unit Owner. No Unit Owner may exempt himself or herself from liability for payment of Assessments, monetary penalties and other fees and charges levied pursuant to the Townhome Documents by waiver and non-use of any of the Common Areas and facilities or by the abandonment of such Unit Owner's Unit.

7.7 Certificate of Payment. The Association on written request shall furnish to a lienholder, Unit Owner or person designated by a Unit Owner a statement setting forth the amount of unpaid Assessments against the applicable Unit. The statement shall be finished within fifteen (15) business days after receipt of the request (or such shorter time period as may be required by applicable law) and is binding on the Association, the Board, and every Unit Owner. The

Association may charge a reasonable fee in an amount established by the Board for each such statement.

7.8 No Offsets. All Assessments, monetary penalties and other fees and charges shall be payable in accordance with the provisions of this Declaration, and no offsets against such Assessments, monetary penalties and other fees and charges shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in the Townhome Documents.

7.9 Working Capital Fund. To ensure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, the Association may require each Purchaser of a Unit to pay to the Association, immediately upon becoming the Unit Owner of the Unit, a sum equal to two (2) monthly installments of the Common Expense Assessment for the Unit. Such amount shall be non-refundable and shall be an advance payment of any Assessments levied by the Association pursuant to this Declaration.

7.10 Reserves. The Board shall not expend funds designated as reserve funds for any purposes other than those purposes for which they were collected.

7.11 Surplus Funds. Surplus funds of the Association remaining after payment of or provisions for Common Expenses and any prepayment of reserves may in the discretion of the Board either be returned to the Unit Owners pro rata in accordance with each Unit Owner's Common Expense Liability or be credited on a pro rata basis to the Unit Owners to reduce each Unit Owner's future Common Expense Assessments.

7.12 Monetary Penalties. The Board shall have the right to levy reasonable monetary penalties against a Unit Owner for violations of the Townhome Documents.

7.13 Transfer Fee. Each Purchaser of a Unit shall pay to the Association immediately upon becoming the Unit Owner of the Unit a transfer fee in the amount set from time to time by the Board to compensate the Association for the administrative cost resulting from the transfer of a Unit.

## **ARTICLE 8 INSURANCE**

### **8.1 Scope of Coverage.**

8.1.1 Commencing not later than the date of the first conveyance of a Unit to a Purchaser, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

(i) Property insurance on the Common Areas and the Unit Exterior of the Units (as defined in Section 5.1), issued under a form which provides all risk extended coverage, in an amount equal to the maximum insurable replacement value of the Common Areas

and Unit Exterior of the Units, as determined by the Board; provided, however that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from a property insurance policy. The Association will not be obligated to obtain or maintain insurance coverage with respect to any portion of any Unit other than the Unit Exterior or on the contents of any Unit (i.e., appliances, window coverings, and wall coverings will not be covered). All fixtures (i.e., carpet, sinks, tubs, shower enclosures, built-in mirrors, cabinets, lights and built-in kitchen equipment) shall be insured by the Unit Owner at a replacement cost equal to the base fixtures installed by the Declarant; each Unit Owner shall be responsible for insuring additional replacement cost for upgrades and personal property, if desired. For purposes of this Article 8, the personal property of occupants of a Unit other than the Unit's Unit Owner shall be deemed personal property of the Unit Owner.

(ii) Commercial general liability insurance, for a limit to be determined by the Board, but not less than a combined single limit of \$2,000,000.00. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Areas. Such policy shall include (i) a cross liability clause to cover liabilities of the Unit Owners as a group to a Unit Owner, (ii) medical payments insurance, and (iii) contingent liability coverage for losses arising out of the use of hired and non-owned automobiles.

(iii) Coverage for any legal liability that results from lawsuits related to employment contracts in which the Association is a party if the Association has employees and if deemed appropriate by the Board.

(iv) Workmen's compensation insurance to the extent necessary to meet the requirements of applicable laws.

(v) Directors' and officers' liability insurance covering all the directors and officers of the Association in such limits as the Board may determine from time to time.

