

**DECLARATION OF COVENANTS, CONDITIONS, AND
RESTRICTIONS OF
PETRA POINT SUBDIVISION**

THIS DECLARATION is made on the date hereinafter set forth by FRANK PAGE and DICKSIE PAGE, hereafter referred to as “Declarants.”

WITNESSETH

WHEREAS, Declarants are the owners of certain real property in Ada County, State of Idaho, hereinafter referred to as “the Properties,” more particularly described as follows:

PETRA POINT SUBDIVISION according to the official plat thereof, recorded in Book _____ of Plats at Pages _____ and _____ as Instrument No. _____ recorded on the _____ day of _____, 2022, records of Ada County, Idaho.

WHEREAS, Declarants desire to subject the above described Properties to certain protective covenants, conditions, restrictions, reservations, easements, liens, and charges for the benefit of the Properties and their present and subsequent Owners as hereinafter specified, and will convey the Properties subject thereto;

NOW, THEREFORE, Declarants hereby declares that all of the Properties above described shall be held, sold and conveyed upon and subject to the easements, conditions, covenants, restrictions and reservations hereinafter set forth, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of, and which shall run with, the Properties and be binding on all parties now or hereafter having any right, title or interest therein or to any part hereof, and shall inure to the benefit of each owner thereof.

ARTICLE I: DEFINITIONS.

The following terms shall have the following meanings:

Section 1. “**ASSOCIATION**” shall mean and refer to River Rock Subdivision Homeowners Association, Inc. a non-profit corporation organized under the laws of the State of Idaho, its successors and assigns.

Section 2. “**PROPERTIES**” shall mean and refer to that certain real property hereinabove described.

Section 3. “**COMMON AREA**” shall mean all real property and improvements thereon (including private driveway, storm water system and recreational facilities) owned by the Association for the common use and enjoyment of the Owners. The Common Areas to be owned by the Association at the time of the

conveyance of the first Lot is described as follows: Lot 5 River Rock Subdivision, according to the official plat thereof.

Section 4. “**LOT**” or “**LOTS**” shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties, with the exception of the Common Area.

Section 5. “**OWNER**” shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 6. “**DECLARANTS**” shall mean and refer to Frank Page and Dicksie Page, their successors, and subject to the provisions of Article XIII, Section 4, below, their assigns.

Section 7. “**DECLARATION**” shall mean and refer to the Declaration of Covenants, Conditions and Restrictions applicable to the Properties recorded in the office of the County Recorder of Ada County, State of Idaho.

Section 8. “**DWELLING UNIT**” shall mean that portion or part of any structure intended to be occupied by one family as a dwelling unit, together with the vehicular parking garage attached thereto, and all projections therefrom.

Section 9. “**MORTGAGE**” shall mean any mortgage, deed of trust, or other security instrument by which a Dwelling Unit or any part thereof is encumbered.

Section 10. “**MORTGAGEE**” shall mean any person or any successor to the interest of such person named as the Mortgagee, trust beneficiary, or creditor under any Mortgage.

Section 11. “**FIRST MORTGAGEE**” shall mean any Mortgagee possessing a lien on any Dwelling Unit first and prior to any other Mortgage.

Section 12. “**INSTITUTIONAL HOLDER**” shall mean a Mortgagee which is a bank or savings and loan association or established mortgage company, or other entity chartered under federal or state laws, any corporation or insurance company, or any federal or state agency.

Section 13. “**PLAT**” shall mean a final subdivision plat covering any real property in River Rock Subdivision as recorded in the office of the county recorder, Ada County, Idaho, as the same may be amended by duly recorded amendments thereto.

Section 14. “**SHARED DRIVEWAY**” shall mean that certain shared driveway to be owned and maintained by the Association as a part of its Common Area which provides access to lots 1, 2, 3, 4, 6, 7, 8, and 9. The use of the term "Shared Driveway" shall include all improvements located thereon.

Section 15. “**SUBDIVISION**” shall mean the River Rock Subdivision as shown on the final Plat recorded in the Office of the County Recorder, Ada County, Idaho.

ARTICLE II: PROPERTY RIGHTS.

