

CONDOMINIUM DECLARATION  
AND COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
O'FARRELL CONDOMINIUMS

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THIS CONDOMINIUM DECLARATION AND COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE O'FARRELL CONDOMINIUMS (this "Declaration") is made effective as of the \_\_\_ day of \_\_\_\_\_, 2009, by Joshua C. Unger ("Declarant").

**ARTICLE 1. PROPERTY AS CONDOMINIUM PROJECT.**

Declarant is the owner of certain real property located in Boise, Ada County, Idaho (the "Property"), which is more particularly described on Exhibit A, attached hereto and made a part hereof, and as shown on the Plat of O'Farrell Condominiums recorded \_\_\_\_\_, 2009, in Book \_\_\_ of Plats at Pages \_\_\_\_\_, Instrument No. \_\_\_\_\_, official records of Ada County, Idaho (the "Plat"), a copy of which is set out as Exhibit B, attached hereto and made a part hereof. The Property, together with all the improvements and structures now or hereafter placed on the Property, are sometimes referred to as the "Project" in this Declaration.

Declarant declares that the Property shall be held, used, conveyed, encumbered, leased, occupied, rented and improved subject to the covenants, conditions, restrictions, reservations and easements stated in this Declaration and the Articles and Bylaws of the Association formed in accordance with this Declaration, all of which are in furtherance of the division of the Property into condominium units and common areas and facilities. The covenants, conditions, restrictions, reservations and easements stated in this Declaration shall be deemed to run with the land and be a burden and benefit to Declarant and all persons who own or acquire an interest in the Property or any part thereof, and their grantees, successors, heirs, executors, administrators and assigns.

**ARTICLE 2. DEFINITIONS.**

2.1 "Articles" mean the Articles of Incorporation of the Association, as may be amended from time to time. A copy of the Articles is attached hereto as Exhibit C and made a part hereof.

2.2 "Assessment" means a share of the funds required for the payment of common expenses, including Regular, Special and Limited Assessments as more particularly described in Section 9 hereof.

2.3 "Association" means O'Farrell Condominium Association, Inc., an Idaho nonprofit corporation, its successors and assigns.

2.4 "Association Rules" mean the rules and regulations that may be adopted, amended, or repealed by the Association from time to time in accordance with this Declaration.

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

2.6 "Bylaws" mean the bylaws of the Association, as may be amended from time to time. A copy of the Bylaws is attached hereto as Exhibit D and made a part hereof.

2.7 “Common Area” means the common areas and facilities as described in Section 3.7 hereto. For purposes of this Declaration, references to Common Area shall include Limited Common Areas where applicable.

2.8 “Condominium” means a separate interest in a Unit together with an undivided interest in common in the Common Area, expressed as percentages of the entire ownership interest in the Common Area as set forth on Exhibit E, attached hereto and made a part hereof.

2.9 “Condominium Act” means the “Condominium Property Act” of the State of Idaho, as defined in Idaho Code Section 55-1501, or its successor.

2.10 “Condominium Documents” mean this Declaration, the Articles, the Bylaws, the Plat, any rules and regulations adopted by the Association, and any and all other related documents and instruments as may be amended.

2.11 “Limited Assessment” means an assessment levied against an Owner by the Association for costs and expenses incurred by the Association for the construction, installation, maintenance, repair and replacement of Common Area and/or Limited Common Area, and equipment and facilities located thereon, including any corrective action necessitated due to damage by the negligent or willful acts or omissions of any Owner or occupant of a Unit who is occupying a Unit with the consent, either express or implied, of such Owner, as more particularly described in Section 9.7 herein.

2.12 “Limited Common Area” means those portions of the Common Area designated for the exclusive use of an Owner or Owners to the exclusion, limitation or restriction of other Owners. Limited Common Area may be established from time to time by Declarant or the Association on any portion of the Property by describing such area on a recorded plat, by granting or reserving it in a deed or other instrument, or by designating it as such in this Declaration. Without limiting the foregoing, the following shall be Limited Common Area: (a) any garage that may be constructed in the area adjoining a Unit; (b) any exterior parking area that may be constructed in the area adjoining a Unit; (c) the area adjoining a Unit that is enclosed by a fence; or (d) any driveway that exclusively serve a single Unit.

2.13 “Member” means each person or entity holding a membership in the Association. Every Owner shall be required to be a Member.

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

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

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

2.17 “Regular Assessment” means an assessment by the Association to provide for the payment of all estimated expenses arising from or connected with the Project as a whole, as more particularly described in Section 9.5 herein.

2.18 “Special Assessment” means an assessment by the Association for the purpose of defraying, in whole or in part, the costs of any new acquisitions and/or new capital improvement, construction or reconstruction or unexpected or extraordinary repair, maintenance or replacement of the Project or any part thereof, or for any expense incurred as provided in this Declaration, or in the event that the Assessment assessed for any particular year is or will become inadequate to meet the expenses of the Association, such assessment being authorized pursuant to the terms and conditions provided herein, as more particularly described in Section 9.6.

2.19 “Transition Date” means the date upon which the authority and responsibility to administer and manage the Association and the project, subject to this Declaration and the Bylaws, passes to the Association. The Transition Date will be earlier of (1) the date designated by Declarant in a written notice to the Owners, which date may, at Declarant’s election, be any date after this Declaration has been recorded: or (2) the one hundred twentieth (120<sup>th</sup>) day after Declarant has transferred title to purchaser of a single Unit.