(vi) Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association, the members of the Board, the members of any committee of the Board or the Unit Owners.

(vii) The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions:

(a) There shall be no subrogation with respect to the Association, its agents, servants, and employees against Unit Owners and other occupants of a Unit.

(b) No act or omission by any Unit Owner, unless acting within the scope of the Unit Owner's authority on behalf of the Association, shall void the policy or be a condition to recovery on the policy.

(c) The coverage afforded by such policy shall be primary and shall not be brought into contribution or proration with any insurance which may be purchased by Unit Owners or their mortgagees or beneficiaries under deeds of trust. If, at the time of a loss insured under an insurance policy purchased by the Association, the loss is also insured under an insurance policy purchased by a Unit Owner, the Association's policy shall provide primary coverage.

(d) A "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Unit Owner because of the negligent acts of the Association or other Unit Owners.

(e) The Association shall be the insured for use and benefit of the individual Unit Owners (designated by name if required by the insurer).

(f) For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the Association and each First Mortgagee named in the policy at least thirty (30) days in advance of the effective date of any substantial change in coverage or cancellation of the policy.

(g) Any insurance trust agreement will be recognized by the insurer.

## 8.2 Fidelity Bonds.

8.2.1 The Association may maintain blanket fidelity bonds for all officers, directors, trustees and employees of the Association and all other persons handling or responsible for funds of or administered by the Association including, but without limitation, officers, directors and employees of any management agent of the Association, whether or not they receive compensation for their services. The total amount of the fidelity bonds maintained by the Association shall be based upon the best business judgment of the Board.

8.2.2 The Association may require any management agent of the Association to maintain its own fidelity bond covering funds of the Association maintained in bank accounts of the management agent as approved by the Association and shall name the Association as an obligee.

8.3 Payment of Premiums. Premiums for all insurance obtained by the Association pursuant to this Article shall be Common Expenses and shall be paid for by the Association.

8.4 Annual Insurance Review. The Board shall annually determine whether the amounts and types of insurance it has obtained provide adequate coverage for the Project in light of increased construction costs, inflation, practice in the area of which the Project is located or any other factor which tends to indicate that either additional insurance policies or increased coverage under existing policies are necessary or desirable to protect the interest of the Unit Owners and of the Association. If the Board determines that increased coverage or additional insurance is appropriate, it shall obtain the same.

8.5 Insurance Obtained by Unit Owners. The issuance of insurance policies to the Association pursuant to this Article shall not prevent a Unit Owner from obtaining insurance for the Unit Owner's own benefit and at the Unit Owner's own expense covering the Unit, the Unit Owner's personal property and providing personal liability coverage. If any insurer of liability or the Common Areas of the Association shall require that each Unit Owner obtain and carry its own property and liability insurance coverage for personal property, then each Unit Owner shall comply with said requirements. The expenses of any alternative accommodations for a Unit Owner and any lessee of such Unit Owner's Unit following any damage to or destruction of the Unit, and during any period of repair, reconstruction, restoration or replacement of such Unit will be the responsibility of that Unit Owner or lessee (or both), and not of the Association or any other Unit Owner, nor will those expenses be covered by insurance obtained by the Association. Any Unit Owner or lessee may, at such Unit Owner's or lessee's sole expense, obtain separate insurance, if available, covering such alternative accommodation expenses.

8.6 Payment of Insurance Proceeds. Any loss covered by property insurance obtained by the Association in accordance with this Article shall be adjusted with the Association and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. The Association shall hold any insurance proceeds in trust for Unit Owners and lienholders, as their interests may appear.

8.7 Certificate of Insurance. An insurer that has issued an insurance policy pursuant to this Article shall issue certificates or memoranda of insurance to the Association and, on written request, to any Unit Owner or First Mortgagee. The insurer issuing the policy shall not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Unit Owner, and each First Mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

## ARTICLE 9 DESTRUCTION OF IMPROVEMENTS

9.1 Automatic Reconstruction. Any portion of the Project for which insurance is maintained by the Association which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (ii) sixty-seven percent (67%) of the Unit Owners (including every Unit Owner of a Unit or allocated Limited Common Area which will not be rebuilt) vote not to rebuild. The cost of repair or replacement of the damaged or destroyed portion of the Project in excess of insurance proceeds and reserves shall be a Common Expense and shall be assessed to the Members as a Special Assessment pursuant to Section 7.3.