Section 1. Enjoyment of Common Area: Each Owner shall have a right and easement of enjoyment in and to the Common Area, and such easement shall be appurtenant to and shall pass with the title to every Lot, subject, however, to the following provisions:

- A. The right of the Association to levy reasonable assessments for the maintenance of any landscaping improvement or other facilities situated upon the Common Area.
- B. The right of the Association to suspend the voting rights and right to use of the Common Area by an Owner for any period during which any assessment against that Owner's Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.
- C. The right of the Association to limit the number of members permitted to use the Common Area.
- D. The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and facilities; and, in aid thereof, to place a mortgage or trust deed thereon, which shall be a first and prior lien there against; provided that the Common Area may not be mortgaged or conveyed without the consent of at least two-thirds (2/3) of the Owners (excluding Declarant), and that any conveyance or mortgage of Common Area shall be subject to and subordinate to rights of ingress and egress of an Owner to his/her Lot.
- E. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members; provided, however, that except as to the Association's right to grant easements for utilities and similar or related purposes, no part of the Common Area and facilities may be alienated, released, transferred, hypothecated, or otherwise encumbered without the written approval of all First Mortgagees and two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly held for this purpose.
- F. The right of the Directors of the Association to promulgate reasonable rules and regulations governing such right of use, from time to time, in the interest of securing maximum safe usage of the Common Area by the members of the Association without unduly infringing upon the privacy or enjoyment of the Owner or occupant of any part of said property, including, without being limited thereto, rules restricting persons under or over designated ages from using certain portions of the Common Area during certain times and reasonable regulations, and restrictions regarding vehicle parking.

Section 2. Delegation of Use: Any Owner may delegate, in accordance with the rules and regulations adopted from time to time by the directors, his right of enjoyment to the Common Area and facilities to the members of his/her family, tenants, or contract purchasers, provided they reside on the property at the time of use.

ARTICLE III: HOMEOWNERS ASSOCIATION.

Section 1. Membership: Every Owner of a Lot shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the payment of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Such ownership shall be the sole qualification for membership and shall automatically commence upon a person becoming such Owner and shall automatically terminate and lapse when such ownership in said property shall terminate or be transferred. Absolute liability is not imposed on Owners/members for damage to Common Areas or Lots in the subdivision.

Section 2. Voting Rights: The Association shall have two classes of voting membership:

Class A: Class A members shall be all Owners with the exception of Declarants and Pineview Development, LLC. The Class A members shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot. Fractional votes shall not be allowed. The vote applicable to any said Lot being sold under contract of purchase shall be exercised by the contract seller, unless the contract expressly provides otherwise.

Class B: Class B: The Class B members shall be the Declarants and Pineview Development, LLC. Each Class B member shall be entitled to three (3) votes for each Lot owned. Class B. The Class B membership held by the Declarants or Pineview Development, LLC shall be converted to a Class A membership at such time as the total Class A membership votes held by Owners (that are not the Declarants or Pineview Development, LLC) is equal to the total Class B membership votes.

Section 3. Assessments:

- A. Creation of Lien and Personal Obligation of Assessments: Each Owner of any Lot, by acceptance of a deed therefore (whether or not it shall be so expressed in such deed), is deemed to covenant and agree to pay to the Association:
- i. Regular annual or other regular periodic assessments or charges; and
 - ii. Special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided.

The regular and special assessments, together with interest, costs of collection, and reasonable attorney's fees shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment, together with interest, costs of collection, and reasonable attorney's fee, shall also be the personal obligation of the Owner of such Lot at the time when the assessment fell due. The obligation shall remain a lien on the Lot until paid or foreclosed, but shall not be a personal obligation of successors in title, unless expressly assumed.

Section 4. Purpose of Assessments:

- A. The assessments levied by the Association shall be used for the purpose of promoting the recreation, health, safety and welfare of the residents in the Properties, for the operation, maintenance, repair, and improvement of the Irrigation Water Supply System, the Common Area and facilities located thereon, for the reasonable expenses

incurred in the operation of the affairs of the Association, for the expenses incurred by the Association in connection with any of its obligations contained in this Declaration or in the Bylaws of the Association, and for any other purpose reasonably authorized by the Directors of the Association.

