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(9) The power and authority to ~~borrow money~~, provided that no indebtedness for borrowed funds shall exceed in the aggregate at any given time the sum of ~~\$5,000.00~~ without the prior vote or approval of the Association at a meeting duly called and convened at which a quorum is present;

(10) The authority to promulgate such reasonable rules, regulations, and procedures as may be necessary or desirable to aid the Committee in carrying out any of its functions or to insure that the Development is maintained and used in a manner consistent with the interests of the Unit Owners; and

(11) The power and authority to perform any other acts and to enter into any other transactions that may be reasonably necessary for the Management Committee to perform its functions as agent for the Unit Owners including the power to collect, enforce, and place liens on Units for delinquent Association fees.

Any instrument executed by the Management Committee reciting facts that, if true, would establish the Committee's power and authority to accomplish through such instrument the acts purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument.

(b) Composition of Management Committee. The Committee shall be composed of not more than five (5) members. At the first regular Association meeting two (2) Committee members shall be elected for three-year terms, two (2) members for a two year term, and one (1) Committee member shall be elected for a one year term. At each annual Association meeting thereafter, any vacant seat on the Committee shall be filled with a member elected for a three-year term. Only Unit Owners and officers and agents of Owners other than individuals shall be eligible for Committee membership. At the annual meeting, a Unit Owner may vote as many candidates for Committee membership as there are seats on the Committee to be filled. Declarant shall retain 51% of representation on the Committee until all phases of the Property are developed. Members of the Committee shall elect one member to serve as President of the Association.

Any Committee member who fails on three successive occasions to attend Committee meetings (whether regular or special) or who has failed to attend at least 25 % of all Committee meetings (whether regular or special) held during any twelve (12) month period shall automatically forfeit his seat. The remaining Committee members shall elect a replacement to sit on the Committee until the expiration of the term for which the member being replaced was elected. Unless a member forfeits or otherwise loses his seat as herein provided, a member shall serve on the Committee until his successor is elected. Committee members shall be reimbursed for all expenses reasonably incurred in connection with Committee business.

(c) Responsibility. The Management Committee shall be responsible for the ~~control, operation, and management of the Development in accordance with the provisions of the Act~~, this Declaration, the Bylaws, such administrative, management and operational rules and regulations as

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it may adopt from time to time as herein provided, and all agreements and determinations lawfully made and entered into by the Committee.

(d) Additional Facilities. The Management Committee shall, subject to any necessary approval, have the authority to provide such facilities, in addition to those for which provision has already been made, as it may deem to be in the best interests of the Unit Owners and to effect the necessary amendment of documents and maps in connection therewith.

(e) Name. The Management Committee shall be known as the "Pheasant Ridge Management Committee."

(f) ~~██████████~~ The Committee may, through a professional property manager (a "Manager"), ~~carry out any of its functions that are properly the subject of delegation.~~ Any Manager so engaged shall be an independent contractor and not an agent or employee of the Committee or the Association, shall be responsible for managing the Development for the benefit of the Committee and the Unit Owners, and shall, to the extent permitted by law and the terms of the agreement with the Committee, be authorized to perform any of the functions or acts required or permitted to be performed by the Management Committee itself. Any agreement for professional management of the Development that may be entered into by the Management Committee or the Association shall call for a term not exceeding one ~~year~~ renewable by agreement of the parties for successive one-year periods, and shall provide that such management agreement may be terminated with or without cause by either party upon not more than thirty ~~(30)~~ days written notice, and without any payment of a termination fee.

## 12. Easements.

(a) Each Unit shall be subject to such easements as may be necessary for the installation, maintenance, repair or replacement of any Common Areas and Facilities located within the boundaries of such Unit and for electrical and gas service, or television cable services to adjacent Units in the same building. The Units are also subject to a Right of Entry in favor of the Association as provided in Section 22 below. The Common Areas and Limited Common Areas are subject to such utility and other easements as are reasonably necessary for the development and operation of the Development, including the expansion of the Development as contemplated herein, and for the repair and ongoing maintenance of the water, sewer, and other utilities that service any existing Units. Each Unit shall be subject to a utility easement for the repair and maintenance of utilities, whether or not such easement is reflected on the applicable plat.

