

**RESTATED DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF  
PEPPERWOOD TOWNHOMES**

**THIS RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF PEPPERWOOD TOWNHOMES is made as of the \_\_\_\_ day of \_\_\_\_\_, 2010, by Prestige Homes Inc., an Idaho corporation, hereinafter referred to as “Declarant,” and by the additional signatories hereto, hereinafter referred to as “Additional Parties.”**

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## **WITNESSETH:**

WHEREAS, Declarant and Additional Parties are the owners of certain Properties in Boise, Ada County, Idaho, more particularly described as:

Block 4 of Pepperwood Estates No. 2, according to the official Plat thereof, filed in book 53 of Plats at Pages 4730-4735, records of Ada County, Idaho; and Block 4 of the Amended Plat of Pepperwood Estates No. 8, according to the official Plat thereof, filed in Book 78 of Plats at Pages 8197-8199, records of Ada County, Idaho.

WHEREAS, Declarant heretofore executed that certain Declaration of Covenants, Conditions, and Restrictions of Pepperwood Townhomes, recorded on June 9, 2005, as Instrument No. 105074707, records of Ada County, Idaho; and

WHEREAS, Additional Parties are persons who thereafter acquired title to or an interest in certain Lots located within the above-described Properties; and

WHEREAS, Declarant and Additional Parties desire to amend and restate in their entirety the Declaration of Covenants, Conditions, and Restrictions of Pepperwood Townhomes;

NOW, THEREFORE, Declarant and Additional Parties hereby amend and restate the Declaration of Covenants, Conditions, and Restrictions of Pepperwood Townhomes, recorded on June 9, 2005, as Instrument No. 105074707, records of Ada County, Idaho, to now and hereafter read in their entirety as follows, and to declare that all of the Properties described above shall be held, sold and conveyed subject to the following restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the described Properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

Any and all provisions contained in the Articles of Incorporation and Bylaws of the Pepperwood Townhomes Owners Association, Inc., as amended from time to time, are incorporated herein and made a part hereof.

To the extent any provision of these Restated Covenants, Conditions and Restrictions of Pepperwood Townhomes conflicts, modifies or amends any provisions of the above referenced Articles of Incorporation or Bylaws, the provisions of which are incorporated herein, the provisions of this instrument shall control.

## ARTICLE 1: Definitions

**Section 1. “Association”** shall mean and refer to Pepperwood Townhomes Owners Association, Inc., its successors and assigns.

**Section 2. “Owner”** shall mean and refer to the record owner, whether one or more persons or entities of a fee simple title to any Lot which is a part of the properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

**Section 3. “Properties”** shall mean and refer to that certain real property hereinbefore described, and such additions hereto as may hereafter be brought within the jurisdiction of the Association.

**Section 4. “Lot”** shall mean and refer to any parcel of land shown upon any recorded subdivision map of the Properties.

**Section 5. “Declarant”** shall mean and refer to Prestige Homes Inc., an Idaho company.

**Section 6. “Additional Parties”** shall mean and refer to the parties who execute this instrument, exclusive of the Declarant.

**Section 7. “Grantors”** shall mean and refer to the Declarant and to Additional Parties.

**Section 8. “Landscape and Maintenance Easement”** shall refer to any grant of easement for landscaping and/or maintenance purposes which is filed of record.

**Section 9. “Common Grounds”** shall refer to Ada County land Parcels R6989630810, R6989630820, R698960830, R6989630840, R6989630850, and R6989630860, which comprises all the area within Pepperwood Townhomes not designated as individual lots.

## ARTICLE II: Property Rights & Responsibilities

**Section 1. Owner’s Property Rights & Responsibilities.** Every Owner shall have a right of enjoyment in and to the Owner’s Lot, subject to the following provisions:

- (a) The right of the Association to charge assessments relative to the Association’s obligation to maintain the grounds, yard and other landscape areas as to all

individual Lots, which obligation of maintenance is restricted to the grounds, yard and other landscape and common areas outside of the individual units, excluding interior courtyards (any area partitioned off from common area with some sort of fencing).

- (b) The right of the Association to suspend the voting rights of an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its public rules and regulations.
- (c) Sidewalks are the owner's responsibility in regard to maintenance, repair, and obligation to keep hazard-free.

