

**CONDOMINIUM DECLARATION  
FOR  
HIDDEN SPRINGS MARKETPLACE  
CONDOMINIUMS NO. 1**

EFFECTIVE THE \_\_\_\_ DAY OF \_\_\_\_\_, 2006

## NOTICE

THE FOLLOWING IS A VERY IMPORTANT DOCUMENT THAT EACH AND EVERY POTENTIAL BUYER AND OWNER OF A CONDOMINIUM WITHIN THE HIDDEN SPRINGS MARKETPLACE CONDOMINIUMS NO. 1 SHOULD READ AND UNDERSTAND. THIS DOCUMENT DETAILS THE OBLIGATIONS, RESPONSIBILITIES AND PROHIBITIONS IMPOSED UPON ALL OWNERS AND UNITS LOCATED WITHIN THE HIDDEN SPRINGS MARKETPLACE CONDOMINIUMS NO. 1.

THE HIDDEN SPRINGS MARKETPLACE CONDOMINIUMS NO. 1 PROVIDE A UNIQUE LIVING AND COMMERCIAL ENVIRONMENT. EACH POTENTIAL OWNER IS ADVISED TO MAKE FULL AND COMPLETE INQUIRY ABOUT THE HIDDEN SPRINGS MARKETPLACE CONDOMINIUMS NO. 1 BEFORE ACQUIRING A UNIT. EACH OWNER ACKNOWLEDGES AND UNDERSTANDS THAT THE UNITS WILL BE SUBJECT TO ASSESSMENTS LEVIED BY THE HIDDEN SPRINGS MARKETPLACE CONDOMINIUMS OWNERS ASSOCIATION, INC.

THE DECLARANT, AS DEFINED IN THIS DECLARATION, EXPRESSLY DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, STATEMENTS OR INFORMATION NOT SET FORTH HEREIN OR IN A WRITTEN DOCUMENT EXECUTED BY THE DECLARANT.

POTENTIAL OWNERS ARE ADVISED TO REVIEW THIS CONDOMINIUM DECLARATION PRIOR TO ACQUIRING A UNIT.

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**CONDOMINIUM DECLARATION**  
**FOR**  
**HIDDEN SPRINGS MARKETPLACE**  
**CONDOMINIUMS NO. 1**

THIS CONDOMINIUM DECLARATION FOR HIDDEN SPRINGS MARKETPLACE CONDOMINIUMS NO. 1 ("Declaration") is made this \_\_\_ day of \_\_\_\_\_, 2006, by Dry Creek Developers, Inc., an Idaho corporation (referred to hereinafter as "Declarant"). All capitalized terms not otherwise defined herein are defined in Section 3.

**SECTION 1. RECITALS**

**1.1. Property Covered.**

Declarant is the owner of certain real property located in Ada County, Idaho, described and depicted on the Hidden Springs Marketplace Condominiums No. 1 final plat (the "Property"), which final plat is recorded in the real property records of Ada County, Idaho, on the \_\_\_ day of \_\_\_\_\_, 2006, as Instrument No. \_\_\_\_\_, in Book \_\_\_\_\_ of Plats at Pages \_\_\_\_\_ through \_\_\_\_\_, a copy of which is attached hereto as Exhibit A and incorporated herein by this reference (the "Plat").

**1.2. Mixed Use Property.**

The Property, together with all appurtenances thereto, is being developed with a mixed use condominium building (the "Building") which shall include, but not be limited to, Residential and Commercial Units, in accordance with the Plat, Declaration, Master Declaration, and the existing development approvals obtained from the City of Boise and Ada County. The Property, together with the Building and related site improvements shall be referred to herein as the "Project."

**1.3. Purpose.**

The purpose of this Declaration is to provide for condominium ownership of the Project pursuant to the Condominium Act, designate Common Area and Limited Common Area, authorize the creation of the Association and/or the designation of the Association as the management body to administer the Project, and set forth the restrictions, covenants, limitations, easements, conditions and equitable servitudes that shall apply to the Project and this condominium ownership regime (collectively "Restrictions") that are unique to the Property and the condominium ownership regime.

## **SECTION 2. DECLARATION**

### **2.1. Declaration.**

Declarant hereby declares that the Project and every parcel, Unit or portion thereof shall be held, sold, conveyed, encumbered, hypothecated, used, occupied and improved subject to the provisions of this Declaration, each and all of which are hereby declared to be in furtherance of a general plan for the creation, maintenance and sale of an ownership in fee simple of separate interests in Units and for co-ownership with others, as tenants-in-common, of Common Area and Limited Common Area, all pursuant to the Condominium Act. All provisions hereof shall be deemed covenants running with the land or as equitable servitudes, and shall constitute benefits and burdens to the Owners and all persons hereafter acquiring or owning any interest in the Project, however such interests may be obtained. Each Owner of a Condominium, including Declarant, is subject to all of the rights and duties contained within the Condominium Documents.

### **2.2. Additional Declarations.**

In addition to the Restrictions set forth in this Declaration, the Project is subject to all of the covenants, conditions, restrictions, easements and definitions of the Master Declaration. In the event there shall be duplicate covenants, conditions, easements and restrictions within this Declaration or between this Declaration and the Master Declaration, the Master Declaration shall control, except insofar as the covenants, conditions, easements and restrictions of the Master Declaration are hereinafter expressly modified.

## **SECTION 3. DEFINITIONS**

The following terms shall have the following meanings when used herein unless the context otherwise requires. In the event any of the definitions contained in this Declaration are inconsistent with the definitions contained in the Master Declaration and the terms, to the extent of any inconsistency, shall have the meanings ascribed to them in this Declaration.

### **3.1. Addendum.**

“Addendum” means the document described in Section 4.4 which upon due recordation combines a Unit.

### **3.2. Additional Condominium Project.**

“Additional Condominium Project” shall mean any other condominium project within the property designated as Block 9 of the Hidden Springs Subdivision – Original Plat, recorded in the real property records of Ada County, Idaho, that has the Association as the management body of such condominium project.

### **3.3. Articles.**

"Articles" means the Articles of Incorporation of The Hidden Springs Marketplace Condominiums Owners Association, Inc., a certified copy of which is attached hereto as Exhibit B, as the same may be amended from time to time.

### **3.4. Assessment.**

"Assessment" means a share of the funds required for the payment of common expenses incurred by the Association, including those expenses attributable to less than all Owners in the case of Limited Assessments, Commercial Assessments and/or Residential Assessments, which, from time to time, are assessed against the Owners, and shall include Regular, Special and Limited Assessments, as more particularly described in Section 9 hereof.

### **3.5. Association.**

"Association" means The Hidden Springs Marketplace Condominiums Owners Association, Inc., an Idaho nonprofit corporation, its successors and assigns.

### **3.6. Association Rules.**

"Association Rules" means the rules and regulations that may be adopted, amended or repealed from time to time by the Board.

### **3.7. Board.**

"Board" means the duly elected board of directors of the Association.

### **3.8. Building.**

"Building" means the building, structure and facilities to be constructed on the Property as shown on the Plat.

### **3.9. Bylaws.**

"Bylaws" means the bylaws of the Association, as they exist from time to time.

### **3.10. Commercial Assessments.**

"Commercial Assessments" means a Limited Assessment levied by the Association to provide for the payment of all estimated expenses growing out of or connected solely to the Commercial Units, as more particularly described in Section 9.7.4.

### **3.11. Commercial Owner.**

"Commercial Owner" means any person or entity, including the Declarant, at any time owning a Commercial Unit. The term "Commercial Owner" shall not refer to any Mortgagee, as

herein defined unless such Mortgagee has acquired title pursuant to foreclosure or any other proceeding in lieu of foreclosure.

**3.12. Commercial Unit.**

"Commercial Unit" means Units 1 through 4, depicted on the Plat.

**3.13. Common Area.**

"Common Area" means the Project, excluding the Units.

**3.14. Condominium.**

"Condominium" means a separate ownership interest in a Unit together with an undivided interest in common in the Common Area (expressed as percentages of the entire ownership interest in the Common Area), as set forth on the attached Exhibit C, incorporated herein and made a part hereof by this reference.

**3.15. Condominium Act.**

"Condominium Act" means the "Condominium Property Act" of the State of Idaho, Idaho Code Section 55-1501 et seq., as the same may exist from time to time.

**3.16. Condominium Documents.**

"Condominium Documents" means this Declaration, the Articles, the Bylaws, the Plat, any services agreements entered into by the Association and any and all other related documents and instruments as the same may be amended from time to time.

**3.17. Declarant.**

"Declarant" means Dry Creek Developers, Inc., an Idaho corporation, or any person or entity to whom the rights of the Declarant under this Declaration are expressly transferred in writing by the Declarant.

**3.18. Lessee.**

"Lessee" shall mean any person or entity leasing all or any part of a Unit from any Owner.

**3.19. Limited Assessment.**

"Limited Assessment" means an Assessment levied against an Owner and such Owner's Unit by the Association for costs and expenses incurred by the Association in connection with corrective action or maintenance, repair, replacement and operation activities performed pursuant to the provisions of this Declaration, including, without limitation, damage to

or maintenance, repair, replacement and operation activities directly attributable to the Owner or such Owner's guests or invitees performed for any Common Area or as a result of the failure of an Owner to keep such Owner's Unit in proper repair as provided in this Declaration, and for any goods or services provided by the Association which benefit less than all the Owners, all as more particularly set forth in Section 9.7 herein.

### **3.20. Limited Common Area.**

"Limited Common Area" means those portions of the Common Area designated for the exclusive use of an Owner or Owners to the exclusion, limitation or restriction of other Owners. Limited Common Area may be established from time to time by Declarant or the Association on any portion of the Property by describing such area on a recorded plat, by granting or reserving it in a deed or other document or instrument, or by designating it as such in this Declaration. The term Common Area as used in this Declaration shall include Limited Common Area.

### **3.21. Management Agreement.**

"Management Agreement" means any agreement or amendments thereto entered into by the Association, which provides for the management, maintenance and operation of the Project, including, without limitation the Common Area, by a management individual or entity.

### **3.22. Management Company.**

"Management Company" means that person or entity hired by the Association to manage the Project, as defined in the Management Agreement.

### **3.23. Marketplace.**

"Marketplace" means the Project and any Additional Condominium Project.

### **3.24. Marketplace Vote.**

"Marketplace Vote" means the vote of the Owners within the Project and any Additional Condominium Project as to all matters relating solely to the Marketplace (including without limitation common area maintenance, common area landscaping and exterior appearance of the Building and all other buildings within any Additional Condominium Project). The Marketplace Vote for the Project and for any Additional Condominium Project shall be determined as follows: the Project and any Additional Condominium Project shall be entitled to one (1) vote for each one hundred (100) square feet of floor area of the Building within the Project or the building(s) within Additional Condominium Project(s), rounded to the nearest hundred. As to the Project, the Marketplace Vote is set forth on Exhibit C. Each Owner within the Project (or an owner within any Additional Condominium Project) shall be entitled to vote that portion of the Marketplace Vote, the percentage of which shall be equal to such Owner's percentage interest in the Common Area of the Project as set forth on the attached Exhibit C (or the owner's percentage interest in the common area of the Additional Condominium Project).

**3.25. Master Declaration.**

"Master Declaration" means that certain Master Declaration of Covenants, Conditions, and Restrictions for Hidden Springs recorded on the 24<sup>th</sup> day of September, 1998, in the real property records of Ada County, Idaho, as Instrument No. 98091525.

**3.26. Member.**

"Member" means each Owner as defined herein and all owners of any Additional Condominium Project holding a membership interest in the Association.

**3.27. Mortgage.**

"Mortgage" means any mortgage, deed of trust or other security instrument by which a Condominium or any part thereof is encumbered.

**3.28. Mortgagee.**

"Mortgagee" means any person or any successor to the interest of such person named as the Mortgagee, trust beneficiary, or creditor under any Mortgage under which the interest of any Owner, or successor to the interest of such Owner, is encumbered.

**3.29. Owner.**

"Owner" means any person or entity, including Declarant, at any time owning a Condominium. The term "Owner" shall not refer to any Mortgagee, as herein defined, unless such Mortgagee has acquired title pursuant to foreclosure or any other proceeding in lieu of foreclosure.

**3.30. Plat.**

"Plat" means the Hidden Springs Marketplace Condominiums No. 1 final plat recorded in the real property records of Ada County, Idaho, on the \_\_\_\_ day of \_\_\_\_\_, 2006, as Instrument No. \_\_\_\_\_, in Book \_\_\_\_ of Plats at Pages \_\_\_\_ through \_\_\_\_\_, which is the plat as required by the Condominium Act, a copy of which is attached hereto as Exhibit A, as it is amended and supplemented from time to time.

**3.31. Project.**

"Project" shall have the meaning set forth in Section 1.2.

**3.32. Project Vote.**

"Project Vote" means the vote of the Owners within the Project as to all matters relating solely to the Project, which shall be equal to each such Owner's percentage interest in the Common Area of the Project as set forth on the attached Exhibit C.

**3.33. Property.**

"Property" shall have the meaning set forth in Section 1.1.

**3.34. Regular Assessment.**

"Regular Assessment" means an Assessment by the Association to provide for the payment of all estimated expenses growing out of or connected with the Project as a whole, as more particularly described in Section 9.5 herein.

**3.35. Residential Assessment.**

"Residential Assessment" means a Limited Assessment by the Association to provide for the payment of all estimated expenses growing out of or connected solely to the Residential Units, as more particularly described in Section 9.7.3.

**3.36. Residential Owner.**

"Residential Owner" means any person or entity, including Declarant, at any time owning a Residential Unit. The term "Residential Owner" shall not refer to any Mortgagee, as herein defined unless such Mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

**3.37. Residential Unit.**

"Residential Unit" means a separate interest in Units 5 through 8, depicted on the Plat.

**3.38. Special Assessment.**

"Special Assessment" means an Assessment by the Association to provide for the payment of any expense growing out of or connected with the Project as a whole, and not paid by the Regular Assessment as more particularly described in Section 9.6 herein.

**3.39. Unit.**

"Unit" shall mean singularly or collectively, Units 1 through 8 as depicted on the Plat, comprising a Condominium and bounded by the interior surfaces of the perimeter walls, floors, ceilings, windows, and doors thereof, and the Unit includes both the portions of the Building so described and the airspace so encompassed.

A Unit shall include wall paneling, wood, tile, paint, paper, carpeting, or any other wall, ceiling, or floor covering, interior surfaces of a perimeter window, interior windows and window frames and glass, interior doors and frames and the interior surfaces of perimeter doors. A Unit shall further include fixtures and hardware and all improvements contained within the unfinished perimeter walls, ceilings, and floors, including, but not limited to, appliances, carpets or other floor treatments, and cabinetry. A Unit shall include any heating and refrigerating elements or related equipment, utility lines and outlets, electrical and plumbing fixtures, pipes, and all other

related equipment required to provide heating, air-conditioning, hot and cold water, electrical, or other utility facilities located within and serving only the Unit; provided, however, that a Unit shall not include any of the structural components of the Building or utility or service lines located within a Unit but serving more than one Unit.

## **SECTION 4. NATURE AND INCIDENTS OF CONDOMINIUM OWNERSHIP**

### **4.1. Estates of an Owner of a Condominium.**

The Project is hereby divided into Condominiums, each consisting of a separate interest in a Unit and an undivided interest in common in the Common Area. The percentage of ownership interest in the Common Area which is to be allocated to each Condominium as a whole for purposes of Assessments, tax assessment under Section 55-1514 of the Condominium Act and liability as provided by Section 55-1515 of the Condominium Act, is set forth on the attached Exhibit C.

### **4.2. Title.**

Title to a Condominium may be held or owned by any individual or entity and in any manner in which title to any other real property may be held or owned in the State of Idaho.

### **4.3. No Further Subdividing.**

Condominium Units may not be further subdivided.

### **4.4. Combination of Units.**

4.4.1. An Owner may physically combine the area or space of one (1) Unit with the area or space of one (1) or more adjoining Units. Such combination shall not prevent separate ownership of such combined Units in the future. The Association reserves the right to designate and convey to any Owner of such combined Units as additional Limited Common Area any walls, floors or other structural separations between Units so combined, or any space which would be occupied by such structural separations but for the combination of Units. Any reduction in the Common Area resulting from combining Units must be approved in writing by a majority vote of the Owners within the Project, and reflected in the required Addendum (defined below).

4.4.2. A recordable copy of an Addendum to the Plat (an "Addendum") shall be prepared and submitted to the Ada County Surveyor for review and approval. The Addendum shall be a graphic depiction of the Condominium Unit, as combined. The Addendum shall be prepared by an Idaho licensed professional land surveyor and shall include the following:

4.4.2.1. The Unit numbers for the original Units being combined and the Unit number for the combined Unit;

4.4.2.2. The exact dimensions and location of the original Units being combined and the exact dimensions and location of the combined Unit.

4.4.2.3. The percentage interest in the Common Area allocated to the combined Unit, which shall be the combined original percentage interest allocated to each Unit being combined. The new percentage interest for the combined Unit shall be determinative of the ownership interest in the Common Area for purposes of tax assessments and liability under Sections 55-1514 and 55-1515 of the Condominium Act.

4.4.2.4. The appropriate signature of the Association evidencing the approval of any change in the Common Area or Limited Common Area resulting from such combination.

4.4.2.5. The signature of the Owner of the Units combined pursuant to this Section.

4.4.3. The approved Addendum shall be deemed effective upon recordation in the records of Ada County.

4.4.4. The Owner causing the combination shall pay for all reasonable costs associated therewith, including the Addendum.

4.4.5. Any combination of a Unit shall be in accordance with applicable local, state and federal law requirements.

#### **4.5. Inseparability of Condominiums.**

No part of a Condominium, including, as applicable, any Limited Common Area, or of the legal rights comprising ownership of a such Condominium may be separated from any other part thereof during the period of Condominium ownership prescribed herein, so that each Unit and the undivided interest in the Common Area appurtenant to such Unit shall always be conveyed, devised, encumbered, transferred and otherwise affected only as a complete Condominium and shall not be transferred in any way resulting in the division of the Condominium. Every gift, devise, bequest, transfer, encumbrance, conveyance, or other disposition of the Condominium or any part thereof shall be presumed to be a gift, devise, bequest, transfer, encumbrance or conveyance, respectively, of the entire Condominium together with all appurtenant rights, created by law or this Declaration.

#### **4.6. Partition of Common Area Not Permitted.**

The Common Area shall be owned in common by all of the Owners of Units, and no Owner may bring any action for partition thereof.

#### **4.7. Taxes and Assessments.**

Each Owner shall execute such instruments and take such actions as may reasonably be specified by the Association to obtain separate real property tax assessments of the interest of each Owner in each Condominium. If any taxes of special districts or other assessments may, in the opinion of the Association, nevertheless, be a lien on the Property or any part thereof, the Association shall pay the same and assess the same to the responsible Owner or Owners. Each Owner shall pay the taxes and assessments assessed against such Owner's Condominium, or interest therein, and such Owner's interest in the Common Area, or any part of any or all of the foregoing. The Association reserves the right to protest any tax valuations or assessment by any taxing government agency and to pay for any costs associated with such protests. Each Owner agrees to reimburse the Association for any costs associated with such protests as related to that Owner's Unit.

#### **4.8. Owner's Rights with Respect to Interiors.**

Each Owner shall have the exclusive right and responsibility to maintain, finish, refinish and decorate the interior surfaces of the walls, ceilings, floors, windows and doors forming and within the interior boundaries of the Unit, including but not limited to the installation of carpet or other floor coverings and paint or wallpaper, subject to the reasonable rules and regulations adopted by the Association as amended from time to time.

### **SECTION 5. EASEMENTS**

#### **5.1. Easements for Encroachments.**

If any part of the Common Area encroaches or shall hereafter encroach upon a Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Area, or upon an adjoining Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. Such encroachments shall not be considered encumbrances on the Common Area or the Units. Encroachments referred to herein include, but are not limited to encroachments caused by settling, rising or shifting of the earth under the Building, or by changes in position caused by repair or reconstruction of the Building or any part thereof. Notwithstanding the foregoing, no Owner shall be entitled to deliberately and intentionally encroach on the Common Area without the prior written approval of the Board.

#### **5.2. Easements of Access for Repair, Maintenance and Emergencies.**

Portions of the Common Area and/or easement areas granted pursuant to this Declaration or any other Condominium Document, are or may be located within the Units or may be conveniently accessible only through the Units. The Owners, with the approval of the Board, shall have the irrevocable right, to be exercised by the Association, as their agent, to have access to each Unit and to all Common Area from time to time during such reasonable hours as may be necessary and established by the Board for the construction, installation, inspection, operation, maintenance, repair or replacement of any of the Common Area located

therein or accessible therefrom, or the construction, installation, inspection, operation, maintenance, repair or replacement of any improvements and facilities located within the Common Area, or for making repairs, maintenance and emergencies therein necessary to prevent damage to the Common Area or to another Unit or Units or to correct a violation of any covenant, condition or restriction of the Declaration, when after reasonable efforts by the Association, the Owner fails to do so. The Association shall also have such right of access independent of any agency relationship. Damage to the interior of any part of a Unit or Units resulting from the construction, installation, inspection, operation, maintenance, repair, emergency repair or replacement of any of the Common Area or as a result of emergency repairs within another Unit at the insistence of the Association or of Owners shall be an expense of all of the Owners; provided, however, that if such damage is the result of the negligence of an Owner or such Owner's invitees, licensees or lessees of a Unit, then such Owner shall be financially responsible for all of such damage. Such damage shall be repaired by the Owner or by the Association on behalf of the Owner and the Unit shall be restored substantially to the same condition as existed prior to damage. Amounts owing by Owners pursuant to repairs made hereto shall be collected by the Association as an Assessment pursuant to Section 9 herein.

### **5.3. Owner's Right to Ingress, Egress and Support.**

Unless otherwise provided herein, each Owner shall have the right to ingress and egress over, upon and across the Common Area necessary for access to that Owner's Unit, and shall have the right to the horizontal and lateral support of such Owner's Unit, and such rights shall be appurtenant to and pass with the title to each Condominium. In exercising the rights granted in this Section, each Owner agrees to use commercially reasonable efforts to avoid interference with the access to other Units.

### **5.4. Association's Right to Use of Common Area.**

The Association shall have the right to make such use of the Common Area as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration, including the right to grant easements, alter the Common Areas, and construct and maintain maintenance and storage facilities in the Common Area for use by the Association.

### **5.5. Declarant's Right Incident to Construction.**

Declarant and persons it shall select, shall have the express and unconditional right to ingress and egress over, upon and across the Project, including Common Area and all Units, the right to store materials thereon and to make other use thereof as may be reasonably necessary or incident to completion of development and construction of the Building and Units shown on the Plat or Addendum and the completion of all Units for use and occupancy.

#### **5.6. Declarant's Right to Grant Reciprocal Easements.**

Declarant and the Association reserve the right to develop or convey certain property adjoining the Property which it may from time to time own, subject to and benefited by easements providing for cross-parking, ingress or egress, storm drainage, and joint maintenance of common areas, including without limitation such easements and joint maintenance as provided in the Master Declaration, as they may be amended from time to time. Declarant reserves the right to grant such cross-easement rights and enter into reciprocal maintenance and other reciprocal agreements between adjoining properties which are not incompatible to the uses of the Property contemplated hereunder.

#### **5.7. Certain Easements Benefit City and County.**

The easements herein granted to an Owner for ingress and egress to and from such Owner's Unit over, upon and across the Common Area are hereby recognized to be a condition of platting the Property imposed by the City of Boise and the Ada County Highway District. Such easements shall not be dissolved or altered in any material way that would prevent their beneficial use for their intended purposes without the express written consent of the City of Boise and the Ada County Highway District, as applicable.

#### **5.8. Emergency Easement.**

A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and all other similar emergency agencies or persons to enter upon all streets and property within the Project in the proper performance of their duties. The easement granted herein is recognized to be a condition of platting the Property imposed by the City of Boise. Such easement shall not be dissolved or altered in any material way that would prevent its beneficial use for its intended purpose without the written consent of the City of Boise.

#### **5.9. Recorded Easements.**

The Property, and all portions thereof, shall be subject to all easements shown on any recorded Plat affecting the Property, or any portion thereof, and to any other easements of record or of use, now existing or hereafter created, including without limitation any easements set forth in the Master Declaration and any storm drainage easements, street light easements, sanitary sewer easements, or any other public utility easement shown on the Plat.

#### **5.10. Easements Deemed Created.**

All conveyances of Condominiums hereafter made, whether by the Declarant or otherwise, shall be construed to grant and reserve such reciprocal easements as shall give effect to Sections 5.1 through 5.9 above, even though no specific reference to such easements or to those Sections appear in any such conveyance.

## **SECTION 6. DESCRIPTION OF A CONDOMINIUM**

Every contract for the sale of a Condominium and every other instrument affecting title to such Condominium shall describe that Condominium Unit by the Unit number shown on the Plat as set forth on Exhibit A, with appropriate reference to the Plat and this Declaration, as each appears on the records of Ada County, Idaho, in the following manner:

“Condominium Unit \_\_\_\_\_ as shown on the Hidden Springs Marketplace Condominiums No. 1 final plat recorded in the records of Ada County, Idaho, as Instrument No. \_\_\_\_\_, as the same may be amended or supplemented from time to time.”

If a Unit is combined according to Section 4.4 then every other instrument affecting title to such combined Condominium shall describe that Unit with appropriate reference to the applicable Addendum, the original Plat, and to this Declaration, as each appears on the records of Ada County, Idaho in the following manner:

“Condominium Unit \_\_\_\_\_ as shown on the Addendum to the Hidden Springs Marketplace Condominiums No. 1 final plat recorded in the records of Ada County, Idaho, as Instrument No. \_\_\_\_\_, which Addendum is a supplement to the original Hidden Springs Marketplace Condominiums No. 1 final plat recorded in the records of Ada County, Idaho, as Instrument No. \_\_\_\_\_, as the same may be amended or supplemented from time to time.”

Such description shall be construed to describe the Condominium interest, together with the appurtenant undivided interest in the Common Area, and to incorporate all rights incident to ownership of a Condominium interest and all the limitations on such Ownership as described in the Condominium Documents and any amendments or supplements thereto, whether or not so specified in the instrument.

## **SECTION 7. USE OF CONDOMINIUMS**

### **7.1. Use and Ownership Restrictions.**

As a condition to any use or occupancy of all or any portion of the Project, each Owner shall be subject to the use restrictions contained in this Declaration and the Master Declaration.

### **7.2. Obstructions of Common Area.**

There shall be no obstruction of the Common Area, nor shall anything be stored on any part of the Common Area without the prior written consent of the Board. Notwithstanding the foregoing, the placement of trash receptacles upon those portions of the Common Area specifically designated for such placement shall not require the consent of the Board. Nothing shall be altered on, planted in, constructed on, or removed from the Common Area except upon the prior written consent of the Board.

### **7.3. Maintenance of Interiors and Limited Common Area.**

Each Owner shall keep the interior of such Owner's Unit, including, without limitation, interior walls, windows, glass, ceilings, floors and permanent fixtures and appurtenances thereto, in a clean, sanitary, and attractive condition, and good state of repair, free from any odor and/or mold, and shall keep the heating and air conditioning equipment, water heater and related devices exclusively serving the Owner's Unit in a good state of maintenance. Each Owner shall keep the Limited Common Area, designated for the exclusive use of such Owner in connection with the Unit (including without limitation all decks) in a clean, sanitary and attractive condition, including removal of snow and ice on Limited Common Area. Each Owner shall notify the Association of any unsafe condition existing in, on or around the Limited Common Area. In addition, nothing unsightly, in the reasonable discretion of the Board, shall be kept on any exterior Limited Common Area (including without limitation all decks).

### **7.4. Prohibition of Damage and Certain Activities.**

7.4.1. No damage to, or waste of, the Common Area or any part thereof shall be committed by any Owner, licensee, guest or other occupant, or any invitee of any Owner, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by any Owner, Owner's invitees, licensees or guests. Any invitee, licensee or guest of an Owner shall not under any circumstances be deemed to be an invitee of any other Owner.

7.4.2. No noxious, destructive or offensive activity shall be carried on in any Unit or in the Common Area or any part thereof and nothing shall be done therein which may be or may become an annoyance or nuisance, in the reasonable discretion of the Board, to any other Owner or to any person at any time lawfully residing or working in a Unit. Without limiting the generality of any of the foregoing, no whistles, bells or other sound devices (other than security devices which have been approved by the Board), flashing lights or search lights, shall be located, used or placed on the Common Area or in a Unit, if such placement of such item in a Unit will unreasonably bother or constitute a nuisance to others.

7.4.3. No unsightly articles, in the reasonable discretion of the Board, shall be permitted to remain on any portion of the Property so as to be visible from any other portion of the Project, including, but not limited to, flags and political signs. Without limiting the generality of the foregoing, refuse, garbage, trash, equipment, gas canisters, propane gas tanks, barbecue equipment, heat pumps, compressors, containers, lumber, firewood, grass, shrub or tree clippings, plant waste, metals, bulk material and scrap shall be kept at all times in such containers (or otherwise screened) and in areas approved by the Board.

7.4.4. No clothing or fabric shall be hung, dried or aired in a manner inconsistent with the Association Rules.

7.4.5. Owners agree that they will not use or suffer or permit any person or persons to use the Units or any part thereof for any use or purpose in violation of the laws of the United States of America, the State of Idaho, the County of Ada, any applicable municipality, or

the ordinances, regulations and requirements of such governmental (public or quasi-public entities) or other lawful authorities.

7.4.6. Owners agree that they will not use or suffer or permit any person or persons to use any Unit or Common Area, or any portion thereof, for any use or purpose in violation of any of the terms and conditions of the Master Declaration and any rules promulgated thereunder.

7.4.7. Except as allowed by Association Rules or by express approval of the Board, Owners may not display or sell merchandise or allow carts, portable signs, devices or any other objects to be stored or to remain outside the defined exterior walls and permanent doorways of the Units. Owners further agree not to install any exterior lighting, shades or awnings, amplifiers or similar devices or use in or about the Building any advertising medium or promotional materials or facilities which may be distributed, heard or seen outside the Unit, such as flyers, flashing lights, searchlights, loudspeakers, phonographs or radio broadcasts or make any changes to the facade of the Building or operate any customer service windows without the Board's prior written consent. Notwithstanding the foregoing, Owners may use outdoor lighting and may sell goods and services in connection with any outdoor seating area associated with any restaurant or business operated within a Commercial Unit. Owners shall not conduct or permit to be conducted any sale by auction in, upon or from the Units, whether said auction be voluntary, involuntary, pursuant to any assignment for the payment of creditors or pursuant to any bankruptcy or other solvency proceeding.

7.4.8. Owners shall not do or permit anything to be done in or about the Building nor bring or keep anything therein which will in any way increase the existing rate or affect any fire or other insurance upon the Project or any of its contents (unless the Association has consented in writing to such use and such Owner pays any increased premium as a result of such use or acts), or cause a cancellation of any insurance policy covering the Project, or any of its contents, nor shall Owners sell or permit to be kept, used or sold in or about said Building any articles which may be prohibited by an extended coverage policy of fire and other casualty insurance.

7.4.9. Owners shall not do or permit anything to be done in or about the Unit or Common Area which will in any way obstruct or interfere with the rights of other Owners or occupants in the Building, create undue noise and disruption, or injure or annoy them or use or allow the Unit to be used for an unlawful or objectionable purpose, nor shall any Owner cause, maintain or permit any nuisance in, or about the Building.

7.4.10. Residential Owners shall use their Residential Units exclusively for single-family residential purposes and home office use solely by persons residing in that Unit. Notwithstanding the foregoing, upon the written approval of all Residential Owners and the Declarant, which approval shall be documented and recorded in such form as approved by the Board, a Residential Unit may be used for any commercial office use.

7.4.11. Owners agrees that they will not use or suffer or permit any person or persons to use the Units or any part thereof for any adult bookstore, adult movie theater,

mausoleum, roller rink, bowling alley, boarding house, or any other activity expressly prohibited by the Board.

7.4.12. Any Commercial Owner operating a restaurant located in the Project shall be fully responsible for the control of all odors associated with such operation and the maintenance of any such odor control system. If the Board, in its sole discretion, takes any actions to control odors resulting from the operation of such restaurant, the Commercial Owner shall be assessed a Limited Assessment to pay for any such costs associated with the same.

#### **7.5. Over the Air Reception Devices.**

All Owners who desire to use any device or antenna to receive over the air transmissions shall be required to use one common antenna which may be located on the Project in a location designated and approved by the Declarant or the Board and shall be subject to any other reasonable restrictions established by the Board. Notwithstanding the foregoing, no portion of this restriction shall apply to the extent that it conflicts with any federal or state law governing such devices. Those Owners using the same shall share the costs and expenses associated with the common antenna.

Notwithstanding the foregoing, subject to the approval of the Board and in accordance with all rules of the Association, Owners shall be permitted to install small satellite dishes within the service well on the roof of the Building for cable services using the electrical conduit system located in the core of the Building, if, and only if, no common antenna is provided or the services provided by the common antennae are not adequate to meet the Owners' needs.

#### **7.6. Rules and Regulations.**

No Owner, lessee, occupant or invitee shall violate the Association Rules as defined and described herein.

#### **7.7. Limited Common Areas.**

No Owner shall, or shall permit anyone else, to paint, stain, repair, replace, add to or otherwise alter any interior Limited Common Area without the written consent of the Owners within the Project. No Owner shall, or shall permit anyone else, to paint, stain, repair, replace, add to or otherwise alter any exterior Limited Common Area without the written consent of the Owners within the Project and the Board. Additionally, nothing shall be stored in or placed upon any interior Limited Common Area except upon the written consent of the Owners within the Project. Nothing shall be stored in or placed upon any exterior Limited Common Area except as may be permitted in the Association Rules or upon the written consent of the Owners within the Project and the Board.

#### **7.8. Parking Restrictions and Use of Garage.**

No Owner shall be entitled to convert any portion of a garage associated with his or her Unit to space suitable for human habitation or use as a home office. Each Owner agrees and

acknowledges that the garage associated with his or her Unit, if any, shall be used solely for storage of personal goods and the personal automobile(s) of such Owner. Each Owner with a garage shall maintain such garage in such manner as to allow such Owner to park at all times two (2) cars in the garage, and at not time, shall any Owner park more than two (2) cars in a driveway adjacent to a Unit, if any. Notwithstanding the foregoing, this Section 7.8 shall not preclude the Declarant or its agents or assigns from using a garage associated with a Unit in the Project for use as a Project office during the course of construction, marketing and sale of the Project and any Additional Condominium Project.

#### **7.9. Window Treatments.**

All window treatments that are visible from the exterior of the Unit shall not cause the exterior of the Building to be unsightly and shall be approved, in writing by the Board. All window treatments shall be in compliance with and shall be subject to Association Rules.

#### **7.10. Construction and Structural Alterations.**

No Owner shall take any construction actions or make any alterations to any Unit that would cause structural weakness and damage. Prior to the commencement of any construction, all improvements and alterations to a Unit must be approved, in writing, by the Board. No Owner shall make any architectural or structural changes, plumbing, electrical or similar work, alterations and improvements within the Common Area without the prior written consent of the Board. All such approved work shall comply with all applicable law and all Association Rules, and shall be performed by such persons who have been pre-approved, in writing, by the Board. All approvals of the Board set forth in this Section shall not be unreasonably withheld or delayed.

#### **7.11. Signage.**

Each Owner shall have the right to erect identification signs or similar signage identifying the business or names of the individuals conducting business in a Unit on or within the Owner's Unit, except that any signs or signage placed in or on a Unit which are visible from any Common Area must be approved by the Board in writing. No signage shall be affixed to or allowed on the exterior of the Building unless approved by Declarant in writing.

#### **7.12. Right to Enjoy and Use Units.**

Each Owner shall be entitled to use and enjoy such Owner's Unit for its intended purpose and nothing herein is intended to impose or grant the authority to impose any restrictions, limitations or prohibitions which would deprive an Owner of the reasonable use and enjoyment or would result in the limitation of the uses conducted in a Commercial Unit such that the business located in the Commercial Unit could not be competitive in the Boise marketplace. Notwithstanding the foregoing, no Owner shall be entitled to use such Owner's Unit for any uses not allowed under any applicable municipal code, or otherwise limited by this Declaration, the Master Declaration or any other Condominium Documents.

## **SECTION 8. HIDDEN SPRINGS MARKETPLACE CONDOMINIUMS OWNERS ASSOCIATION**

### **8.1. Creation and Designation of Association.**

Declarant shall organize the Association, which shall be registered and organized as a nonprofit corporation under the laws of the State of Idaho, and Declarant shall designate the Association as the management body of the Project in accordance with the Condominium Act. The Association shall be charged with the duties and vested with the powers prescribed by law and set forth in its Articles, Bylaws and this Declaration (as it relates to the Association's management of the Project) as amended and/or supplemented from time to time. Neither the Articles nor the Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

### **8.2. Members.**

Each Owner (including the Declarant) by virtue of being an Owner and for so long as such ownership is maintained, shall be a Member of the Association and shall have voting rights as hereafter set forth in this Section 8. A membership in the Association shall be appurtenant to and inseparable from the Condominium owned by such Member. A membership in the Association shall not be assigned, transferred, pledged or alienated in any way except upon the transfer of title to said Condominium and then only to the transferee of title to said Condominium. Any attempt to make a prohibited transfer of a membership shall be void and shall not be reflected on the books of the Association. Each owner of a condominium in an Additional Condominium Project, by virtue of being such an owner, for so long as such ownership is maintained, shall be a Member of the Association.

### **8.3. Membership.**

The Association shall have two (2) classes of membership.

8.3.1. Class A Members. There shall be two groups of Class A Members as set forth below:

8.3.1.1. Class A Commercial Members shall be all Owners of Commercial Units, with the exception of the Declarant for so long as the Class B Commercial Member exists. Upon the Class B Commercial Member Termination Date (defined below), each Owner of a Commercial Unit, including Declarant so long as Declarant owns any Commercial Unit, will be entitled to vote the number of votes established for such Commercial Unit as set forth in Exhibit C attached hereto and incorporated herein by this reference at all meetings of the Association as more particularly set forth in Section 8.4 below.

8.3.1.2. Class A Residential Members shall be all Owners of Residential Units, with the exception of the Declarant for so long as the Class B Residential Member exists. Upon the Class B Residential Member Termination Date (defined below), each Owner of a Residential Unit, including Declarant so long as Declarant owns any Residential

Unit, will be entitled to vote the number of votes established for such Residential Unit as set forth in Exhibit C attached hereto and incorporated herein by this reference at all meetings of the Association as more particularly set forth in Section 8.4 below.

8.3.2. Class B Members. There shall be two groups of Class B Members as set forth below:

8.3.2.1. The Class B Commercial Member shall be the Declarant, by and through Declarant's designated representative (hereinafter "Declarant's Commercial Delegate"). The Class B Commercial Member shall be entitled to vote the collective voting power of all Commercial Units as set forth in Exhibit C, until the Class B Commercial Member Termination Date. The Class B Commercial Member shall cease to exist upon the earlier to occur of the following: (i) Declarant owns no Commercial Unit within the Marketplace; or (ii) Declarant informs the Board in writing that Declarant no longer wishes to exercise its rights as the Class B Commercial Member hereunder. This date may be referred to herein as the "Class B Commercial Member Termination Date."

8.3.2.2. The Class B Residential Member shall be the Declarant, by and through Declarant's designated representative (hereinafter "Declarant's Residential Delegate"). The Class B Residential Member shall be entitled to vote the collective voting power of all Residential Units as set forth in Exhibit C, until the Class B Residential Member Termination Date. The Class B Residential Member shall cease to exist upon the earlier to occur of the following: (i) Declarant owns no Residential Unit within the Marketplace; or (ii) Declarant informs the Board in writing that Declarant no longer wishes to exercise its rights as the Class B Residential Member hereunder. This date may be referred to herein as the "Class B Residential Member Termination Date."

#### **8.4. Voting Rights in the Association.**

On all matters of the Association submitted to a vote of the Owners of the Project, the Class B Member shall be the sole voting Member until the respective Class B Member Termination Date. Upon the respective Class B Member Termination Date, at all meetings of the Association each respective Class A Member will be entitled to vote as more particularly set forth below.

##### 8.4.1. Voting in Specific Situations.

8.4.1.1. Matters Affecting Commercial Units Only. On all matters relating solely to Commercial Units within the Project, each Class A Commercial Member shall be entitled to cast the number of votes allocated to each Owner of a Commercial Unit identified as the Project Vote on Exhibit C. On all matters relating solely to Commercial Units within the Marketplace, each Class A Commercial Member shall be entitled to cast the number of votes allocated to each Owner of a Commercial Unit identified as the Marketplace Vote on Exhibit C.

8.4.1.2. Matters Affecting Residential Units Only. On all matters relating solely to Residential Units within the Project, each Class A Residential Member shall be

entitled to cast the number of votes allocated to each Owner of a Residential Unit identified as the Project Vote on Exhibit C. On all matters relating solely to Residential Units within the Marketplace, each Class A Residential Member shall be entitled to cast the number of votes allocated to each Owner of a Residential Unit identified as the Marketplace Vote on Exhibit C.

8.4.1.3. Matters Affecting the Project Generally. On all matters relating to the Project, and not specific to either the Commercial Units or the Residential Units, each Class A Commercial Member and Class A Residential Member within the Project shall be entitled to cast the number of votes allocated to each Owner of a Unit identified as the Project Vote on Exhibit C. No Owner within any Additional Condominium Project shall be entitled to cast a vote on any matter relating solely to the Project.

8.4.1.4. Matters Affecting the Marketplace. On all matters relating to the Marketplace, and not specific to either Commercial Units or Residential Units, each Class A Commercial Member and Class A Residential Member shall be entitled to cast the number of votes allocated to each Owner of a Unit identified as the Marketplace Vote on Exhibit C.

8.4.1.5. Matters Affecting the Project Only. No owner within an Additional Condominium Project shall be entitled to cast a vote on any matter relating solely to the Project.

8.4.1.6. Matters Affecting Additional Condominium Projects. No Owner within the Project shall be entitled to cast a vote on any matter relating solely to any Additional Condominium Project.

8.4.2. Vote of Combined Units. Upon the combination of any Units as provided for in Section 4.4, the Project Vote and the Marketplace Vote of the combined Unit shall be based on the relative square footage of the combined Unit and shall be the combined Project Vote and the combined Marketplace Vote of the original Units being combined, in accordance with Section 4.4 hereof, and this Declaration shall be amended accordingly as shown on the recorded Addendum.

8.4.3. Vote of Multiple Owners. If the Owner of a Condominium shall be more than one (1) person, all such persons shall be deemed Members, but the voting rights in the Association attributable to that Condominium may not be split and shall be exercised by one representative selected by such persons as they, among themselves, may determine. In the event such persons are unable to agree among themselves on any matter put to a vote as to how the vote shall be cast, such persons shall not be entitled to vote on the matter in question. If only one such person casts a vote, it will thereafter be conclusively presumed for all purposes that such person was acting with the authority and consent of all other co-Owners of such Condominium. The right to vote may not be severed or separated from the ownership of the Condominium to which it is appurtenant, except that an Owner may give a revocable proxy, or may assign such Owner's right to vote to a lessee, mortgagee, beneficiary or contract purchaser of the applicable Condominium, for the term of the lease, mortgage, deed of trust or contract. Any sale, transfer or conveyance of such Condominium to a new Owner shall operate automatically to transfer the appurtenant voting right to the new Owner, subject to any

assignment of the right to vote to a lessee, mortgagee, beneficiary or contract purchaser as provided herein.

8.4.4. Matters Deemed Approved. Except as otherwise provided herein, all matters submitted to a vote of the Members shall be determined, made, approved or authorized if the votes of the Members entitled to vote on such matter cast in favor of such matter exceed those votes cast against such matter.

#### **8.5. Board of Directors and Officers.**

The affairs of the Association shall be conducted by a Board of Directors consisting of no less than three (3) and no more than nine (9) members and such officers as the Board may elect or appoint, in accordance with the Articles and Bylaws, as the same may be amended from time-to-time. At least one (1) member of the Board shall be elected by the Owners of Commercial Units holding a membership interest in the Association (the "Commercial Representative"). At least one (1) member of the Board shall be elected by the Owners of Residential Units holding a membership interest in the Association (the "Residential Representative"). At least one (1) member of the Board shall be elected jointly by the Owners of both Residential Units and Commercial Units holding a membership interest in the Association (the "At-Large Representative"). Any additional Board members due to any increase in the number of Board members shall be At-Large Representatives, elected jointly by the Owners of the Residential and Commercial Units. For so long as the Declarant is the Class B Commercial Member in this Project or any Additional Condominium Project, Declarant shall have the sole right to elect the Commercial Representative. For so long as the Declarant is the Class B Commercial Member in this Project, Declarant shall have the sole right to cast the aggregate Marketplace Vote for all Commercial Owners within the Project in any election for an At-Large Representative. For so long as the Declarant is the Class B Residential Member in this Project or any Additional Condominium Project, Declarant shall have the sole right to elect the Residential Representative. For so long as the Declarant is the Class B Residential Member in this Project, Declarant shall have the sole right to cast the aggregate Marketplace Vote for all Residential Owners within the Project in any election for an At-Large Representative.

#### **8.6. Transfer.**

Except as otherwise expressly stated herein, any of the rights, interests and obligations of the Association set forth herein or reserved herein may be transferred or assigned to any other person or entity; provided, however, that no such transfer or assignment shall relieve the Association of any of the obligations set forth herein and no such transfer or assignment shall revoke or change any of the rights or obligations of any Owners as set forth herein.

#### **8.7. Powers of the Association.**

The Association shall have all the powers of a non-profit corporation organized under the general non-profit corporation laws of the State of Idaho subject only to such limitations upon the exercise of such powers as are expressly set forth in the Condominium Documents as the same may be amended from time to time, and is hereby designated the management body as

provided in the Condominium Act. The Association, functioning through the Board, shall have the power to do any and all lawful things which may be authorized, required or permitted to be done by the Association under the Condominium Documents and the Condominium Act or which may be in the Board's discretion necessary or proper for, or incidental to the proper management, operation, construction, inspection, installation, maintenance, repair, replacement and administration of the Project, including, without limitation:

8.7.1. Assessments. The power to levy Assessments on the Owners of Condominiums and to force payment of such Assessments.

8.7.2. Right of Enforcement. The power and authority from time to time in its own name, on its own behalf or on behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Condominium Documents, including the Association Rules as defined herein and adopted pursuant to this Declaration, and to enforce by mandatory injunction or otherwise, all provisions hereof.

8.7.3. Parking. The power and authority from time to time to assign, re-assign and relocate any parking space(s) designated for the use of any particular Owner; provided, however, such assignment, re-assignment and relocation meets all applicable requirements under the Condominium Documents.

8.7.4. Delegation of Powers. The authority to delegate its power and duties to committees, officers, employees, or to any person, firm or corporation to act as the management body, and specifically the authority to delegate its powers and duties to a Management Company pursuant to a Management Agreement; provided, however, that any delegation of the Association's powers and duties may be revoked upon thirty (30) days written notice to such Management Company. Neither the Association nor the members of the Board shall be liable for any omission or improper exercise by any person or entity to whom any such duty or power has been delegated, unless a Member of the Association or a member of the Board is a principal in the liable Management Company and then such principal shall be liable to the extent liable under the Management Agreement, such Management Company's governing documents and applicable law. Any person or entity delegated any powers authorizing it to act as the Management Company shall be required to carry all appropriate insurance, including, but not limited to worker's compensation, liability insurance and bonds, and such Management Company shall ensure that any other person or entity working in the Building or on the Project on the Management Company's behalf shall carry the same.

8.7.5. Association Rules. The power to adopt, amend and repeal by majority vote of the Board such rules and regulations as the Board deems reasonable or proper from time to time (the "Association Rules") including fees and/or fines for violation of the Condominium Documents and the Association Rules. The Association shall have the express authority to make and enforce any rules, regulations, restrictions, protocols and procedures necessary or appropriate governing the Project regarding construction, inspection, installation, operation, maintenance, repair and replacement activities and hours, social events, animals and pets, moving hours, smoking and any other events or items related to the Project or the use and

enjoyment thereof. The Association shall govern the use of the Units and Common Area by the Owners, their invitees, licensees, lessees, occupants, and contract purchasers of Owners, it being understood that the Association Rules shall apply equally to all Owners and shall not be inconsistent with the Condominium Documents. A copy of the Association Rules as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner. Upon such mailing or delivery, said Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration. In the event of any conflict between any such Association Rules and any other provision of the Condominium Documents, the provisions of the Association Rules shall be deemed to be superseded by the provisions of the Condominium Documents to the extent of any such inconsistency. The Association Rules may supplement and add to the Condominium Documents.

8.7.6. Emergency Powers. The power to enter upon any Unit as necessary in connection with any maintenance or construction for which it is responsible, or when necessitated by violation of the Declaration or Association Rules, or in the event of any emergency involving illness or potential danger to life or property and the power to take corrective action. Such entry shall be made with as little inconvenience to the Owners as practicable and any damage caused thereby shall be repaired by the Association, except as otherwise provided herein.

8.7.7. Licenses, Easements and Rights-of-Way. The power to grant and convey to any third party such licenses, easements and rights-of-way in, on or under the Common Area as may be necessary or appropriate for the orderly maintenance, preservation and enjoyment of the Project and for the preservation of health, safety, convenience and welfare of all the Owners for the purpose of constructing, erecting, operating or maintaining, including, but not limited to:

8.7.7.1. Lines, cable, wires, conduits or other devices for the transmission of electricity, heating, power, telephone, television and data, other utility services and meters and other facilities associated with the foregoing;

8.7.7.2. Sewers, storm drains, water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes; and

8.7.7.3. Cross parking easements, sidewalk abutments, drive lanes, parking areas, curb cuts, landscaping abutting common areas, public and private streets or land conveyed for any public or quasi-public purpose.

8.7.8. Miscellaneous Services. The power to obtain and pay for the services of any person or entity to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Project, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The Association may arrange with others to furnish electrical, water, sewer, trash collection services, and other common services to each Condominium (subject to reimbursement by the respective Owner for such services as an Assessment), and may obtain and pay for legal and

accounting services necessary or desirable in connection with the operation of the Project or the enforcement of this Declaration.

8.7.9. Property for Common Use. The power to acquire and hold for the use and benefit of all of the Owners, or for the benefit of only those Owners within a particular Condominium, tangible and intangible personal property and real property and the power to dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be deemed to be owned by the Owners in the same proportion as their respective interest in the Common Area. Such interest shall not be transferable except with the transfer of a Condominium. Each Owner may use such property in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of other Owners. The transfer of title to a Condominium, including that pursuant to foreclosure or power of sale, shall entitle the purchaser or transferee to the interest in such personal property associated with the Condominium transferred.

8.7.10. Inspection. The power and authority to enter a Unit for the purpose of conducting regular maintenance inspections.

8.7.11. Implied Rights. Notwithstanding the foregoing, the Association may exercise any other right or privilege given to it expressly by this Declaration or by law, and every other right or privilege reasonable to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

8.7.12. Use of Association Powers. Notwithstanding the foregoing, the Association shall not take any action that would impair an Owner's right to enjoy and use his/her Unit as set forth herein, in particular Section 7.12.

## **8.8. Duties of the Association.**

In addition to the power delegated to it by the Condominium Documents, the Association or its agents shall have the obligation to conduct all business affairs of the Association and to perform, without limitation, each of the following duties:

8.8.1. Budgets and Financial Statements. Financial statements for the Association shall be regularly prepared and copies made available to each Member as follows:

8.8.1.1. A pro forma operating statement (budget) for the Project for each fiscal year shall be made available to the Members not less than ninety (90) days after the beginning of each fiscal year.

8.8.1.2. Within ninety (90) days after the close of each fiscal year, the Association, or its agent, shall cause to be prepared and made available to each Owner, a balance sheet as of the last day of the Association's fiscal year and an annual operating statement reflecting the income and expenditures of the Association for the Project for that fiscal year.

8.8.2. Operation and Maintenance of Common Area. Operate, maintain and otherwise manage or provide for the operation, maintenance and management of the Common Area and all improvements thereon, including sidewalks and landscaping not in the public right of way, parking areas, drive lanes, common seepage beds and the exterior of the Building as described in Section 8.8.6 below and including the repair and replacement of property damaged or destroyed by casualty loss and all other property acquired by the Association, and shall maintain the same in a good, clean, attractive and sanitary condition, order and repair, and in accordance with the Master Declaration.

8.8.3. Taxes and Assessments. Pay all real and personal property taxes and assessments separately levied against the Common Area, if any, owned and managed by the Association or against the Association and any property owned by the Association and all such taxes shall be paid or a bond insuring payment posted prior to the sale or the disposition of any property to satisfy the payment of such taxes. In addition, the Association shall pay all other taxes, federal, state or local, including income or corporate taxes levied against the Association in the event that the Association is denied the status of a tax exempt corporation.

8.8.4. Water and Other Utilities. Acquire, provide and/or pay for water, storm drainage system maintenance, sewer, garbage disposal, refuse and rubbish collection and other necessary services for the Common Area and Units.

8.8.5. Insurance. Obtain, from reputable insurance companies authorized to do business in the State of Idaho and maintain in effect the policies of insurance described in Section 13 hereof.

8.8.6. Maintenance of Exteriors and Improvements. Maintain and repair the exterior surfaces of the Building and other improvements in the Project excluding Limited Common Area serving only one Unit. The exterior maintenance shall include painting, staining, repairing, re-staining, replacing and caring for all exterior surfaces including roofs and exterior portions of doors as necessary to maintain them in good condition.

8.8.7. Drainage Facilities. Operate and maintain the storm drainage area, as depicted on the Plat. Notwithstanding anything to the contrary, no buildings or other similar improvements shall be constructed within the storm drainage area, as depicted on the Plat, that would materially interfere with the Property's drainage system.

8.8.8. Maintenance of Records and Right of Inspection. Keep and maintain at its principal place of business, current copies of the Condominium Documents, any rules and regulations applicable to the Property and its books, records and financial statements. The membership register, books of account and minutes of meetings of the Board and committees of the Association shall be made available for inspection and copying by any Owner or by such Owner's duly appointed representatives for a fee, at any reasonable time and for a purpose reasonably related to such Owner's interest as an Owner at the office of the Association or at such other place as the Board shall prescribe. No Owner or any other person, except Declarant, shall copy the membership register for the purposes of solicitation of or direct mailing

to any Owner, except for a purpose reasonably related to an Owner's Condominium interest as an Owner.

8.8.9. Amplification. The provisions of this Section are amplified by the Bylaws; provided, however, that no present or future provision of such Bylaws shall substantially alter or amend any of the rights or obligations of the Owners set forth herein.

8.8.10. Use of Association Powers. Notwithstanding the foregoing, the Association shall not take any action that would impair an Owner's right to enjoy and use his/her Unit as set forth herein, and in Section 7.12.

### **8.9. Joint Management & Operation.**

In an effort to create a uniform appearance among and between the Project and any Additional Condominium Project(s), to promote efficiency in the operation of this Project and any Additional Condominium Project(s) and to take advantage of any cost savings in performing any of its duties hereunder, and under any declaration governing any Additional Condominium Project(s), all of the powers and duties of the Association set forth herein in connection with the operation and management of the Project may be performed jointly under a single contract with the performance of similar powers and duties in connection with the operation and management of any Additional Condominium Project(s). The costs and expense of carrying out any of the powers and duties of the Association for which Assessments may be levied hereunder shall be all costs and expenses specifically chargeable to the Project and that portion of any shared costs and expenses chargeable to the Project and any Additional Condominium Project determined by the fraction the numerator of which is the square footage of floor area of the Building within the Project and the denominator of which is the square footage of the floor area of all buildings within the Project and any Additional Condominium Project(s) benefited by such cost and expense. The Association shall take all actions necessary and/or appropriate to determine the square footage of the Buildings within the Project and Additional Condominium Project(s) governed thereby and such determination shall be deemed conclusive for purposes hereof. Notwithstanding the foregoing, the Project and Additional Condominium Project(s) are independent of one another. The Project and Additional Condominium Project(s) shall have the right to request services from the Association in addition to those required to meet any standards set forth in the Master Declaration and this Declaration or in any other document setting forth any standards for such Additional Condominium Project(s) at the sole cost and expense of the Project or Additional Condominium Project(s) requesting such services. Neither the Owners of the Project nor the owners of any Additional Condominium Project shall have the right to require the Association to provide any service or perform any maintenance for the benefit of any other project, which is not uniformly required of or provided to all projects without the approval of a majority of the owners of the benefited project.

## **SECTION 9. ASSESSMENTS**

### **9.1. Covenant to Pay Assessments.**

By acceptance of a deed to any Condominium, each Owner of such Condominium thereby covenants and agrees to pay when due all Assessments or charges made by the Association against such Owner pursuant to the provisions of this Section and this Declaration. The due date, manner and method of payment shall be as set forth in this Declaration or as established by the Board from time to time.

### **9.2. Rate of Assessment.**

Except as otherwise provided herein, all Owners shall be responsible for Regular Assessments and Special Assessments levied by the Association in proportion to their percentage ownership interest in the Common Area, as set forth on Exhibit C. All Owners shall be responsible for Limited Assessments levied by the Association, as set forth in Section 9.7.

### **9.3. Assessment Constitutes Lien.**

The Assessments and charges together with interest, costs and fees, including but not limited to, any fees incurred by the Management Company, and reasonable attorneys' fees, all which may be incurred in collecting the same, shall be a charge on the Condominium against which each such Assessment or charge is made and shall be lien against such Condominium.

### **9.4. Assessment is Personal Obligation.**

Each of the Assessments, together with interest, costs and fees, shall also be the personal obligation of the Owner of such Condominium at the time such Assessments become due. The personal obligation for delinquent Assessments shall not pass to such Owner's successors in title unless expressly assumed by them but shall remain such Owner's personal obligation regardless of whether he remains an Owner. Notwithstanding the foregoing, a purchaser of a Condominium shall be jointly and severally liable with the seller for all unpaid assessments against the Condominium up to the time of grant or conveyance without prejudice to the purchaser's right to recover from the seller the amount paid by the purchaser for such Assessments.

### **9.5. Regular Assessments.**

9.5.1. Purpose of Regular Assessments. The proceeds from Regular Assessments are to be used to pay for all costs and expenses incurred by the Association in connection with the Project, including legal and attorneys' fees and other professional fees, for the conduct of its affairs as provided in Section 8, including without limitation the costs and expenses of construction, improvement, protection, maintenance, repair, management and operation of the Common Area, including Common Area maintenance costs which are prorated among Owners pursuant to the Master Declaration and furnishing utility services, including water, sewer, gas, trash and electricity and other common services to the Common Area and

each Condominium (if not separately metered), insurance, any deficit remaining from previous periods, a maintenance contingency reserve, and an amount allocated to an adequate reserve fund to be used for repairs, replacement, maintenance and improvement of those elements of the Common Area, or other property of the Association that must be replaced and maintained on a regular basis (collectively the "Expenses"). Declarant and/or the Association reserves the right to separately meter utility services provided to each Condominium, and in such event the Owner of the Condominium shall be fully responsible for the costs of providing utilities for the Owner's individual use.

9.5.2. Computation of Allocation for Regular Assessments. Unless otherwise determined by the Board, the Board shall compute and forecast the amount of its Expenses and Regular Assessments on an annual basis. The computation of Regular Assessments shall take place not less than thirty (30) nor more than sixty (60) days before the beginning of each fiscal year of the Association, unless a change in members or the Management Company makes it impractical to compute the Regular Assessments in that timeframe. In such event, the Owners shall be immediately notified upon completion of such computation. Notwithstanding the foregoing, the computation of Regular Assessments shall be completed in good faith and shall be valid upon completion. The computation of the Regular Assessments for the period from the recordation of this Declaration until the beginning of the next fiscal year shall be reduced by an amount which fairly reflects the fact that such period was less than one year.

#### **9.6. Special Assessments.**

In the event that the Board shall determine that the Regular Assessment for a given calendar year is or will be inadequate to meet the Expenses of the Association, incurred in connection with the Project, for any reason, including, without limitation, costs of construction, reconstruction, unexpected repairs or replacement of improvements upon the Common Area, attorneys fees and/or litigation costs, other professional fees, or for any other reason, the Board shall determine the approximate amount necessary to defray such Expenses and levy a Special Assessment. The Board shall, in its discretion, determine the schedule under which such Special Assessment will be paid. If such Special Assessment shall affect more than one Condominium, but not the entire Building, the Owners of the affected Condominiums shall pay those costs associated solely with their Units, while all Owners shall share such costs associated with the Common Area in proportion to their ownership interests set forth on Exhibit C.

#### **9.7. Limited Assessments.**

9.7.1. Corrective Actions. The Association may levy against any Owner a Limited Assessment equal to the costs and expenses incurred by the Association, including legal and management fees, for the construction, installation, inspection, operation, maintenance, repair and replacement of the Common Area, equipment and facilities located thereon, including any corrective action necessitated due to damage by the negligent acts of an Owner, or any person or entity occupying a Condominium with the Owner's consent, either expressed or implied, or for costs and expenses incurred in bringing the Owner's Condominium into compliance with the provisions of the Condominium Documents.

9.7.2. Extraordinary Expenses. A Limited Assessment may also be levied against any Owner or group of Owners whose Unit requires or consumes a materially disproportionate percentage of water, sewer, heating, ventilation, and air conditioning services and charges or any other Expense. If such Limited Assessment shall affect more than one Condominium, but not the entire Building, the Owners of the effected Condominiums shall pay those costs associated solely with their Condominiums in proportion to their percentage ownership.

9.7.3. Residential Assessments. The Association may levy against the Residential Owners within the Project only, a Residential Assessment equal to the costs and expenses incurred by the Association in implementing any services requested by a majority of the Residential Owners and approved by the Board, which benefit the Residential Owners only.

By way of example and for illustration purposes only, a majority shall be determined by adding the total percentage ownership in the Common Area of the Residential Owners and then dividing each Owner's individual percentage ownership in the Common Area by such total percentage ownership of all the Residential Owners. The resulting percentage shall be that Residential Owner's proportional vote and proportional share of any such Residential Assessment.

9.7.4. Commercial Assessments. The Association may levy against the Commercial Owners within the Project, collectively or individually, a Commercial Assessment equal to the costs and expenses incurred by the Association in implementing those services requested by a Commercial Owner or group of Commercial Owners, and approved by the Board, which benefit either a single Commercial Owner or group of Commercial Owners. Nothing contained herein shall require a non-benefiting Commercial Owner to pay any portion of a Commercial Assessment as described in this Section 9.7.4.

By way of example and for illustration purposes only, each effected Commercial Owner's proportional share of such Commercial Assessment shall be determined by dividing each benefited Commercial Owner's percentage interest in the Common Area by the total percentage ownership in the Common Area of all benefited Commercial Owners.

A Limited Assessment may also be levied against Commercial Owners for extraordinary cleaning and maintenance of the Common Area and public sidewalks surrounding the first floor, directly resulting from the use of that Common Area by the Owners of Commercial Units located on the first floor and the patrons of the business(es) located on the first floor.

## **9.8. Notice and Assessment Due Date.**

Unless the Board establishes a different schedule for the payment of Regular Assessments, monthly installments of the Regular Assessment shall become delinquent if not paid by the 1st day of each month. If not paid within five (5) days, a late fee equal to ten percent (10%) of the Regular Assessment shall be charged to the Owner. Each Assessment, other than a Regular Assessment, shall become delinquent if not paid within ten (10) days of the date of notice thereof to the Owner. With each delinquent payment a single late charge up to

ten percent (10%) of the delinquent installment shall be charged. In addition, each installment payment which is delinquent for more than twenty (20) days may accrue interest at the lesser of (i) twelve percent (12%) per annum or (ii) the maximum rate allowed by law calculated from the date of delinquency to and including the date full payment is received by the Association. The Association may bring an action against any delinquent Owner and may foreclose the lien against such Owner's Condominium as more fully provided herein. The Association expressly reserves its rights to file any liens against such Owner pursuant to city, county and state law for any payment not made by the fifteenth (15<sup>th</sup>) day of the month for Regular Assessments or fifteen (15) days after notice of any other Assessment.

**9.9. Estoppel Certificate.**

The Association, upon at least twenty (20) days prior written request, shall execute, acknowledge and deliver to the party making such request, a statement in writing stating whether or not, to the knowledge of the Association, a particular Owner is in default under the provisions of this Declaration, and further stating the dates to which any Regular and Special Assessments have been paid by the Owner. Any such certificate delivered pursuant to this Section may be relied upon by any prospective purchaser or mortgagee of the Owner's Condominium. Reliance on such estoppel certificate may not extend to any default as to which the signor shall have had no actual knowledge. Owners agree to pay for all reasonable costs associated with obtaining this estoppel certificate with respect to such Owner's Unit.

**9.10. No Reserves Provided by Declarant.**

Owners acknowledge and agree that they have been fully notified and informed that the Declarant, as Declarant, did not or will not pay any part of or contribute any initial assessments or deposit reserves for use in the Project, except as otherwise provided in Section 9.11.

**9.11. Declarant's Assessment Obligations.**

For a period of two (2) years following the recordation of the Plat, Declarant shall only be responsible for the lesser of (i) the shortfall of any operating costs of the Project after the collection of all dues and assessments from the Owners, excluding the Declarant or (2) those dues and assessments, less any assessed reserves for replacement, assessed to those Units owned by the Declarant. After two (2) years following the recordation of the Plat, Declarant shall pay all dues and assessments assessed to those Units owned by the Declarant.

**SECTION 10. ENFORCEMENT OF ASSESSMENTS; LIENS**

**10.1. Right to Enforce.**

The Association has the right to collect and enforce its Assessments, including any late charges and/or interest accrued thereon pursuant to the provisions hereof. Each Owner shall be deemed to covenant and agree to pay each and every Assessment provided for in this Declaration, including any late charges and/or interest accrued thereon, and agrees to the enforcement of all Assessments in the manner herein specified. In the event an attorney or

attorneys are employed for the collection of any Assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, each Owner agrees to pay reasonable attorneys' fees and costs, including the costs and expenses for any lien releases, in addition to any other relief or remedy obtained against such Owner. The Board or its authorized representative may enforce the obligations of the Owners to pay such Assessments by commencement and maintenance of a suit at law or in equity, or the Board may exercise the power of foreclosure and sale pursuant to this Section to enforce the liens created pursuant to this Section. A suit to recover a money judgment for an unpaid Assessment shall be maintainable without foreclosing or waiving the lien hereinafter provided.

## **10.2. Assessment Liens.**

10.2.1. Creation. There is hereby created a claim of lien with power of sale on each and every Condominium to secure payment of any and all Assessments levied against such Condominium pursuant to this Declaration together with interest thereon at the maximum rate permitted by law and all costs of collection which may be paid or incurred by the Association making the Assessment in connection therewith, including reasonable attorneys' fees. All sums assessed in accordance with the provisions of this Declaration shall constitute a lien on such respective Condominium upon recordation of a notice of assessment with the Ada County Recorder. Such lien shall be prior and superior to all other liens or claims created subsequent to the recordation of the notice of assessment except for tax liens for real property taxes on any Condominium and any assessment on any Condominium in favor of any municipal or other governmental assessing body which, by law, would be superior thereto.

10.2.2. Notice of Assessment. Upon default of any Owner in the payment of any Assessments issued hereunder, the Association may cause to be recorded in the office of the Ada County Recorder a notice of assessment. The notice shall state the amount of such assessment and other authorized charges (including the cost of recording such notice), a sufficient description of the Condominium against which the same have been assessed, and the name of the record Owner thereof. Each assessment shall constitute a separate basis for a notice of assessment, but any number of assessments may be included within a single notice. Upon payment to the Association of such assessment and charges in connection therewith or other satisfaction thereof, the Association shall cause to be recorded a further notice stating the satisfaction and the release of the lien thereof. The Association may demand and receive the cost of preparing and recording such release before recording the same.

## **10.3. Method of Foreclosure.**

Such lien may be foreclosed by appropriate action in court or by sale by the Association, its attorney or other person authorized to make the sale. Such sale shall be conducted in accordance with the provisions of the Idaho Code applicable to the exercise of powers of sale in deeds of trust or any other manner permitted by law. The Board is hereby authorized to appoint its attorney, any officer or director of the Association, or any title company authorized to do business in Idaho as trustee for the purpose of conducting such power of sale or foreclosure.

#### **10.4. Required Notice.**

No action may be brought to foreclose the lien created by recordation of the notice of assessment, whether judicially, by power of sale or otherwise, until the expiration of thirty (30) days after a copy of such notice of assessment has been deposited in the United States mail, certified or registered, postage prepaid, to the Owner described in such notice of assessment, and to the person in possession of such Condominium(s) and a copy thereof is recorded by the Association in the Ada County Recorder's Office.

#### **10.5. No Subordination.**

The lien for the Assessments provided for herein in connection with a given Condominium shall not be subordinate to the lien of any Mortgage except the lien of a first Mortgage given and made in good faith and for value that is of record as an encumbrance against such Condominium prior to the recordation of a claim of lien for the Assessments. Except as expressly provided in this Section 10.5 with respect to a first Mortgagee who acquires title to a Condominium, the sale or transfer of any Condominium shall affect neither the Assessments lien provided for herein, nor the creation thereof by the recordation of a notice of assessment, on account of the Assessments becoming due whether before, on, or after the date of such sale or transfer, nor shall such sale or transfer diminish or defeat the personal obligation of any Owner for delinquent Assessments as provided for in this Declaration.

#### **10.6. Rights of Mortgagees.**

Notwithstanding any other provision of this Declaration, no amendment of this Declaration shall operate to defeat the rights of a Mortgagee under any Mortgage upon a Condominium made in good faith and for value, and recorded prior to the recordation of such amendment, provided that after the foreclosure of any such Mortgage such Condominium shall remain subject to this Declaration as amended.

In the event a Mortgagee obtains title to any Condominium by any method permitted under law and/or pursuant to all remedies provided in this Declaration, and/or pursuant to any provisions in the Mortgage, such Mortgagee will be liable for any such Condominium's unpaid dues or charges which accrue prior to the acquisition of title to such Condominium by such Mortgagee. Further, upon obtaining title to any such Condominium, such Mortgagee shall have the unrestricted right to exercise any vote as may be attributable to such Condominium in any meeting of the Association or otherwise.

Any encumbrancer holding a lien on a Condominium may pay, but shall not be required to pay, any amounts secured by the lien created pursuant to this Section, and upon such payment such encumbrancer shall be subrogated to all rights of the Association with respect to such lien, including priority.

## **SECTION 11. RIGHTS TO COMMON AREAS**

### **11.1. Use of Common Area.**

Every Owner shall have a nonexclusive right and easement to use the Common Area (exclusive of Limited Common Area) and a limited right to use Limited Common Area designated for use by certain Owners to the exclusion, limitation or restriction of other Owners, which right and easement shall be appurtenant to and shall pass with the title to every Condominium, subject to the following provisions:

11.1.1. Assessments. The rights of the Association to levy Assessments as provided herein and the payment by an Owner of all such Assessments;

11.1.2. Voting and Rights of Use. The right of the Association to suspend the voting rights and rights to use of, or interest in Common Area by an Owner for any period during which any Assessments or charges against such Owner's Condominium remain unpaid;

11.1.3. Dedication or Transfer. The right of the Association to dedicate or transfer all or any part of Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No dedication or transfer shall be effective unless an instrument verifying such dedication or transfer is executed and recorded by the Association verifying that (i) Members representing fifty-one percent (51%) or more of the total number of votes which may be cast by all of the Members, and (ii) fifty-one percent (51%) or more of all Mortgagees have approved such dedication or transfer; and

11.1.4. Association Rules. The right of the Association to establish and enforce such Association Rules as the Association deems proper regarding the Project and use of Common Area.

### **11.2. Delegation of Right to Use.**

Any Owner may delegate in accordance with the respective Condominium Documents, such Owner's reasonable right of enjoyment to the Common Area to his licensees, invitees, lessees or contract purchasers who reside in such Condominium.

### **11.3. Damages.**

Each Owner shall be liable for expenses for corrective action necessitated by violation of the Declaration or Association Rules or for any damage to such Common Area which may be sustained by reason of such Owner's guests, invitees or licensees. In the case of joint ownership of a Condominium, the liability of such Owners shall be joint and several. The cost of corrective action shall be assessed as a Limited Assessment against the Condominium and may be collected as provided herein for the collection of other Assessments.

#### **11.4. Maintenance of Exterior Common Areas.**

All exterior Common Areas and all improvement thereon shall be operated and maintained pursuant to the Master Declaration, including parking areas, drive lanes, common seepage beds, storm sewers or related storm drainage facilities, but not including the exteriors of Buildings.

#### **11.5. Designation of Limited Common Area.**

Declarant hereby designates these areas and the improvements located therein, as set forth on the Plat, attached hereto as Exhibit A, as Limited Common Area for the exclusive use of the Owners of the Condominium Units specified on the Plat. Other Owners may be allowed to use the Limited Common Area designated in this Section upon the approval of the Declarant and the Owners utilizing the Limited Common Area at such time, such approval not to be withheld or delayed unless additional utilization of the Limited Common Area would result in over-utilization thereof and substantially interfere with the use of the Limited Common Area by the Owners entitled thereto. In the event the Limited Common Area created by this Section is no longer needed by the Owners entitled to the use thereof for such Owner's use of the Condominium, the Association will be entitled to the use thereof in fulfilling its duties and responsibilities under this Declaration.

#### **11.6. Maintenance of Limited Common Area.**

In the event any Limited Common Area designated in this Section is exclusively used by one Owner, such Owner shall be responsible for maintaining, repairing, and replacing the Limited Common Area in good condition and repair at the Owner's sole cost and expense. Any change in the appearance of the Limited Common Area as a result of such maintenance, repair and replacement shall require the written consent of the other Owners and/or the Board in accordance with Section 7.7. Any Limited Common Area used by more than one Owner shall be maintained by the Association. The Owners entitled to the use of the Limited Common Area shall be assessed Limited Assessments, as provided in Section 9.7, for the costs and expenses of maintaining, repairing, and replacing the Limited Common Area. The Owners using the Limited Common Area designed in this Section shall pay the Limited Assessments associated therewith based on the square footage of each Condominium entitled to use the Limited Common Area to the net square footage of all of the Condominiums entitled to use the Limited Common Area except as otherwise agreed by those Owners.

