### **FOURTH AMENDED AND RESTATED**

### **CONDOMINIUM DECLARATION AND**

**COVENANTS, CONDITIONS AND RESTRICTIONS**

**FOR**

**THE CITYSIDE LOFTS CONDOMINIUMS**

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**CONDOMINIUM DECLARATION**

**AND COVENANTS, CONDITIONS AND RESTRICTIONS FOR**

**THE CITYSIDE LOFTS CONDOMINIUMS**

 THIS FOURTH AMENDED AND RESTATED CONDOMINIUM DECLARATION AND COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE CITYSIDE LOFTS CONDOMINIUMS (this “Declaration”) is made effective as of the \_\_\_ day of \_\_\_\_\_\_\_\_\_\_ 2023, by CitySide Lofts Condominium Association, Inc. (the “Declarant”), an Idaho corporation.

 This Declaration amends and restates, and supersedes it in its entirety, that certain Third Amended and Restated Declaration and Covenants, Conditions and Restrictions for the CitySide Lofts Condominiums, recorded as Instrument No. 2016-019834 in the official records of Ada County, Idaho.

# ARTICLE 1. PROPERTY AS CONDOMINIUM PROJECT.

CitySide Lofts, LLC, (the “Original Declarant”) created a condominium project pursuant to the Condominium Property Act, Idaho Code 55-1500 *et seq*., which is more particularly described on Exhibit A, attached hereto and made a part hereof, and as shown on the Plat of The CitySide Lofts Condominiums recorded June 7, 2006, in Book 95 of Plats at Pages 11697-11709, Instrument No. 106090204, official records of Ada County, Idaho, a copy of which is set out as Exhibit B, attached hereto and made a part hereof, as the same may be amended, modified or supplemented from time to time in accordance with this Declaration (the “Plat”). The Property, together with all the improvements and structures now or hereafter placed on the Property, are sometimes referred to as the “Project” in this Declaration.

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

# ARTICLE 2. DEFINITIONS.

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

 2.2 “Assessment” means a share of the funds required for the payment of common expenses, including Regular, Special and Limited Assessments as more particularly described in Article 8 hereof.

 2.3 “Association” means CitySide Lofts Condominium Association, Inc., an Idaho nonprofit corporation, its successors and assigns.

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

 2.5 “Board” and “Board of Directors” mean those persons who, as a group, serve as the board of directors of the Association.

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

 2.7 “Common Area” means the common areas and facilities as described in Section 3.6 hereto. For purposes of this Declaration, references to Common Area shall include Limited Common Areas where applicable.

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

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

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

2.11 “Eligible Mortgagee” means the holder of a valid first priority mortgage or deed of trust on a Unit who has given written notice to the Association stating its name, address and the Unit subject to its mortgage or deed of trust.

2.12 “Limited Assessment” means an assessment levied against an Owner by the Association for costs and expenses incurred by the Association for the construction, installation, maintenance, repair and replacement of Common Area and/or Limited Common Area, and equipment and facilities located thereon, including any corrective action necessitated due to damage by the negligent or willful acts or omissions of any Owner or occupant of a Unit who is occupying a Unit with the consent, either express or implied, of such Owner, as more particularly described in Section 8.7 herein.

2.13 “Limited Common Area” means those portions of the Common Area designated for the exclusive use of an Owner or Owners to the exclusion, limitation or restriction of other Owners. Limited Common Area may be established from time to time by the Board on any portion of the Property by describing such area on a recorded Plat, by granting or reserving it in a deed or other instrument, by designating it as such in this Declaration or by recording an amendment to this Declaration. Without limiting the foregoing, fifth-floor roof top decks adjacent to Units 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418 and 419, the parking stalls and storage units located in the underground parking facility and the parking stalls on the surface parking deck shall be Limited Common Area. Notwithstanding anything the contrary contained in this Declaration, the Association may, in its sole discretion, grant exclusive easements to any or all of the Owners of Units 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418 and 419 for the specific purpose of expanding the Limited Common Area of their fifth-floor roof top decks as set forth in Section 4.4 of this Declaration.

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

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

2.16 “Regular Assessment” means an assessment by the Association to provide for the payment of all estimated expenses arising from or connected with the Project as a whole, as more particularly described in Section 8.5 herein.

2.17 “Special Assessment” means an assessment by the Association for the purpose of defraying, in whole or in part, the costs of any new acquisitions and/or new capital improvement, construction or reconstruction or unexpected or extraordinary repair, maintenance or replacement of the Project or any part thereof, or for any expense incurred as provided in this Declaration, or in the event that the Assessment assessed for any particular year is or will become inadequate to meet the expenses of the Association, such assessment being authorized pursuant to the terms and conditions provided herein, as more particularly described in Section 8.6.

2.18 “Transition Date” was the date upon which the authority and responsibility to administer and manage the Association and the project, subject to this Declaration and the Bylaws, passed to the Association. The Transition Date occurred on the one hundred twentieth (120th) day after closing by Original Declarant of the first sale of a Unit to a bona fide purchaser.