**Section 2. Association Obligation to Maintain Landscaping.** The Association shall have the obligation to maintain the grounds, yards and other landscape areas as designated herein as same is situated on each and every Lot. In addition, the Association shall be responsible for approving any and all modifications to any and all landscape areas situated on those individual Lots to the extent that the Association shall be responsible for maintaining those areas within which the Owner decides to make a landscaping change, modification, alteration, addition or deletion.

**Section 3. Association Obligation to Maintain Exterior Structures.** The Association shall have the further obligation to maintain individual structures; but only to the extent that:

- (a) the Association shall be responsible for painting exterior structures, including the selection of paint colors, which shall maintain the existing colors unless a change is unanimously approved by unit owners and the architectural committee
- (b) the Association shall not be responsible for replacement of exterior roofing and siding as same becomes necessary. The responsibility of replacing roofing and siding is that of the Owner who shall maintain the existing roofing and siding materials unless a change is approved by the architectural committee.

**Section 4. Easements.** It is hereby reserved for the use and benefit of the Grantor and granted for the use and benefit of each Lot, and for the use and benefit of each Owner and occupant, and for the Association, and their successors and assigns, for the purposes incident to such use, development and maintenance of the property, an easement the purpose of permitting the Grantor, or the Association, their contractors or agents, to enter onto Lots for the purpose of undertaking grounds, yard and landscape maintenance and to otherwise repair and maintain the structure of the buildings, to include painting of structures, which obligation the Association has assumed.

It is also hereby reserved for the use and benefit of the Grantor and granted for the use and benefit of each Lot, and for the use and benefit of each Owner and occupant, and for the Association, and their successors and assigns, mutual easements of access, ingress and egress over and across the Lots for the purpose of performing landscaping, maintenance and repairs, for the installation and repair of utilities, for the drainage of water over, across and upon adjacent Lots, and for the operation and maintenance of drainage areas. This Declaration shall be subject to all easements heretofore or hereafter granted by Grantor for the installation and maintenance of utilities and drainage facilities that are required for the development of the Properties.

The Owners of Lots within the subdivision are restricted from constructing any improvements upon any drainage or utility easements as shown on the plat of the subdivision or otherwise designated in any recorded instrument which would interfere with or prevent the easement from being used for such purpose.

**Section 5. Maintenance.** The following provisions shall govern the maintenance of Lots and all improvements thereon.

- (a) The Association shall assume the obligation to maintain the grounds, yards and other landscape areas of each individual Lot, which obligation to maintain said grounds, yards and landscape areas shall be limited to those portions of each individual Lot which are outside of the individual units, courtyards and garbage structures, including lawn, trees, planting beds with the shrubs therein, entrance sign, stone landscape features, swimming pool and associated facilities, mailboxes and associated facilities, sidewalks which are not within individual lot lines, streets, parking lots, and all other accouterments of the common grounds.
- (b) The Association shall assume the responsibility to maintain sprinkler system equipment. Certain sprinkler timer boxes, filter tubes, valve boxes and other sprinkler system equipment are located on individual lots. All present and future owners of Pepperwood Townhomes hereby grant easement to the Association contractors and agents to access such equipment as needed. Owners have the right to request compensation from the Association for any significant costs of electricity to run such equipment.
- (c) The Association shall assume the obligation to operate, maintain, and otherwise manage, or provide for the operation, maintenance and management of all drainage easements, as shown on the plat of the subdivision or otherwise designated in any recorded instrument; provided, that the Owner of any Lot or the Association shall be entitled to install and maintain landscaping on drainage easement areas so long as the same does not interfere with or prevent the easement areas from being used for their intended purposes; and further provided, that the Association shall have no liability for any damage done to landscaping or

other improvements located on the drainage easement areas as the result of the use of such areas for collection, drainage and disposal of waters flowing over, across and upon Lots within the subdivision:

- (d) All structures, facilities, equipment, objects and conditions determined by the Board, in its sole discretion, to be offensive, shall be enclosed within an approved structure or appropriately screened from public view. All trash, debris, garbage and refuse shall be kept, at all times, in covered containers and all such containers shall be kept on a Lot within an enclosed structure or screened from public view and must be approved by the architectural committee.
- (e) No articles, goods, machinery, materials or similar items shall be stored, kept or maintained on any portion of a Lot within the Pepperwood Townhomes along a public or private right-of-way or otherwise kept in the open or exposed to public view.
- (f) Any event or condition on a Lot which, in the sole discretion of the Association, creates an unsightly or blighting influence, shall be corrected, removed or obstructed from public view, as the case may be, by the Owner of the Lot, notwithstanding the fact that such event or condition may not be specifically described and/or prohibited in this Declaration.

