

497271

D E C L A R A T I O N

OF

CONDOMINIUM REGIME

ESTABLISHING A PLAN FOR CONDOMINIUM OWNERSHIP OF PREMISES  
AND A COMMITMENT OF CERTAIN PROPERTY LOCATED IN BANNOCK  
COUNTY, IDAHO, TO A CONDOMINIUM REGIME, PURSUANT TO TITLE  
55, CHAPTER 15, OF THE IDAHO CODE ANNOTATED.

} } } } }

NAME: "HERITAGE VILLAGE CONDOMINIUM"

(PHASE NO. 1)

SPONSOR: Lawrence P. Lystrup and Bill K. Lystrup

DATE OF DECLARATION: June 5, 1972

} } } } }

The land affected and included in this Declaration and  
within said Condominium Regime, lies in the City  
of Pocatello, in Bannock County, Idaho.

JAYSON HOLLADAY

Pocatello, Idaho

Attorney for Sponsors

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

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OF A CONDOMINIUM REGIME AND PLAN OF OWNERSHIP

NOW DESIGNATED AND HEREAFTER KNOWN AS

"HERITAGE VILLAGE CONDOMINIUM"

(Phase No. 1)

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Declaration made and formulated in the City of Pocatello, County of Bannock, State of Idaho, this 5th day of June, 1972, by Lawrence P. Lystrup and Bill K. Lystrup, .joined in the execution hereof by their respective spouses, hereinafter referred to as "Declarants," pursuant to the Condominium Property Act of Idaho,

WITNESSETH:

WHEREAS, the Declarants are the owners of record of certain real property located in the City of Pocatello, County of Bannock, State of Idaho, and more particularly described as follows:

Beginning at the Northwest corner of the SW 1/4 of SW 1/4 of Section 14, Township 6 South, Range 34 E.B.M., Thence South 712.0', thence East 25' to the POINT OF BEGINNING,; thence East 130', thence North 80.0', thence East 165.5', thence South 8 27' East 390.88', thence West 352.92', thence North 306.4' to the Point of Beginning.

WHEREAS, Declarants are the owners of certain Townhouse homes, buildings and certain other improvements heretofore constructed, or hereafter to be constructed, upon the premises described above, which property constitutes a "Condominium Project" under the terms and provisions of the Condominium Property Act (Title 55, Chapter 15, Idaho Code Annotated 1965 , and it is the express desire and the intention of the Declarants to divide the said project and condominium regime into separate condominium units and interests, and to sell and convey the same to various purchasers, subject to the covenants, conditions and restrictions herein reserved to be kept and observed; and

WHEREAS, Declarants desire and intend by filing this Declaration and the requisite plat or survey map and diagrammatic floor plans of the buildings built or to be built, together with all other related improvements, to submit the above-described real property and the Townhouse buildings and other improvements constructed thereon, together with all appurtenances thereto, to the provisions of the said Condominium Property Act of the State of Idaho, and to impose upon said property mutually beneficial restrictions under a general plan of improvement for the

benefit of all of said condominiums, units and the individual owners thereof.

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NOW, THEREFORE, the Declarants do hereby publish and declare that all of the property described above is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the following easements, covenants, conditions, restrictions, uses, limitations and obligations, all of which are declared and agreed to be in furtherance of a plan for the improvement of said real property and the division thereof into condominium units, and shall be deemed to run with the land, and be binding upon all parties having any right, title or interest in and to the described properties or any units or parts thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner, as specified in this formal declaration.

#### ARTICLE I

##### (DEFINITIONS)

Section 1. "Declarants" shall mean and refer to Lawrence P. Lystrup and Bill K. Lystrup, who have made and executed this Declaration, or their successors and assigns.

Section 2. "Declaration" shall mean this instrument by which the Heritage Village Condominium Project is established as provided for under the Condominium Property Act of Idaho.

Section 3. "Project" shall mean the entire parcel of real property referred to in this Declaration to be divided into condominiums, including all structures, buildings and other improvements heretofore constructed or hereafter to be constructed upon the described premises.

Section 4. "Condominium" shall mean the entire estate in the real property owned by any Owner, consisting of an undivided interest in the Common Area and ownership of a separate interest in a Unit.

Section 5. "Unit" shall mean the elements of a condominium which are not owned in common with the Owners of other condominiums in the project as shown on the map; and refers to the separate and distinct interest in a condominium owned by an individual Owner, the physical boundaries of the said unit being the interior surfaces of the perimeter walls, floors, ceilings, windows, window frames, doors and door frames; and the "unit" includes both the portions of the building so described and the airspace so encompassed.

