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**DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS, AND
EASEMENTS
FOR THE
BRODY SQUARE COMMUNITY**

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**DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS
FOR THE
BRODY SQUARE COMMUNITY**

This Declaration of Covenants, Conditions, Restrictions, and Easements for the Brody Square Community (this “**Declaration**”) is made on APRIL 28, 2022 (the “**Effective Date**”), by Pinnacle Land Development, LLC, an Arizona limited liability company (“**Grantor**”). Capitalized terms not otherwise defined in the text hereof are defined in Article 1.

WHEREAS, Grantor owns that certain real property legally described as follows (collectively, the “**Community**”):

Lots 1 through 22 in Block 1, Lots 1 through 14 in Block 2, Lots 1 through 20 in Block 3, Lots 1 through 6 in Block 4, and Lots 1 through 11 in Block 5 of Brody Square Subdivision, according to the official plat thereof recorded in the real property records of Ada County, Idaho as Instrument No. 2022-025146 (the “**Initial Plat**”).

WHEREAS, Grantor desires to execute and record this Declaration to set forth the basic restrictions, covenants, limitations, easements, conditions, and equitable servitudes that will apply to the Community, which are designed to protect, enhance, and preserve the value, amenities, desirability, and attractiveness of the Community and to ensure a well-integrated, high quality development.

NOW, THEREFORE, Grantor hereby declares that the Community, and each Lot and portion thereof, is and will be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied, and improved in accordance with this Declaration, which is hereby declared to be in furtherance of a general plan to protect, enhance, and preserve the value, amenities, desirability, and attractiveness of the Community and to ensure a well-integrated, high quality development. This Declaration: (a) runs with the land and is binding upon any Person having or acquiring any right, title, or interest in any Lot or portion of the Community; (b) inures to the benefit of every Lot and portion of the Community; and (c) inures to the benefit of and is binding upon Grantor and each Owner having or holding any right, title, or interest in any Lot or portion of the Community, and their successors, heirs, and assigns.

**ARTICLE 1
DEFINITIONS**

“**ACHD**” means the Ada County Highway District.

“**Articles**” means the Articles of Incorporation of the Association.

“**Assessments**” means the Regular Assessments, Special Assessments, Limited Assessments and Transfer Assessments, and for each together with any late charges, interest and costs incurred in collecting the same, including attorneys’ fees.

“**Association**” means Brody Square Homeowners Association, Inc., an Idaho nonprofit corporation.

“Board” means the Board of Directors of the Association.

“Bound Party” has the meaning set forth in Section 9.1.

“Budget” has the meaning set forth in Section 5.6.

“Building Envelope” means the area within a Lot where a residential structures may be located, always subject to the Committee’s approval. Unless otherwise designated by Grantor or approved by the Committee, the Building Envelope is that portion of the Lot not located within easements or setbacks required by this Declaration, the Plat, or applicable law.

“Bylaws” means the Bylaws of the Association.

“Claims” has the meaning set forth in Section 9.1.

“Committee” means the Architectural Review Committee identified in Section 4.1.

“Common Area” means (a) Lots 12 and 22 in Block 1, Lots 1, 5, and 14 in Block 2, Lot 9 in Block 3, Lot 6 in Block 4, and Lots 1 and 11 in Block 5 of the Initial Plat, and all Improvements located thereon; (b) any real property designated as Common Area by Grantor on any Plat, deed, or other recorded instrument; (c) any real property designated as Common Area in any Supplemental Declaration; (d) any real or personal property held by or for the benefit of the Association, including storage facilities, recreational facilities and open spaces (including paths, greenbelts, and other areas that may also be open to the public); and (e) any lease, license, use rights, or agreement rights for amenities or facilities held by the Association from time-to-time.

“Community” has the meaning set forth in the opening recitals of this Declaration.

“Community Documents” means this Declaration, each Plat, each Supplemental Declaration, the Articles, the Bylaws, the Community Rules, the Design Requirements, and any other procedures, rules, regulations, or policies adopted under such documents by the Association or the Committee. In the event of any conflict between this Declaration and any other of the Community Documents, this Declaration controls.

“Community Rules” has the meaning set forth in Section 2.6.2.

“Declaration” means this Declaration of Covenants, Conditions, Restrictions, and Easements for the Brody Square Community, as may be amended from time to time, and as may be supplemented pursuant to any one or more Supplemental Declarations.

“Design Requirements” has the meaning set forth in Section 4.2.

“Effective Date” has the meaning set forth in the opening preamble of this Declaration.

“Expenses” has the meaning set forth in Section 5.2.

“Grantor” has the meaning set forth in the opening preamble of this Declaration.

“Grantor Member” has the meaning set forth in Section 2.2.2.

“Grantor Member Termination Date” has the meaning set forth in Section 2.2.2.

“Home Occupation” has the meaning set forth in Section 3.1.

“Household Pets” has the meaning set forth in Section 3.8.

“Improvement” means any structure, facility, system or object, whether permanent or temporary, which is installed, constructed, placed upon or allowed on, under or over any portion of the Community, including residential structures, club houses, pump or lift stations, fences, streets, drives, driveways, parking areas, sidewalks, bridges, bicycle paths, curbs, painting, landscaping, walls, hedges, plantings, trees, wildlife habitat improvements, vegetation, rocks, signs, lights, mailboxes, electrical lines, pipes, pumps, ditches, recreational facilities, grading, road construction, and utility improvements.

“Initial Development Period” has the meaning set forth in Section 2.2.2.

“Initial Plat” has the meaning set forth in the opening recitals of this Declaration.

“Irrigation System” means the system for delivering seasonal irrigation water to the Community that exists separate and apart from the potable water system, as further described in Sections 2.6.5 and 3.13 hereof. The Irrigation System includes the pump, pump station, and related facilities located on Lot 9 in Block 3 of the Initial Plat, together with any common pipes, lines, controls, and other equipment and facilities that serve the Common Area or the Community in general. The Irrigation System terminates at the point of connection to each Lot, and thus does not include any pipes, lines, sprinklers, timers, controls, or other irrigation equipment or facilities within a Lot or that otherwise serve an individual Lot (except to the extent the same are located within a Common Area Lot).

“Levy Meeting” has the meaning set forth in Section 2.6.8.

“Limited Assessment” means: (a) a charge against a particular Owner for an expense directly attributable to such Owner, equal to the cost incurred or estimated to be incurred by the Association in connection with corrective action or maintenance, repair, replacement and operation activities performed pursuant to the provisions of this Declaration, including correcting damage to or maintenance, repair, replacement and operation activities performed for any Common Area, Limited Common Area, or Maintenance Property; or (b) a charge against one or more Owners, but less than all Owners, for the purpose of paying costs and expenses for goods or services provided to those Owner or Owners being charged where such goods and services do not benefit all Owners, in each event including interest thereon as provided in this Declaration.

“Limited Common Area” means those portions of the Common Area designated for the exclusive use of an Owner or Owners to the exclusion, limitation, or restriction of other Owners. Limited Common Area may be established from time to time by Grantor or the Association on any portion of the Community by describing such area on a Plat, by granting or reserving it in a deed or other document or instrument, or by designating it as such in this Declaration. The term Common Area as used in this Declaration shall include Limited Common Area. Grantor hereby designates: (a) Lot 12 in Block 1 of the Initial Plat as Limited Common Area appurtenant to, and for the exclusive benefit of, Lots 9 through 11 in Block 1 of the Initial Plat, to the exclusion of all other Lots and their Owners and Occupants; and (b) Lot 5 in Block 2 of the Initial Plat as Limited Common Area appurtenant to, and for the exclusive benefit of, Lots 6 through 8 in Block 2 of the Initial Plat, to the exclusion of all other Lots and their Owners and Occupants.

“Lot” means any lot depicted on the Plat. For voting, membership and Assessment purposes herein, the term Lot does not include any real property owned by the Association as Common Area.

“Maintenance Property” means any real or personal property not owned by the Association but which is located upon, within, or in vicinity of the Community and which the Association operates and/or maintains for the benefits which will accrue to the Community and its Owners. Maintenance Property is not Common Area. Grantor may designate Maintenance Property in this Declaration, in any Plat or Supplemental Declaration, or by granting or reserving it in a deed or other instrument. After the Initial Development Period, the Association may acquire any Maintenance Property it deems necessary and/or beneficial to the Community, in which event the Association will designate such Maintenance Property in a recorded instrument. To the extent any portion of the Irrigation System is located on an individual Owner’s Lot, such portion of the Irrigation System and that portion of the surface of the applicable Lot as is necessary or convenient for the Association to perform its obligations with respect to the Irrigation System hereunder are hereby designated as Maintenance Property.

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

“Mortgage” means any mortgage, deed of trust, or other document pledging any portion of the Community or interest therein as security for the payment of a debt or obligation.

“Occupant” means any individual that resides within a dwelling structure located on a Lot.

“Owner” means the record owner, whether one or more Persons, holding fee simple interest of record to a Lot, 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.

“Owner Members” has the meaning set forth in Section 2.2.1.

“Owner Parties” means, for each Owner, all of the Owner (including all Persons that comprise Owner), its Occupants, and the guests of any of them, and the Owner’s contractors and invitees.

“Party Wall” means any common wall between two (2) dwelling units which is also the legal dividing line between the two (2) Lots on which the dwelling units are located.

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

“Plat” means any subdivision plat covering any portion of the Community (whether now or, pursuant to Article 12, hereinafter existing), as recorded in the Ada County Recorder’s Office, including the Initial Plat.

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

“Released Party” has the meaning set forth in Section 2.8.

“Remedial Period” has the meaning set forth in Section 2.6.8.

“**Special Assessment**” means 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.