**Section 6. Leasing.** An Owner of any Lot may elect to lease/rent said Lot. Such lease, however, must not be entered into on a day to day or week to week basis. Renters are subject to all the regulations that apply to owners. Owners are responsible to insure that renters comply with these CC&Rs.

**Section 7. Insurance.** Owners are responsible to carry appropriate property and liability insurance for their lot and all improvements thereupon. Association is responsible to carry appropriate liability and hazard insurance on property owned by the Association.

**Section 8. Parking.** No more than one (1) vehicle is allowed to be parked in driveway or parking overflow. No vehicle shall be parked in the right-of-way overnight.

### **ARTICLE III: Covenant for Maintenance Assessments**

**Section 1. Creation of the Lien and Personal Obligation of Assessments.** The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any



Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) monthly assessments or charges and (2) special assessments for capital improvements. The monthly and special assessments, together with interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each assessment is made. Each assessment, together with interest, costs and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due and shall not pass to his successors in title unless expressly assumed by them.

**Section 2. Purpose of assessments.** The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in the Properties and in particular for the improvement and maintenance of the Properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Properties, and of the homes situated upon the Properties.

**Section 3. Basis and maximum of annual assessments.** Each Lot shall be subject to a monthly assessment of not more than seventy-five (\$75.00) dollars. The board of directors shall fix the monthly assessment within the maximum amount, and may raise or lower the monthly assessment amount within the maximum as they deem necessary in their discretion.

(a) From and after the first day of February 2010, each Lot shall be subject to a monthly assessment of not more than fifty (\$50.00) dollars, with a three-hundred (\$300.00) dollar annual capital assessment that may be applied monthly. The board of directors shall fix the monthly assessment within the maximum amount, and may raise or lower the monthly assessment amount within the maximum as they deem necessary in their discretion.

(b) From and after the first day of January 2011, the maximum monthly assessment may be increased or decreased by the board of directors by no more than 10% in one year. Assessments must be approved by a vote of over two-thirds (2/3) of the Members, as hereinafter provided.

(c) The Association may change the maximum of the assessment fixed by section 3 hereof provided that any change shall have the assent of two-thirds of the votes of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least 10 days in advance and shall set forth the purpose of the meeting.

**Section 4. Special assessments for capital improvements.** In addition to the monthly assessments authorized above, the Association may levy in any calendar year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital

improvement upon the common area, including the necessary fixtures and personal property related thereto, provided that the assessment shall have the assent of two-thirds of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than 10 days nor more than 50 days in advance of the meeting setting forth the purpose of the meeting.

**Section 5. Uniform rate of assessment.** Both monthly and special assessments must be fixed as a uniform rate for all Lots, provided that the rate set for the Lots owned by Declarant shall be fixed at zero percent (0%) the assessment rate for the other Lots.

**Section 6. Quorum for any action authorized under sections 3 and 4.** At the first meeting called, as provided in sections 3 and 4 hereof, the presence at the meeting of Members or of proxies entitled to cast 60% of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth in sections 3 and 4, and the required quorum at any such subsequent meeting shall be one-half of the required quorum at the preceding meeting. No subsequent meeting shall be held more than 30 days following the preceding meeting.

**Section 7. Assessment Billing and Receipt.** Written notice assessments due shall be sent to every Owner subject thereto. The due dates shall be established by the Declarant or the board of directors. The Association shall upon demand at any time furnish a certificate in writing, signed by an officer of the Association, setting forth whether the monthly assessments are current. A reasonable charge may be made by the board for the issuance of these certificates. The certificates shall be conclusive evidence of the facts stated therein. When owners use an automatic scheduled electronic bill payment method, the sending of invoices may be waived.

**Section 8. Effect of nonpayment of assessments: Remedies of the Association.** If the assessments are not paid on the date when due, then the assessment shall become delinquent and shall, together with interest thereon and cost of collection thereof as hereinafter provided, become a continuing lien on the property which shall bind the property in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. Collection of assessments can be pursued in small claims court or other proceedings. The personal obligation of the then Owner to pay the assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within 30 days after the delinquent date, the assessment shall bear interest from the date of delinquency at the rate of 10% per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the property and there shall be added to the amount of the assessment the costs of preparing and filing the complaint in the action, and in the event a judgment is obtained, the judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the court together with the costs of this action.