2.20 “Unit” means the separate interest in a Condominium as depicted on the Plat. For purposes of this Declaration, a Unit consists of the entire residential structure and related improvements constructed on a Unit and the utility systems, components and elements that exclusively serve such Unit. Without limiting the generality of the foregoing, or, as appropriate, in addition, each Unit shall include: (1) the decorated interior and exterior surfaces, including paint, lacquer, varnish, wall covering, tile and other finishing materials applied to floors, ceilings, and interior and perimeter walls, carpeting, if any, and also the floors and ceilings themselves, and the drywall, paneling and other finishing wall material; (2) all windows, skylights, if any, and screens and doors, including storm doors and windows, if any, and the frames, sashes and jambs, and the hardware therefor; (3) all fixtures and appliances installed for the exclusive use of that Unit, commencing at the point of disconnection from the structural body of the building and from utility pipes, lines or systems serving the entire building or more than one Unit thereof, including, without limiting the generality hereof, built-in cabinets, dishwashers, garbage disposal units, refrigerators, stoves and hoods, television antennas and cables, furnaces, hot water heaters, heat pumps, air conditioning units (even though located outside the bounds of a Unit), and components of the foregoing, if any; (4) all plumbing, electric, heating, cooling and other utility or service lines, pipes, wires, ducts, conduits and apparatus, wherever located, which serve only that Unit; (5) all control knobs, switches, thermostats and electrical outlets and connections affixed to or projecting from the walls, floors and ceilings which service either the Unit or the fixtures located therein; (6) all interior walls that are not necessary for support of the structure, and all components thereof and all space encompassed thereby; (7) the portion of any fireplaces actually within the interior of a Unit, and fireplace vents or chases; (8) the attic space or storage space above a Unit, and the crawl space below a Unit, if any, to which the Unit has direct and exclusive access; excluding therefrom, however, all of the following items, whether or not located within the bounds of that Unit, which shall be elements of the Common Area: (1) any supporting element of a building contained in the interior walls that serves more than one (1) Unit; and (2) all plumbing, electric, heating, cooling and other utility or service lines, pipes, sump pumps and accessories thereto, wires, ducts and conduits which serve any other Unit.

### **ARTICLE 3. CONDOMINIUM OWNERSHIP.**

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

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

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

3.4 Partition Not Permitted. The Common Area shall be owned in common by all of the Owners of Units, and no Owner may bring any action for partition thereof.

3.5 Taxes and Assessments. Each Owner shall execute such instrument and take such actions as may reasonably be specified by the Association to obtain separate real property tax assessments of the interest of each Owner in each Condominium. If, in the opinion of the Association, any taxes or assessments may be a lien on the Property or any part thereof, the Association shall pay the same and assess the same to the Owner or Owners responsible therefor. Each Owner shall pay the taxes and assessments assessed against such Owner's Condominium, or interest therein, and such Owner's interest in the Common Area.

3.6 Owner's Rights with Respect to Interior and Exterior of Unit. Each Owner shall have the exclusive right to maintain, finish, refinish, decorate, remodel, alter and improve the interior and exterior of his Unit, including, without limitation, its Limited Common Area, in accordance with Article 8 of this Declaration.

3.7 Common Area. The common areas and facilities consist of those specified in the Condominium Act, including, without limitation:

3.7.1 The land described in Exhibit A hereto, excluding each Unit;

3.7.2 Pipes, ducts, wires, conduits, and other utility installations not exclusively serving any one (1) Unit;

3.7.3 Other items which may be designated by the Association.

## **ARTICLE 4. EASEMENTS.**

4.1 Easements for Encroachments. If any part of the Common Area encroaches or shall hereafter encroach upon a Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Area, or upon an adjoining Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. Such encroachments shall not be considered encumbrances on the Common Area or the Units.

4.2 Easements of Access for Repair, Maintenance and Emergencies. The Owners shall have the irrevocable right, to be exercised by the Association, as their agent, to have access to each Unit and to all Common Areas from time to time during such reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Area located therein or accessible therefrom, or for making emergency repairs necessary to prevent damage to the Common Area or to another Unit or Units. Such rights to access shall also exist to correct a violation of any restriction set forth in this Declaration, when, after reasonable notice to the Owner, the Owner fails to do so. The Association shall also have such right independent of any agency relationship. Damage to any part of a Unit or Units resulting from the maintenance, repair, emergency repair or replacement of any of the Common Area or as a result of emergency repairs within another Unit at the instance of the Association or of Owners shall be an expense of all of the Owners; provided, however, that if such damage is the result of the negligence of an Owner or such Owner's invitees, licensees or lessees of a Unit, then such Owner shall be financially responsible for all of such damage. Such damage shall be repaired and the Unit shall be restored substantially to the same condition as existed prior to the damage. Amounts owing by Owners pursuant hereto shall be collected by the Association as an Assessment pursuant to Section 9 herein.

4.3 Owner's Right to Ingress and Egress. Each Owner shall have the right to ingress and egress over, upon and across the Common Area necessary for access to the Owner's Unit, and such rights shall be appurtenant to and pass with the title to each Condominium. In exercising the rights granted in this Section, each Owner agrees to use reasonable efforts to avoid interference with the access to other Units.

4.4 Association's Right to Use of Common Area. The Association shall have a nonexclusive easement to make such use of the Common Area as may be necessary or appropriate to perform its duties and functions pursuant to this Declaration, including the right to grant access easements, utility easements, alter the Common Areas, and construct and maintain maintenance and storage facilities in the Common Area for use by the Association.