“**Supplemental Declaration**” has the meaning set forth in Article 12.

“**Transfer Assessment**” has the meaning set forth in Section 5.5.

“**Violation**” has the meaning set forth in Section 2.6.8.

ARTICLE 2 THE BRODY SQUARE HOMEOWNERS ASSOCIATION

2.1 **Organization of the Association.** Grantor has organized the Association to manage the business and affairs of the Community in accordance with applicable law and the Community Documents.

2.2 **Membership.** Each Owner, by virtue of being an Owner and for so long as such ownership is maintained, will be a Member of the Association, and no Owner will 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 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 will be appurtenant to the Lot or other portion of the Property owned by such Owner. The memberships in the Association must 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 prohibited transfer or attempt to make a prohibited membership transfer will be void and will not be reflected on the books of the Association. The Association will have two (2) classes of membership as follows:

2.2.1 *Owner Members.* “**Owner Members**” will be the Owners of the Lots, excluding Grantor until the Grantor Member Termination Date. Prior to the Grantor Member Termination Date, Owner Members are not entitled to vote. At all meetings of the Association after the Grantor Member Termination Date, each Member will be entitled to one (1) vote for each Lot owned by such Member.

2.2.2 *Grantor Member.* The “**Grantor Member**” is Grantor, who will be the sole voting Member of the Association entitled to vote the collective and total voting power of the Association from the Effective Date through and including the Grantor Member Termination Date (the “**Initial Development Period**”). The Grantor Member will cease to exist as the Grantor Member on the date Grantor informs the Board in writing that Grantor no longer wishes to exercise its rights as the Grantor Member (the “**Grantor Member Termination Date**”), but will otherwise continue to exist as a beneficiary of this Declaration and as an Owner Member if Grantor owns any Lots.

2.3 **Membership Meetings; Voting.** The Association will hold an annual meeting of the Members and periodic special meetings of the Members as set forth in the Bylaws. Subject to Sections 2.2.1 and 2.2.2, each Member will be entitled to one (1) vote as a Member in the Association for each Lot owned by such Member.

2.4 **Board of Directors.** The business and affairs of the Association will be managed by the Board. The Board will consist of not less than three (3) directors and no more than five (5) directors. Directors need not be Owners. During the Initial Development Period, Grantor has the exclusive right to appoint, remove, and replace directors at any time and from time-to-time in Grantor’s sole discretion, and

to otherwise fill vacancies on the Board as they arise. After the Initial Development Period, the Owners have the right to elect, remove, and replace directors as provided in the Bylaws. Any vacancies on the Board occurring after the Initial Development Period will be filled by a plurality vote of the remaining directors through a special election at any meeting of the Board.

2.5 Delegation of Authority. The Board may at any time (and from time-to-time) delegate all or any portion of its powers and duties to committees, officers, employees, or to any Person to act as manager. The Association may employ or contract for the services of a professional manager or management company to manage the day-to-day affairs of the Association. No such employment or contract will have a term of more than one (1) year. If such manager is Grantor or Grantor's affiliate, such contract is subject to cancellation by the Association with or without cause and without payment of a termination fee (but including all fees incurred through the date of termination) so long as the Association provides at least thirty (30) days' prior notice of termination.

2.6 Powers of the Association. The Association has all the powers of a nonprofit corporation organized under Idaho law and all of the powers and duties set forth in the Community Documents, including the power to perform any and all acts which may be necessary to, proper for, or incidental to the foregoing powers. The powers of the Association include, by way of illustration and not limitation:

2.6.1 Assessments. The power and authority to levy Assessments against each Lot (except Common Area) and Owner thereof pursuant to the restrictions enunciated in this Declaration, and to enforce payment of such Assessments, all in accordance with the provisions of this Declaration. This power includes the right of the Association to levy Assessments against the Lots and the Owners thereof to cover the operation and maintenance costs of Common Area and Maintenance Property.

2.6.2 Community Rules. The power and authority to adopt, amend, and repeal such rules and regulations as the Board deems reasonable and appropriate to govern the Community (the "**Community Rules**"), including rules and regulations regarding (a) the use of the Common Area, and (b) procedures in the conduct of business and affairs of the Association. Except when inconsistent with this Declaration, the Community Rules have the same force and effect as if they were set forth in and were made a part of this Declaration. A copy of the Community Rules as they may from time to time be adopted, amended, or repealed will be mailed, e-mailed, faxed, or otherwise delivered to each Owner. Upon such mailing or delivery to the Owners, the Community Rules will have the same force and effect as if they were set forth in and were made a part of this Declaration.

2.6.3 Common Area. The power and authority to acquire and dispose of, and the duty to manage, operate, maintain, repair, and replace the Common Area for the benefit of the Community; provided, however, except as permitted under Section 2.6.9 hereof, no interest in the Common Area will be disposed of without the approval by the vote or written consent of Owners representing more than sixty-five percent (65%) of the total voting power in the Association.

2.6.4 Maintenance Property. The power and authority (and duty) to operate, maintain, and otherwise manage or provide for the operation, maintenance, and management of the Maintenance Property.

2.6.5 Irrigation System. The power and authority to construct, install, maintain, repair, replace, manage, and operate the Irrigation System, including without limitation the power and authority to enter upon any Lot (but not inside any building constructed thereon) as necessary to construct, install, maintain, repair, replace, manage, and operate the Irrigation System. The

Association may operate and/or share ownership of the Irrigation System as part of a common irrigation water supply arrangement with neighboring properties, regardless of whether such neighboring properties are now or hereinafter annexed into the Community.

2.6.6 Improvements. The power and authority to construct, install, maintain, repair, replace, and operate any Improvements in any Common Area, any Maintenance Property, any public right-of-way serving the Community, or any other location deemed by the Board to benefit the Community, including any fences, signs, or other Improvements at Community entrances or otherwise in the vicinity of the Community, and any berms, retaining walls, fences, and water amenities within or abutting any Common Area.

2.6.7 Entry onto Lots. The power and authority to enter upon any Lot (but not inside any building constructed thereon) in the event of any emergency involving potential danger to life or property or when necessary in connection with any maintenance or construction for which the Association is responsible, or as otherwise necessary for the Association to discharge its obligations under the Community Documents. Such entry will be made with as little inconvenience to the Owner of such Lot as practical under the circumstances, and any damage caused thereby will be repaired by and at the expense of the Association.

2.6.8 Fines. The power and authority to impose reasonable monetary fines that will constitute a lien upon the Lot owned or occupied by the Owner or Occupant determined by the Board to be in violation of the Community Documents (individually, a “**Violation**”). Provided, however, pursuant to the provisions of Idaho Code Section 55-115, the Association will 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 will 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 after 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 will be deemed to be a part of the Assessments to which the Owner’s Lot is subject under this Declaration. In no event shall any portion of any such fines be used to increase the compensation to the Board or agent thereof.

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

2.6.9.1 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 provision of lighting and services;

2.6.9.2 Public and other 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;

2.6.9.3 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 pedestrian and bicycle pathways; or

2.6.9.4 The Irrigation System.

2.6.10 Amenity Agreements. The power and authority to enter into any lease, license, use or other agreements as the Board deems proper or convenient to secure the use of off-site amenities or facilities for the benefit of the Community. Without limiting the generality of the foregoing, and only by way of example, the Association may enter into such agreements with others for the use of any recreational amenities or facilities, including clubhouses and swimming pools, by the Owners on such terms as the Association deems reasonable or prudent. In such event, any costs incurred by the Association related thereto will be Expenses, and such Expenses will be included in the Regular Assessments.

2.6.11 Reserves. The power and authority to establish and fund such operating and capital reserves as the Board deems necessary or prudent.

2.6.12 Taxes. The power and authority to pay all real and personal property taxes and assessments (if any) levied against the Common Area, the Association, or any other property owned by the Association. In addition, the Association will pay all taxes, including income, revenue, corporate or other taxes (if any) levied against the Association.

2.6.13 Enforcement. The power and authority at any time and from time-to-time, on its own behalf or on behalf of any consenting Owners, to take any action, including any legal action, to prevent, restrain, enjoin, enforce or remedy any breach or threatened breach of the Community Documents. The power of enforcement includes:

2.6.13.1 The right to enter upon any Lot (but not inside any building constructed thereon) for the purpose of removing, altering, reconstructing, or restoring any Improvements constructed, reconstructed, refinished, added, altered, or maintained in violation of the Community Documents. If such Improvements are located on a Lot, the Association will first provide the Owner thereof with a notice specifying the default and a reasonable period to cure (no less than ten (10) days and no more than thirty (30) days), and if the Owner does not cure the default to the reasonable satisfaction of the Association within such cure period, the Owner of the Improvements will immediately reimburse the Association for all expenses incurred by the Association in connection with its removal, alteration, reconstruction, or restoration of such Improvements.

2.6.13.2 The right to enforce the obligations of the Owners to pay each and every Assessment or charge provided for in the Community Documents.

2.6.13.3 The right to perform any duty or obligation of an Owner under the Community Documents if such duty or obligation is not timely performed by such Owner. In such event, the defaulting Owner will immediately reimburse the Association for all costs reasonably incurred by the Association in performing such duty or obligation. Except

in the event of an emergency, the Association will provide the defaulting Owner with a notice specifying the default and a reasonable period to cure (no less than ten (10) days and no more than thirty (30) days) prior to exercising its power and authority hereunder.

2.6.13.4 The right to authorize variances from the requirements of this Declaration when required by applicable law (such as the Fair Housing Act) or when needed to prevent the requirements would impose an undue hardship on an Owner that would be inequitable for such Owner to bear. The granting of a variance will not waive any element of the Declaration for any purpose except as to the particular Lot and the particular provision covered by the variance. Approval of a variance will not affect the Owner's obligation to comply with the other elements of this Declaration or applicable law.