By way of additional clarification, the following elements are not a part of the unit: bearing walls, columns, floors, roofs, foundations, central heating, central refrigeration, central air-conditioning equipment, tanks, pumps, reservoirs, other central services, pipes, ducts, flues, chutes, conduits, wires and other utility installations, wherever located (except the outlets thereof when located within the unit) and any elevator equipment and shafts.

Section 6. "Common Area" shall mean all land and all portions of the property not located within any Unit; and also includes, but not by way of limitation, roofs, foundations, pipes, ducts, flues, chutes, conduits, wires and other utility installations to the outlets, bearing walls, perimeter walls, columns and girders, to the interior surfaces thereof, regardless of location, greens, gardens, patios, carports, storage sheds, balconies, service streets, parking areas, recreational green and facilities, all installations of power, lights, gas, hot and cold water and heating existing for common use and all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use.

Section 7. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any condominium unit which is a part of the project, the said term including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 8. "Association" shall mean the Heritage Village Association, Inc., an Idaho corporation, not for profit, its successors and assigns; and that said "Association" shall perform the statutory and common-law functions of a management body, as contemplated by the Condominium Property Act of the State of Idaho. And that the members or stockholders of the said Association shall be and consist of the Owners in said project; and that the business and affairs of said Association shall be managed and controlled by a Board of Directors, more particularly defined in the Articles of Incorporation of the said Heritage Village Association, Inc.

Section 9. "Mortgage" shall mean a Deed of Trust as well as a mortgage.

Section 10. "Condominium Map" shall mean the condominium map for the Heritage Village Condominiums, to be filed for record in the office of the County Recorder of Bannock County, Idaho, consisting of a plat or survey map of the surface of the ground of the real property showing a survey and legal description thereof, the location of each building with respect to the boundaries of the real property, together with diagrammatic floor plans of the structures or buildings showing the boundaries of each Unit within each building, including horizontal and vertical locations and dimensions of all boundaries of each Unit, Unit number identifying the Units, together with such other information as may be included thereon in the discretion of the Declarants.

## ARTICLE II.

### (PROPERTY RIGHTS AND INCIDENTS OF OWNERSHIP)

Section 1. Estates of an Owner. The Project is hereby divided into Condominiums, each consisting of a separate interest in a Unit and an undivided interest in common in the Common Area in accordance with the attached Exhibit A setting forth the Common Area appurtenant to each Unit. The percentage of ownership interest in the Common Area which is to be allocated to each Unit for purposes of tax assessment under Section 55-1514 of the Idaho Code and for purposes of liability as provided by Section 55-1515 of such Code shall be the same as set forth in the said Exhibit A. Exhibit A also contains a legal description

of each Unit in the Project, consisting of the identifying number of such Unit as shown on the Condominium map. Such undivided interest in the Common Area are hereby declared to be appurtenant to the respective units.

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Section 2. Owners' Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his Unit remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(c) 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 such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of the members agreeing to such dedication or transfer has been recorded.

Section 3. Delegation of Use. Any owner may delegate, in accordance with the by-laws, his or her right of enjoyment to the Common Area and facilities to the members of his family or guests, his tenants, or contract purchasers who reside on the property.

Section 4. Title. Title to a Condominium may be held or owned by any entity and in any manner in which title to any other real property may be held or owned in the State of Idaho.

Section 5. Inseparability. 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 and otherwise affected only as a complete Condominium. Accordingly, every gift, devise, bequest, transfer, encumbrance, conveyance or other disposition of a Condominium or any part thereof shall be presumed to be a gift, devise, bequest, transfer, encumbrance, or conveyance, respectively, of the entire Condominium, together with all appurtenant rights created by law or by this Declaration.

Section 6. Owner's Right to Common Area. Subject to the limitations contained in this Declaration, each owner shall have the nonexclusive right to use and enjoy the General Common Area, and shall have the exclusive right to use and enjoy the Limited Common Area designated herein for exclusive use by such Owner.

Section 7. Taxes and assessments. Each Owner shall

execute such instruments 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. And each owner shall pay the taxes or assessments against his Condominium, or interest therein, or his interest in the Common Area, or any part of any or all of the foregoing.

Section 8. Owner's Rights With Respect to Interiors. Each Condominium Owner shall have the exclusive right to paint, repaint, tile, wax, paper or otherwise maintain, refinish and decorate the interior surfaces of the walls, ceilings, floors, windows and doors forming the boundaries of his Unit and all walls, ceilings, floors and doors within such boundaries.

