

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THE RIVER STREET TOWNHOMES

NOTICE

THIS DOCUMENT IS A VERY IMPORTANT LEGAL DOCUMENT WHICH EACH POTENTIAL OWNER AND OCCUPANT OF PROPERTY WITHIN THE PROJECT SHOULD READ AND UNDERSTAND.

THE PROJECT IS A UNIQUE RESIDENTIAL COMMUNITY AND THIS DOCUMENT SETS FORTH THE OBLIGATIONS AND RESPONSIBILITIES OF ALL OWNERS AND OCCUPANTS OF THE PROJECT.

THIS DOCUMENT AFFECTS THE LEGAL RIGHTS OF EACH OWNER AND OCCUPANT. POTENTIAL OWNERS AND OCCUPANTS ARE ADVISED TO REVIEW THIS DOCUMENT WITH THEIR LEGAL AND OTHER ADVISORS PRIOR TO ACQUIRING OR OCCUPYING A LOT.

THE DECLARANT EXPRESSLY DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, STATEMENTS OR INFORMATION NOT SET FORTH HEREIN OR IN ANY WRITTEN DOCUMENT EXECUTED BY DECLARANT. ANY REPRESENTATIONS OR WARRANTIES MADE BY ANY REAL ESTATE BROKER OR AGENT OR OTHER PERSON CONCERNING THE TOTAL OR TYPES OF ASSESSMENTS TO BE LEVIED AGAINST AN OWNER OR LOT WITHIN THE PROJECT SHOULD BE DISREGARDED IN THEIR ENTIRETY AND IN ALL EVENTS THE TERMS AND CONDITIONS OF THIS DOCUMENT SHALL CONTROL.

TABLE OF CONTENTS

ARTICLE I. RECITALS	1
1.1 Property Covered	1
1.2 Development	1
1.3 Purpose	1
ARTICLE II. DECLARATION	1
ARTICLE III. DEFINITIONS	2
3.1 “Abandoned or Inoperable Vehicle”	2
3.2 “Affordable Unit”	2
3.3 “Articles”	2
3.4 “Assessments”	2
3.5 “Association”	2
3.6 “Association Rules”	2
3.7 “Board”	2
3.8 “Building Envelope”	2
3.9 “Bylaws”	2
3.10 “Common Area”	2
3.11 “Community Pathway”	3
3.12 “Declarant”	3
3.13 “Design Committee”	3
3.14 “Design Guidelines”	3
3.15 “Dwelling Unit”	3
3.16 “First Mortgage”	3
3.17 “Improvement”	3
3.18 “Irrigation System”	3
3.19 “Limited Assessment”	3
3.20 “Limited Common Area”	4
3.21 “Lot”	4
3.22 “Maintenance Property”	4
3.23 “Member”	4
3.24 “Mortgage”	4
3.25 “Occupant”	4
3.26 “Oversized Vehicles”	4
3.27 “Owner”	4
3.28 “Party Wall”	4
3.29 “Person(s)”	4
3.30 “Project Documents”	4
3.31 “Property”	5
3.32 “Regular Assessment”	5
3.33 “Restricted Area”	5
3.34 “Special Assessment”	5
3.35 “Transfer Assessment”	5

ARTICLE IV. GENERAL AND SPECIFIC RESTRICTIONS.....	5
4.1 Uses-Generally	5
4.2 Improvements Generally.....	5
4.3 [Intentionally Deleted].....	6
4.4 Exterior Maintenance – Association Obligations.....	6
4.5 Exterior Maintenance – Owner’s Obligations.....	8
4.6 Fencing – Owner’s Obligations.....	8
4.7 Nuisances	9
4.8 No Hazardous Activities	9
4.9 No Mining or Drilling.....	9
4.10 Insurance Rates.....	9
4.11 Vehicles and Equipment	10
4.12 Animals/Pets.....	10
4.13 No Mobile Homes or Temporary Structures.....	10
4.14 Drainage.....	10
4.15 Grading	10
4.16 Water Supply Systems.....	11
4.17 Sewage Disposal Systems	11
4.18 Water Rights Appurtenant to Subdivision Lands.....	11
4.19 Energy Devices, Outside.....	11
4.20 Signs.....	11
4.21 No Further Subdivision.....	11
4.22 Declarant’s Right of Development.....	11
4.23 Compliance with Laws	12
ARTICLE V. ASSOCIATION	12
5.1 Organization of Association.....	12
5.2 Membership.....	12
5.3 Voting at the Association.....	13
5.4 Board of Directors and Officers	13
5.5 Power and Duties of the Association.....	13
5.6 Annual Meeting.....	17
5.7 Budgets and Financial Statements.....	18
5.8 Manager	18
5.9 Personal Liability.....	18
5.10 Waiver of Consequential Damages.	18
ARTICLE VI. RIGHTS TO COMMON AREAS; DESIGNATION OF COMMON AREAS, RESTRICTED AREAS AND MAINTENANCE PROPERTY	18
6.1 Use of Common Are.....	18
6.2 Deed to Common Area	19
6.3 Delegation of Right to Use.....	19
6.4 Designation of Maintenance Property.	19
6.5 Damages.....	20

ARTICLE VII. ASSESSMENTS.....	20
7.1 Covenant to Pay Assessments	20
7.2 Uniform Rate of Assessment.....	20
7.3 Special Assessments	22
7.4 Limited Assessments	22
7.5 Transfer Assessments	22
7.6 Assessment Period.....	22
7.7 Notice and Assessment Due Date.....	22
7.8 Estoppel Certificate	23
7.9 Special Notice and Quorum Requirements.....	23
ARTICLE VIII. ENFORCEMENT OF ASSESSMENTS; LIENS.....	23
8.1 Right to Enforce	23
8.2 Assessment Liens	23
8.3 Method of Foreclosure.....	24
8.4 Subordination to Certain Mortgages.....	24
8.5 Rights of Mortgagees.....	24
ARTICLE IX. INSPECTION OF THE ASSOCIATION’S BOOKS AND RECORDS.....	24
9.1 Member’s Right of Inspection.....	24
9.2 Rules Regarding Inspection of Books and Records	25
9.3 Director’s Rights of Inspection	25
ARTICLE X. DESIGN COMMITTEE	25
10.1 Creation; Declarant’s Right of Appointment	25
10.2 Appointment of Design Committee Representative	25
10.3 Improvements Generally.....	25
10.4 Expenses.....	26
10.5 Non-Liability of Design Committee Members	26
10.6 Variances.....	26
10.7 Declarant’s Exemption.....	27
ARTICLE XI. EASEMENTS	27
11.1 Owners: Easements of Enjoyment.....	27
11.2 Delegation of Use	27
11.3 Recorded Easements	27
11.4 Easements of Encroachment	27
11.5 Party Walls.....	27
11.6 Easements of Access.....	28
11.7 Drainage and Utility Easements	28
11.8 Improvement of Drainage and Utility Easement Areas.....	28
11.9 Rights and Duties Concerning Utility Easements	29
11.10 Maintenance and Use Easement Between Walls and Property.....	29
11.11 Disputes as to Sharing of Costs	29

11.12	Declarant’s Rights Incident to Construction	29
11.13	Emergency Easement.....	29
11.14	Maintenance Easement	29
11.15	Community Pathway	30
11.16	Easements Deemed Created	30
ARTICLE XII. DAMAGE OR DESTRUCTION.....		30
12.1	Association as Attorneys in Fact	30
12.2	Estimate of Damages or Destruction	30
12.3	Repair and Reconstruction	30
12.4	Funds for Repair and Reconstruction	30
12.5	Disbursement of Funds for Repair and Reconstruction.....	31
12.6	Decision Not to Rebuild.....	31
12.7	Damage or Destruction Affecting Lots.....	31
ARTICLE XIII. CONDEMNATION		31
13.1	Rights of Owners.....	31
13.2	Condemnation; Distribution of Award; Reconstruction	31
ARTICLE XIV. RESOLUTION OF DISPUTES		32
14.1	Agreement to Avoid Litigation	32
14.2	Exemptions.....	32
14.3	Dispute Resolution.....	33
ARTICLE XV. ANNEXATION AND DEANNEXATION		34
ARTICLE XVI. MISCELLANEOUS		34
16.1	Term.....	34
16.2	Amendment	35
16.3	Notices	35
16.4	Enforcement and Non Waiver.....	35
16.5	Use of Trademark	36
16.6	Interpretation	36
16.7	Successors and Assigns.....	36
16.8	Owners’ Acknowledgements	36

DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THE RIVER STREET TOWNHOMES

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE RIVER STREET TOWNHOMES (“**Declaration**”) is executed this ____ day of _____, 2022 (the “**Effective Date**”), by River Street Townhomes, LLC, an Idaho limited liability company (“**Declarant**” and “**Class B Member**”). All capitalized terms not otherwise defined in the text hereof are defined in Article III.

ARTICLE I.
RECITALS

1.1 Property Covered. The property subject to this Declaration (the “**Property**”) is legally described as Lots 1-12 and Parcel A in Block 1 of the River Street Townhomes Subdivision, according to the official plat thereof recorded in the official records of Blaine County, Idaho, as Instrument Number _____, as amended from time to time (the “**Plat**”), which Property has been approved by the City of Hailey for a residential townhome planned unit development (the “**Project**”).

1.2 Development. The Project is a residential townhome development which Declarant currently intends to develop in accordance with existing development approvals obtained by Declarant from the City of Hailey, or any other development plan(s) for which Declarant may from time to time obtain approval from the City of Hailey, as may be amended or changed from time to time at the sole discretion of Declarant without approval from any Owner (collectively the “**Development Plan**”). The Property will be developed for attached single family townhomes in accordance with the Development Plan.

1.3 Purpose. The purpose of this Declaration is to set forth the basic restrictions, covenants, limitations, easements, conditions and equitable servitudes (collectively “**Restrictions**”) that will apply to the entire Project and the use of any and all portions of the Property. The Restrictions are designed to protect, enhance and preserve the value, amenities, desirability, and attractiveness of the Property; to ensure a well-integrated, high quality development; and to guarantee adequate maintenance of the Common Area, Restricted Area and Maintenance Property, including any Improvements located thereon in a cost effective and administratively efficient manner.

ARTICLE II.
DECLARATION

Declarant hereby declares that the Property, and each lot, parcel, unit or portion thereof, is and/or shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following terms and Restrictions, all of which are declared and agreed to be in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Property, and to enhance the value, desirability and attractiveness of the Property. The terms and Restrictions set forth herein shall run with the land constituting the Property, and with each estate therein, and shall be binding upon any Person having or acquiring any right, title or interest in the Property or any lot, parcel, unit or

portion thereof; shall inure to the benefit of every lot, parcel, unit or portion of the Property and any interest therein; and shall inure to the benefit of and be binding upon Declarant, Declarant's successors in interest and each grantee or Owner and such grantee's or Owner's respective successors in interest, and may be enforced by Declarant, any grantee or grantee's successors, any Owner or Owner's successors, or by the Association. In the event of any conflict between this Declaration and any other of the Project Documents, this Declaration shall control.

ARTICLE III. DEFINITIONS

3.1 **"Abandoned or Inoperable Vehicle"** shall be defined as any vehicle which cannot be driven under its own propulsion and has been left unattended for a period of seven (7) days or longer.

3.2 **"Affordable Unit"** means each of Lot 8 and Lot 11, and all Improvements on each of such Lots.

3.3 **"Articles"** shall mean the Articles of Incorporation of the Association.

3.4 **"Assessments"** shall mean those payments required of Owners who are Members, including Regular Assessments, Special Assessments, Limited Assessments, and Transfer Assessments.

3.5 **"Association"** shall mean the Idaho non-profit corporation, or its successors, organized and established by Declarant to exercise the powers and to carry out the duties set forth in this Declaration. Declarant shall have the power, in its discretion, to name the Association "River Street Townhomes Owners Association, Inc.", or any similar name which fairly reflects its purpose. The Association shall have no right, title or interest in the name "River Street Townhomes," stylized or otherwise, or any logo in connection therewith.

3.6 **"Association Rules"** shall mean those rules and regulations promulgated by the Association from time to time governing conduct upon and use of the Property under the jurisdiction or control of the Association, the imposition of fines and forfeitures for violation of Association Rules and regulations, and procedural matters for use in the conduct of business of the Association.

3.7 **"Board"** shall mean the Board of Directors or other governing board or individual, if applicable, of the Association.

3.8 **"Building Envelope"** shall mean the area within a Lot where residential and accessory structures may be located, always subject to the prior written approval of the Design Committee. Building Envelopes may be designated by the Declarant by describing such an area on the Plat, reserving it in a deed or other instrument, or by designating it as such in this Declaration or the Design Guidelines. If a Building Envelope is not so designated within a Lot, then the Building Envelope shall be that portion of the Lot not located within legal setback areas or designated easements.

3.9 **"Bylaws"** shall mean the Bylaws of the Association.

3.10 **"Common Area"** shall mean all real or personal property in which the Association holds an interest or which is held or maintained for the mutual use and benefit of the Association and its Members. Common Area may be established from time to time by Declarant on any portion of the Property by describing such area on the Plat, by granting or reserving it in a deed or other instrument, or

by designating it as such in this Declaration. In addition, the Association may acquire any Common Area or Restricted Area it deems necessary and/or beneficial to the Property. Common Area may include any lease, license, use rights, or agreement rights for amenities or facilities held by the Association from time to time. Declarant hereby designates Parcel A in Block 1 of the Plat and all Improvements thereon as Common Area.

3.11 “**Community Pathway**” shall mean that pathway located in the Project and identified on Exhibit A attached hereto and incorporated herein (the “**Community Pathway Exhibit**”).

3.12 “**Declarant**” shall mean River Street Townhomes, LLC, an Idaho limited liability company, or its successors in interest, or any Person to whom the rights under this Declaration are expressly transferred, in whole or in part, other than a transfer to individual Lot Owners.

3.13 “**Design Committee**” shall mean the Design Committee created by Declarant pursuant to Article X hereof.

3.14 “**Design Guidelines**” shall mean the design guidelines and rules, if any, promulgated, published, amended and supplemented from time to time pursuant to Article X.

3.15 “**Dwelling Unit**” shall mean each single family residential townhome within the Project located on a separate Lot attached via a Party Wall to one (1) or more other single family residential townhomes on a separate Lot or Lots.

3.16 “**First Mortgage**” shall mean any Mortgage which is not subordinate to any lien or encumbrance except liens for taxes or other liens which are given priority by statute.

3.17 “**Improvement**” shall mean any structure, facility or system, or other improvement or object, whether permanent or temporary, which is erected, constructed, placed upon or allowed on, under or over any portion of the Property, including, without limitation, residential structures, accessory buildings, fences, streets, drives, driveways, parking areas, pathways, sidewalks, bicycle paths, curbs, landscaping, walls, hedges, plantings, trees, wildlife habitat improvements, living and/or dead vegetation, rocks, signs, lights, basketball hoops, trampolines, mail boxes, electrical lines, pipes, pumps, ditches, grading, road construction, utility improvements, removal of trees and other vegetation, plantings, and landscaping, and any new exterior construction or exterior improvement which may not be included in the foregoing. Improvement(s) includes both original improvements existing on the Property on the date hereof and all later changes and Improvements.