4.5 Easements Deemed Created. All conveyances of Condominiums hereafter made, whether by the Declarant or otherwise, shall be construed to grant and reserve such reciprocal easements as shall give effect to Sections 4.1, 4.2, 4.3, and 4.4 above, even though no specific reference to such easements or to those Sections appear in any such conveyance.

4.6 Emergency Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and all other similar emergency agencies or persons to enter upon all streets and property within the Project in the proper performance of their duties. The easement granted herein is recognized to be a condition of platting the Property imposed by the City of Boise. Such easement shall not be dissolved or altered in any material way that would

prevent its beneficial use for its intended purpose without the written consent of the City of Boise.

4.7 Recorded Easements. The Property, and all portions thereof, shall be subject to all easements shown on any recorded Plat affecting the Property, or any portion thereof, and to any other easements of record or of use, including, without limitation, any storm drainage easements, street light easements, sanitary sewer easements, or any other utility easement shown on the Plat.

#### **ARTICLE 5. DESCRIPTION OF A CONDOMINIUM.**

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

Condominium Unit \_\_\_\_\_, as shown on the Plat of O'Farrell Condominiums filed \_\_\_\_\_, in Book \_\_ of Plats at Pages \_\_\_\_\_, as Instrument No. \_\_\_\_\_, official records of Ada County, Idaho, as said plat may be amended or supplemented from time to time, and as defined in the Condominium Declaration and Covenants, Conditions and Restrictions for O'Farrell Condominiums, recorded as Instrument No. \_\_\_\_\_, official records of Ada County, Idaho, as said declaration may be amended or supplemented from time to time.

Such description shall be construed to describe the Unit, together with an appurtenant undivided ownership interest as tenants-in-common in the Common Area, and to incorporate all the rights incident to ownership of a Condominium and all the limitations on such ownership as described in the Condominium Documents or any amendments or supplements thereto.

#### **ARTICLE 6. USE OF CONDOMINIUMS.**

6.1 Single-Family Residence. Each Unit shall be used solely as a single-family residence.

6.2 Maintenance of Units and Limited Common Area. Each Owner shall keep an Owner's Unit and the Limited Common Area appurtenant to such Unit in a good, clean, well maintained state of repair, and perform cleaning and housekeeping, at such Owner's sole cost and expense. In the event an Owner shall fail to make a repair or perform maintenance required of that Owner, or in the event the need for repair or maintenance of any part of the Common Areas or Limited Common Areas is caused by the negligent or intentional act of an Owner or occupant, or is as a result of the failure of any Owner or its predecessor in title to timely pursue to conclusion a claim under any warranty, express, implied or imposed by law, the Association perform the same, and if the cost of such repair or maintenance is not covered by insurance, whether because of a deductible or otherwise, the costs thereof shall constitute a Special Assessment on such Owner's Unit. The determination that such repair or maintenance is necessary, or has been so caused, shall be made by the Board.

6.3 No Obstructions of Common Area. There shall be no obstruction of the Common Area, nor shall anything be stored on any part of the Common Area without the prior written

consent of the Board. The Association may direct that any vehicle, equipment or other thing improperly kept in the Common Area be removed, and if it is not removed, the Association may cause it to be removed at the risk and expense of the owner thereof. Nothing shall be altered on, planted in, constructed on, or removed from the Common Area except upon the prior written consent of the Board.

6.4 Prohibition of Certain Activities; Indemnity. Without the prior written consent of the Board, nothing shall be done or kept in any Unit, the Limited Common Area for such Unit, or any in the Common Area which would: (a) result in the cancellation of or increase in the rate of the insurance on the Project or the other Units within the Project, or any part thereof; or (b) be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of, the Common Area or any part thereof shall be committed by any Owner, licensee, guest, or other occupant, or any invitee of any Owner, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste. No noxious, destructive or offensive activity shall be carried on in any Unit, the Limited Common Area for such Unit, or any in the Common Area and nothing shall be done therein which may be or may become an annoyance or nuisance to any other Owner or to any person at any time lawfully residing in a Unit.

6.5 Limited Common Areas. Each Owner shall have the exclusive right to improve and alter the Limited Common Area appurtenant to such Owner's Unit, subject to the restrictions contained in this Declaration. Each Owner shall maintain the Limited Common Area appurtenant to his or her Unit in good condition and repair, and in a clean and neat appearance, at such Owner's sole expense. The Association may adopt, amend or repeal rules and regulations from time to time governing any Limited Common Areas as provided in this Declaration.

6.6 Animals/Pets. No animals of any kind shall be raised, bred, or kept in or about the Common Area except in accordance with the rules and regulations governing pets that may be adopted by the Association from time to time. Any approved pet shall be confined, leashed or otherwise controlled at all times when outside any Unit, and pets shall not be left alone in the Common Area. No Owner shall permit any pet to be a nuisance, which includes but is not limited to excessive barking, biting or growling, and an Owner shall immediately remove such Owner's pet waste from public or private property including the Common Area. The Association may adopt, amend or repeal rules and regulations from time to time governing any approved pets or animals as provided in this Declaration.

6.7 Signs. No signs of any kind, including, without limitation, "for sale" and "open house" signs or commercial signs, shall be displayed on or from any portion of the Property without the consent of the Board; provided, however, that an Owner may display one "for sale" or "for rent" sign of professional appearance in the Common Area with dimensions no greater than 18 inches by 24 inches. Notwithstanding the foregoing, Declarant shall have the right to display "for sale" or "for rent" signs on the Property.

6.8 Rules and Regulations. No Owner, or an Owner's lessee, occupant or invitee, shall violate the Association Rules as defined in Section 7.4.1.4.