Section 9. Easements of Access for Repair, Maintenance and Emergencies. Since some of the Common Area is or may be located within the Units or may be conveniently accessible only through the Units, the Owners of other Units shall have the irrevocable right, to be exercised by the Association as their agent, to have access to each Unit and to all Common Area 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 therein necessary to prevent damage to the Common Area or to another Unit or Units. The Association shall also have such right independent of any 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 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 negligence of the Owner of a Unit, then such Owner shall be financially responsible for all of such damage. Such damage shall be repaired and the property shall be restored substantially to the same condition as existed prior to damage. Amounts owing by Owners pursuant hereto shall be collected by the Association by assessment, and such assessments shall be fixed, established and collected from time to time in the manner provided in this Declaration.

Section 10. 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 the duties and functions which it is obligated or permitted to perform pursuant to this Declaration, including the right to construct and maintain in the General Common Area maintenance and storage areas for use by the Association.

Section 11. Declarants' Right Incident to Construction. Declarants, and persons the Declarants may select, shall have the right ingress and egress over, upon and across the Common Area, the right to store materials thereon and to make such other use thereof as may be reasonably necessary to complete development of the Project.

### ARTICLE III.

#### (DESCRIPTION OF A CONDOMINIUM)

Every contract for the sale of a Condominium and every other instrument affecting title to a Condominium (including deeds, leases, mortgages and the like) may describe that Condominium by the identifying number, symbol, name or other identification or designation as shown on the Condominium Map with the appropriate reference to the Condominium Map and to this Declaration as each appears on the records of the County Recorder of Bannock County, Idaho, in the following fashion, to-wit:

## (EXAMPLE)

"Condominium Unit \_\_\_\_\_ as shown on the Condominium Map for the Heritage Village Condominiums appearing in the records of Bannock County, Idaho, as Instrument Number \_\_\_\_\_, and as defined and described in that Declaration of Condominium Regime for the Heritage Village Condominium recorded in the Official Records of Bannock County, Idaho, as Instrument No. \_\_\_\_\_."

Such description shall be deemed good and sufficient for all purposes under the Condominium Property Act of the State of Idaho; and such description will be construed to describe the Unit, together with the appurtenant undivided interest in the Common Area, and to incorporate all of the rights incident to ownership of a Condominium and all the limitations on such ownership as described in this Declaration.

ARTICLE IV.

## (MECHANIC'S LIEN RIGHTS)

No labor performed or services or materials furnished with the consent of, or at the request of, an Owner or his agent or his 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 the performance of such labor or furnishing of such materials or services. Such express consent shall be deemed to have been given by the Owner of any Condominium in the case of emergency repairs thereto. Labor performed or services or materials furnished for the Project, 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 to the holder of the lien of the fraction of the total sum secured by such lien which is attributable to his Condominium.

ARTICLE V.

## THE ASSOCIATION. (MEMBERSHIP AND VOTING RIGHTS)

Section 1. Membership. The Articles of Incorporation and the By-laws of the Heritage Village Association, Inc. are attached hereto as an Exhibit and hereby made a part of this Declaration. Every Owner shall be entitled and required to be a member of the Association. If title to a Condominium is held by more than one person, the membership related to that Condominium shall be shared by

all such persons in the same proportionate interests and by the same type of tenancy in which the title to the Condominium is held. An Owner shall be entitled to one membership for each Condominium owned by him. No person or entity other than an Owner may be a member of the Association, and the Articles of Incorporation or By-laws of the Association always 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. 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.

Section 2. Voting Rights. The Association shall have one class of voting membership, which shall include all Owners. Each Owner shall be entitled to one vote for each Unit or Condominium owned. When more than one person holds an interest in any Unit or Condominium, all such persons shall be members; however, the vote for such Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Unit or Condominium.

Section 3. Transfer. 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. Any such transfer or assignment shall not revoke or change any of the rights or obligations of any Owners as set forth herein.

Section 4. Amplification. The provisions of this Article are amplified by the Articles of Incorporation of the Association and by the By-laws of the Association; provided, however, that no present or future provision of such Articles of Incorporation or By-laws shall substantially alter or amend any of the rights or obligations of the Owners set forth herein.

#### ARTICLE VI.

##### CERTAIN RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 1. The Management Body. The Association is hereby designated to be the "Management Body" as provided in Section 55-1503 and 55-1506 of the Idaho Code and shall administer the Project in accordance with the Condominium Property Act of such Code, the Articles of Incorporation and By-laws of the Association and the provisions of this Declaration.

Section 2. The Common Area. The Association, subject to the rights of the Owners set forth in Article II hereof, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon (including furnishings and equipment related thereto), and shall keep the same in good, clean, attractive and sanitary condition, order and repair.