If the Association employs attorneys to collect any Assessment or charge, whether by suit or otherwise, or to otherwise enforce compliance with the Community Documents, the Association is entitled to recover its reasonable attorneys' fees in addition to any other relief or remedy obtained.

2.6.14 Insurance. The power and authority to obtain such bonds and insurance as may be required by applicable law and such further insurance as the Board deems necessary or prudent, including casualty insurance for any property or Improvements owned or maintained by the Association, public liability insurance related to the Association's operations and the use of the Common Area, directors and officers liability coverage, automobile insurance, worker's compensation insurance and fidelity bonds. Unless otherwise authorized by Grantor, the Association will procure at least the following insurance policies to the extent such policies are available on commercially reasonable terms:

2.6.14.1 Casualty insurance on all insurable personal property and Improvements owned by the Association or for which the Association bears risk of loss, which insurance will be for the full replacement cost thereof without optional deductibles;

2.6.14.2 Worker's compensation insurance and employer's liability coverage if required by law;

2.6.14.3 Broad form comprehensive public liability insurance insuring the Association, the Board, the Committee and their respective agents and employees against any liability incident to the ownership or use of the Common Area or Maintenance Property and against any liability incident to the Association's performance of its obligations under the Community Documents; which insurance will be for not less than One Million Dollars (\$1,000,000) per occurrence with respect to personal injury/sickness/death and One Million Dollars (\$1,000,000) per occurrence with respect to property damage; and

2.6.14.4 Full coverage directors' and officers' liability insurance with a limit of at least Two Hundred Fifty Thousand Dollars (\$250,000).

2.6.15 Entitlement Obligations. The power and authority to fulfill any duties imposed by any governmental or other quasi-governmental agencies as part of the entitlements for the development of Community, including any requirements or obligations identified in such entitlements as the responsibility of community association or homeowners' association, such as plat notes, development agreements or conditions of approval.

2.6.16 Financing. The power and authority to enter into any agreements necessary or convenient to allow Owners to take full advantage of, or secure the full availability of, any financing

programs offered or supported by the Federal National Mortgage Association (FNMA), the Government National Mortgage Association (GNMA), the Federal Housing Administration (FHA), the Veterans Administration (VA), the Federal Home Loan Mortgage Corporation (FHLMC) or any similar entity.

2.6.17 Estoppel Certificates. The power and authority to execute a written statement stating (a) whether or not, to the knowledge of the Association, a particular Owner or Owner's Lot is in default of this Declaration; (b) the dates to which any Assessments have been paid by a particular Owner; and (c) such other matters as the Board deems reasonable. Any such certificate may be relied upon by a bona-fide prospective purchaser or mortgagee of such Owner's Lot, but only to the extent such prospective purchaser or mortgagee has no knowledge to the contrary. The Association may charge a reasonable fee for such statements.

2.6.18 Improvements in the Public Right-of-Way. The power and authority to enter into license and easement agreements with ACHD (or assume the duties and obligations under any such license and easement agreements entered into by Grantor) to install, maintain, improve, irrigate, trim, repair and replace improvements and landscaping in the public rights-of-way (including sidewalk easements and planter strips).

2.6.19 Open Space Corridors. The power and authority to enter into agreements with any governmental entity, utility provider, irrigation company, conservation organization or any other public or private entity (or assume any such agreement entered into by Grantor) to improve, operate, maintain, repair or replace any corridor, open space, recreation facility, greenbelt or trail spaces, either for the benefit of the Community or the general public, along with the power and authority to collect and pay the charges, fees, and assessments to any such public or private entity.

2.6.20 Other. Such other and further powers as the Board deems reasonable and appropriate, it being the intent of Grantor that the Association have broad power and authority consistent with the Community Documents and applicable law.

2.7 **Association Records; Owner Inspection**. The Association will keep such records of its business and affairs as is customary for community or homeowner associations, including a membership register, accounting records, financial statements, operating budgets, balance sheets and minutes of meetings of the Board, the Members and committees. Such records will be available at the Association's regular offices for inspection and copying by any Owner at such Owner's expense. The Board may establish reasonable rules with respect to (a) notice to be given to the custodians of the records by Persons desiring to make the inspection, (b) hours and days of the week when such an inspection may be made, and (c) payment of the cost of reproducing copies of documents requested pursuant to this Section 2.7. The Association's obligations hereunder may be fulfilled by making the records available to an Owner electronically, including delivery by electronic mail or the posting of such records on a website. No Owner may request the inspection of records more than two (2) times during any calendar year (and for this limitation, all Persons that own a Lot will be considered to be one Owner).

2.8 **Immunity; Indemnification**. Each Owner understands and agrees that Grantor, the Association, the Association's manager (if any), the Committee and the directors, officers, agents, employees and committee members of any of them (each individually a "**Released Party**") are immune from personal liability to such Owner or any other Person, and such Owner hereby knowingly and voluntarily waives and releases each Released Party, for such Released Party's actions or failure to act with respect to the Community Documents that does not constitute gross negligence or willful misconduct on the part of such Released Party. The Association will indemnify, defend and hold each Released Party harmless from any action, expense, loss or damage caused by or resulting from such Released Party's actions or failure to act with respect to the

Community Documents; provided, however, the Association is not obligated to indemnify, defend and hold harmless any Released Party for their own gross negligence or willful misconduct.

2.9 **Waiver of Consequential Damages.** Neither the Grantor nor the Association is liable to any Owner for, and each Owner releases the Grantor and the Association from, any form of indirect, special, punitive, exemplary, incidental or consequential or similar costs, expenses, damages or losses arising from or related to the Community.

ARTICLE 3 GENERAL AND SPECIFIC OBLIGATIONS AND RESTRICTIONS

3.1 **Residential Use.** All Lots (except Common Area Lots) will be used exclusively for residential purposes and other uses incidental thereto as permitted by this Declaration and applicable law. Except for Home Occupations permitted pursuant to this Section, no Lot will be used at any time for commercial or business activity. A “**Home Occupation**” is any lawful, gainful occupation conducted on a Lot by an Occupant of the Lot. A Lot may be used for a Home Occupation provided that the home office or studio related thereto is: (a) not more than five hundred (500) square feet in size; and (b) located entirely within a dwelling. The Home Occupation must be conducted in accordance with the other terms and limitations of the Community Documents and applicable law. A Lot may be used for other Home Occupations only upon the specific approval of the Association, which approval may be subject to such requirements and conditions as the Association deems appropriate, and which Home Occupation must be conducted in accordance with the other terms and limitations of the Community Documents and applicable law. No Home Occupation may (i) involve highly combustible materials, (ii) involve retail operations, (iii) use equipment or tools where the dimensions, weight or power rating are beyond normal household equipment or tools, (iv) cause abnormal automotive or pedestrian traffic in the Community, (v) be, in the reasonable opinion of the Board, objectionable due to unsightliness, odor, dust, smoke, noise, glare, heat, vibration or similar disturbances, (vi) involve dispatch activities where employees meet in the Community and are sent to other locations, (vii) involve other uses that, in the reasonable opinion of the Association, would detract from the residential character of the Community. It is not a violation of this Section for an Owner to lease its Lot and the Improvements thereon in accordance with Section 3.2.

3.2 **Leasing.** In order to foster and maintain the stable, residential character of the Community and to preserve the Community values, no Owner may lease, in whole or part, such Owner’s Lot or the primary residential dwelling located thereon to any Person except as expressly permitted in this Section 3.2. For purposes of this Section 3.2, the term “lease” as applied to a Lot will be deemed to include any rental, letting, subletting, licensing, demising or assignment of any interest, estate or right of use, enjoyment, occupancy or possession of any Lot (or portion thereof) to any Person who is not a member of such Owner’s family. For purposes of this Section 3.2, a “member of such Owner’s family” will be defined as any individual who is related to the Owner by blood, legal marriage or legal adoption. Each Owner may lease its entire Lot: (a) to one or more members of such Owner’s family for any period of time; and (b) to any tenant comprised as a single housekeeping unit so long as such lease is for a term of six (6) months or greater. For purposes of this Section, the term “single housekeeping unit” will be one (1) or more individuals living together sharing household responsibilities and activities which may include, sharing expenses, chores, eating evening meals together and participating in recreational activities and having close social, economic and psychological commitments to each other. An Owner who leases a Lot is fully responsible for the conduct and activities of such Owner’s tenant as if such Owner were the tenant. Any Owner who leases a Lot will comply with the Fair Housing Act to the extent it applies to such Owner.

If an Owner leases a Lot in violation of the restrictions set forth in this Section or otherwise fails to comply with this Section, such Owner will be in default of this Declaration, and will indemnify, defend and hold harmless the Association and the other Owners from and against any and all claims, loss or damage

arising from or related to such violation, including any actions taken or fines or penalties imposed under federal law, and will further be subject to the remedies described in Section 15.7 hereof.