2.19 “Unit” means the separate interest in a Condominium as depicted on the Plat. For purposes of this Declaration, a Unit consists of the space designated by that Unit’s designation on the Plat that is bounded by the undecorated interior surfaces of the perimeter walls, the unfinished surface of the floors, and the unfinished interior surface of the ceilings, all projected, if necessary by reason of structural divisions such as interior walls and partitions, to constitute complete enclosures of space, and all improvements within that space. Without limiting the generality of the foregoing, or, as appropriate, in addition, each Unit shall include: (1) the decorated surfaces, including paint, lacquer, varnish, wall covering, tile and other finishing materials applied to floors, ceilings, and interior and perimeter walls, carpeting, if any, and also the floors and ceilings themselves, and the drywall, paneling and other finishing wall material; (2) all windows, skylights, if any, and screens and doors, including storm doors and windows, if any, and the frames, sashes and jambs, and the hardware therefor; (3) all fixtures and appliances installed for the exclusive use of that Unit, commencing at the point of disconnection from the structural body of the building and from utility pipes, lines or systems serving the entire building or more than one Unit thereof, including, without limiting the generality hereof, countertops, built-in cabinets, dishwashers, garbage disposal units, refrigerators, stoves and hoods, television antennas and cables, furnaces, hot water heaters, heat pumps, air conditioning units (even though located outside the bounds of a Unit), and components of the foregoing, if any; (4) all plumbing, electric, heating, cooling and other utility or service lines, pipes, wires, ducts, conduits and apparatus, wherever located, which serve only that Unit; (5) all control knobs, switches, thermostats and electrical outlets and connections affixed to or projecting from the walls, floors and ceilings which service either the Unit or the fixtures located therein; (6) all interior walls that are not necessary for support of the structure, and all components thereof and all space encompassed thereby; (7) the portion of fireplaces actually within the interior of a Unit, and fireplace vents or chases, if any; (8) the attic space or storage space above a Unit, if any, to which the Unit has direct and exclusive access; and (9) the elevator located within and exclusively serving the Unit, including all equipment and components of which serve such elevator wherever located, if any; excluding therefrom, however, all of the following items, whether or not located within the bounds of that Unit: (1) any supporting element of the building contained in the interior walls; (2) all plumbing, electric, heating, cooling and other utility or service lines, pipes, sump pumps and accessories thereto, wires, ducts and conduits which serve any other Unit; and (3) fireplace brick chimneys, if any.

# ARTICLE 3. CONDOMINIUM OWNERSHIP.

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

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

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

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

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

3.6 Common Area. The Common Area consists of the Property, excluding each Unit and such other improvements or portions of the Project as designated by the Association.

3.7 Parking Stalls. As provided in Section 2.13, the parking stalls located in the underground parking facility and on the surface parking deck shall be Limited Common Area. The location/numbering scheme of parking stalls is set forth on the attached Exhibit F. The Association shall maintain a written record of all of the parking stalls and the Unit for which each parking stall serves as Limited Common Area (the “Parking Stall List”). Subject to the Association Rules, only the Owner of the Unit for which a parking stall is designated as Limited Common Area on the Parking Stall List may use such parking stall. Upon an Owner’s sale of a Unit, the right to use a parking stall or stalls as Limited Common Area for such Unit shall transfer to the successor Owner of such Unit. Owners may swap parking stalls that serve as a Limited Common Area for their Units; provided, any such swap of parking stalls between Unit Owners must first be approved by the Board in writing and shall be subject to the Board’s reasonable discretion. Upon the making of an approved swap of parking stalls, the Association shall update the Parking Stall List. Upon written request, the Association shall provide an Owner with the then current Parking Stall List, certified by the Association as complete and correct.

3.8 Storage Units. As provided in Section 2.13, the storage units located in the underground parking facility shall be Limited Common Area. The location/numbering scheme for storage units is set forth on the attached Exhibit F. The Association shall maintain a written record of all of the storage units and the Unit for which each storage unit serves as Limited Common Area (the “Storage Unit List”). Subject to the Association Rules, only the Owner of the Unit for which a storage unit is designated as Limited Common Area may use such storage unit. Upon an Owner’s sale of a Unit, the right to use a storage unit or units as Limited Common Area for such Unit (if any) shall transfer to the successor Owner of such Unit. Owners may swap storage units that serve as a Limited Common Area for their Units; provided, any such swap of storage units between Unit Owners must first be approved by the Board in writing and shall be subject to the Board’s reasonable discretion. Upon the making of an approved swap of storage units, the Association shall update the Storage Unit List. In addition, an Owner may transfer its rights to a storage unit to an Owner of a Unit who does not already have a storage unit designated for its Unit; provided, any such transfer of rights between Owners must first be approved by the Board in writing and subject to the Board's reasonable discretion. In no case may more than one (1) storage unit be assigned to any Unit. Upon written request, the Association shall provide an Owner with the then current Storage Unit List, certified by the Association as complete and correct.

## ARTICLE 4. EASEMENTS.

 4.1 Easements of Enjoyment; Limitations. Each Owner shall have a right and easement of enjoyment in, over and upon the Common Areas and an unrestricted right of access to and from such Owner’s Unit, which rights and easements shall be appurtenant to and shall pass with title to a Unit, subject to the right of the Board to make the Association Rules concerning the use and management of the Common Areas and the Limited Common Areas; provided, however, that each Owner, and their tenants, guests and invitees, shall have vehicular access to and from the Parking Facilities, the Common Areas and an Owner’s Unit only from adjacent West Grand Avenue, and provided further that, except as may be allowed by separate written agreement, no vehicular access to and from the Parking Facilities, Common Areas and an Owner’s Unit shall be allowed through or upon the adjacent private parking areas and the Myrtle Street entrance to such adjacent private parking areas. Any such non-authorized vehicular access through adjacent private properties is strictly prohibited. Violators of this prohibition may be subject to fines, penalties and other sanctions as determined by the Board. Notwithstanding anything above to the contrary, no Association Rules shall limit or prohibit the right of vehicular ingress and egress to a Unit or to that Unit’s parking facilities and common areas so long as such vehicular access is only from West Grand Avenue. Each Owner shall be deemed to have delegated that Owner’s right of enjoyment to the Common Areas and to ingress and egress to the occupant of that Owner’s Unit.

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

 4.3 Easements of Access for Repair, Maintenance and Emergencies. The Association shall have a right of entry to, over, upon and through all of the Project, including each Unit and the Limited Common Areas, to enable the Association to perform its obligations, rights and duties pursuant to this Declaration with regard to maintenance, repair, restoration and/or servicing of any items, things or areas of or in the Project. Without limiting the foregoing, the Association shall have the right of entry to each Unit and the Limited Common Areas in the event of emergencies. The Association shall maintain a master key system to allow for entry to the Units pursuant to this Declaration, with a copy of the master key(s) kept on the Property for use by the fire department and emergency services. If any Owner rekeys or otherwise changes the locks to their Unit, Owner shall ensure that the new or changed locks will continue to support access to the Unit using the master key. In the event of an emergency, the Association’s right of entry to a Unit and its appurtenant Limited Common Areas may be exercised without notice; otherwise, the Association shall give the Owner or occupant of a Unit no less than twenty-four hours advance notice prior to entering a Unit or its appurtenant Limited Common Areas. Damage to any part of a Unit or Units resulting from the maintenance, repair, emergency repair or replacement of any of the Common Area shall be an expense of all of the Owners; provided, however, that if such damage is the result of the negligence of an Owner or such Owner’s invitees, licensees or lessees of a Unit, then such Owner shall be financially responsible for all of such damage. Such damage shall be repaired and the Unit shall be restored substantially to the same condition as existed prior to the damage. Amounts owing by Owners pursuant hereto shall be collected by the Association as an Assessment pursuant to Section 9 herein.

 4.4 Association’s Right to Use of Common Area. The Association shall have a nonexclusive easement to make such use of the Common Area as may be necessary or appropriate to perform its duties and functions pursuant to this Declaration, including the right to grant access easements, utility easements, alter the Common Areas, and construct and maintain maintenance and storage facilities in the Common Area for use by the Association. The Association shall have the right, in its sole discretion, to grant exclusive easements to any or all of the Owners of Units 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418 and 419 for the specific purpose of expanding the Limited Common Area of the fifth-floor roof top decks appurtenant to these Units, subject to the Architectural Control provisions of Section 6.12 and any relevant Association guidelines.  The construction of such expansion shall be at the sole expense of each Owner and shall not extend beyond the roof boundary of the fourth floor of their own Unit, nor shall it extend into the existing recreational Common Area on the fifth floor near the elevator or into the corresponding emergency exit walkways to and from each stairway.  Any Owner expanding its fifth-floor roof top deck shall indemnify and hold the Association and the other Owners harmless for any damage or liability arising from or related to such construction or the usage of such expanded deck.

 4.5 Easement for Support. Every portion of a building or utility line or any improvement on any portion of the Project contributing to the support of another building, utility line or improvement on another portion of the Project shall be burdened with an easement of support for the benefit of all other such buildings, utility lines, and improvements of the Project.

 4.6 Emergency Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and all other similar emergency agencies or persons to enter upon all streets and property within the Project in the proper performance of their duties. The easement granted herein is recognized to be a condition of platting the Property imposed by the City of Boise. Such easement shall not be dissolved or altered in any material way that would prevent its beneficial use for its intended purpose without the written consent of the City of Boise.

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

4.8 Easements Reserved to Original Declarant. More than six years has elapsed since the closing of the first sale of a Unit to a bona fide purchaser, and no original warranties remain in-force. As such, no non-exclusive easements remain in reserve for the original Declarant.

4.9 Easements Deemed Created. All conveyances of Condominiums hereafter made shall be construed to grant and reserve the easements set forth in this Article 4 even though no specific reference to such easements appear in any such conveyance.

# ARTICLE 5. DESCRIPTION OF A CONDOMINIUM.

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

Condominium Unit \_\_\_\_, as shown on the Plat of The CitySide Lofts Condominiums recorded June 7, 2006, in Book 95 of Plats at Pages 11697-11709, as Instrument No. 106090204, official records of Ada County, Idaho, as said plat may be amended or supplemented from time to time, and as defined in the Fourth Amended and Restated Condominium Declaration and Covenants, Conditions and Restrictions for The CitySide Lofts Condominiums, recorded as Instrument No. \_\_\_\_\_\_\_\_\_\_, official records of Ada County, Idaho, as said declaration may be amended or supplemented from time to time.

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

# ARTICLE 6. USE OF CONDOMINIUMS.

 6.1 Unit Uses. Except as otherwise specifically provided in this Declaration, no Unit shall be used for any purpose other than that of a residence for individual living together as a single housekeeping unit, and uses customarily incidental thereto; provided, however, that no Unit may be used as a rooming house, group home, commercial foster home, fraternity or sorority house, or any similar type of lodging, care or treatment facility. Notwithstanding the foregoing: (1) an occupant maintaining a personal or professional library, keeping personal business or professional records or accounts, conducting personal business (provided that such use does not involve customers, employees, licensees or invitees coming to the Unit), making professional telephone calls or corresponding in or from a Unit, is engaging in a use expressly declared customarily incidental to residential use and is not in violation of these restrictions; (2) as more than six years has elapsed since the closing of the first sale of a Unit in the original building to a bona fide purchaser, and as more than six years has elapsed since the closing of the first sale of a Unit to a bona fide purchaser in the Additional Property, no Units, nor a portion or portions of the Common Areas, may be used by the original Declarant as sales and/or rental models and offices, nor for storage and/or maintenance purposes; and (3) one or more Units or a portion thereof, or a portion or portions of the Common Area, may be maintained for use by the Association in fulfilling its responsibilities.

 6.2 Owner Maintenance Obligations. Each Owner shall repair and maintain its Unit or Units owned, and all components thereof, and perform cleaning and housekeeping with respect to Limited Common Areas appurtenant to its Unit or Units. Without limiting the generality of the foregoing, an Owner’s repair and maintenance obligation shall include repair, maintenance and replacement of all windows, screens and doors, including the frames, sashes and jambs, and the hardware therefor. In the event an Owner shall fail to make a repair or perform maintenance required of that Owner, or in the event the need for repair or maintenance of any part of the Common Areas or Limited Common Areas is caused by the negligent or intentional act of an Owner or occupant, or is as a result of the failure of any Owner or its predecessor in title to timely pursue to conclusion a claim under any warranty, express, implied or imposed by law, the Association perform the same, and if the cost of such repair or maintenance is not covered by insurance, whether because of a deductible or otherwise, the costs thereof shall constitute a Special Assessment on such Owner’s Unit. The determination that such repair or maintenance is necessary, or has been so caused, shall be made by the Board.

 6.3 Obstructions of Common Area. There shall be no obstruction of the Common Area, nor shall anything be stored on any part of the Common Area without the prior written consent of the Board. The Board may direct that any vehicle, equipment or other thing improperly kept in the Common Area be removed, and if it is not removed, the Board may cause it to be removed at the risk and expense of the owner thereof. Nothing shall be altered on, planted in, constructed on, or removed from the Common Area except upon the prior written consent of the Board, including, without limitation, personal decorations placed in interior hallways.

6.4 Prohibition of Certain Activities; Indemnity. Without the prior written consent of the Board, nothing shall be done or kept in any Unit or in the Common Area or any part thereof which would: (1) result in the cancellation of or increase in the rate of the insurance on the Project or any part thereof; or (2) be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of, the Common Area or any part thereof shall be committed by any Owner, licensee, guest, or other occupant, or any invitee of any Owner, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste. No noxious, destructive or offensive activity shall be carried on in any Unit or in the Common Area or any part thereof and nothing shall be done therein which may be or may become an annoyance or nuisance to any other Owner or to any person at any time lawfully residing in a Unit. CitySide Lofts buildings 406 and 412 are non-smoking buildings. No smoking is allowed anywhere in the Common Areas and/or the Limited Common Area or within thirty (30) feet of any entrance to the buildings. This includes, but is not limited to, cigarettes, e cigarettes, vaping devices, pipes and/or cigars. Without limiting the generality of the foregoing, refuse, garbage, trash, equipment, gas canisters, propane gas tanks, barbecue equipment, heat pumps, compressors, containers, lumber, firewood, grass, shrub or tree clippings, plant waste, metals, bulk material, and scrap shall be kept at all times in such containers (or otherwise screened) and in areas approved by the Board.

6.5 Visible Areas. Nothing shall be caused or permitted to be hung or displayed on the outside or inside of windows (except interior inoffensive drapes, curtains, or louvered blinds which, from exterior observances, must be white, beige or gray, or as otherwise authorized by the Board) or placed on the outside walls of a building or otherwise outside of a Unit, or any part thereof. No awning, canopy, shutter or television or citizens band or other radio antenna or transmitter, or any other device or ornament, shall be affixed to or placed upon an exterior wall or roof or any part thereof, or the exterior or any door or window, or in, on, or over a patio, porch or balcony, visible to the exterior unless authorized by the Board or required by applicable law to be permitted, but, in such case, subject to such lawful rules and regulations as the Board may adopt.

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

 6.7 Signs. No signs of any kind, including, without limitation, “for sale” and “open house” signs or commercial signs, shall be displayed on or from any portion of the Property without the consent of the Board.

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

6.9 Renting and Leasing.  In order to maintain the character of the Project as primarily a housing community for owner-occupants, and to assure that the Project meets the requirements of institutional first mortgagees, institutional and governmental agency guarantors, and mortgage insurers necessary to qualify buyers and Owners and/or the Project for owner-occupant residential financing, no more than thirty percent (30%) of the total Units shall be leased at all times, in accordance with the terms of this Section.

6.9.1 Approval to Lease.  The Association shall maintain a list of Units that are leased.  If an Owner desires to lease a Unit, such Owner shall provide written notice to the Association at least thirty (30) days prior to the proposed commencement date of any such lease.  If the Association receives notice of intent to lease a Unit from an Owner, and such lease will not increase the number of leased Units above the thirty percent (30%) maximum limit, then the Association shall provide written notice of the approval of such lease to the requesting Owner.

6.9.2 Leasing Wait List.  If the Association receives a notice of intent to lease a Unit from an Owner, and the number of Owner-occupied Units is or would be more than the thirty percent (30%) maximum limit, the Owner providing such notice of intent to lease shall be notified by the Association that the thirty percent (30%) maximum limit is exceeded.  The Association shall maintain a list of Owners that sought permission to lease their Units but were unable to do so due to the thirty percent (30%) maximum limit, which list shall be maintained according to the date of each Owner’s request to lease.

6.9.3 Lease Agreements; Restrictions.  Any lease agreement for a Unit shall be in writing, shall provide that the lease is and shall be subject in all respects to the provisions of the Condominium Documents, shall be for a term of not less than one (1) calendar month, and shall provide that the failure by the tenant to comply with the terms of the Condominium Documents shall be a default under the lease.  Prior to the commencement of the term of a lease the Owner shall notify the Board, in writing, of the name or names of the tenants and the time during which the lease term shall be in effect.  No lease may be of less than an entire Unit.  No Unit or part thereof shall be rented or used for transient or hotel purposes, which is defined as: (1) rental under which occupants are provided customary hotel services such as room service, laundry service and similar services; or (2) rental to roomers or boarders, defined as rental to one or more persons of a portion of a Unit only.  If an Owner leases a Unit in violation of the restrictions set forth in this Section or otherwise fails to comply with this Section, such Owner shall be in default of this Declaration, and shall indemnify, defend and hold harmless the Association and the other Owners from and against any and all claims, loss or damage arising from or related to such violation.

6.9.4 Re-Leasing; Change of Tenants.  At least thirty (30) days prior to the expiration of an existing lease of a Unit, or within five (5) days of the termination of an existing lease, the Owner of such Unit shall notify the Association of such expiration or termination.  Additionally, the Owner shall at that time provide written notice to the Association of its intent to either re-lease the Unit to another tenant or to be removed from the list of Units approved for leasing.  If an Owner does not lease its Unit within ninety (90) days of such expiration or termination date, the Association's approval for such Owner to lease its Unit shall be revoked, and the Association shall notify the next Owner on the Leasing Wait List (if any). Owners who have had their approval revoked pursuant to this Section 6.9.4 may resubmit a new request to the Association for a new approval subject to Section 6.9.1.

6.9.5 Lease Opportunity Notice.  If the number of leased Units falls below the thirty percent (30%) maximum limit, the Association shall provide the first Owner on the Leasing Wait List (if any) with notice of the ability to lease such Owner’s Unit (the “Lease Opportunity Notice”).   If an Owner declines to lease its Unit or does not lease its Unit within ninety (90) days of receipt of a Lease Opportunity Notice, the Association's approval for such Owner to lease its Unit shall be revoked, and the Association shall notify the next Owner on the Leasing Wait List (if any). Owners who have had their approval revoked pursuant to this Section 6.9.5 may resubmit a new request to the Association for a new approval subject to Section 6.9.1.

6.9.6 Exceptions for Hardship, Familial Relationships.  In cases of extreme hardship, including but not limited to disability, job loss, temporary job relocation, military service, divorce, etc., the Association may, in its sole discretion, make an exception to the rental restriction and temporarily authorize an Owner to lease its Unit.  The Association may also, in its sole discretion, waive the rental restriction for tenants who are immediate family members such as a parent or child.

6.9.7 Exclusions from Rental Restrictions.  Notwithstanding anything to the contrary contained in this Declaration, the rental restrictions set forth Section 6.9 and its subsections, shall not be applicable to: (1) an institutional first mortgagee, insurer, guarantor which takes title to a Unit by deed in lieu of foreclosure, or a purchaser at a foreclosure sale, or the immediate successor in title to the Unit of that institutional first mortgagee, insurer, guarantor or purchaser, that rents the Unit(s) so acquired, (2) a third party who purchased more than two (2) Units from the Original Declarant, which Units are held for investment purposes, that elects to rent such Units, or (3) any Owner that is a principal or member of the Original Declarant, or otherwise directly or indirectly owns an interest in the Original Declarant, that rents a Unit or Units owned by such Owner.

6.10 Replacements. Any building erected to replace an existing building containing Units shall be of new construction, be of comparable structure type, size, design and construction to that replaced, and shall contain a like number of Units of comparable size to the Units in the building replaced.

6.11 Structural Integrity. Nothing shall be done in any Unit, or in, on or to the Common Areas or Limited Common Areas, which may impair the structural integrity of any improvement.

6.12 Architectural Control. No building, fence, wall, sign or other structure or improvement shall be commenced, erected or maintained upon the Project, or any part thereof, nor shall any interior remodel or exterior addition to or change or alteration be made to any Unit, until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing by the Board or its designated representative or representatives, in its or their sole discretion. Nothing visible to the exterior shall be permitted to be hung, placed, displayed or maintained in Limited Common Areas unless approved in writing by the Board or its designated representative or representatives, in its or their sole discretion, or unless the same is authorized by existing Association Rules. Notwithstanding any repair or maintenance provision contained herein to the contrary, the Board may require, as a condition to approval, that: (1) the responsibility for repairing and maintaining the addition or improvement shall be the responsibility of the requesting Owner and its successors and assigns; and (2) that the requesting Owner take reasonable steps designated by the Board to cause the construction of the addition or improvement to not unreasonably interfere with the occupants of other Units.

# ARTICLE 7. ASSOCIATION OF UNIT OWNERS.

 7.1 Creation. The Association shall be organized and operated in accordance with the Condominium Documents to carry out and enforce the restrictions set forth in this Declaration.

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

 7.2 Voting Rights in the Association. Except as otherwise provided in this Declaration or the Association’s Articles and Bylaws, a matter submitted to a vote of the Members shall be deemed approved if the number of votes in favor of such matter exceed those against such matter. As provided in the Association’s Articles, the Association shall have one (1) class of voting membership. Each Member shall be entitled to one (1) vote for each Unit in which it holds the interest required for membership in the Association. When more than one (1) person holds such interest in any Condominium, all such persons shall be Members, but all such persons shall be entitled to a single vote with respect to such Unit and in no event shall the vote cast with respect to any Unit be split.

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

 7.4 Powers and Duties of the Association.

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

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

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

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

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

 7.4.1.5 Emergency Powers. The power to enter upon any Unit and take any corrective action as necessary in connection with any maintenance or construction for which it is responsible, or when necessitated by violation of this Declaration or Association Rules, or in the event of any emergency involving illness or potential danger to life or property. Such entry shall be made with the Association’s master key with as little inconvenience to the Owners as practicable and any damage caused thereby shall be repaired by the Association, except as otherwise provided herein.

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

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

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

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

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

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

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

 7.4.2.1 Operation and Maintenance of Common Area and Limited Common Area. The Association, to the extent and at such times as the Board, in its exercise of business judgment, determines to allocate funds therefor, shall maintain, repair and replace all improvements constituting a part of the Common Areas, including the Limited Common Areas, and including but not limited to utility facilities serving more than one Unit, utility lines in the Common Areas, lawns, shrubs, trees, walkways, drives, parking areas, fireplace brick chimneys, and the structural portions and exterior portions of all buildings and improvements which are a part of the Common Areas, including the Limited Common Areas, and that do not constitute part of a Unit, provided that the Association shall not be responsible for the cleaning and housekeeping of Limited Common Areas or components thereof. The Association shall maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements that are a part of the Common Areas, including the Limited Common Areas. Except to the extent, if any, that a loss is covered by insurance maintained by the Association, the Association shall not have a responsibility to repair or maintain any Unit, or component thereof, of personal property within a Unit.

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

 7.4.2.3 Water and Other Utilities. Acquire, provide and/or pay for water, pressurized irrigation system water and maintenance, storm drainage system maintenance, sewer, garbage, disposal, refuse and rubbish collection and other necessary services for the Common Area and Units.

 7.4.2.4 Insurance. Obtain, from reputable insurance companies authorized to do business in the State of Idaho and maintain in effect the policies of insurance described in Article 10 hereof.

 7.4.2.5 Storm Water Drainage System. The Association shall maintain, repair and replace all improvements and components comprising the storm water and drainage system located on and/or serving the Property.

 7.5 Maintenance of Records and Right of Inspection. The Association shall keep and maintain at its principal place of business, current copies of the Condominium Documents, any rules and regulations applicable to the Property and its books, records and financial statements. The membership register, books of account and minutes of meetings of the Board and committees of the Association shall be made available for inspection and copying by any Owner at the Owner’s expense, or by such Owner’s duly appointed representatives, and by any Eligible Mortgagee at any reasonable time and for a purpose reasonably related to such Owner’s interest as an Owner or such Eligible Mortgagee’s interest at the office of the Association or at such other place as the Board shall prescribe. No Owner or any other person shall copy the membership register for the purposes of solicitation of or direct mailing to any Owner. Upon written request to the Association, any Eligible Mortgagee may have an audited financial statement of the Association prepared at such Eligible Mortgagee’s sole cost and expense (including, without limitation, compensation for any actual costs incurred by the Association in responding to any such audit request).

 7.6 Registered Agent and Office for Association. DS Property Management, Inc. is hereby designated as the registered agent of the Association to receive service of process for the purposes provided in the Condominium Act. The Board may at any time designate a different agent for such purpose pursuant to the Condominium Act.

**ARTICLE 8.** **ASSESSMENTS.**

 8.1 Covenants to Pay Assessments. By acceptance of a deed to any Condominium, each Owner of such Condominium thereby covenants and agrees to pay when due all Assessments or charges made by the Association against such Owner pursuant to the provisions of this Article 8 and this Declaration. The due date, manner and method of payment shall be as set forth in this Declaration or as established by the Board from time to time.

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

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

 8.4 Assessment is Personal Obligation. Each of the Assessments, together with interest, costs and reasonable attorneys’ fees, shall also be the personal obligation of the Owner of such property at the time such Assessments fall due. Notwithstanding the foregoing, a purchaser of a Condominium (other than an Eligible Mortgagee foreclosing on a deed of trust or mortgage, or taking title to a Unit in lieu of foreclosure) shall be jointly and severally liable with the seller for all unpaid assessments against the Condominium up to the time of grant or conveyance without prejudice to the purchaser’s right to recover from the seller the amount paid by the purchaser for such Assessments.

 8.5 Regular Assessments.

 8.5.1 Purpose of Regular Assessments. The proceeds from Regular Assessments are to be used to pay for all costs and expenses incurred by the Association, including legal and attorneys’ fees and other professional fees, for the conduct of its affairs as provided in the Condominium Documents, including without limitation the costs and expenses of construction, improvement, protection, maintenance, repair, management and operation of the Common Area or furnishing utility services, including water and sewer, and other common services to each Unit, any deficit remaining from previous periods, a management contingency reserve, and an amount allocated to an adequate reserve fund to be used for repairs, replacement, maintenance and improvement of those elements of the Common Area, or other property of the Association that must be replaced and maintained on a regular basis (collectively the “Expenses”). The Association reserves the right to separately meter utility services provided to each Condominium, and in such event the Owner of the Condominium shall be fully responsible for the costs of providing utilities for the Owner’s individual use.

 8.5.2 Computation of Regular Assessments. Unless otherwise determined by the Board, the Board shall compute and forecast the amount of its Expenses and Regular Assessments on an annual basis. The computation of Regular Assessments shall take place not less than thirty (30) nor more than sixty (60) days before the beginning of each fiscal year of the Association. Notwithstanding the foregoing, the computation of Regular Assessments shall be completed in good faith and shall be valid upon completion. Any increase in regular assessments of twenty-five percent (25%) or more from the regular assessments from the previous year must be approved by at least fifty-one percent (51%) of the Eligible Mortgagees.

 8.6 Special Assessments. In addition to the Regular Assessments authorized above, the Association acting through the Board may levy Special Assessments for the purpose of defraying, in whole or in part, the costs of any construction, reconstruction, or repair of the Common Area or replacement of a capital improvement in the Common Area or for which the Association is responsible, including, without limitation, fixtures and personal property related thereto. Special Assessments shall be levied on the same basis as Regular Assessments and shall be subject to the limitations contained in this Article 8; provided, however, that such limitations shall not apply to Special Assessments levied by the Board for expenses incurred in bringing an Owner or Owner’s Unit into compliance with the provisions of the Condominium Documents.

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

 8.8 Notice and Assessment Due Date. Unless the Board establishes a different schedule for the payment of Regular Assessments, the Regular Assessment shall be paid in monthly installments. Each Regular Assessment shall become delinquent unless paid prior to the tenth (10th) of the month, without prior notice or demand from the Association, so long as Regular Assessments are paid monthly. Each Special Assessment shall become delinquent unless paid within ten (10) days after the Association’s delivery of notice thereof to an Owner. There shall accrue, with each delinquent payment a single late charge of ten percent (10%) of the delinquent installment. In addition, each installment payment which is delinquent for more than twenty (20) days shall accrue interest at the lesser of (1) twelve percent (12%) per annum or (2) the maximum rate allowed by law calculated from the date of delinquency to and including the date full payment is received by the Association. The Association may bring an action against any delinquent Owner and may foreclose the lien against such Owner’s Condominium as more fully provided herein.

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

**ARTICLE 9. ENFORCEMENT OF ASSESSMENTS; LIENS.**

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

 9.2 Assessment Liens.

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

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

 9.3 Method of Foreclosure. Such lien may be foreclosed by appropriate action in court or by sale by the Association, its attorney or other person authorized to make the sale. Such sale shall be conducted in accordance with the provisions of the Idaho Code applicable to the exercise of powers of sale in deeds of trust or any other manner permitted by law. The Board is hereby authorized to appoint its attorney, any officer or director of the Association, or any title company authorized to do business in Idaho as trustee for the purpose of conducting such power of sale or foreclosure.

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

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

 9.6 Rights of Eligible Mortgagees. Notwithstanding any other provision of this Declaration, no amendment of this Declaration shall operate to defeat the rights of an Eligible Mortgagee upon a Condominium made in good faith and for value, and recorded prior to the recordation of such amendment.

**ARTICLE 10. INSURANCE.**

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

 10.1.1 Casualty Insurance. The Association shall obtain and maintain insurance for all Units, which shall expressly include all fixtures, appliances, and improvements that are contained within or are a part of each Unit, but shall expressly exclude the increased value (if any) of any betterments and/or alterations in each Unit above those improvements used to establish the replacement value for each respective Unit, and all buildings, structures, fixtures and equipment, and common personal property and supplies now or at any time hereafter constituting a part of the Common Areas, Limited Common Areas, or common property of the Association, including, without limitation, foundations, footings, roofs, interior and exterior finishes, electrical, mechanical, utilities, site, parking garage and landscaping improvements of any nature, against loss or damage by fire, lightning, and such other perils as are ordinarily covered with respect to project similar in construction, location and use, including all perils normally covered by the standard “all risk” endorsement, where such is available, issued in the locate of the Project, or, if the policy does not include an “all risk” endorsement, a policy that includes “broad form” covered causes of loss, in amounts at all times sufficient to prevent the Owners from becoming co-insurers under the terms of any applicable coinsurance clause or provision and not less than one hundred percent (100%) of the current insurable replacement cost of such items (exclusive of land, foundations, footings, excavations, and other items normally excluded from coverage). The casualty insurance required by this Section 10.1.1 shall include an allowance for demolition and debris removal in an amount not less than five percent (5%) of the total replacement cost set forth in the policy.

 10.1.2 Public Liability and Property Damage Insurance. The Association shall obtain and maintain broad form comprehensive liability coverage in such amounts and in such forms as it deems advisable to provide adequate protection, but in any event with policy limits of no less than One Million Dollars ($1,000,000) per occurrence for bodily or property damage. 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.

10.1.3 Workers Compensation and Employer’s Liability Insurance. The Association shall obtain and maintain workers compensation and employer’s liability insurance and all other similar insurance in respect to employees of the Association in the amounts and in the forms now or hereafter required by law. Contractors providing services for the Association shall be required to provide proof of workers compensation and liability insurance prior to working on the Project.

10.1.4 Fidelity Insurance; Director and Officer. The Association shall obtain and maintain in such amounts and in such forms as it shall deem appropriate coverage against liability of its officers and directors, dishonesty of employees, destruction or disappearance of money or securities, and forgery, but in any event with policy limits for the maximum amount of funds handled by the Association and its agents and representatives.

10.1.5 Other. The Association may obtain and maintain 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.

 10.2 Form. Each policy shall provide that it cannot be canceled by either the insured or the insurance company until after ten (10) days’ prior written notice is first given to each Owner. All policies of insurance shall provide that the insurance thereunder shall be invalidated or suspended only in respect to the interest of any particular Owner guilty of breach of warranty, act, omission, negligence or noncompliance with any provision of such policy, including payment of the insurance premium applicable to that Owner’s interest or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy. All policies of insurance shall provide further that the insurance under such policy as to the interest of all other insured Owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect.

 Public liability and property damage insurance shall name the Association as the insured, with the Association 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 Common Areas.

 10.3 Insurance Proceeds. The Association shall receive the proceeds of any casualty insurance payments received under policies obtained and maintained by the Association pursuant to Article 10.

 10.4 Owner’s Own Insurance. Each Owner shall be responsible for obtaining and maintaining insurance coverage for such Owner’s general liability with respect to his or her Unit (as defined in Section 2.19), any personal property located within such Unit, and the increased value (if any) of any betterments and/or alterations made to such Owner’s Unit above those improvements used to establish the replacement value for such Owner’s Unit. Any Owner or occupant may obtain and maintain in force such insurance in addition to that provided by the Association pursuant to this Declaration as that Owner or occupant may determine, subject to the provisions hereof, and provided that no Owner or occupant may at any time purchase individual policies of insurance against loss covered by the insurance to be maintained by the Association pursuant to this Declaration. In the event any Owner of occupant violates this provision, any diminution in insurance proceeds resulting from the existence of such other insurance shall be chargeable to the Owner who acquired or whose occupant acquired such other insurance, who shall be liable to the Association to the extent of any diminution and/or loss or proceeds.

**ARTICLE 11. CASUALTY, DAMAGE OR DESTRUCTION.**

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

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

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

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

 11.5 Repair or Reconstruction. As soon as practicable after receiving estimates under Section 11.4, the Board shall diligently pursue to completion the repair or reconstruction of that part of the Common Area damaged or destroyed. Such repair or reconstruction shall be in accordance with the original plans and specifications of the Common Area or may be in accordance with any other plans and specifications the Association may approve.

 11.6 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 Board, pursuant to Section 8.6 hereof, may levy in advance a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair or reconstruction. Such Special Assessments shall be allocated and collected as provided in that Section. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair or reconstruction.

 11.7 Disbursement of Funds for Repair or Reconstruction. The insurance proceeds held by the Association and the amounts received from the assessments provided in Section 11.6 constitute a fund for the payment of costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the cost of repair or reconstruction shall be made from insurance proceeds; if there is a balance after payment of all costs of such repair or reconstruction, such balance shall be distributed to the Owners in proportion to the contributions by each Owner pursuant to the assessments by the Board under Section 11.6 of this Declaration.

**ARTICLE 12. CONDEMNATION.**

 12.1 Consequences of Condemnation. If at any time or times during the continuance of condominium ownership of the Property created by this Declaration, all or any part of the Common Area shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions shall apply.

 12.2 Proceeds. All compensation, damages or other proceeds therefrom, the sum of which is hereinafter called the “Condemnation Award,” shall be payable to the Association, except to the extent that any portion of a Condemnation Award is payable to a First Mortgagee pursuant to the terms of this Declaration.

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

 12.4 Reconstruction and Repair. Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified in Section 11.6 above.

**ARTICLE 13. AMENDMENTS.**

 13.1 By Original Declarant. Except as otherwise provided in this Declaration, the provisions of this Declaration may be amended, modified, clarified, supplemented, added to or terminated (collectively, “Amendment”) by Original Declarant by recordation of a written instrument setting forth such Amendment until the closing by Original Declarant of the first sale of a Unit to a bona fide purchaser. Notwithstanding the foregoing, Original Declarant shall not make any Amendment to those terms and conditions contained in this Declaration that are required by the City of Boise as conditions of approval of the Project, without the prior written consent of the City of Boise. Notwithstanding anything to the contrary contained in this Declaration, an amendment to the Declaration by the Original Declarant pursuant to Section 2.13 or Section 13.5 shall not require the vote or written consent of the Members.