**Section 9. Exempt property.** The following property subject to the Declaration shall be exempt from the assessments charges and liens created herein: (a) all Properties to the extent of any easement or other interest therein dedicated to and accepted by the local public authority and devoted to public use; (b) all Common Properties as defined in Article II, section 3 hereof.

**Section 10. Association Budget.** The Association is authorized to prepare annual budgets which shall indicate anticipated management, operating, maintenance, repair and other common expenses for the Association's next fiscal year and which shall be sufficient to pay all estimated expenses and outlays of the Association for the next calendar year or growing out of or in connection with the activities of the Association from a previous period. The Association annual budget may include any reasonable contingency or other reserve fund.

## **ARTICLE IV: Architectural Control**

**Section 1. Architectural Committee.** A committee, consisting initially of the Declarant and then the Board of Directors of the Association, shall act as an Architectural Committee and shall, prior to any new construction in said subdivision, be furnished with one set of detailed plans and specifications of any proposed building to be located in said subdivision and shall be allowed specifications. If said Committee shall approve the proposed building, or any modification or alteration thereof, they shall so indicate by the dating and signing of the set of plans by one or more members of the Committee and their approval shall be construed as full compliance with the provisions of the original covenants. Said Committee shall have sole discretion to determine what shall be substantial compliance with said covenants. No building shall occupy any portion of said subdivision without prior consent of said Committee.

Notwithstanding any other provision to the contrary in this Restated Declaration of Covenants, Conditions, and Restrictions of Pepperwood Townhomes, after the Declarant has sold all of the Lots, the Architectural Committee shall be turned over to the Pepperwood Townhomes Owners Association, Inc., and not before. Amending this instrument shall not affect this provision.

A majority of said Committee is empowered to act for the Committee. In the event any member of the Committee is unable to act or fails or desires not to act, the remaining Committee members shall appoint an Owner of a Lot in said subdivision to serve on said Committee, all of whom serve without compensation.

**Section 2. Covenants, Restrictions, Easements and Conditions.** The following covenants shall run with the land and be in force and effect for thirty (30) years hereafter unless

sooner terminated by agreement of the Owners of seventy-five percent (75%) of the Lots in the subdivision and after all Lots herein have been sold by the Declarant. Modification or termination of these covenants can only be made with the consent of the Declarant while any Lots in this subdivision remain in his ownership, and are as follows, to wit:

- (a) No building, fence, wall, structure, improvement or obstruction shall be placed or permitted to remain upon any part of the Properties unless a written request for approval thereof containing the plans and specifications therefor, including exterior color scheme, has been approved in writing by the Architectural Committee. The approval of the Committee shall not be unreasonably withheld if said plans and specifications are for improvements which are similar in general design and quality, and generally in harmony with the dwellings then located on the Properties.
- (b) All record Lots within this subdivision shall be subject to and restricted by the following recorded subdivision covenants:
  - (1) A monthly sewer charge must be paid after connecting to the Boise City public sewer system, according to the ordinances and laws of Boise City.
  - (2) The applicant/owner of the subdivision shall and hereby does vest in Boise City the right and power to bring all actions against the owner of the premises hereby conveyed or any part thereof for the collection of any charges herein required and to enforce the conditions herein stated.
- (c) No stationary playground equipment, including immobile play sets and trampolines, shall be permitted. Storage sheds having a height less than seven (7) feet or visible by public right-of-way shall only be allowed to be placed or constructed in the backyard of any unit, and cannot be visible from the street.
- (d) No shack, tent, trailer house, or basement shall be used within the subdivision for living quarters, or any other purpose, permanent or temporary.
- (e) Nothing of an offensive, dangerous, odorous or noisy endeavor shall be conducted or carried on nor shall anything be done or permitted in said subdivision which may be or become an annoyance or nuisance to the other property Owners in said subdivision.
- (f) Keeping or raising of farm animals or poultry is prohibited. All dogs and cats or household pets kept on the premises shall be properly fed and cared for and shall be adequately fenced so as not to annoy or trespass upon the use of property of others. Dogs shall not be allowed to run at large. Repeated nuisance barking will not be allowed either indoors or outdoors. Owners are responsible for immediate

removal of pet waste when walking pets in the neighborhood, pursuant to Boise City Code. The number of pets allowed is not more than two (2) weighing no more than 30 pounds each.