#### ARTICLE VII.

##### EXTERIOR MAINTENANCE

In addition to maintenance upon the Common Area, the Association shall be responsible for the maintenance and



repairs of exterior surfaces of buildings and improvements located in the Project including, without limitation, the painting of the same as often as reasonably necessary, the maintenance and repair of roofs, gutters, downspouts; the maintenance of trees, shrubs, grass, walks, driveways and other exterior improvements. In the event, however, that the need for maintenance or repair is caused by the willful or negligent act of an Owner, his family, guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Unit or individual Condominium is subject. Further, the cost of such management, maintenance and repair by the Association shall be borne as later provided in this Declaration, under the subject of "Assessments."

#### ARTICLE VIII.

##### MISCELLANEOUS SERVICES TO BE CONTRACTED BY ASSOCIATION

The Association may obtain and pay for the services of any person or party to manage the 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. Moreover, the Association may retain and pay for legal and accounting services necessary or desirable in connection with the operation of the Project or the enforcement of this Declaration. Also, the Association may arrange with others to furnish electrical, water, sewer, trash collection services and other common services to each Unit.

#### ARTICLE IX.

##### PERSONAL PROPERTY FOR COMMON USE

The Association may acquire and hold for the use and benefit of all of the Owners tangible and intangible personal property and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be deemed to be owned by the Owners in the same proportion as their respective interests in the Common Area. Such interest shall not be transferable except with the transfer of a Condominium. A transfer of a Condominium shall transfer to the transferee ownership of the transferor's beneficial interest in such property without any reference thereto. 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. The transfer of title to a Condominium under foreclosure shall entitle the purchaser to the interest in such personal property associated with the foreclosed Condominium.

#### ARTICLE X.

##### COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarants, for each Unit or Condominium owned within the Project, hereby covenant, and each Owner of any Unit or Condominium by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to

the Association: (1) the annual or monthly assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the properties and projects, herein described, and for the improvement and maintenance of the Common Area, and of the Townhouse homes, dwellings and structures situated upon the project properties.

Section 3. Maximum Assessment. Until January 1 of the year immediately following the conveyance of the first Condominium Unit to an Owner, the maximum monthly assessment shall be \$25.00 per Unit.

(a) From and after January 1 of the year immediately following conveyance of the first Unit to an Owner, the maximum assessment may be increased each year not more than 3% above the maximum assessment for the previous year, without a vote of the Association membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased above and in excess of 3%, by a vote of two-thirds (2/3) of the Association members, except the Declarants, who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors of the Heritage Village Association, Inc. may fix the annual assessment at an amount not in excess of the maximum, herein provided.

Section 4. Special Assessments for Capital Improvement. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or part, the cost of any construction, reconstruction, repair or replacement or a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Association members, except the Declarants, who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for An Action Authorized Under Sections 3 and 4. Written notice of any meeting

called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all Association members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Units and may be collected on a monthly basis, with the exception that those Units or Lots which are undeveloped or unbuilt-on at such time, and owned by the developer or Declarants, shall be assessed at the rate of but 25% of the maximum assessment per improved Unit.

Section 7. Date of Commencement of Annual Assessment, Due Dates. The annual assessments provided for herein shall commence, as to all Units, on the 1st day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted, however, according to the number of months remaining in the calendar year. The Board of Directors of the Management Body or Association shall fix the amount of the annual assessment against each Unit at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

Section 8. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eight percent (8%) per annum. The Association may bring an action at Law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of the any first mortgage. Sale or transfer of any Unit shall not affect the assessment lien. However, the sale or transfer of any Unit pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Unit from liability for any assessments hereafter becoming due or from the lien thereof.

Section 10. Expiration of Lien. Unless sooner satisfied and released, or the enforcement thereof initiated as provided earlier in this Article, any lien created pursuant to this Article shall expire and be of no further force or effect one year from the date of recordation of said notice of assessment; provided, however, that said one year period may be extended by the Association for not to exceed one additional year by a written extension signed by the Association and recorded in the County Recorder's Office of Bannock County, Idaho, prior to the expiration of said first one-year period.

Section 11. Personal Obligation of Owner. The amount of any annual or special assessment against any Condominium Unit shall be regarded as the personal obligation of the Owner thereof to the Association. Accordingly, a suit to recover a money judgment for such personal obligation may be maintainable by the Association without foreclosing or waiving the lien securing the same.

Section 12. Statement of Account. Upon payment of a reasonable fee not to exceed \$18.00 and upon written request of any Owner or any Mortgagee, prospective Mortgagee or prospective purchaser of a Condominium, the Association shall issue a written statement setting forth the amount of the unpaid assessments, if any, with respect to such Condominium Unit, the amount of the current yearly assessment and the date that such assessment becomes due, credit for advanced payments or prepaid items, including, but not limited to, an Owner's share of prepaid insurance premiums, which shall be conclusive upon the Association in favor of persons who rely thereon in good faith. Unless such request for a statement of account shall be complied with within 21 days, all unpaid assessments which become due prior to the date of making such request shall be subordinate to the lien of a Mortgagee which acquired its interest subsequent to requesting such statement. Where a prospective purchaser makes such request, both the lien for such unpaid assessments and the personal obligations of the purchaser shall be released automatically if the statement is not furnished within the 21 days provided herein and thereafter an additional written request is made by such purchaser and is not complied with within ten days, and the purchaser subsequently acquires the Condominium Unit.

Section 13. Personal Liability of Purchaser for Assessments. Subject to the provisions of the next-preceding section, a purchaser of a Condominium Unit shall be jointly and severally liable with the seller for all unpaid assessments against the Condominium Unit up to the time of the grant or conveyance, without prejudice to the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.

## ARTICLE XI.

### PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Townhouses and dwellings upon the project properties and placed on the dividing line between the Condominium Units or Lots, shall constitute a party wall and, to the

extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply, thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall should be shared by the owners who make use of the wall in proportion to such use.

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

Section 4. Right to Contribution Runs with Land. The right of any owner to contribution from any other owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 5. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

## ARTICLE XII.

### ARCHITECTURAL CONTROL

No structural alteration, improvement or addition in or to any Unit, or in or to the exterior of the buildings or other Common Area, or no building, fence, wall or other structure shall be commenced, initiated, erected or maintained upon the project properties unless the Owner or his agent shall first submit such plans and specifications to the Board of Directors of the Association, or to the architectural committee composed of three (3) or more representatives appointed by the Board, and unless the proposed plans and specifications are approved in writing by the said Board of Directors of the Association or by such architectural control committee as may be appointed by the Board. And in event any such proposed plans and specifications are submitted, as aforesaid, they must specifically show and delineate the exact nature, kind, shape, materials, workmanship, height, location and the like of the proposed alteration, improvement, addition, change or the like. And the said Board of Directors of the Association shall be authorized to appoint an Architectural Control Committee composed of three (3) capable and competent representatives of the, project buildings. Further, in the event that the Board, or its designated committee, fails to approve or disapprove any such proposed design, improvement or addition within thirty (30) days after said proposed plans and, specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

## ARTICLE XIII.

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## GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Unit Owner, shall have the right of enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability Invalidation of any one of these covenants or restrictions by judgment or court order shall in nowise affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants, provisions and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time the said Declaration shall be automatically extended for successive periods of ten (10) years, from term to term. And this Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Unit Lot Owners, and after the lapse of the first 20 year period, by an instrument signed by not less than seventy-five percent (75%) of the Unit Lot Owners. And in the event of any such amendment, said instrument amending this Declaration must be filed of record. Provided, however, that the Declarants or their assigns shall have the right to amend this Declaration for the purposes and within the limits specified in the next succeeding section (4) with regard to annexation of additional residential property and Common Area.

Section 4. Annexation. It is expressly provided and declared that this Declaration includes what is designated as Phase I of the Heritage Village Condominium regime which shall consist of approximately thirty-six (36) Condominium Units together with related and appurtenant Common Area, as described on Page 2 of this Declaration, and upon the Condominium map. Moreover, and in addition, it is contemplated by this Declaration that an additional parcel of residential property and Common Area may be annexed by the Declarants, themselves, to the Project Properties described herein, which annexation may be made without the consent of the Unit Owners or members of Phase I within a period of forty-eight (48) months after the recording of this Declaration: Any such annexation within forty-eight (48) months by the Declarants may, at their option, be designated and included as Phase II of the Heritage Village Condominium. Further, such annexation within said period of 48 months, without the consent or acquiescence of the Owners, may be accomplished by a specific amendment of this Declaration for the purpose of including additional residential property, constructing additional Condominium Units on such annexed' property and providing appurtenant Common Areas for such annexed properties. This particular amendment for the purpose of annexation may be accomplished and executed by the Declarants without the ratification or consent of the Owners participating in Phase I, so long as the said amendment relates

primarily to the annexation and development of additional residential property, Condominium Units and appropriate Common Area for the proposed Phase II of this project. Provided, further, after the lapse of forty-eight (48) months, no additional residential property or Common Area may be annexed to the project properties described herein without the written consent of two-thirds (2/3) of the Owners of Condominium Units in Phase I of the Heritage Village Condominium.

#### ARTICLE XIV.

##### INSURANCE

Section 1. Type of Insurance. The Association shall obtain and keep in full force and effect at all times the following insurance coverage with companies duly authorized to do business in Idaho. The provisions of this Article shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder in such amounts and in such kinds as the Association may deem appropriate from time to time:

(a) Casualty Insurance. The Association shall obtain insurance upon the Project Properties in such amounts as shall provide for full replacement thereof in the event of damage or destruction from the casualty against which such insurance is obtained, all in the manner in which a corporation owning similar multiple family residential buildings in the vicinity of the Project Properties would, in the exercise of prudent business judgment, obtain such insurance. Such insurance shall include fire and extended coverage, vandalism and malicious mischief, war risk insurance if available and if deemed appropriate by the Association, and such other risks and hazards against which the Association shall deem it appropriate to provide insurance protection. The Association may comply with the above requirements by the purchase of blanket coverage and may elect such "deductible" provisions as in the Association's opinion are consistent with good business practice.

(b) Public Liability and Property Damage Insurance. The Association shall purchase broad form comprehensive liability coverage in such amounts and in such forms as it 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 Project.

(c) Workmen's Compensation and Employer's Liability Insurance. The Association shall purchase workmen's compensation and employer's liability insurance and all other similar insurance in respect of employees of the Association in the amounts and in the forms now or hereafter required by law.

(d) Fidelity Insurance. The Association shall purchase, in such amounts and in such forms as it shall deem appropriate, coverage against dishonesty of employees, destruction or disappearance of money or security, and forgery.

(e) 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. 497271

Section 2. Optional Insurance. The Association may obtain the following types of insurance coverage, but is not required to do so:

(a) Personal property casualty insurance. The Association may in its discretion obtain insurance on the personal property and furnishings in the various Units of the Owners in such amounts as shall provide for the full replacement thereof in the event of damage or destruction from casualties against which such insurance is obtained; but as aforesaid, said coverage is wholly optional and in no way obligatory.

(b) Casualty and Public Liability Insurance. The Association may in its discretion obtain casualty and public liability insurance coverage, in amount it may select, with respect to an Owner's activities within each individual Unit and for activities of the Owner, not acting by the Association, with respect to the Common Area.

Section 3. Form. Casualty insurance shall, be carried in a form or forms naming the Association the insured, as trustee for the Unit Owners, which policy or policies shall specify the interest of each Condominium Owner (Owner's name, Unit number and the appurtenant undivided interest in the Common Area), and which policy or policies shall provide a standard loss payable clause providing for payment of insurance proceeds to the Association as trustee for the Owners and for the respective first Mortgagees which from time to time shall give notice to the Association of such first Mortgages, such proceeds to be used in accordance with this Declaration. Each policy shall also provide that it cannot be cancelled by either the insured or the insurance company until after fifteen days' prior written notice is first given to each Owner and to each first Mortgagee. The Association shall furnish to each Owner and to Declarants a true copy of such policy together with a certificate identifying the interest of the 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 any 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 shall name the Association the insured, as trustee 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 Project properties. 497271

Section 4. Owner's Responsibility. Insurance coverage on the individual unit owners' furnishings, personal property and belongings placed in the units shall be the responsibility of the respective Owners (unless the Association elects, at its sole option, to arrange for such insurance for individual Units, pursuant to Section 2, above; but in absence of such election by the Association and unless the Owners are notified in writing of such election by the Association, the Unit Owners are at all times responsible for their own insurance coverage against damage, destruction or loss of their personal property).

Section 5. Insurance Proceeds. The Association shall receive the proceeds of any casualty insurance payments received under policies obtained and maintained pursuant to this Article. The Association shall apportion the proceeds to the portions of the Project which have been damaged and shall determine the amount of the proceeds attributable to damage to the Common Area. To the extent that reconstruction is required herein, the proceeds shall be used for such purpose. To the extent that reconstruction is not required herein and there is a determination that the Project shall not be rebuilt, the proceeds shall then be distributed and apportioned among the Owners according to law and the provisions of this Declaration.

Section 6. Owner's Own Insurance. Notwithstanding the provisions of Sections 1 and 2 hereof, each Owner may obtain insurance at his own expense, providing coverage upon his Condominium, his personal property, for his personal liability, and covering such other risks as he may deem appropriate, but each such 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 Article. All such insurance of the Owner's Condominium 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 XV.

### CASUALTY DAMAGE OR DESTRUCTION

Section 1. Affects Title. Title to each condominium is hereby made subject to the terms and conditions hereof, which bind the Declarants and all subsequent Owners, whether or not expressed in the deed by which any Owner acquires his Condominium.

Section 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 the Project upon its damage or destruction as hereinafter provided. Acceptance by any grantee of a deed from the Declarants or from any Owner shall constitute such appointment.