9.2 Determination Not to Reconstruct. If sixty-seven percent (67%) of the Unit Owners (including every Unit Owner of a Unit or an allocated Limited Common Area which will not be rebuilt) vote not to rebuild, the insurance proceeds shall be distributed in proportion to their Ownership Interest Percentages in the Common Areas to the Unit Owners of those Units or the Unit Owners to which those Limited Common Areas were allocated, as applicable, or to

lienholders as their interests may appear. The remainder of the proceeds shall be distributed to all Unit Owners or lienholders as their interests may appear in proportion to their Ownership Interest Percentages in the Common Areas. If the Unit Owners vote not to rebuild any Unit, that Unit's allocated interest in the Common Areas and in the Common Expenses shall be automatically reallocated to the other Units pro rata on the basis of allocated interests, and the Association shall prepare, execute and record an amendment to this Declaration reflecting the reallocation.

9.3 Negotiations With Insurer. The Association shall have full authority to negotiate in good faith with representatives of the insurer of any totally or partially destroyed building or any other portion of the Common Areas, and to make settlements with the insurer for less than full insurance coverage on the damage to such building or any other portion of the Common Areas. Any settlement made by the Association in good faith shall be binding upon all Unit Owners and First Mortgagees. Insurance proceeds for any damage or destruction of any part of the Project covered by property insurance maintained by the Association shall be paid to the Association and not to any First Mortgagee or other lienholder. The Association shall hold any proceeds in trust for the Unit Owners and lienholders as their interests may appear. Except as otherwise provided in Sections 9.1 and 9.2, all insurance proceeds shall be disbursed first for the repair or restoration of the damaged Common Areas, and Unit Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged or destroyed Common Areas have been completely repaired or restored.

9.4 Repair of Units. Installation of improvements to, and repair of any damage to, the interior of a Unit not covered by property insurance maintained by the Association shall be made by and at the individual expense of the Unit Owner of that Unit and shall be completed as promptly as practicable and in a lawful and workmanlike manner.

9.5 Priority. Nothing contained in this Article shall entitle a Unit Owner to priority over any lender under a lien encumbering such Unit Owner's Unit as to any portion of insurance proceeds allocated to such Unit.

## **ARTICLE 10 EMINENT DOMAIN**

10.1 Total Taking of a Unit. If a Unit is acquired by eminent domain, or if part of a Unit is acquired by eminent domain leaving the Unit Owner with a remnant which may not be practically or lawfully used for any purpose permitted by this Declaration, the award must compensate the Unit Owner for the Unit and interest in the Common Areas, regardless of whether any Common Areas are taken. Upon such a taking, unless the decree otherwise provides, that Unit's allocated interests in the Common Areas and in the Common Expenses shall automatically be reallocated to the remaining Units in proportion to their respective allocated Ownership Interest Percentages immediately before the taking. Upon such a taking, the Association shall prepare, execute and record an amendment to the Declaration in compliance with the Townhome Documents. Any remnant of a Unit remaining after part of a Unit is taken becomes a Common Area.

10.2 Partial Taking of a Unit. Except as provided in Section 10.1, if part of a Unit is acquired by eminent domain, the award must compensate the Unit Owner for the reduction in the value of the Unit Owner's Unit and interest in the Common Areas, regardless of whether any Common Areas are taken. On acquisition, unless the decree otherwise provides, that Unit's allocated interests in the Common Areas and in the Common Expenses shall be reduced in proportion to the reduction in size of the Unit and the portion of the allocated interests divested from the partially acquired Unit shall automatically be reallocated to that Unit and the remaining Units in proportion to their respective Ownership Interest Percentages immediately before the taking, with the partially acquired Unit participating in the reallocation on the basis of its reduced interest.

