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DECLARATION OF PROTECTIVE RESTRICTIONS AND COVENANTS

HIDDEN VALLEY TOWNHOUSE SUBDIVISION

We, the undersigned, hereinafter referred to as Grantors, being the owners of the property hereinafter described hereby adopt the following Protective Restrictions and Covenants in their entirety to apply to the townhouse area of real property to be subdivided and contained in a subdivision to be known as Hidden Valley Townhouse Subdivision located in Bannock County, Idaho, or in the townhouse portions of other subdivisions that adopt this Declaration and being further described as follows:

Hidden Valley Townhouse Subdivision according to the plat thereof recorded in the records of Bannock County, Idaho as Instrument No. X or any other phases or subdivision that specifically adopt this Declaration or refer to the covenants that govern the "Hidden Valley Townhouse Subdivision," or which reference these recorded covenants on the subdivision plat.

This Declaration can be adopted with only the approval of Grantor. No approval from any other portion of the Hidden Valley Townhouse Subdivision or the Association is required to adopt this Declaration on additional phases of the Subdivision or in any other subdivision.

Grantor intends to create a townhouse form of ownership to be governed by and subject to the provisions of this declaration as well as the Idaho Condominium Property Act as in effect upon the date this declaration is recorded. The areas within this project as defined above shall be held in separate and common ownership as set forth herein.

ARTICLE 1. DEFINITIONS

Unless the context otherwise specifies or requires, the terms defined in this Article I shall, for all purposes of this Declaration, have the meanings herein specified.

1.1 ARTICLES. The term "Articles" shall mean the Articles of Incorporation of the Hidden Valley Townhouse Association, Inc. which are or shall be filed in the Office of the Secretary of State of the State of Idaho, which said Articles are incorporated herein by this reference, as said Articles may from time to time be amended.

1.2 ASSOCIATION. The term "Association" shall mean the Hidden Valley Townhouse

Association, Inc., the non-profit membership corporation, including its successors and assigns.

1.3 BOARD. The term "Board" shall mean the Board of Directors of the Association.

1.4 BY-LAWS. The term "By-Laws" shall mean the By-Laws of the Association which are or shall be adopted by the Board which are on file at the office of the Association and which are incorporated herein by this reference, as such By-Laws may from time to time be amended.

1.5 DECLARATION. The term "Declaration" shall mean the Declaration of Protective Restrictions and Covenants herein set forth in this entire document, as same may from time to time be amended.

1.6 GRANTOR. The term "Grantor" shall mean Tuscany Hills Development Co., L.L.C.

1.7 GRANTEE. The term "Grantee" shall mean any present and future Owners or the Subdivision.

1.8 Hidden Valley Townhouse Subdivision. The term "Hidden Valley Townhouse Subdivision" shall mean all of the real property and improvements referred to in the preamble together with such other real property as may from time to time be added thereto or covered thereby. This Declaration covers only the townhouse portion of said subdivision and specifically those phases of said subdivision that adopt these covenants. A companion Declaration covers the single family residential portion of said subdivision.

1.9 Hidden Valley Townhouse Subdivision RULES. The term "Hidden Valley Townhouse Subdivision Rules" shall mean the Rules adopted by the Board as they may be in effect from time to time.

1.10 IMPROVEMENTS. The term "Improvements" shall include buildings, outbuildings, roads, driveways, parking areas, fences, screening walls, stairs, decks, hedges, windbreaks, plants, planted trees and shrubs, poles, signs and all other structures or landscaping improvements of every type and kind.

1.11 LOT. The term "Lot" shall mean any parcel of real property designated for townhouse residential use on any subdivision map or plat pertaining to property which is the subject to this Declaration.

1.12 MEMBER. The term "Member" shall mean and refer to every person or entity who holds membership in the Association.

1.13 OWNER. The term "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of equitable or beneficial title (or legal title if same has merged) of any lot and without any limitation of the foregoing.

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- a. Owner shall include the purchaser or buyer of a lot under an executory contract for the sale of real property; and
- b. For the purposes of Article 2, unless the context requires otherwise, those governed by said Article 2 shall include the family, invitees, licensees and lessees of any Owner together with any other person or persons holding any possessory interest granted by such Owner in any lot.

The foregoing is not intended to include persons or entities who hold an interest in any lot merely as security for the performance of an obligation.

1.14 RESIDENCE. The term "Residence" shall mean a building or buildings, including any garage, carport or similar outbuilding used for residential purposes.

1.15 TOWNHOUSE COMMON AREA: Townhouse Common Area shall be all community clubhouse facilities, if any, sidewalks and driveways, including those portions in the public right of way adjacent to townhouse portion of the subdivision, pumps, pavement, streets, pipes, wires, conduits and utility lines not owned or maintained by a public utility as well as the exterior of the townhouse units. Additionally the Association shall have an easement of ingress and egress over and upon each townhouse unit for purposes of maintenance of the exterior of the building and the grounds which easement shall be part of the Townhouse Common Area.

ARTICLE 2. RESTRICTIONS AND COVENANTS

2.1 TOWNHOUSE LOTS. The real estate within Hidden Valley Townhouse Subdivision is divided into townhouse lots in compliance with local and state regulations and laws.

2.2 COVENANTS RUN WITH LAND. These protective restrictions and covenants shall run with the land described therein and shall be binding upon the parties hereto and all successors in title of interest to said real property or any part thereof, hereinafter referred to as "Grantees", for a period of thirty (30) years, at which time said Protective Restrictions and Covenants shall be automatically extended for successive periods of ten (10) years unless the owners of legal title to not less than two thirds (2/3) of the platted residence tracts or platted lots, by an instrument or instruments in writing, duly signed and acknowledged by them shall then terminate or amend said Protective Restrictions and Covenants, and such termination or amendment shall become effective upon filing of such instrument or instruments for record in the office of the Recorder of Bannock County, Idaho. Such Instrument or instruments shall contain proper references by volume and page numbers to the recorded Declaration in which the Protective Restrictions and Covenants are set forth and all amendments hereof.

Should any Grantee violate or attempt to violate any of the provisions of these Protective Restrictions and Covenants, any other person or persons owning any real property embraced in

the said subdivision plat shall have full power and authority to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any of the said Protective Restrictions and Covenants, and either to prevent the violation or to recover damages sustained by reason of such violation or both.

Should the Grantee of any property covered by these restrictions fail, neglect or refuse to satisfy and discharge any obligation or lien which arises by reason of the enforcement of any of the Protective Restrictions and Covenants hereunder within thirty (30) days after the same becomes due, the Grantor or Grantor's successor's in interest including any person or persons seeking enforcement of these Protective Restrictions and Covenants shall have the right to recover interest on such obligation or lien at the maximum rate of interest allowable by the laws of the State of Idaho.

Should any party entitled to enforce any of the Protective Restrictions and Covenants hereunder bring an action for the enforcement of the same, the prevailing party in such suit or action shall be entitled to recover all legal costs in said suit or action, including the reasonable attorney's fees fixed by the court in such suit or action.

Where any restrictions, easement or dedication herein varies from the requirements of the subdivision or other ordinances of the City of Pocatello and the requirements of the city ordinances relating to his subdivision are more restrictive, said more restrictive requirements shall be deemed to be a part hereof as if set forth herein as part of these Protective Restrictions and Covenants. This limitation shall apply in particular to locations, public easements and ways where the same are particularly required by such ordinances but not set forth herein.

2.3 ARCHITECTURAL COMMITTEE. The Board shall serve as the Architectural Committee. No structure shall be constructed on any lot without prior written approval of the Architectural Committee. Plans and specifications showing the nature, kind, shape, height, materials, exterior colors, and location of same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Committee.

A. Grantee agrees that actions of the Committee shall be wholly discretionary and shall be binding. If the Committee does not approve or discharge plans and specifications within fifteen (15) days after submission to it, such approval will not be required and the provisions hereof will be deemed to have been fully complied with.

B. As to all improvements, construction and alterations upon any lot, the Committee shall have the right to refuse to approve any design, plan or color for such improvements, construction or alterations which, in its opinion, is not suitable or desirable for any reason, aesthetic or otherwise. In so passing on such design the Committee shall have the privilege in the exercise of its discretion to take into consideration the suitability of the proposed structure, the materials of which it is to be built and the exterior color scheme in relation to the site upon which it is proposed to be erected. The Committee may specify the required grading of the lot and retaining walls which may be necessary.

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The Committee may also consider whether the proposed structure and design shall be in harmony with the surroundings, the effect of the building or of the structure or alteration therein as planned when viewed from adjacent or neighboring property, the effect or impairment that said structure will have, on the view of surrounding lots and any and all other facts which, in the Committee's opinion, shall affect the desirability of such proposed structure, improvement or alteration. Actual construction shall comply substantially with the plans and specifications approved.

C. The initial Board and all subsequent Boards shall constitute the Committee. No member of such Committee shall be entitled to any compensation for services performed pursuant to this covenant, nor shall they incur liability by reason of any act or omission in exercising the duties herein established by said Committee.

The powers and duties of such Committee or of its designated successors shall close ten (10) years after the date of the covenants are recorded, and thereafter the approval described in this covenant shall not be required, unless prior to said date, and effective thereon a written instrument shall be executed by the then record owners of a majority of the lots in this subdivision and duly recorded appointing a representative or representatives, who shall thereafter exercise the same powers previously exercised by said Committee. Any such representatives shall be separate and independent of the Board unless said written instrument designates the Board as the representatives.

2.4 BUILDING RESTRICTIONS.

A. Reserved Right: Grantor reserves the right to construct townhouse residences and other improvements upon any lot and to offer the same with completed structures thereon for sale to individual grantees and owners.

B. Height: No dwelling or other structure shall be constructed on the residential lots in said subdivision having a height of more than thirty-two (32) feet from ground level nor more than two and one-half (2½) stories.

C. Type of Building: All units shall follow a common design theme to promote the integrity of the subdivision. All buildings shall be kept in good repair, and said property shall be used in such manner as to be inoffensive to any other property owners thereof. Exterior colors shall be flat, non-gloss type and shall be limited to subdued tones.

D. No Production Buildings: No production buildings produced off site, manufactured homes, mobile homes or buildings manufactured off site and moved to the premises for occupancy as a residence shall be allowed.