(b) In the event that, by reason of the construction, reconstruction, repair, settlement, movement or shifting of any part of the building, any part of the Common Areas and Facilities encroaches or shall hereafter encroach upon any part of any Unit or any part of the Common Area and Facilities, valid easements for such encroachment and the maintenance of such encroachment are hereby established and shall exist for the benefit of such Unit and the Common Areas and Facilities, as the case may be, so long as all or any part of the building containing any such Unit shall

remain standing; provided, however, that in no event shall a valid easement or any encroachment be created in favor of any Unit Owner or in favor of the Unit Owners as owners of the Common Areas and Facilities if such encroachment occurred due to the willful conduct of such Unit Owner or Owners.

(c) Some of the Common Areas and Facilities are or may be located within the Units or may be conveniently accessible only through the Units. The Owners of the other Units shall have the irrevocable right, to be exercised by the Committee as its agent, to have access to each Unit and to all Common Areas and Facilities from time to time during such reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Areas and Facilities located therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Areas and Facilities or to another Unit or Units. The Committee shall also have such rights independent of the agency relationship. Damage to the interior of any part of a Unit or Units resulting from the maintenance, repair, emergency repair, or replacement of any of the Common Areas and Facilities or as a result of emergency repairs within another Unit at the instance of the Committee or of Unit Owners shall be the responsibility of the Association; provided, that if such damage is the result of negligence of the Owner of a Unit, then such Owner shall be financially responsible for all such damage. Such damage shall be repaired and the building shall be restored substantially to the same condition as existed prior to damage. Amounts owing by Owners pursuant hereto shall be collected by the Committee by assessment.

(d) The Management Committee shall have non-exclusive easements to make such use of the Common Areas and Facilities as may be necessary or appropriate to perform the duties and functions that it is obligated or permitted to perform pursuant to this Declaration.

13. Change in Ownership. The Management Committee shall maintain up-to-date records showing the name of each person who is an Owner, the address of such person, and the Unit owned by him. In the event of any transfer of a fee or undivided fee interest in a Unit either the transferor or transferee shall furnish the Management Committee with evidence establishing that the transfer has occurred and that the deed or other instrument accomplishing the transfer is of record in the office of the County Recorder of Bannock County, Idaho. The Management Committee may for all purposes act and rely on the information concerning Owners and Unit ownership which is thus acquired by it or, at its option, the Management Committee may act and rely on current ownership information respecting any Unit or Units obtained from the office of the County Recorder of Bannock County, Idaho. The address of an Owner shall be deemed to be the address of the Unit owned by such person unless the Management Committee is otherwise advised in writing.

~~14.~~ Assessments.

(a) In accordance with Section 19, below, every Unit Owner shall pay his equal share of the Common Expenses. Payment thereof shall be in such amounts and at such times as the Management Committee determines in accordance with the Act, the Declaration or the Bylaws. There shall be a lien for nonpayment of Common Expenses or any other assessment set forth

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herein, all as provided by the Act. In addition, such lien shall include a \$100.00 filing and processing fee assessable to the violating Unit Owner. The Committee shall have the authority to place liens (without providing prior notice to the Unit Owner) upon any Unit for which an assessment has not been paid over sixty (60) days after its due date.

(b) All assessments shall be made payable to: "Pheasant Ridge Homeowners Association" and shall be sent to P.O. Box 5546, Chubbuck, Idaho 83202, or at such other address as shall be hereafter designated by the Association in writing.

(b) No assessment for a single improvement in the nature of a capital expenditure which exceeds the sum of \$20,000 shall be made without the same having been first voted on and approved by at least a majority of the Development's undivided ownership interest. Notwithstanding any other provision of this Declaration, no assessment shall be made on any units or land owned by the Declarant until the last Unit in any phase has been sold or so long as the Declarant owns said Unit for resale, including Units that have been sold and repossessed by Declarant and are being actively marketed.