10.3 Taking of Common Areas. If part of the Common Areas is acquired by eminent domain, the portion of the award attributable to the Common Areas taken shall be paid to the Association for the benefit of the Unit Owners, and any portion of the award attributable to the acquisition of a Limited Common Area shall be equally divided among the Unit Owners of the Units to which that Limited Common Area was allocated at the time of the acquisition.

10.4 Taking of Entire Project. In the event the Project in its entirety is acquired by eminent domain, the Project shall be terminated and each Unit Owner shall be entitled to an award for such Unit Owner's Unit and interest in the Common Areas.

10.5 Priority and Power of Attorney. Nothing contained in this Article shall entitle a Unit Owner to priority over any First Mortgagee under a lien encumbering the Unit Owner's Unit as to any portion of any condemnation award allocated to such Unit. Each Unit Owner hereby appoints the Association as attorney-in-fact for the purpose of negotiations and settlement with the condemning authority for the acquisition of the Common Areas, or any part thereof. This power of attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors or assigns or a Unit Owner.

## **ARTICLE 11** **RIGHTS OF FIRST MORTGAGEES**

11.1 Notification to First Mortgagees. Upon receipt by the Association of a written request from a First Mortgagee or insurer or governmental guarantor of a First 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 Eligible Mortgage Holder or Eligible Insurer or Guarantor with timely written notice of the following:

11.1.1 Any condemnation loss or any casualty loss which affects a material portion of the Project or any Unit on which there is a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor;

11.1.2 Any delinquency in the payment of Assessments or charges owed by a Unit Owner subject to a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor or any other default in the performance by the Unit Owner of any

obligation under the Townhome Documents, which delinquency or default remains uncured for the period of sixty (60) days;

11.1.3 Any lapse, cancellation or material modification of any insurance policy maintained by the Association;

11.1.4 Any proposed action which requires the consent of a specified percentage of Eligible Mortgage Holders as set forth in Section 11.2.

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

11.2.1 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, Articles or Bylaws which establish, provide for, govern or regulate any of the following shall be effective unless approved by Eligible Mortgage Holders holding First Mortgages on at least fifty-one percent (51%) of all Units which are subject to First Mortgages held by Eligible Mortgage Holders:

- (i) Voting rights;
- (ii) Assessments, assessment liens or subordination of assessment liens;
- (iii) Reserves for maintenance, repair and replacement of Common Areas;
- (iv) Insurance;
- (v) Responsibility for maintenance and repairs;
- (vi) Expansion or contraction of the Project, or the addition, annexation or withdrawal of property to or from the Project;
- (vii) Boundaries of any Unit;
- (viii) Reallocation of interests in the Common Areas or Limited Common Areas or rights to their use;
- (ix) Convertibility of Units into Common Areas or of Common Areas into Units;
- (x) Imposition of any restrictions on a Unit Owner's right to sell or lease the Unit Owner's Unit;
- (xi) Restoration or repair of the Project (after a hazard damage or partial condemnation) in a manner other than that specified in the Townhome Documents;

(xii) Any action to partition or sell the Project after substantial destruction or condemnation occurs; or

(xiii) Any provisions which expressly benefit First Mortgagees, Eligible Mortgage Holders or Eligible Insurers or Guarantors.

11.2.2 Any action to partition or sell the Project for reasons other than substantial destruction or condemnation of the Project must be approved by Eligible Mortgage Holders holding First Mortgages on Units the Unit Owners of which have at least sixty-seven percent (67%) of the votes in the Association allocated to Unit Owners of all Units subject to First Mortgages held by Eligible Mortgage Holders.

11.2.3 Any First 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 thirty (30) 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.

11.2.4 The approvals required by this Section shall not apply to amendments that may be executed by the Declarant in the exercise of its Development Rights.