3.18 “**Irrigation System**” means the system for delivering irrigation water to the Property that exists separate and apart from the potable water system. The Irrigation System includes the pipes, lines, sprinklers, controls and other equipment located in and servicing the Common Area and, if applicable, one or more Lots.

3.19 “**Limited Assessment**” shall mean (a) a charge against a particular Owner and such Owner’s Lot, directly attributable to the Owner, equal to the cost incurred by the Association in connection with corrective action performed pursuant to the provisions of this Declaration, including, without limitation, damage to any Common Area, Restricted Area, Maintenance Property or the failure of an Owner to keep such Owner’s Lot in proper repair, and including interest thereon as provided in this Declaration; or (b) a charge against one or more Owners, but less than all Owners for the purpose of paying costs and expenses benefiting less than all Owners.

3.20 “**Limited Common Area**” shall mean those Common Areas designated for the exclusive use of an Owner or Owners to the exclusion, limitation or restriction of other Persons. Limited Common Area may be established from time to time by the Declarant or the Association on any portion of the Property by describing or depicting such area on the Plat, by granting or reserving it in a deed or other instrument, or by designating it as such in this Declaration.

3.21 “**Lot**” shall mean a lot, subplot, parcel, unit or portion of the Property, as specified or shown on the Plat. For voting, membership and Assessment purposes herein, “Lot” shall not include any Common Area or Restricted Area.

3.22 “**Maintenance Property**” shall mean any real or personal property located upon or within the general vicinity of the Project not owned by the Association, but which the Association operates and/or maintains for the benefits which will accrue to the Project and its Owners, including, without limitation, private property, landscaping, signs, benches, lights, trails, parks, or other open space and lands. Maintenance Property may be established from time to time by Declarant by describing such area on the Plat, by granting or reserving it in a deed or other instrument, or by designating it as such in this Declaration, including without limitation that Maintenance Property identified and designated in Section 6.4.

3.23 “**Member**” shall mean each Owner holding a membership in the Association, including Declarant.

3.24 “**Mortgage**” shall mean any mortgage, deed of trust, or other document pledging any portion of the Property or interest therein as security for the payment of a debt or obligation.

3.25 “**Occupant**” shall mean any resident or occupant of a Lot other than the Owner, including, without limitation, family members, guests, invitees and tenants.

3.26 “**Oversized Vehicles**” shall be defined as vehicles which are too high or too wide to clear the entrance of a normal residential garage door opening.

3.27 “**Owner**” shall mean the record owner, whether one or more Persons, including Declarant, holding fee simple interest of record to a Lot which is a part of the Property, and buyers under executory contracts of sale, but excluding those Persons having such interest merely as security for the performance of an obligation, unless and until such Person has acquired fee simple title pursuant to foreclosure or other proceedings.

3.28 “**Party Wall**” shall mean any common wall between two (2) Dwelling Units which is also the legal dividing line between the two (2) Dwelling Units.

3.29 “**Person(s)**” shall mean any individual, partnership, corporation, trust, estate or other legal entity, including Declarant.

3.30 “**Project Documents**” shall mean the basic documents creating and governing the Property including, without limitation, this Declaration, all Supplemental Declarations, Articles Bylaws, any Association Rules, any Design Guidelines and any other procedures, rules, regulations or policies adopted under such documents by the Association or the Design Committee, all as the same may be amended according to their respective terms from time to time.

3.31 **“Property”** shall mean the “Property” identified in the opening recital, including, without limitation, each lot, parcel, unit or portion thereof and interest therein, and all property annexed into the Project through a Supplemental Declaration.

3.32 **“Regular Assessment”** shall mean the portion of the cost of maintaining, improving, repairing, managing and operating the Common Area, Restricted Area and the Maintenance Property, including all Improvements located thereon, and the other costs and expenses incurred to conduct the business and affairs of the Association which is levied against the Lot of each Owner by the Association, pursuant to the terms of this Declaration.

3.33 **“Restricted Area”** shall mean that portion of the Property which is not Common Area or Lots, but is owned or leased, operated and maintained by the Association. Restricted Area may be established from time to time by Declarant on any portion of the Property by describing such area on a recorded Plat, by granting or reserving it in a deed or other instrument (including, without limitation, a Supplemental Declaration), or by designating it as such in this Declaration, or the Design Guidelines. In addition, the Association may acquire any Restricted Area it deems necessary and/or beneficial to the Property and/or the Owners. Restricted Area may include easement, lease and/or license rights. Restricted Area shall not be subject to use by Members, Owners or the public; provided however, that the Association shall have the power to convert any Restricted Area into Common Area or to allow limited or selective uses of the Restricted Area.

3.34 **“Special Assessment”** shall mean that portion of the costs of the capital improvements or replacements, equipment purchases and replacements or shortages in Regular Assessments which are authorized to be paid to the Association, pursuant to the provisions of this Declaration.

3.35 **“Transfer Assessment”** has the meaning set forth in Section 7.5.

ARTICLE IV. GENERAL AND SPECIFIC RESTRICTIONS

4.1 Uses-Generally. All Lots (except Lots that are Common Area) shall be used exclusively for residential purposes and other appropriate incidental uses permitted under any zoning ordinances applicable to the Property provided such other appropriate uses are in compliance with the Project Documents.

4.2 Improvements Generally. All Improvements are to be designed, constructed and used in such a manner as to promote compatibility between the types of uses contemplated by this Declaration. The general contractor for the initial Dwelling Unit constructed on each Lot shall be a registered contractor in the State of Idaho. No Lot (except Lots that are Common Area) shall be improved except with a single Dwelling Unit and accessory structures. The general instructions set forth in this Declaration shall govern the right of a Person or Owner, excluding the Declarant, to construct, reconstruct, refinish, remove, add, alter or maintain any Improvement upon, under or above the Property, and to make or create any excavation or fill on the Property, or make any change in the natural or existing surface contour or drainage, or install any utility line or conduit on, under or over the Property, including, without limitation, any Lot. All Improvements by any Owner, excluding Declarant, must be pre-approved in writing by the Design Committee prior to their construction or reconstruction. In the event any Improvements are damaged or completely destroyed, the Owner shall repair or reconstruct such Improvements in accordance with approved plans and designs governing such repair or reconstruction.

This Declaration is not intended to serve as authority for the Design Committee to control the interior layout or interior design of residential structures except to the extent incidentally necessitated by use, size and height restrictions. This Declaration is intended to serve as authority for the Design Committee to use its judgment to see that all Improvements conform and harmonize as to external design, quality and type of construction, architectural character, materials, color, location on the Property, height, grade and finished ground elevation, natural conditions, landscaping, and related aesthetic considerations.

The Association, after reasonable notice to the offender and/or to the Owner, may remove any Improvement constructed, reconstructed, refinished, removed, added, altered or maintained in violation of this Declaration and/or the Design Guidelines and the Owner of the Improvements shall immediately reimburse the Association for all expenses incurred in connection with such removal. Each violation of this Declaration and the Design Guidelines is hereby declared to be and to constitute a nuisance, and every public or private remedy allowed for such violation by law or equity against an Owner shall be applicable.

4.3 [Intentionally Deleted].

4.4 Exterior Maintenance – Association Obligations. To provide a uniform, clean, and neat appearance within the Property without the requirement of approval of the Owners, the Association shall provide the following services to the following portions of the Property:

4.4.1 *Generally.* The Association shall maintain the Common Area in good operating condition and repair. In addition, the Association will undertake certain care, maintenance, repair and replacement activities within the Property, including on the Lots of individual Owners, to the limited extent set forth in this Section 4.4 (sometimes referred to herein as “**Common Maintenance Activities**”). Each Owner will undertake all operation, care, maintenance, repair and replacement with respect to such Owner’s Lot and the Improvements thereon except the extent any such operation, care, maintenance, repair and/or replacement obligations are expressly assumed by the Association in this Section 4.4. For the removal of doubt, the Association’s obligations under this Section 4.4 do not include any matters arising from or related to Homeowner Maintenance. “**Homeowner Maintenance**” means each Owner’s obligation to diligently inspect, care for, operate, maintain, repair and replace the Owner’s Lot and the Improvements thereon in accordance with best practices, any manuals or other documents provided to the Owner, and this Declaration (including, without limitation, Section 4.5 hereof). The Association may limit or decline to provide any Common Maintenance Activities, or cease any Common Maintenance Activities started, if any Owner or occupant of any Lot fails to fully and faithfully cooperate with the Association’s performance thereof, or engages in or permits any conduct that interferes with the safe or efficient performance of the Common Maintenance Activities, or if the Board, in its reasonable discretion, determines that performance of such Common Maintenance Activities would be a waste of the Association’s resources. The Common Maintenance Activities may be performed by Association staff or contractors. The Association will not be responsible, and each Owner releases the Association from, any personal injury or property damage arising from or related to the performance of the Common Maintenance Activities, except if caused by the Association’s gross negligence or willful misconduct. No Owner will be entitled to any deferral or reduction of any charge or Assessment if the Owner refuses or would not benefit from any Common Maintenance Activities, or if the Association exercises any right to limit, decline to provide or cease any Common Maintenance Activities as provided in this Declaration.

4.4.2 *Landscaping and Irrigation System.* The Association shall care for the landscaping and maintain the Irrigation System in the Common Area and in the Maintenance Property

(except for any portion of the Maintenance Property that is enclosed by a privacy wall or fencing) in accordance with this Section 4.4.2. The Association's care and maintenance obligations will be limited to: (a) periodic weeding, mowing, trimming, pruning, aerating, and fertilizing landscaping, as well as removing, repairing, and replacing diseased, damaged, and destroyed landscaping on each Lot; and (b) operating, maintaining, repairing, and replacing the Irrigation System as necessary to keep the same in good operating condition and repair, including performing spring startup and fall blowout, and periodic regulation and adjustment of irrigation pressure, replacement and repair of irrigation lines, replacement and repair of irrigation heads and nozzles, and monitoring and making adjustments to ensure proper coverage for landscaping. All such care and maintenance will be performed in accordance with the standards promulgated by the Board from time-to-time, which shall set forth the scope and frequency of the care and maintenance to be performed as determined by the Board in its reasonable discretion (the "**Landscape Care Standards**"). The Association may perform additional care and maintenance, or perform care and maintenance at a level beyond the minimums in the Landscape Care Standards, at any time and from time-to-time, all without obligation of any kind to continue doing so. The Association may charge the Owner of any Lot for the cost of repairing or replacing any landscaping or component of the Irrigation System where such repair or replacement is caused by the Owner's abuse, misuse, or vandalism. Each Owner agrees that any unusual or excessive damage will be presumed to be from abuse, misuse or vandalism. In light of the Association's maintenance responsibilities hereunder, no Owner shall modify any portion of the landscaping or Irrigation System on its Lot or elsewhere within the Property. Each Owner shall be responsible for the maintenance of all potted plants, hanging plants, and the like on such Owner's Lot.

4.4.4 *Snow and Ice Treatment*. The Association shall perform snow and ice treatment to the Community Pathway (but not on any pathways connecting Dwelling Units to the Community Pathway) and paved surfaces of the Common Area commensurate with similar townhome developments in Hailey, Idaho. The Association shall not be responsible for snow and ice treatment to roofs and gutters, or for any other maintenance or care of the gutters.

4.4.5 *Fencing*. The Association shall maintain, repair, and replace all fencing that was both originally installed by Declarant and abuts Common Area, along with all perimeter fences around the Project, so as to keep the same in good operating condition and repair.

4.4.6 *Roof Replacement*. The Association will replace the roofing materials (i.e., the roof shingles or membrane, as applicable, but not roof structure) of each townhome structure at the end of the normal life of the then existing roofing materials as determined by the Board in its reasonable discretion, which is anticipated to be approximately once every thirty-five (35) years. The replacement will occur only on a per "structure" basis where a "structure" is each group of connected townhome structures. The replacement will not occur on an individual townhome in any structure unless the replacement occurs on all townhomes within the structure. The Association will not undertake the early replacement of roofing materials, even if the roofing materials need to be replaced early because of casualty events, inadequate Homeowner Maintenance, or any other reason. The Association strongly recommends that each Owner diligently perform all Homeowner Maintenance obligations with respect to its roofing. The roof replacement will occur as set by the Board, and will be with the materials, methodology and colors selected by the Board, with the intent that the roofs will be uniform throughout the Community and equal to or better than the roofing materials originally installed by Declarant in terms of quality, appearance, and durability.

4.4.7 *Exterior Painting.* The Association will repaint the exterior walls (which will be the exterior wall surface, door and window trim, eaves and soffits, but not the doors, windows or floor surfaces (i.e., wood patios or decks)) of each townhome structure at the end of the normal life of the then existing paint as determined by the Board in its reasonable discretion, which is anticipated to be approximately once every ten (10) years. The repainting will occur only on a per “structure” basis where a “structure” is each group of connected townhome structures. The repainting will not occur on an individual townhome in any structure unless the repainting concurrently occurs on all townhome within the structure. The Association will not undertake the early painting of the exterior walls, even if the exterior walls need to be repainted early because of casualty events, inadequate Homeowner Maintenance, or any other reason. The Association strongly recommends that each Owner diligently perform all Homeowner Maintenance obligations with respect to its exterior walls. The repainting will occur as set by the Board, and will be with the materials, methodology and colors selected by the Board, with the intent that the repainting will be uniform throughout the Community (in terms of quality, but not necessarily color) and equal to or better than the painting materials originally used by Declarant in terms of quality, appearance, and durability.

Notwithstanding the foregoing, upon the written approval of the Board, an Owner may repaint the exterior walls of its townhome prior to the time the Association performs the repainting required of it under this Section 4.4.7, on the condition that the paint be equal to or better than the paint originally used in terms of quality, appearance, and durability, and on such other conditions as the Board may require.

4.4.8 *Costs.* The Association’s cost in connection with the maintenance and repair of the Property as contemplated by this Section 4.4 shall be paid through Regular, Special or Limited Assessments, whichever the Board shall deem appropriate under the circumstances.

Notwithstanding anything to the contrary contained herein, in the event that the need for the maintenance, repair, or replacement is caused by the willful or negligent acts or omissions of an Owner(s) (or the guests, licensees, tenants or invitees of such Owner(s)), the cost of such maintenance, repair, or replacement shall be assessed against such Owner and such Owner’s Lot as a Limited Assessment, and shall create a lien enforceable in the same manner as other Assessments as set forth herein.

4.5 Exterior Maintenance – Owner’s Obligations. Each Improvement on an Owner’s Lot shall at all times be kept in good operating condition and repair, and no Improvement on an Owner’s Lot shall be permitted to fall into disrepair. In the event that any Owner shall permit any Improvement which is the responsibility of such Owner to maintain, to fall into disrepair so as to create a dangerous, unsafe, unsightly, or unattractive condition, or that damages property or facilities on or adjoining the Owner’s Lot, the Association, upon thirty (30) days prior written notice to the Owner of such Lot, shall have the right to correct such condition, and to enter upon such Owner’s Lot for the purpose of doing so, and such Owner shall promptly reimburse the Association for the cost thereof. Such cost shall be a Limited Assessment and shall create a lien enforceable in the same manner as other Assessments as set forth herein. The Owner of the offending property shall be personally liable, and such Owner’s property may be subject to a mechanic’s lien for all costs and expenses incurred by the Association in taking such corrective acts, plus all costs incurred in collecting the amounts due. Each Owner shall pay all amounts due for such work within ten (10) days after receipt of written demand therefor, or the amounts may, at the option of the Board, be added to the amounts payable by such Owner as Regular Assessments.

4.6 Fencing – Owner’s Obligations. If an Owner desires to install any fencing on such Owner’s Lot, such fencing shall first be approved in writing by the Design Committee. Except as

otherwise provided in this Declaration, each Owner shall be responsible for maintaining the exterior and interior surfaces of the fencing installed on such Owner's Lot.

4.7 Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate anywhere upon the Property, including the Common Area and Restricted Area or vacant Lots, and no odor shall be permitted to arise from any portion of the Property so as to render the Property or any portion thereof unsanitary, unsightly, offensive or detrimental to the Property or to its occupants or residents, or to any other property in the vicinity thereof or to its occupants or residents. No noise, no exterior fires, no obstructions of pedestrian walkways, no unsightliness, or other nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to the Property or to its occupants or residents or to other property in the vicinity or to its occupants or residents, as determined by the Association, in its reasonable judgment, or in violation of any state or local law or ordinance. Without limiting the generality of the foregoing, no whistles, bells or other sound devices (other than security devices used exclusively for security purposes which have been approved by the Design Committee), flashing lights or search lights, shall be located, used or placed on the Property without the prior written approval of the Design Committee. No unsightly articles shall be permitted to remain on any Lot so as to be visible from any other portion of the Property. Without limiting the generality of the foregoing, refuse, garbage, trash, equipment, gas canisters, propane gas tanks, barbecue equipment, heat pumps, compressors, containers, lumber, firewood, grass, shrub or tree clippings, plant ways, metals, bulk material, and scrap shall be kept at all times in such containers and in areas approved by the Design Committee. No clothing or fabric shall be hung, dried or aired in such a way as to be visible to any other portion of the Property.

No business or home occupation shall be permitted to exist or operate upon any Lot located upon any portion of the Property so as to be offensive or detrimental to the Property or to its occupants or residents, as determined by the Association, in its reasonable judgment, or in violation of any federal, state or local law, rule, regulation or ordinance. Notwithstanding the foregoing, such home business or occupation shall not be deemed offensive or detrimental to the Property if it results in (i) no more than four (4) vehicle trips per day to the home exclusively for business purposes; (ii) no more than one (1) delivery vehicle per day to the home, in addition to U.S. Mail delivery vehicles and recognized overnight mail courier service delivery vehicles; (iii) no vehicles parked on the Property for business purposes for more than thirty (30) minutes at a time; or (iv) any non-material increase in noise or traffic prior to 8:00 AM or after 5:00 PM.

4.8 No Hazardous Activities. No activities shall be conducted on the Property, and no Improvements shall be constructed on any Property which are or might be unsafe or hazardous to any Person or property.

4.9 No Mining or Drilling. No portion of the Property shall be used for the purpose of blasting, mining, quarrying, drilling, boring or exploring for or removing water, oil, gas or other hydrocarbons, minerals, rocks, stones, sand, gravel or earth. This Section shall not prohibit exploratory drilling or coring which is necessary to construct Improvements.

4.10 Insurance Rates. Nothing shall be done or kept on any Lot which will increase the rate of, or cancel any insurance on any other portion of the Property without the approval of the Owner of such other portion, nor shall anything be done or kept on the Property or a Lot which would result in the cancellation of insurance on any portion of the Property owned or managed by any Association or which would be in violation of any law.

4.11 Vehicles and Equipment. The use of all vehicles and equipment, including, without limitation, trucks, automobiles, bicycles, golf carts, motorcycles, recreational vehicles, all-terrain vehicles, motor homes, motor coaches, campers, trailers, snowmobiles, aircraft, boats, snow removal equipment, garden maintenance equipment, and yard maintenance equipment shall be subject to all of the Project Documents which prohibit or limit the use thereof within the Property. Without limiting the foregoing, the following specific restrictions apply: (a) all parking in the Common Area shall be limited to those specific areas marked with parking stalls and shall be limited to temporary parking by guests and invitees for a period not to exceed seventy-two (72) hours in any rolling five (5) day period, and such parking shall be on a first come, first served basis; (b) vehicles shall not extend or otherwise be permitted on or into any sidewalk, bicycle path, or pedestrian path unless such vehicle is engaged in an emergency procedure, or as provided elsewhere in the Project Documents; (c) no motor homes, motor coaches, campers, trailers, snowmobiles, aircraft, boats, recreational vehicles, all-terrain vehicles, Abandoned or Inoperable Vehicles, Oversized Vehicles, dilapidated or unrepaired and unsightly vehicles, or any similar equipment such as snow removal equipment, garden maintenance equipment, and all other unsightly equipment and machinery shall be placed upon any portion of the Property including, without limitation, streets, parking areas and driveways, unless the same are enclosed by a structure concealing them from view in a manner approved by the Design Committee; and (d) the use of any electronic, gas or other fuel operated gardening, yard or snow removal equipment shall only be allowed from 7:00 a.m. to 8:00 p.m.

4.12 Animals/Pets. No birds, fowl, swine, insects, pigeons, poultry, livestock, reptiles, or any other animals shall be kept on the Property. This Section 4.12 is not intended to prohibit the keeping of up to two (2), in the aggregate, domesticated dogs and/or domesticated cats. Notwithstanding the foregoing, consistent and/or chronic barking by dogs shall be considered a nuisance and shall not be kept on the Property. Each dog in the Project shall be subject to all “leash laws” of the City of Hailey when such animal is off the premises of its owner. Each Owner shall be responsible for the prompt and proper disposal of all pet waste generated by such Owner’s dogs and cats.

4.13 No Mobile Homes or Temporary Structures. No house trailer, mobile home, tent (other than for short term recreational use), shack or other temporary building, improvement or structure shall be placed upon any portion of the Property, except temporarily as may be required by construction activity undertaken on the Property.

4.14 Drainage. There shall be no interference with the established drainage pattern over any portion of the Property, unless an adequate alternative provision is made for proper drainage and is first approved in writing by the Design Committee. For the purposes hereof, “established” drainage is defined as the system of drainage, whether natural or otherwise, which exists at the time the overall grading of any portion of the Property is completed by Declarant, or that drainage which is shown on any plans approved by the Design Committee, which may include drainage from Common Area and Restricted Area over any Lot in the Property. In all events, each Owner shall be responsible for retaining any drainage originating on its Lot on-site and shall not otherwise install, construct or place any Improvement within any drainage swale located upon any Maintenance Property, which is the obligation of the Association to maintain.

4.15 Grading. The Owner of any Lot within the Property in which grading or other work has been performed pursuant to a grading plan approved under applicable provisions of the Hailey City Code or by the Design Committee, shall maintain and repair all graded surfaces and erosion prevention devices, retaining walls, drainage structures, means or devices which are not the responsibility of any public

agency, and plantings and ground cover installed or completed thereon. Such requirements shall be subject to Regular, Special, and Limited Assessments provided for herein.

4.16 Water Supply Systems. No separate or individual water supply system, regardless of the proposed use of the water to be delivered by such system, shall be permitted on any Lot unless such system is approved by all government authorities having jurisdiction, and designed, located, constructed and equipped in accordance with the requirements, standards and recommendations of the Design Committee and Declarant, so long as Declarant is the Owner of a Lot.

4.17 Sewage Disposal Systems. No individual sewage disposal system shall be used on the Property. Each Owner shall connect the appropriate facilities on such Owner's Lot to the public sewer system and pay all charges assessed thereon.

4.18 Water Rights Appurtenant to Subdivision Lands. Declarant owns certain water and water rights which are appurtenant to the Property. Declarant hereby reserves unto itself all such water and water rights. Accordingly, no Lot or any Owner thereof shall have any right, title, or interest in any of said water or water rights.

4.19 Energy Devices, Outside. No energy production devices, including, without limitation, generators of any kind and solar energy devices, shall be constructed or maintained on any portion of the Property without the written approval of the Design Committee, except for heat pumps shown in the plans approved by the Design Committee. This Section shall not apply to passive solar energy systems incorporated into the approved design of a residential structure.

4.20 Signs. No signs of any kind, exclusive of, "for sale" signs, shall be displayed on or from any portion of the Property except those signs approved by the Design Committee, or signs of Declarant or its representatives, agents, employees or assigns, or signs required by law.

4.21 No Further Subdivision. No Lot may be further subdivided unless expressly approved in writing by the Association and consistent with all applicable city and state laws and ordinances. This Section shall not apply to any portion of the Property owned by Declarant.

4.22 Declarant's Right of Development. Nothing contained herein shall limit the right of Declarant to grant licenses, to reserve rights of ways and easements for Declarant, utility companies, public agencies or others, or to complete excavation, grading and construction of Improvements to and on any portion of the Property owned by Declarant, or to alter the foregoing and its construction plans and designs, or to construct such additional Improvements as Declarant deems advisable in the course of development of the Property so long as any Lot in the Property remains unsold. Such right shall include, but shall not be limited to, erecting, constructing and maintaining on the Property such structures and displays as may be reasonably necessary for the conduct of Declarant's business of completing the work and disposing of the same by sales, lease or otherwise. Declarant may use any structures owned by Declarant on the Property as model home complexes or real estate sales or leasing offices. Declarant need not seek or obtain Association or Design Committee approval of any Improvement constructed or placed by Declarant on any portion of the Property owned by 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 Blaine County Recorder's Office.

Declarant, in Declarant's sole discretion and in accordance with all applicable City of Hailey zoning laws, may amend and modify the Development Plan. By acceptance of a deed to any portion of the Property, each Owner of such Property thereby acknowledges and agrees the Development Plan for the Property may be amended, modified or changed in Declarant's sole discretion, so long as the Development Plan is consistent with the City of Hailey's zoning laws. Each Owner by acceptance of a deed to any Lot or other portion of the Property agrees that such Owner shall not object to or oppose any development of any portion of the Property, or other property owned by Declarant and annexed to the Property. Such agreement not to oppose development is a material consideration to the conveyance of any portion of the Property by Declarant to any and all Owners.

No provision of this Declaration shall be construed as to prevent or limit Declarant's right to complete development of the Property, including any subdivision or resubdivision of the Property, or to construct Improvements thereon, nor Declarant's right to maintain model homes, construction, sales or leasing offices or similar facilities on any portion of the Property, including the Common Area, Restricted Area or any public right-of-way, nor Declarant's right to post signs incidental to construction, sales or leasing.

4.23 Compliance with Laws. Subject to the rights of reasonable contest, each Owner shall promptly comply with the provisions of all applicable laws, regulations, ordinances and other governmental or quasi-governmental regulations with respect to all or any portion of the Property.

ARTICLE V. ASSOCIATION

5.1 Organization of Association. The Association shall be initially organized by Declarant as an Idaho non-profit corporation under the provisions of the Idaho Code relating to general non-profit corporations and shall be charged with the duties and vested with the powers prescribed by law and set forth in the Project Documents. Neither the Articles nor the Bylaws shall be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. Declarant may, in its discretion, grant to the Association a revocable, non-exclusive license to use the name "River Street Townhomes." Each Owner shall abide by and benefit from the provisions, covenants, conditions and restrictions contained in the Project Documents.

5.2 Membership. Each Owner, by virtue of being an Owner and for so long as such ownership is maintained, shall be a Member of the Association, and no Owner, except Declarant, shall have more than one (1) membership in the Association for each Lot owned by such Member. When more than one (1) Person holds an ownership interest in any Lot, all such Persons and entities will be Members; provided, however, the vote for such Lot with common ownership will be exercised as the Owners of such Lot determine, but in no event will more than one (1) vote be cast with respect to such Lot. Memberships in the Association shall be appurtenant to the Lot or other portion of the Property owned by such Owner. The memberships in the Association shall not be transferred, pledged, assigned or alienated in any way except upon the transfer of Owner's title and then only to the transferee of such title. Any attempt to make a prohibited membership transfer shall be void and will not be reflected on the books of the Association. The Association shall have two (2) classes of membership.

5.2.1 Class A Members. Class A Members shall be the Owners of the Lots, excluding the Declarant, until the Class B Member Termination Date (defined below). Prior to the Class B Member Termination Date, Class A Members are not entitled to vote. At all meetings of the Association after the

Class B Member Termination Date, each Class A Member will be entitled to one (1) vote for each Lot owned by such Member.

5.2.2 *Class B Member.* Declarant shall be the Class B Member, who is the sole voting Member of the Association entitled to vote the collective voting power of the Association from the Effective Date until the Class B Member Termination Date. The Class B Member shall cease to exist upon the earlier to occur of the following: (i) Declarant no longer owns any of the Lots within the Property (including, without limitation, any Lots annexed into the Project through a Supplemental Declaration); (ii) Declarant informs the Board, in writing, that Declarant no longer wishes to exercise its rights as the Class B Member; or (iii) five (5) years following the date the first Lot within the Property is conveyed by Declarant. This date may be referred to herein as the “**Class B Member Termination Date.**”

5.3 Voting at the Association. Upon the Class B Member Termination Date, each Class A Member will be entitled one (1) vote per Lot owned by such Member at all meetings of the Association.

5.4 Board of Directors and Officers. The affairs of the Association shall be conducted and managed by the Board and such officers as the Board may elect or appoint, in accordance with the Articles and Bylaws, as the same may be amended from time to time.

5.5 Power and Duties of the Association.

5.5.1 *Powers.* The Association shall have all the powers of a non-profit corporation organized under the non-profit corporation laws of the State of Idaho subject only to such limitations upon the exercise of such powers as are expressly set forth in the Project Documents. The Association shall have the power to do any and all lawful things which may be authorized, required or permitted to be done by the Association under Idaho law and under the Project Documents, and to do and perform any and all acts which may be necessary to, proper for, or incidental to the proper management and operation of the Common Area, Restricted Area, Maintenance Property and the Association's other assets, including water rights when and if received from Declarant, and the performance of the other responsibilities herein assigned, including without limitation:

5.5.1.1 *Assessments.* The power to levy Assessments on behalf of itself, on any Owner and Association Member, or any portion of the Property pursuant to the restrictions enunciated in this Declaration, and to force payment of such Assessments, all in accordance with the provisions of this Declaration. This power shall include the right of the Association to levy Assessments on any Owner of any portion of the Property to cover the operation and maintenance costs of the Common Area, Restricted Area and the Maintenance Property. The right to levy Assessments shall include the right to establish start-up and/or transfer fees payable upon purchase and/or sale of any Lot.

5.5.1.2 *Right of Enforcement.* The power and authority from time to time in its own name, on its own behalf, or on behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Project Documents, and to enforce by injunction or otherwise, all provisions hereof.

5.5.1.3 *Power to Levy Fines.* The power to impose reasonable monetary fines which shall constitute a lien upon the Lot owned or occupied by the Owner, Occupant or other Person determined by the Board to be in violation of the Project Documents (individually, a “**Violation**”).

Provided, however, pursuant to the provisions of Idaho Code Section 55-115, the Association shall not impose a fine on an Owner for a Violation unless: (i) the Board votes to impose the fine at any regular or special meeting of the Board or the Association (individually, a “**Levy Meeting**”); (ii) such Owner is provided at least thirty (30) days advance written notice of the Levy Meeting by personal service or certified mail at the last known address of such Owner as shown in the records of the Association; and (iii) such Owner is given a reasonable opportunity to respond to the Violation during the Levy Meeting. Provided further, the Association shall not impose a fine on an Owner if such Owner, prior to the Levy Meeting, begins resolving the Violation and continues to address the Violation in good faith until the Violation is fully resolved (the “**Remedial Period**”). For purposes of this Section, the phrase “address the violation in good faith until the Violation is fully resolved” means the Owner must resolve the Violation within thirty (30) calendar days of the Notice; provided, however, if the nature of the Violation is such that more than thirty (30) calendar days are required for its resolution, then the Owner must diligently prosecute the same to completion within sixty (60) calendar days. All such fines shall be deemed to be a part of the Assessments to which the Owner’s Lot is subject under this Declaration. In all events, no portion of such fines may be used to increase the compensation to the Board or agent thereof.

5.5.1.4 *Delegation of Powers.* The authority to delegate its power and duties to committees, officers, employees, or to any Person to act as manager. Neither the Association nor the members of its Board shall be liable for any omission or improper exercise by the manager of any such duty or power so delegated. All contracts for management of any Common Area, Restricted Area or Maintenance Property shall be for a term not exceeding one (1) year, and shall be subject to review by the Board upon termination of the Class B membership.

5.5.1.5 *Association Rules.* The power to adopt, amend and repeal by majority vote of the Board such Association Rules as the Association deems reasonable. The Association may govern the use of the Common Area by the Owners, their families, invitees, licensees, lessees or contract purchasers, including, without limitation, the use of Common Area for organized recreational activities; provided, however, that any Association Rules shall apply equally to all Owners and shall not be inconsistent with this Declaration, the Articles or the Bylaws. A copy of the Association Rules as they may from time to time be adopted, amended or repealed shall be mailed, e-mailed, faxed or otherwise delivered to each Owner. Upon such mailing or delivery, the Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration. If the Association sends the Association Rules by e-mail or facsimile, they shall be deemed delivered upon transmission. In the event such Association Rules are inconsistent with or less restrictive than any other provisions of this Declaration, the Articles, Bylaws, and/or Design Guidelines, the provisions of the Association Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles, Bylaws, or Design Guidelines to the extent of any such inconsistency.

5.5.1.6 *Improvements Within the Public Right of Way.* The authority to own, maintain, repair, replace and/or operate any Improvements, including, without limitation, drainage facilities, landscaping islands, bridges, bridge facades, median strips and pathways located within any public right-of-way located within the Property or identified on the Plat.

5.5.1.7 *Emergency Powers.* The power, exercised by the Association or by any Person authorized by it, to enter upon any portion of the Property (but not inside any building constructed thereon) in the event of any emergency involving illness or potential danger to life or property or when necessary in connection with any maintenance or construction for which the Association is

responsible. Such entry shall be made with as little inconvenience to the Owner as practicable, and any damage caused thereby shall be repaired by the Association.

5.5.1.8 *Licenses, Easements and Rights of Way.* The power to grant and convey to any third party such licenses, easements and rights of way in, on or under the Common Area and Restricted Area as may be necessary or appropriate for the orderly maintenance, preservation and enjoyment of the same, and for the preservation of the health, safety, convenience and the welfare of the Owners, for the purpose of constructing, erecting, operating or maintaining:

5.5.1.8.1 Underground lines, cables, wires, conduits or other devices for the transmission of electricity or electronic signals for lighting, heating, power, telephone, television or other purposes, and the above ground lighting stanchions, meters, and other facilities associated with the provisions of lighting and services;

5.5.1.8.2 Public sewers, storm drains, water drains and pipes, water supply systems, sprinkling systems, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities; and

5.5.1.8.3 Mailboxes and sidewalk abutments around such mailboxes or any service facility, berm, fencing and landscaping abutting common areas, public and private streets or land conveyed for any public or quasi-public purpose including, without limitation, pedestrian and bicycle pathways.

5.5.2 *Duties.* In addition to duties necessary and proper to carry out the powers delegated to the Association by the Project Documents, without limiting the generality thereof, the Association or its agents, if any, shall have the authority and the obligation to conduct all business affairs of the Association and to perform, without limitation, each of the following duties:

5.5.2.1 *Operation and Maintenance of Common Area.* Operate, maintain, and otherwise manage or provide for the operation, maintenance and management of the Common Area, and all Improvements located thereon including the operation and maintenance of the Irrigation System serving the Common Area and the repair and replacement of property damaged or destroyed by casualty loss and including any signs placed at the entrances to, or otherwise in the vicinity of the Property. The Association shall, at Declarant's sole discretion, operate and maintain all properties owned by Declarant which are designated by Declarant for temporary or permanent use by Members of the Association;

5.5.2.2 *Operation and Maintenance of Restricted Area.* Operate, maintain, and otherwise manage or provide for the operation, maintenance and management of the Restricted Area, including, without limitation, any fencing located thereon, and the repair and replacement of property damaged or destroyed by casualty loss;

5.5.2.3 *Operation and Maintenance of Maintenance Property.* Operate, maintain, and otherwise manage or provide for the operation, maintenance and management of any Maintenance Property the Association, in its sole discretion, has decided to operate and/or maintain due to the benefits flowing through to the Owners and Members, including, without limitation, any signs, benches, lights, trails or parks, and/or as specifically provided in this Declaration, subject to any limitations on such operation, maintenance and management as set forth in this Declaration. The rights

and duties enunciated in this Subsection 5.5.2.3 shall include the right to levy Assessments on Owners as provided in Subsection 5.5.1.1;

5.5.2.4 *Identification Signs.* Maintain, repair and replace all permanent entry and special identification signs, including without limitation, entrance and monument signs, for the Property whether the same be located within or outside of the boundaries of the Property;

5.5.2.5 *Maintenance of Berms, Landscape Buffers and Fences.* Maintain any berms, retaining walls, landscape buffers, and water amenities within and abutting any Common Area, Restricted Area and Maintenance Property;

5.5.2.6 *Improvements in the Public Right of Way.* Maintain, improve, operate, repair and replace any facilities and Improvements, including, without limitation, drainage systems or facilities, bridge facades, pathways, landscape islands or median strips, any pathways abutting the Property, and landscaping or landscaping improvements located in any public rights-of-way which the Association is obligated, or otherwise deems advisable, to maintain, operate, repair and replace pursuant to the Plat, or any license, easement or other agreement;

5.5.2.7 *Operation and Maintenance of Storm Drainage Facilities.* Operate and maintain or otherwise provide for the operation and maintenance of all storm drainage facilities constructed by Declarant within the Project and adjacent to the Project, including, without limitation, drainage pipes, stormwater swales and collection ponds, whether located on and through the Lots, Restricted Area, Common Area or rights-of-way, and the repair and replacement of property damaged or destroyed by casualty loss;

5.5.2.8 *Taxes and Assessments.* Pay all real and personal property taxes and Assessments separately levied against the Association, the Common Area, the Restricted Area, the Property or any other property owned by the Association. Such taxes and Assessments may be contested or compromised by the Association, provided, however, that such taxes and Assessments are paid or a bond insuring payment is posted prior to the sale or disposition of any property to satisfy the payment of such taxes and Assessments. In addition, the Association shall pay all other federal, state and/or local taxes, including income or corporate taxes levied against the Association in the event that the Association is denied the status of a tax exempt corporation;

5.5.2.9 *Water and Other Utilities.* Acquire, provide and/or pay for water, sewer, garbage disposal, refuse and rubbish collection, electrical, telephone and gas and other necessary services for the Common Area and/or the Lots, as applicable, and to own and/or manage for the benefit of the Project all water rights and rights to receive water held by the Association, whether such rights are evidenced by license, permit, claim, decree, stock ownership or otherwise; and

5.5.2.10 *Insurance.* Obtain insurance from reputable insurance companies authorized to do business in the State of Idaho, and maintain in effect any insurance policy the Board deems necessary or advisable, and to the extent possible to obtain, including, without limitation the following policies of insurance:

5.5.2.10.1 Fire insurance including those risks embraced by coverage of the type known as the broad form "All Risk" or special extended coverage endorsement on a blanket

agreed amount basis for the full insurable replacement value of all Improvements, equipment and fixtures located within the Common Area and Restricted Area;

5.5.2.10.2 Comprehensive public liability insurance insuring the Board, the Association, Declarant, and the individual grantees, tenants, agents and employees, invitees and guests of each of the foregoing against any liability incident to the ownership and/or use of the Common Area, Restricted Area and Maintenance Property. Limits on liability of such coverage shall be as follows: Not less than One Million Dollars (\$1,000,000) per person and One Million Dollars (\$1,000,000) per occurrence with respect to personal injury or death, and One Million Dollars (\$1,000,000) per occurrence with respect to property damage;

5.5.2.10.3 Full coverage directors' and officers' liability insurance in an amount determined by the Board, but in all events not less than One Million Dollars (\$1,000,000);

5.5.2.10.4 Such other insurance, including motor vehicle insurance and worker's compensation insurance, to the extent necessary to comply with all applicable laws and indemnity, faithful performance, fidelity and other bonds as the Board shall deem necessary or required to carry out the Association functions or to insure the Association against any loss from malfeasance or dishonesty of any employee or other Person charged with the management or possession of any Association funds or other property;

5.5.2.10.5 The Association shall be deemed trustee of the interests of all Owners in connection with any insurance proceeds paid to the Association under such policies, and shall have full power to receive such Owner's interests in such proceeds and to deal therewith; and

5.5.2.10.6 Insurance premiums for the above insurance coverage shall be deemed a common expense to be included in the Regular Assessments levied by the Association.

5.5.2.11 Rule Making. Make, establish, promulgate, amend and repeal such Association Rules as the Board shall deem advisable;

5.5.2.12 Design Committee. Appoint and remove members of the Design Committee, subject to the provisions of this Declaration;

5.5.2.13 Enforcement of Restrictions and Rules. Perform such other acts, whether or not expressly authorized by this Declaration, as may be reasonably advisable or necessary to enforce any of the provisions of the Project Documents and any and all laws, ordinances, rules and regulations of the City of Hailey and Blaine County. Also including, without limitation, the recordation of any claim of lien with the Blaine County Recorder's Office, as more fully provided herein; and

5.5.2.14 Duties Imposed During Entitlement Process. Carry out all duties imposed by any governmental, municipal or other agencies as part of the entitlement process for the development of the Project.

5.6 Annual Meeting. The Association shall hold an annual meeting each year as more particularly set forth in the Articles and/or Bylaws.

5.7 Budgets and Financial Statements. Financial statements for the Association shall be prepared regularly and, upon request, copies shall be made available to each Member of the Association as follows:

5.7.1 A pro forma operating statement or budget for each fiscal year shall be available not less than sixty (60) days before the beginning of each fiscal year. The operating statement shall include a schedule of Assessments received and receivable.

5.7.2 Within ninety (90) days after the close of each fiscal year, the Association shall cause to be prepared and available to each Owner, a balance sheet as of the last day of the Association's fiscal year and annual operating statements reflecting the income and expenditures of the Association for its last fiscal year. Copies of the balance sheet and operating statement shall be available to each Member within ninety (90) days after the end of each fiscal year.

5.8 Manager. The Association may employ or contract for the services of a manager or management company, provided that no such employment or contract shall have a term of more than one (1) year, and each such contract shall be subject to cancellation by the Association with or without cause and without payment of a termination fee; provided ninety (90) days or less prior notice is given. The manager so employed or contracted with shall not have the authority to make expenditures chargeable against the Association except upon specific prior written approval and direction by the Board. The Board shall not be liable for any omission or improper exercise by such manager of any such duty, power or function so delegated by or on behalf of the Board.

5.9 Personal Liability. Each Owner understands and agrees that Declarant, the Association, the Association's manager (if any), the Design Committee and the directors, officers, members, managers, agents, employees and committee members of any of them (each individually a "**Released Party**") are immune from personal liability to such Owner and all other Persons for any action, expense, damage, loss or prejudice suffered or claimed on the account of any act, omission, error or negligence of a Released Party, and each Owner hereby knowingly and voluntarily waives and releases each Released Party for all such action, expense, damage, loss or prejudice suffered or claimed. The Association will indemnify, defend and hold each Released Party harmless from any action, expense, damage, loss or prejudice suffered or claimed arising from or related to each Released Party's acts, omissions, errors or negligence, provided that such Released Party, based upon the information possessed by such Released Party, acted in good faith without willful or intentional misconduct.

5.10 Waiver of Consequential Damages. Neither the Association nor the Declarant shall be liable to any Owner or Occupant for, and each Owner and Occupant releases the Association and Declarant from, any form of indirect, special, punitive, exemplary, incidental, or consequential or similar costs, expenses, damages, or losses.

ARTICLE VI.

RIGHTS TO COMMON AREAS; DESIGNATION OF COMMON AREAS, RESTRICTED AREAS AND MAINTENANCE PROPERTY

6.1 Use of Common Area. Every Owner shall have a right to use the Common Area which right shall be appurtenant to and shall pass with the title to every Lot subject to the following provisions:

6.1.1 The right of the Association to levy and increase Assessments for the construction, protection, maintenance, repair, management and operation of Improvements on the Common Area, including the right to levy and increase Special Assessments;

6.1.2 The right of the Association to suspend the voting rights and rights of use, or interest in, the Common Area by an Owner for any period during which any Assessment or charge against such Owner's Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of the Association Rules;

6.1.3 The right of the Association to dedicate, transfer or mortgage all or any part of the Common Area to any public agency, authority or utility or other Person for such purposes and subject to such conditions as may be permitted by the Project Documents; provided however, that no such dedication, transfer or mortgage outside the contemplation of Section 5.5.1.8 shall be effective unless an instrument agreeing to such dedication, transfer or mortgage signed by Members holding at least two-thirds (2/3) of the total voting power in the Association, has been recorded;

6.1.4 The right of the Association to prohibit the construction of Improvements on all Common Areas;

6.1.5 Common Areas may be used by the public as established from time to time by Declarant on any portion of the Property by describing such area on the Plat, by granting or reserving it in a deed or other instrument, or by designating it as such in this Declaration; and

6.1.6 Owner's shall not be entitled to use those portions of the Common Area designated as Restricted Area by Declarant or the Association from time to time.