E. Moving of Building: Construction of outbuildings--no buildings or structures shall be moved onto said real property or building site except a new fabricated structure of a type and design approved by the Architectural Committee. A new fabricated outbuilding or structure shall have a HUD-FHA structural engineering bulletin issued and be in current existence. No

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trailer houses or mobile homes shall be parked in any street or within building setback lines. No trailer, recreational vehicle, mobile home, basement, tent, shack, garage, barn or other outbuildings erected or placed on a building site shall at any time be used as a residence, whether temporarily or permanently, nor shall any residence of a temporary character be permitted. At the discretion of the undersigned original Grantor only, a temporary material and tool storage building or enclosure and/or constructor's construction or sales office will be permitted during the initial development of said subdivision, all of which shall be removed as soon as practical or on the direction of the Grantor no later than termination of development.

F. Garages and Parking: Each townhouse unit shall have a minimum of a single car garage. In addition each townhouse unit shall have not less than 400 square feet of concrete or paving sufficient for off street parking of two cars.

G. No Resubdivision: No lots shall be resubdivided or divided again.

H. Sight Distance at Intersections: No fence, wall, hedge or shrub planting which obstruct sight lines at elevations between two and six feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

I. Fences: No fences shall be allowed except for a privacy wall between units as approved by the Association.

J. Exterior antennas: No outside television antennas radio aerials, ham radio antennas or other such aerials or antennas shall be installed on any residential lot or the exterior of any residence except satellite dishes smaller than 36" in diameter.

K. Mail and Paper Delivery Boxes: The Grantor shall determine the location, color, size, design, lettering and all particulars of all mail or paper delivery boxes, and standards and brackets and name signs for such boxes in order that the area be strictly uniform in appearance with respect hereto.

L. Landscaping: All exterior landscaping including in the platted Common Area referenced in Article 5 below, in the Townhouse Common Area defined above and on the individual townhouse lots will be maintained by the Association. Any additions to that landscaping or any maintenance outside of that done by the Association must be approved by the Board. Each Owner grants an easement for ingress and egress to the Association and its agents and employees for purposes of coming upon Owner's lot to maintain said landscaping and to repair and replace any landscaping or sprinkler systems that are in need of repair or replacement.

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2.6 USE RESTRICTIONS.

A. Oil and Mining Operations: No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in a lot or tract, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot or tract. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot or tracts.

B. Excavation, Defacing of Landscape, Ditches: No excavation for stone, sand, gravel, earth or minerals shall be made upon a building site unless such excavation is necessary in connection with the erection of an improved structure thereon. No irrigation drain or waste water shall be permitted to flow in open ditches to or on any lot or tract in said subdivision except as follows: Ditches, if any, to be located only within easement or street right of way lines shown on the plat of said subdivision.

C. Billboards - Signs: No sign of any kind shall be displayed to the public view on any residential building site except one professional sign of not more than 5 square feet advertising the property for sale or rent. A professional sign advertising development of said subdivision may be used and will be removed upon completion of said subdivision or at the direction of the Grantor but no later than termination of the development.

D. Noxious Use of Property: No portion of the real property or of lot or townhouse unit shall be used for the conduct of any trade or business or the conduct of any business or professional activities other than for purposes of maintaining or managing the townhouse units, including the rental thereof, if any, and noxious or undesirable acts, or undesirable use of any portion of the real property is prohibited and shall not be permitted or maintained. The determination of the undersigned owners that any activity or use is undesirable or noxious shall be conclusive upon all parties. Provided, however, the undersigned, its officers and agents may maintain on a residence lot owned by them an office for the purpose of the development construction and sale of the townhouse units or lots in said subdivision.

E. Spite Fences: The construction or maintenance of a spite fence or a spite tree or hedge shall be prohibited upon any lot.

F. Storage of vehicles, materials, and refuse: No working or commercial vehicles of one and a half ton or greater or any trailer shall be regularly or as a matter of practice be parked in any lot unless properly screened or garaged and shall not be parked on any street adjacent to the property. No unsightliness shall be permitted on any lot. Without limiting the generality of the foregoing, all unsightly facilities, equipment or structures shall be enclosed within approved structures or appropriately screened from view. Trailers, campers, recreational vehicles, boats, tractors, and vehicles other than automobiles shall at all times be kept in an enclosed structure or screened from view in a manner approved by the Architectural Committee. All refuse, garbage and trash shall be kept at all times in covered, reasonably noiseless containers,

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which shall be kept and maintained within an enclosed structure or appropriately screened from view, except when necessarily placed for pickup by garbage removal facilities. Storage piles, compost piles and facilities for hanging, drying or airing clothes or household fabrics shall be appropriately screened from view. No lumber, grass, shrubs or tree clippings or scraps, refuse or trash shall be kept, stored or allowed to accumulate on any lot or tract unless appropriately screened as approved by the Architectural Committee.

G. Building Material Storage: No building materials of any kind shall be placed or stored upon a building site until the Grantee or builder is ready and able to commence construction, and then such material shall be placed within the property lines of the building site upon which the structure is to be erected. The Architectural Committee and/or its agents shall have the right to enter upon any vacant building site for the purpose of burning or removing weeds, brush, growth or refuse.

H. Unreasonable bright light, loud noise, or offensive odors: No light shall be emitted from any lot which light is unreasonably bright or causes unreasonable glare; no sound shall be emitted from any lot or common area which is unreasonably loud or annoying and no odors shall be emitted on any lot or property which are noxious or offensive to others.

I. Animals and Pets: No animals, livestock or poultry of any kinds shall be raised, bred or kept on any lot except dogs, cats or other household pets, provided they are not kept, bred or maintained by any commercial purpose, nor shall any such domesticated animals be kept which unreasonably bother or constitute a nuisance to the residents of other lots in said subdivision. Each lot owner or occupant shall confine that individual's pets to that individual's lot and shall not allow same to run free.

J. Residential Dwellings: All lots within the area shall be used exclusively for residential living purposes and such uses as are customarily incidental hereto. No dwelling shall be used for living purposes by more persons than it was designed to accommodate comfortably.

2.7 RESTRICTIONS AGAINST USES DETRIMENTAL TO NEIGHBORHOOD. No part of any building site shall be used or occupied as a residence or otherwise, so as to have injurious effect upon the use, occupancy or value of any adjacent premises for the usual and customary residence purpose as established by the manner of use in the general area or neighborhood. As to whether any use of occupancy violates the above provisions, the Grantor may make such determination based upon any reason, aesthetic or otherwise, including failure to maintain the premises, that any activity or use violates this provision. In addition to enforcing the provisions of Article 2 hereof which is a further condition of the grants made, the Grantor, upon a determination of violation of this paragraph, may give a notice in writing to the owner and occupant of the premises involved and, if such violation is not corrected within 6 months after the mailing of said notice to the owner and occupant, the Grantor may at its option repurchase the said premises from the original Grantee or said original Grantee's successors in interest at the fair market value thereof by tendering said price, less the balance due on any mortgage, and in which event, upon said tender or payment of said purchase price to the then said owner of the premises, the owner shall make, execute and deliver to the Grantor a deed reconveying to the said Grantor

the said premises, subject to any mortgage, which execution and delivery may be specifically enforced by court action. This covenant shall attach to and pass with all property within the subdivision and shall be binding upon anyone owning or claiming any right, title or interest in and to any of said property. In the event that Grantor and Grantee or then owner cannot agree upon a fair market value, said disputes shall be submitted for arbitration under the Rules of the American Arbitration Society and the laws of the State of Idaho, and the decision rendered therefrom shall be binding upon the parties hereto.

2.8 UTILITIES. All lots will be served by underground utility, electrical and telephone lines, and no above surface distribution lines or poles shall be installed. The services shall be installed in road or easement rights of way as platted. Each Grantee agrees at Grantee's sole expense to pay all connection charges as established by any applicable utility entity for underground service facilities as a condition precedent to connecting thereto. The undersigned Grantor shall not be liable for the cost thereof and may recover funds advanced, if any, to obtain initial installation.

2.9 RESERVATION. The undersigned Grantor does further reserve to itself, its licensees, successors and assigns, the right and power to vacate and relocate, or to plat new streets, by instrument filed of record, any street or alley as long as the undersigned Grantor owns each of the parcels which are adjacent to the street, both vacated and relocated on the new and old right of way and provides an adequate roadway in place of any vacated. Provided, nevertheless, vacations and relocations, easements, right of ways and streets allowed hereunder shall be made in accordance with the minimum standards of the State of Idaho and Pocatello, Idaho laws, ordinances and regulations thereunder in relation to platting in effect at the time of the construction of improvements. This provision shall not be deemed to include any provisions of statute giving any Grantee hereunder the right to object to such variance, relocation, vacation and dedication and such rights of protest are transferred to the undersigned Grantor hereunder.

2.10 AMENDMENTS. These Protective Restrictions and Covenants may be amended by an instrument in writing, signed by the owners, including the undersigned Grantor, of not less than two-thirds of the lots platted in said subdivision. Any amendment must be recorded, and the same shall become effective upon the filing of such instrument or instruments in the office of the County Recorder of Bannock County, Idaho.

2.11 MISCELLANEOUS RESTRICTIONS

A. Owner's Obligation to Maintain and Repair Interior. Each Owner, at Owner's expense, shall keep the interior of that Owner's townhouse unit in good condition and repair and shall do all redecorating and painting which shall be required from time to time to maintain the appearance and condition of the interior of that Owner's townhouse unit. Each Owner shall be responsible for the maintenance or replacement of any fixtures or appliances such as refrigerators, air conditioning and heating equipment, dishwashers, garbage disposals and ranges which are part of the townhouse unit or which services that Owner's townhouse unit exclusively.

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B. Owner's Liability for Damage. Except to the extent covered by insurance purchased by the Association, an Owner shall repair all damage caused by the deliberate, negligent or careless action or inaction of such Owner, the occupants of that Owner's townhouse to the agents, employees or guests of such Owner and all such repairs shall be of like quality and kind as is generally present in the townhouse units.

C. Property Tax. Each townhouse unit shall be subject to separate assessment and taxation by each taxing authority and each Owner will pay all taxes assessed against that Owner's townhouse unit and that Owner's portion of the common area.

D. Party Walls. The rights and duties of Owners with respect to Party Walls or Party Fences shall be as follows:

1. The owners of contiguous lots who have a Party Wall or Party Fence shall both equally have the right to use such wall or fence, provided that such use by one owner does not interfere with the use and enjoyment of same by the other owner.
2. In the event that any Party Wall or Party Fence is damaged or destroyed through the act of an Owner or any of the Owner's agents or guests or members of Owner's family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such owner to rebuild and repair the Party Wall or Fence without cost to the other adjoining lot owner or owners.
3. In the event that any Party Wall or Party Fence is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time) other than by the act of an adjoining owner, Owner's agents, guests or family, it shall be the obligation of all owners whose lots adjoin such wall or fence to rebuild and repair such wall or fence at their joint and equal expense.
4. Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any party Wall without the prior consent of all owners of any interest therein, whether or way of easement or in fee.
5. In the event of a dispute between owners with respect to the construction, repair or rebuilding of a Party Wall or Party Fence, or with respect to the sharing of the cost thereof, such adjoining owners shall submit the dispute to the Board, the decision of which shall be binding.

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ARTICLE 3. HIDDEN VALLEY TOWNHOUSE ASSOCIATION, INC.

3.1 ORGANIZATION AND MEMBERSHIP.

- a. THE ASSOCIATION. The Association is a non-profit membership corporation charged with the duties and invested with the powers set forth herein. It was created by the Articles, and its affairs shall be governed by the Articles and By-Laws which shall not for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

- b. BOARD OF DIRECTORS AND OFFICERS. The affairs of the Association shall be conducted by a Board of Directors and such officers as the Directors may elect or appoint, in accordance with the Articles of Incorporation and the By-Laws of the Association, as same may be amended from time to time.

3.2 MEMBERSHIP.

- a. OWNER MEMBERS. Membership in the Association, except for membership of the Grantor, or any of its successors or assigns thereto, shall be limited to owners of lots in the townhouse portion of the Hidden Valley Townhouse Subdivision. Each Owner shall be entitled to one membership in the Association, for owner and owner's family residing in the house. Ownership of a lot or townhouse unit shall be the sole qualification and criteria for membership. The foregoing is intended to preclude persons or entities who hold an interest merely as security for the performance of an obligation from being members. Each owner, by virtue of being an owner and for so long as is an owner, shall be a member of the Association, or, in the event of its dissolution, a member of the unincorporated association succeeding to the Association. The rights and obligations of an owner and membership in the Association shall not be assigned, transferred, pledged, conveyed, or alienated in any way except upon transfer of ownership to the owner's lot and then only to the transferee of ownership to such lot, or by intestate succession, testamentary disposition, foreclosure of mortgage of record, or other legal process as now in effect or as may hereafter be established. Any attempt to make a prohibited transfer is void and shall not be recognized by the Association. In the event an owner of any lot should fail or refuse to transfer the membership registered in that owner's name to the transferee of such lot, the Association shall have the right to record the transfer upon the books of the Association and issue a new membership to the transferee and the old membership outstanding in the name of the Seller shall be null and void as though the same had been surrendered.

- b. **MEMBER'S RIGHTS AND DUTIES** The rights, duties, privileges and obligations of an owner as a member of the Association or its succeeding unincorporated association, shall be those set forth in, and shall be exercised and imposed in accordance with, the provisions of this Declaration, the Articles and the By-Laws.
- c. **RIGHTS UPON DISSOLUTION.** If the Association dissolves, each lot owner shall be a member an unincorporated association which will succeed to the rights of the Association. Each member of the unincorporated association shall have an underlying beneficial interest in all of the Association's property transferred to or for the account or benefit of the unincorporated association, such interest being in direct proportion to the number of lots owned by such member; provided, however, that there shall be no judicial partition of such property, or any part thereof, nor shall any such member or other person acquiring any interest in said property, or any part thereof, seek judicial partition, the right to do so being expressly waived.

3.3 **VOTING CLASS.** The Association shall have one (1) class of voting membership. There shall be one vote for each lot regardless of the number of owners having an interest therein. The vote for each lot must be cast as a unit, and fractional votes shall not be allowed. In the event that joint owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. In the event more than one vote is cast for a particular lot, none of said votes shall be counted as said votes shall be deemed void. If any owner or owners casts a vote representing a certain lot, it will thereafter be conclusively presumed for all purposes that the owner or group were acting with the authority and consent of any other owners of the same lot.

The right to vote may not be severed or separated from the lot ownership to which it is appurtenant, and any sale, transfer or conveyance of such lot to a new owner or owners shall operate to transfer the appurtenant vote without the requirement of any express reference thereto. An owner may grant a proxy to another owner for purposes of voting; provided however if the owner granting the meeting attends a meeting in person, that proxy may be withdrawn by that owner unless the proxy, on its face, is irrevocable.

3.4 **DUTIES OF THE ASSOCIATION.** The Association shall have the duty, subject to and in accordance with this Declaration, to do and perform the following for the benefit of the owners and for the maintenance and improvement of the subdivision and shall be responsible for maintenance of the storm water drainage system within the subdivision. The Association shall pay all taxes and assessments levied upon any of the real or personal property of the Association, and all costs for fees, licenses and other permits necessary for the operation of the Association to the extent not assessed to the owners. Any such taxes and assessments may be contested or compromised by the Association; provided, however, that they are paid or a bond insuring the payment is posted prior to the sale or other disposition of any property to satisfy the payment of such taxes. The Association may obtain and maintain in force such policies of insurance as may be deemed necessary by the Board. The insurance referred to above, where applicable, shall name

as separately protected insureds, the Association, the Board, any committees appointed by the Board, all Officers of the Association, and their representatives, agents, members and employees, and the owners (as a class) with respect to any liability arising out of the activities of the Association and the maintenance and use of any common area or property of the Association under the jurisdiction of the Association. The Association may make, establish, promulgate, amend and repeal the Hidden Valley Townhouse Subdivision Rules as provided in Section 3.6. The Association may take such action as may be reasonably necessary to enforce the covenants, conditions and restrictions of this Declaration and the subdivision Rules. The Association may notify any owner of any violation or breach of any of the matters contained in this Declaration or the subdivision Rules. The Association may do and carry out the duties of the Association set forth in other sections of this Declaration, the Articles and the By-Laws, and such other duties as may reasonably be inferred from this Declaration, the Articles and the By-Laws. In addition to the foregoing, the Association shall have the duty to maintain the storm water drainage system which serves the subdivision.

3.5 POWERS AND AUTHORITY OF THE ASSOCIATION. The Association shall have all of the powers of a non-profit corporation organized under the laws of the State of Idaho in operating for the benefit of its members, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Articles, the By-Laws and this Declaration. It shall have the power to do any and all lawful things which may be authorized, required or permitted to be done by the Association under and by virtue of this Declaration, including all things which may be reasonably inferred therefrom, and to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Association or for the peace, health, comfort, safety or general welfare of the owners. Without in any way limiting the generality of the foregoing, the Association shall have the power and authority at any time:

- a. FEES. The Association may charge an Owner or any other person such reasonable admission or other fees for the use of any recreational facilities situated upon the Common Areas as the Board may deem necessary or desirable to carry out the intent and purposes of this Declaration, the Articles and the By-Laws.
- b. ENFORCEMENT. The Association shall have the power and authority, from time to time, in its own name and on its own behalf, or on the behalf of any owner or owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration and to enforce, by mandatory injunction or otherwise, all of the provisions of this Declaration. When in the discretion of the Board it is determined that an owner or other person has failed, refused or neglected to comply with any provision contained herein, the Board or any Officer of the Association or other authorized person shall give such owner ten (10) days notice in writing of the failure to comply with said provision, setting forth the nature of the failure to comply and the change required. If upon the expiration of said ten (10) days from the date of such notification, the owner fails to remedy such non-compliance, the Association may thereupon cause same to be performed or remedy the non-compliance and in such event the owner shall reimburse the Association for all expenses incurred in

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connection therewith upon demand, including, as such expenses, and without limitation costs, investigation and collection fees. If such expenses are not promptly paid by the owner to the Association, the Association acting through the Board shall levy in reimbursement a special individual assessment against such owner pursuant to Section 4.6 hereof.

- c. **EASEMENTS AND RIGHTS OF WAY.** The Association may grant and convey to any third party, easements, rights of way, parcels or strips of land, in, on, over or under any Common Area under its jurisdiction, for the purpose of constructing, erecting, operating or maintaining thereon, therein and thereunder (1) roads, streets, walks, driveways, parkways and park areas, (2) underground wires and conduits or other devices for the transmission of electricity for lighting, heating, cable television, power, telephone and other purposes, (3) public sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes and (4) any similar public or quasi-public improvements or facilities.
- d. **EMPLOYMENT OF AGENTS.** The Association may employ the services of a secretary, manager, architect, engineer, consultant, other employee or employees, and attorneys and accountants, to manage and carry out the affairs of the Association, and, to the extent not inconsistent with the laws of the State of Idaho and upon such conditions as are otherwise deemed advisable by the Board, to delegate to any of said persons any of its rights, powers and duties.
- e. **PUBLIC SERVICE.** The Association may contract for or provide (to the extent adequate services are not provided by a public authority) police and fire protection, refuse disposal, street light maintenance, security patrol and such other services, facilities and maintenance of a public or quasi public nature as may be deemed necessary or desirable by the Board for the effectuation of the purposes of this Declaration. In connection with providing such facilities and services, the Association may contract with or assign its duties to any public authority, governmental body or special district, or other private entity deemed appropriate by the Board.
- f. **WITHDRAWAL OF RIGHTS AND PRIVILEGES OF OWNERS.** In the event any owner fails to perform or breaches or violates any provision, restriction, or requirement contained in this Declaration or incorporated herein by reference, the Board may, without in any way limiting any of its other rights, and in its sole discretion, withdraw from the owner any of the rights and privileges of the owner or take any other action deemed appropriate by the Board.
- g. **USE OF FUNDS.** The Association may borrow money and lend or invest its funds upon such terms and conditions as shall be determined by the Board in accordance with the intent and purposes of this Declaration.
- h. **PROPERTY.** The Association may own and hold the title to real and personal

property.

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- i. **ADDITIONAL TERRITORY.** The Association may accept and include within Hidden Valley Townhouse Subdivision and the operation of the Association, by deed, contract, or otherwise, additional residential or common areas as and when approved by the Board, subject to ratification by a majority vote of the votes entitled to be cast by the owners present at any regular meeting of the owners of the Association or any special meeting called therefor, upon such terms and conditions as the Board may determine, including, by way of example and not by way of limitation, the roads and roadways presently located adjacent to lots in Hidden Valley Townhouse Subdivision and other properties adjoining Hidden Valley Townhouse Subdivision and its entry way.
 - j. **COMMITTEES.** The Board may, in its sole discretion, establish whatever committees it deems necessary, either temporary or permanent, to carry out the intent and purposes of this Declaration, the Articles and the By-Laws. Any Committee member may be a member of the Board, an owner, or such other person as the Board may appoint, for whatever term or terms the Board deems appropriate. To the extent not inconsistent with the laws of the State of Idaho, and upon such conditions as are otherwise deemed advisable by the Board, the Board may delegate to any such Committee or Committees any of its rights, powers and duties.
 - k. **VARIANCES.** The Association may grant to any owner a right of variance or modification of and from any of the provisions of this Declaration, the Articles or By-Laws, upon the unanimous approval of the Board, whenever it is determined by the Board that same would be in the best interests of the Association.
 - l. **ESTOPPEL CERTIFICATE.** Upon such terms and conditions as the Board may determine, the Association may issue an Estoppel Certificate binding the Association to the position or determination stated therein, and anyone interested therein shall be entitled to rely on the matters stated therein. Said Certificate to be valid and binding on the Association shall be executed by at least one member of the Board, or the President of the Association, or such other person or persons as the Board in its discretion may determine and designate.
 - m. **APPEAL.** Any owner aggrieved by any action taken by the Board or any Committee shall have a right of appeal to the Association to consider same, the Association having the final right to approve, rescind or modify any action taken by the Board or by any Committee, by a majority vote of the votes entitled to be cast by the owners present at any regular meeting or special meeting called therefor. Any aggrieved owner desiring a special meeting of the Association to consider same may call for same in the manner set forth in the By-Laws of the Association.

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- ii. EQUAL TREATMENT OF OWNERS. No action shall at any time be taken by the Association or its Board which in any manner would unreasonably discriminate against any owner or owners in favor of any other owner or owners.

3.6 Hidden Valley Townhouse Subdivision RULES.

- a. RULEMAKING POWER. The Association may, from time to time, and subject to the provisions of this Declaration, adopt, declare, amend, modify and repeal Rules and Regulations to be known as the "Hidden Valley Townhouse Subdivision Rules", by a majority vote of the members of the Board. Said Hidden Valley Townhouse Subdivision Rules may relate to any matter or thing involving the Association, the Board, any Committee, any Residential Area or Common Area, any property owned or controlled by the Association, the Articles, By-Laws and this Declaration. Said Hidden Valley Townhouse Subdivision Rules shall become effective when passed upon by the Board and notice thereof is given to the owners in accordance with this Declaration.
- b. RECORDATION OF RULES. A copy of the Hidden Valley Townhouse Subdivision Rules, as they may from time to time be adopted, amended or repealed, may be recorded and shall be on file and available for inspection by any owner.

3.7 LIABILITY OF MEMBERS OF THE BOARD, THE COMMITTEE AND OFFICERS. No member of the Board or any Committee or any officer of the Association shall be personally liable to any owner or to any other person, including the Association, for negligence or for any error or omission of the Board, the Association, its representatives and employees or any Committee, except for the wilful and intentional misconduct of any such person.

3.8. MAINTENANCE BY ASSOCIATION. The Association may, at any time in the discretion of the Board, without any approval of the owners being required, as to any Townhouse Common Area as defined above or upon the exterior of any townhouse unit:

1. Reconstruct, repair, replace or refinish any improvement or portion thereof upon any such area (to the extent that such work is not done by a governmental entity, if any, responsible for the maintenance and upkeep of such area) in accordance with (a) the last plans thereof approved by the Board, (b) the original plans for the improvement, or (c) if neither of the foregoing is applicable and if such improvement was previously in existence, then in accordance with the original design, finish or standard of construction of such improvement as same existed;
2. Construct, reconstruct, repair, replace or refinish any road improvement or surface upon any portion of such area used as a road, street, walk, driveway or parking area;

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- 3. Replace injured and diseased trees or other vegetation in any such area, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for conservation of water and soil and for aesthetic purposes;
- 4. Place and maintain upon any such area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof;
- 5. Repair and paint the exterior of any townhouse unit and maintain the landscaping of any townhouse and repair and replace the landscaping and sprinkler system as may from time to time be required.
- 6. Do all such other and further acts which the Board deems necessary to preserve and protect the property and the beauty thereof, in accordance with the general purposes specified in this DECLARATION.
- 7. The Board shall be the sole judge as to the appropriate maintenance of all grounds within the Townhouse Common Areas or upon individual lots.

ARTICLE 4. FUNDS AND ASSESSMENTS

4.1 DECLARATION OF ASSESSMENT AND AGREEMENT OF PAYMENT. The Grantor, for each lot owned within the properties, hereby covenants, and each owner of any lot by the acceptance of a deed therefore or acceptance of an agreement to purchase, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association the assessments made as hereafter provided in Section 4.3.

4.2 PURPOSE OF ASSESSMENTS. The annual and special assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents of Hidden Valley Townhouse Subdivision, and in particular for the improvement and maintenance of the common areas, services and facilities devoted to these purposes. No owner of a house may exempt that owner from liability for contribution toward the common expenses by waiver of the use or enjoyment of any of the common elements or by the abandonment of owner's house.

4.3 ASSESSMENTS. The initial assessment shall be _____ Dollars (\$____.00) per townhouse unit per month beginning with the month of closing the first sale of a townhouse lot. Thereafter the following procedure shall govern such assessments.

- a. At least thirty (30) days prior to the commencement of each fiscal year, the Board shall estimate the costs and expenses to be incurred by the Association during such fiscal year in performing its functions under this Declaration (including a reasonable provision for contingencies and replacements), and shall subtract from such estimate an amount equal to the anticipated balance (exclusive of any

reserves) in the operating fund at the start of such fiscal year which is attributable to fees and assessments received for the prior fiscal year. The foregoing computations shall constitute the budget, which shall be presented to the owners at the Annual Meeting of the Association. The Directors shall determine the amount of an annual assessment necessary to meet the Budget. The amount so determined shall be levied as an assessment against each lot in Hidden Valley Townhouse Subdivision and against each owner individually. The amount of each assessment may vary from year to year, and may vary in any one year as between improved and unimproved lots. A lot shall be deemed to be improved ninety (90) days after the start of construction of a residence thereon, whether said construction is completed within said time.

- b. **PAYMENT OF ANNUAL ASSESSMENT.** The time of the first conveyance or occupancy (whichever occurs first) of each unit and from time to time thereafter, the Board shall notify the owner or owners of each lot as to the amount of the annual assessment and shall each month collect for each lot one-twelfth (1/12) of said lot's proportional share of said annual assessment.
- c. **SPECIAL ASSESSMENTS.** In addition to other assessments authorized by this Declaration, the Board shall have the right and power to levy a special assessment applicable for the purpose of providing for the construction of additional recreational and other common facilities, unexpected repairs, or the alteration, replacement, demolition or removal of existing recreational and other common facilities, from time to time, as in its discretion appears to be in the best interests of the Association. Any such alteration, demolition, removal, construction, improvements or additions increasing the owner's assessment for that year over the then maximum limitation shall be authorized by an affirmative vote of a majority of the Board at a duly called meeting at which a quorum is present, and ratified and approved by a majority vote of the members who shall vote in person or by proxy at a meeting called for that purpose.
- d. **UNIFORM RATE OF ASSESSMENT.** Both annual and special assessments must be fixed at a uniform rate for all improved lots, and may be collected on a lump sum or on a monthly installment basis.

4.4 **SPECIAL INDIVIDUAL ASSESSMENT.** The Board may levy a special assessment against any owner and owner's lot as a result of whose failure to comply with this Declaration, or the Hidden Valley Townhouse Subdivision Rules, monies are about to be or were expended by the Association from the operating fund in performing its functions under the Declaration, the Articles and By-Laws. Such assessments shall include, but not be limited to, reimbursement to the Association for any amount so expended or to be expended, and shall be due and payable to the Association when levied. Special individual assessments shall be enforced in the same manner as annual or other special assessments.

4.5 **OPERATING FUND.** There shall be an operating fund from which the Association

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shall make disbursements in performing the functions of the Association, and into which the Association shall deposit all monies paid to it as:

- a. Annual Assessments;
- b. Special Assessments;
- c. Miscellaneous fees; and
- d. Income and profits attributable to the operating fund.

4.6 ENFORCEMENT OF ASSESSMENTS. Each assessment levied hereunder shall be a separate, distinct and personal debt and obligation of the owner or owners against whom same is assessed, and shall constitute a lien and charge upon the lot in Hidden Valley Townhouse Subdivision to which the assessment relates or is owned by said owner. Each owner of any lot becoming an owner of any lot or by acceptance of a deed relating thereto or by acceptance of any other document or instrument conveying an ownership interest therein, whether or not it shall be so expressed in any such deed or other document or instrument, is and shall be deemed to covenant and agree to pay to the Association the assessments provided for herein, and agrees to the enforcement of the assessments in the manner herein specified. In the event the Association employs an attorney or attorneys for collection of any assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, or for any other purpose in connection with the breach of this Declaration, each owner agrees to pay reasonable attorneys' fees and costs thereby incurred in addition to any other amounts due from the owner or any other relief or remedy obtained against said owner. In the event of a default in payment of any such assessment when due, in which case the assessment shall be deemed delinquent, and in addition to any other remedies herein or by law provided, the Association may enforce each such obligation in any manner provided by law or in equity, or without any limitation of the foregoing, by either or both of the following procedures:

- a. ENFORCEMENT BY SUIT. The Association may bring a suit at law against each owner or owners to enforce each such assessment obligation. Each owner agrees that any judgment rendered in any such action shall include a sum for reasonable attorneys' fees in such amount as the court may adjudge against the defaulting owner, plus all Court costs and necessary expenses and accounting fees incurred by the Association, plus interest on the amount of said assessment at the maximum legal rate allowed by law from the date the assessment becomes delinquent until paid in full.
- b. ENFORCEMENT BY LIEN. The Association shall give notice to each lot owner whose assessment is due and unpaid by mailing to said owner a copy of the notice and claim of lien which shall state the following:
 - 1. The last known name of the delinquent owner;
 - 2. The legal description and street address of the lot against which claim of lien is made;
 - 3. The amount claimed to be due and owing (with any offset allowed);
 - 4. That the claim of lien is made by the Association pursuant to the terms of