Section 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 a Condominium Owner which may be necessary or appropriate to exercise the powers herein granted. Repair and reconstruction of the improvements as used in the succeeding subparagraphs mean restoring the Project to substantially the same condition in which it existed prior to damage, with each Unit and the Common Area having the same vertical and horizontal boundaries as before. The proceeds of any insurance collected shall be available to the Association for the purpose of repair or reconstruction unless the Owners and all first Mortgagees unanimously agree not to rebuild in accordance with the provisions set forth hereinafter. 497271

In the event any Mortgagee should not agree not to rebuild, the Association shall have the option to purchase such Mortgage by payment in full of the amount secured thereby if the Owners are in unanimous agreement not to rebuild. The Association shall obtain the funds for such purpose by special assessments as provided earlier in this Declaration.

Section 4. Estimate of Costs. As soon as practicable after an event causing damage to, or destruction of, any part of the Project, the Association shall obtain, estimates it deems reliable of the costs of repair or reconstruction of that part of the Project damaged or destroyed.

Section 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 Project damaged or destroyed. The Association may take all necessary or appropriate action to effect repair or reconstruction, as attorney-in-fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith. Such repair or reconstruction shall be in accordance with the original plans and specifications of the Project or may be in accordance with any other plans and specifications the Association may approve, provided that in such latter event the number of cubic feet and the number of square feet of any Unit may not vary by more than 5% from the number of cubic feet and the number of square feet for such Unit as originally constructed, pursuant to such original plans and specifications, and the location of the Buildings shall be substantially the same as prior to damage or destruction.

Section 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 may levy in advance a special assessment sufficient to provide funds to pay such estimated or actual cost of repair or reconstruction. Such assessment shall be allocated and collected as provided elsewhere in this Declaration. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair or reconstruction.

Section 7. Disbursement of Funds for Repair or Reconstruction. The insurance proceeds held by the Association and the amounts received from the assessments provided for in Section 6 constitute a fund for the payment

of costs of repair and construction after casualty. It shall be deemed that the first money disbursed in payment for 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 this Declaration.

Section 8. Decision not to Rebuild. If all Owners and all holders of first Mortgages on Condominiums agree not to rebuild, as provided herein, the Project properties shall be sold and the proceeds distributed and apportioned among the Owners in proportion to the respective amounts originally paid to the Declarants for the purchase of the Condominium realty.

## ARTICLE XVI.

### USE PROVISIONS

Section 1. No unsightliness shall be permitted on any property within the unit or the project property or subdivision. Without limiting the generality of the foregoing, all unsightly structures, facilities, equipment, objects and conditions shall be enclosed within an approved structure or appropriately screened from view.

Section 2. Refuse, garbage and trash shall be kept at all times in a covered, noiseless container and any such container shall be kept within an enclosed structure or appropriately screened from view.

Section 3. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Townhouse or residence Lot, or upon the Project Properties, including the Common Area. However, until or unless either the Board of Directors or the Architectural Control Committee of the Association determines, in their sole discretion, at any time in the future, to exclude the keeping of dogs, cats or household pets in the Heritage Village Condominium, the Owners may presently keep dogs, cats or household pets within or upon their Townhouse Unit or dwelling, subject to strict rules and regulations adopted by the Association. No dog shall be allowed in or upon the Common Area without being held and retained on a leash. The Association may adopt rules and regulations providing for the removal to a pound of any dog found on the Common Area without being retained on a leash. Further, if a substantial number of Unit Owners have cause to lodge complaints about such animals or pets, either the Board of Directors or the Architectural Control Committee may act upon such complaints--or such Board or Committee may act independent and of their own discretion--and exclude or forbid all dogs, cats and other household pets upon the project properties.

Section 4. No noxious or offensive activity shall be carried on in or upon any Unit, residence Lot nor in the Common Area, nor shall anything be done therein which may or become an annoyance or nuisance to the other Owners.

Section 5. No portion of the residential property and Condominium Units shall be used, except for residential purposes and for purposes incidental or accessory thereto, and except for model homes used or shown by the developers of Heritage Village Condominium.

Section 6. No clothing, laundry or wash shall be aired or dried on any portion of the residential property in an area exposed to view from any other Lot or Unit in a residential Property area. Drying areas will be permitted only in locations approved by the Association and only when protected from view by screening or fencing approved by the Association. 497271

Section 7. No sign shall be displayed to the public view on any lot or Unit except temporary signs not more than five feet square advertising the property for sale or rent and except for temporary signs erected by the developer of Heritage Village in connection with the construction, lease or sale of Townhouse Units and Lots or other parcels of the Property.

Section 8. If a connection to a master antenna is available at the lot or Unit line, no television or radio antenna shall be located on such Lot or Unit exposed to view from any other Lot or Unit in a residential property area, unless approved by the Association.

Section 9. Nothing shall be altered or constructed in or removed from the Common Area except upon the written consent of the Association.

Section 10. No boats, mobile homes, trailers, trucks, campers or snow machines shall be parked anywhere on the properties except in areas designated as storage areas by the Association.