11.3 Right of First Refusal. The right of a Unit Owner to sell, transfer or otherwise convey such Unit Owner's Unit shall not be subject to any right of first refusal or similar restriction, except as specifically provided otherwise in this Section 11.3. If initial construction of a residence on a Unit is completed by anyone other than Chasewood Ammon Property Fund LLC ("Original Declarant"), the first sale of such Unit shall be subject to a right of first refusal in favor of Original Declarant as provided herein. If the owner of such Unit makes an offer to sell such Unit that a purchaser is willing to accept or receives an offer to purchase such Unit that the owner is willing to accept (in either case, an "Offer"), the owner shall forward to Original Declarant a copy of any Offer, including the price and all other terms and conditions of the proposed purchase and sale of the Unit. Original Declarant will have thirty (30) business days after receipt of the Offer to notify the owner in writing of Original Declarant's election to exercise the Right of First Refusal and purchase the Unit from the owner on the same terms and conditions as the Offer. If Original Declarant elects not to exercise or fails to timely exercise the right of first refusal, the owner may consummate the proposed purchase and sale transaction on the terms and conditions of such Offer within one hundred eighty (180) days thereafter, at which case the right of first refusal will automatically terminate. If the proposed purchase and sale transaction contemplated by such Offer is not timely consummated, the first sale of the Unit thereafter shall be subject to the right of first refusal described herein. Any conveyance of the Unit in violation of the right of first refusal described herein is subject to a right in Original Declarant to repurchase the Unit from the transferee for the price and on the terms and conditions of such conveyance.

11.4 Right of Inspection of Records. Any Unit Owner, First Mortgagee or Eligible Insurer or Guarantor will, upon written request be entitled to: (i) inspect the current copies of the Townhome Documents and the books, records and financial statements of the Association during

normal business hours; (ii) receive within ninety (90) days following the end of any fiscal year of the Association, an audited financial statement of the Association for the immediately preceding fiscal year of the Association, free of charge to the requesting party; and (iii) receive written notice of all meetings of the Members of the Association and be permitted to designate a representative to attend all such meetings.

11.5 Prior Written Approval of First Mortgagees. Except as provided by statute in case of condemnation or substantial loss to the Units or the Common Areas, unless at least sixty-seven percent (67%) of all First Mortgagees (based upon one vote for each First 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:

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

11.5.2 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;

11.5.3 Partition or subdivide any Unit;

11.5.4 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;

11.5.5 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.

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

11.7 Condemnation or Insurance Proceeds. No Unit Owner, or any other party, shall have priority over any rights of any First 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.

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

11.9 Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Article and any other provision of the Townhome Documents, the provisions of this Article 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 the Townhome Documents with respect to the number or percentage of Unit Owners, First Mortgagees, Eligible Mortgage Holders or Eligible Insurers or Guarantors 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, First Mortgagees, Eligible Mortgage Holders or Eligible Insurers or Guarantors shall prevail; provided, however, that the Declarant, without the consent of any Unit Owner being required, shall have the right to amend this Declaration, the Articles or the Bylaws during the Period of Declarant Control in order to (i) comply with the Townhome Documents 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 the 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 including, without limitation, FNMA, FHLMC, FHA and VA, or (iv) the rules or requirements of any federal, state or local governmental entity or agency whose approval of the Project, the Plat or the Townhome Documents is required by law or requested by Declarant.

## **ARTICLE 12** **RESERVATION OF** **SPECIAL DECLARANT RIGHTS**

The Declarant reserves all of the following rights:

12.1 Development Rights. The Declarant hereby reserves the Development Rights for the Period of Declarant Control.

12.2 Special Declarant Rights. The Declarant hereby reserves the Special Declarant Rights.

12.3 Use of Easements. The Declarant hereby reserves the right to use easements reserved in this Declaration for the purposes specified in this Declaration.

12.4 Appointment and Removal of Directors and Officers. The Declarant reserves the right to appoint and remove any member of the Board or any officer of the Association as set forth in Section 6.2, for the time period set forth therein.

## ARTICLE 13 GENERAL PROVISIONS

13.1 Enforcement. The Association, or any Unit Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Townhome Documents. Failure by the Association or by any Unit Owner to enforce any covenant or restriction contained in the Townhome Documents shall in no event be deemed a waiver of the right to do so thereafter.

13.2 Severability. Invalidation of any one of the terms, covenants, conditions or restrictions shall in no way affect any other provisions herein, which shall remain in full force and effect. However, if any term, covenant, condition or restriction is deemed unenforceable to its full extent, then such term, covenant, condition or restriction shall be enforced to the maximum extent permitted by law and may be modified by the trier of law to enable it to be enforced to the fullest extent permitted at law.

13.3 Duration. The covenants and restrictions of this Declaration, as amended from time to time, shall run with and bind the Project in perpetuity unless the Project is partitioned or sold as provided in Section 13.4.

13.4 Partition of Project. The Project may be partitioned or sold only in the manner provided for in the Townhome Documents.

### 13.5 Amendment.

13.5.1 Except as provided in this Declaration and except in cases of amendments that may be executed by a Declarant in the exercise of its Development Rights, the Declaration and/or the Plat may be amended only by a vote of the Unit Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

13.5.2 Except to the extent of the Development Rights given herein to the Declarant and except to the extent expressly permitted or required by the Townhome Documents, an amendment to the Declaration shall not create or increase the number of Units or change the boundaries of any Unit, the allocated Ownership Interest Percentage of a Unit, or the use as to which any Unit is restricted, in the absence of unanimous consent of the Unit Owners.

13.5.3 An amendment to the Declaration shall not terminate or decrease any unexpired Development Right, Special Declarant Right or Period of Declarant Control unless the Declarant approves the amendment in writing. The consent of Declarant shall be required to any amendment during the Period of Declarant Control.

13.5.4 During the Period of Declarant Control, the Declarant shall have the right to amend the Declaration, including the Plat, to (i) comply with the Townhome Documents 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 the Declaration if the amendment does not adversely affect

the rights of any Unit Owner, (iii) comply with the rules 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, including without limitation, VA, FHA, FNMA or FHLMC, or (iv) the rules or requirements of any federal, state or local governmental entity or agency whose approval of the Project, the Plat or the Townhome Documents is required by law or requested by Declarant.

13.5.5 Any amendment adopted by the Unit Owners pursuant to Subsection 13.5.1 shall be signed by the President or Vice President of the Association and shall be recorded with the County Recorder of each County in which any portion of the Project is located. Any such amendment shall certify that the amendment has been approved as required by this Section. Any amendment made by the Declarant pursuant to Subsection 13.5.4 or the Townhome Documents shall be executed by the Declarant and shall be recorded with the County Recorder of each County in which any portion of the Project is located.

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

13.7 Notices. All notices, demands, statements or other communications required to be given to or served on a Unit Owner under this Declaration shall be in writing and shall be deemed to have been duly given and served if delivered personally or sent by United States mail, postage prepaid, return receipt requested, addressed to the Unit Owner, at the address which the Unit Owner shall designate in writing and file with the Association or, if no such address is designated, at the address of the Unit of such Unit Owner. A Unit Owner may change such Unit Owner's address on file with the Association for receipt of notices by delivering a written notice of change of address to the Association pursuant to this Section. A notice given by mail, whether regular, certified, or registered, shall be deemed to have been received by the person to whom the notice was addressed on the earlier of the date the notice is actually received or three (3) days after the notice is mailed. If a Unit is owned by more than one person, notice to one of the Unit Owners shall constitute notice to all Unit Owners of the same Unit. Each Unit Owner shall file such Unit Owner's correct mailing address with the Association, and shall promptly notify the Association in writing of any subsequent change of address.

13.8 Binding Effect. By acceptance of a deed or by acquiring any ownership interest in any portion of the Project, each Person, for himself/herself, his/her heirs, personal representatives, successors, transferees and assigns, binds himself/herself, his/her heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by the Townhome Documents and any amendments thereof. In addition, each such Person by so doing thereby acknowledges that the Townhome Documents set forth a general scheme for the improvement and development of the real property covered thereby and hereby evidences such Person's intent that all the restrictions, conditions, covenants, rules and regulations contained in the Townhome Documents shall run with the land and be binding on all subsequent and future Unit Owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such Person fully understands and acknowledges that the Townhome Documents shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Unit Owners. Declarant, its successors, assigns and grantees, covenants

and agrees that the Units and the membership in the Association and the other rights created by the Townhome Documents shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the Unit.

13.9 Gender. The singular, wherever used in this Declaration, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions of this Declaration apply either to corporations or individuals, or men or women, shall in all cases be assumed as though in each case fully expressed.

13.10 Captions and Titles; Section References; Exhibits. All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the meaning or intent thereof. References in this Declaration to numbered Articles, Sections or Subsections, or to lettered Exhibits, will be deemed to be references to those paragraphs or Exhibits so numbered or lettered in this Declaration, unless the context otherwise requires. Any Exhibits referred to in this Declaration are hereby incorporated herein by reference and fully made a part hereof.

13.11 Survival of Liability. The termination of membership in the Association shall not relieve or release any such former Unit Owner or Member from any liability or obligation incurred under, or in any way connected with, the Association during the period of such ownership or membership, or impair any rights or remedies which the Association may have against such former Unit Owner or Member arising out of, or in any way connected with, such ownership or membership and the covenants and obligations incident thereto.

13.12 Construction. In the event of any discrepancies, inconsistencies or conflicts between the provisions of this Declaration and the Articles, Bylaws or the Association Rules, the provisions of this Declaration shall prevail.

13.13 Joint and Several Liability. In the case of joint ownership of a Unit, the liabilities and obligations of each of the joint Unit Owners set forth in, or imposed by, the Townhome Documents shall be joint and several.

13.14 Guests and Tenants. Each Unit Owner shall be responsible for compliance by such Unit Owner's agents, tenants, guests, invitees, licensees and their respective servants, agents, and employees with the provisions of the Townhome Documents. A Unit Owner's failure to insure compliance by such Persons shall be grounds for the same action available to the Association or any other Unit Owner by reason of such Unit Owner's own noncompliance.

13.15 Attorneys' Fees. In the event the Declarant, the Association or any Unit Owner employs an attorney or attorneys to enforce a lien or to collect any amounts due from a Unit Owner or to enforce compliance with or recover damages for any violation or noncompliance with the Townhome Documents, the prevailing party in any such action shall be entitled to recover from the other party their reasonable attorneys' fees incurred in the action.

13.16 Number of Days. In computing the number of days for purposes of any provision of the Townhome Documents, all days shall be counted including Saturdays, Sundays and holidays; but if the final day of any time period falls on a Saturday, Sunday or holiday, then the next day shall be deemed to be the next day which is not a Saturday, Sunday or holiday.

13.17 Declarant's Right to Use Similar Name. The Association hereby irrevocably consents to the use by any other nonprofit corporation which may be formed or incorporated by Declarant of a corporate name which is the same or deceptively similar to the name of the Association provided one or more words are added to the name of such other corporation to make the name of the Association distinguishable from the name of such other corporation. Within five (5) days after being requested to do so by the Declarant, the Association shall sign such letters, documents or other writings as may be required by the Idaho Secretary of State in order for any other nonprofit corporation formed or incorporated by the Declarant to use a corporate name which is the same or deceptively similar to the name of the Association.

13.18 Effect of Declaration. The Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances and regulations applicable thereto.

13.19 No Representations or Warranties. No representations or warranties of any kind, express or implied, have been given or made by the Declarant or its agents, consultants or employees in connection with the Project, or any portion thereof, its physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, costs of maintenance, taxes or regulation thereof, except as specifically and expressly set forth in this Declaration.

13.20 Right to Configure Project. To the extent permitted by law, the Declarant shall have the right, at any time, to change the design, size and configuration, or make any other changes as it deems appropriate, of the Project. There is no guarantee that the Project will be developed as originally planned.