- B. Maximum Annual Assessment: Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be \$720. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the Board of Directors of the Association may fix the annual assessment at an amount necessary to provide for the reasonable expenses of the Association; and said assessment shall be payable to the Association in regular monthly, quarterly, semi-annual or annual installments as may be determined by the Board of Directors.
- C. Special Assessments for Capital Improvements: In addition to the regular assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, the Irrigation Water Supply System, or for any of the Association's obligations set forth herein, **provided that** any such assessment shall have the assent of two-thirds (2/3) of the votes of those members who are voting in person or by proxy at a meeting duly called for this purpose. Any such special assessment shall be payable over such a period as the Association shall determine.
- D. Notice and Quorum for Any Action Authorized Under Section 4(C): Written notice of any meeting called for the purpose of taking any action authorized under Section 4(C), above, shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast two-thirds (2/3) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.
- E. Uniform Rate of Assessment: Both annual and special assessments must be fixed at a uniform rate for non-exempt Lots.
- F. Date of Commencement of Annual Assessments - Due Dates: The annual assessments provided for herein shall commence as to a Lot sold on the first day following the initial conveyance of the said Lot after a Dwelling Unit has been constructed on the said Lot. The first annual assessment shall be adjusted according to the number of days remaining in the calendar year. The Board of Directors of the Association shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

- G. Effect of Nonpayment of Assessments – Remedies of Association: In the event any assessment is not paid within thirty (30) days after the due date, the Owner shall be subject to a late fee in the amount of \$35.00 for each month or part thereof that the assessment shall be delinquent, which said late fee shall be added to and become a part of the assessment provided for in this section. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.
- H. Subordination of the Lien to Mortgages: The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due, or from the lien thereof
- I. Exempt Property: The following property, subject to this Declaration, shall be exempt from the assessments created herein:
1. All property expressly dedicated to and accepted by a local public authority;
 2. The Common Area;
 3. All other Properties owned by Declarants or the Association, including the shared driveway for Lots 1, 2, 3, 4, 6, 7, 8, and 9.
 4. All Lots owned by Declarant, until title is transferred to another, or until occupancy, whichever occurs first.

Section 5. Turnover Meeting: Within ninety (90) days after Declarants have sold and conveyed to a person other than a successor declarant all of the Lots, the Declarants shall call the first meeting of the Owners for the purpose of organizing the Association and to elect members of the Association's board of directors. If a quorum of the Owners is present (as set forth in the Association's bylaws), the Owners shall elect not fewer than one member of the Association's board of directors. Notice of such meeting shall be given to all Owners as provided in Article III, Section 4, Part D of the Declaration. If Declarants fail to call the meeting, the meeting may be called and notice given by any Owner. The expense of giving notice shall be paid or reimbursed by the Association. At the meeting, Declarants shall deliver to the Association such information and documents as may be required by Idaho law. Nothing in this Section shall be construed as preventing the Declarants from calling the organizational and turnover meeting prior to such date, or from calling informal, informational meetings of the Owners.

Section 6. Adoption of Bylaws, Declarants Control of Association: Declarants shall adopt Bylaws for the Association. Declarants specifically reserve the right to control the Association by appointing the interim directors of the Association until the organizational and turnover meeting of the Association has been held and the Owners have elected regular directors as provided in Article III, Section 5 of the Declaration.

ARTICLE IV: EASEMENTS.

Section 1. Future Easements: The Association shall have the future right to provide for such easements across, upon, and under the surface of its Common Area as platted herein as may be reasonably necessary to serve the interests and convenience of the property Owners of this subdivision for public or private ways, any public utilities (including cable television, internet service, etc.), drainage, access, subterranean irrigation lines, and eave and balcony overhangs.

Section 2. Encroachments: In the event that, by reason of the construction, settlement or shifting of the building, any part of any Dwelling Unit or drainage water from any Lot or Dwelling Unit encroaches or shall hereafter encroach upon any part of the Common Area or any adjacent Lot, easements for the maintenance of such encroachment and for such use of the areas encroached upon are hereby established and shall exist for the benefit of said Dwelling Unit, so long as all or any part of the buildings shall remain standing; provided, however, that in no event shall a valid easement for any encroachment or use of the Common Area or adjacent Dwelling Units be created in favor of any Owner of such encroachment or use if it is detrimental to or interferes with the reasonable use and enjoyment of the property by other Owners and if it occurred due to the willful conduct of any Owner.

Section 3. Easement for Maintenance: Declarants and the Association shall have a permanent easement to go upon the privately-owned property of Owners in this subdivision to perform maintenance upon the Properties and the Common Area, including, but not limited to, lawn maintenance, perimeter fence maintenance, utility service maintenance, subterranean irrigation water system maintenance, and drainage system maintenance. This together with all rights of ingress and egress necessary for the full and complete use, occupation and enjoyment of the easements hereby reserved, and all rights and privileges incident thereto, including the right from time to time to cut, trim, and remove trees, brush, overhanging branches, and other obstructions which may injure or interfere with the use, occupation, or enjoyment of the reserved easement and the operation, maintenance, and repair of utility service connections and drainage systems, as well as snow removal for the shared driveway.