Section 11. No basketball standard or fixed sports apparatus shall be attached to the exterior surfaces of any residence or Unit or garage except where such exterior surfaces face an interior patio, or unless written permission is first obtained from either the Architectural Control Committee or the Board of Directors.

Section 12. In addition, the Association shall prepare and formulate reasonable Rules and Regulations including, and in addition to, the foregoing Use Provisions; and upon the Association furnishing copies to the Owners, the residents in and the Owners of Heritage Village shall observe and comply with all of said Association Regulations; and the Association is specifically authorized to adopt any such rules and regulations.

## ARTICLE XVII.

### STATUTE

The provisions and covenants of this Declaration shall be in addition and supplemental to the Condominium Property Act of the State of Idaho and to all other provisions of law.

## ARTICLE XVIII.

### NUMBER AND GENDER

Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

IN WITNESS WHEREOF, the Declarants and sponsors have set their hands to this Declaration this 5th day of June, 1972. 497271

*Lawrence P. Lystrup* *Bill K. Lystrup*  
Lawrence P. Lystrup Bill K. Lystrup  
(Declarant) (Declarant)

*Helen L. Lystrup* *Ruth J. Lystrup*  
Helen L. Lystrup Ruth J. Lystrup  
(Wife of (Wife of  
Lawrence P. Lystrup) Bill K. Lystrup)

STATE OF IDAHO )  
 )  
 ) : ss  
COUNTY OF BANNOCK )

On this 5th day of June, 1972, before me, the undersigned, a Notary Public, personally appeared Lawrence P. Lystrup and Bill K. Lystrup, the Declarants, together with their wives, Helen P. Lystrup and Ruth J. Lystrup, each and all known to me to be the persons whose names are subscribed to the within and foregoing Declaration, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have set my hand and seal the date first above written.

*Jayson C. Holladay*  
NOTARY PUBLIC FOR IDAHO  
Residing at Pocatello, Idaho  
Commission expires: 21 April 1975

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EXHIBITS ANNEXED

APPENDED AND ANNEXED HERETO, AND MADE AN INTEGRAL PART OF THIS DECLARATION ARE SEVERAL EXHIBITS AND DISCLOSURES, INCLUDING:

Plat or map of surface of ground included within Heritage Village Condominium Project;

Diagrammatic floor plans of buildings built or to be built, with details identifying each Unit;

Legal description of each Unit in Project, which description may consist of simply identifying number, symbol or name of such Unit as shown on the plat; and

Approximate area of each Unit, together with the percentage of Ownership interest in Common Area allocate each Unit for purpose of tax assessment.

EXHIBIT B

497271

HERITAGE VILLAGE CONDOMINIUM

## PHASE NO. I

Unit Designation or Apt. No.	Building Number	Location or Portion of Building	Approx. Area	Percentage of Interest in Common Area	Vote
1	A	South End	1,056	2.8	1
2	A	Southerly Half	1,056	2.7	1
3	A	Southerly Half	1,104	2.8	1
4	A	Southerly Half	1,104	2.8	1
5	A	Southerly Half	1,040	2.7	1
6	A	Southerly Half	1,040	2.7	1
7	A	Northerly Half	1,120	2.8	1
8	A	Northerly Half	1,120	2.8	1
9	A	Northerly Half	1,040	2.7	1
10	A	Northerly Half	820	2.5	1
11	A	Northerly Half	1,340	3.0	1
12	A	North End	1,120	2.8	1
13	B	South End	1,120	2.9	1
14	B	Southerly Half	1,340	3.0	1
15	B	Southerly Half	820	2.5	1
16	B	Southerly Half	1,040	2.7	1
17	B	Southerly Half	1,120	2.8	1
18	B	Southerly Half	1,120	2.8	1
19	B	Northerly Half	1,040	2.8	1
20	B	Northerly Half	1,040	2.8	1
21	B	Northerly Half	1,104	2.8	1
22	B	Northerly Half	1,104	2.8	1
23	B	Northerly Half	1,056	2.8	1
24	B	North End	1,056	2.8	1
25	C	South End	1,056	2.8	1
26	C	Southerly Half	1,056	2.8	1
27	C	Southerly Half	1,104	2.8	1
28	C	Southerly Half	1,104	2.8	1
29	C	Southerly Half	1,040	2.8	1
30	C	Southerly Half	1,040	2.7	1
31	C	Northerly Half	1,120	2.8	1
32	C	Northerly Half	1,120	2.8	1
33	C	Northerly Half	1,040	2.7	1
34	C	Northerly Half	820	2.5	1
35	C	Northerly Half	1,340	3.0	1
36	C	North End	1,120	2.9	1