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Hanley Lofts Condominium Association  
c/o Lukins & Annis, P.S.  
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717 W. Sprague Ave. Ste. 1600  
Spokane, Washington 99201

**Document Title:** Declaration of Covenants, Conditions, and  
Restrictions for Hanley Lofts Condominiums in  
Coeur D'alene, Idaho

**Grantor:** Hanley Lofts, LLC, an Idaho limited liability  
company

**Grantee:** Hanley Lofts Condominium Association, Inc.

**Legal Description  
(abbreviated):** COEUR D ALENE PLACE 28TH ADD, LT 1  
BLK 5, TR D, 2751N04W

Complete legal description on Exhibit B

**Parcel No.** C-L190-005-001-0  
**AIN:** 336720

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EXHIBIT "A" Description of Units

EXHIBIT "B" Legal Description of Property

**DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS FOR  
HANLEY LOFTS CONDOMINIUMS IN  
COEUR D' ALENE, IDAHO**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR HANLEY LOFTS CONDOMINIUMS IN COEUR D' ALENE, IDAHO ("**Declaration**"), is made on the date hereinafter set forth, by Hanley Lofts LLC, an Idaho limited liability company ("**Declarant**"), with an address of 1421 N. Meadowwood Lane, #200, Liberty Lake, Washington 99019, with reference to the following facts:

A. Declarant is the owner of the real property located in Kootenai County, Idaho, more particularly described on Exhibit "B" attached hereto and incorporated by this reference (the "**Property**").

B. Declarant desires to establish the Property as a residential condominium regime under the provisions of the Idaho Condominium Property Act (Title 55 Idaho Code, Chapter 15), which condominium will be known as the "Hanley Lofts Condominiums."

C. The Owner of each Unit receives title to an individual living space and an individual enclosed Garage. The Owner of a Unit also receives an interest as tenant in common in proportion to the Unit's Allocated Interest in the Common Elements. Each Unit shall also have appurtenant to it certain additional rights, including rights of membership in the Hanley Lofts Condominium Association, an Idaho nonprofit corporation, formed to govern the Property, and exclusive rights in certain portions of the Common Elements, referred to herein as Limited Common Elements. Only the Declarant and the Association has the power to convey any interest in the Common Elements, as set forth in this Declaration.

D. Several of the particulars relating to each Unit are described more fully on Exhibit "A", attached hereto and incorporated by this reference. Pursuant to I.C. § 55-1505(b), Exhibit "A" sets forth a description of each Unit, including, without limitation, the identifying number, symbol or name of each Unit as shown on the Survey/Plan and the Allocated Interest in the Common Elements attributable to each Unit.

E. Declarant intends by this document to impose upon the Property mutually beneficial restrictions under a general plan of ownership and operation of the Property for the benefit of all of the said Units and the Owners thereof.

F. Declarant hereby declares that the Property is held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold, and improved, subject to the following declarations, limitations, covenants, conditions, restrictions, and easements, all of which are for the purpose of enhancing and protecting the value and attractiveness of the Property, and every part thereof, in accordance with the plan for the establishment of a condominium regime. All of the limitations, covenants, conditions, restrictions, and easements constitute covenants and encumbrances which run with the land and are perpetually binding upon Declarant and its successors-in-interest and assigns, and all parties having or acquiring any right, title, or interest in or to any part of the Property.

**ARTICLE 1.**  
**DEFINITIONS**

Unless otherwise expressly provided, the following words and phrases, when used in this Declaration and in the Project Documents, have the following meanings:

Act: the Idaho Condominium Property Act as set forth in Title 55 Idaho Code, Chapter 15 or subsequent superseding Idaho laws.

Allocated Interest: the undivided co-tenancy interest in the Common Elements, the share of liability for the Common Expenses allocated to each Unit, and the voting power in the Association allocated and attributable to each Unit, as fixed per I.C. § 55-1505(c) and as set forth on Exhibit "A".

Articles: the Articles of Incorporation of the Association as may be restated or amended from time to time.

Assessment: all sums chargeable by the Association against a Unit, to cover such Unit's share of the cost of maintaining, improving, repairing, operating, insuring and managing the Property, together with fines, interest, late charges, and costs of collection, all as set forth in Article 6 of this Declaration. Assessments may be designated as Regular Assessments, Extraordinary Assessments, or Special Assessments, as those terms are more specifically defined in Article 6.

Association: Hanley Lofts Condominium Association, Inc., an Idaho nonprofit corporation, formed by Declarant in conjunction with the creation of the condominium regime, the Members of which are the Owners of Units as provided herein.

Board or Board of Directors: the governing body of the Association.

Budget: the budget adopted by the Board and ratified by the Members pursuant to Section 6.2.

Bylaws: the Bylaws of the Association as may be restated or amended from time to time.

Class A Member: is defined in Section 2.6.

Class B Member: is defined in Section 2.6.

Committee: is defined in Section 4.1.

Common Elements: the entire Property, excluding only the Units and, without limiting the foregoing, including the Limited Common Elements. The rights and restrictions pertaining to the use of the Common Elements are further described in Article 3 of this Declaration.

Common Expenses: expenditures made by or financial liabilities of the Association, together with any allocations for reserves. Without limiting the generality or scope of the foregoing, the Common Expenses include the actual and estimated expenses of: maintenance,

improvement, repair, operation, insurance and management of the Common Elements; property and other taxes and assessments on the Common Elements (or otherwise payable by the Association); the providing of utility services which are not metered to separate Units; administration of the Association (including legal fees, collection costs and fees for services provided to the Committee); recoupment of unpaid assessments against a foreclosed Unit; expenditures designated as Common Expenses by or pursuant to the Project Documents or the Board; and any reasonable reserves for such purposes as determined by the Board.

Condominium: means the condominium created by this Declaration and related Survey/Plan, pursuant to the Act.

Declarant: Hanley Lofts LLC, an Idaho limited liability company, and its successors-in-interest and assigns with respect to the entire Property. The term "Declarant" does not include independent third parties acquiring Units, but includes, without limitation, any third person who succeeds to any special Declarant rights reserved under this Declaration.

Declarant Control: is the period of time beginning on the date this Declaration is first recorded in the real property records of Kootenai County, Idaho, and ending as set forth in Section 2.12 (c). After the termination of the period of Declarant Control, Declarant, if still an Owner, will continue to have all the rights and duties ordinarily given to Owners under this Declaration.

Declaration: this Declaration of Covenants, Conditions and Restrictions, as it may be restated or amended from time to time.

Disputes: is defined in Section 15.4(a).

Director: a member of the Board of Directors.

Eligible Guarantor: is defined in Article 12.

Eligible Holder: is defined in Article 12.

Eligible Insurer: is defined in Article 12.

Excluded Matters: is defined in Section 15.4(b).

FHA: is defined in Section 9.2.

FNMA: is defined in Section 9.2.

Garage: means an enclosed garage area appurtenant to a Unit used primarily for storage of vehicles.

GNMA: is defined in Section 9.2.

Limited Common Elements: those portions of the Common Elements and facilities set aside for exclusive use by one or more Owners (but less than all Owners), pursuant to Article 3 of this Declaration.



Master Association: Coeur d'Alene Place Master Association, Inc., an Idaho nonprofit corporation.

Master Declaration: that certain Master Declaration of Covenants, Conditions, Restrictions for Coeur d'Alene Place Master Association, dated January 6, 1995, and recorded on January 6, 1995, in the real property records of Kootenai County, Idaho, under recording number 1383804, as it may be amended or supplemented from time to time.

Master Association Documents: the Master Declaration, plat, articles of incorporation, bylaws, and rules and regulations of the Master Association, as each may be restated or amended from time to time.

Member: a person entitled to membership in the Association as provided herein and in the Articles.

Mortgage: includes a recorded mortgage, deed of trust, real estate contract, or other instrument creating a security interest in any Unit.

Mortgagee: includes a mortgagee, beneficiary or holder of a deed of trust, real estate contract vendor, or other holder of a mortgage (including Declarant or Declarant's assignee with respect to any purchase-money security interests retained by Declarant on sale of any Unit).

Mortgagor: includes a mortgagor, the trustor of a deed of trust, real estate contract vendee or other individual granting a security interest in any Unit.

Officer: the President, Vice-President, Secretary, and Treasurer, and such other Officers as the Board may, from time to time, by resolution create.

Owner or Owners: the record holder or holders of title of a Unit. This includes, without limitation, any person having a fee simple title to any Unit, but excludes, without limitation, persons or entities having any interest merely as security for the performance of any obligation. Further, if a Unit is sold under a recorded contract of sale to a purchaser, the purchaser, rather than the fee owner, is considered the "Owner."

Person: any individual or any corporation, joint venture, limited liability company, limited partnership, partnership, firm, association, trust, or other similar entity or organization.

Project Documents: this Declaration, the Survey/Plan, and the Articles, Bylaws, and Rules and Regulations of the Association, as each may be restated or amended from time to time.

Property: the real property described in this Declaration, together with every building, improvement or structure thereon, and every easement or right appurtenant thereto, and all personal property intended for use in connection therewith or for the use, benefit or enjoyment of the Owners.

Special Declarant Rights: those rights reserved to Declarant, described in Section 14.3.

Special Development Rights: those development rights described in Section 14.4.

Survey/Plan: collectively, the recorded plat or survey map showing the surface of the ground included within the Property, together with the recorded diagrammatic floor plan or plans of any building thereon, which identifies each Unit and shows its relative location and approximate dimensions and elevations.

TMC: is defined in Section 9.2.

Unit: a physical portion of the Property used for dwelling designated for separate ownership, and an individual enclosed Garage. The walls, floors or ceilings are the boundaries of a Unit, and all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces thereof shall be deemed part of a Unit. All other portions of the walls, floors, and ceilings, including, without limitation, the balconies, and the entirety of all window glass, window frames, and window seals, are part of the Common Elements. In interpreting this Declaration, the Survey/Plan, and deeds to Owners, the existing physical boundaries of each Unit as originally constructed or as reconstructed as permitted in this Declaration are conclusively presumed to be its boundaries rather than the metes and bounds expressed or depicted in the Survey/Plan or deeds to Owners, regardless of settling or lateral movement of the building and regardless of minor variance between boundaries shown in the Survey/Plan or deeds to Owners, and the actual boundaries of the Units.

VA: is defined in Section 9.2.

## ARTICLE 2.

### **ASSOCIATION, ADMINISTRATION, MEMBERSHIP AND VOTING RIGHTS**

2.1 Organization of Association. The Association is incorporated under the name of Hanley Lofts Condominium Association, as a nonprofit corporation under the Idaho Nonprofit Corporation Act.

2.2 Master Declaration; Master Association. The Condominium is a portion of a larger development and is subject to the provisions of the Master Declaration. Owners are also “Owners” as that term is defined in the Master Declaration and are subject to the Master Association Documents.

2.3 Duties and Powers. The duties and powers of the Association are those set forth in this Declaration, and in the Articles and Bylaws, together with its general and implied powers as a nonprofit corporation, generally to do any and all things that a nonprofit corporation organized under the laws of the State of Idaho may lawfully do and which are necessary or proper in operating for the peace, health comfort, safety and general welfare of its Members, subject only to the limitations upon the exercise of such powers as are expressly set forth in this Declaration, the Articles, and the Bylaws. Some of these duties and powers are noted below:

- (a) Adopt and amend Bylaws, rules, and regulations;
- (b) Adopt and amend budgets for revenues, expenditures, and reserves, and impose and collect Assessments for Common Expenses and/or special charges for maintenance work on Limited Common Elements from Owners;

(c) Hire and discharge or contract with managing agents and other employees, agents, and independent contractors;

(d) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Owners on matters affecting the Condominium, pursuant to I.C. § 55-1513.

(e) Make contracts and incur liabilities;

(f) Regulate the use, maintenance, repair, replacement, and modification of Common Elements;

(g) Cause additional improvements to be made as a part of the Common Elements;

(h) Acquire, hold, encumber, convey in its own name, any right, title, or interest to personal property;

(i) Grant easements, leases, licenses, and concessions through or over the Common Elements and petition for or consent to the vacation of streets and alleys;

(j) Impose and collect any payments, fees, or charges for the use, rental, or operation of the Common Elements, other than Limited Common Elements described in Section 3.5, and for services provided to Owners;

(k) Impose and collect as a Special Assessment charges for late payment of assessments pursuant to I.C. § 55-1518 and, after notice and an opportunity to be heard by the Board or by such representative designated by the Board and in accordance with such procedures as provided in the Declaration or Bylaws or rules and regulations adopted by the Board;

(l) Impose as Special Assessments reasonable fines pursuant to I.C. § 55-115, and in accordance with a previously established schedule thereof adopted by the Board and finished to the Owners for violations of the Declaration, Bylaws, and rules and regulations of the Association;

(m) Impose and collect reasonable charges for the preparation and recording of amendments to the Declaration and statements of unpaid Assessments;

(n) Provide for the indemnification of its Officers and Board and maintain Directors' and Officers' liability insurance;

(o) Exercise any other powers conferred by the Declaration or Bylaws;

(p) Exercise any other powers necessary and proper for the governance and operation of the Association;

(q) Maintain and repair any Unit, its appurtenances and appliances, and any Limited Common Element not included in maintenance work, if such maintenance or repair is reasonably necessary in the discretion of the Board to protect the Common Elements or preserve the appearance and value of the Condominium, and the Owner of said Unit has failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair has been delivered by the Board to Owner; provided that the Board shall levy a Special Assessment against the Unit of such Owner for the cost of such maintenance or repair; and

(r) Pay any amount necessary to discharge any lien or encumbrance levied against the entire Property or any part thereof, which is claimed to or may, in the opinion of the Board, constitute a lien against the Property or against the Common Elements, rather than merely against the interest therein of particular Owners. Where one or more Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it, and any costs and expenses (including court costs and attorney fees) incurred by the Board by reason of such lien or liens shall be specially charged against the Owners and the Units responsible to the extent of their responsibility.

(s) Appoint a receiver for the Association pursuant to I.C. § 55-1512.

2.4 Membership. The Owner of a Unit automatically, upon becoming the Owner of that Unit, is a Member of the Association, and remains a Member thereof until such time as its ownership is transferred as set forth in Section 2.5, at which time such membership in the Association automatically ceases. The membership is appurtenant to the Unit owned by such Owner.

2.5 Transferred Membership. Membership in the Association may not be transferred, pledged, or alienated in any way, except upon either the transfer of ownership of the Unit to which it is appurtenant, and then only to the new Owner, or the transfer to a bona fide Mortgagee. Any attempt to make a prohibited transfer is void. In the event the Owner of any Unit should fail or refuse to transfer the membership registered in such Owner's name to the purchaser of the Unit, the Association has the right to record the transfer upon its books and thereupon the old membership outstanding in the name of the seller will be null and void.

2.6 Classes of Membership: Voting Requirements. Until the expiration of the period of Declarant Control, the Association will have two (2) class of voting membership. A "**Class A Member**" is each Owner of a Unit, except for the Declarant during the period of Declarant Control. Class A Members are entitled to one (1) vote per Unit owned by such Class A Member. Until the expiration of the period of Declarant Control, the Declarant is a "**Class B Member**" and is entitled to ten (10) votes per Unit owned by Declarant. Upon the termination of the period of Declarant Control, Declarant, if still an Owner of a Unit, will become a Class A Member and will be entitled to one (1) vote for each Unit owned by Declarant. Except as specifically set forth herein, voting requirements are as set forth in the Articles and Bylaws.

2.7 Multiple Owners. Owners of a Unit as joint tenants, tenants in common, community property, or other ownership involving more than one owner, shall be joint Members of the Association, but the sum total of their vote shall not exceed the voting power allocated to the Unit owned.

2.8 Proxies. Votes allocated to a Unit may be cast pursuant to a proxy duly executed by an Owner, subject to such limitations as may be set forth in the Bylaws. If a Unit is owned by more than one person, each owner of the Unit may vote or register protest to the casting of votes by the other Owners of the Unit through a duly executed proxy. An Owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. Unless stated otherwise in the proxy, a proxy terminates eleven (11) months after its date of issuance.

2.9 Pledged Votes. If an Owner is in default under a first Mortgage on the Unit for ninety (90) consecutive days or more, the Mortgagee is automatically authorized to declare at any time thereafter that the Owner has pledged the Owner's vote on all issues to the Mortgagee during the continuance of the default. If the Board has been notified of and provided a copy of any such pledge, only the vote of the Mortgagee will be recognized in regard to the matters upon which the vote is so pledged. Amendments to this subsection are only effective upon the written consent of all the voting Owners and their respective Mortgagees, if any.

2.10 Meetings. The Association shall hold Annual Membership Meetings, Regular Membership Meetings and Special Membership Meetings (collectively, "**Membership Meetings**") in accordance with the Bylaws. Notice of a Membership Meeting shall be provided to Members no fewer than ten (10) days and no more than sixty (60) days before the meeting date. Notice for Membership Meetings must include the place, date, and time of the meeting. Notice may be sent by electronic transmission (including emails) or otherwise by first class mail.

2.11 Quorums. A quorum is present throughout any meeting of the Association if the Owners of twenty percent (20%) of the Allocated Interests (and Declarant, if Declarant holds at least twenty percent (20%) of the total Allocated Interests) are present in person or by proxy at the beginning of the meeting. A quorum is deemed present throughout any meeting of the Board if persons entitled to cast a majority of the votes on the Board are present at the beginning of the meeting.

2.12 Board of Directors. Following the period of Declarant Control, the number of Directors, election procedure for Directors and Board meeting requirements will be established by the Bylaws. To assure Declarant reasonable control of the Association during the development and sale of the Units, Declarant has the right to appoint the initial Directors according to the following:

(a) Until sixty (60) days after conveyance of fifty percent (50%) of the Units to Owners other than Declarant, Declarant shall appoint all Directors.

(b) Commencing sixty (60) days after conveyance of fifty percent (50%) of the Units to Owners other than Declarant, at least two (2) Directors shall be elected by the Members other than Declarant;

(c) The period of Declarant control will terminate automatically on the earliest of: (i) sixty (60) days after conveyance of seventy-five percent (75%) of the Units to Owners other than Declarant; (ii) two (2) years after the last conveyance or transfer of record of any Unit except as security for a debt; (iii) five (5) years following the first conveyance of any Unit; or (iv) the date on which Declarant records an amendment to this Declaration voluntarily surrendering the right to appoint Directors. Within thirty (30) days following termination of Declarant control, the Members shall elect a Board of Directors.

2.13 Removal of Board. The Owners, by a two-thirds vote of the total voting power present and entitled to vote at any meeting of the Owners at which a quorum is present, may remove any Director, with or without cause, other than a Director, if any, appointed by Declarant. Declarant may not remove any Director elected by the other Owners.

2.14 Management by Board. Except as otherwise provided in the Declaration, the Bylaws, or the Act, the Board shall act in all instances on behalf of the Association, in the performance of its duties, and the Directors are required to exercise: (a) if appointed by Declarant, the care required of fiduciaries of the Owners; or (b) if elected by the Owners, ordinary and reasonable care.

2.15 Use of Agent. The Board of Directors, on behalf of the Association, may contract with a professional management agent for the performance of maintenance and repair and for conducting other activities on behalf of the Association, as may be determined by the Board, subject to such limitations as may be set forth in the Bylaws.

2.16 Power of Attorney. Declarant, on behalf of all Owners, hereby grants to the Association an irrevocable Power of Attorney to sell and convey the entire Property for the benefit of all Owners thereof, when partition of the Property may be had under the terms of this Declaration or by law, and to sell, convey, encumber and otherwise transfer the real property located within the Common Elements, which powers will: (i) be binding upon all Owners, whether they expressly assume the obligations of the Declaration or not; (ii) be exercisable by a majority of the Board (following the appropriate vote of authorization by eighty percent (80%) of the Allocated Interests, as required hereunder and by law); and (iii) be exercisable only after the recordation of a certificate by those who have the right to exercise such Power of Attorney that such Power of Attorney is properly exercisable under this Declaration, which certificate shall be conclusive evidence of the facts recited therein in favor of any person relying thereon in good faith; provided that each Owner may convey such Owner's undivided interest in the Common Elements together with the Owner's Unit, in compliance with Section 3.3, below.

2.17 Borrowing by Association. In the discharge of its duties and the exercise of its powers as set forth in Section 2.2, but subject to the limitations set forth in this Declaration, the Board may borrow funds on behalf of the Association and to secure the repayment of such funds, assess each Unit (and the Owner thereof) for said Unit's pro rata share of said borrowed funds. The obligation to pay the pro rata share is a lien against each Unit. The Owner of a Unit may remove the Owner's Unit from the lien by payment of the Assessment. Subsequent to any such payment, discharge, or satisfaction, the Unit will be free and clear of the liens so paid, satisfied, or discharged. Such partial payment, satisfaction, or discharge does not prevent the lienor from

proceeding to enforce the lienor's rights against any Unit for any lien not so paid, satisfied, or discharged.

2.18 Association Records and Funds. The Association shall keep financial records sufficiently detailed to enable the Association to comply with the Act. All financial and other records shall be made reasonably available for examination by any Owner, the Owner's authorized agents and all Mortgagees. At least annually, the Association shall prepare, or cause to be prepared, a financial statement of the Association. The funds of the Association shall not be commingled with the funds of any other Association, nor with the funds of any manager of the Association, or any other person responsible for the custody of such funds. Any reserve funds of the Association shall be kept in a segregated account and any transaction affecting such funds, including the issuance of checks, will require the signature of at least two (2) persons who are Officers or Directors.

2.19 Transfer of Administration. Within thirty (30) days after the termination of the period of Declarant Control, the Board shall call a meeting of the Association for the purpose of electing the new Board as set forth in the Bylaws. Within sixty (60) days after the termination of the period of Declarant Control, Declarant shall deliver to the Association all property of the Owners and the Association held or controlled by Declarant.

2.20 Additional Property. Declarant may, in its sole discretion and by its sole act, add any real property it owns to the Property by the execution and recording of an addendum to this Declaration in the land records of Kootenai County, Idaho and may construct multiple buildings on the Property. SOME OF THE EFFECTS OF THE FOREGOING WOULD BE TO INCREASE THE NUMBER OF UNITS, THE NUMBER OF PERSONS USING THE COMMON ELEMENTS, THE NUMBER OF MEMBERS OF THE ASSOCIATION, THE SIZE OF THE ASSOCIATION'S BUDGET AND THE TOTAL NUMBER OF VOTES THAT MAY BE CAST BY MEMBERS.

2.21 Approval of Association Proceedings. Except as provided in this Section, the Association shall not commence a judicial or administrative proceeding, including, without limitation, any proceeding described in Section 15.4, without the approval of two-thirds of the Allocated Interests of the Owners. This Section will not apply to (a) actions brought by the Association to enforce the Project Documents (including, without limitation, the foreclosure of liens), (b) the collection of Assessments; (c) proceedings involving challenges to ad valorem taxation; (d) counterclaims brought by the Association in proceedings instituted against it; or (e) actions brought by the Association against any contractor or vendor arising out of a contract for services or supplies between the Association and such contractor or vendor. This Section cannot be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

2.22 Implied Rights and Obligations. Except as they may have been delegated to the Master Association, the Association will perform all of the duties and obligations imposed on it expressly by the Project Documents, together with every other duty or obligation reasonably to be implied by the express provisions of the Project Documents or reasonably necessary to satisfy any such duty or obligation. The Association may exercise any other right or privilege (a) given to it expressly by the Project Documents, (b) reasonably to be implied from the existence of another

right or privilege given expressly by the Project Documents or (c) reasonably necessary to effectuate any such right or privilege.

**ARTICLE 3.**  
**RIGHTS IN COMMON ELEMENTS**

3.1 Common Elements. The Common Elements consist of all of the Property, other than the Units, as provided in the Act. Each Owner has, as appurtenant to the Owner's Unit, an undivided interest in the Common Elements equal to the Allocated Interests set forth in Exhibit "A." Each Owner also has a nonexclusive right to use the Common Elements (other than the Limited Common Elements) in accordance with the purposes for which it is intended, without hindering the exercise of or encroaching upon the lawful rights of any other Owner(s), subject to rules and regulations enacted by authority of the Board.

3.2 Ownership of Common Elements. Even though all Owners have undivided interests in the Common Elements, the Common Elements may not be separately sold, conveyed, encumbered, or otherwise transferred by any individual Owner. The Association, acting by and through the Board of Directors, has all right and authority in and to the Common Elements, except as otherwise set forth in this Declaration.

3.3 No Separate Conveyance of Undivided Interests. The undivided interests in the Common Elements and the fee title to the respective Units may not be separated or separately conveyed. Each such undivided interest is hereby declared to be permanent in character and unalterable except by amendment of this Declaration, and is deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the fee title to the Unit.

3.4 Partition Prohibited. Except as permitted by law or by this Declaration, the Common Elements will remain undivided as set forth above, and no Owner may bring any action for partition or division of any part of the Common Elements, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Property. Judicial partition by sale of a single Unit owned by two or more persons, and division of the sale proceeds, is not prohibited under this Declaration (but physical partition of a single Unit is prohibited).

3.5 Limited Common Elements. Portions of the Common Elements referred to as "Limited Common Elements," are hereby set aside and allocated for the perpetual exclusive use of the Owners of individual Units. The Limited Common Elements include, without limitation:

(a) Any portion of any window, window frame, window sealant, chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture that services a single Unit (any portion of any such item that services more than one Unit or any portion of the Common Elements is a part of the Common Elements);

(b) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, and all exterior doors and windows or other fixtures designed to services a single Unit, but which are located outside the Unit's boundaries; and



(c) The storage areas appurtenant to various Units, as reflected on the Survey/Plan.

3.6 Regulation of Common Elements Use. The rights and easements of use and enjoyment of the Common Elements created by this Declaration, including, without limitation, any Common Elements, if any, are subject to such rules and regulations as may be adopted by the Board of Directors. The beneficial use of the exercise facility, swimming pool, and other similar Common Elements, if any, must benefit each Owner equally. Without otherwise limiting the generality of the Board's authority to enact reasonable rules and regulations, such rights are subject to the following:

(a) The right of the Board to suspend the rights (including the right to use any easement) of any Member, and the persons deriving such rights and easements from any Member, for use and enjoyment of any part of the Common Elements (other than areas reasonably required for access to that Member's or the use of that Member's Unit), for any period during which the payment of any Assessment against the Member and the Member's Unit remains delinquent, or during which the Member may otherwise be in breach of the Project Documents; provided, however, that any suspension for either nonpayment of any Assessment or breach of any provision in the Project Documents does not constitute a waiver or discharge of the Member's obligation to pay Assessments or to comply with the Project Documents as provided in this Declaration;

(b) The right of the Board to consent to or otherwise cause the construction of additional improvements on the Common Elements and to consent to or otherwise cause the alteration or removal or any existing improvements on the Common Elements for the benefit of the Members of the Association;

(c) The right of the Board to consent to or join in the grant or conveyance of easements, licenses, or rights of way in, on, or over the Common Elements for utilities or other purposes not inconsistent with the intended use of the Property as a residential condominium project;

(d) The rights and reservations of Declarant as set forth in this Declaration; and

(e) The right of the Board to reasonably restrict access to roofs, maintenance areas and other Common Elements of the Property.

3.7 Delegation of Use. Any Member entitled to the right and easement of use and enjoyment of the Common Elements may delegate such right to its tenants or subtenants who are occupying the Member's Unit, subject to reasonable regulation by the Board. An Owner who has made such a delegation of rights is not entitled to the use or enjoyment of any part of the Common Elements for so long as such delegation remains in effect.

3.8 Damage by Member. Each Member is liable to the Association for any damage to the Common Elements not fully reimbursed to the Association by insurance, if the damage is sustained because of the negligence, willful misconduct, or unauthorized or improper use,

installation or maintenance of any improvement by the Member, or by any guest, tenant, family member, employee, or invitee of the Member. However, the Association, acting through the Board, reserves the right to determine whether any claim will be made upon the insurance maintained by the Association, and the Association further reserves the right to levy a Special Assessment against such Member's Unit, equal to the increase, if any, in insurance premiums directly attributable to the damage caused by the Member or the person for whom the Member may be liable as described above. The cost of correcting the damage to the extent not reimbursed to the Association by insurance will be a Special Assessment against such Unit and may be enforced as provided herein for the enforcement of other Assessments.

#### **ARTICLE 4.**

#### **ARCHITECTURAL CONTROL; UNIT RECONFIGURATION**

4.1 Architectural Control Committee. Declarant hereby creates an Architectural Control Committee consisting of no less than three (3) nor more than five (5) Committee members. The initial members of the Architectural Control Committee (the "**Committee**") shall be appointed by Declarant prior to the sale of any Unit within the Property. Declarant retains the rights to select, appoint, supervise, and remove all members of the Architectural Control Committee until the earlier to occur of: (a) the date that is fifty (50) years following the date this Declaration is recorded, and (b) when the Declarant voluntarily surrenders all rights to select, appoint supervise and remove Committee members as evidenced by written notification to the Board of such relinquishment of rights. Thereafter, members of the Architectural Control Committee shall be appointed by the Board. Individuals appointed to the Architectural Control Committee, other than those appointed by Declarant, must be from the membership of the Association. The members of the Committee shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder. Neither the Committee nor any member of the Committee is liable in damages or otherwise for decisions made in good faith pursuant to the authority granted in this Article.

4.2 Prohibition of Alteration and Improvement. Subject to I.C. §§ 55-115(5) and (6)(a) - (b) and the exemption of Declarant hereunder, no building, sign, fence, wall, obstruction, awning, window treatment, improvement, or structure of any kind, which would be visible from the Common Elements or any other area outside of any Unit itself, shall be commenced, erected, painted or maintained upon the Property, nor shall any alteration or improvement of any kind be made thereto, unless and until the same has been approved in writing by the Board or by the Architectural Control Committee appointed by Declarant or the Board, as provided in this Article.

4.3 Plans and Approval. Plans and specifications showing the nature, kind, shape, color, size, materials and location of such improvements or alterations, or the size, lettering and general appearance of any sign, shall be submitted to the Board or Committee for approval as to quality of workmanship and design, and harmony of external design with existing structures, and as to location in relation to surrounding structures, topography, and finish grade elevation. Such submission will require a review fee. The Committee, from time to time, shall determine the amount of such fee in a reasonable manner. Such fees shall be used to defray the costs and expenses of Committee, including the cost and expense of hiring architect(s), as provided above, or for such other purposes as established by the Declarant (or the Board at such time when Declarant no longer has the right to appoint and remove members of the Committee). No permission or approval will

be required to rebuild in accordance with the original plans and specifications, or to rebuild in accordance with plans and specifications previously approved by the Board or the Committee.

The Board or Committee shall consider and act upon any and all plans and specifications submitted for its approval under this Article and perform such other duties as from time to time shall be deemed appropriate by the Board, including the inspection of construction in progress to assure its conformance with plans approved by the Board or Committee. Any application submitted to the Board or Committee pursuant to this Article is deemed disapproved, unless written approval shall have been transmitted to the applicant within thirty (30) days after the date of receipt by the Board or the Committee of all required materials.

## **ARTICLE 5.** **REPAIR AND MAINTENANCE**

5.1 Repair and Maintenance Rights and Duties of Association. Subject to provisions in this Declaration pertaining to eminent domain and destruction of improvements, the Association shall paint, maintain, repair and replace the Common Elements and facilities thereon, and all portions of the Common Elements (other than the Limited Common Elements, which are to be maintained by individual Owners pursuant to Section 5.2, below), or shall contract for such maintenance, repair and replacement to assure maintenance of such Common Elements and facilities thereon in good condition, reasonable wear and tear excepted. For the purpose of performing the maintenance, repair or replacement of the Common Elements and facilities thereon as authorized by this Article, or for purposes of making emergency repairs necessary to prevent damage to such Common Elements or to individual Units, or for any other purpose reasonably related to the performance by the Board of its responsibilities under this Declaration, the Board (and its agents and employees) has an irrevocable easement over and onto all portions of the Common Elements (including the Limited Common Elements), and also has the irrevocable right, after reasonable notice to the Owner, and at reasonable hours, to enter any Unit.

5.2 Repair and Maintenance Rights and Duties of Owners. Except for those portions of the Property which the Association is required to maintain and repair, each Owner shall, at the Owner's sole cost and expense, maintain, repair and replace his or her Unit and the Limited Common Elements appurtenant to such Unit, keeping the same in good order, condition and repair. Additionally, each Owner shall maintain, repair and replace as necessary any separate air conditioning, water heating, or other utility unit or equipment which services only the Owner's Unit. Each Owner has the exclusive right to paint, plaster, panel, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floors, windows and doors constituting part of the Owner's Unit; provided that any floor area with installed carpeting in a non-ground-floor Unit (at the time of conveyance of the Unit) must remain a carpeted floor area, unless the written consent of the Architectural Control Committee and of the Owner of any Units below the carpeted are obtained. In the event an Owner fails to maintain the Owner's Unit or Limited Common Elements as provided herein in a manner which the Architectural Control Committee deems necessary to preserve the appearance and value of the Property, Architectural Control Committee may notify the Owner of the work required and request it be done within sixty (60) days, or such lesser period of time necessary to the health and welfare of the other Owners, from the giving of such notice. In the event the Owner fails to carry out such maintenance within such period, the Architectural Control Committee may cause such work to be done and may specially

assess the cost thereof to such Owner. Decisions with respect to the standard of appearance and condition of Units and of Limited Common Elements, and with respect to the necessity for and manner of caring for, maintaining, repairing, repainting or redecorating Units and Limited Common Elements shall be made by the Architectural Control Committee. The provisions of this Section are subject to the requirements set forth in Article 4 (architectural control) and Article 8 (use restrictions), and nothing in this Section permits an Owner to alter any other portion of the Limited Common Elements, including without limitation any structural portions of the buildings.

5.3 Right of Entry. The Board and its agents or employees, may enter any Unit or Limited Common Element when necessary in connection with any maintenance, landscaping or construction for which the Board is responsible or in the event of emergencies. Such entry shall be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Board and paid for as a Common Expense if the entry was due to an emergency, or for the purpose of maintenance or repairs to Common or Limited Common Elements where the repairs were undertaken by or under the direction or authority of the Board; provided, if the repairs or maintenance were necessitated by or for the Unit entered or its Owners, or requested by its Owners, the costs thereof shall be specially charged to such Unit. In furtherance of the foregoing, the Board (or its designated agent) has the right at all times to possess such keys and/or lock combinations as are necessary to gain immediate access to Units and Limited Common Element.

## **ARTICLE 6.**

### **ASSOCIATION ASSESSMENTS AND FUNDS**

6.1 Covenant to Pay. Each Owner, by accepting a deed or entering into a recorded contract of sale, agrees to pay and shall pay to the Association on or before their due dates all Assessments, fees, costs and other charges payable under this Declaration or the other Project Documents. Such Assessments, fees, costs and other charges, together with interest, late charges, costs and reasonable attorneys' fees will be a personal obligation of each Owner and charge and continuing lien against each Unit against which they are made. Upon a conveyance of title to a Unit, the grantee will be jointly and severally liable for any sums due at the time of conveyance. Failure of the Board to fix Assessment amounts or rates or to deliver each Owner an Assessment notice will not be deemed a waiver, modification or a release of any Owner from the obligation to pay Assessments. No Owner may exempt itself from liability for assessments by non-use of Common Elements, abandonment of a Unit or any other means. No diminution or abatement of Assessments or set-off may be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or replacements, or from any other action it takes.

#### 6.2 Budget

(a) Preparation. The Association's fiscal year will commence each January 1st and end on December 31, unless the Board designates another fiscal year. At least thirty (30) days prior to the beginning of each fiscal year, the Board shall prepare a Budget of the estimated Common Expenses for the coming year, including any contributions to be made to reserve accounts. The Budget must reflect the sources and estimated amounts of funds to cover such expenses, which may

include any surplus from prior years, any income expected from sources other than assessments, and the amount to be generated via assessments. Subject to the ratification requirements set forth below, the Board may revise the Budget from time to time to account for and defray additional expenses of the Association. Upon ratification of a Budget each such fiscal year, the Board shall assess all Units with assessments as provided in this Declaration.

(b) Ratification. Within 30 days after the adoption by the Board of any proposed regular or special Budget, the Board shall mail a summary of the Budget to all Members and shall call for a meeting of the Members to consider ratification of the Budget. The date of the meeting cannot be less than fourteen (14) days, nor more than sixty (60) days, after the mailing of the summary. The Budget will be automatically be ratified unless disapproved at a meeting by at least two-thirds of the Allocated Interests of all the Owners. Such ratification will be effective regardless of whether a quorum is present.

(c) Disapproved Budget. If any proposed Budget is disapproved or the Board fails for any reason to determine the Budget for any fiscal year, then the Budget most recently in effect will continue in effect until a new Budget is ratified.

6.3 Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Unit owned by Declarant, hereby covenants, and each Owner of any Unit by acceptance of a deed therefore, whether or not it so expresses in such deed, is deemed to covenant and agree to pay to the Association the following Assessments, which are established and collected as provided herein and in the Act:

- (a) Regular Assessments;
- (b) Extraordinary Assessments; and
- (c) Special Assessments.

Each Assessment, together with interest, costs, penalties and actual attorneys' fees, is a charge and a continuing lien upon the Unit against which each Assessment is made, the lien to become effective from the time the Assessment is due. Each such Assessment, together with interest, costs, penalties and actual attorneys' fees, is also the personal obligation of the person who was the Owner of such Unit at the time when the Assessment became due. No Owner may exempt himself or herself from liability for the required contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Elements or by the abandonment of his or her Unit. Assessments and other receipts received by the Association on behalf of the Condominium shall belong to the Association.

6.4 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of all the Owners of Units and for the improvement and maintenance of the Common Elements for the common good of the Property. The Regular Assessments will include an adequate reserve fund for maintenance, repair and replacement of those portions of the Common Elements, which must be replaced on a periodic

basis. Nothing in this Section precludes the Association from performing work on an Owner's Unit or Limited Common Elements in compliance with this Declaration.

6.5 Regular Assessments. Until the end of the Association's fiscal year immediately following the closing of the sale of the first Unit (or until the period of Declarant Control expires, whichever is sooner), the annual maximum Regular Assessment per Unit will be such amount as is set forth in the budget prepared by Declarant, payable in installments as determined by the Board. Each Unit's share for the first fiscal year in which Assessments are made will be prorated based on the number of months remaining in that fiscal year. Thereafter, the Board shall determine and fix the amount of the maximum annual Regular Assessment against each Unit.

6.6 Extraordinary Assessments. In addition to the Regular Assessments authorized above, the Board may levy, in any fiscal year, an Extraordinary Assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements, including fixtures and personal property related thereto, or to defray any unanticipated or underestimated Regular Assessment; provided, however, that the aggregate Extraordinary Assessments for any fiscal year shall not exceed five percent (5%) of the budgeted gross expenses of the Association (excluding reserves) for that fiscal year, without the vote or written assent of a majority of the Allocated Interests of the Association.

6.7 Special Assessments. In addition to the Regular and Extraordinary Assessments authorized above, the Board may levy Special Assessments (without limitation as to amount or frequency) against an individual Unit and its Owner to reimburse the Association for costs incurred in bringing that Owner and the Owner's Unit into compliance with the provisions of the Project Documents, including, without limitation, interest, penalties, actual attorneys' fees and costs. The provisions of this Section are subject to the requirements set forth in Article 6 of the Bylaws.

6.8 Allocation of Assessments. Each Unit, including Units owned by Declarant, bear a share of each aggregate Regular and Extraordinary Assessments equal to the Allocated Interest, subject to the authority of the Board to make the following adjustments, in its discretion:

- (a) Common Expenses associated with the Limited Common Elements may be paid by or assessed against the Units to which the Limited Common Elements are assigned, on an equal basis among such Units;
- (b) Common Expenses benefiting fewer than all of the Units may be assessed exclusively against the Units benefited;
- (c) The cost of insurance shall be assessed in proportion to risk; and
- (d) The costs of utilities may be assessed in proportion to usage.

6.9 Date of Commencement of Assessment; Due Dates. Until the Association makes a Common Expense Assessment, Declarant shall pay all Common Expenses. However, Regular Assessments begin with respect to existing Units, in any event, no later than sixty (60) days after the conveyance of the first Unit. Declarant shall make the budget for the first Assessment and provide notice and a copy of the same to all Owners in advance of commencement. Due dates of

Assessments are the first day of every calendar month, unless otherwise provided by the Board. No notice of such Assessment is required, other than an annual notice setting forth the amount and frequency of the Assessment for the following year, together with a copy of the ratified budget.

6.10 Working Capital Fund. A working capital fund shall be established to meet unforeseen expenditures or to purchase any additional equipment or services reasonably required in the discretion of the Board, with the fund to be established by deposits at the closing of the first conveyance of each Unit, and any subsequent conveyance of a Unit, paid by the buyer in an amount equal to two months of the then-current Regular Assessment. Amounts paid into the fund are reserve funds under Section 6.3, above, and are not advance payments of the monthly Regular Assessments. The working capital fund shall be transferred to the Association for deposit to a segregated account when control of the Association is transferred to the Owners. Declarant has no right to use the working capital fund to defray any of its expenses, reserve contributions, or construction costs, or to make up any budget deficits during the period of Declarant Control.

6.11 Transfer of Unit by Sale or Foreclosure. Pursuant to I.C. § 55-1528(2), on or before January 1 of each year the Association shall provide to all Owners a disclosure of fees that will be charged to an Owner in connection with any transfer of ownership of a Unit. The sale or transfer of any Unit does not affect any Assessment lien, or relieve the Unit from any liability, whether the lien pertains to payments becoming due prior or subsequent to such sale or transfer, and any lien shall have the priority set forth in I.C. § 55-1518. Notwithstanding the foregoing, if the sale or transfer of any Unit pursuant to foreclosure or by deed in lieu of foreclosure of a recorded first Mortgage given in good faith and for value extinguishes a lien of any Assessments, such sale or transfer pursuant to Mortgage foreclosure will not affect the personal liability of the Owner or former Owner for unpaid Assessments. Any Assessments for which the liens are extinguished are deemed Common Expenses collectible from all of the Units including the Unit for which the lien was extinguished. In a voluntary conveyance of a Unit, the grantee of the same is jointly and severally liable with the grantor for all unpaid Assessments by the Association against the latter for the grantor's share of the Common Expenses (and for his obligation for individual Special Assessments) up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee.

6.12 Enforcement of Assessment Obligation; Priorities; Discipline. If any part of any Assessment is not paid and received by the Association or its designated agent within thirty (30) days after the due date, an automatic late charge equal to the greater of Twenty-Five Dollars (\$25.00) or five percent (5%) of the Assessment will be added to the Assessment. After an Assessment is delinquent for at least thirty (30) days from its due date, the Assessment and the late charge shall thereafter bear interest at the rate of fifteen percent (15%) per annum (or, if lower, the highest rate permitted by law) until paid. Each unpaid Assessment, whether Regular, Extraordinary or Special, is a lien on each respective Unit with the priority specified in the Act. Such lien, when delinquent, may be enforced by sale by the Association (acting through the Board), its attorney or other person authorized by this Declaration or by law to make the sale, after failure of the Owner to pay such Assessment, in accordance with the provisions of Idaho law applicable to the exercise of powers of sale in deeds of trust, or by judicial foreclosure as a mortgage, or in any other manner permitted by law. The Association may record against any delinquent Unit in the real property records of Kootenai County a notice of such lien setting forth the amount then owing. For purposes of allowing foreclosure by power of sale, Declarant shall grant the Property to an Idaho title

insurance company in trust, with the power of sale (to be operative in the case of a default in any Assessment obligation). During any such foreclosure proceeding, the Association has all rights respecting the Unit as are set forth in I.C. § 45-810 and in the Act. The Association, acting on behalf of the Owners, has the power to bid for the Unit at the foreclosure sale, and to acquire and hold, lease, encumber and convey the same. The foreclosing party has the right to reduce or eliminate any redemption rights of the defaulting Owner as allowed by law. Suit to recover a money judgment for unpaid Assessments, rent, interest, costs, penalties, and attorneys' fees may be maintainable without foreclosing or waiving the lien securing the same. The Board may impose reasonable monetary penalties including, without limitation, actual attorneys' fees and costs and may temporarily suspend the Association membership rights of an Owner who is in default in payment of any Assessment, after notice and hearing according to the Bylaws.

6.13 Payment of Taxes Assessed Against Common Elements or Personal Property of Association. In the event that any taxes are assessed against the Common Elements, or the personal property of the Association (rather than against the Units), said taxes will be included in the Assessments made under the provisions of this Article, and, if necessary, an Extraordinary Assessment may be levied against the Units in an amount equal to said taxes (regardless of the limitation on Extraordinary Assessments set forth in Section 6.6, above). Any such Extraordinary Assessment shall be paid in two (2) installments, thirty (30) days prior to the due date of each tax installment.

6.14 Failure to Assess. Any failure by the Board or the Association to make the budget and Assessments before the expiration of any budget for the ensuing period shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or any estoppel, or a release of the Owners from the obligation to pay Assessments during that or any subsequent time period, and the monthly Assessments in amounts previously established shall continue until a new Assessment is established.

6.15 Delinquent Assessment Deposit. An Owner may be required by the Board, from time to time, to make and maintain a deposit not less than one (1) month nor in excess of three (3) months estimated monthly Assessment and charges, which may be collected, as are other Assessments and charges. Such deposit shall be held in a separate fund, be credited to the Unit owned by such Owner, and be for the purpose of establishing a reserve for delinquent Assessments. The Board may make such a requirement at any time when such Owner is ten (10) days or more delinquent in paying the Owner's monthly or other Assessments and charges. The deposits are not advance payments of Regular Assessments. In the event the Board draws upon the deposit as a result of an Owner's delinquency in payment of any Assessments, the Owner will continue to be responsible for the immediate and full payment of the delinquent Assessment (and all penalties and costs thereon) and thus the full restoration of said deposit, and the Board will continue to have all of the rights and remedies for enforcing such Assessment payment and deposit restoration as provided by this Declaration and by law. Upon the sale of a Unit, the seller/Owner thereof is not entitled to a refund from the Association of any deposit or reserve account made or maintained with respect to such Unit; rather, any such deposit or reserve account will continue to be held by the Association for the credit of such Unit, and the purchaser will succeed to the benefit thereof, and the seller will be responsible for obtaining from the purchaser appropriate compensation therefore.



**ARTICLE 7.**  
**EASEMENTS AND UTILITIES**

7.1 Access, Use and Maintenance Easements. Declarant expressly reserves for the benefit of the Owners and the Association reciprocal, nonexclusive and irrevocable easements for access, ingress and egress over all of the Common Elements, and for the use and enjoyment of all facilities thereon. Subject to the provisions of this Declaration governing use and enjoyment thereof, the easements may be used by Declarant, its successors, purchasers and all Owners, their guests, tenants, family members, and invitees, residing on or temporarily visiting the Property, for such walkways, vehicular access, and such other purposes reasonably necessary for use and enjoyment of a Unit Declarant also expressly reserves for the benefit of the Board of Directors and all agents, Officers and employees of the Association, nonexclusive and irrevocable easements over the Common Elements (including, without limitation, any Limited Common Elements) and all Units as necessary to maintain and repair the Common Elements, and to perform all other tasks in accordance with the provisions of this Declaration. Such easements over the Common Elements are appurtenant to, binding upon and will pass with the title to, every Unit conveyed.

7.2 Encroachment Easement. Each Unit has an irrevocable easement over all adjoining Units and the Common Elements for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of the building, or any other cause. Each such easement includes, without limitation, an easement for maintenance of said encroachments as long as the encroachment exists, and the rights and obligations of Owners are not altered in any way by said encroachment, settlement or shifting; provided, however, that in no event will a valid easement for encroachment be created in favor of any Owner if said encroachment occurred due to the willful misconduct of said Owner. In the event any portion of an improvement is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Unit agree that minor encroachments over adjoining Units or Common Elements are permitted and that there is a valid easement for the maintenance of said encroachments so long as the encroachments exist. Nothing in this Section obligates an Owner to remedy any encroachment, unless the encroachment occurred due to the willful misconduct of said Owner.

7.3 Utility Easements. Declarant expressly reserves for the benefit of itself and its successors-in-interest and assigns, including the Association, irrevocable easements over and under the entire Property (together with the right to grant and transfer the same) for the installation, repair, and maintenance of sanitary sewer, water, electric, heating, air conditioning and ventilation-related items, gas, data, telephone, television and other utility lines and services, as may be deemed appropriate to service the Property and the Units.

7.4 Owners' Rights and Duties With Respect to Utilities. The rights and duties of the Owners with respect to utilities are as follows:

- (a) Whenever sanitary sewer, water, electrical, gas, telephone, or television lines or connections, or heating or air conditioning conduits, ducts, flues, or other utility or service connections are located or installed within the Property, which connections, or any portion thereof, lie in or upon Units owned by other than the Owner of a Unit served by said connections, the Owners of any Unit served by said connections have the right, and are hereby granted an easement to the extent

necessary for the connection, to enter upon the Units or to have the utility companies enter upon the Units in or upon which said connections, or any portion thereof lie, to repair, replace and generally maintain said connections as and when necessary.

(b) Whenever sanitary sewer, water, electrical, gas, telephone, or television lines or connections, or heating or air conditioning conduits, ducts, flues, or other utility or service connections are located or installed within the Property, which connections serve more than one Unit, the Owner of each Unit served by said connection shall be entitled to the use and enjoyment of such portions of said connections as service the Owner's Unit.

## **ARTICLE 8.** **USE RESTRICTIONS**

In addition to all of the covenants contained herein, the use of the Property and each Unit therein is subject to the following:

8.1 Master Use Covenants and Restrictions. The use of the Units and Common Elements is subject to the provisions of the Master Declaration and the rules and regulations adopted by the Master Association from time to time, all of which are incorporated into this Declaration as if set forth herein.

8.2 Use of Individual Units. Except as provided in Section 8.4 and Section 8.5, no Unit may be occupied and used except for single-family residential purposes. Single-family residential purposes includes, without limitation, any use common within similar single-family complexes (such as, without limiting such common uses, in-home care providers).

8.3 Use of Decks and Patios; Grills. Towels, linens, clothes, and other personal effects may not be hung or otherwise be visible on decks or patios. Use of decks must comply with existing laws and regulations. Grills or barbeques may not be used on any Owner's deck, except small gas grills with propane tanks. Tanks shall not exceed one pound in size. No barbeques, outdoor heaters, outdoor fireplaces, chimneys, manufactured fire pits, fire bowls, smokers, charcoal or open flame devices of any kind are permitted.

8.4 Use of Garages. Except as provided in Section 8.5, no Garage may be occupied and used except for storage of vehicles or personal items. No Garage may be used for commercial or other non-storage purposes. Garages may not be used to house animals.

8.5 Commercial Uses; Home Offices. No Unit may be used for commercial or other non-residential purposes, except for home office businesses, which are allowed subject to the stipulation that the operation of an office business in a Unit (a) has no outward appearance of the business (e.g., no signs or advertising); (b) creates no material noise or disturbance to the other Owners; (c) is consistent with the residential character of the neighborhood and does not constitute a nuisance or a hazardous or offensive use or threaten the security or safety of other residents, as may be determined by the Board in its sole discretion; (d) does not result in more than three commercial vehicles visiting the Unit per week (exclusive of mail delivery or delivery by common carrier, such as UPS or FedEx); (e) does not involve the use of more than twenty-five percent

(25%) of the Unit's total residential floor area; and (f) is allowed by applicable laws and ordinances. Determinations as to the acceptability of commercial uses and home offices will be made by the Board, acting reasonably.

8.6 Pets and Animals. No animals shall be raised or maintained within any Unit unless otherwise specified in a duly adopted set of Rules and Regulation. The right to keep dog(s) is conditioned by a requirement that (i) all dogs be kept leashed and otherwise under strict control at all times when in the Common Elements, (ii) the Owner responsible for such animal promptly disposes of any animal waste that is deposited on the Common Elements and (iii) the Unit Owner provides evidence of liability insurance with a coverage amount set by the Board from time to time. Each Owner agrees to indemnify Declarant and the Association and hold them harmless against loss or liability of any kind arising from that Owner having any animal at the Property.

8.7 Unit Maintenance. Each Owner shall, at all times, keep in a clean, neat and orderly condition and in good repair all areas maintained by an Owner pursuant to Section 5.2 and all Limited Common Elements appurtenant to such Unit. All rubbish, trash and garbage shall be regularly removed from the Property, and no Owner shall be allowed to accumulate any trash or garbage in any Common Element or any Unit area visible from a Common Element. Trash, garbage and other waste shall be kept only in sanitary containers, which will be screened and concealed from the view of other Units, the Common Elements, and all public ways.

8.8 Nuisances. No noxious, illegal, or offensive activities may be carried on in any Unit, or in any part of the Property, nor shall anything be done thereon which may be or may become an annoyance or a nuisance to or which may in any way interfere with the quiet enjoyment of each other Owner, or which may in any way increase the rate of any insurance carried for the benefit of the Property, or cause any insurance policy to be canceled or to cause a refusal to renew the same, or which will impair the structural integrity of any building or improvement. Any question with regard to the interpretation of this Section will be determined by the Board in its sole discretion.

8.9 Conduct and Behavior. Owners and guests must exhibit conduct that will ensure the well-being of the Condominium. Any action or behavior resulting in unsafe conditions or practices, discourteous conduct, harassment, or any action that impairs the rights and privileges of other Owners or guests may result in a Special Assessment and/or loss of privileges.

8.10 Noise. Owners must be respectful of others' right to peaceful enjoyment of the Property. Owners and their guests are expected to restrict noise between certain hours set forth in the Rules and Regulations.

8.11 Smoking. Smoking of any kind or type, including without limitation, cigarettes, cigars, pipes, other tobacco products, or illegal substances is prohibited within 50 feet of any building located on the Property.

8.12 Garbage. Garbage and recycling receptacles must be kept within Garages and out of sight, but may be put outside and in front of Owners' Garages after nightfall on the night before of a contracted collection service scheduled pickup. Garbage bins must be brought inside by the night of pick up.

8.13 Vehicle and Equipment Restrictions. No utility, boat, camper or other trailer, mobile home, commercial vehicle, bus, truck (other than standard size pickup trucks), inoperable automobile, boat, or similar equipment, and no vehicle which is in an extreme state of disrepair is permitted to remain on the Property, other than temporarily (as for purposes of loading and unloading of passengers or personal property), or within such portion of the Common Elements as may be designated by the Board for such purpose. No noisy or off-road, unlicensed motor vehicles may be maintained or operated upon the Property, except such recreational vehicles as may have been approved by the Board. Neither the Association nor Declarant will be responsible for any damage to, or theft of, vehicles (or their contents) parked anywhere on the Property.

8.14 Parking. Owners and visitors must park in designated areas only. Parking is not permitted on grass, along roadways marked "No Parking", in fire lanes or any other area not designated. All signs posted with parking restrictions must be followed. No emergency or temporary parking or storage shall continue for more than seventy-two (72) hours. Failure of an Owner or guest to comply with the parking restrictions set forth in this Declaration or in the Rules and Regulations may result in such persons car being towed at their expense and without notice.

8.15 Signs. Subject to I.C. §§ 55-115(5) and (6)(a) - (b), signs advertising Units for sale or rent may be displayed on the Property without prior approval of the Board provided that such signs must be of reasonable and customary size, shall not display a sale price or rent amount and shall be displayed only at such location or locations as shall be designated for such purpose by the Board. No signs of any kind may be displayed to the public view on any Units or on any portion of the Property, unless first approved by the Board in its sole discretion. The foregoing notwithstanding, Declarant may post sales and marketing signs at the Property and may include prices on such signs.

8.16 Satellite or Antenna. Each Unit will be wired for cable or satellite television services. No Owner may install any outside antennas, discs, satellite dishes, aerials, antenna poles, antenna masts, electronic devices, antenna towers, citizen band (CB), amateur band (ham) antennas, wind turbines or windmills other similar equipment unless the Committee, in its sole discretion, has given prior written approval. The foregoing notwithstanding, any antenna, disc or satellite dish equal to or less than one meter in diameter, that falls within the scope of, or is otherwise covered by the Telecommunications Act of 1995, and the provisions of 47 C.F.R. 1.4000, as amended, or any subsequent federal or state law applicable to common interest communities, will be permitted on the Property.

8.17 Snow Clearance. The Association will perform all snow clearance activities on the Property, except the removal of snow from decks/patios of Units.

8.18 Compliance with Laws. Any activity that violates local, state or federal laws or regulations, including, without limitation, environmental laws and regulations, will be deemed to be a violation of this Declaration; provided, however, that Declarant or the Board may, but will not be obligated to, take enforcement with respect to such a violation.

8.19 Leasing of Units. An Owner may lease all or any portion of the Owner's Unit (including the Garage) or any portion of a Limited Common Element appurtenant only to the Unit to any lessee on such terms and conditions as they may agree, except that (a) no lease or rental

agreement may relate to less than the whole of any Unit, (b) no lease or rental agreement may be for less than thirty (30) days, and (c) no lease or rental agreement for a Unit may be for any purpose other than residential purposes. Any lease or rental agreement must be in writing and provide by its terms that the lease or rental agreement is subject in all respects to the Project Documents. Any failure by a lessee to comply with the terms of the Project Documents is a default under the lease, whether or not it is expressed therein, and the Owner is liable for any costs incurred which result from the lessee's actions. No Unit may be the subject of any "timeshare" or other similar agreement.

8.20 No Warranty of Enforceability. While Declarant has no reason to believe that any of the restrictive covenants contained in this Article 8 or elsewhere in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Unit in reliance on one or more of such restrictive covenants assumes all risks of the validity and enforceability thereof and, by acquiring the Unit, agrees to hold Declarant harmless therefrom.

## **ARTICLE 9.** **INSURANCE**

9.1 Duty to Obtain Insurance; Types. The Board shall cause to be obtained and maintained the following policies of insurance:

(a) Hazard Insurance. A "master" or "blanket" type of hazard insurance policy, insuring the Property against all risks of direct physical loss commonly insured against, to not less than eighty percent (80%) of its actual cash value, excluding land, excavations, foundations, and other items normally excluded from such policies. Such policy will, without limitation, protect against loss or damage by fire and all other hazards that are normally covered by the standard extended coverage endorsement, and all other perils customarily covered for similar types of projects, including those covered by the standard "all risk" endorsement. The policy will name the Association (for the use and benefit of the individual Owners), as the named insured and will contain the standard mortgagee clause, naming the holders of first Mortgages (and their successors and assigns) as the mortgagees.