### **SECTION 12. MECHANIC'S LIEN RIGHTS**

No labor performed or services or materials furnished with the consent of or at the request of an Owner or such Owner's agent, contractor or subcontractor shall be the basis for the filing of a lien against the Condominium of any other Owner or against any part thereof, or against any other property of any other Owner, unless such other Owner has expressly consented to or requested in writing the performance of such labor or furnishing of such materials or services. Such express written consent shall be deemed to have been given by the Owner of any Condominium in the case of emergency corrective action undertaken by the

Association. Labor performed or services or materials furnished for the Property if duly authorized by the Association shall be deemed to be performed or furnished with the express consent of each Owner. Any Owner may remove his/her Condominium from a lien filed against two or more Condominiums or any part thereof by the payment of sums secured by such lien and attributable to such Owner's Condominium.

## **SECTION 13. INSURANCE**

### **13.1. Types of Insurance.**

The Association shall obtain and keep in full force and effect at all times the following insurance coverage provided by reputable companies duly authorized to do business in Idaho. The provisions of this Section shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Board may deem appropriate from time to time. The Association may maintain one policy of any insurance coverage required hereunder for purposes of insuring this Project and any Additional Condominium Project(s).

13.1.1. Casualty Insurance. The Association shall obtain insurance on the Building in such amounts as shall provide for full replacement thereof, including, but not limited to, those costs associated with rebuilding, design, any required permits, legal fees and any other fees associated with the replacement of the Building, in the event of damage or destruction from the casualty against which such insurance is obtained. Such insurance shall include fire and extended coverage, vandalism and mischief, and such other risks and hazards against which the Association shall deem it appropriate to provide insurance protection. The Association may comply with the above requirements by the purchase of blanket coverage and may elect such "deductible" provisions as in the Association's opinion are consistent with good business practice.

13.1.2. Public Liability and Property Damage Insurance. The Association shall purchase broad form commercial general liability insurance coverage in such amounts and in such forms as it deems advisable to provide adequate protection. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other use of the Project.

13.1.3. Workers Compensation and Employer's Liability Insurance. The Association and/or the Management Company shall purchase workers compensation and employer's liability insurance and all other similar insurance in respect to employees of the Association and/or the Management Company in the amounts and in the forms now or hereafter required by law.

13.1.4. Fidelity Insurance. The Association and/or the Management Company shall purchase in such amounts and in such form as it shall deem appropriate coverage against liability of its officers and directors, dishonesty of employees, destruction or disappearance of money or securities, and forgery.

13.1.5. Optional Insurance. The Association may obtain the following types of insurance coverage, but is not required to do so.

13.1.5.1. Personal Property Casualty Insurance. The Association may in its discretion obtain casualty and public liability insurance on the personal property and furnishings initially placed in any Units by Declarant, if any, upon completion of construction of the Building in such amounts as shall provide for the full replacement thereof in the event of damage or destruction from casualties against which such insurance is obtained. It is expressly understood that any Owner desiring to obtain additional condominium insurance may do so at the sole cost of the Owner.

13.1.5.2. Casualty and Public Liability Insurance. The Association may in its discretion obtain casualty and public liability insurance coverage, in amounts it may select, with respect to an Owner's activities within each Unit.

13.1.5.3. Other. The Association may obtain insurance against such other risks, of a similar or dissimilar nature, including errors and omissions insurance for the actions of the Board, as it shall deem appropriate with respect to the Buildings, including any personal property of the Association located thereon.

## **13.2. Form.**

Casualty insurance shall be carried in a form or forms naming the Association as the insured as trustee for the Owners, which policy or policies shall specify the interest of each Owner (Owner's name, Unit number, and the appurtenant undivided interest in the Common Area) and which policy or policies shall provide a standard loss payable clause providing for payment of insurance proceeds to the Association as trustee for the Owners and for the respective first Mortgagees which from time to time shall give notice to the Association of such Mortgages, such proceeds to be used in accordance with this Declaration. Each policy shall also provide that it cannot be canceled by either the insured or the insurance company until after thirty (30) days prior written notice is first given to each Owner and to each first Mortgagee requesting such notice. The Association shall furnish to each Owner and to Declarant a true copy of such policy together with a certificate identifying the interest of the Owner. All policies of insurance shall provide that the insurance thereunder shall be invalidated or suspended only in respect to the interest of any particular Owner guilty of breach of warranty, act, omission, negligence or noncompliance with any provision of such policy, including payment of the insurance premium applicable to that Owner's interest or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy. All policies of insurance shall provide further that the insurance under any such policy as to the interest of all other insured Owners not guilty of any such breach of warranty, act, omission, negligence or noncompliance with any provision of such policy shall not be invalidated or suspended and shall remain in full force and effect.

Public liability and property damage insurance shall name Declarant, the Management Company and the Association as the insured, with the Association as trustee for the Owners,

and shall protect each Owner against liability for acts of the Association in connection with the ownership, operation, maintenance or other use of the Building and/or the Project, as applicable under the circumstances.

### **13.3. Owner's Responsibility.**

Insurance coverage on any furnishings initially placed in the Unit by Declarant, and regardless of the Association's election, insurance coverage against loss from theft on all personal property and insurance coverage on items of personal property placed in a Unit by Owner, shall be the responsibility of the respective Owners.

### **13.4. Insurance Proceeds.**

The Association shall receive the proceeds of any casualty insurance payments received under policies obtained and maintained pursuant to this Section, except Section 13.3 hereof. The Association shall apportion the proceeds to the portions of the Building that have been damaged. To the extent that reconstruction is required herein, the proceeds shall be used for such purpose. To the extent that reconstruction is not required herein and there is a determination that the Building shall not be rebuilt, the proceeds shall be distributed in the manner set forth in Section 14.8. Each Owner and each Mortgagee shall be bound by the apportionments of damage and of the insurance proceeds made by the Association pursuant hereto.

### **13.5. Owner's Own Insurance.**

Notwithstanding the provisions of Section 13.1 hereof, each Owner must obtain insurance at the Owner's own expense providing coverage upon the Owner's Condominium, personal property, personal liability, and covering such other risks as the Owner may deem appropriate, but each policy shall provide that it does not diminish the insurance carrier's coverage for liability arising under insurance policies which the Association obtains pursuant to this Section. All such insurance on the Owner's Condominium shall waive the insurance company's right of subrogation against the Association, the other Owners, and the servants, agents and guests of any of them, if such insurance can be obtained in the normal practice without material additional premium charge for the waiver of rights of subrogation.

## **SECTION 14. CASUALTY, DAMAGE OR DESTRUCTION**

### **14.1. Affects Title.**

Title to each Condominium is hereby made subject to the terms and conditions of this Section 14, which bind the Declarant and all subsequent Owners, whether or not it is expressed in the deed by which any Owner acquires a Condominium.

#### **14.2. Association As Agent.**

All of the Owners irrevocably constitute and appoint the Association their true and lawful attorney-in-fact in their name, place and stead for the purpose of dealing with the their Condominium upon the Condominium's damage or destruction as hereinafter provided. Acceptance by any grantee of a deed from the Declarant or from any Owner shall constitute such appointment.

#### **14.3. General Authority of Association.**

As attorney-in-fact for the Owners, the Association shall have full and complete authorization, right and power to make, execute and deliver any contract, deed, or other instrument with respect to the interest of an Owner which may be necessary or appropriate to exercise the powers herein granted. Repair and reconstruction of the improvements as used in succeeding Sections means restoring the Condominiums, including the site improvements, equipment and facilities therein, to substantially the same condition in which it existed prior to damage, with each Unit and the Common Area having substantially the same vertical and horizontal boundaries as before. The proceeds of any insurance collected shall be available to the Association for the purpose of repair or reconstruction unless eighty percent (80%) the Owners and all first Mortgagees agree not to rebuild in accordance with the provisions set forth hereinafter.

#### **14.4. Estimate of Costs.**

As soon as practicable after an event causing damage to, or destruction of, any part of the Project, the Association shall obtain estimates that it deems reliable of the costs of repair or reconstruction of that part of the Project damaged or destroyed.

#### **14.5. Repair or Reconstruction.**

As soon as practicable after receiving these estimates, the Association shall diligently pursue to completion the repair or construction of that part of the Project damaged or destroyed. Provided, however, in the event fifty percent (50%) or more of the Project has been damaged or destroyed, the Association's obligation and/or right to rebuild the Project shall be subject to Declarant's prior written approval, such approval to be in Declarant's sole discretion. The Association may take all necessary or appropriate action to effect repair or reconstruction, as attorney-in-fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith. Such repair or reconstruction shall be in accordance with the original plans and specifications of the Project or may be in accordance with any other plans and specifications the Association may approve, provided that in such latter event the number of cubic feet and the number of square feet of any Unit may not vary by more than five percent (5%) from the number of cubic feet and the number of square feet for such Unit as originally constructed pursuant to such original plans and specifications, and the location of the Units shall be substantially the same as prior to damage or destruction.

#### **14.6. Funds for Reconstruction.**

The proceeds of any insurance collected shall be available to the Association for the purpose of repair or reconstruction. If the proceeds of the insurance are insufficient to pay the estimated or actual cost of such repair or reconstruction, the Association, pursuant to Section 9.6 hereof, may levy in advance a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair or reconstruction. Such Special Assessments shall be allocated and collected as provided in that Section. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair or reconstruction.

#### **14.7. Disbursement of Funds for Repair or Reconstruction.**

The insurance proceeds held by the Association and the amounts received from the assessments provided in Section 14.6 constitute a fund for the payment of costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the cost of repair or reconstruction shall be made from insurance proceeds; if there is a balance after payment of all costs of such repair or reconstruction, such balance shall be distributed to the Owners in proportion to the contributions by each Owner pursuant to the Assessments by the Association under Section 14.6 of this Declaration.

#### **14.8. Decision Not to Rebuild.**

If all Owners and all holders of first Mortgages on Condominiums agree not to rebuild, as provided herein, and/or Declarant's decision not to rebuild as provided in Section 14.5, the Project shall be sold. The sale proceeds shall be apportioned among the Owners in the same proportions as their share of the Common Area as provided in Exhibit C; and such apportioned proceeds shall be paid into separate accounts, each such account representing one (1) Condominium. Each such account shall remain in the name of the Association, and shall be further identified by the Condominium designation and the name of the Owner. From each separate account the Association, as attorney-in-fact, shall use and disburse the total amount of such accounts without contribution from one account to the other, first to Mortgagees and other lienors in the order of priority of their Mortgages and other liens, and the balance remaining to each respective Owner

### **SECTION 15. CONDEMNATION**

#### **15.1. Consequences of Condemnation.**

If at any time or times during the continuance of the condominium ownership regime pursuant to this Declaration, all or any part of the Project shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions of this Section shall apply.

### **15.2. Proceeds.**

All compensation, damages or other proceeds therefrom, the sum of which is hereinafter called the "Condemnation Award," shall be payable to the Association.

### **15.3. Complete Taking.**

In the event that all of the Units are taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership regime pursuant hereto shall terminate. The Condemnation Award shall be apportioned among the Owners in the same proportions as their share of the Common Area in the Project, provided that if a standard different from the value of the Condominiums as a whole is employed to measure the Condemnation Award in the negotiation, judicial decree or otherwise, then in determining such shares the same standard shall be employed to the extent it is relevant and applicable.

On the basis of the principle set forth in the last preceding paragraph, the Association shall, as soon as practicable, determine the share of the Condemnation Award to which each Owner is entitled and pay such amounts as soon as practicable in the same manner provided in Section 14.8 of this Declaration.

### **15.4. Partial Taking.**

In the event that less than all of the Units are taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership regime hereunder shall not terminate. Each Owner shall be entitled to a share of the Condemnation Award to be determined in the following manner: As soon as practicable the Association shall, reasonably and in good faith, allocate the Condemnation Award between compensation, damages or other proceeds and shall apportion the amounts so allocated among the Owners as follows:

15.4.1. Allocation to Common Area. The total amount allocated to taking of or injury to the Common Area shall be apportioned among the Owners in the same proportion as their share of the Common Area as provided in the Exhibit C;

15.4.2. Allocation to Condominiums. The total amount allocated to severance damages shall be apportioned to those Condominiums which were taken or condemned as follows: (a) the respective amounts allocated to the taking of or injury to a particular Unit and/or improvements an Owner has made within the Owner's own Unit shall be apportioned to the particular Unit involved; and (b) the total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances. If an allocation of the Condemnation Award is already established in negotiation, judicial decree, or otherwise, then in allocating the Condemnation Award the Association shall employ such allocation to the extent it is relevant and applicable. Distributions of apportioned proceeds shall be made in the same manner provided in Section 14.8 of this Declaration.