## **ARTICLE 7. ASSOCIATION OF UNIT OWNERS.**

7.1 Creation. The Association shall be organized by the Declarant and operated by the Owners to carry out and enforce the restrictions set forth in this Declaration.

7.1.1 Membership. Every Owner shall be required to be a member of the Association. There shall be one membership in the Association for each Unit. No person or entity other than an Owner may be a Member of the Association, and the Articles and/or Bylaws of the Association shall so state and shall in addition state that the memberships in the Association may not be transferred except in connection with the transfer of a Condominium or portion thereof. Provided, however, that the rights of membership may be assigned to a Mortgagee as further security for a loan secured by a lien on a Condominium or to any person or organization that has assumed by contract, or otherwise, liability for paying assessments of any Owner.

7.2 Voting Rights in the Association; Transition Date. Except as otherwise provided in this Declaration or the Association's Articles and Bylaws, a matter submitted to a vote of the Members shall be deemed approved if the number of votes in favor of such matter exceed those against such matter. As provided in the Association's Articles, the Association shall have two (2) classes of voting membership:

7.2.1 Class A Membership. Class A Members shall be all Owners, with the exception of the Declarant until Declarant's Class B membership has been converted to a Class A Membership pursuant to this Declaration. Each Class A Member shall be entitled to one (1) vote for each Unit in which it holds the interest required for membership in the Association. When more than one (1) person holds such interest in any Condominium, all such persons shall be Members, but all such persons shall be entitled to a single vote with respect to such Unit and in no event shall the vote cast with respect to any Unit be split.

7.2.2 Class B Membership. Class B Member(s) shall be Declarant, its successors and assigns. Each Class B Member shall be entitled to the number of votes that is equal to three (3) votes for each Unit in which it holds the interest required for membership in the Association. The Declarant's Class B Membership shall convert to a Class A Membership upon the earlier of (1) the date designated by Declarant in a written notice to the Unit Owners, which date may, at Declarant's election, be any date following the Transition Date: or (2) one calendar year after Declarant has transferred title to purchasers of Units representing more than three-fourths (3/4) of the total number of Units in the Project.

Notwithstanding anything to the contrary contained in this Declaration, Declarant shall have the full power and authority to exercise all of the rights, duties and functions of the Association until the Transition Date.

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

#### 7.4 Powers and Duties of the Association.

7.4.1 Powers. The Association shall have all the powers of a non-profit corporation organized under the general non-profit corporation laws of the State of Idaho subject only to such limitations upon the exercise of such powers as are expressly set forth in the Condominium Documents as the same may be amended from time to time, and is hereby designated the "Management Body" as provided in the Condominium Act. The Association, functioning through the Board, shall have the power to do any and all lawful things which may be authorized, required or permitted to be done by the Association under the Condominium Documents and necessary or proper for, or incidental to the proper management, operation and administration of the Project, including, without limitation:

7.4.1.1 Assessments. The power to levy Assessments on the Owners of Condominiums and to require payment of such Assessments.

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

7.4.1.3 Delegation of Powers. The authority to delegate its powers and duties to committees, officers, employees, or to any person, firm or corporation to act as the Management Body, and specifically the authority to delegate its powers and duties to a management firm pursuant to a management agreement; provided, however, that any delegation of the Association's powers and duties may be revoked upon thirty (30) days written notice to such management firm. Neither the Association nor the members of the Board shall be liable for any omission or improper exercise by any person or entity to whom any such duty or power has been delegated.

7.4.1.4 Association Rules. The power to adopt, amend and repeal by majority vote of the Board such rules and regulations as the Board deems reasonable (the "Association Rules") including fees and/or fines for violation of the Condominium Documents and the Association Rules. The Association shall govern the use of the Units, Common Areas and Limited Common Areas by the Owners, their invitees, licensees, lessees, occupants, and contract purchasers of Owners, it being understood that the Association Rules shall apply equally to all Owners and shall not be inconsistent with the Condominium Documents. A copy of the Association Rules as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner. Upon such mailing or delivery, said Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration. In the event of any conflict between any such Association Rules and any other provision of the Condominium Documents, the provisions of the Association Rules shall be deemed to be superseded by the provisions of the Condominium Documents to the extent of any such inconsistency.

7.4.1.5 Emergency Powers. The power to enter upon any Unit and take any corrective action as necessary in connection with any maintenance or construction for which it is responsible, or when necessitated by violation of this Declaration or Association

Rules, or in the event of any emergency involving illness or potential danger to life or property. Such entry shall be made with as little inconvenience to the Owners as practicable and any damage caused thereby shall be repaired by the Association, except as otherwise provided herein.

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

7.4.1.6.1 Underground lines, cable wires, conduits or other devices for the transmission of electricity for lighting, heating, power, telephone, television, other utility services and above-ground lighting structures, meters and other facilities associated with the provision of lighting and services.

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

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

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

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

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

7.4.2.1 Operation and Maintenance of Common Area. Operate, maintain and otherwise manage or provide for the operation, maintenance and management of the Common Area (not including Limited Common Area) and all improvements thereon, including the repair and replacement of property damaged or destroyed by casualty loss and all other property acquired by the Association, and maintaining the same in a good condition, order and repair.

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

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

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

7.6 Registered Agent and Office for Association. Joshua C. Unger, whose address is 1407 Cottonwood Court, Boise, Idaho 83702, is hereby designated as the initial registered agent of the Association to receive service of process for the purposes provided in the Condominium Act. The Board may at any time designate a different agent for such purpose pursuant to the Condominium Act.