Section 4. Shared Driveway: Vehicular access to Lots 1, 2, 3, 4, 6, 7, 8, and 9 shall be provided by a common driveway to be constructed in the locations depicted on the General Site Plan on common lot 5. Each of the said Lots are subject to cross easements providing perpetual and indefeasible access rights for ingress and egress to the Lots encumbered by the easements. It is the intent of the Declarants that the easements so created shall run with the land and not be sold or conveyed separately from the lots taking access over them. No Owner or other person shall place or permit to be placed across the easement premises any obstruction or in any manner otherwise interfere with the use of the easement premises by the Owners of said lots without the mutual consent of all such Owners.

ARTICLE V: PARTY OR CONTIGUOUS WALLS.

Section 1. General Rules of Law Apply: Each wall which is built as a part of the original construction of the units upon the property and placed on the dividing line between the Lots shall constitute a “**Party Wall**” and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance: The cost of reasonable repair and maintenance of a Party Wall shall be shared by the owners who make use of the wall and proportioned to such use.

Section 3. Destruction by Fire or Other Casualty: If a Party Wall is destroyed or damaged by fire or other casualty, any owner who has used the wall may restore it, and if the other owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice however to the right of any such owners to call for a larger contribution from the others under any rule of law regarding liability for negligence or willful acts or omissions.

Section 4. Weatherproofing: Notwithstanding any other provision of this Article, an owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs with Land: The right of any owner to contribution from any other owner under this Article shall be appurtenant to the land and shall pass to such owners or successors entitled.

Section 6. Arbitration: In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrator shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

ARTICLE VI: MAINTENANCE RESPONSIBILITY.

Section 1. By Association: The Association shall provide all reasonably required maintenance and repairs to (a) the Common Area and improvements thereon, (b) the Shared Driveway, (c) the storm water drainage and retention system, (d) the perimeter fencing constructed by Declarant, (e) the asphalted portions of the shared driveway, (f) the sprinkler irrigation system on all lots and common areas, (g) the lawns located in the front and rear yards of each Lot, (h) the landscaping improvements located in the front and rear yards of each Lot, and (i) shall provide snow removal for the shared driveway and the sidewalks along Alworth. In addition, the Association shall maintain and keep in good order and repair the exterior of all Units, including but not limited to the roof thereof, any private decks, fences, and courtyards, all planter areas, trees and shrubs located in the front yard of each Lot and all landscaping improvements located in the rear yard of each Lot. In the event the need for maintenance or repair is caused through the willful or negligent act of an Owner, his/her family, guests or invitees, the costs of such maintenance or repairs shall be added to and become part of the assessment to which such Owner's Lot is subject. The Association reserves an easement for ingress, egress and maintenance as may be reasonably necessary to perform the maintenance duties of the Association.

Section 2: By the Owners: In the event of damage or destruction of a Dwelling Unit by fire or other casualty, the Owner of said Dwelling Unit must complete repair and/or replacement of the Dwelling Unit within ninety (90) days of the damage or destruction.

ARTICLE VII: PROPERTY USE RESTRICTIONS.

The following restrictions shall be applicable to the Properties and shall be for the benefit of and limitations upon all present and future Owners of said property, or of any interest therein:

- A. Lot Use: No Lot, with the exception of the Common Area, shall be used except for single-family residential purposes. No Lot or the Common Area shall be used for the conduct of any trade, business or professional activity, except for such home occupations as may be permitted pursuant to and under the provisions of the ordinances of the Garden City. All Lots and improvements constructed thereon must comply with all applicable governmental rules, ordinances, laws, statutes, and regulations, as the same may be amended from time to time.
- B. Animals: No animals, livestock, or poultry of any kind shall be raised, bred or kept on any part of said Properties, except that 2 dogs, or 2 cats, or 1 dog & 1 cat, or other household pets may be kept within a Dwelling Unit or within a fenced area as may be approved by the Architectural Control Committee (see Article VIII). Any dog outside a Dwelling Unit or fenced area must be on a leash, and the Owner or custodian of the animal shall be responsible for the immediate cleanup of the animal's droppings. The term "fenced area" as used in this paragraph shall be interpreted to include any electronic pet containment system; provided, however, that the boundary of any such system shall be approved by the Architectural Control Committee and that in no event shall said boundary extend beyond the front plane of the Dwelling Unit constructed on said Lot.
- C. Garbage and Refuse Disposal: No part of said Properties shall be used or maintained as a dumping ground for rubbish, trash or other waste. No garbage, trash or other waste shall be kept or maintained on any part of said Properties except in a sanitary container. Any equipment for the storage or disposal of such material must be kept inside the Owner's garage, except on the regular trash pickup day.
- D. Nuisance: No noxious or offensive or unsightly conditions shall be permitted upon any part of said Properties, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No exposed antennae or satellite dishes shall be erected on the Properties without the prior approval of the location by the Architectural Control Committee. Garage doors shall, to the extent possible, remain closed at all times that the garage is not in active use by the Owner or occupant.
- E. Outbuildings: No trailer, truck camper, tent, garage, barn, shack or other outbuilding shall at any time be used as a residence temporarily or permanently on any part of said Properties.
- F. Parking and Storage of Vehicles and Equipment: Parking of boats, trailers, motorcycles, trucks, truck campers, commercial vehicles, commercial trailers, motorhomes, recreational vehicles, and like equipment, or junk cars or other unsightly vehicles, shall not be allowed on any Lot nor on the Common Area, nor on the Shared Driveway, nor on the street in front homes, except as may be prescribed in writing by, and at the sole discretion of, the Board of Directors of the Homeowners Association, which discretion may not be challenged for having been exercised unreasonably; provided, however, that boats, trailers, campers, motor homes and similar recreational vehicles may be parked on a Lot for a period not to exceed 48 hours while in immediate use by an Owner, being prepared for use, or being prepared for storage after use. All other parking or storage of any other equipment shall be prohibited, except as approved in writing by the Board of Directors of the Homeowners Association. Any vehicle awaiting repair or being repaired shall be removed from the subdivision within 48 hours.

- G. Sight Distance at Intersections: No fence, wall, hedge, or shrub planting shall be placed or permitted to remain on any Lot in violation of the sight obstruction policies of the Ada County Highway District.
- H. Leasing Restrictions: Any lease (as defined below) between an Owner and his tenant shall provide that the terms of the lease shall be subject in all respects to the provisions contained in this Declaration, the Association's Articles of Incorporation, and its Bylaws, and that any failure by said tenant to comply with the terms of such documents shall be a default under such lease. For the purposes of this Declaration, a "lease" shall mean any agreement for the leasing or rental of a Dwelling Unit (including a month-to-month rental agreement), and all such Leases shall be in writing. Other than the foregoing, there is no restriction on the right of any Owner to lease his/her Dwelling Unit.
- I. Sewer Restrictions: All bathroom, sink and toilet facilities shall be located inside the Dwelling Unit and shall be connected by underground pipe to wet line sewer connection lines which have been provided to each Lot.
- J. Fences: All fences, including fences around dog runs or other uses, must be approved in advance by the Architectural Control Committee as to design, materials, and location. No such fence shall extend beyond the front plane of the Dwelling Unit constructed, or to be constructed, on the Lot.
- K. Parking Rights: Subject to the provisions of paragraph F. above, any automobile or other vehicle used by any owner or guest may be parked in the driveway or garage which is part of the Dwelling Unit.
- L. Photovoltaic (Solar) Systems:
- a) Notwithstanding any interpretative contrary provision in the Declarations, Declarant and any subsequent owner of a Dwelling Unit may install a solar photovoltaic system (together with all appurtenances, accessories, connections, hardware, and any software that may be appropriate for the operation of solar systems to serve a particular Dwelling Unit ("Equipment") mounted, affixed, or adhered on a portion of thereof of an owner's Dwelling Unit, located directly above the Dwelling Unit. Equipment may also include subsequently developed improvements and technology designed to improve or accommodate solar related energy for the benefit of a Dwelling Unit.
 - b) Each Dwelling Unit Owner is granted an easement to install and maintain the Equipment and any aspects of the solar system on the Roofs of Dwelling Units which, in any way, may serve a Dwelling Unit regardless of which Dwelling Unit Equipment and system location and to connect the Equipment to the Dwelling Unit and to operate, maintain, repair, replace and decommission said Equipment and system at any time and from time to time as deemed necessary by the Dwelling Unit Owner in its reasonable discretion. To effectuate the operation, maintenance, repair, replacement and decommission of said Equipment each Dwelling Unit Owner is further granted the right to access its Roof and any other areas necessary at any time such as neighboring roofs, adjacent land and the Common Area, upon prior written three business days' notice to any director of the Homeowners Association or any member of the Architectural Control Committee. (Except in the case of emergency).