15. Party Walls. Each wall that is built as a part of the original construction of the Units upon the Property and placed on the dividing line between the Units shall constitute a party wall (a "Party Wall"), and, to the extent not inconsistent with the provisions of this Section 15, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(a) 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 Party Wall in proportion to such use.

(b) 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 Party Wall may restore it, and if the other Owners thereafter make use of the Party 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 negligent or willful acts or omissions.

(c) Weatherproofing. Notwithstanding any other provision of this Section 15, 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.

16. Destruction or Damage. In the event of destruction or damage of part or all of the improvements in the Development, the procedures of this Section shall apply.

(a) If proceeds of the insurance maintained by the Management Committee are alone sufficient to repair or reconstruct the damaged or destroyed improvement, such repair or reconstruction shall be carried out.

(b) If less than 75% of the Development's improvements are destroyed or substantially damaged, and if proceeds of the insurance maintained by the Committee are not alone sufficient to accomplish repair or reconstruction, restoration shall be carried out and all of the Units shall be assessed for any deficiency on the basis of their respective ownership interest.

(c) If 75% or more of the Project's improvements are destroyed or substantially damaged, and proceeds of the insurance maintained by the Management Committee are not alone sufficient to accomplish restoration, and if the Unit Owners within 100 days after the destruction or damage by a vote of at least 75% of the entire undivided ownership interest in the Development elect to repair or reconstruct the affected improvements, restoration shall be accomplished in the manner directed under subsection (b) above.

(d) If 75% or more of the Development's improvements are destroyed or substantially damaged, and proceeds of the insurance maintained by the Committee are insufficient to accomplish restoration, and if the Unit Owners do not, within 100 days after the destruction or damage and by a vote of at least 75% of the entire undivided ownership interest in the Development, elect to repair or reconstruct the affected improvements, the Management Committee shall partition and liquidate the Development.

(e) Any reconstruction or repair that is required to be carried out by this Section 16 shall be accomplished at the instance and direction of the Management Committee. Any question regarding the extent of damage to or destruction of Development improvements shall be made by an MAI appraiser selected by the Management Committee who shall determine the figure representing the percentage of Development improvements that have been destroyed or substantially damaged, and such appraiser's determination shall be deemed conclusive for purposes of this Section 16.

(f) Protection of First Lien Holders. The following protections for the benefit of first mortgage holders are provided:

(1) As used in this Declaration, the term "Eligible Holder, Insurer or Guarantor" shall mean a holder, insurer or guarantor of a first mortgage on a Unit in the Development that has requested notice in accordance with the provisions of Section 34, below.

(2) Any restoration or repair of the Development after a partial condemnation or damage due to an insurable hazard shall be completed substantially in accordance with the original plans and specifications, unless any variations are approved by a majority of the Eligible Holders, Insurers or Guarantors of first mortgages on Units, with one vote being allocated to each Unit, to be exercised by the Eligible Holder, Insurer or Guarantor of that Unit.

(3) Any election to terminate the condominium regime after substantial destruction or a substantial taking in condemnation of the Development must be approved by a majority of the Eligible Holders, Insurers or Guarantors of first mortgages on Units, with one vote being allocated to each Unit, to be exercised by the Eligible Holder, Insurer or Guarantor of that Unit.

(4) No reallocation of interests in the Common Areas and Facilities resulting from a partial condemnation or partial destruction of the Development may be effected unless approved by a majority of the Eligible Holders, Insurers or Guarantors of first mortgages on Units, with one vote being allocated to each Unit, to be exercised by the Eligible Holder, Insurer or Guarantor of that Unit.

17. Taxes.

(a) Generally. It is understood that under the Act each Unit, together with its corresponding membership interest in the Association, is deemed a parcel and subject to separate assessment and taxation by each assessing unit and special district for all types of taxes authorized by law. Each Unit Owner will, accordingly, pay and discharge any and all taxes that may be assessed against his Unit.

(b) Special Assessments for Capital Improvements. In addition to annual assessments, 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 Areas and Facilities, including fixtures and personal property related thereto provided that any such assessment shall have the majority of the votes of Unit Owners who are voting in person or by proxy at a meeting duly called for this purpose. The Declarant shall not be subject to assessments for special assessments for Units titled in Declarant's name, unless such Units are leased to third parties.

18. Insurance. All Owners of Units will provide their own hazard or public liability insurance homeowner policy on the Unit owned by them. The Association shall maintain the following insurance:

(a) Hazard Insurance. The Management Committee or Association shall at all times ~~maintain in force hazard insurance meeting the following requirements:~~

(1) A multi-peril type "master" or "blanket" policy covering the entire Development (both Units and Common Areas and Facilities) shall be maintained. In addition, any fixture, equipment or other property within the Units which are financed by any mortgage to be purchased by FNMA or FHLMC (regardless of whether such property is or is not part of the Common Areas and Facilities) shall (to the extent required under HUD-FHA Land Use Planning Bulletin No. 6) be covered in such master or blanket policy which meets the minimum requirements of said Bulletin No. 6. Such policy shall provide coverage against loss or damage by fire and other

hazards covered by the standard extended coverage endorsement, debris removal, cost at demolition, vandalism, malicious mischief, windstorm, water damage, and such other risks as customarily are covered with respect to projects similar to the Development in construction, location, and use. *As a minimum, such policy shall provide coverage on a replacement cost basis in an amount not less than that necessary to comply with any coinsurance percentage specified in the policy but not less than one hundred percent (100%) of the full insurable value* (based upon replacement cost).

(2) The named insured under each policy required to be maintained by the foregoing subsection (1) shall be in form and substance essentially as follows: "Pheasant Ridge Homeowner's Association, Inc., or its authorized representative, for the use and benefit of the individual owners."

(3) Each such policy shall include the standard mortgage clause (without contribution) that either shall be endorsed to provide that any proceeds shall be paid to the Association for the use and benefit of mortgagees as their interests may appear or shall be otherwise endorsed to fully protect the interests of mortgagees. In addition, the mortgagee clause shall provide that the insurance carrier shall notify each eligible mortgagee at least thirty (30) days in advance of the effective date of any reduction in or cancellation of the policy.

(4) Each such policy shall provide that notwithstanding any provision thereof that gives the carrier the right to elect to restore damage in lieu of making a cash settlement, such option shall not be exercisable if it is in conflict with any requirement of law or without the prior written approval of the Association.

(b) ~~Fidelity Insurance~~. The Management Committee or Association shall at all times maintain in force fidelity coverage against dishonest acts on the part of ~~Managers~~ (and employees of Manager), trustees, employees, officers, Committee members, or volunteers responsible for handling funds belonging to or administered by the Management Committee or Association of Unit Owners. The fidelity bond or insurance shall name the Association as the obligee or insured and shall be written in an amount sufficient to afford the protection reasonably necessary, but in no event less than one hundred fifty percent (150%) of the estimated annual operating expenses of the Development including reserve funds, unless a greater amount is required by a majority of the mortgagees or their designees. Such fidelity bond or insurance shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression. In addition, the mortgagee clause shall provide that the insurance carrier shall notify each eligible mortgagee at least thirty (30) days in advance of the effective date of any reduction in or cancellation of the policy.

(c) Liability Insurance. The ~~Management Committee~~ or Association of Unit Owners shall at all times ~~maintain in force a comprehensive policy~~ of public liability insurance covering all of the Common Areas and Facilities. Such insurance shall include a severability of interest endorsement or its equivalent which shall preclude the insurer from denying the claim of a Unit Owner because of negligent acts of other Owners, the Management Committee, or the Association

of Unit Owners. The coverage afforded by such public liability insurance shall include protection against water damage liability, liability for non-owned and hired automobiles, liability for property of others, and such other risks as customarily are covered with respect to projects similar to the Development in construction, location and use. The limit of liability under such insurance shall not be less than \$1,000,000 for all claims for personal injury and/or property damage arising out of a single occurrence.

(d) General Requirements Concerning Insurance. Each insurance policy or fidelity bond maintained pursuant to the foregoing Sections 17(a) through 17(c) shall be written by an insurance carrier that is licensed to transact business in the State of Idaho. No such policy or fidelity bond shall be maintained where: (1) under the terms of the carrier's charter, bylaws, bond or policy, contributions may be required from, or assessments may be made against, a Unit Owner, a mortgagee, the Management Committee, the Association of Unit Owners, a Unit, the Common Areas and Facilities, or the Development; (2) by the terms of the carrier's charter, bylaws, bond or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders, or members; (3) the bond or policy includes any limiting clauses (other than insurance conditions) that could prevent the entitled party from collecting insurance proceeds; or (4) the bond or policy provides that the insurance thereunder shall be brought into contribution with insurance purchased by the individual Unit Owners or their mortgagees. Each such fidelity bond or policy shall provide that: (a) coverage shall not be prejudiced by any act or neglect of the Unit Owners when such act or neglect is not within the control of the Association of Unit Owners or the Management Committee; (b) coverage shall not be prejudiced by any failure by the Association or Committee to comply with any warranty or condition with regard to any portion of the Development over which the Association and Committee have no control; (c) coverage may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days prior written notice to any and all insureds named therein, including any Mortgagee named as an insured; and (d) the insurer waives any right to subrogation it might have as to any and all claims against the Association, the Management Committee, and Unit Owner, and/or their respective agents, employees or tenants. If due to changed circumstances, excessive cost, or any other reason, any of the insurance coverage required to be obtained and maintained under Sections 17(a) through 17(c) hereof cannot reasonably be secured, with respect to such coverage the Association or the Committee shall obtain and maintain such substitute, different or other coverage as may be reasonable and prudent under the circumstances as they then exist, however the Association shall not self insure.

(e) Additional Provisions. The following additional provisions shall apply with respect to insurance:

(1) In addition to the insurance described above, the Committee shall secure and at all times maintain insurance against such risks as are or hereafter may be customarily insured against in connection with projects similar to the Development in construction, nature, and use;

(2) The Committee shall have authority to adjust losses;



(3) Insurance secured and maintained by the Committee shall not be brought into contribution with insurance held by the individual Unit Owners or their mortgagees; and

(4) Each policy of insurance obtained by the Committee shall, if possible, provide: a waiver of the insurer's subrogation rights with respect to the Committee, the Manager, the Unit Owners, and their respective servants, agents, and guests; that it cannot be canceled, suspended, or invalidated due to the conduct of any member, officer, or employee of the Committee or of the Manager 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 Unit Owners.

19. Payment of Common Expenses.

(a) Each Unit Owner shall pay the Management Committee his allocated portion, past, present, and future, of the Common Expenses deemed necessary by the Management Committee to manage and operate the Development, upon the terms, at the time, and in the manner herein provided without any deduction on account of any set-off or claim which the Owner may have against the Management Committee or Association. During the first year years 2003 and 2004, the fee shall be \$100\$45.00 per month, unless otherwise provided by the Management Committee to adjust for actual costs per Unit. Each installment shall be due on or before the first day of each month. This amount shall include a portion of the expenses for water, but the Association shall also assess a water fee of \$15.00 per month per Unit (which amount shall remain constant during the years 2003 and 2004) in addition to the \$45.00 per month fee referenced above. These amounts will be billed together, but separately itemized. If the Unit Owner shall fail to pay any installment within five (5) days of the time when the same becomes due, the Owner shall pay a ten dollar (\$10.00) late fee and shall pay interest on the delinquent installment at the rate of eighteen percent (18%) per annum from the date when such installment shall become due to the date of the payment thereof, together with all costs and expenses, including attorney's fees, incurred in any proceedings brought to collect such unpaid common expenses, whether or not a suit is filed.

(b) The Common Expenses for each year, or portions of the year, shall be deemed to be such aggregate sum as the Management Committee from time to time shall determine, in its judgment, to be paid by all the Owners of Units in the Development then in existence to enable the Management Committee to pay all estimated expenses and outlays of the Management Committee to the close of such year, growing out of or in connection with the maintenance and operation of such land, buildings and improvements; which sum may include, among other things, the cost of management, special assessments, fire, casualty, flood, fidelity, public liability and other insurance or bond premiums, common lighting, landscaping, and the care of the grounds, repairs, and renovations to Common Areas and Facilities, (other than services that are separately billed or metered to the individual Units by the utility or party furnishing such service), legal and accounting fees, management fees, expenses and liabilities incurred by the Management Committee under or by reason of this Declaration, the payment of any deficit remaining from the previous period, the creation of a reasonable contingency or other necessary reserve or surplus fund, as well as all other costs and expenses relating to the Development. The Management Committee may, from time to

time, up to the close of the year for which such cash requirements have been so filed or determined, increase or diminish the amount previously fixed or determined for such year. It may include in the cash requirements for any year, any liabilities or items of expense that accrued or became payable in the previous year, or might have been included in the cash requirements for a previous year, but were not included therein; and also any sums the Management Committee may deem necessary or prudent to provide a reserve against liabilities or expenses then accrued or thereafter to accrue although not payable in that year. A working capital fund equal to at least two (2) months' estimated Common Expenses for each Unit shall be established by the Management Committee. In addition, a separate fund for the purpose of paying for emergency or other repairs of sewer, water, or other utilities shall be established and maintained with a balance of \$5,000, to be used as needed for that purpose and then replenished out of the operating budget of the Association.

(c) The portion payable with respect to each Unit in and for each year or for a portion of a year shall be a sum equal to the aggregate amount of such Common Expenses for such year, or portion of year, determined as aforesaid, divided by the number of Units owned by parties other than the Declarant. Such assessments, together with any additional sums accruing under this Declaration, shall be payable monthly in advance, or in such payments and installments as shall be required by the Management Committee. The Declarant shall not be subject to assessments for Common Expenses for Units titled in Declarant's name, unless such Units are leased to third parties.

(d) The Management Committee shall have discretionary powers to prescribe the manner of maintaining and operating the Development and to determining the cash requirements of the Association to be paid as aforesaid by the Owners under this Declaration. Every such reasonable determination by the Management Committee within the bounds of the Act and this Declaration shall be final and conclusive as to the Owners, and any expenditures made by the Management Committee, within the bounds of the Act and this Declaration shall as against the Owner be deemed necessary and properly made for such purpose.

(e) If an Owner shall at any time let or sublet his Unit and shall default for a period of one month in the payment of any assessments, the Management Committee may, at its option, so long as such default shall continue, demand and receive from any tenant or subtenant of the Owner occupying the Unit the rent due or becoming due and payment of such rent to the Management Committee shall be sufficient payment and discharge of such tenant or subtenant and the Owner to the extent of the amount so paid. Said amount shall be applied in the following order: first to the costs of collection and attorney fees; second, to late fees and interest; and lastly to the assessment.

(f) Each ~~monthly assessment~~ and each special assessment shall be separate, distinct and personal obligations of the Owner(s) of the Unit against which the same is assessed at the time the assessment is made and shall be collectible as such. The amount of any assessment, whether regular or special, assessed to a Unit plus interest at eighteen percent (18%) per annum plus late fees, and costs, including reasonable attorney's fees, shall become a lien upon such Unit upon recordation of a notice of assessment as provided by the Act. Suit to recover a money judgment for unpaid Common Expenses may be maintained without foreclosing or waiving the lien securing the same.