6.2 Deed to Common Area. The Common Area shall be deeded by Declarant to the Association and the Common Area, together with any and all Improvements thereon shall be operated and maintained by the Association pursuant to this Declaration.

6.3 Delegation of Right to Use. Any Owner may delegate, in accordance with the Project Documents, such Owner's right of enjoyment to the Common Area to the members of such Owner's family in residence, and such Owner's tenants or contract purchasers who occupy such Owner's Lot. Only Declarant or the Association shall have the right to delegate the right of enjoyment to the Common Area to the general public, and such delegation to the general public may be for a fee set by Declarant or the Association.

6.4 Designation of Maintenance Property. Declarant hereby designates the following as Maintenance Property:

6.4.1 That portion of any Lot containing any landscaping, any portion of the Irrigation System, and/or any portion of the Community Pathway, in all events excluding any residential Improvements (the "**Landscape Maintenance Property**");

6.4.2 The landscaping, Irrigation System, roofs, and exterior walls of the townhomes on each Lot for the limited purposes identified in Section 4.4;

6.4.3 All sidewalks, curbs, and gutters, if any, located upon a Lot;

6.4.4 All cluster mailbox units located within the Property;

6.4.5 All signage located within the Property, including without limitation, all trailhead signage, street signage, Common Area signage, Project identification signage and other directional and identification signage;

6.4.6 Any stormwater drainage swales located within the Property but not located within designated Common Area or Restricted Area or otherwise identified as Maintenance Property; and

6.4.7 All property required to be maintained by the “Owner” pursuant to that certain Maintenance Agreement now or hereinafter recorded in the real property records of Blaine County, Idaho, the general form of which is attached hereto as Exhibit B and incorporated herein (the “**Maintenance Agreement**”). In furtherance of the foregoing, the Association assumes all duties, obligations, liabilities, terms, provisions, and covenants of the “Owner” under the Maintenance Agreement.

6.5 Damages. Each Owner shall be fully liable for any damage to any Common Area, Restricted Area or Maintenance Property which may be sustained by reason of the negligence or willful acts or omissions of the Owner, such Owner’s resident tenant or contract purchaser, or such Owner’s family and guests, both minor and adult. In the case of joint ownership of a Lot the liability of such Owners shall be joint and several. The cost of correcting such damage shall be a Limited Assessment against the Lot and may be collected as provided herein for the collection of other Assessments.

ARTICLE VII. ASSESSMENTS

7.1 Covenant to Pay Assessments. By acceptance of a deed to any Lot, each Owner of such Lot thereby covenants and agrees to pay when due all Assessments, set-up fees or charges made by the Association, including, without limitation, all Regular, Special and Limited Assessments and charges made against such Owner pursuant to the provisions of this Declaration or other applicable Project Document.

7.1.1 *Assessment Constitutes Lien*. Such Assessments and charges together with interest, costs and reasonable attorneys’ fees which may be incurred in collecting the same, shall be a charge on the land and shall be a continuing lien upon the property against which each such Assessment or charge is made.

7.1.2 *Assessment is Personal Obligation*. Each such Assessment, together with interest, costs and reasonably attorneys’ fees, shall also be the personal obligation of the Owner of such property beginning with the time when the Assessment falls due. The personal obligation for delinquent Assessments shall not pass to such Owner’s successors in title unless expressly assumed by them but shall remain such Owner’s personal obligation regardless of whether such Owner remains an owner.

7.2 Uniform Rate of Assessment. Subject to the terms that follow, all Regular Assessments, Special Assessments, and Transfer Assessments must be fixed at a uniform rate for each Lot; provided, however, once all Lots have been sold by Declarant to third parties, Regular Assessments against the Affordable Units shall not increase by more than five percent (5%) over the Regular Assessments against the Affordable Units for the prior fiscal year (the “Affordable Unit Regular Assessment Limitation”). Notwithstanding the foregoing, if an Affordable Unit is not sold to the City of Hailey, Idaho or the Blaine County Housing Authority in accordance with Section 4 of that certain Planned Unit Development

Agreement recorded in the real property records of Blaine County, Idaho as Instrument No. 690305, then the Affordable Unit Regular Assessment Limitation shall not apply to such Affordable Unit(s).

7.2.1 *Regular Assessments.* All Owners are obligated to pay Regular Assessments to the treasurer of the Association on a schedule of payments established by the Board.

7.2.2 *Purpose of Regular Assessments.* The proceeds from Regular Assessments are to be used to pay for all costs and expenses incurred by the Association, including, without limitation, legal and attorneys fees and other professional fees, for the conduct of its affairs, including without limitation the costs and expenses of construction, improvement, protection, maintenance, repair, management and operation of the Common Areas, Restricted Areas and Maintenance Property, including all Improvements located on such areas owned and/or managed and maintained by the Associations (the “**Operating Expenses**”), and an amount allocated to an adequate reserve fund to be used for repair, replacement, maintenance and improvement of those elements of the Common Area, Restricted Area and Maintenance Property, or other property of the Association that must be replaced and maintained on a regular basis (the “**Repair Expenses**”). The Operating Expenses and the Repair Expenses are collectively referred to herein as the “**Expenses**”.

7.2.3 *Computation of Regular Assessments.* The Association shall compute the amount of its Expenses on an annual basis. The Board shall compute and levy the amount of Regular Assessments owed by its Members for the first fiscal year within six (6) months following the month in which the closing of the first sale of a Lot occurs in the Property for the purposes of the Association’s Regular Assessment (“**Initiation Date**”). Thereafter, the computation of Regular Assessments by the Association shall take place not less than thirty (30) nor more than sixty (60) days before the beginning of each fiscal year of the Association. The computation of the Regular Assessment for the period from the Initiation Date until the beginning of the next fiscal year shall be reduced by an amount which fairly reflects the fact that such period was less than one (1) year.

7.2.4 *Amounts Paid by Owners.* The Board can require, in its discretion or as provided in the Project Documents, payment of Regular Assessments to the Association in monthly, quarterly, semiannual or annual installments. Regardless of the installment schedule adopted by the Board, the Board may bill for Assessments monthly, quarterly, semi-annually or annually, at its sole discretion. The Regular Assessment to be paid by any particular Owner for any given fiscal year shall be computed as follows:

7.2.4.1 As to the Association’s Regular Assessment, each Owner, except for the Declarant, as provided further in Subsection 7.2.4.2 below, shall be assessed and shall pay an amount computed by multiplying the Association’s total advance estimate of Expenses by the fraction produced by dividing the Lots attributable to the Owner by the total number of Lots in the Property; and

7.2.4.2 For two (2) years following the date assessments are first assessed against the Owners of Lots, Declarant shall not be assessed any Regular Assessments for each Lot of which Declarant is an Owner. However, during such two (2) year period, Declarant shall pay an amount equal to the lesser of: (i) the actual Operating Expenses shortfall of the Association (the “**Shortfall**”); or (ii) the Regular Assessments multiplied by the total number of Lots owned by Declarant on the date Regular Assessments are assessed against the Owners of Residential Lots (the “**Shortfall Payment**”). Declarant’s Shortfall Payment shall end two (2) years after the date assessments begin. Thereafter, Declarant shall be assessed Regular Assessments for each Lot of which Declarant is an Owner.

7.3 Special Assessments.

7.3.1 *Purpose and Procedure.* In the event that the Board shall determine that its respective Regular Assessment for a given calendar year is or will be inadequate to meet the Expenses of the Association for any reason, including, without limitation, costs of construction, improvement, protection, maintenance, repair, management and operation of Improvements upon the Common Area, Restricted Area or Maintenance Property, attorney's fees and/or litigation costs, other professional fees, or for any other reason, the Board shall determine the approximate amount necessary to defray such Expenses and levy a Special Assessment against the Owners which shall be computed in the same manner as Regular Assessments. The Board shall, in its discretion, determine the schedule under which such Special Assessment will be paid.

7.3.2 *Consistent Basis of Assessment.* Every Special Assessment levied by and for the Association shall be levied and paid upon the same basis as that prescribed for the levying and payment of Regular Assessments.

7.4 Limited Assessments. Notwithstanding the above provisions with respect to Regular and Special Assessments, the Board may levy a Limited Assessment against a Member as a remedy to reimburse the Association for costs incurred in bringing the Member and/or such Member's Lot into compliance with the provisions of the Project Documents or for damage caused by the Member, or any of such Member's family, representatives, tenants or invitees, to any Common Area, Restricted Area, Maintenance Property or any other portion of the Property. All Limited Assessments shall be deemed to result from the applicable Owner's Violation of the Project Documents, and therefore shall be subject to the procedures set forth in Section 5.5.1.3 hereof.

7.5 Transfer Assessments. Upon the transfer of fee simple title to a Lot (except a Common Area Lot) from Declarant to a third party Owner, and upon each subsequent transfer of such Lot thereafter, the transferee will pay a transfer assessment to the Association in an amount determined by the Board from time to time (the "**Transfer Assessment**"). Each Transfer Assessment will be paid at the escrow closing of such Lot to and for the benefit of the Association, or if no such escrow closing, directly to the Association. The Transfer Assessments are to be used to pay for Expenses and are not be used for any purpose prohibited by law. Transfer Assessments are not be considered prepayment of any other type of Assessments, are in addition to the Owner's continuing obligation to pay all other types of Assessments, and are not refundable.

7.6 Assessment Period. Unless otherwise provided in the Project Documents, the Assessment period for the Association, shall be determined by the Board. The first Assessment shall be prorated according to the number of months remaining in the fiscal year and shall be payable in equal installments.

7.7 Notice and Assessment Due Date. The Board shall determine if payments for all Assessments shall be due monthly, quarterly, semi-annually or annually. The Association shall send to each Owner written notice of the amount and due dates of each installment of the Annual Assessment at least once per year, and shall send at least fifteen (15) days prior written notice of the amount and due dates of each installment any Special Assessment. Each installment of the Regular Assessment or Special Assessment shall become delinquent if not paid within ten (10) days after the due date thereof. There may accrue, solely at the Board's discretion, with each delinquent installment payment a late charge equal to ten percent (10%) of the delinquent installment. In addition, each installment payment which is

delinquent for more than twenty (20) days may accrue, at the Board's uniform discretion, interest at eighteen percent (18%) per annum calculated the date of delinquency to and including the date full payment is received by the Association. The Association may bring an action against the delinquent Owner and may foreclose the lien against such Owner's Lot as more fully provided herein. Each Owner is personally liable for Assessments, together with all interest, costs and attorneys' fees, and no Owner may be exempt from such liability by a waiver of the use and enjoyment of the Common Area, or by lease or abandonment of such Owner's Lot.

7.8 Estoppel Certificate. The Association, upon at least twenty (20) days prior written request, shall execute, acknowledge and deliver to the party making such request, a statement in writing stating whether or not, to the knowledge of the Association, a particular Owner is in default under the provisions of this Declaration, and further stating the dates to which any Assessments have been paid by the Owner. Any such certificate delivered pursuant to this Article VII may be relied upon by any prospective purchaser or mortgagee of the Owner's Lot. Reliance on such Certificate may not extend to any default as to which the signor shall have had no actual knowledge. The Association shall be entitled to charge a reasonable fee for such statements. The Association shall further provide any other statements to an Owner as required by law, and may charge a reasonable fee for such statements.

7.9 Special Notice and Quorum Requirements. Notwithstanding anything to the contrary contained in the Project Documents, written notice of any meeting called for the purpose of levying a Special Assessment by the Association, or for the purpose of obtaining a membership vote in connection with an increase in the Regular Assessment shall be sent to all Members and to any Person in possession of a Lot, not less than fifteen (15) days nor more than thirty (30) days before such meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of the total votes of the Association shall constitute a quorum. If such quorum is not present, subsequent meetings may be called subject to the same notice requirement, and the required quorum at the subsequent meetings shall be fifty percent (50%) of the quorum required at the preceding meeting. No such subsequent meeting shall be held more than thirty (30) days following the preceding meeting.

ARTICLE VIII. ENFORCEMENT OF ASSESSMENTS; LIENS

8.1 Right to Enforce. The Association has the right to collect and enforce its Assessments which are created hereby and pursuant to the provisions hereof. Each Owner of a Lot, upon becoming an Owner of such Lot, shall be deemed to covenant and agree to pay each and every Assessment provided for in this Declaration and agrees to the enforcement of all Assessments in the manner herein specified. In the event an attorney or attorneys are employed for the collection of any Assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, each Owner agrees to pay reasonable attorney's fees in addition to any other relief or remedy obtained against such Owner. The Board or its authorized representative may enforce the obligations of the Owners to pay such Assessments by commencement and maintenance of a suit at law or in equity to enforce the liens created hereby. A suit to recover a money judgment for an unpaid Assessment shall be maintainable without foreclosing or waiving the lien hereinafter provided.

8.2 Assessment Liens.

8.2.1 *Creation.* There is hereby created a claim of lien on each and every Lot to secure payment of any and all Assessments levied against such Lot pursuant to this Declaration together with

interest thereon at the maximum rate permitted by law and all costs of collection which may be paid or incurred by the Association making the Assessment in connection therewith, including reasonable attorneys' fees. All sums assessed in accordance with the provisions of this Declaration shall constitute a lien on such respective Lots upon recordation of a claim of lien with the Blaine County Recorder's Office. Such lien shall be prior and superior to all other liens or claims created subsequent to the recordation of the notice of delinquency and claim of lien except for tax liens for real property taxes on any Lot and Assessments on any Lot in favor of any municipal or other governmental assessing body which, by law, would be superior thereto.

8.2.2 *Claim of Lien.* Upon default of any Owner in the payment of any Regular, Special or Limited Assessment levied hereunder, the Association may cause to be recorded in the Blaine County Recorder's Office a claim of lien. The claim of lien shall state the amount of such delinquent sums and other authorized charges (including the cost of recording such notice), a sufficient description of the Lot(s) against which the same have been assessed, and the name of the record Owner thereof. Each delinquency shall constitute a separate basis for a notice and claim of lien, but any number of defaults may be included within a single notice and claim of lien. Upon payment to the Association of such delinquent sums and charges in connection therewith or other satisfaction thereof, the Association shall cause to be recorded a further notice stating the satisfaction of relief of such delinquent sums and charges. The Association may demand and receive the cost of preparing and recording such release before recording the same.

8.3 Method of Foreclosure. Such lien shall be foreclosed by appropriate action in court.

8.4 Subordination to Certain Mortgages. The lien for the Assessments provided for herein in connection with a given Lot shall not be subordinate to the lien of any Mortgage except the lien of a First Mortgage given and made in good faith and for value that is of record as an encumbrance against such Lot prior to the recordation of a claim of lien for the Assessments. Except as expressly provided in this Article VIII, with respect to a mortgagee of a First Mortgage who acquires title to a Lot, the sale or transfer of any Lot shall not affect the Assessment lien provided for herein, nor the creation thereof by the recordation of a claim of lien, on account of the Assessments becoming due whether before, on, or after the date of such sale or transfer, nor shall such sale or transfer diminish or defeat the personal obligation of any Owner for delinquent Assessments as provided for in this Declaration.