- c) The Equipment shall remain the personal property of the Dwelling Unit Owner and no part of it shall become or be deemed a fixture, notwithstanding the manner in which the Equipment may be attached to the Dwelling Unit Roofs or other common areas of the Association. Installation of Equipment shall be performed by a qualified and insured contractor, in a good and workmanlike manner and pursuant to all applicable permits required by the City of Garden City, copies of which shall be provided to the Association or Architectural Control Committee prior to installation. A Dwelling Unit Owner shall, as soon as practical, also provide the Association or Architectural Control Committee with a certificate of the contractor's insurance, in such form and amount reasonably satisfactory to the Association, naming the Association as an additional insured.
- d) A Dwelling Unit Owner shall be solely responsible for maintaining, repairing, and replacing the Equipment as the Dwelling Unit Owner deems necessary from time to time, at the Unit Owners' sole cost and expense, except for damage caused by the Association, its agents, servants, and employees which damage the Board shall repair in a good and workmanlike manner within twenty-one (21) days of being notified of such damage by the Dwelling Unit Owner.
- e) A Dwelling Unit Owner shall arrange for disconnecting and temporarily removing the Equipment when requested by the Board, in its commercially reasonable discretion, solely for the purpose of repair and/or replacement of its Roof, its appurtenances or building components. The Dwelling Unit Owner shall pay for all costs related thereto, including any costs of re-installation, provided that the Association shall make reasonable efforts to avoid and minimize any need for repair or re-installation.

ARTICLE VIII: ARCHITECTURAL CONTROL.

Section 1. Architectural Control Committee: In order to protect the quality and value of the homes built on the Properties, and for the continued protection of the Owners thereof, an Architectural Control Committee is hereby established consisting of three or more Owners to be appointed by the Board of Directors of the Association. The Board of Directors of the Association shall appoint members to the Architectural Control Committee at each annual meeting of the Board.

Section 2. Approvals Required: No building, fence, wall, patio cover, window awning, or other structure or landscaping improvements of any type, shall be commenced, built, constructed, placed, or maintained upon any Lot, Common Area, Shared Driveway, or other property, nor shall any exterior addition, change or alteration of existing improvements be made until the plans and specifications showing the nature, kind, shape, configuration, height, materials, location, and such other detail as the Architectural Control Committee may require, shall have been submitted to and approved in writing by the Architectural Control Committee as to the harmony of external design and location in relation to surrounding structures and topography, and as to conformity with requirements of this Declaration.

The Architectural Control Committee shall have the right to refuse to approve any design, plan or color for such improvements, construction, or alterations which, in its opinion, are not suitable or desirable for any reason, aesthetic or otherwise. In so passing any such design, the Committee shall have the privilege in the exercise of its discretion to take into

consideration the suitability of any proposed alteration. Sheds or play structures are not allowed. The Architectural Control Committee may also consider whether the design of the proposed alteration is in harmony with the surroundings, the effect of the alteration when viewed from adjacent or neighboring property, and any and all other facts which, in the Architectural Control Committee's opinion, shall affect the desirability of such proposed improvement or alteration. Actual alterations shall comply substantially with the plans and specifications approved.

Section 3. Submissions: Requests for approval of the Architectural Control Committee shall consist of such documents and other materials as may be reasonably requested by the Architectural Control Committee.

Section 4. Rules and Regulations: The Architectural Control Committee is hereby authorized to adopt such rules and regulations to govern its procedures and the requirements for making submissions and obtaining approval as the Committee deems appropriate and in keeping with the spirit of due process of law. The Architectural Control Committee is further hereby empowered to adopt such rules and regulations as it shall deem appropriate, to be consistent with the provisions of this Declaration, pertaining to matters of design, materials, colors, and aesthetic interests. Any such rules and regulations may be amended from time to time, at the sole discretion of the Architectural Control Committee. The failure of the Architectural Control Committee to adopt any such rules and regulations shall not form the basis for an attack upon the exercise of the Architectural Control Committee's discretion, it being the intent of this Declaration to provide the Architectural Control Committee with as broad discretion as is permissible under the law.

Section 5. Waiver: The approval of any plans, drawings or specifications for any alteration, or for any matter requiring the approval of the Architectural Control Committee, shall not be deemed a waiver of any right to withhold approval of any similar plan, drawing, specifications, or matters subsequently submitted for approval.