13.21 Indemnification. The Association will indemnify each and every officer and director of the Association and each and every member of any committee appointed by the Board (including, for purposes of this Section, former officers and directors of the Association and former members of committees appointed by the Board) (collectively, "Association Officials" and individually an "Association Official") against any and all expenses, including attorneys' fees, reasonably incurred by or imposed upon an Association Official in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the Board serving at the time of such settlement) to which he or she may be a party by reason of being or having been an Association Official, except for his or her own individual willful misfeasance, malfeasance, misconduct or bad faith. No Association Official will have any personal liability with respect to any contract or other commitment made by them or action taken by them, in good faith, on behalf of the Association (except indirectly to the extent that such Association Official may also be a Member of the Association and therefore subject to Assessments hereunder to fund a liability of the Association), and the Association will indemnify and forever hold each such

Association Official free and harmless from and against any and all liability to others on account of any such contract, commitment or action. Any right to indemnification provided for herein is not exclusive of any other rights to which any Association Official may be entitled. If the Board deems it appropriate, in its sole discretion, the Association may advance funds to or for the benefit of any Association Official who may be entitled to indemnification hereunder to enable such Association Official to meet on-going costs and expenses of defending himself or herself in any action or proceeding brought against such Association Official by reason of his or her being, or having been, an Association Official. In the event it is ultimately determined that an Association Official to whom, or for whose benefit, funds were advanced pursuant to the preceding sentence does not qualify for indemnification pursuant to this Section or otherwise under the Articles, Bylaws, Rules or applicable law, such Association Official must promptly upon demand repay to the Association the total of such funds advanced by the Association to him or her, or for his or her benefit, with interest (should the Board so elect) at a rate not to exceed ten percent (10%) per annum from the date(s) advanced until paid.

13.22 No Partition. Except as provided in the Townhome Documents, to Person acquiring any interest in the Property or any part thereof will have a right to, nor may any person seek, any judicial partition of the Common Areas, nor will any Unit Owner sell, convey, transfer, assign, hypothecate or otherwise alienate all or any of such Unit Owner's interest in the Common Areas or any funds or other assets of the Association except in connection with the sale, conveyance or hypothecation of such Unit Owner's Unit (and only appurtenant thereto), or except as otherwise expressly permitted herein. This Section must not be construed to prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring or disposing of title to real property which may or may not be subject to this Declaration.

13.23 References to this Declaration in Deeds. Deeds to and instruments affecting any Unit or any other part of the Project may contain the covenants, conditions and restrictions herein set forth by reference to this Declaration, but whether or not any such reference is made in any deed or instrument, each and all of the provisions of this Declaration are and will be binding upon the grantee-Unit Owner or other Person claiming through any instrument and his, her or its heirs, executors, administrators, successors and assigns.

13.24 Laws, Ordinances and Regulations. The covenants, conditions and restrictions set forth in this Declaration and the provisions requiring Unit Owners and other Persons to obtain the approval of the Board or any committee appointed by the Board with respect to certain actions are independent of the obligation of the Owners and other Persons to comply with all applicable laws, ordinances and regulations, and compliance with this Declaration will not relieve a Unit Owner or any other Person from the obligation also to comply with all applicable laws, ordinances and regulations. 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 in violation of this Declaration and subject to any or all of the enforcement proceedings set forth herein.

IN WITNESS WHEREOF, the Declarant has executed this Declaration to be effective as of the date first written above.

DECLARANT:

Pebble Creek Property Fund LLC,  
an Idaho limited liability company

By: Concordia Development Group LLC,  
an Idaho limited liability company,  
Manager

By:     Darwin Kade Clinger  
Darwin Kade Clinger, Manager

STATE OF Arizona)  
County of Maricopa)  
ss.

This record was acknowledged before me on the 22<sup>nd</sup> day of September, 2025, by Darwin Kade Clinger, as Manager of Concordia Development Group LLC, an Idaho limited liability company, as Manager or Pebble Creek Property Fund LLC, an Idaho limited liability company.



Shirley Emge  
Signature of Notary Public  
My Commission Expires: 9-30-2027  
9-30-2027

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**EXHIBIT A**

**Legal Description of the Land**

All of Pebble Creek – Phase No. 1, according to the plat thereof recorded September 19, 2023, as Instrument No. 458441, in the Office of the County Recorder of Madison County, Idaho.