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

ARTICLE IX. INSPECTION OF THE ASSOCIATION'S BOOKS AND RECORDS

9.1 Member's Right of Inspection. The membership register, books of account and minutes of meetings of the board and committees of any Association shall be made available for inspection and copying by any Member of said Association or by such Member's duly appointed representatives, at any reasonable time and for a purpose reasonably related to such Member's interest as a Member at the office of the Association or at such other place as the board of such Association shall prescribe. No Member or

any other Person, other than Declarant, shall copy the membership register for the purposes of solicitation of or direct mailing to any Member of said Association.

9.2 Rules Regarding Inspection of Books and Records. The Board shall establish reasonable rules with respect to: notice to be given to the custodians of the records by the Persons desiring to make the inspection; hours and days of the week when such an inspection may be made; and payment of the cost of reproducing copies of documents requested pursuant to this Article IX.

9.3 Director's Rights of Inspection. Every director of the Board shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association, and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extracts and copies of documents.

ARTICLE X. DESIGN COMMITTEE

10.1 Creation; Declarant's Right of Appointment. On or before (30) days after the date on which Declarant first conveys a Lot to an Owner, Declarant shall appoint three (3) individuals to serve on the Project's design committee (the "**Design Committee**"). Thereafter, at any time, and from time to time, until such time as the Class B Membership is terminated, Declarant shall have the exclusive right, in Declarant's sole discretion, to appoint, remove and replace all members of the Design Committee. At all other times, the Board shall have the right to appoint, remove and replace all members of the Design Committee. If a vacancy on the Design Committee occurs and a permanent replacement has not yet been appointed, Declarant, prior to the Class B Member Termination Date, and the Board thereafter, as the case may be, may appoint an acting member to serve for a specified temporary period not to exceed one (1) year. A member of the Design Committee need not be an Owner. Members of the Design Committee may be removed by the Declarant or the Board, as applicable, with or without cause. Pursuant to Section 10.3 below, the Design Committee shall review, study, and either approve or reject the proposed plans for Improvements on the Property, all in compliance with the Declaration. The actions of the Design Committee in the exercise of its discretion by its approval or disapproval of the proposed Improvements on the Property, or with respect to any other matter before it, shall be conclusive and binding on all interested parties.

10.2 Appointment of Design Committee Representative. The Design Committee may appoint in writing one (1) of its members to act as its designated representative (the "**Committee Representative**"). The Committee Representative may be delegated all duties and obligations of the Design Committee. In the event a Committee Representative is appointed, it is intended that the Design Committee shall look to the Committee Representative to perform all functions of the Design Committee; provided however, the Design Committee shall make all final determinations and decisions regarding all Design Committee duties and obligations. Any action or decision made by two (2) members of the Design Committee shall be a binding decision of the entire Design Committee.

10.3 Improvements Generally. The Design Committee is authorized (but not required) to draft Design Guidelines for the construction and reconstruction of all Improvements on the Property and amend and supplement the same, from time to time. No Improvements on any portion of the Property shall be constructed, reconstructed, placed or removed from the Property without prior written consent of the Design Committee, and without being in compliance with the Project Documents. The Design Guidelines, if any, shall be used by the Design Committee to ensure that all Improvements conform and

harmonize as to external design, quality and type of construction, architectural character, materials, color, location within the Building Envelope, height, grade and finish ground elevation, natural conditions, landscaping and all aesthetic considerations, including guidelines designed to protect the special qualities of the Project, and to encourage creative design, by providing general architectural, design and construction guidelines (including Building Envelope guidelines), landscape guidelines (including a description of existing, natural conditions and vegetation), submittal and review procedures, and fees and charges for review. The Design Guidelines shall be drafted to conform to this Declaration, the Articles and the Bylaws, and must be approved by the Board prior to implementation. In the event of a conflict between the Design Guidelines and this Declaration, the Articles or the Bylaws, this Declaration, the Articles or Bylaws, as the case may be, shall govern. The content of the Design Guidelines may be modified and amended from time to time as provided in the Design Guidelines, and in all events can be modified and changed by a majority vote of the Board. Nothing contained in this Article X limits any Owner's obligation and duty to ensure that such Owner's Lot development is in compliance with this Declaration, the Design Guidelines, any other Project Documents or applicable local, state and federal laws, rules, regulations and ordinances. Until such time as the Design Committee formally adopts Design Guidelines as set forth above, the Design Guidelines are as follows: any repair or replacement of any Improvement must, in all respects, be equal to the originally constructed Improvement in terms the design, quality of material, appearance (including without limitation color), and durability.

10.4 Expenses. All expenses of the Design Committee shall be paid by the Association. The Design Committee shall have the right to charge a fee for each application submitted to it for review in an amount which may be established by the Design Committee from time to time and such fees shall be collected by the Design Committee and remitted to the Association to help defray the expenses of the Design Committee's operation, including reasonable payment to each member of the Design Committee for their services.

10.5 Non-Liability of Design Committee Members. Approval by the Design Committee does not assure approval of the Improvements by any appropriate governmental or quasi-governmental agency, board or commission. Notwithstanding that the Design Committee has approved Improvements, plans and specifications, neither the Design Committee nor any of its members shall be responsible or liable to the Association or to any Person, Owner, or Declarant with respect to any loss, liability, claim or expense which may arise by reason of such approval of the Improvements, unless due to the willful misconduct or bad faith of the Design Committee. Neither the Board, Design Committee or any agent thereof nor Declarant or any of its members, managers, employees, agents or consultants shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the provisions of the Project Documents, nor for any structural or other defects in any work done according to such plans and specifications. In any and all events, the Design Committee shall be defended, indemnified and held harmless by the Association in any such suit or proceeding which may arise by reason of the Design Committee's decision. The Association, however, shall not be obligated to defend, indemnify and hold harmless any member of the Design Committee to the extent any such member of the Design Committee shall be adjudged to be liable for willful misconduct or bad faith in the performance of such member's duty as a member of the Design Committee, unless and only to the extent that the court in which such action or suit may be brought shall determine that, despite the adjudication of liability, but in view of all circumstances of the case, such member is fairly and reasonably entitled to indemnification and defense for such expense if such court shall deem it proper.

10.6 Variances. The Design Committee may authorize variances from compliance with any of the Design Guidelines, including restrictions upon height, size, floor area or placement of structures, or

similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require. Such variances must be evidenced in writing, must be signed by at least two (2) members of the Design Committee. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration or the Design Guidelines shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration or the Design Guidelines for any purpose except as to the particular property and particular provision hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting his or her use of the Property, including, but not limited to zoning ordinances and lot set-back lines or requirements imposed by any governmental or municipal authority.

10.7 Declarant's Exemption. Any and all Improvements constructed by or at the request or direction of Declarant on or to the Property are not subject to review and approval by the Design Committee.

ARTICLE XI. EASEMENTS

11.1 Owners: Easements of Enjoyment. Every Owner shall have a nonexclusive easement for the use and enjoyment of the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the easements set forth in this Declaration, as supplemented and amended from time to time.

11.2 Delegation of Use. Any Owner may delegate, in accordance with the Project Documents, such Owner's right of enjoyment in the Common Area, to such Owner's tenants, employees, family, guests or invitees.

11.3 Recorded Easements. The Property, and all portions thereof, shall be subject to all easements shown or identified on the Plat affecting the Property, or any portion thereof, and to any other easements of record or of use as of the date of recordation of this Declaration, as supplemented and amended from time to time.

11.4 Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment as between each Lot and such portion or portions of the Common Area or Restricted Area adjacent thereto, or as between adjacent Lots, due to the unwillful placement or settling or shifting of the Improvements including, without limitation, structures, walkways, bike paths, sidewalks and driveways constructed, reconstructed or altered thereon in accordance with the terms of this Declaration. Easements of encroachment shall be valid only so long as they exist, and the rights and obligations of Owners shall not be altered in any way because of encroachments, settling or shifting of the Improvements; provided, however, that in no event shall a valid easement for encroachment occur due to the willful or bad faith act(s) of an Owner. In the event a structure on any Lot is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Lot agree that minor encroachments within and over adjoining Lots that existed prior to the encroachment may be reconstructed pursuant to the easement granted by this Section 11.4.

11.5 Party Walls. Lots may include Party Walls. To the extent any Party Wall exists, there is hereby created a common reciprocal easement for the location of such Party Wall. Each Owner shall

have the right to use the surface of any Party Wall contained within the interior of the Owner's Lot, provided that an Owner shall not drive, place or cause to be driven or placed any nail, bolt, screw or other object into a Party Wall which penetrates a Party Wall equal to or greater than the Party Walls' width. The Owner shall respectively own to the centerline of any Party Wall. The cost of reasonable repair and maintenance of a Party Wall shall be shared equally by the Owners of such Party Wall. Such Party Wall shall be maintained in good condition by the Owners thereof, free of structural defects and using reasonable care to avoid injury to the adjoining property. Notwithstanding any other provisions in this Section 11.5, an Owner who by negligent or willful act(s) causes a Party Wall to be damaged and/or exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements and/or repair to such Party Wall. If such Party Wall is destroyed or damaged by fire or other casualty, either Owner may restore such Party Wall and the other Owner shall contribute one-half (1/2) of the cost of such restoration. This right of contribution shall be without prejudice to any right to call for a larger contribution under any rule of law regarding liability for negligent or willful acts or omissions.

11.6 Easements of Access. Declarant expressly reserves for the benefit of all the Property reciprocal easements of ingress and egress for all Owners to and from their respective Lots, for installation and repair of utility services, for drainage of water over, across and upon adjacent Lots, Common Areas and Restricted Areas resulting from the normal use of adjoining Lots, Common Areas or Restricted Areas, and for necessary maintenance and repair of any Improvement in the condition required by this Declaration, including, without limitation, fencing, retaining walls, lighting facilities, mailboxes and sidewalk abutments, trees and landscaping. Such easements may be used by Declarant, and by all Owners, their guests, tenants and invitees, residing on or temporarily visiting the Property, for pedestrian walkways, vehicular access and such other purposes reasonably necessary for the use and enjoyment of a Lot or Common Area.

11.7 Drainage and Utility Easements. Notwithstanding anything expressly or impliedly contained herein to the contrary, this Declaration shall be subject to all easements heretofore or hereafter granted by Declarant for the installation and maintenance of utilities and drainage facilities that are required for the development of the Property, including, without limitation, those identified on the Plat. In addition, Declarant hereby reserves for the benefit of the Association the right to grant additional easements and rights of way over the Property to utility companies and public agencies as necessary or expedient for the proper development of the Property until close of escrow for the sale of the last Lot in the Property.

11.8 Improvement of Drainage and Utility Easement Areas. The Owners of Lots are hereby restricted and enjoined from constructing or altering any Improvements upon any drainage or utility easement areas identified on the Plat or otherwise designated in any recorded document which would interfere with or prevent the easement from being used for its intended purpose; provided, however that any Owner, the Association, designated Person or the Declarant having an interest in the drainage and utility easement described in this Article XI, shall be entitled to install and maintain landscaping on such easement areas, subject to approval by the Design Committee, so long as the same would not interfere with or prevent the easement areas from being used for their intended purposes or violate the terms of such easement; provided further, that any damage sustained to Improvements on the easement areas as a result of legitimate use of the easement area shall be the sole and exclusive obligation of the Owner of the Lot where Improvements were so damaged, or in the event the easement area where Improvements were so damaged is located in a Common Area or Restricted Area, the Association, shall be responsible for the damage sustained and may impose a Special Assessment therefore.

11.9 Rights and Duties Concerning Utility Easements. The rights and duties of the Owners of the Lots within the Property with respect to utilities shall be governed by the following:

11.9.1 Wherever utility house connections are installed within the Property, which connections or any portions thereof lie in or upon Lots owned by an Owner other than the Owner of the Lot served by the connections, the Owner of the Lot served by the connections shall have the right, and is hereby granted an easement to the full extent necessary therefor, to enter upon any Lot or to have their agent enter upon any Lot within the Property in or upon which said connections or any portion thereof lie, to repair, replace and generally maintain the connections as and when it may be necessary; and

11.9.2 Whenever utility house connections are installed within the Property, which connections serve more than one Lot the Owner of each Lot served by the connections shall be entitled to full use and enjoyment of such portions of said connections as service such Owner's Lot.

11.10 Maintenance and Use Easement Between Walls and Property. Whenever the wall of a structure, a fence, eave or overhang constructed on a Lot pursuant to the Design Committee's approval is located within three (3) feet of the property line of such Lot, the Owner of such Lot is hereby granted an easement over and on the adjoining Lot (not to exceed three (3) feet from the property line of the Lot) for purposes of maintaining, repairing or replacing such wall, fence, eaves or other overhangs, and the Owner of such adjoining Lot is hereby granted an easement for landscaping purposes over and on the area lying between the property line and such structure or fence so long as such use does not cause damage to the structure or fence. Nothing contained in this Section 11.10 shall be deemed to grant an easement within the interior of any Dwelling Unit.

11.11 Disputes as to Sharing of Costs. In the event of a dispute between Owners with respect to the repair, replacement or maintenance of any Improvement, Party Wall, roofs, utility connections or driveways, or with respect to the sharing of the cost therefor, the matter shall be resolved among the applicable Owners and the Association shall not be made a party thereto.

11.12 Declarant's Rights Incident to Construction. Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress over, in, upon, under, and across the Property and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the construction of the Improvements on the Property owned by Declarant; provided, however, that no such rights shall be exercised by Declarant in such a way as to unreasonably interfere with the occupancy, use, enjoyment, or access to an Owner's Lot by that Owner or such Owner's family, tenants, employees, guests, or invitees.

11.13 Emergency Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and all other similar emergency agencies or Persons to enter upon the Property in the proper performance of their duties.

11.14 Maintenance Easement. A non-exclusive easement is hereby reserved granted to the Association upon, across, over, in, and under all portions of all Lots that are not improved with an occupied structure. The Association shall use the easement granted herein as the Association may deem necessary, appropriate, or convenient to perform to exercise its rights identified in the Project Documents, to perform its duties and obligations identified in the Project Documents, and to make emergency repairs.

11.15 Community Pathway. Declarant hereby creates, grants, declares, and reserves, for the benefit of all Lots and the Owners thereof (including, without limitation, Declarant and the Association), an easement on, over, and across those portions of Lots 6 through 15 in Block 1 and Lot 36 in Block 1 of the Plat that are paved with the Community Pathway (the “**Pathway Easement**”), as identified on the Community Pathway Exhibit. The Pathway Easement is for the purpose of non-motorized ingress, egress, and passage by Owners and their respective Occupants and agents.

11.16 Easements Deemed Created. All conveyances of Lots made after the date of the recording of the Declaration, as amended and supplemented from time to time whether by Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Article XI, even though no specific reference to such easements or to this Article XI appears in the instrument for such conveyance.

ARTICLE XII. DAMAGE OR DESTRUCTION

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

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

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

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

12.5 Disbursement of Funds for Repair and Reconstruction. The insurance proceeds held by the Association and the amounts received from the Special Assessments constitute a fund for the payment of the costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to the contributions each Owner made as a Special Assessment to the Association under this Article XII, or, if no Special Assessments were made, then in equal shares per Lot, first to the mortgagees of a First Mortgage and then to the Owners, as their interests appear.

12.6 Decision Not to Rebuild. If Owners representing more than more than two-thirds (2/3) of the total allocated votes within the jurisdiction of the Association and more than more than two-thirds (2/3) of the mortgagees of a First Mortgage (based upon one vote for each mortgage owned) of the Lots agree in writing not to repair and reconstruct and no alternative Improvements are authorized, then and in that event the damaged Common Area shall be restored to its natural state and maintained as an undeveloped portion of the Common Area by the appropriate Association in a neat and attractive condition, and any remaining insurance proceeds shall be distributed in equal shares per Lot, first to the mortgagees of a First Mortgage and then to the Owners, as their interests appear. Notwithstanding the foregoing, in the event any Common Area improvement which was required by the City of Hailey as a condition of approval for the development of the Project is damaged, the Association shall repair or reconstruct such improvement unless the Association obtains the prior written consent of the City of Hailey not to repair or reconstruct such improvement.

12.7 Damage or Destruction Affecting Lots. In the event of damage or destruction to the Improvements located on any of the Lots, the Owner thereof shall promptly repair and restore the damaged Improvements to their condition prior to such damage or destruction. Subject to the provisions of Section 5.5.1.3, if such repair or restoration is not commenced within one hundred eighty (180) days from the date of such damage or destruction, or if repair and reconstruction is commenced but then abandoned for a period of more than ninety (90) days, then the Association may impose a fine of not less than one hundred dollars (\$100) per day on the Owner of the Lot until repair and reconstruction is commenced, unless the Owner can prove to the reasonable satisfaction of the Association that such failure is due to circumstances beyond the Owner's control.

ARTICLE XIII. CONDEMNATION

13.1 Rights of Owners. Whenever all or any part of the Common Area or Restricted Area shall be taken or conveyed in lieu of and under threat of condemnation, the Board acting as attorney in fact for all Owners, shall notify each Owner of the taking, but the Association shall act as attorney in fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

13.2 Condemnation; Distribution of Award; Reconstruction. The award made for such partial or complete taking shall be payable to the Association as trustee for all Owners to be disbursed as follows: If the taking involves a portion of the Common Area or Restricted Area on which Improvements have been constructed, then, unless within sixty (60) days after such taking Declarant and Owners representing more than more than two-thirds (2/3) of the Class A Members shall otherwise agree, the Association shall restore or replace such Improvements so taken on the remaining land included in the

Common Area or Restricted Area to the extent lands are available therefor, in accordance with plans approved by the Board and the Design Committee. If such Improvements are to be repaired or restored, the provisions in Article XII regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any Improvements on the Common Area or Restricted Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be distributed in equal shares per Lot, first to the mortgagees of any First Mortgage and then to the Owners, as their interests appear.

ARTICLE XIV. RESOLUTION OF DISPUTES

14.1 Agreement to Avoid Litigation. Declarant, the Association, and the Owners agree that it is in their best interests to provide a fair, impartial, and expeditious procedure for the resolution of disputes related to the Project Documents instead of costly, lengthy, and unpredictable litigation. Accordingly, Declarant, the Association (including its officers, directors and committee members), each Owner and any party claiming a right or interest under the Project Documents (each, a “**Bound Party**”) agree to encourage the efficient resolution of disputes within the Project without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that all claims, grievances, appeals, or disputes arising out of or relating to the interpretation, application, or enforcement of the Project Documents or the rights, obligations, and duties of any Bound Party under the Project Documents (“**Claims**”) will be subject to the provisions of Section 14.3 unless exempt under Section 14.2. All Claims will be subject to resolution pursuant to this Article XIV as a condition precedent to the institution or continuation of any legal or equitable proceeding; provided, however, any Bound Party may proceed in accordance with applicable law to comply with any notice or filing deadlines prior to resolution of the Claim.

14.2 Exemptions. The following Claims will not be subject to this Article XIV unless all Bound Parties thereto agree to submit such Claim to these dispute resolution procedures:

14.2.1 Any Claim by the Association against any Bound Party to enforce the obligation to pay any Assessment to the Association under the Project Documents;

14.2.2 Any Claim by Declarant or the Association to obtain injunction or equitable relief to enforce any provision of the Project Documents;

14.2.3 Any Claim between Owners where the Declarant or the Association are not a party thereto, which Claim would constitute a cause of action independent of the Project Documents;

14.2.4 Any Claim in which any indispensable party is not a Bound Party;

14.2.5 Any Claim against a Released Party that would be barred by Section 5.9;

14.2.6 Any Claim which otherwise would be barred by any applicable law (such as, for example, the applicable statute of limitations); and

14.2.7 Any Claim arising out of or relating to the interpretation, application, or enforcement of any purchase, sale, or construction agreement with Declarant or any builder related to the construction of Improvements within the Project, or the rights, obligations, and duties of any Bound Party

under such agreements, it being understood that applicable law and the provisions of such agreements will control the resolution of any claims or disputes related thereto.

14.3 Dispute Resolution.

14.3.1 Direct Discussions. Any Bound Party having a Claim against any other Bound Party will notify such party(ies) of the Claim in writing, stating plainly and concisely the following: (a) the nature of the Claim; (b) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises); (c) the basic facts supporting the allegations in the Claim; (d) the other Persons involved in the Claim or with personal knowledge of the facts alleged; and (e) the claimant's proposed remedy, including the specific monetary amounts (if any) demanded. The Bound Parties to the Claim will make reasonable efforts to meet in person to resolve the Claim by good faith discussions and negotiations – it being understood that the best opportunity to achieve a fair and satisfactory resolution to a Claim is ordinarily through early discussions and negotiations held in good faith.

14.3.2 Dispute Resolution. If the Bound Parties to a Claim are unable to resolve the Claim through direct discussions within a reasonable time, either Bound Party may submit the Claim to the Board for assistance in resolving the Claim. In such event, the Board may, by notice to each Bound Party to the Claim within thirty (30) days of its receipt of a request for assistance:

14.3.2.1 Order the Bound Parties to continue direct discussions and negotiations for a period of up to thirty (30) days. If the Claim is not resolved in such period, any Bound Party may request the Board's assistance to resolve the Claim;

14.3.2.2 Order the Bound Parties to mediate the Claim with an independent real estate attorney, real estate professional, or judge selected by the Association. The mediator will set the rules of the mediation. Any party to the mediation can invite additional parties to the mediation if the presence of such additional party is required for a complete resolution of any Claim. The parties will share the mediator's fee and any filing fees equally. Unless otherwise agreed, the mediation will be held within thirty (30) days of the order for mediation and will be held in a neutral location near the Project selected by the mediator. Agreements reached in mediation will be enforceable as settlement agreements in any court having jurisdiction thereof. If the mediation does not resolve the Claim, the Bound Parties may proceed to litigation of the Claim in any court of competent jurisdiction;

14.3.2.3 Order the Bound Parties to settle the Claim through arbitration by a single arbitrator conducted in accordance with the Idaho Uniform Arbitration Act (Idaho Code, Title 7, Chapter 9) except as otherwise provided herein. The arbitrator will be any independent real estate attorney or judge appointed by the Association. The arbitrator will set the rules of the arbitration. The arbitrator may, in its discretion, order parties to produce documents relevant to the dispute and may order written discovery and depositions (but with care to avoid burdensome discovery or depositions). The arbitrator will endeavor to hold the arbitration at mutually convenient times and locations; provided, however, the arbitrator will endeavor to complete the arbitration within forty-five (45) days after appointment of the arbitrator. The parties will bear their own attorneys' fees (if any) and share the arbitrator's fees equally; provided, however, the arbitrator may award costs, arbitrator's fees, and attorneys' fees to the substantially prevailing party. The arbitrator's award will be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof;

14.3.2.4 If the Claim is within the jurisdiction of the Small Claims Department of the Magistrate Division (currently, monetary claims for \$5,000 or less), order a Bound Parties to file such Claim exclusively therein; or

14.3.2.5 Elect to exempt the Claim from this Article XIV, at which time the Bound Parties are free to exercise any right or remedy in accordance with applicable law.

If the Board fails to notify the Bound Parties within thirty (30) days of its receipt of a request for assistance, the Board will be deemed to have elected to exempt the Claim from this Article XIV.

14.3.3 *Enforcement.* If the Bound Parties resolve any Claim through mediation or arbitration pursuant to this Article XIV and any Bound Party thereafter fails to abide by the terms of such resolution (i.e., settlement agreement or arbitrator's award), then any other Bound Party may take any legal or other action to enforce such settlement agreement or arbitrator's award without the need to comply again with the procedures set forth in this Article XIV. In such event, the Bound Party taking action to enforce the resolution will be entitled to recover from any non-complying Bound Party all costs and attorneys' fees reasonably incurred in such enforcement.

ARTICLE XV. ANNEXATION AND DEANNEXATION

Declarant may annex additional lands into the Project from time to time by recording a supplement to this Declaration declaring such additional lands to be part of the Project and subject to this Declaration (each a "**Supplemental Declaration**"). Such Supplemental Declaration may add or delete covenants, conditions, restrictions and easements applicable to the annexed lands as Declarant may deem appropriate. Upon annexation, Owners within the annexed lands shall become Owners in the Project on equal footing with the then current Owners in the Project and shall have the same rights, privileges and obligations (except as may otherwise be set forth in the annexing Supplemental Declaration). Declarant shall have the right to de-annex any property owned by Declarant from the Project upon Declarant's recordation of a Supplemental Declaration identifying the de-annexed lands and declaring that such lands shall no longer be subject to this Declaration. In order to be valid, all Supplemental Declarations must refer to this Declaration and be recorded in the Blaine County Recorder's Office.

ARTICLE XVI. MISCELLANEOUS

16.1 Term. The easements created hereunder shall be perpetual, subject only to termination by the holders of such easements as provided by law. The covenants, conditions, restrictions and equitable servitudes of this Declaration shall run until December 31, 2072, unless amended or terminated as herein provided. After December 31, 2072, such covenants, conditions, restrictions and equitable servitudes shall be automatically extended for successive periods of ten (10) years each, unless amended or terminated by a written instrument executed by Members holding at least a majority of the voting power of the Association and such written instrument is recorded with the Blaine County Recorder's Office.

16.2 Amendment.

16.2.1 *Amendment.* From and after the Effective Date through the Class B Member Termination Date, Declarant has the exclusive right to amend or terminate this Declaration by executing a written instrument setting forth such amendment or termination, and the same will be effective upon the recordation thereof with the Blaine County Recorder's Office. After the Class B Member Termination Date, any amendment to this Declaration or termination hereof will be by a written instrument setting forth such amendment or termination, signed and acknowledged by the president and secretary of the Association certifying and attesting that such amendment or termination has been approved by the vote or written consent of Members representing more than sixty-five percent (65%) of the total voting power in the Association, and the same will be effective upon the recordation thereof with the Blaine County Recorder's Office.

16.2.2 *Effect of Amendment.* Any amendment or termination of this Declaration approved in the manner specified above shall be binding on and effective as to all Owners and their respective properties notwithstanding that such Owners may not have voted for or consented to such amendment or termination. Such amendments may add to and increase, or eliminate, the covenants, conditions, restrictions and easements applicable to the Property but shall not prohibit or unreasonably interfere with the allowed uses of such Owner's property which existed prior to the said amendment.

16.2.3 *City Approval Required for Amendment.* Notwithstanding the foregoing, neither the Declarant nor the Owners shall amend any provision of this Declaration which was required by the City of Hailey as a condition of approval for the development of the Project without the prior written consent of the City of Hailey.

16.3 Notices. Any notices permitted or required to be delivered as provided in this Declaration shall be in writing and may be delivered either personally, or by fax, mail or e-mail. If delivery is made by mail, it shall be deemed to have been delivered seventy two (72) hours after the same has been deposited in the United States mail, first class, postage prepaid, addressed to any Person at the address given by such Person to the Association for the purpose of service of such notice, or to the residence of such Person if no address has been given to the Association or to the address of such Person as contained in the Blaine County tax assessor's rolls. Such address may be changed from time to time by notice in writing to the Association. Notices sent by e-mail or facsimile shall be deemed delivered upon transmission of the same.

16.4 Enforcement and Non Waiver.

16.4.1 *Right of Enforcement.* Except as otherwise provided herein, any Owner, the Association or Declarant shall have the right to enforce any or all of the provisions hereof against any property within the Property and against the Owners thereof.

16.4.2 *Violations and Nuisances.* The failure of any Owner of a Lot to comply with any provision hereof, or with any provision of the Project Documents, is hereby declared a nuisance and will give rise to a cause of action in Declarant, the Association or any Owner for recovery of damages or for negative or affirmative injunctive relief or both.

16.4.3 *Violation of Law.* Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Property is hereby

declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth in this Declaration and any or all enforcement procedures in law and equity.

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

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

16.5 Use of Trademark. Each Owner by acceptance of a deed for such Owner's Lot shall be deemed to acknowledge that "River Street Townhomes" is a service mark and trademark of Declarant, or its licensees, and to covenant that such Owner shall not use the term "River Street Townhomes" without the prior written permission of Declarant, or its licensees.

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

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

16.6.2 *Restrictions Severable.* Notwithstanding the provisions of the foregoing Subsection 16.6.1, each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision herein.

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

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

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

16.8 Owners' Acknowledgements. By accepting a deed to any Lot(s) contained within the Property, each Owner acknowledges that Owner has accepted title to the Lot(s) after conducting all necessary inquiries and due diligence, and that Owner takes the Lot(s) "As Is", without any express or implied warranty from Declarant.

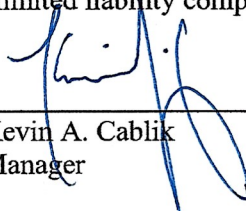
[End of Text]

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IN WITNESS WHEREOF, the undersigned has duly executed this Declaration effective as of the date first set forth above.

DECLARANT:

River Street Townhomes, LLC,
an Idaho limited liability company

By: 
Name: Kevin A. Cablik
Its: Manager

STATE OF IDAHO)
) ss.
County of Ada)

This record was acknowledged before me on May 23, 2022, by Kevin A. Cablik,
as manager of River Street Townhomes, LLC.

KRISTIN CAUDILL
Notary Public-State of Idaho
Commission Number 33817
My Commission Expires 06-30-2027

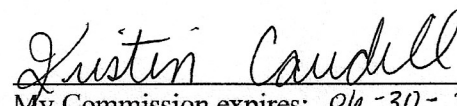

My Commission expires: 06-30-2027

EXHIBIT A

Community Pathway Exhibit

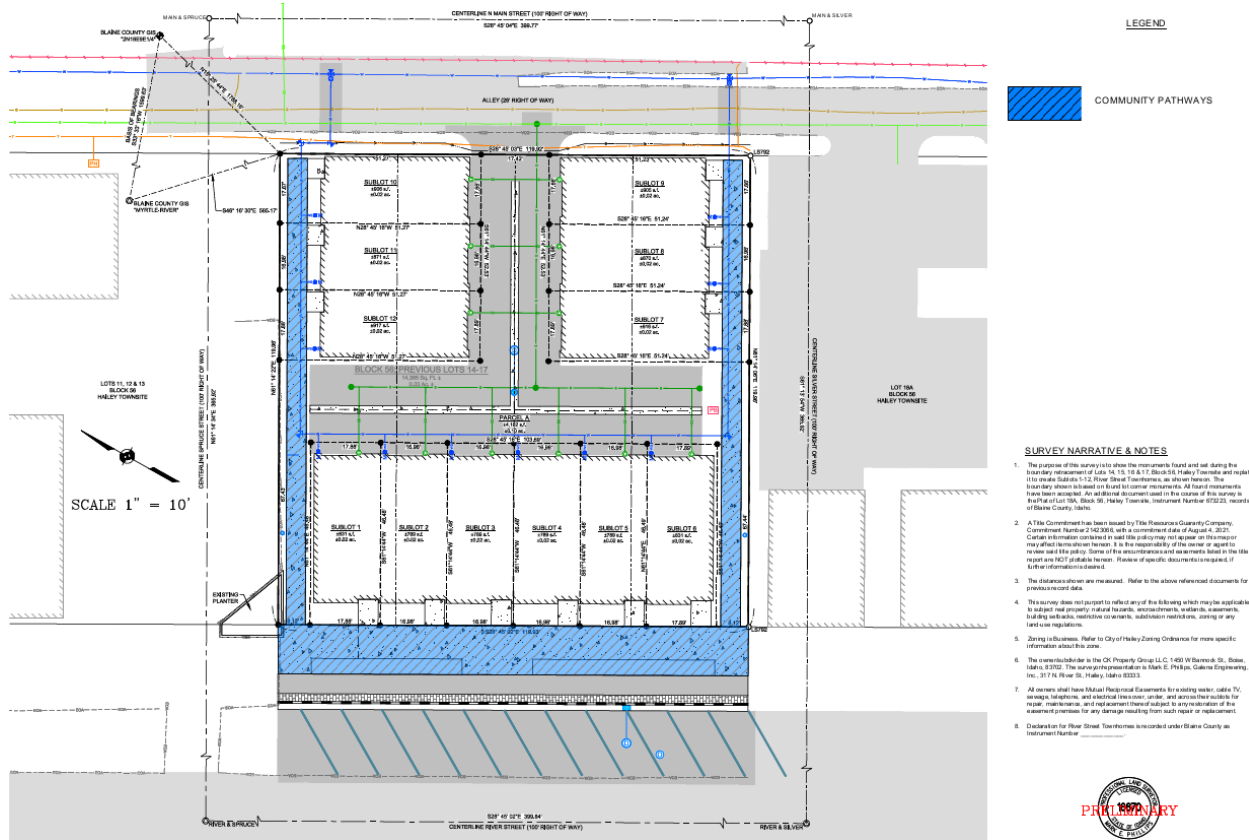


EXHIBIT B

Form of Maintenance Agreement

[attached; 8 pages]

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

City of Hailey
Attn. Hailey City Clerk
115 Main Street, Ste H
Hailey, Idaho 83333

(space above line for Recorder's use)

MAINTENANCE AGREEMENT

**River Street Townhomes, LLC (410 North River Street, Lot 14-17, Block 56, Hailey
Townsite)**

THIS AGREEMENT, made and entered into this _____ day of _____, 2022, by and between River Street Townhomes, LLC (the "Owner"), its successors and or assigns, and City of Hailey, Idaho (the "City").

RECITALS

WHEREAS, the City is a municipal corporation possessing powers granted to municipalities under the applicable provisions of the Idaho Code, including the power to contract; and

WHEREAS, the Owner is the entity charged with the management and upkeep of the River Street Townhomes located within the City of Hailey, State of Idaho; and

WHEREAS, the River Street Townhomes ("the Development") has been developed in accordance with the terms and conditions as outlined in the Hailey Municipal Code; and

WHEREAS, the owner, pursuant to an entitlement process including a subdivision platting process, Design Review, and Planned Unit Development Application, conditional approval of which required this Agreement, which is intended to run with the land, be perpetual, and bind heirs and assigns, and

WHEREAS, the terms of the Maintenance Agreement the Owners will assume various obligations with respect to snow removal, electrical, landscaping and irrigation within the Development and adjoining right-of-way, which are situated within the City's right-of-way (collectively, the "Maintenance Obligations") and as shown in the attached exhibit, Exhibit A

WHEREAS, reflecting upon Title 12: Streets, Sidewalks and Public Spaces, Chapter 12.16: Encroachments Permits, this Agreement shall act in-lieu of an Encroachment Permit, and shall satisfy the processes and procedures of Encroachment Permits addressed therein.

WHEREAS, the Parties wish to memorialize the extent and ongoing and perpetual nature of the Maintenance Obligations as set forth herein;

NOW, THEREFORE, in consideration of the above stated facts and objectives, and for other valuable consideration, the receipt of which is hereby acknowledged, it is hereby agreed as follows:

TERMS AND CONDITIONS

1. Sidewalks within City Right-of-Way:

- A. The Owner shall clear snow from all sidewalks and bike paths, constructed as part of the Development, which are located within the City's right-of-way (hereafter "Sidewalks") as soon as reasonably possible before each City snow plowing operation along the street adjacent to the Sidewalk, and shall be responsible for removal and disposal of snow at the Owner's expense should said effort not occur immediately before the City plowing operations.
- B. The Owner shall cause all Sidewalks to be swept and cleared of debris at least once each Spring after the snow melts, and as reasonably requested by the City as required to keep clean of debris.
- C. The Owner shall be solely responsible for all Maintenance Obligations associated with the Sidewalks, at a level consistent with City practices or with the maintenance of the remainder of the Common Area maintained by the Owner, whichever is greater. Notwithstanding the foregoing, nothing in this Agreement shall create an obligation on the Owner to replace the Sidewalks at the end of their lifecycle. That said, the Owner shall be responsible for any damages caused as a result of Owner's activities.

2. Landscaping and Irrigation within City Right-of-Way:

- A. The Owners shall, at its sole expense, maintain landscaping and irrigation behind the curb line, including but not limited to, grass, trees and shrubs, and irrigation lines, near and within the Development, which may be located within the City's right-of-way, in a good and healthy condition and in accordance with at least the minimum standards provided in "Private Trees" of the City's Tree Ordinance, Hailey Municipal Code, Chapter 12.20, as the same may be amended from time to time. Irrigation lines, which are located within the City's right-of-way, shall also be maintained in a good and healthy condition and in accordance with at least the minimum standards provided in "Storm Drainage and Irrigation Pipe" of the Hailey Municipal Code, Chapter 18.08: Street and Drainage Construction, as the same may be amended from time to time.
- B. The Owners shall, at its sole expense, maintain in good condition, and repair and replace as appropriate, the irrigation system installed within the City's Right-of-Way. Said irrigation system will utilize City potable water; however, will be delivered and billed through the Owners' metered water account.

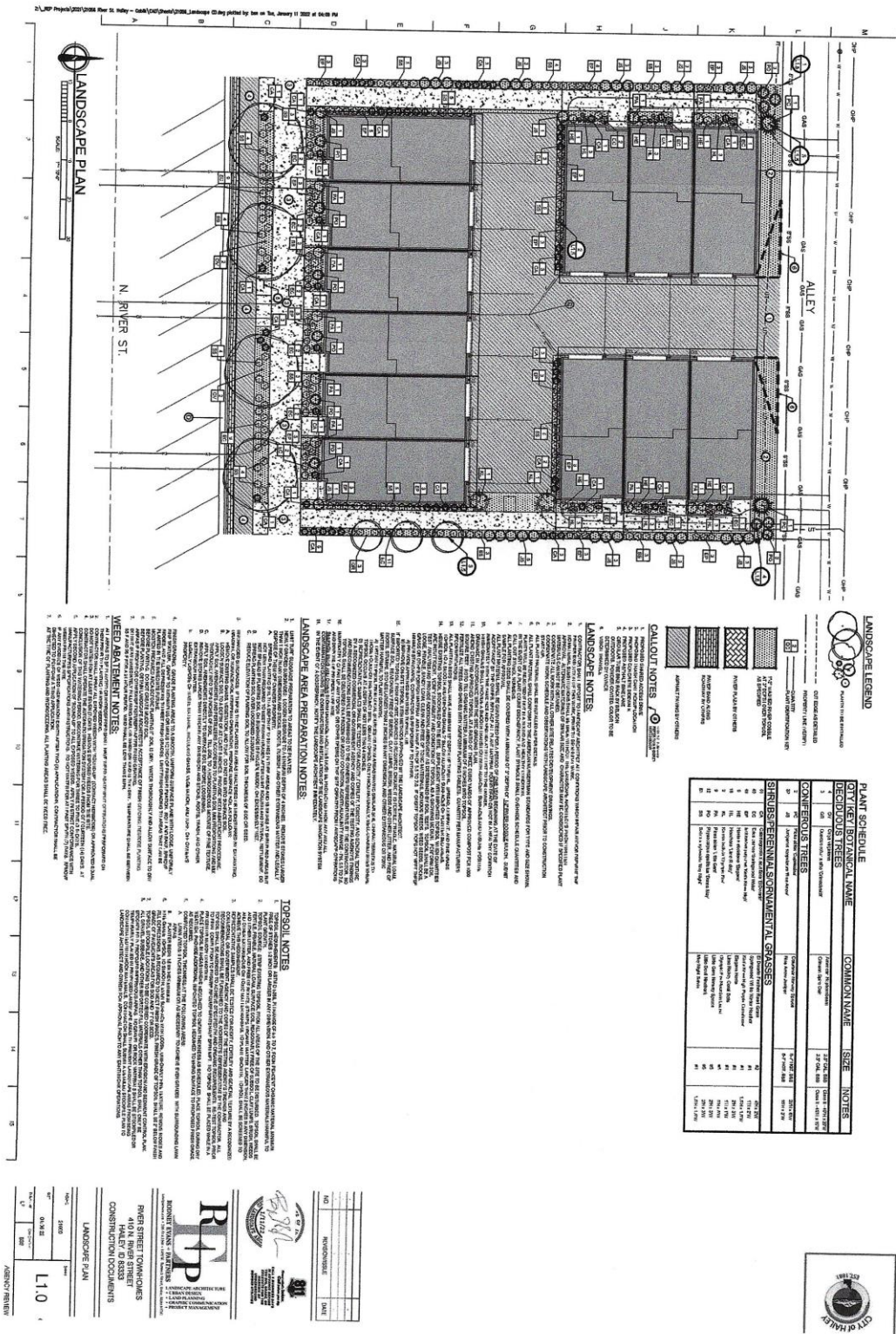
- C. The City hereby grants the Owners a license to be on, over and under its right-of-way for the limited purposes of carrying out its Maintenance Obligations as they relate to landscaping and irrigation, as set forth in this paragraph. Any activities within the public right-of-way in excess of the Maintenance Obligations state herein, or any actions that disturb the surface of the hardscape materials while performing said maintenance obligations, shall require advance notification to the City, and approval of such activities.
3. **Electrical within City Right-of-Way:**
- A. The Owner shall, at its sole expense, maintain all electrical, including, but not limited to, street tree lighting and street lights, in the Development which are located within the City's right-of-way, in a good and healthy condition and in accordance with at least the minimum standards provided in "Miscellaneous" of the Hailey Municipal Code, Chapter 18.14: Standard Drawings, as they may be amended from time to time. Furthermore, the Owner shall guarantee that all lighting be operational at times designated by the City, and that any holiday lighting be approved in advance and consistent with City practices.
4. **Maintenance Obligations:** The Maintenance Obligations may be contracted to third-party providers by the Owners, but all costs associated therewith shall be the sole responsibility of the Owners. The Owners hereby commit to a budget in advance for all the cost of all anticipated Maintenance Obligations, including capital reserves, to cover the costs of the Maintenance Obligations. The Owners shall present evidence of advance budgeting to the City upon request.
5. **Term:** The Owners' Maintenance Obligations hereunder shall be perpetual, so long as this Agreement remains in effect, and shall be a covenant running with the common area included within the Development, and the terms and provisions hereof shall inure to the benefit of and be binding upon all owners of the real property within the Development and their respective heirs, personal representatives, successors and assigns.
6. In the event the Owners fail to meet the Maintenance Obligations and do not cure such failure within thirty (30) days after written notice from City, default or failure, or in the case of a breach which is incapable of being cured within a thirty (30) day time period, Owners fails within thirty (30) days after written notice from City to commence to cure the same and thereafter to prosecute the cure of such breach with due diligence and continuity, the City shall have the right, but not the obligation, to take over the Maintenance Obligations and to place a lien on the Owners' Assessment receipts to cover the costs of such Maintenance Obligations which the Owners have failed to perform. So long as the Owners are not in breach of this Agreement, the City shall NOT have the right to assume the Maintenance Obligations without the express written consent of the Owners.
7. In the event either party hereto retains an attorney to enforce any of the rights,

duties and obligations arising out of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party reasonable attorney's fees at the trial and appellate levels and, whether or not litigation is actually instituted.

8. This Agreement shall be governed by, construed, and enforced in accordance with the laws and decisions of the State of Idaho. Venue shall be in the District Court of the Fifth Judicial District of the State of Idaho.
9. This Agreement shall not be changed or terminated orally. It is understood and agreed by the parties hereto that there are no verbal promises or implied promises, agreements, stipulations or other representations of any kind or character pertaining to the Landscaping and Irrigation, or the Local System other than as set forth in the agreements and approvals referenced in this paragraph.

Exhibit A: Site and Landscape Plan – River Street Townhomes

EXHIBIT "A": SITE & LANDSCAPE PLAN



DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
THE RIVER STREET TOWNHOMES - 47
15925385_3

River Street Townhomes, LLC

By Kevin Cablik, ~~Governor~~ **MANAGER**

STATE OF IDAHO)

Ada : ss.
County of ~~Blaine~~)

On this 11th day of April, 2022, before me the undersigned Notary Public in and for said State, personally appeared Kevin Cablik, known or identified to me to be the Owners of River Street Townhomes, LLC, and the person who executed the foregoing instrument on behalf of said company and acknowledged to me he executed the same on behalf of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year in this certificate first above written.

KRISTIN CAUDILL
Notary Public-State of Idaho
Commission Number 33817
My Commission Expires 06-30-2027

Kristin Caudill
Notary Public for Idaho
Residing at: Boise, ID
Comm. Expires: 6-30-2027