## **ARTICLE 8. ARCHITECTURAL RESTRICTIONS.**

No improvement shall be constructed on a Unit, in the Limited Common Area appurtenant to a Unit or in the Common Area that is: (a) greater than one story or twenty-five feet in height; or (b) within five (5) feet of an adjoining Limited Common Area. The Association may adopt Association Rules concerning additional architectural restrictions pursuant to the

terms of this Declaration. This Article 8 shall not affect or in any way be applicable to the Declarant.

## **ARTICLE 9. ASSESSMENTS.**

9.1 Covenants to Pay Assessments. By acceptance of a deed to any Condominium, each Owner of such Condominium thereby covenants and agrees to pay when due all Assessments or charges made by the Association against such Owner pursuant to the provisions of this Section 9 and this Declaration. The due date, manner and method of payment shall be as set forth in this Declaration or as established by the Board from time to time.

9.2 Uniform Levy of Assessment. All Owners shall be responsible for Regular Assessments and Special Assessments levied by the Association, which Assessments shall be levied by the Association at a uniform rate, in accordance with sound accounting and management principles, consistently applied.

9.3 Assessment Constitutes Lien. The Assessments and charges together with interest, costs and reasonable attorneys' fees which may be incurred in collecting the same, shall be a charge on the Condominium against which each such Assessment or charge is made.

9.4 Assessment is Personal Obligation. Each of the Assessments, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such property at the time such Assessments fall due. Notwithstanding the foregoing, a purchaser of a Condominium shall be jointly and severally liable with the seller for all unpaid assessments against the Condominium up to the time of grant or conveyance without prejudice to the purchaser's right to recover from the seller the amount paid by the purchaser for such Assessments.

### 9.5 Regular Assessments.

9.5.1 Purpose of Regular Assessments. The proceeds from Regular Assessments are to be used to pay for all costs and expenses incurred by the Association, including legal and attorneys' fees and other professional fees, for the conduct of its affairs as provided in Section 8, including without limitation the costs and expenses of construction, improvement, protection, maintenance, repair, management and operation of the Common Area or furnishing utility services, including water and sewer, and other common services to the Common Area, any deficit remaining from previous periods, a management contingency reserve (if approved by the Association), and an amount allocated to an adequate reserve fund to be used for repairs, replacement, maintenance and improvement of those elements of the Common Area, or other property of the Association that must be replaced and maintained on a regular basis (collectively the "Expenses").

9.5.2 Computation of Regular Assessments. Unless otherwise determined by the Board, the Association shall compute and forecast the amount of its Expenses and Regular Assessments on an annual basis. The computation of Regular Assessments shall take place not less than thirty (30) nor more than sixty (60) days before the beginning of each fiscal year of the Association. Notwithstanding the foregoing, the computation of Regular Assessments shall

be completed in good faith and shall be valid upon completion. The computation of the Regular Assessments for the period from the recordation of this Declaration until the beginning of the next fiscal year shall be reduced by an amount which fairly reflects the fact that such period was less than one year.

9.6 Special Assessments. In addition to the Regular Assessments authorized above, the Association may levy Special Assessments for the purpose of defraying, in whole or in part, the costs of any construction, reconstruction, or repair of the Common Area or replacement of a capital improvement in the Common Area or for which the Association is responsible, including, without limitation, fixtures and personal property related thereto. Special Assessments shall be levied on the same basis as Regular Assessments and shall be subject to the limitations contained in this Article 9; provided, however, that such limitations shall not apply to Special Assessments levied by the Association for expenses incurred in bringing an Owner or Owner's Unit into compliance with the provisions of the Condominium Documents.

9.7 Limited Assessments. The Association may levy against any Owner a Limited Assessment equal to the costs and expenses incurred by the Association, including legal and management fees for the construction, installation, maintenance, repair and replacement of Common Area and equipment and facilities located thereon, including any corrective action necessitated due to damage by the negligent acts of an Owner, or any person or entity occupying a Condominium with the Owner's consent, either express or implied, or for costs incurred in bringing the Owner's Condominium into compliance with the provisions of the Condominium Documents. A Limited Assessment may also be levied against any Owner whose Unit incurs a material and substantially disproportionate percentage of the expenses associated with water and sewer services or other utilities.

9.8 Notice and Assessment Due Date. Unless the Board establishes a different schedule for the payment of Regular Assessments, the Regular Assessment shall be paid in monthly installments. Each Regular Assessment shall become delinquent unless paid upon the earlier of: (a) the tenth (10th) of the month, without prior notice or demand from the Association, so long as Regular Assessments are paid monthly; or (b) seven (7) days from the Association's notice to an Owner. Each Special Assessment shall become delinquent unless paid within ten (10) days after the Association's delivery of notice thereof to an Owner. There shall accrue, with each delinquent payment a single late charge of ten percent (10%) of the delinquent installment. In addition, each installment payment which is delinquent for more than twenty (20) days shall accrue interest at the lesser of (i) twelve percent (12%) per annum or (ii) the maximum rate allowed by law calculated from the date of delinquency to and including the date full payment is received by the Association. The Association may bring an action against any delinquent Owner and may foreclose the lien against such Owner's Condominium as more fully provided herein.