## **15.5. Reorganization.**

In the event a partial taking results in the taking of a complete Unit, then, upon the distribution of such Owner's apportioned proceeds, the Owner thereof automatically shall cease to be a member of the Association. Thereafter the Association shall re-allocate the ownership, voting rights and assessment ratio determined in accordance with this Declaration according to the same principles employed in this Declaration at its inception and shall submit such re-allocation to the remaining Owners for approval and amendment of this Declaration as provided in Section 16.1.2 hereof.

## **15.6. Reconstruction and Repair.**

Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified in Section 14 above.

## **SECTION 16. MISCELLANEOUS**

### **16.1. Amendment.**

16.1.1. By Declarant. Until the recordation of the first deed to a Condominium, the provisions of this Declaration may be amended, modified, clarified, supplemented, added to or terminated (collectively an "Amendment") by the Declarant by recordation of a written instrument setting forth such Amendment. Additionally, so long as Declarant owns a Condominium, the provisions of this Declaration may be amended modified, clarified, supplemented, added to or terminated by a recorded amendment by the Declarant to comply with all applicable law or as necessary to allow the Project to be developed and improved as contemplated in the Condominium Documents.

16.1.2. By Members. Except as provided in Section 16.1.1, after the recordation of the first deed to a Condominium, any Amendment to this Declaration, other than this Section 16.1, shall be by an instrument in writing signed and acknowledged by the president and secretary of the Association certifying and attesting that such Amendment has been approved by the vote or written consent of Members representing fifty-one percent (51%) or more of the total votes which may be cast by all of the Members, except where a greater percentage is required by express provision in this Declaration, and such Amendment shall be effective upon its recordation with the Ada County Recorder. Any Amendment to this Section 16.1 shall require the vote or written consent of Owners holding ninety-five percent (95%) of the total votes which may be cast by all of the Members.

Notwithstanding the foregoing, nothing in this Section 16.1.2 shall allow an amendment that would limit the rights of the Owners as stated in Sections 7.12 and 8.7.12.

16.1.3. Effect of Amendment. Any Amendment of this Declaration approved in the manner specified above shall be binding on and effective as to all Owners notwithstanding that such Owners may not have voted for or consented to such Amendment subject to Sections 7.12 and 8.7.12. Such Amendment may add to and increase the covenants, conditions,

restrictions and easements applicable to the Project but shall not prohibit or unreasonably interfere with the allowed uses of such Owner's Condominium which existed prior to the said amendment.

## **16.2. Mortgage Protection.**

16.2.1. Rights of First Mortgagee. Notwithstanding any other provision of this Declaration, no amendment of this Declaration shall operate to defeat or render invalid the rights of the beneficiary under any first Mortgage upon a Unit made in good faith and for value, and recorded prior to the recordation of such amendment, provided that after foreclosure of any such first Mortgage, such Unit shall remain subject to this Declaration, as amended.

16.2.2. Availability of Condominium Documents and Records. The Association shall have current copies of the Condominium Documents for the Project, including the Association's books, records, and financial statements available for inspection by the Owners or by holders, insurers, and guarantors of first Mortgages that are secured by Units during normal business hours. First mortgagees, upon written request, shall have the right to require from the Association audited annual financial reports and other financial data be available no later than 120 days from the Association's fiscal year-end.

16.2.3. Notice. Upon written request to the Association from any holder, insurer or guarantor of any first Mortgage stating both its name, address and the Unit number or address of the Unit on which it has its first Mortgage, said holder, insurer, or guarantor of a first Mortgage encumbering a Unit shall be entitled to notice of the following:

16.2.3.1. Any condemnation or casualty loss that affects either a material portion of a Building or a Unit encumbered by such first Mortgage;

16.2.3.2. Any sixty (60) day delinquency in the payment of Assessments or charges owed by the Owner of any Unit on which it holds a first Mortgage;

16.2.3.3. A lapse, cancellation, or material modification of any insurance policy maintained by the Association; and

16.2.3.4. Any proposed action that requires the consent of a specified percentage of eligible Mortgage holders.

16.2.3.5. Any default by the mortgagor of such Unit in the performance of such mortgagor's obligations under the Condominium Documents, which default is not cured within thirty (30) days after the Association learns of such default.

16.2.4. Assessments After Foreclosure. Each holder of a first Mortgage who comes into possession of a Unit by virtue of foreclosure of the Mortgage or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, will take title to such Unit free of any claims for unpaid assessments and charges against the Unit, which accrue prior to the time such holder comes into possession of the Unit.

16.2.5. Amendments. At least sixty-seven percent (67%) of the Owners and at least fifty-one percent (51%) of the first Mortgagees (based upon one vote for each Mortgage owned) shall agree to all material changes to the Condominium Documents.

16.2.6. Termination of Legal Status. At least sixty-seven percent (67%) of the Owners and at least fifty-one percent (51%) of the first Mortgagees (based upon one vote for each Mortgage owned) shall agree in writing to terminate the legal status of the Project after substantial destruction or condemnation of the Project. At least sixty-seven percent (67%) of the first Mortgagees (based upon one vote for each Mortgage owned) may terminate the legal status of the Project for reasons other than substantial destruction or condemnation of the Project.

16.2.7. Leases. Any agreement for the leasing or rental of a Unit, including a month-to-month rental agreement, shall provide that the terms of such agreement shall be subject in all respects to the provisions of the Condominium Documents. All such agreements shall be in writing and shall provide that any failure by the lessee to comply with the terms of the Condominium Documents shall be a default under the agreement.

16.2.8. Working Capital Fund. The Class B Member shall establish an initial working capital fund in an amount that is at least equal to two months of estimated common charges for each Unit. Each Unit's share of the working capital fund may be collected either at the time the sale of the Unit is closed or when control of the Project is transferred to the unit owners, whichever is earlier. Any amounts paid into this fund should not be considered as advance payments of regular assessments. The working capital fund shall be transferred to the Association for deposit to a segregated fund when there are no longer any Class B Members. The Class B Member is prohibited from using the working capital funds to defray any of its expenses, reserve contributions, or construction costs or to make up any budget deficits while it is in control of the Association.

### **16.3. Enforcement and Non-Waiver.**

16.3.1. Right of Enforcement. Except as otherwise provided herein, any Owner, the Association and Declarant shall each have the right to enforce any or all of the provisions of this Declaration against any Unit or any part or portion of the Project and against the Owners thereof.

16.3.2. Non-Waiver. Failure of the Declarant or the Board to insist upon strict compliance with this Declaration, the Bylaws or the Association Rules, or to exercise any right contained in such documents, or to serve any notice or to institute any action, shall not be construed as a waiver or a relinquishment of the right to insist on compliance in the future with any term, covenant, condition or restriction. The receipt by the Board of payment of an assessment from an Owner, with knowledge of a breach by the Owner, shall not be a waiver of the breach. No waiver by the Board of any requirement shall be effective unless the waiver is expressed in writing, and the writing is signed by the Board.

#### **16.4. Registration of Mailing Address.**

Each Owner shall register such Owner's mailing address with the Association and all notices or demands intended to be served upon any Owner shall be sent by United States Mail postage prepaid, addressed in the name of the Owner at such registered mailing address. If an Owner fails to provide the Association with a valid address, all notices shall be sent to that Owner's address on record with the Ada County Assessor's office. All notices or demands intended to be served upon the Association shall be given by registered or certified mail, postage prepaid, to the address of the Association as designated in the Bylaws. All notices or demands to be served on Mortgagees pursuant hereto shall be sent by either registered or certified mail, postage prepaid, addressed in the name of the Mortgagee at such address as the Mortgagee may have furnished to the Association in writing. Unless the Mortgagee furnishes the Association such address, the Mortgagee shall not be entitled to receive any of the notices provided for in this Declaration. Any notice referred to in this Section shall be deemed given when deposited in the United States mail in the form provided for in this Section.

#### **16.5. Interpretation.**

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

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

16.5.2. Restrictions Severable. Notwithstanding the provisions of the foregoing Section 16.5.1, each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision herein.

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

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

#### **16.6. Owner's Obligations Continue.**

All obligations of the Owner under and by virtue of the provisions contained in this Declaration shall continue, notwithstanding that such Owner may have leased, rented or entered a contract of sale of his interest as provided herein, but the Owner of a Condominium shall have no obligation for expenses or other obligations accruing after the Owner conveys such Condominium.

**16.7. Exhibits.**

All exhibits attached hereto are incorporated herein as if set forth in full herein. However, in the event of any conflict between such exhibits and the text of the Declaration, the Declaration shall control.

**16.8. Acknowledgement and Waivers.**

All Owners expressly acknowledge that there are no understandings, representations, warranties or promises of any kind that have been made to induce the Owners to own Units in the Project except as set forth in this Declaration or any other written valid and binding agreement between the Declarant and the Owners, that this Declaration or any other written valid and binding agreement between the Declarant and the Owners sets forth in full the entire agreement between the parties and governing the Project, and the Owners have not relied on any verbal agreement, statement, representation, warranty or other promises that are not expressed in writing in this Declaration or any other written valid and binding agreement between the Declarant and the Owners. Except as may be set forth in any written agreement between Owner and Declarant, each Owner has acquired and accepted its Condominium Unit "as is, where is" with all faults. No person, agent or employee of Declarant has any authority to modify the terms of this Section, and no person on Declarant's behalf is authorized to make any future verbal agreement upon which any Owner may rely to cancel, change or modify any portion of this Declaration. This Declaration or any other written valid and binding agreement between the Declarant and the Owners supersedes any and all prior understandings and agreements. This Declaration or any other written valid and binding agreement between the Declarant and the Owners may be amended or modified only by the terms included herein.

**[end of text]**

This Declaration is executed effective as of the date first written above.

**DECLARANT**

**DRY CREEK DEVELOPERS, INC.,  
an Idaho corporation**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF IDAHO    )  
                          ) ss.  
County of Ada     )

On this \_\_\_\_ day of \_\_\_\_\_, in the year of 2006, before me, a Notary Public in and for said State, personally appeared \_\_\_\_\_, known or identified to me to be the \_\_\_\_\_ of \_\_\_\_\_, the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

\_\_\_\_\_  
Notary Public for Idaho  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

The undersigned holder of a recorded security interest in the Property hereby consents to the recordation of the Plat and this Declaration.

Idaho Independent Bank

By: \_\_\_\_\_  
Bret Tinker, Vice President

STATE OF IDAHO    )  
                                  ) ss.  
County of Ada        )

On this \_\_\_\_ day of \_\_\_\_\_, in the year of 2006, before me, a Notary Public in and for said State, personally appeared Bret Tinker, known or identified to me to be the Vice President of Idaho Independent Bank, the \_\_\_\_\_ that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

\_\_\_\_\_  
Notary Public for Idaho  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

**EXHIBIT A**

**Plat of the Hidden Springs Marketplace Condominiums No. 1**

**EXHIBIT A**

**EXHIBIT B**  
**Articles of Incorporation**  
**(Certified Copy)**

**EXHIBIT C**

**Proportionate Interest in Common Area and Voting Rights**

<b>Unit</b>	<b>Square Footage of Floor Area<sup>1</sup></b>	<b>Percentage of Ownership in Common Area<sup>2</sup></b>	<b>Project Vote</b>	<b>Marketplace Vote of the Project</b>	<b>Marketplace Vote of Owners</b>
1	1,903 s.f.	12.2%	12.2	155.70	19
2	787 s.f.	5.0%	5.0		7.8
3	790 s.f.	5.1%	5.1		7.9
4	1,421 s.f.	9.1%	9.1		14.2
5	2,536 s.f.	16.3%	16.3		25.4
6	2,708 s.f.	17.4%	17.4		27.1
7	2,423 s.f.	15.6%	15.6		24.3
8	3,002 s.f.	19.3%	19.3		30
	<b>15,570 s.f.</b>	<b>100%</b>	<b>100</b>		<b>155.70</b>

Calculation of Marketplace Vote of the Project	Total Square Footage of Floor Area of Project	15,570	=	155.70
	Divider	100		

This Exhibit C may be amended from time to time by the proper recordation of an Addendum, as provided in this Condominium Declaration.

Notwithstanding the foregoing, each Owner's voting rights, including the voting rights of the Declarant, shall be subject to those terms set forth in Section 8.4, hereof.

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<sup>1</sup> For the purposes of this Declaration, the square footage of the floor area of a garage associated with a Unit, if any, has been and shall be included in the square footage of the floor area of the respective Unit and Project.

<sup>2</sup> Percentage of ownership interest in the Common Area has been allocated based on the relative square footage of the floor area within the respective Units, which is believed at the time this Declaration is executed, to be consistent with a determination based on the relative value of the Unit compared to the value of the Project as a whole.

**EXHIBIT C**