 13.2 By Members. Except as otherwise provided in this Declaration, after the closing by Original Declarant of the first sale of a Unit to a bona fide purchaser, any Amendment to this Declaration, other than to Article 13, shall be by an instrument in writing signed and acknowledged by the President and Secretary of the Association certifying and attesting that such Amendment has been approved by the vote or written consent of Members representing more than sixty-seven percent (67%) of the total votes which may be cast by all of the Members, except where a greater percentage is required by express provision in this Declaration, and such Amendment shall be effective upon its recordation in the real property records of Ada County, Idaho; provided, however, that any Amendment that alters voting rights must also be approved by at least fifty-one percent (51%) of the Eligible Mortgagees. Any Amendment to Article 13 shall require the vote or written consent of Owners holding seventy-five percent (75%) of the total votes which may be cast by all of the Members. Notwithstanding anything to the contrary contained in this Declaration, an amendment to the Declaration by the Board pursuant to Section 2.13 shall not require the vote or written consent of the Members.

 13.3 Effect of Amendment. Any Amendment of this Declaration approved in the manner specified above and recorded in the real property records of Ada County, Idaho shall be binding on and effective as to all Owners notwithstanding that such Owners may not have voted for or consented to such Amendment. Such Amendment may add to and increase the restrictions applicable to the Project but shall not prohibit or unreasonably interfere with the allowed uses of such Owner’s Condominium which existed prior to the said amendment.

 13.4 Amendments to Plat. Notwithstanding anything to the contrary contained in this Declaration, any amendment to the Plat for the Project, or any amendment to this Declaration that serves to alter the Plat for the Project, shall be subject to the prior review and approval of the Ada County Surveyor's office in accordance with applicable law.

**ARTICLE 14. MORTGAGEE PROTECTION.**

 Upon written request to the Association from an Eligible Mortgagee, such Eligible Mortgagee shall be entitled to notice of the following: (1) any condemnation or casualty loss that affects either a material portion of a building or a Unit encumbered by such Eligible Mortgagee; (2) any sixty (60) day delinquency in the payment of Assessments or charges owed by the Owner of any Unit encumbered by such Eligible Mortgagee; (3) a lapse, cancellation, or material modification of any insurance policy maintained by the Association; and (4) any proposed action that requires the consent of a specified percentage of Eligible Mortgagees under this Declaration.

**ARTICLE 15. LIMITATION OF LIABILITY.**

15.1 No Liability. Except to the extent covered by insurance obtained by the Board, neither the Association nor the Board shall be liable for: (1) the failure of any utility or other service to be obtained and paid for by the Board; (2) injury or damage to person or property caused by the elements, or resulting from electricity, water, rain, dust or sand which may lead or flow from outside or from any parts of the buildings or from any of their pipes, drains, conduits, appliances or equipment, or from any other place; or (3) inconvenience or discomfort resulting from any action taken to comply with any law, ordinance, or orders of a governmental authority. No diminution or abatement of Assessments shall be claimed or allowed for any such utility or service failure, or for such injury or damage, or for such inconvenience or discomfort.

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

**ARTICLE 16. INDEMNIFICATION.**

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

**ARTICLE 17. MISCELLANEOUS.**

17.1 Enforcement and Non-Waiver.

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

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

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

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

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

 17.3.2 Restrictions Severable. Notwithstanding the provisions of the foregoing Section 17.3.1, each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability or any other provision herein.

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

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

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

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

[end of text]

This Declaration is executed effective this \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_, 2023.

CitySide Lofts Condominium Association, Inc. an Idaho corporation

By:

 Daniel Johnson, President

STATE OF IDAHO )

): ss

County of Ada )

On this \_\_ day of \_\_\_\_\_\_\_\_\_\_, 2023, before me the undersigned, a Notary Public in and for said State, personally appeared Daniel Johnson, known or identified to me to be the President of CitySide Lofts Condominium Association, Inc., an Idaho corporation, and acknowledged to me that such corporation executed the same.

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

Notary Public

Residing at , Idaho

Commission Expires

# CERTIFICATE OF CONSENT OF MEMBERS

The undersigned, as President and Secretary/Treasurer of the CitySide Lofts Condominium Association, Inc., certify and attest that this Fourth Amended and Restated Condominium Declaration and Covenants, Conditions, and Restrictions for The CitySide Lofts Condominiums (to which this certificate is attached) has been approved by the written consent of Members representing more than sixty-seven percent (67%) of the total votes which may be cast by all of the Members, and hereby consent to the filing of such instrument pursuant to the Condominium Property Act, Title 55, Chapter 15, Idaho Code.

 DATED this \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2023.

CitySide Lofts Condominium Association, Inc., an Idaho corporation

By:

Daniel Johnson, President

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

 Matthew Barnett, Secretary/Treasurer

STATE OF IDAHO )

):ss

County of Ada )

On this day of \_\_\_\_\_\_\_\_\_\_, 2023, before me the undersigned, a Notary Public in and for said State, personally appeared Daniel Johnson and Matthew Barnett, known or identified to me known to be, respectively, the President and Secretary/Treasurer of CitySide Lofts Condominium Association, Inc., an Idaho corporation, the corporation that executed the instrument or the person(s) who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Notary Public

Residing at , Idaho

Commission Expires

**EXHIBIT A**

**Legal Description of Property**

**EXHIBIT B**

**CitySide Lofts Condominium Plat**

**(Pages 1 through 13)**

**EXHIBIT C**

**Articles of Incorporation**

**(Pages 1 through 4)**

 **EXHIBIT D**

**Association Bylaws**

**(Pages 1 through 8)**

**EXHIBIT E**

**Percentage Ownership Interests in the Common Area**

**(Pages 1 through 2)**

**EXHIBIT F**

**Parking Stall and Storage Unit Location/Numbering Scheme**

**(Pages 1 through 3)**