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

## **ARTICLE 10. ENFORCEMENT OF ASSESSMENTS; LIENS.**

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

### 10.2 Assessment Liens.

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

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

10.3 Method of Foreclosure. Such lien may be foreclosed by appropriate action in court or by sale by the Association, its attorney or other person authorized to make the sale. Such sale shall be conducted in accordance with the provisions of the Idaho Code applicable to the exercise of powers of sale in deeds of trust or any other manner permitted by law. The

Board is hereby authorized to appoint its attorney, any officer or director of the Association, or any title company authorized to do business in Idaho as trustee for the purpose of conducting such power of sale or foreclosure.

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

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

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

In the event a Mortgagee obtains title to any Condominium by any method permitted under law and/or pursuant to all remedies provided in this Declaration, and/or pursuant to any provisions in the Mortgage, such Mortgagee will not be liable for any such Condominium's unpaid dues or charges which accrue prior to the acquisition of title to such Condominium by such Mortgagee. Further, upon obtaining title to any such Condominium, such Mortgagee shall have the unrestricted right to exercise any vote as may be attributable to such Condominium in any meeting of the Association or otherwise.

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

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

11.1 Use of Common Area. Every Owner shall have a nonexclusive right and easement to use the Common Area, which shall be appurtenant to and shall pass with the title to every Condominium, subject to the following provisions:

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

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

11.1.3 Dedication to Transfer. 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. No dedication or transfer shall be effective unless an instrument verifying such dedication or transfer is executed and recorded by the Association verifying that (i) Members representing more than two-thirds (2/3) of the total number of votes which may be cast by all of the Members, and (ii) more than two-thirds (2/3) of all Mortgagees have approved such dedication or transfer; and

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

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

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

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

No labor performed or services or materials furnished with the consent of or at the request of an Owner or such Owner's agent, contractor or subcontractor shall be the basis for the filing of a lien against the Condominium of any other Owner or against any part thereof, or against any other property of any other Owner, unless such other Owner has expressly consented to or requested in writing the performance of such labor or furnishing of such materials or services. Such express written consent shall be deemed to have been given by the Owner of any Condominium in the case of emergency corrective action undertaken by the Association. Labor performed or services or materials furnished for the Property if duly authorized by the Association shall be deemed to be performed or furnished with the express consent of each Owner. Any Owner may remove his Condominium from a lien against two or more Condominiums or any part thereof by payment of sums secured by such lien which is attributable to such Owner's Condominium.

## **ARTICLE 13. INSURANCE.**

13.1 Insurance for the Association. If the Association is not collecting any assessments, the Association shall not be required to obtain any insurance. If additional elements are added to the Common Area in accordance with the terms of this Declaration, or the Association begins to collect assessments or otherwise handle funds, the Association shall obtain and keep in full force and effect at all times the following insurance coverage provided by reputable companies duly authorized to do business in Idaho as appropriate. The provisions of this Section shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Association may deem appropriate from time to time.

13.1.1 Casualty Insurance. Insurance for all buildings, structures, fixtures and equipment, and common personal property and supplies now or at any time hereafter constituting a part of the Common Areas (not including Limited Common Area), against loss or damage by fire, lightning, and such other perils as are ordinarily covered with respect to project similar in construction, location and use, including all perils normally covered by the standard "all risk" endorsement, where such is available, issued in the locate of the Project, or, if the policy does not include an "all risk" endorsement, a policy that includes "broad form" covered causes of loss, in amounts at all times sufficient to prevent the Owners from becoming co-insurers under the terms of any applicable coinsurance clause or provision and not less than one hundred percent (100%) of the current insurable replacement cost of such items (exclusive of land, foundations, footings, excavations, and other items normally excluded from coverage).

13.1.2 Public Liability and Property Damage Insurance. Broad form comprehensive liability coverage in such amounts and in such forms as the Association deems advisable to provide adequate protection. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other use of the Common Area and Units.

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

13.1.4 Fidelity Insurance; Director and Officer. The Association shall purchase in such amounts and in such forms as it shall deem appropriate coverage against liability of its officers and directors, dishonesty of employees, destruction or disappearance of money or securities, and forgery.

13.1.5 Other. The Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to the Project, including any personal property of the Association located thereon.

13.2 Form. Each policy shall provide that it cannot be canceled by either the insured or the insurance company until after ten (10) days' prior written notice is first given to each Owner. All policies of insurance shall provide that the insurance thereunder shall be invalidated or suspended only in respect to the interest of any particular Owner guilty of breach of warranty, act, omission, negligence or noncompliance with any provision of such policy, including payment of the insurance premium applicable to that Owner's interest or who permits or fails to

prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy. All policies of insurance shall provide further that the insurance under such policy as to the interest of all other insured Owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect.

Public liability and property damage insurance for the Common Area shall name Declarant and the Association as the insured, with the Association as agent for the Owners, and shall protect each Owner against liability for acts of the Association in connection with the ownership, operation, maintenance or other use of the Common Areas. Property damage insurance for each Unit shall name the owner of that Unit as the insured, and shall name as those parties that the owner of such Unit requests in writing as additional insureds.

13.3 Insurance Proceeds. The Association shall receive the proceeds of any casualty insurance payments received under policies to be obtained and maintained by the Association pursuant to this Section and as provided in Article 14 hereof, except to the extent such proceeds are for damage to a Unit, in which event the proceeds shall be payable directly to the Owner of the damaged Unit.

13.4 Owner's Own Insurance. Each Owner shall be responsible for obtaining insurance, at the Owner's own expense, providing coverage upon the Owner's Unit, Limited Common Area, personal property, personal liability, and covering such other risks as the Owner may deem appropriate, but each policy shall provide that it does not diminish the insurance carrier's coverage for liability arising under insurance policies which the Association obtains pursuant to this Section. In addition, and without limiting the foregoing, each Owner shall obtain insurance covering the paved walkway shared by the Units. All such insurance on the Owner's Unit shall waive the insurance company's right of subrogation against the Association, the other Owners, and the servants, agents and guests of any of them, if such insurance can be obtained in the normal practice without additional premium charge for the waiver of rights of subrogation.

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

14.1 Affects Title. Title to each Condominium is hereby made subject to the restrictions set forth in this Declaration, as amended from time to time, which bind the Declarant and all subsequent Owners, whether or not it be so expressed in the deed by which any Owner acquires a Condominium.

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

14.3 General Authority of Association. As attorney-in-fact, the Association shall have full and complete authorization, right and power to make, execute and deliver any contract, deed, or other instrument with respect to the interest of an Owner which may be necessary or appropriate to exercise the powers herein granted.

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

14.5 Repair or Reconstruction. As soon as practicable after receiving these estimates, the Association shall diligently pursue to completion the repair or reconstruction of that part of the Common Area damaged or destroyed. Such repair or reconstruction shall be in accordance with the original plans and specifications of the Common Area or may be in accordance with any other plans and specifications the Association may approve.

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

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

## **ARTICLE 15. CONDEMNATION.**

15.1 Consequences of Condemnation. If at any time or times during the continuance of condominium ownership of the Property created by this Declaration, 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.

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

15.3 Taking. The total amount allocated to taking of or injury to the Common Area shall be apportioned among the Owners in the same proportions as their shares of the Common Area as provided in this Declaration.

15.4 Reconstruction and Repair. Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified in Section 14.6 above.

## **ARTICLE 16. AMENDMENTS.**

16.1 By Declarant. Except as provided in Section 16.2, until the recordation of the first deed to a Condominium, the provisions of this Declaration may be amended, modified, clarified, supplemented, added to or terminated (collectively, "Amendment") by Declarant by recordation of a written instrument setting forth such Amendment. Notwithstanding the foregoing, Declarant shall not make any Amendment to those terms and conditions contained in this Declaration that are required by the City of Boise as conditions of approval of the Project, without the prior written consent of the City of Boise.

16.2 By Members. Except as provided in this Section 16.2, after the recordation of the first deed to a Condominium, any Amendment to this Declaration, other than to Article 16, shall be by an instrument in writing signed and acknowledged by the president and secretary of the Association certifying and attesting that such Amendment has been approved by the vote or written consent of Members representing more than two-thirds (2/3) of the total votes which may be cast by all of the Members, except where a greater percentage is required by express provision in this Declaration, and such Amendment shall be effective upon its recordation with the Ada County Recorder. Any Amendment to Article 16 shall require the vote or written consent of Owners holding eighty-five percent (85%) of the total votes which may be cast by all of the Members.

16.3 Effect of Amendment. Any Amendment of this Declaration approved in the manner specified above shall be binding on and effective as to all Owners notwithstanding that such Owners may not have voted for or consented to such Amendment. Such Amendment may add to and increase the Restrictions applicable to the Project but shall not prohibit or unreasonably interfere with the allowed uses of such Owner's Condominium which existed prior to the said amendment.

#### **ARTICLE 17. MORTGAGEE PROTECTION.**

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

- A. Any condemnation or casualty loss that affects either a material portion of a Building or a Unit encumbered by such first Mortgage;
- B. Any sixty (60) day delinquency in the payment of Assessments or charges owed by the Owner of any Unit on which it holds a first Mortgage;
- C. A lapse, cancellation, or material modification of any insurance policy maintained by the Association; and
- D. Any proposed action that requires the consent of a specified percentage of eligible Mortgage holders.

#### **ARTICLE 18. RIGHT OF DECLARANT TO COMBINE, PARTITION OR REALIGN UNITS HELD BY DECLARANT.**

Notwithstanding any other provision of the Declarant or Bylaws, as long as the Declarant owns one or more Units, the Declarant shall have the right, without further authorization from the Owners, Board or Association, to combine or partition or otherwise realign units held by the Declarant in order to facilitate their sale or lease, and to reflect such changes in the affected

Unit or Units in a duly recorded amendment to the Declaration, which includes a metes and bounds description of any new or realigned Units. In no event, however, shall such combining, partitioning or other realigning of Units held by the Declarant: (a) alter or diminish the common area; (b) alter or diminish the undivided interest in the common area and voting rights or Units not then owned by the Declarant or Units owned by Declarant but under a contract of sale not then in default; or (c) diminish the total undivided interest in the common area, voting rights and share of common charges previously allocated to the units undergoing such combining, partitioning or realigning. Neither this provision nor the authority of the Declarant to record an amendment of the Declaration pursuant thereto may be modified or deleted by amendment of the Declaration or Bylaws or otherwise, until such time as the Declarant shall have sold all units held by it.

#### **ARTICLE 19. LIMITATION OF LIABILITY.**

19.1 Liability for Utility Failure. Except to the extent covered by insurance obtained by the Board, neither the Association nor the Board (nor the Declarant or Declarant's managing agent) shall be liable for: (a) the failure of any utility or other service to be obtained and paid for by the Board; (b) injury or damage to person or property caused by the elements, or resulting from electricity, water, rain, dust or sand which may lead or flow from outside or from any parts of the buildings or from any of their pipes, drains, conduits, appliances or equipment, or from any other place; or (c) inconvenience or discomfort resulting from any action taken to comply with any law, ordinance, or orders of a governmental authority. No diminution or abatement of common expense assessments shall be claimed or allowed for any such utility or service failure, or for such injury or damage, or for such inconvenience or discomfort.

19.2 No Personal Liability: So long as a Board member, Association committee member, Association officer, Declarant or the managing agent has acted in good faith, without willful or intentional misconduct, upon the basis of such information as is then possessed by such person, no such person shall be liable to any Unit Owner, or to any other person, including the Association, for any damage, loss, or prejudice suffered or claimed on account of any act, omission, error or negligence of such person.

#### **ARTICLE 20. INDEMNIFICATION.**

Each Board member, Association committee member and Association officer, the Declarant and the managing agent shall be indemnified by the Association against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed in connection with any proceeding to which he or she may be a party, or in which he may become involved, by reason of holding or having held such position at the time such expenses or liabilities are incurred, except to the extent such expenses and liabilities are covered by any type of insurance and except in such cases wherein such person is adjudged guilty of willful misfeasance in the performance of his or her duties; provided, however, that in the event of a settlement, the indemnification shall apply only when the Board approves such settlement and reimbursement as being for the best interests of the Association.

## **ARTICLE 21. MISCELLANEOUS.**

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

21.1.1 Right of Enforcement. Except as otherwise provided herein, any Owner or the Association shall have the right to enforce any or all of the provisions of this Declaration against the Owners.

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

21.2 Registration of Mailing Address. Each Owner shall register such Owner's mailing address with the Association and all notices or demands intended to be served upon any Owner shall be sent by either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. All notices or demands to be served on Mortgagees pursuant hereto shall be sent by either registered or certified mail, postage prepaid, addressed in the name of the Mortgagee at such address as the Mortgagee may have furnished to the Association in writing. Unless the Mortgagee furnishes the Association with such address, the Mortgagee shall not be entitled to receive any of the notices provided for in this Declaration. Any notice referred to in this section shall be deemed given when deposited in the United States mail in the form provided for herein.

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

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

21.3.2 Restrictions Severable. Notwithstanding the provisions of the foregoing Section 21.3.1, each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability or any other provision herein.

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

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

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

21.5 Attorney Fees; Remedies. In the event of any demand, proceeding, action or suit based upon or arising out of any alleged breach by any party of any covenant, condition, restriction or term contained in this Declaration, the prevailing party shall be entitled to recover reasonable attorneys' fees and other costs of such demand, proceeding, action or suit from the other party. All rights and remedies of each of the parties under this Declaration shall be cumulative, and the exercise of one or more rights or remedies shall not preclude the exercise of any other right or remedy available under this Declaration or applicable law.

[end of text]

This Declaration is executed effective this \_\_\_\_ day of \_\_\_\_\_, 2009.

DECLARANT:

\_\_\_\_\_  
Joshua C. Unger

**STATE OF IDAHO**            )  
  ):ss  
County of Ada                )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2009, before me the undersigned, a Notary Public in and for said State, personally appeared Joshua C. Unger, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

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

\_\_\_\_\_  
Notary Public  
Residing at \_\_\_\_\_, Idaho  
Commission Expires \_\_\_\_\_

**CERTIFICATE OF CONSENT OF HOLDER OF RECORDED SECURITY INTEREST**

The undersigned, as a holder of a security interest recorded against the property described herein, hereby consent to the filing of the Condominium Declaration and Covenants, Conditions, and Restrictions for O’Farrell Condominiums (to which this certificate is attached) and a condominium survey map or plat in connection with the real property described in Exhibit A attached to said Declaration, and filings to be made pursuant to the Condominium Property Act, Title 55, Chapter 15, Idaho Code.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

MetLife Home Loans, a division of MetLife Bank, N.A.

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF IDAHO            )  
  ):ss  
County of Ada                )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2009, before me, a Notary Public in and for the State of Idaho, personally appeared \_\_\_\_\_, known or identified to me to be the \_\_\_\_\_ of MetLife Home Loans, a division of MetLife Bank, N.A., the national association that executed the instrument or the person who executed the instrument on behalf of said national association, and acknowledged to me that such national association executed the same.

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

\_\_\_\_\_  
Notary Public  
Residing at \_\_\_\_\_, Idaho  
Commission Expires \_\_\_\_\_

**ACCEPTANCE OF AGENT DESIGNATED TO RECEIVE SERVICE OF PROCESS**

Pursuant to Idaho Code, Section 55-1512, the undersigned, Joshua C. Unger, hereby accepts designation as the agent to receive service of process in any action relating to the common areas and facilities of O'FARRELL CONDOMINIUM ASSOCIATION, INC., in accordance with the provisions of the Condominium Declaration and Covenants, Conditions, and Restrictions for O'Farrell Condominiums (to which this certificate is attached).

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Joshua C. Unger

STATE OF IDAHO            )  
  ):ss  
County of Ada            )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2009, before me the undersigned, a Notary Public in and for said State, personally appeared Joshua C. Unger, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

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

\_\_\_\_\_  
Notary Public  
Residing at \_\_\_\_\_, Idaho  
Commission Expires \_\_\_\_\_

**EXHIBIT A**

Legal Description of Property

**EXHIBIT B**

[attach condominium plat]

**EXHIBIT C**

Articles of Incorporation

[attach Articles of Incorporation]

**EXHIBIT D**

Association Bylaws

[attach Bylaws of the Association]

## **EXHIBIT E**

Percentage Ownership Interests in the Common Area

[attach chart showing ownership percentages]

Note: Each Unit's respective square footage and percentage of the total square footage of all of the Units must be shown on Exhibit E.