3.3 Exterior Maintenance Obligations. Each Owner agrees to inspect, care for, maintain, repair, replace and operate its Lot and all Improvements thereon as necessary to keep the same in good, safe condition and repair, including, without limitation: (a) performing periodic cutting, trimming, aerating, and fertilizing of the landscaping on the Owner's Lot; and (b) removing and replacing diseased and dead landscaping on the Owner's Lot. Without limiting the generality of the foregoing, each Lot must be kept in a neat and orderly condition at all times, including the period prior to the Owner constructing any Improvements thereon. In the event that any Owner permits any Improvement on such Owner's Lot to: (i) fall into disrepair such that it, in the judgment of the Board, creates an unsafe, unsightly, unattractive, or inoperable condition; or (ii) be constructed, reconstructed, refinished, removed, added, altered, or maintained in violation of this Declaration, the Association may exercise its power and authority hereunder to enter upon such Owner's Lot and take such action as the Association deems necessary or appropriate to correct such condition or violation. In such event, the defaulting Owner will immediately reimburse the Association for all costs reasonably incurred by the Association in correcting such condition or violation. Except in the event of an emergency, the Association will provide the defaulting Owner with a notice specifying the default and a reasonable period to cure (no less than ten (10) days and no more than thirty (30) days) prior to exercising its power and authority hereunder. Each Owner hereby designates the Association as the Owner's agent for purposes of Idaho's mechanic's lien statute (i.e., Idaho Code § 45-501), and each laborer, material supplier or other Person who performs work on such Owner's Lot at the direction of the Association will have a mechanic's lien against the Owner's Lot for such work.

3.4 Nuisances. No rubbish or debris of any kind will be placed or permitted to accumulate anywhere upon the Community, including the Common Area or vacant Lots, so as to render the Community or any portion thereof unsanitary, unsightly, offensive or detrimental to the Community, or to any other property in the vicinity of the Community. No Owner will allow any odor to arise from the Community so as to render the Community or any portion thereof unsanitary, offensive or detrimental to the Community, or to any other property in the vicinity of the Community. No business or Home Occupation, no noise, no exterior fires, no obstructions of pedestrian walkways, no unsightliness or other nuisance will be permitted to exist or operate upon any portion of the Community so as to be offensive or detrimental to the Community or its Occupants or to other property in the vicinity or to its occupants or residents, as determined by the Board, in its reasonable judgment, or in violation of any federal, state or local law, rule, regulation or ordinance. Without limiting the generality of any 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 Committee), flashing lights or search lights will be located, used or placed on the Community without the Committee's approval. No unsightly articles will be permitted to remain on any Lot so as to be visible from any other portion of the Community. Without limiting the generality of the foregoing, refuse, garbage, trash, equipment, gas canisters, propane gas tanks, barbecue equipment, heat pumps, compressors, containers, lumber, firewood, grass, shrub or tree clippings, plant waste, metals, bulk material and scrap will be kept at all times in such containers and in areas approved by the Committee. No clothing or fabric will be hung, dried or aired in such a way as to be visible to any other portion of the Community. No major appliances (such as clothes washers, dryers, refrigerators or freezers) may be kept, stored or operated on any balcony, patio, porch or other exterior area of any Improvement. Window air-conditioning units are not allowed. Windows will be covered only by drapes, shades or shutters that are white or muted earth tone in color, and will not be painted or covered by foil, cardboard, sheets or similar materials. Garage sales within the Community are prohibited except to the extent arranged by the Association.

Trampolines are permitted in the back yard only and must be kept in good condition and repair. Portable basketball hoops are permitted so long as they are parallel to the side of the driveway (and not in

any roadways or Common Areas) when in use, are stored in a garage when not in use, and shall be kept in good condition and repair. Permanent basketball hoops require the prior written approval of the Committee.

3.5 No Hazardous Activities. No activities will be conducted on the Community, and no Improvements will be constructed in the Community which are or might be unsafe or hazardous to any Occupant.

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

3.7 Vehicles and Equipment. All on-street parking will be limited to those specific areas where on-street parking is not expressly prohibited by the governmental or quasi-governmental agencies with responsibility therefor, and nothing will be parked in such areas in excess of forty-eight (48) hours in any given seven (7) day period. Vehicles will 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 Community Documents. No motor homes, motor coaches, campers, trailers, snowmobiles, aircraft, boats, recreational vehicles, all-terrain vehicles, abandoned or inoperable vehicles (defined as any vehicle which has not been driven under its own propulsion for a period of forty-eight (48) hours or longer), oversized vehicles (defined as vehicles which are too high or too wide to clear the entrance of all garage door openings originally constructed on the Owner's Lot), dilapidated or unrepaired and unsightly vehicles or similar equipment such as snow removal equipment, garden maintenance equipment and/or any other unsightly equipment and machinery will be placed upon any portion of the Community, including but not limited to streets, parking areas and driveways, unless the same are located entirely within a garage and concealed from the view of anybody standing outside the garage, except when the garage is open to facilitate ingress and egress. To the extent possible, garage doors will remain closed at all times. Electric, gas or other fuel operated gardening, yard or snow removal equipment will only be operated from 7:00 a.m. to 9:00 p.m., subject to applicable law.

3.8 Animals/Pets. No animals, livestock or poultry of any kind will be raised, bred or kept on any Lot except that Household Pets (defined below) may be kept for an Owner's personal use provided that (a) such Household Pets are not bred or maintained for any commercial purpose, (b) no more than two (2) of any combination of domesticated dogs or domesticated cats may be kept on a Lot, and (c) any such Household Pets will be properly restrained and controlled at any time they are within the Community. **"Household Pets"** means generally recognized household pets that are customarily kept as indoor pets, such as domesticated dogs, domesticated cats, fish, birds (excluding hens and chickens), rodents and non-poisonous reptiles. Household Pets will not include livestock, poultry (including hens and chickens), swine or waterfowl. Household Pets will not be kept which unreasonably bother or constitute a nuisance to other Owners. Any noisy animal (defined below), any vicious animal, any non-domestic household pet or any animal which damages or destroys property will be deemed a nuisance. Excessive or untimely barking, molesting passersby, chasing vehicles, pursuing or attacking other animals, including wildlife, and trespassing upon private property in such a manner as to damage the Community will also be deemed a nuisance. A "noisy animal" means any animal which habitually or frequently disturbs the sleep, peace or quiet of any Occupant. Owners will contact the local animal control agency regarding noisy animals prior to complaining to the Board about such animals. Any costs associated with responding to complaints of a noisy animal or nuisance pet may be levied against an Owner as a Limited Assessment. The Owner of a Lot where a Household Pet is kept, as well as the legal owner of the Household Pet (if not such Owner), will be jointly and severally liable for any and all damage and destruction caused by the Household Pet, and for any clean-up of any Common Area, roads or other property necessitated by such Household Pet.

3.9 Assistance Animals. Assistance animals are welcome in the Community in accordance with the Fair Housing Act (42 U.S.C. § 3601 et. seq., as amended) and the implementing regulations promulgated thereunder. An assistance animal will be as defined in the Fair Housing Act, which is currently any animal needed by a disabled individual to have an equal opportunity to use and enjoy a dwelling. Examples of assistance animals are guide animals, animals that alert people who are deaf, animals that pull a wheelchair, animals that alert and protect a guest who is having a seizure, animals that remind an individual with mental illness to take prescribed medications, animals that calm an individual with Post Traumatic Stress Disorder (PTSD) during an anxiety attack and animals that provide comfort or emotional support. Assistance animals in training are to be treated as assistance animals, even if the handler is not disabled. An assistance animal need not be licensed or certified by any government. Individuals with assistance animals will not be treated less favorably than other residents or charged fees that are not charged to other residents without animals. The Association has the right, to the extent permitted under the Fair Housing Act, to prohibit or restrict any assistance animal that (a) is out of control and the handler does not take effective action to control it, or (b) the animal's behavior poses a threat to the health or safety of others. Any individual who brings an assistance animal on the Community is financially and legally responsible for any injury or damage caused by such assistance animal, and for any clean-up of Common Areas, roads or other property necessitated by such assistance animal.

3.10 Construction and Temporary Structures. During the course of construction, no trailer houses or similar mobile units designed for overnight accommodations will be parked on any street. No trailer, tent, shack, garage, barn or other unattached structure erected on a Lot will, at any time, be used as a residence, temporarily or permanently, nor will any residence of a temporary character be permitted. No building of any kind will be erected or maintained on a Lot prior to the construction of the Improvements thereon. The construction of Improvements will be prosecuted diligently and continuously from the time of commencement thereof until such Improvements are fully completed and painted. The construction site will be cleaned of trash and debris nightly and maintained in a non-nuisance condition.

3.11 Drainage. No Owner will interfere with the established drainage pattern over any portion of the Community, unless adequate alternative provisions for proper drainage have first been approved by the Committee and properly installed. 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 Community is completed by Grantor, or that drainage which is shown on any plans approved by the Committee, which may include drainage from Common Area over any Lot in the Community.

3.12 Grading. Except as provided in Section 3.11, no Lot will drain onto, over, across or under the Common Area or an adjacent Lot. The Owner of any Lot within the Community in which grading or other work has been performed pursuant to a grading plan approved by any public agency, or by the Committee, will 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.

3.13 Irrigation System. The Association shall operate the Irrigation System for the Community. No Owner will modify any portion of the Irrigation System. Each Owner shall connect its Lot(s) to the Irrigation System, if available, upon the earlier to occur of the issuance of a certificate of occupancy or nine (9) months after the issuance of a building permit to ensure that all required landscaping is maintained in a high quality manner and first class condition and in accordance with the Community Documents. The private irrigation system installed on each Lot shall be automated and timer-controlled, and shall be operated in accordance with any rules adopted by the Association. Each Owner acknowledges that the Irrigation System water may be inadequate, particularly during low water years and seasons, and that no Owner is guaranteed any specific amount of water for use on such Owner's Lot.

3.14 **Irrigation District Assessments.** The Community may be located in an irrigation district and, if so, the irrigation district may make assessments to Association or the Owners. If the irrigation district assesses the Association, then the Association will pay the assessment and the assessments will be part of the Expenses of the Association. If the irrigation district directly assesses the Owners, then the Owners will pay the assessments directly to the irrigation district.

3.15 **Energy Devices.** Solar panels and solar collectors ("**Solar Devices**") are permitted on the rooftop of any structure on any Lot if the rooftop is owned, controlled and maintained by the Owner; provided however, the Committee will have the right to determine the specific location where the Solar Devices may be installed on the roof as long as installation is permitted within an orientation to the south or within forty-five (45) degrees east or west of due south. Solar Devices shall be consistent with applicable building codes. Panels or collectors of the Solar Devices be parallel to a roof line, conform to the slope of the roof, and any frame, support bracket, or visible piping or wiring be painted to coordinate with the roofing material. No other energy production devices or generators of any kind (e.g., windmills and ground-mounted Solar Devices) will be permitted in the Community without the Committee's approval of the device and the installation thereof. The Association may adopt reasonable rules relating to Solar Devices so long as such rules comply with applicable law.

3.16 **For Sale Signs.** No more than one (1) sign – not to exceed three (3) feet by three (3) feet – will be allowed on any Lot at any time to advertise the Lot for sale or to advertise the Lot during the course of construction, and all such signs must be removed within fifteen (15) days of occupancy or closing of sale. Directional and open house signs may be used during open house time period only. Signs advertising a Lot for rent or lease are not allowed anywhere within the Community. The Association may erect and maintain identification signs, street signs and other appropriate informational signs upon the Common Area or upon utility easements of a size and design approved by the Board. No other signs will be placed or maintained upon the Common Area except with the approval of the Board. Except as otherwise permitted by this Section 3.16 and Section 3.17, no other signs are allowed on any Lot.

3.17 **Political Signs.** A "political sign" is limited to any fixed, ground-mounted display in support of or in opposition to a candidate for office or a ballot measure that an Owner is entitled to vote on in accordance with applicable law (i.e. if a candidate or ballot measure is outside of the Owner's voting district, signs related thereto are not qualifying "political signs" and are not permitted). An Owner may place political signs – not to exceed three (3) feet by three (3) feet – for an upcoming election on any Lot owned by that Owner, but only during the period that is thirty (30) days prior to the applicable election, and the signs will be removed within three (3) days after any the election. The Association may adopt reasonable rules, subject to any applicable laws, regarding the time, place, number, and manner of display of political signs. The Association may remove political signs that violate this Declaration or the Association's rules, so long as the removal is not prohibited by applicable law (e.g., Idaho Code § 55-115(5) or its successor).

3.18 **Flags.** No flags, banners, windsocks or similar items are permitted within the Community except for the flag of the United States of America, the flag of the state of Idaho, the POW/MIA flag, and an official or replica flag of any branch of the United States armed forces (the "**Permitted Flags**"). The Association may adopt reasonable rules that regulate the display of Permitted Flags as permitted by applicable law (e.g., Idaho Code § 55-115(6) or its successor).

3.19 **Antenna; Satellite Dishes.** The following restrictions will apply to direct broadcast satellite dishes that are less than one meter in diameter and antenna for receipt of video programing (each, a "**Device**") except where the restrictions would (a) unreasonably delay or prevent installation, maintenance or use of the Device; (b) unreasonably increase the cost of installation, maintenance or use of the Device; or (c) preclude reception of an acceptable quality signal to the Device. The Device must be installed on the rear of the residential structure on the Lot, or within four (4) feet of the rear of the structure on any such

structure's side walls. The Device must be screened by a fence, landscaping or similar structures in accordance with the Design Requirements, or as otherwise required to ensure the safety of the residents of the Community. No Device may be installed until after an Owner has received Committee approval for construction of residential Improvements on the Owner's Lot. Satellite dishes that are one meter or larger in diameter, and any antenna other than an antenna for the receipt of video programming, will not be a Device and are prohibited unless the Device and its installation are expressly approved by the Committee.

3.20 **No Further Subdivision.** No Lot may be further subdivided unless the subdivision is approved by the Board, and then only in accordance with applicable law.

3.21 **Holiday Lights.** Winter holiday decorations and lighting displays are permitted starting on November 15 of each year and must be removed by January 15 of the following year. Any other holiday decorations or lighting displays (such as Halloween) are permitted up to fifteen (15) days prior to the holiday and must be removed within three (3) days after the holiday.

3.22 **Trash.** Trash cans and other trash receptacles, including recycling cans and receptacles, must not be visible from any street except between 5:00 AM and 8:00 PM on the day selected by the trash collector for trash and recycling pick-up.

3.23 **Common Driveways.** There is hereby established a perpetual easement for ingress and egress over, under, upon, and through:

3.23.1 Lot 12 in Block 1 of the Initial Plat (the "**L12B1 Common Driveway**") for the benefit Lots 9 through 11 in Block 1 of the Initial Plat (the "**L12B1 Common Driveway Lots**"). The L12B1 Common Driveway Lots shall take access to the public right of way through the L12B1 Common Driveway; and

3.23.2 Lot 5 in Block 2 of the Initial Plat (the "**L5B2 Common Driveway**") for the benefit Lots 6 through 8 in Block 2 of the Initial Plat (the "**L5B2 Common Driveway Lots**"). The L5B2 Common Driveway Lots shall take access to the public right of way through the L5B2 Common Driveway; and

3.23.3 Lot 7 in Block 2 of the Initial Plat (the "**L7B2 Common Driveway**") for the benefit Lots 4 through 6 in Block 2 of the Initial Plat (the "**L7B2 Common Driveway Lots**"). The L7B2 Common Driveway Lots shall take access to the public right of way through the L7B2 Common Driveway

The L12B1 Common Driveway, L5B2 Common Driveway, and the L7B2 Common Driveway (collectively, the "**Common Driveways**") are also each subject to an easement for water, sewer, and other utilities services. The Common Driveways shall be constructed in accordance with Meridian City Code § 11-6C-3D, be paved to a minimum of 20 feet in width with surface capable of supporting at least 75,000 pounds, and the Association will otherwise maintain, repair, and replace the Common Driveways (including the surface paving thereon) as required by Meridian City Code § 11-6C-3D. In that the Common Driveways are Limited Common Area, the costs and expenses incurred by the Association in connection its maintenance, repair, and replacement thereof shall be recouped via Limited Assessments in accordance with Section 5.4(d).

3.24 **Party Walls.** To the extent a Lot has one or more Party Walls, the Party Walls will be constructed to meet the requirements for attached dwelling units under applicable laws. Party Walls will be constructed such that all of the wall's structural elements are located entirely on its own Lot, including the portions of the Party Wall that such dwelling units use for structural and lateral support (provided,

however, lateral ties are allowed as permitted by law). Each Owner will have the right to use the surface of any Party Wall contained within the interior of the Owner's Lot, provided that an Owner will 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 will respectively own to the centerline of any Party Wall. The cost of reasonable repair and maintenance of a Party Wall will be shared equally by the Owners of such Party Wall. Such Party Wall will 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 3.24, an Owner who by negligent or willful act(s) or omissions causes a Party Wall to be damaged and/or exposed to the elements will bear the whole cost of repairing the damage and/or furnishing the necessary protection against such. If such Party Wall is destroyed or damaged by fire or other casualty, either Owner may restore such Party Wall and the other Owner will contribute one-half (1/2) of the cost of such restoration. This right of contribution will 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.

3.25 Marijuana-Free Community. No Owner may use, occupy, or permit the use or occupancy of any Lot (or any portion thereof) that in any manner relates to the use, sale, possession, cultivation, manufacture, distribution, or marketing of any substance containing any amount of marijuana, cannabis, or tetrahydrocannabinol, whether for commercial, medical, or personal purposes, whether or not such activities are lawful under all applicable laws (collectively, "**Prohibited Activities**"). Notwithstanding the foregoing, nothing in this section will prohibit any individual from possessing and using any drug approved by the U.S. Food and Drug Administration that has been lawfully prescribed and lawfully obtained by such individual, provided that such individual only possesses and uses the drug in compliance with applicable law.

Any lease (as defined in Section 3.2) of a Lot entered into by an Owner must contain a clause expressly prohibiting the tenant thereunder from engaging or permitting others to engage in any Prohibited Activities, and further permitting the Owner to terminate the lease and evict the tenant in the event the tenant violates such clause or otherwise violates this Section 3.25. If the Owner becomes aware that its tenant is or has been engaged, or is permitting or has permitted others to engage, in any Prohibited Activities on the Owner's Lot, then the Owner must take all reasonable actions to terminate the lease in accordance with applicable law, evict the tenant, and otherwise take all reasonable actions to terminate the Prohibited Activities on such Lot. The Owner must keep the Association fully advised of the Owners actions and plans to prohibit and terminate the Prohibited Activities as required by this Section.

In addition and not by way of limitation, each Owner agrees to indemnify, defend and hold the Association and all other Owners harmless from and against any loss, claim (including without any governmental action for seizure or forfeiture of any real or personal property, with or without compensation, and whether or not the property is taken free of or subject to lien or security interest), damage, liability, fine, penalty, cost or expense (including attorneys' fees and expenses) arising from, out of, or related to any Prohibited Activities at or on the Owner's Lot and/or the indemnifying Owner's breach, violation, or failure to enforce or comply with any of the covenants set forth in this Section.

The failure by any Owner to fully and faithfully comply with this Section will constitute a material non-curable event of default that grants the Association and any other Owner the right to exercise any right or remedy available in the Community Documents or at law.

ARTICLE 4

ARCHITECTURAL REVIEW COMMITTEE

4.1 **Creation.** The Board will appoint no less than three (3) and no more than five (5) individuals to serve on the Architectural Review Committee (the “**Committee**”). Committee members may be Board members, and if the Board fails to appoint of Committee members, then Board members will serve as the Committee members. The Board has the exclusive right to appoint, remove and replace Committee members at any time with or without cause, and to fill vacancies on the Committee. If a vacancy on the Committee occurs and the Board has not yet appointed a replacement, the remaining Committee members may appoint an acting member to serve until the Board appoints a replacement. A Committee member need not be an Owner.

4.2 **Design Requirements.** The Committee has the power and authority to adopt, amend and repeal such rules and regulations as the Committee deems reasonable and appropriate to ensure that all Improvements in the Community conform and harmonize as to external design, quality and type of construction, architectural character, materials, color, location in the Building Envelope, height, grade and finish ground elevation, natural conditions, landscaping and other design or aesthetic considerations (the “**Design Requirements**”). The Design Requirements may include rules and regulations: (a) to protect the special qualities of the Community; (b) to encourage creative design; (c) to provide general architectural, design and construction guidelines; (d) that provide landscape guidelines (including a description of existing, natural conditions and vegetation); (e) that provide submittal and review procedures; (f) establishing fees and charges for review; and (g) establishing penalties for noncompliance. The Design Requirements will be drafted to conform to this Declaration, and in the event of a conflict between the Design Requirements and this Declaration, this Declaration will govern. In the event that any provision of the Design Requirements are deemed ambiguous on any matter, the Committee’s interpretation of such provision will be given deference so long as the interpretation is a permissible construction of such provision. Until such time as the Committee formally adopts Design Requirements as set forth above, the Design Requirements 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.

4.3 **Design Review Required.** No Owner will construct, reconstruct, alter, install or remove any Improvements except with the Committee’s approval. The Committee will review, study and either approve or reject the proposed Improvements, all in compliance with the Declaration and the Design Requirements. Except as otherwise set forth herein, any action or decision made by a majority of the Committee will be the binding decision of the entire Committee. The Committee is authorized to retain the services of one or more consulting architects, landscape architects, engineers, designers and other consultants to advise and assist the Committee on a single project, on a number of projects or on a continuing basis. The Committee’s action in the exercise of its discretion by its approval or disapproval of the proposed Improvements, or with respect to any other matter before it, will be conclusive and binding on all interested parties. The Committee will not direct or control the interior layout or interior design of residential structures except to the extent incidentally necessitated by use, size and height restrictions.

4.4 **Fences.** Subject to the approval required by Section 4.3, each Owner will be responsible for the construction, maintenance, and replacement of all fences desired on such Owner’s property, and specific approval from the Committee will be required prior to constructing any gate that opens to Common Area. Notwithstanding the foregoing, all fences that abut the Common Area will be maintained by the Association; provided, however, that the Owner of any Lot abutting such fence will reimburse the Association for any damage to such fence caused by such Owner or its Occupants, guests, invitees or contractors.

4.5 **Expenses.** All expenses of the Committee will be paid by the Association. The Committee will have the right to charge reasonable fees for applications submitted to it for review, in amounts which may be established by the Committee from time-to-time, and such fees will be collected by the Committee

and remitted to the Association to help defray the expenses of the Committee's operation, including reasonable payment to each member of the Committee for their services as provided herein. Each Owner, by submitting a design review application to the Committee, agrees to pay any additional reasonable fees based on costs incurred by the Committee in retaining consultants for the review and approval of the Owner's application(s).

4.6 **Variances.** The Committee may authorize variances from any of the Design Requirements when the Committee deems it desirable to address special circumstances, such as topography, natural obstructions, hardship, aesthetic considerations or other circumstances. The granting of a variance will not waive any element of the Design Requirements for any purpose except as to the particular property and particular provision covered by the variance. Approval of a variance will not affect the Owner's obligation to comply with this Declaration or applicable law.

4.7 **Committee Approvals.** The Committee's approval of any Improvement does not mean the Improvements will be permitted by applicable law, approved by the applicable governmental authorities or others. The Committee will not be responsible in any way for any defects or errors in any plans or specifications submitted, revised or approved, nor for any structural or other defects in any work done according to such plans and specifications.

4.8 **Immunity; Indemnification.** The Committee's members, agents and employees will be immune from liability and entitled to indemnification as set forth in Section 2.8 hereof.

ARTICLE 5 ASSESSMENTS

5.1 **Covenant to Pay Assessments.** Each Owner covenants and agrees to pay when due (without deduction, setoff, abatement of counterclaim of any kind whatsoever) all Assessments or charges made against such Owner or such Owner's Lot pursuant to the Community Documents. Assessments against a Lot will be a continuing lien on such Lot until paid, whether or not ownership of such Lot is transferred. Assessments against a Lot are also the personal obligation of the Owner of the Lot when the Assessment becomes due and payable. Such personal obligation will remain with such Owner regardless of whether such Owner remains the owner of the Lot. Delinquent Assessments related to a Lot will not pass to such Owner's successors in title unless expressly assumed by them. Such Assessments and charges, together with interest, costs and reasonable attorneys' fees, which may be incurred in collecting the same, will be a charge on the land and will be a continuing lien upon the Community against which each such Assessment or charge is made.

5.2 **Regular Assessments.** Regular Assessments are to be used to pay for all costs and expenses incurred by the Association for the conduct of its affairs or the exercise of any of the Association's powers, duties or obligations under the Community Documents (collectively, the "**Expenses**"). Without limiting the generality of the foregoing, the Expenses will include:

5.2.1 The cost and expenses incurred by the Association for professional management of its business and affairs;

5.2.2 The costs and expenses incurred by the Association in the exercise of any of its powers under Section 2.6;

5.2.3 The costs and expenses of construction, improvement, protection, insurance, maintenance, repair, management and operation of the Common Area, Maintenance Property, and

all Improvements located in other areas that are owned, managed or maintained by the Association; and

5.2.4 An amount to fund adequate reserves for extraordinary operating expenses, contingent risks or liabilities (such as indemnification and defense expenses), capital repairs, capital replacements and any other expenses for which the Board deems prudent to fund a reserve.

5.3 **Special Assessments.** If the Board determines that the Regular Assessment for a given calendar year is or will be inadequate to meet the Expenses for such calendar year for any reason, the Board may levy a Special Assessment to collect the additional funds needed to meet the Expenses for such calendar year. Special Assessments will be levied and paid upon the same basis as Regular Assessments; provided, however, the Association will, in the Board's reasonable discretion, set the schedule under which such Special Assessment will be paid, which schedule may be different than Regular Assessments.

5.4 **Limited Assessments.** Notwithstanding the above provisions with respect to Regular Assessments and Special Assessments, the Association may levy a Limited Assessment against an Owner (a) for any fines, fees or charges levied against the Owner under the Community Documents; (b) to reimburse the Association for any costs incurred to bring the Owner's Lot or any Improvements thereon into compliance with the Community Documents; (c) to reimburse the Association for any damages caused by an Owner or its tenants, occupants, guests, invitees and contractors to any Common Area, Maintenance Property, or Improvements owned or maintained by the Association; and (d) for the cost of providing any goods or services under the Community Documents that benefit such Owner or Owner's Lot, but less than all Owners or all Owners' Lots.

5.5 **Transfer Assessments.** Upon Grantor's transfer of fee simple title to a Lot to an Owner that intends on occupying the residential structure of such Lot (either by itself or through a use agreement such as a lease, life estate, etc.), 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 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. For the avoidance of doubt, the initial contractor for each Lot is not required to pay a Transfer Assessment upon receiving title to such Lot from Grantor.

5.6 **Assessment Procedures.** Unless otherwise determined by the Board, the Association will compute and forecast the total amount of Expenses on an annual basis (the "**Budget**"). The computation of the Budget will take place not less than thirty (30) nor more than ninety (90) days before the beginning of each fiscal year of the Association, unless a change in Owners or other circumstance makes it impracticable to compute the Budget in that time frame, in which event the Budget will be computed as soon as reasonably practicable. In all events, the computation of the Budget will be completed in good faith and is valid upon completion. Each Owner's Regular Assessment will be computed by multiplying the Budget by the fraction produced by dividing the number of Lots owned by such Owner by the total number of Lots not then exempt from Assessment. The Association may, in its discretion or as provided in the Community Documents, require payment of Regular Assessments in monthly, quarterly, semi-annual, or annual installments. The Association will provide Owners with not less than fifteen (15) days and no more than thirty (30) days of prior notice before any Board meeting for the purpose of levying a Special Assessment or increasing the Regular Assessment by more than ten percent (10%). Assessments are due and payable within thirty (30) days after the Association provides an invoice therefor to each Owner. If all or any part of an Assessment is not paid when due, then: (a) the delinquent Owner will pay to the Association a late payment charge

equal to 5% of the delinquent amount; and (b) interest accrues on the delinquent amount at the rate of twelve percent (12%) per annum until paid in full. In the event an Owner's payment is returned for any reason, such Owner will pay to the Association an administrative fee in an amount set by the Board and thereafter the Association has the right to require future Assessments due from such Owner to be paid in the form of a cashier's check, certified check, or other form of immediately collectible funds acceptable to the Association in the Board's discretion. Each Owner acknowledges and agrees that the late payment charge and administrative fee are reasonable compensation to the Association for additional administrative costs and expenses caused by any late payment or returned check.

5.7 Assessment Liens.

5.7.1 Creation. There is hereby created a continuing claim of lien with power of sale on each and every Lot to secure payment of any and all Assessments levied against such Lot pursuant to the Community Documents, together with interest thereon at the rate described in Section 5.6 and all collection costs and attorneys' fees which may be paid or incurred by the Association in connection therewith. Upon default of any Owner in the payment of any Assessment related to a Lot, the Association may record a claim of lien against such Lot in accordance with applicable law (currently, Idaho Code § 45-810). Each delinquency will constitute a separate basis for a claim of lien, but any number of defaults may be included within a single claim of lien. Such claim of lien may be foreclosed in any manner permitted by applicable law. Upon payment of such lien in full, the Association will prepare and record a release of such claim of lien.

5.7.2 Subordination to First Mortgages. Upon recordation of a claim of lien for delinquent Assessments in accordance with applicable law, such lien will be prior and superior to all other liens or claims created subsequent to the recordation of the claim of lien except for (a) liens which, by law, would be superior thereto and (b) 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 Section 5.7.2, the sale or transfer of any Lot will 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 will such sale or transfer diminish or defeat the personal obligation of any Owner for delinquent Assessments as provided for in this Declaration.

5.8 **Exemptions.** All Common Area and any Lots owned by the Association will be exempt from Assessments. Grantor will be exempt from Assessments as set forth in Section 10.4.

ARTICLE 6 RIGHTS TO COMMON AREAS

6.1 **Use of Common Area.** Every Owner will have a right to use the Common Area as set forth in this Declaration subject to:

6.1.1 The Community Documents;

6.1.2 The right of the Association to suspend the right of an Owner to use the Common Area 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 Community Rules; and

6.1.3 The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility or other party for such purposes and subject to such conditions as may be permitted by the Community Documents.

6.2 **Delegation of Right to Use.** An Owner may delegate its right to use the Common Area to the occupants of such Owner's Lot; provided, however, each Owner will be liable to the Association for any damage to any Common Area, Maintenance Property, or any other Improvements owned or maintained by the Association where such damage is sustained by reason of the negligence or willful misconduct of such Occupants. The cost of correcting such damage will be a Limited Assessment against the Lot.

6.3 **Association's Responsibility.** The Association will operate, maintain, repair, and replace the Common Area, Maintenance Property, and any other Improvements owned, managed, or maintained by the Association, so as to keep the same in good operating condition and repair, subject to and in accordance with the terms of this Declaration.

ARTICLE 7 EASEMENTS

7.1 **Recorded Easements.** The Community, and all portions thereof, shall be subject to all easements shown or identified any 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 or as of the date of any applicable Supplemental Declaration.

7.2 **Easements of Encroachment.** There will be reciprocal appurtenant easements of encroachment as between adjacent Lots and between Lots and adjacent portions of the Common Area due to the unwillful placement or settling or shifting of the Improvements constructed, reconstructed or altered in accordance with the Community Documents. Easements of encroachment will be valid only so long as they exist, and the rights and obligations of Owners will not be altered in any way because of encroachments, settling or shifting of the Improvements; provided, however, that in no event will a valid easement for encroachment occur due to the willful or bad faith acts of an Owner. If an Improvement is partially or totally destroyed, such Improvement may be repaired or rebuilt within such minor encroachments that existed prior to the encroachment and may be reconstructed pursuant to the easement granted by this Section 7.2.

7.3 **Easements of Access.** There will be reciprocal appurtenant easements of ingress and egress for all Owners to and from their respective Lots for installation and repair of utility services and for necessary maintenance and repair of any Improvement, such as fencing, retaining walls, lighting facilities, mailboxes and sidewalk abutments, trees and landscaping.

7.4 **Improvements in Drainage and Utility Easements.** No Owner will construct or alter any Improvements in any drainage or utility easement areas which would interfere with the easement being used for its intended purpose. Such Owners may install and maintain Improvements on such easement areas as permitted by the Community Documents so long as such Improvements are permitted by the terms of the easement and such Improvements will not interfere with or prevent the easement areas from being used for their intended purposes. No lawful user of the easement will incur any liability to such Owner for the damage or destruction of such Improvements.

7.5 **Party Wall Easements.** Subject to the Community Documents, Grantor hereby establishes a reciprocal easement for the location of such Party Wall, and a reciprocal easement of ingress and egress for each Lot Owner over the adjacent ten (10) feet of those adjoining Lots containing Party Walls

(but not inside of any single level attached dwelling units) for reasonable and necessary maintenance and repair of the Party Walls.

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

7.7 **Maintenance Easement.** A non-exclusive easement is hereby reserved to the Grantor and the Association upon, across, over, in, and under all portions of all Lots that are not improved with an occupied structure. Grantor and the Association may use the easement reserved herein as Grantor or the Association may deem necessary, appropriate, or convenient to perform any of their respective rights or obligations identified in the Community Documents, to perform their respective duties and functions to which they are obligated or permitted to perform pursuant to the Community Documents, and to make emergency repairs. Nothing herein relieves each Owner's obligation to maintain Improvements on such Owner's Lot.

7.8 **Grantor's Rights Incident to Construction.** Grantor, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress over, in, upon, under, and across the Community 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 in the Community on those portions owned by Grantor or the Association; provided, however, that Grantor will not exercise such rights in a way that will 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.

7.9 **Easements Deemed Created.** All conveyances of Lots made after the date of the recording of the Declaration, whether by Grantor or otherwise, will be construed to grant and reserve the easements contained in this Article 7 and elsewhere in this Declaration, even though no specific reference to such easements appear in the conveyance instrument.

ARTICLE 8 STORM WATER DRAINAGE AND RETENTION SYSTEM

8.1 **ACHD Storm Water Drainage Easement.** Portions of Lot 9 in Block 3 are servient to and contain the ACHD storm water drainage system. The foregoing Lot is encumbered by that certain First Amended Master Perpetual Storm Water Drainage Easement recorded on November 10, 2015, as Instrument No. 2015-103256, official records of Ada County, and incorporated herein by this reference as if set forth in full (the "**Master Easement**"). The Master Easement and the ACHD storm water drainage system are dedicated to the ACHD pursuant to Section 40-2302, Idaho Code. The Master Easement is for the operation and maintenance of the ACHD storm water drainage system. Said easement shall remain free of all encroachments and obstructions (including fences and trees) which may adversely affect the operation and maintenance of the storm drainage facilities.

8.2 **Operation and Maintenance.** Operation and maintenance of the storm water drainage facilities will be governed by the Storm Drainage Facilities Operations and Maintenance Manual for Brody Square Subdivision (the "**O&M Manual**"), a copy of which is on file with the Association.

8.3 **ACHD Approval of Certain Amendments.** Any amendment of this Declaration or the O&M Manual having any direct impact or effect on the ACHD storm water drainage system shall be subject to ACHD's prior review and approval.

8.4 **Inspection and Maintenance.** ACHD will have the right at all times to inspect the storm water drainage system and perform any required maintenance and repairs.

8.5 **ACHD Assessment of Costs.** ACHD will be entitled to pursue reimbursement for the reasonable costs of all required maintenance and repairs to the storm water drainage system that result from the Association's failure to perform the light maintenance duties as defined and required by the O&M Manual.

ARTICLE 9 RESOLUTION OF DISPUTES

9.1 **Agreement to Avoid Litigation.** Grantor, 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 Community Documents instead of costly, lengthy and unpredictable litigation. Accordingly, Grantor, the Association (including its officers, directors and committee members), each Owner and any party claiming a right or interest under the Community Documents (each, a "**Bound Party**") agree to encourage the efficient resolution of disputes within the Community without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that all claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of the Community Documents or the rights, obligations and duties of any Bound Party under the Community Documents ("**Claims**") will be subject to the provisions of Section 9.3 unless exempt under Section 9.2. All Claims will be subject to resolution pursuant to this Article 9 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.

9.2 **Exemptions.** The following Claims will not be subject to this Article 9 unless all Bound Parties thereto agree to submit such Claim to these dispute resolution procedures:

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

9.2.2 Any Claim by Grantor or the Association to obtain injunction or equitable relief to enforce any provision of the Community Documents;

9.2.3 Any Claim between Owners where the Grantor or the Association are not a party thereto, which Claim would constitute a cause of action independent of the Community Documents;

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

9.2.5 Any Claim against a Released Party that would be barred by Section 2.8;

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

9.2.7 Any Claim arising out of or relating to the interpretation, application or enforcement of any purchase, sale or construction agreement with Grantor or any builder related to the construction of Improvements within the Community, 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.

9.3 **Dispute Resolution.**

9.3.1 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.

9.3.2 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:

9.3.2.1 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;

9.3.2.2 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 Community 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;

9.3.2.3 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;

9.3.2.4 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

9.3.2.5 Elect to exempt the Claim from this Article 9, 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 9.

9.3.3 If the Bound Parties resolve any Claim through mediation or arbitration pursuant to this Article 9 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 9. 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 10 INITIAL DEVELOPMENT PERIOD

10.1 **Community Management.** Each Owner recognizes that the Community will require a high level of knowledge, effort, judgment, diligence and attention during the Initial Development Period, and that level is beyond what can reasonably be expected from Community volunteers. Accordingly, each Owner agrees that it is in the best interest of the Community for Grantor to have full management authority for the Community during the Initial Development Period, including the sole and exclusive right to appoint remove and replace directors of the Board and members of the Committee at any time and from time-to-time in Grantor's sole discretion.

10.2 **General Exemptions.** Grantor may, from time-to-time in Grantor's discretion and without first seeking or obtaining the approval of Association or Committee:

10.2.1 Make modifications or Improvements on any Lot or the Common Area as Grantor deems appropriate;

10.2.2 Place or authorize signs of such size, design and number as Grantor deems appropriate for the initial development of the Community, including signs to identify the Community, display information pertaining to the Community, display information or instructions to builders, to advertise Lots and homes for sale (including sale events and open houses), and to advertise of Community elements or events;

10.2.3 Authorize any developer or contractor to use any Lot as a model home, sales office, construction office or construction storage yard;

10.2.4 Place or authorize portable or temporary structures upon any Lot or the Common Area; and

10.2.5 Establish or reserve such additional covenants, conditions, restrictions or easements on any Lot prior to conveyance thereof as Grantor deems necessary or convenient for the development of the Lot or the Community.

10.3 **Water Rights Appurtenant to Community Lands.** Grantor owns certain water and water rights which are appurtenant to the Community. Grantor hereby reserves unto itself any and all such water and water rights appurtenant to the Community, and Owners of any and all Lots accordingly will have no right, title or interest in or to any of said water or water rights.

10.4 **Grantor's Exception from Assessments.** If Grantor owns any Lots during the first two (2) years following the date Assessments are first assessed against the Owners of Lots, Grantor will not be assessed any Regular Assessments or Special Assessments for any Lots owned by Grantor. If Grantor owns at least one (1) Lot during such period, Grantor will pay the shortfall, if any, in the operating Expenses of the Association; provided, however, such obligation will not exceed the amount that the Regular Assessments and Special Assessments that Grantor would otherwise be assessed as an Owner multiplied by the total number of Lots owned by Grantor on the date Regular Assessments or Special Assessments are assessed against the Owners of Lots. After the foregoing period, Grantor will be assessed Regular Assessments and Special Assessments for each Lot owned by Grantor.

10.5 **Assignment of Grantor's Rights.** Grantor may assign any or all of its rights under the Community Documents to any Person in a written instrument that contains the assignee's acceptance of such assignment and agreement to assume any of Grantor's obligations pertaining to the rights assigned, which acceptance and assumption will be effective as of the date of execution. The assignment and assumption agreement will be recorded in the real property records of Ada County, Idaho, and a copy thereof will be given by Grantor to the Association and, thereupon, the Grantor originally identified herein will be relieved of Grantor's obligations pertaining to the rights assigned.

ARTICLE 11 TERM

The easements created hereunder are perpetual, subject only to extinguishment by the holders of such easements as provided by law. The remainder of this Declaration runs until December 31, 2051 and thereafter will be automatically extended for successive periods of ten (10) years each, in each event unless earlier amended or terminated in accordance with Article 13.

ARTICLE 12 ANNEXATION AND DEANNEXATION

Grantor may annex additional lands into the Community from time-to-time by recording a supplement to this Declaration declaring such additional lands to be part of the Community 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 Grantor may deem appropriate. Upon annexation, Owners within the annexed lands will become Owners in the Community on equal footing with the then current Owners in the Community, and will have the same rights, privileges and obligations (except as may otherwise be set forth in the annexing Supplemental Declaration). Grantor will have the right to de-annex any property owned by Grantor from the Community upon Grantor's recordation of a Supplemental Declaration identifying the de-annexed lands and declaring that such lands will 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 real property records of Ada County, Idaho.

ARTICLE 13 AMENDMENTS

13.1 **Amendment.** From and after the recordation of this Declaration until the expiration or earlier termination of the Initial Development Period, Grantor will have 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 Ada County Recorder's Office. After the expiration or earlier termination of the Initial Development Period, 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 Ada County Recorder's Office.

13.2 Effect of Amendment; Mortgagee Protection. Any Supplemental Declaration or amendment or termination of this Declaration will be effective upon its recordation with the Ada County Recorder's Office and will be binding on and effective as to all Owners, whether or not such Owners voted for or consented to such Supplemental Declaration or amendment or termination. Any Supplemental Declaration or amendment to this Declaration may add to, delete, and/or otherwise change the covenants, conditions, restrictions, and easements applicable to the Community; provided, however, notwithstanding any other provision of this Declaration, no Supplemental Declaration or amendment will operate to defeat or render invalid the rights of the beneficiary under any Mortgage made in good faith and for value, and recorded prior to the recordation of such Supplemental Declaration or amendment, provided that after foreclosure of any such Mortgage, such Lot will remain subject to this Declaration as supplemented or amended.

ARTICLE 14 NOTICES; TIME

Unless otherwise provided herein, all notices required or permitted to be given under this Declaration shall be in writing and shall be given by: (a) hand delivery, in which event such notice shall be deemed received upon the earlier of delivery or refusal to accept delivery thereof; (b) U.S. Certified Mail, return receipt requested, with postage prepaid, in which event such notice shall be deemed received upon the earlier of the date of actual receipt, the date of delivery as shown on the return receipt, or the third day after deposit in the mail; (c) a nationally-recognized overnight delivery service (e.g., FedEx), in which event such notice shall be deemed received upon the earlier of the actual date of receipt or the day after deposit with the nationally-recognized overnight delivery service; or (d) email transmission, in which event such notice shall be deemed received on the date sent if sent before 5:00PM in the local time zone where the Community is physically located, and on the next day, if sent after 5:00PM in the local time zone where the Community is physically located. Notwithstanding the foregoing, actual notice, however given and from whomever received shall always be effective, and any notice given by a member, the manager, or the Company's attorneys, shall, for all purposes, be deemed to have been given by such member or the Company, as applicable. All such notices shall be addressed to the applicable Member, director, and/or the Association at the address on file for such Person at the Association, or if no address has been given for an Owner, at the address of the Lot owned by the Owner within the Community.

All time periods in this Declaration shall be deemed to refer to calendar days. If the last date on which to perform any act, give any notice, or be deemed to have received any notice under this Declaration shall fall on a Saturday, Sunday, or holiday observed by the state courts sitting in the county in which the Community is physically located, such act or notice shall be deemed timely if performed or given, or notice shall be deemed received, on the next succeeding day that is not a Saturday, Sunday, or holiday observed by the state courts sitting in county in which the Community is physically located. Time is of the essence.

ARTICLE 15 MISCELLANEOUS

15.1 **Interpretation.** This Declaration will be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the Community. As used herein, the word “including” will be deemed to be followed by “but not limited to” unless otherwise indicated. Unless the context requires a contrary construction, the singular will include the plural and the plural the singular; and the masculine, feminine or neuter will each include the masculine, feminine and neuter. All captions and titles used in this Declaration are intended solely for convenience of reference and will not affect that which is set forth in any of the provisions hereof. As used herein the terms “shall,” “will,” and “must” may be used interchangeably and are mandatory, while the term “may” is permissive. *In the event that any provision of this Declaration is deemed ambiguous on any matter, the Board’s interpretation of such provision will be given deference so long as the interpretation is a permissible construction of such provision.*

15.2 **Governing Law.** This Declaration will be governed by the laws of the State of Idaho without regard to its conflicts of law principles. Any legal action to interpret or enforce this Declaration will be filed exclusively in the state or federal courts situated in Ada County, Idaho.

15.3 **Severability.** Each provision of this Declaration will be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof will not affect the validity or enforceability of any other provision herein.

15.4 **Entire Agreement.** This Declaration and the documents referenced herein constitute the sole agreement of Grantor and the Owners with respect to the subject matter herein and supersedes all prior understandings and agreements with respect to the subject matter hereof.

15.5 **No Third Party Beneficiaries.** Except as otherwise set forth herein, this Declaration and each and every provision herein is for the exclusive benefit of Grantor, the Association and the Owners and not for the benefit of any third party.

15.6 **No Waiver.** No waiver by the Association hereunder may be oral. No waiver, forbearance, delay, indulgence or failure by the Association to enforce any of the provisions of this Declaration will in any way prejudice or limit the Association’s right thereafter to enforce or compel strict compliance with the provision hereof, any course of dealing or custom of the trade notwithstanding. No delay or omission on the part of the Association will operate as a waiver thereof, nor will any waiver by the Association of any breach of this Declaration operate as a waiver of any subsequent or continuing breach of this Declaration.

15.7 **Enforcement; Remedies.** The failure of any Owner or Occupant to comply with applicable law pertaining to the ownership, use or occupancy of any Lot or the Community, or to comply with any provision of the Community Documents, is hereby declared a nuisance and gives rise to a cause of action (subject to Article 9) in Grantor, the Association (on its own and/or on behalf of any consenting Owners) and any affected Owner for recovery of damages or for negative or affirmative injunctive relief or both enforce the provisions hereof only as set forth in this Declaration. Each remedy provided herein is cumulative and not exclusive. If any party initiates or defends any legal action or proceeding to interpret or enforce any of the terms of this Declaration, the substantially prevailing party will be entitled to recover any costs and attorneys’ fees reasonably incurred therein.

15.8 **Consents and Approvals.** Subject to Grantor’s rights as the Grantor Member (sole voting Member) during the Initial Development Period, any consents or approvals required or contemplated herein must be in a writing executed by the party whose consent or approval is required or contemplated. No Owner unreasonably withhold, condition or delay its consent or approval of any matter requested by Grantor, the Association, the Committee or another Owner.

15.9 **Recitals and Exhibits.** All recitals and exhibits to this Declaration are true, correct, material, and are hereby incorporated as if set forth herein in full.

[Remainder of page intentionally left blank; signature page follows.]

IN WITNESS WHEREOF, Grantor has executed this Declaration effective as of the Effective Date.

GRANTOR:

Pinnacle Land Development, LLC,
an Arizona limited liability company

By:



Name: Randal S. Clarno

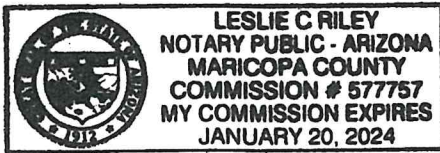
Its: Authorized Signatory

STATE OF IDAHO)

) ss.

County of Ada)

This record was acknowledged before me on April 28th, 2022, by Randal S. Clarno, as authorized signatory for Pinnacle Land Development, LLC, an Arizona limited liability company.



Signature of Notary Public

My Commission Expires:

11/20/2024