(b) Liability Insurance. A comprehensive general liability insurance policy, including medical payments insurance, with policy limits and endorsements deemed appropriate by the Board (but having a combined single limit of liability of not less than One Million Dollars (\$1,000,000)), covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Elements.

(c) Fidelity Bonds. If deemed appropriate by the Board or required by any Mortgagee holding a first-position lien, blanket fidelity bonds for anyone who either handles or is responsible for funds, which are held or administered by the Association, whether or not they receive compensation for such services.

(d) Other Insurance. Such additional insurance as deemed appropriate by the Board.

9.2 Lenders' Requirements. Without limiting the foregoing insurance requirements, the Association and each Owner shall continuously maintain in effect insurance and fidelity bonds meeting the requirements for similar projects established by The Mortgage Corporation (“TMC”), the Government National Mortgage Association (“GNMA”), the Federal National Mortgage Association (“FNMA”), the Veterans Administration (“VA”), and/or the Federal Housing Administration (“FHA”), so long as any of them shall be a holder, insurer, or guarantor of a Mortgage on a Unit within the Project, except to the extent such coverage is not available or has been waived in writing by TMC, GNMA, FNMA, VA, and/or FHA, as applicable.

9.3 Coverage Not Available. If the insurance described in Section 9.1 is not reasonably available, or is modified, canceled, or not renewed, the Association shall promptly cause notice of that fact to be hand delivered or sent prepaid by first class United States mail to all Owners, to each Mortgagee at their respective last known addresses. The Owners may then obtain, to the extent available, the insurance not otherwise reasonably available to the Association. The Association in any event may carry any other insurance it deems appropriate to protect the Association of the Owners.

9.4 Required Provisions. Insurance policies carried pursuant to this Article shall:

(a) Provide that each Owner and each Mortgagee of a Unit, if any, is an insured person under the policy with respect to liability arising out of the Owner's interest in the Common Elements or membership in the Association;

(b) Provide that the insurer waives its right to subrogation under the policy as to any and all claims against the Association, the Owner of any Unit and/or their respective agents, employees or tenants, and members of their household, and of any defenses based upon co-insurance or upon invalidity arising from the acts of the insured;

(c) Provide that no act or omission by any Owner, unless acting within the scope of the Owner's authority on behalf of the Association, nor any failure of the Association to comply with any warranty or condition regarding any portion of the premises over which the Association has no direct control, will void the policy or be a condition to recovery under the policy;

(d) Provide that if, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance, and that the liability of the insurer thereunder shall not be affected by, and the insurer shall not claim any right of setoff, counterclaims, apportionment, proration, contribution or assessment by reason of, any other insurance obtained by or for any Owner or any Mortgagee;

(e) Provide that, despite any provision giving the insurer the right to restore damage in lieu of a cash settlement, such option shall not be exercisable without the prior written approval of the Association, or when in conflict with the

provisions of any insurance trust agreement to which the Association is a party, or any requirement of law;

(f) Contain no provision (other than insurance conditions) which will prevent Mortgagees from collecting insurance proceeds; and

(g) Contain, if available, an agreed amount and inflation guard endorsement.

9.5 Waiver of Claim Against Association. As to all policies of insurance maintained by or for the benefit of the Association and the Owners, the Association and the Owners hereby waive and release all claims against one another, the Board and Declarant, to the extent of the insurance proceeds available, whether or not the insurable damage or injury is caused by the negligence of or breach of any agreement by any of said persons.

9.6 Right and Duty of Owners to Insure. Each Owner is solely responsible for insurance on the Owner's personal property and equipment within its Unit, and all Limited Common Elements appurtenant only to such Unit. Nothing hereby precludes any Owner from also carrying any public liability insurance, as the Owner deems desirable to cover individual liability for damage to persons or property occurring inside its Unit or elsewhere upon the Property. Such policies will not adversely affect or diminish any liability under any insurance obtained by or on behalf of the Association, and duplicate copies of such other policies shall be deposited with the Board upon request. If any loss intended to be covered by insurance carried by or on behalf of the Association occurs and the proceeds payable thereunder are reduced by reason of insurance carried by any Owner, such Owner shall assign the proceeds of such insurance carried by the Owner to the Association to the extent of such reduction, for application by the Board to the same purposes as the reduced proceeds are to be applied.

9.7 Notice of Expiration Requirements. If available, all policies of insurance maintained by the Association will contain a provision that said policy or policies may not be canceled, terminated or expired by their terms, without twenty (20) days prior written notice to the Board, Declarant, the Owners and their respective Mortgagees holding first-position liens (provided that such persons shall have filed written requests with the carrier for such notice).

9.8 Insurance Premiums. Insurance premiums for any blanket insurance coverage obtained by the Association and any other insurance deemed necessary by the Board of Directors are a Common Expense to be included in the Regular Assessments levied by the Association and collected from the Owners. Anticipated insurance deductibles shall be separately accounted for by the Association in the reserve fund and will be used solely for the payment of premiums of insurance deductibles if and when they become due.

9.9 Trustee for Policies. The Association, acting through its Board of Directors, is hereby appointed and is deemed trustee of the interests of all named insureds under policies of insurance purchased and maintained by the Association. All insurance proceeds under any such policies shall be paid to the Board as Trustee. The Board has full power to receive and to receipt for the proceeds and to deal therewith as provided herein. The Board is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers. Any two (2) Directors may

sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures is binding on all the named insureds.

9.10 Certificate. An insurer that has issued an insurance policy under this Article shall issue certificates or memoranda of insurance to the Association and, upon written request, to any Owner or Mortgagee. The insurer issuing the policy may not modify the amount or the extent of the coverage of the policy or cancel or refuse to renew the policy unless the insurer has complied with all applicable provisions of Title 41 of the Idaho Code pertaining to the cancellation or nonrenewal of contracts of insurance. The insurer shall not modify the amount or the extent of the coverage of the policy, or cancel or refuse to renew the policy, without complying with the requirements of the Act.

9.11 Notification on Sale of Unit. Promptly upon the conveyance of a Unit, the new Owner shall notify the Association of the date of the conveyance and the Owner's name and mailing address.

## **ARTICLE 10.**

### **DESTRUCTION OF IMPROVEMENTS**

10.1 Restoration of Property. Except as otherwise provided in this Declaration, in the event of any destruction of any portion of the Property, the repair or replacement of which is the responsibility of the Association, it is the duty of the Association to restore and repair the same to its former condition, as promptly as practical, subject to land use and permit approvals. The proceeds of any insurance maintained pursuant to Article 9 hereof for reconstruction or repair of the Property will be used for such purpose, unless otherwise provided herein. The Board will represent the Owners in any related proceedings, negotiations, settlements, or agreement, and is authorized to have prepared the necessary documents to effect such reconstruction as promptly as practical. Any proceeds from any settlement will be paid directly to the Association for the benefit of the Owners and their Mortgagees. The Property shall be reconstructed or rebuilt substantially in accordance with the Survey/Plan and the original construction plans if they are available, unless changes or a decision not to rebuild have been approved in writing by eighty percent (80%) of the voting power of the Owners and a majority of Mortgagees of record who hold first-position liens against Units.

10.2 Sale of Property. In the event of a determination not to rebuild, the Association, upon the approval of eighty percent (80%) of the voting power of the Owners, is authorized to have prepared, executed and recorded, as promptly as practical, a certificate stating that a majority of the Board may properly exercise the irrevocable Power of Attorney described in Section 2.15 above, to sell the damaged portion of the Common Elements at the highest and best price obtainable, either in its damaged condition, or after damaged structures have been razed. The net proceeds of such sale and the proceeds of any insurance carried by the Association will be divided equally among the Owners (subject to the rights of their respective Mortgagees).



**ARTICLE 11.**  
**EMINENT DOMAIN**

11.1 **In General.** If a Unit is acquired by condemnation, or if part of a Unit is acquired by condemnation leaving the Owner with a remnant of a Unit which may not practically or lawfully be used for any purpose permitted by the Declaration, the award must compensate the Owner for the Owner's Unit and its appurtenant interest in the Common Elements, whether or not any Common Elements are acquired. Upon acquisition, unless the decree otherwise provides, that Unit's Allocated Interests are automatically reallocated to the remaining Units in proportion to the respective Allocated Interests of those Units before the taking, and the Association shall promptly prepare, execute, and record an amendment to the Declaration reflecting the reallocations. Any remnant of a Unit remaining after part of a Unit is taken under this section is thereafter a Common Element.

11.2 **Partial Unit Condemnation.** Except as provided in Section 11.1, if part of a Unit is acquired by condemnation, the award must compensate the Owner for the reduction in value of the Unit and its appurtenant interest in the Common Elements, whether or not any Common Elements are acquired. Upon acquisition, unless the decree otherwise provides: (a) that Unit's Allocated Interests will be reduced in proportion to the reduction in the size of the Unit, and (b) the portion of the Allocated Interests divested from the partially-acquired unit will be automatically reallocated to that Unit and the remaining Units in proportion to the respective Allocated Interests of those Units before the taking, with the partially-acquired Unit participating in the reallocation on the basis of its reduced Allocated Interests.

11.3 **Common Element Condemnation.** If part of the Common Elements is acquired by condemnation the portion of the award attributable to the Common Elements taken shall be paid to the Owners based on their respective Allocated Interests. Any portion of the award attributable to the acquisition of a Limited Common Element must be equally divided among the Owners of the Units to which that Limited Common Element was allocated at the time of acquisition.

11.4 **Association to Represent Owners.** The Association shall represent the Owners in any proceedings, negotiations, settlements or agreements regarding a condemnation of any part of the Condominium, and any condemnation proceeds shall be payable to the Association for the benefit of the Owners of affected Units and their Mortgagees. Should the Association fail to act on the Owners' behalf in a condemnation process, the affected Owners may individually or jointly act on their own behalf.

**ARTICLE 12.**  
**RIGHTS OF MORTGAGEES**

In order to induce various lenders and lending agencies, including without limitation, the TMC, GNMA, FNMA, VA and FHA to participate in the financing of the sale or ownership of Units, this Article 12 is included in this Declaration. To the extent these added provisions, pertaining to the rights of such lenders and lending agencies conflict with any other provisions of this Declaration or any other of the Project Documents, these added restrictions shall control. For purposes of this Article 12, the terms “**Eligible Holder**”, “**Eligible Insurer**”, or “**Eligible Guarantor**” refer, respectively, to a holder, insurer or guarantor of any mortgage on a Unit.

12.1 Eligible Holder's Nonliability. An Eligible Holder will not, merely by reason of its security interest, be liable for the payment of any assessment, nor for the observation or performance of any covenant or restriction in this Declaration, except (a) those enforceable by equitable relief and not requiring the payment of money or (b) as provided in this Article 12.

12.2 Eligible Holder's Rights During Foreclosure. During the pendency of any proceeding to foreclose a mortgage, including any redemption period, the Eligible Holder may exercise all rights and privileges of the Owner of the encumbered Unit, including, without limitation, the right to vote in the Association, to the exclusion of the Owner's exercise of such rights.

12.3 Eligible Holder as Owner. Any Person that becomes an Owner of a Unit, including a Eligible Holder or its successors or assigns, will be subject to all provisions of this Declaration, including, without limitation, the obligation to pay assessments.

12.4 Free and Clear Title. If an Eligible Holder acquires title to a Unit through foreclosure or deed in lieu thereof, it will not be liable for any unpaid assessments that became due prior to the date that title vests with the Eligible Holder, except as may be required by Idaho law.

12.5 Survival of Assessment Obligations. After foreclosure, any unpaid assessment will continue to exist and remain a personal obligation of the Owner against whom the same was assessed. The Association will use reasonable efforts to collect the unpaid assessment from the former Owner.

12.6 Subordination of Assessment Liens. The liens for assessments under this Declaration will be subordinate to the lien of any first-position Mortgage held by an Eligible Holder. Upon demand, the Association shall execute a written subordination agreement to confirm the priority of the lien of a first-position Mortgage.

12.7 Notices. Upon receipt by the Association from any Eligible Insurer, any Eligible Guarantor, or any Eligible Holder of a first-position Mortgage (together with a copy of the first-position Mortgage held by such Eligible Holder) of a written request to receive notice, specifying the address to which the following items are to be sent, the Association shall timely send to such Eligible Insurer, Eligible Guarantor or Eligible Holder the below-described notices (until the Association receives a written request from such Person to discontinue sending the following items or until the relevant Mortgage is discharged of record). The failure of the Association to send any such notice to any such Person shall have no effect on any meeting, act or thing which was to have been the subject of such notice nor affect the validity thereof.

(a) Notice of Meetings. A copy of any notice of a meeting of the Association or of the Board that is thereafter sent to the Owner of such Unit.

(b) Financial Statements. A copy of any financial statement of the Association that is thereafter sent to the Owner of such Unit.

(c) Management Change. Written notice of any termination by the Association of any professional management of the Common Elements, and the assumption by the Association of the self-management of the Common Elements;

provided, however, such assumption by the Association of the self-management of Common Elements shall not occur unless approved by (i) at least two-thirds (2/3) of the Voting Interests of all the Owners, and (ii) if such professional management has previously been required by at least fifty-one percent (51%) of Eligible Holders, by Eligible Holders holding first-position Mortgages encumbering at least fifty-one percent (51%) of the residential Units encumbered by such first-position Mortgages.

(d) Termination of Insurance. At least thirty (30) days' prior written notice of the cancellation or termination by the Association of any policies of insurance covering the Common Elements or any fidelity bonds of the Association, as well as copies of any notices of cancellation by others received by the Association with respect thereto.

(e) Damage to Common Elements. Written notice of any damage to the Common Elements that affects a material portion thereof.

(f) Condemnation of Common Elements. Written notice of any condemnation or eminent domain proceeding or proposed acquisition arising therefrom with respect to the Common Elements.

(g) Matters Affecting Declaration. Written notice of any material amendment to, or the abandonment or termination of, this Declaration or of any proposed action that would require the consent of Eligible Holders.

(h) Delinquencies. Written notice of any failure by an Owner owning a Unit encumbered by a first-position Mortgage held by an Eligible Holder to perform that Owner's obligations under the Project Documents, including, but not limited to, any delinquency in the payment of any assessments, where such failure or delinquency has continued for a period of sixty (60) days.

12.8 Implied Approval. Implied approval of an Eligible Holder with respect to any matter described in this Declaration may be assumed when the Eligible Holder fails to submit a response to any written notice within sixty (60) days after it receives that notice, provided that notice was delivered by certified or registered mail, with a "return receipt" requested.

### **ARTICLE 13.** **DURATION AND AMENDMENT**

13.1 Duration; Termination of Condominium. This Declaration continues in full force in perpetuity, unless and until all Units are taken by condemnation, as provided in the Act, or unless and until a Termination Agreement is adopted and signed by Owners holding at least eighty percent (80%) of the Allocated Interests.

#### 13.2 Amendments

(a) In General. Any amendment of this Declaration and/or the Survey/Plan shall be subject to the provisions of the Act and to the special

provisions of this Declaration, relating to material amendments. Otherwise, except in cases of amendments that may be undertaken by Declarant in connection with the exercise of its Special Development Rights, any amendment of this Declaration or the Survey/Plan requires the vote of the Members at a general or special meeting. In all cases where a vote is required, notice of the subject matter of a proposed amendment in reasonably detailed form shall be included in the notice of any meeting of the Association at which the proposed amendment is to be considered. Except where a greater amount is otherwise required by the Act or this Declaration, an amendment may be adopted at a duly called meeting of the Association by the vote, in person or by proxy, of Owners holding at least two-thirds (2/3) of all the Allocated Interests. A certificate, signed and sworn to by two (2) Officers of the Association, that the record Owners of the required number of Units (and the required number of Eligible Holders, where applicable) have either voted for or consented in writing to any amendment adopted as provided above, when recorded, will be conclusive evidence of that fact. The Association shall maintain in its files the record of all such votes or written consents.

(b) Eligible Holder Approval. In addition to any other provisions contained in this Declaration, the prior written approval of fifty-one percent (51%) of Eligible Holders who have requested from the Association notification of amendments will be required for any material amendment to this Declaration or the other Project Documents of any of the following: (a) voting rights; (b) assessment liens or the subordination thereof; (c) reserves for maintenance, repair and replacement of Common Elements; (d) insurance or fidelity bonds; (e) responsibility for maintenance and repair; (f) the boundaries of any Unit owned by an Owner other than Declarant; (g) reallocation of interests in the Common Elements or rights to their use; (h) convertibility of Common Elements into Units or of Units into Common Elements; (i) expansion or contraction of the Property, or the addition, annexation or withdrawal of real property or Improvements to or from the Property; (j) impositions of restrictions on the right of an Owner to lease or convey the Owner's Unit; (k) a decision by the Association to establish self-management when professional management had been required previously by Eligible Holders; (l) any action to terminate the legal status of the Condominium after substantial destruction or condemnation occurs; (m) restoration or repair of the Property (after substantial destruction or partial condemnation) in a manner other than as specified in this Declaration; and (n) any provisions that are for the express benefit of Eligible Holders.

(c) Amendments to Comply with Lender Requirements. In addition to the foregoing, Declarant and the Board have the power and authority, without the vote of the Association, to amend this Declaration and to enter into such contracts and agreements on behalf of the Association as are required in order to satisfy the guidelines of the VA, FHA, TMC, the FNMA or the GNMA or any similar entity so as to allow for the purchase, guaranty or insurance, as the case may be, by such entities of Mortgages encumbering Units. Each Owner agrees that it will benefit the Association and the Members, as a class of potential mortgage borrowers and potential sellers of their Units, if these entities approve the Property as a qualifying

condominium project under their respective policies, rules and regulations as adopted from time to time.

**ARTICLE 14.**  
**DECLARANT'S RIGHTS AND RESERVATIONS**

14.1 Continued Declarant Actions. Declarant has undertaken the work of the creation of a condominium regime. The completion of that work and the sale, rental, and other disposal of the Units are essential to the establishment and welfare of the Property as a residential condominium project. In order that said work may be completed and said Property be established as a fully occupied residential project as rapidly as possible, nothing in this Declaration is understood or construed to: (i) prevent Declarant, its contractors, or subcontractors from doing on or in the Property or any Unit, whatever is reasonably necessary or advisable in connection with the completion of the work; (ii) prevent Declarant or its representatives from erecting, constructing and maintaining on any part or parts of the Property, such structures as may be reasonable and necessary for the conduct of its business of completing said work and establishing said Property as a residential condominium, and disposing of the same by sale, lease or otherwise; (iii) prevent Declarant from maintaining such sign or signs on any of the Property as may be necessary for the sale, lease or disposition thereof; or (iv) prevent Declarant or its representatives from granting licenses or reserving rights-of-way and easements to utility companies, public agencies or others.

14.2 Definition of Declarant. Except to the extent prohibited by the Act, in the event Declarant conveys all of its right, title and interest in and to the Property to any third person, where such third person must assume in writing the obligations of Declarant hereunder, then and in such event, Declarant hereunder is relieved of the performance of any further duty or obligation hereunder, and such third person is obligated to perform all such duties and obligations of Declarant. The rights of Declarant hereunder may be assigned by Declarant to any successor in interest in connection with Declarant's interest in any portion of the Property, by an express written assignment recorded in the real property records of Kootenai County, Idaho.

14.3 Special Declarant Rights. Declarant, for itself and any successor Declarant, has reserved all Special Declarant Rights allowed under Idaho law, including, without limitation, the following:

(a) Project-Related Work. Declarant, its agents, employees and contractors shall have the right to complete improvements, repair, maintain and otherwise perform work authorized or indicated in or on this Declaration, Survey/Plan, building permits, any purchase and sale agreement between Declarant and a Unit purchaser, or as otherwise authorized or required by law.

(b) Sales Office. Declarant, its agents, employees and contractors shall have the right to establish or maintain in any Unit owned by Declarant and in any of the Common Elements (other than Limited Common Elements assigned to Units not owned by Declarant) business, construction, and sales; signs; storage areas; model units; and parking areas for all agents, employees, contractors, or prospective purchasers; provided, that any signs maintained by Declarant must not unreasonably interfere with an Owner's use and enjoyment of its Unit, appurtenant

Limited Common Elements and those portions of the Common Elements reasonably necessary to enjoy that Unit and Limited Common Elements.

(c) Association Directors and Officers. Declarant shall have the right to appoint any Officer or Director of the Association, as provided in this Declaration or the Bylaws.

(d) Architectural Control Committee. Declarant shall have the right to appoint the Architectural Control Committee and to exercise the rights provided to Declarant for management and operation of the Architectural Control Committee during the period of time stated in Article 4.

(e) Special Declarant Committees. Declarant shall have the right to appoint any other special declarant committee.

(f) Termination of Special Declarant Rights. The Special Declarant Rights will terminate upon the earlier of (i) the date that is sixty (60) days after all Units contemplated in this Declaration or a supplemental declaration have been conveyed to Owners other than the Declarant; or (ii) five (5) years after the initial recording of this Declaration.

14.4 Special Development Rights. Declarant, for itself and any successor Declarant, has reserved the following Special Development Rights:

(a) Addition and Withdrawal. Declarant reserves the right to: (i) add real property or Improvements to the Condominium; and (ii) withdraw real property or Improvements from the Condominium.

(b) Creation of Lots and Common Elements. Declarant reserves the right to and create Units and Common Elements on the Property.

(c) Combination; Subdivision; Reallocation. With respect to Units that have not been conveyed by Declarant, Declarant reserves the right to: (i) combine Units; (ii) subdivide Units; (iii) convert Units into Common Elements or Limited Common Elements; (iv) incorporate Common Elements or Limited Common Elements into an existing Unit; (v) convert Limited Common Elements to Common Elements and (vi) reallocate Limited Common Elements among Units.

(d) Exercise of Special Development Rights. To exercise any Special Development Right, Declarant shall prepare, execute and record an amendment to this Declaration. Any Special Development Right may be exercised with respect to different portions of the Property at different times. Declarant does not make any assurances regarding the final boundaries of such portions or regarding the order in which those portions may be subjected to the exercise of Special Development Rights. The exercise of any Special Development Right with respect to a portion of the Property will not require the execution of the same or similar Special Development Right with respect to any other portion of the Property. If any Units are added to or withdrawn from the Condominium, Allocated Interests will be

automatically reallocated among all Units in proportion to the square footage of each Unit, and the Association shall promptly prepare, execute, and record an amendment to the Declaration reflecting the reallocations.

(e) Termination of Special Development Rights. The Special Development Rights shall terminate upon the earlier of (i) the date that is sixty (60) days after all Units contemplated in this Declaration or a supplemental declaration have been conveyed to Owners other than the Declarant; (ii) two (2) years after any right of the Declarant to add new Units was last exercised (including the addition of Units to any real property that the Declarant added to the Property); or (iii) when the Declarant notifies the Association that Declarant elects to voluntarily terminate any or all of the Special Development Rights by recording a supplemental declaration.

14.5 Declarant Easements. Declarant, for itself and any successor Declarant, reserves an easement through the Common Elements for ingress, egress, use of the Common Elements, construction of improvements, and installation and connection of utilities, exercising Special Declarant Rights, exercising Special Development Rights and as may be reasonably necessary for discharging Declarant's obligations.

## **ARTICLE 15.** **OTHER PROVISIONS**

15.1 Enforcement. The Association (acting through the Board), any Owner, and any governmental or quasi-governmental agency or municipality having jurisdiction over the Property has the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by this Declaration, and in such action shall be entitled to recover costs and reasonable attorneys' fees as are ordered by the tribunal. Any such action by the Association may be taken on behalf of two (2) or more Owners, as their respective interests may appear, with respect to any cause of action relating to the Common Elements or more than one Unit. Failure by any such person or entity to enforce any such provision is in no event deemed waiver of the right to do so thereafter.

15.2 Limitation of Liability. Declarant, the Board and any of the Board's committees may grant, withhold or deny its consent, permission, or approval in any instance where its consent, permission, or approval is permitted or required at its sole discretion and without any liability of any nature or kind to Owner or any other Person for any reason whatsoever. Declarant will not be held liable or responsible for any violation of this Declaration by any Person other than itself.

15.3 Indemnification. The Association shall indemnify, defend and hold harmless Declarant, and any related Persons, from and against any and all claims, suits, actions, causes of action and damages arising from any personal injury, loss of life or damage to property sustained on or about the Property or other property serving the Association, or resulting or arising out of the operation of the Association, and from and against all costs, expenses, counsel fees (whether or not suit is instituted), expenses and liabilities incurred by Declarant arising from any such claim, the investigation thereof, or the defense of any action or proceedings brought thereon, and from and against any orders, judgments or decrees which may be entered thereon. The expense of

fulfilling this covenant of indemnification set forth in this Section will be a Common Expense to the extent such matters are not covered by the Association insurance.

#### 15.4 Dispute Resolution

(a) Mediation; Arbitration. Except for the Excluded Matters (defined below), any claim, controversy or dispute (collectively, “**Disputes**”) by or among Declarant, the Association, any Owner, or any of them, arising out of or relating to the Project Documents or the Property will be resolved pursuant to the provisions of this Section. Each dispute will be subject to mediation and, if not resolved by mediation, will be resolved by binding arbitration, conducted pursuant to Title 7, Chapter 9 of the Idaho Code, modified as described herein. Demand for arbitration must be in writing. Arbitration must be conducted by one arbitrator. If the parties cannot agree to an arbitrator within thirty (30) days of the initial demand for arbitration, any party may petition a court of competent jurisdiction in Kootenai County, Idaho, for the appointment of an arbitrator. Once appointed, the arbitrator must allow discovery as described in the Civil Rules for Idaho District Court. The hearing will be conducted within one hundred twenty (120) days after the arbitrator's appointment, unless otherwise agreed in writing by all of the parties. The arbitrator must render a written decision within thirty (30) days after completion of the hearing. The arbitration will be held in Coeur d'Alene, Idaho, or in such other place as may be agreed upon at the time by the parties. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Each party shall pay its own expenses in connection with the arbitration proceedings and the parties will timely pay equal shares of the arbitrator's compensation and expenses, subject to reimbursement pursuant to the following sentence. If any party commences arbitration in connection with any Project Document, the prevailing party in such arbitration will be entitled to reimbursement for its reasonable costs (including arbitration expenses) and attorneys' fees incurred. Disputes will be barred from arbitration if such Disputes would be barred in a litigation proceeding under applicable statutes of limitations. The mediation and arbitration agreement contained in this Section will survive the conveyance by any party of its interest or involvement in the Property or any Unit therein, as well as the termination of this Declaration.

(b) Excluded Matters. The Excluded Matters described in this Section will not be subject to the procedures described in Section 15.4(a). The prevailing party with respect to an Excluded Matter will be entitled to reimbursement for its reasonable costs and attorneys' fees incurred. The “**Excluded Matters**” are: (i) actions relating to the collection of assessments and other charges imposed by the Association (except that Disputes as to the validity of such assessments or other charges will be subject to resolution pursuant to Section 15.4(a)); (ii) actions by the Association for injunctive or other equitable relief; (iii) actions for injunctive or declaratory relief seeking a determination as to the applicability, enforcement or interpretation of this Declaration; (iv) any action in which an indispensable party is not subject to the mediation and arbitration agreement contained in Section 15.4(a); and (v) any action to enforce an arbitration award.



15.5 Declaration Runs with Land. The covenants, reservations, restrictions, and other provisions of this Declaration will run with and bind the Property and will inure to the benefit of Declarant, the Association, the Master Association and all Owners, their respective legal representatives, heirs, successors and assigns.

15.6 Governing Law. This Declaration will be construed in all respects under the laws of the State of Idaho.

15.7 Interpretation. Wherever in this Declaration the context so requires, the singular number will include the plural, and the converse; and the use of any gender will be deemed to include all genders. Section captions in this Declaration do not have any independent meanings. The provisions of this Declaration must be liberally interpreted and construed to provide maximum flexibility consistent with the purposes set forth herein, including the Preamble. All exhibits attached to this Declaration are incorporated by reference.

15.8 Notices. Any notice or other communication required or permitted to be given or delivered pursuant to this Declaration will be deemed properly given and delivered upon (a) personal delivery, (b) the mailing thereof by United States mail, postage prepaid or (c) by reputable overnight courier.

(a) To the Declarant. Notice to Declarant as may be required or desired under this Declaration must be in writing and delivered or mailed to Declarant at its principal place of business as shown by the records of the Secretary of the State of Idaho, or at any other location designated by Declarant. Upon request of an Owner, the Association shall furnish to such Owner the then-current address for Declarant as reflected by the Association records.

(b) To Association. Notice to the Association as may be required under this Declaration or the Association Bylaws must be in writing and delivered or mailed to the Association at its principal place of business as shown by the records of the Secretary of the State of Idaho, or at any other location designated by the Association.

(c) To Owners. Notice to any Owner of a violation of any of provision of this Declaration, or any other notice as may be required herein must be in writing and delivered or mailed to the Owner at the address shown on the tax rolls of Kootenai County, Idaho, or to the address of the Owner, as shown on the deed recorded in the land records of Kootenai County, Idaho, or to the address of the Owner as filed with the Secretary of the Association, or if an Owner is not an individual, to its principal place of business as shown by the records of the Secretary of State (of Idaho or its state of organization).

15.9 No Waiver. No waiver of any breach of this Declaration will constitute a waiver of any other breach, whether of the same or any other covenant, condition or restriction.

15.10 Severability. If any covenant, condition, restriction or other provision of this Declaration is held to be invalid in whole or in part by any tribunal of competent jurisdiction, then such provision will be deemed modified to the minimum extent necessary to make it valid and

enforceable and the court's holding will in no way affect the validity of the remaining provisions of this Declaration, all of which shall remain in full force and effect.


15.11 Conflict of Project Documents. If there is any conflict among or between the Project Documents, the provisions of this Declaration will prevail, thereafter; priority is given to Project Documents in the following order: Survey/Plan; Master Declaration; Master Association articles of incorporation; Master Association bylaws; Master association rules and regulations; Articles; Bylaws; and rules and regulations of the Association. Notwithstanding the foregoing, any provision in any of the Project Documents which is for the protection of Mortgagees has priority over any inconsistent provision in that document or in any other Project Document.

*[signature page follows]*

The undersigned, being the Declarant herein, has executed this Declaration on this 26  
day of May, 2022.

**DECLARANT:**

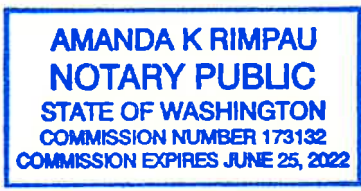
HANLEY LOFTS LLC, an Idaho limited liability company

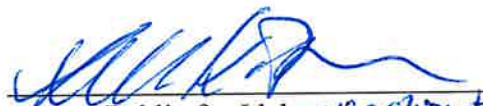
By:   
Name: Joseph M Frank  
Its: Manager

STATE OF Washington )  
  :SS  
COUNTY OF Spokane )

On this 26<sup>th</sup> day of May, 2022 before me Amanda K. Rimpau  
Notary Public in and for the State of Idaho, personally appeared Joseph M. Frank,  
known or identified to me to be a the Washington manager, of Hanley Lofts, LLC the limited  
liability company that executed the within instrument and the person has executed the instrument  
on behalf of said limited liability company, and acknowledged to me that such limited liability  
company executed the same.

WITNESS my hand and official seal hereto affixed the day and year first above written.



  
Notary Public for Idaho, Washington  
Residing at Coeur d'Alene, ID  
Commission Expires June 25, 2022

**EXHIBIT "A"**  
**TO**  
**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**  
**HANLEY LOFTS CONDOMINIUMS**

**DESCRIPTION OF UNITS**

<b>TABLE 1</b>			
<b>Allocated Interests if Building 1 is constructed:</b>			
	Building No.	Unit No.	Allocated Interest
	1	101	1/12
	1	102	1/12
	1	103	1/12
	1	104	1/12
	1	201	1/12
	1	202	1/12
	1	203	1/12
	1	204	1/12
	1	205	1/12
	1	206	1/12
	1	207	1/12
	1	208	1/12
<b>Total:</b>		12	<b>100</b>

**TABLE 2**  
**Allocated Interests if Buildings 1 and 2 are constructed:**

	Building No.	Unit No.	Allocated Interest
	1	101	1/24
	1	102	1/24
	1	103	1/24
	1	104	1/24
	1	201	1/24
	1	202	1/24
	1	203	1/24
	1	204	1/24
	1	205	1/24
	1	206	1/24
	1	207	1/24
	1	208	1/24
	2	101	1/24
	2	102	1/24
	2	103	1/24
	2	104	1/24
	2	201	1/24
	2	202	1/24
	2	203	1/24
	2	204	1/24
	2	205	1/24
	2	206	1/24
	2	207	1/24
	2	208	1/24
<b>Total:</b>		<b>24</b>	<b>100</b>

<b>TABLE 3</b>			
<b>Allocated Interests if Buildings 1, 2 and 3 are constructed:</b>			
	<b>Building No.</b>	<b>Unit No.</b>	<b>Allocated Interest</b>
	1	101	1/36
	1	102	1/36
	1	103	1/36
	1	104	1/36
	1	201	1/36
	1	202	1/36
	1	203	1/36
	1	204	1/36
	1	205	1/36
	1	206	1/36
	1	207	1/36
	1	208	1/36
	2	101	1/36
	2	102	1/36
	2	103	1/36
	2	104	1/36
	2	201	1/36
	2	202	1/36
	2	203	1/36
	2	204	1/36
	2	205	1/36
	2	206	1/36
	2	207	1/36
	2	208	1/36
	3	101	1/36
	3	102	1/36
	3	103	1/36
	3	104	1/36
	3	201	1/36
	3	202	1/36
	3	203	1/36
	3	204	1/36
	3	205	1/36
	3	206	1/36
	3	207	1/36
	3	208	1/36
<b>Total:</b>		<b>36</b>	<b>100</b>

**EXHIBIT "B"**  
**TO**  
**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**  
**HANLEY LOFTS CONDOMINIUMS**

**LEGAL DESCRIPTION OF PROPERTY**

All of Lot 1, Block 5, of Coeur D' Alene Place Twenty-Eight Addition, recorded in Book L of Plats, Pages 190 thru 190B, located in the Southwest Quarter of Section 27, Township 51 North, Range 4 West, Boise Meridian, in the City of Coeur D' Alene, Kootenai County, Idaho.

TOGETHER with a portion of Tract D of said Coeur D' Alene Place Twenty-Eight Addition, described as follows:

BEGINNING at the Southeast Corner of said Tract D; thence N88°35'45"W along the Southerly Line of said Tract D a distance of 84.47 feet to the Southwest Corner of said Tract D; thence N01°24'15"E along the West Line of said Tract D a distance of 22.90 feet; thence S88°35'45"E a distance of 84.47 feet to the East Line of said Tract D; thence S01°25'25"W along said East Line a distance of 22.90 feet to the POINT OF BEGINNING.

Containing 2.45 Acres more or less