Section 6. Liability: Neither the Architectural Control Committee nor any member thereof shall be liable to the Association, any Owner, or any other party, for any damage suffered or claimed on account of any act, action or lack thereof, or conduct of the Architectural Control Committee or any members thereof, so long as the Architectural Control Committee, or the respective members thereof, acted in good faith on the basis of information they then possessed.

Section 7. Construction and Sales Period Exception: During the course of construction of any permitted structures or improvements and during the initial sales period, the restrictions (including sign restrictions) contained in this Declaration or in any Supplemental Declaration shall be deemed waived to the extent necessary to permit such construction and the sale of all Dwelling Units; provided that, during the course of such construction and sales, nothing shall be done which will result in a violation of these restrictions upon completion of construction and sale. Further, Declarants shall have the right to select and use any individual Dwelling Units owned by it as models for sales purposes.

ARTICLE IX: INSURANCE AND BOND.

Section 1. Required Insurance: The Association shall obtain and keep in full force and effect at all times the following insurance coverages provided by companies duly authorized to do

business in Idaho. The provisions of this Article shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage in addition to any insurance coverage required hereunder in such amounts and in such forms as the Association may deem appropriate from time to time.

- A. A comprehensive policy of public liability insurance covering all of the common areas, commercial spaces and public ways in the properties. Such insurance policy shall contain a severability of interest endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners. The scope of coverage must include all other coverage in the kinds and amounts required by private institutional mortgage investors for projects similar in construction, location and use.
- B. Workmen's compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association in the amounts and in the forms now or hereafter required by law.

Section 2. Optional Insurance: The Association may obtain and keep in full force and effect at all times the following insurance coverage provided by companies duly authorized to do business in Idaho:

- A. A multi-peril-type policy covering any Common Area improvements, providing as a minimum fire and extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use on a replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based upon replacement cost).
- B. Liability insurance affording coverage for the acts, errors and omissions of its directors and officers, including members of the Architectural Control Committee and other committees as may be appointed from time to time by the Board of Directors of such association, in such amount as may be reasonable in the premises.
- C. The Association may obtain bonds and insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to the protection of the properties, including any personal property of the Association located thereon, its directors, officers, agents, employees, and association funds.

Section 3. Additional Provisions: The following additional provisions shall apply with respect to insurance:

- A. Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Owners or their mortgages.
- B. Each policy of insurance obtained by the Association shall, if possible, provide: a waiver of the insurer's subrogation rights with respect to the Association, its officers, the Owners and their respective servants, agents and guests; that it cannot be canceled, suspended or invalidated due to the conduct of any agent, officer or employee of the Association without a prior written demand that the defect be cured; that any "no other insurance" clause therein shall not apply with respect to insurance held individually by the Owners.

- C. All policies shall be written by a company licensed to write insurance in the state of Idaho and all hazard insurance policies shall be written by a hazard insurance carrier holding financial rating by Best's Insurance Reports of Class VI or better.
- D. Notwithstanding anything herein contained to the contrary, insurance coverage must be in such amounts and meet other requirements of the Federal Home Loan Mortgage Corporation.

ARTICLE X: CONDEMNATION.

Section 1. Consequences of Condemnation: If, at any time or times, all or any part of the Common Area shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions shall apply.

Section 2. Proceeds: All compensation, damages, or other proceeds therefrom, the sum of which is hereinafter called the "condemnation award," shall be payable to the Association owning the condemned Common Area.

Section 3. Apportionment: The condemnation award shall be apportioned among the Owners having an interest in the condemned Common Area equally on a per-Lot basis. The Association shall, as soon as practicable, determine the share of the condemnation award to which each Owner is entitled. Such shares shall be paid into separate accounts, one account for each Lot. Each such account shall remain in the name of the appropriate Association and shall be further identified by Lot number and the name of the Owner thereof. From each separate account, the Association, as attorney-in-fact, shall use and disburse the total amount of such accounts, without contribution from one account to the other, first to Mortgagees and other lienors in the order of priority of their Mortgages and other liens and the balance remaining to each respective Owner.

ARTICLE XI: MORTGAGEE PROTECTION.

Section 1. Notwithstanding anything to the contrary contained in this Declaration or in the Articles or Bylaws of the Association:

- A. The Association shall maintain an adequate reserve fund for the performance of its obligations, including the maintenance, repairs, and replacement of those common elements and improvements thereon, and such reserve shall be funded by at least quarterly assessments.
- B. The holders of First Mortgages shall have the right to examine the books and records of the Association and to require annual reports or other appropriate financial data.
- C. Any management agreement for the Properties or Common Area, or any other contract providing for services of the developer, sponsor or builder, shall be terminable (i) by the contracting Association for cause upon thirty (30) days written notice thereof, and (ii) by either party without cause and without payment of a termination fee on ninety (90) days or less written notice thereof, and the term of any such agreement shall not exceed one (1) year.
- D. Any lien which the Association may have on any Lot or Dwelling Unit for the payment of assessments attributable to such Lot or Dwelling Unit will be subordinate

to the lien or equivalent security interest of any Mortgage on the Lot or Dwelling Unit recorded prior to the date notice of such assessment lien is duly recorded.

- E. Unless all institutional holders of First Mortgages have given their prior written approval, no Association shall:
1. By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area property owned, directly or indirectly, by such Association for the benefit of the Owners. (The granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Area property shall not be deemed a transfer within the meaning of this clause.)
 2. Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner.
 3. By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Dwelling Units, the maintenance of the Common Area property, Party Walls, or common fences and driveways, or the upkeep of lawns and plantings in the subdivision.
 4. Fail to maintain fire and extended coverage on insurable Common Area property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost).
 5. Use hazard insurance proceeds for losses to any Common Area property for other than the repair, replacement or reconstruction of such Common Area property.
 6. Amend materially this Declaration, the Association's Articles of Incorporation, or its Bylaws.

ARTICLE XII: GENERAL PROVISIONS.

Section 1. Enforcement: The Association, or any Owner, or the owner of any recorded mortgage upon any part of said property, shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association, or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In the event the Association or an Owner is required to initiate any action to enforce the provisions of this Declaration, it shall be entitled to recover from the Owner against whom enforcement is sought, all attorney fees and costs incurred as a consequence thereof, whether or not any lawsuit is actually filed, and any such attorney fees and costs so incurred by the Association shall be added to and become a part of the assessment to which such Owner's Lot is subject.

Section 2. Severability: Invalidation of any one of these Covenants, Conditions, or Restrictions of this Declaration by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 3. Amendment: The Covenants, Conditions and Restrictions of this Declaration shall run with the land and shall inure to the benefit of and be enforceable by the Association or the legal Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of twenty-five (25) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. Except as otherwise provided herein, any of the covenants and restrictions of this Declaration, except the easements herein granted, may be amended by an instrument signed by members entitled to cast not less than two-thirds (2/3) of the votes of membership. Any amendment to the Covenants, Conditions and Restrictions of this Declaration shall require, until the last Lot in the Subdivision is sold by the Declarant, in addition to the requisite majority membership vote, written consent of Declarant, its successors, or assigns. Any amendment must be recorded.

Neither the Declarants nor the Owners shall amend any provision of this Declaration that was required by Garden City as a condition of approval for the development of the Properties without the prior written consent of the Garden City's Planning Director.

Section 4. Assignment by Declarant: Any or all rights, powers and reservations of Declarants herein contained may be assigned to the Association or to any other corporation, company, or association which is now organized or which may hereafter be organized and which will assume the duties of Declarants hereunder pertaining to the particular rights, powers and reservations assigned. Upon evidencing its intent in writing to accept such assignment, any such association, company, or corporation shall have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarants herein. All rights of Declarants hereunder reserved or created shall be held and exercised by Declarants alone, so long as it owns any interest in any portion of said property.

Section 5. Dispute Resolution and Governing Law: All Disputes (as defined herein below) arising between the Declarants and the Association (or any member thereof) shall be finally determined by arbitration pursuant to the applicable rules of the American Arbitration Association. Arbitration may be commenced by either party by filing a demand for arbitration with the American Arbitration Association. Judgment upon the award rendered by the arbitrator in any arbitration in which the Declarants and the Association are among the parties, shall be final and binding and may be entered in any court having jurisdiction thereof. As used herein, the term "Disputes" shall include, without limitation, any controversy between the Declarants and the Association (whether or not the controversy includes third parties) arising in any way out of this Declaration or its interpretation; the work of Declarants or Pineview Development, LLC in developing and constructing the subdivision and any improvements therein, including without limitation construction defects; and the formation, operation or control of the Association. Disputes include any cause of action whether arising in tort, contract, statute or otherwise. The exclusive venue for all proceedings conducted under this section shall be in Ada County, Idaho. This Declaration shall be governed by, and construed in accordance with, the laws of the State of Idaho.