- (g) No business shall be conducted on the Properties that cannot be conducted within the residence of the Owner as permitted by law. No signs shall be installed to advertise said business. No oil exploration or development of any nature or kind or mining exploration, development or structure shall be permitted upon the Lots in this subdivision.
- (h) No Lot or building site included within this subdivision shall be used or maintained as dumping ground for waste material. Incinerators are not permitted. Receptacles for storage of trash, garbage, et cetera., shall be maintained in a sanitary and clean condition and stored out of public view as stated in Article II, section 5(d) hereof.
- (i) Parking of boats, trailers, motorcycles, trucks, motor homes, campers, recreational vehicles and like equipment, or junk cars or other unsightly vehicles shall not be allowed on any part of the Properties nor on public ways adjacent thereto excepting only within the confines of an enclosed garage, or other approved enclosure, and no portion of same may project beyond the enclosed area. The Architectural Committee shall be the sole and exclusive judges of approved parking areas. This restriction shall not be construed to preclude temporary parking of motor homes, campers and recreational vehicles while the same are being loaded by the owners, not to exceed a period of 24 hours.
- (j) Installation of radio and/or television antennae or antennae or satellite dishes is prohibited outside any building without written consent from the Architectural Committee, which would require them to be screened from the street view, when possible.
- (k) The construction of any separate principal building on any Lot or building site located within this subdivision is prohibited.
- (l) The Architectural Committee's decision is final and binding on all issues.
- (m) The pool area is for the use and enjoyment of Pepperwood Townhomes Owners Association and shall be under the supervision of the board of directors.
- (n) Members are not authorized to make changes to landscaping or irrigation system without permission of the architectural committee. The architectural committee shall promulgate guidelines and rules for landscaping.

- (o) Fencing and Trellaces. Fencing may not exceed 4' in height if it is visible from the Public Right of Way. Fence may be 6' tall with additional lattice in rear side yards, but cannot extend more than 15' past structure. Rear fencing at property line must drop back to 4' tall. All privacy walls and fences must be approved by the ACC. Trellaces can be built, but must comply with City Code, and all materials, colors and designs must be approved by the ACC.
- (p) Additional Landscaping. Owners may plant additional landscaping either on their property or in immediately adjacent common area. However, HOA will not be responsible for plantings. If additional plantings increase time required for weeding and maintenance, those areas will be left to the responsibility of the occupant.
- (q) Leasing of Units. In the event that properties are not occupied by owner, but are leased out, there can be no more that 2 adults, plus 1-1/2 persons per additional bedroom.

## **ARTICLE V: General Provisions**

**Section 1. Time Extension for Covenants.** The covenants set forth in this instrument shall run with the land and shall be binding on all persons owning Lot(s) under them for a period of thirty (30) years from the date of recording thereof, after which time such covenants shall be automatically extended for successive periods of ten (10) years, unless at any time after the initial recording of this instrument, an instrument signed by the Owners of seventy-five percent (75%) of the land of this subdivision has been recorded agreeing to change or terminate said covenants in whole or part and after all Lots therein have been sold by the Declarant. Modification or termination of these covenants can only be made with the consent of the Declarant while any Lots in this subdivision remain in his ownership.

**Section 2. Enforcement.** The board of directors shall make or assign a committee to make necessary and reasonable rules, regulations and fine schedules to enforce these CC&Rs against any person or persons violating or attempting to violate them. In the event of judgment against any person for such, the Court may award injunction against any person for violation, require such compliance as the Court deems necessary, award such damages, reasonable counsel fees and Court costs as may be suffered or incurred, and such other or further relief as may be deemed just and equitable. The Association, or the Owner, shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants and reservations, liens, and charges now or hereafter imposed by the provisions of the Declaration.

**Section 3. Architectural Committee.** The Directors shall become the Architectural Committee upon the sale of all Lots by the Declarant.



On this \_\_\_\_\_ day of \_\_\_\_\_, 2010, before me, a Notary Public in and for said State, personally appeared Pat McMonigle, a member of Prestige Homes Inc., an Idaho company, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same on behalf of said limited liability company.

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 FOR IDAHO  
Residing at: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**ADDITIONAL PARTIES**

The Additional Parties and the Lot(s) owned by each of them, or which each of them has or claims an interest, are as follows: