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CONDOMINIUM DECLARATION AND

COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

THE SHOPS AND RESIDENCES AT COPPER RIDGE

CONDOMINIUM DECLARATION AND

COVENANTS, CONDITIONS AND RESTRICTIONS FOR

THE SHOPS AND RESIDENCES AT COPPER RIDGE

ARTICLE I

Recitals and Certain Definitions

Section 1.01 **The Declarant; the Real Property.** KGF Development LLC, a Washington limited liability company authorized to do business within the State of Idaho (together with its successors and assigns, including any person or entity acquiring all and not less than all of the interest of KGF Development LLC in the "Real Property" whether by purchase or pursuant to foreclosure proceedings or otherwise, collectively the "Declarant") is the owner of that certain real property located in the City of Ketchum, Blaine County, Idaho, described in Exhibit A attached hereto and hereby made a part of this Declaration (the "Real Property").

Section 1.02 **Intention of Declarant.** Declarant intends to provide for condominium ownership of the Real Property under the Condominium Property Act of the State of Idaho.

Section 1.03 **The Project.** The term "Project" shall collectively mean the Real Property and all buildings and other improvements located on the Real Property. Declarant intends for the Project to be a mixed-use project consisting of areas for retail and residential uses.

Section 1.04 **Type of Ownership.** This condominium project will provide a means for residential ownership in fee simple of separate interests in the residential units on the second and third floors of the Project, for ownership in fee simple of the Retail Area, and for ownership with the other condominium owners of an undivided interest in the Common Area, as those terms are herein defined.

ARTICLE II

Additional Definitions

The following terms shall have the following meanings when used herein unless the context otherwise requires.

Section 2.01 **Building.** "Building" means any building constructed on the Real Property pursuant to this Declaration.

Section 2.02 **Unit.** "Unit" means the separate interest in a Residential Condominium as bounded by the interior surfaces of the perimeter walls, floors, ceilings, windows, and doors thereof and the interior surfaces of built-in fireplaces, as shown and numbered on the Condominium Map filed for record concurrently with this Declaration, together with all fixtures and improvements therein contained. Notwithstanding such markings, the following are not part of a "Unit": bearing walls, columns, floors, and roofs (except for the interior surface thereof, of a perimeter wall, floor, or ceiling), foundations, clothes chutes, shafts, central heating systems, reservoirs, tanks, pumps, and other services used by more than one Unit or by the Retail Area, pipes, vents, ducts, flutes, chutes, conduits, and wires, except the outlets thereof when located within the Unit. The interior surfaces of a perimeter window or door means the points at which such surfaces are located when such windows or doors are closed; the physical windows and doors themselves are part of the Residential Common Area as herein defined.

Section 2.03 **Common Area.** "Common Area" means the entire Project excepting all Units and Retail Area.

Section 2.04 **Limited Common Area.** "Limited Common Area" means that Common Area designated herein for exclusive use by Owners of particular Condominiums, as those terms are herein defined, as described in greater detail in Section 4.02.

Section 2.05 **General Common Area.** "General Common Area" means all Common Areas excepting all Limited Common Areas, Retail Common Areas and Residential Common Areas.

Section 2.06 **Condominium.** "Condominium" means ***either*** (1) a separate interest in a Unit, plus the Limited Common Area appurtenant to that Unit, along with an undivided interest in common in the Residential Common Area, and along with an undivided interest in common in the Residential Limited Common Area in accordance with the attached Exhibit B setting forth the Residential Limited Common Area appurtenant to each Unit (collectively, a "Residential Condominium"), ***or*** (2) a separate interest in a Retail Store, plus the Limited Common Area appurtenant to that Retail Store, along with an undivided interest in common in the Retail Common Area, and along with an undivided interest in common in the Retail Limited Common Area in accordance with the attached Exhibit B setting forth the Retail Common Area appurtenant to each Retail Area (collectively, a "Retail Condominium"). In addition, each Condominium includes a share of the General Common Area not otherwise allocated in this section in the proportions set forth in Exhibit C.

Section 2.07 Owner. "Owner" means any person or entity, including Declarant, at any time owning a Condominium; the term "Owner" shall not refer to any Mortgagee, as herein defined, unless such Mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

Section 2.08 Mortgage. "Mortgage" means any mortgage, deed of trust, or other security instrument by which a Condominium or any part thereof is encumbered.

Section 2.09 Mortgagee. "Mortgagee" means any person or any successor to the interest of such person named as the mortgagee, trust beneficiary, or creditor under any Mortgage under which the interest of any Owner, or successor to the interest of such Owner, is encumbered.

Section 2.10 Association. "Association" means the Copper Ridge Association, Inc., an Idaho nonprofit corporation, its successors and assigns, organized as provided herein.

Section 2.11 Board. "Board" means the Board of Directors of the Association.

Section 2.12 Condominium Map. "Condominium Map" means the Condominium Map for The Shops and Residences at the Copper Ridge filed for record in the office of County Recorder of Blaine County, Idaho, consisting of a plat or survey map of the surface of the ground of the Real Property showing a survey and legal description thereof, the location of the Building with respect to the boundaries of the Real Property, together with diagrammatic floor plans of the Building showing the boundaries of the Retail Area and each Unit within the Building, including horizontal and vertical locations and dimensions of all boundaries of the Retail Area and each Unit and the Unit number identifying the Units, together with such other information as may be included therein in the discretion of the Declarant.

Section 2.13 Residential Area. "Residential Area" means that portion of the Project, currently designated as the second and third floors of the Project, which Declarant intends to be used for residential uses, with each Unit purchased in fee simple by its Owner.

Section 2.14 Residential Common Area. "Residential Common Area" means all areas included within the Residential Area; except the area within each Unit; and except the load bearing walls, columns, floors and roofs (other than the interior surface of a perimeter wall, floor or ceiling), foundations, and shafts, reservoirs, tanks, pumps, central heating systems, and other building electrical, mechanical and other systems used in common with the Units and the Retail Area; but including the elevators, decks, entry lobbies and hallways, staircases, elevator maintenance room, decks, second floor trash room, and heating equipment exclusively for use by Unit Owners.

Section 2.15 Penthouse Limited Common Area. "Penthouse Limited Common Area" means the following portions of the Residential Common Areas, which are designated as Limited Common Area for the exclusive use, in common, by the Owners of Units 1-6 only: gallery deck and adjoining hallways located on the second floor; second floor elevator lobby and balcony; first floor elevator lobby (in common with the Retail Store Owners); stairway between first and second floor adjacent to elevator; basement elevator lobby (in common with the Retail Store Owners); basement storage areas 1 through 6; individual basement parking garages 1 through 6; six (6) basement reserved parking spaces; and driveways and basement parking access (in common with the Retail Store Owners). The Board shall assign the basement storage areas, individual basement parking garages and basement reserved parking spaces to individual Penthouse Unit Owners from time to time; provided that, each Penthouse Unit Owner shall at all times be entitled to one (1) storage area, one (1) individual basement parking garage, and one (1) basement reserved parking space.

Section 2.16 Penthouse. "Penthouse" means one of Units 1-6.

Section 2.17 Retail Area. "Retail Area" means that portion of the Project, currently designated for the first floor and a portion of the basement of the Project, which Declarant intends to be used for commercial uses, with each retail Store purchased in fee simple by its Owner, and used by Owner or rented to tenants whose uses are primarily the sale and provision of goods and services to the general public.

Section 2.18 Retail Store. "Retail Store" means that Area within the Retail Area designated to be included within a particular Retail Condominium's boundaries and includes Condominiums C-1 through C-12. The following are not part of any Retail Store: bearing walls, columns, floors, and roofs (except for the interior surface thereof, of a perimeter wall, floor, or ceiling), foundations, shafts, central heating systems, reservoirs, tanks, pumps, and other services used by more than one Retail Store or used in common with Units, pipes, vents, ducts, flutes, chutes, conduits, and wires, except the outlets thereof when located within a Retail Store. The interior surfaces of a perimeter window or door means at the points at which such surfaces are located when such windows or doors are closed; the physical windows and doors themselves are part of the Retail Common Area as herein defined.

Section 2.19 Retail Common Area. "Retail Common Area" means all areas included within the Retail Area; except the Retail Stores; and except the load bearing walls, columns, floors and roofs (other than the interior surface of a perimeter wall, floor or ceiling), foundations, and shafts, reservoirs, tanks, pumps, central heating systems, and other building electrical, mechanical and other systems used in common with the Units and the Retail Stores; <u>but including</u> the storage areas, entry lobbies and hallways (except that the basement and first floor elevator lobbies are in common with the Penthouse Residential Condominium Owners), staircases, public restrooms, heating equipment, and driveways and basement parking access reserved exclusively for use by the Retail Store Owners, and driveways and basement parking access (in common with the Penthouse Residential Condominium Owners).

ARTICLE III

<u>Statement of Intention and Purpose</u>

Declarant hereby declares that the Project and every part thereof is held and shall be held, conveyed, devised, leased, rented, encumbered, used, occupied, improved, and otherwise affected in any manner, subject to the provisions of this Declaration, each and all of which provisions are hereby declared to be in furtherance of the general plans and scheme of condominium ownership referred to in Article I and are further declared to be for the benefit of the Project and every part thereof and for the benefit of each Owner. All provisions hereof shall be deemed to run with the land as covenants running with the land or as equitable servitudes, as the case may be, and shall constitute benefits and burdens to the Declarant and the Declarant's assigns and to all persons hereafter acquiring or owning any interest in the Project, however such interest may be obtained.

ARTICLE IV

<u>Nature and Incidents of Condominium Ownership</u>

Section 4.01 **<u>Estates of an Owner</u>.** The Project is hereby divided into Condominiums, each consisting of ***either*** (1) a separate interest in a Unit, plus the Limited Common Area appurtenant to that Unit, along with an undivided interest in common in the Residential Common Area in accordance with the attached <u>Exhibit B</u> setting forth the Residential Common Area appurtenant to each Unit, ***or*** (2) a separate interest in a Retail Store, plus the Limited Common Area appurtenant to that Retail Store, along with an undivided interest in common in the Retail Common Area in accordance with the attached <u>Exhibit B</u> setting forth the Retail Common Area appurtenant to each Retail Store. <u>Exhibit B</u> contains a legal description of each Unit and Retail Store in the Project, consisting of the identifying number of such Unit or Retail Store as shown on the Condominium Map. In addition, each Condominium includes a share of the General Common Area not otherwise allocated above in the proportions set forth in <u>Exhibit C</u>. The percentage of ownership interest in the Common Area which is to be allocated to each Unit and Retail Store for purposes of tax assessment under Section 55-1514 of the Idaho Code and for purposes of liability as provided by Section 55-1515 of the Idaho Code shall be the same as set forth in Exhibit C. Except for separation or combination of Condominiums, conversion of all or part of a Condominium to Common Area or vice versa, and changes due to reconstruction under Articles Xii or XIII, Exhibit C shall not be subject to change. Except for separation or combination of Condominiums, conversion of all or part of Condominiums to Common Areas or vice versa, and changes due to reconstruction under Articles XII or XIII, Exhibit C shall not be subject to change.

Section 4.02 Limited Common Area. "Limited Common Area" shall consist of decks, balconies, porches, enclosed residential garages and heating equipment located in an enclosed area adjacent to each Unit or Retail Store or for the exclusive use of that Unit or Retail Store. The deck or decks, balcony or balconies, porch or porches, and individual heating equipment adjoining a Unit, the storage area designated for each Unit or Retail Store as referred to above, and the enclosed garage and parking space designated for each Unit as referred to above, shall be used in connection with such Unit or Retail Store, as the case may be, to the exclusion of the use thereof by the other Owners of Common Area except by invitation.

Section 4.03 Retail Parking Area. The Association may, but shall not be obligated to, maintain as a part of the Retail Common Area, a non-exclusive exterior retail parking area for the use of the Retail Condominium Owners, Retail Store tenants, or their invitees, or any portion thereof in a size and of a nature deemed adequate by the Association. The right to the use of such exterior parking area and to the maintenance thereof by the Association shall be appurtenant to and shall pass with the title to each Retail Condominium.

Section 4.04 Right to Combine Units. Declarant reserves the right to combine physically the area or space of one Unit or Retail Store with the area or space of one or more adjoining Units or Retail Stores. Such combination shall not prevent separate ownership of such Condominiums in the future. Declarant reserves the right to designate and convey to any purchaser of such combined Units or Retail Stores as additional Limited Common Area any walls, floors, or other structural separations between Units or Retail Stores so combined, or any space which would be occupied by such structural separations but for the combination of the Units or Retail Stores. Such structural separations and such space shall automatically become General Common Area if the combined Units or Retail Stores become subject to separate ownership in the future. Declarant reserves the right to physically divide the area or space of any Retail Store as provided below.

Section 4.05 Title. Title to a Condominium may be held or owned by any entity and in any manner in which title to any other real property may be held or owned in the State of Idaho.

Section 4.06 **Inseparability.** No part of a Condominium or of the legal rights comprising ownership of that Condominium may be separated from any other part of that Condominium during the period of Condominium ownership prescribed herein, so that each Condominium and the undivided interest in the Common Area appurtenant to such Condominium shall always be conveyed, devised, encumbered, and otherwise affected only as a complete Condominium; provided, however, that the Owner of a Retail Store may subdivide such Retail Store for the purpose of renting or leasing a portion of such Retail Store to one or more tenants. Every gift, devise, bequest, transfer, encumbrance, conveyance, or other disposition of a Condominium or any part thereof shall be presumed to be a gift, devise, request, transfer, encumbrance, or conveyance, respectively, of the entire Condominium, together with all appurtenant rights created by law or by this Declaration. Notwithstanding the foregoing, any Owner of a Retail Condominium may sell or otherwise transfer a percentage of that Owner's interest in a Retail Condominium and such percentage shall be presumed to be a gift, devise, request, transfer, encumbrance, or conveyance, respectively, of the all rights associated with that percentage including all appurtenant rights created by law or by this Declaration.

Section 4.07 **Partition Not Permitted.** The Common Area shall be owned in common by all Owners of Condominiums, and no Owner may bring any action for partition thereof.

Section 4.08 **Owner's Right to Common Area.** Subject to the limitations contained in this Declaration, each Owner shall have the nonexclusive right to use and enjoy the General Common Area, and shall have the exclusive right to use and enjoy the Limited Common Area designated herein for exclusive use by such Owner(s) or for use in common with certain other Owner(s). Each Unit Owner shall have the nonexclusive right to use and enjoy the Residential Common Area, and each Retail Store Owner shall have the nonexclusive right to use and enjoy the Retail Common Area. In addition, the Owners of Retail Stores C-1 through C-12 shall have the nonexclusive right to use and enjoy the parking garage and access driveways of the Retail Common Area.

Section 4.09 **Taxes and Assessments.** Each Owner shall execute such instruments and take such actions as may reasonably be specified by the Association to obtain separate real property tax assessments of the interest of each Owner in each Condominium. If any taxes or special district or other assessments may, in the opinion of the Association, nevertheless be a lien on the Project 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 or such Owner's interest in the Common Area or any part of any or all of the foregoing. Each Owner shall pay all taxes, rates, impositions, and assessments levied against the Project or any part of the Common Area in proportion to such Owner's interest in such Common Area as set forth in Exhibit C, and such payment shall be made to the Association at least thirty (30) days prior to the delinquency of such tax or assessment. Each such unpaid tax or assessment shall bear interest at the rate of twelve percent (12%) per annum from and after the time the same becomes payable by each Owner and shall be secured by the lien created by Section 9.06 hereof. Notwithstanding the foregoing, taxes, assessments, or other charges attributable to the Common Area shall be apportioned among the Owners as provided in Article IX hereof.

Section 4.10 Owner's Rights With Respect to Interiors. Each Owner shall have the exclusive right to paint, repaint, tile, paper, or otherwise maintain, refinish and decorate the interior surfaces of the walls, ceilings, floors, and doors and to clean the interior surfaces of windows, all of which form the boundaries of that Owner's Residential Condominium or Retail Condominium, and all walls, ceilings, floors, and doors within such boundaries. The cleaning of exterior surfaces of windows is expressly reserved to the Association. Window covering for all windows in each Residential Unit shall be of a style and color approved by the Association so as to insure a uniformity of general appearance for the exterior of the second and third floors of the Building. Each Residential Owner shall contract with the Association's specified manufacturer/supplier and installer and pay all costs associated with these initial window coverings. Each Owner of a Residential Condominium may select the interior fabric covering for window coverings without obtaining prior approval from the Association. No Residential Condominium Owner may, without the consent of the Association, install or alter draperies or blinds or otherwise place anything in or on the Unit windows which is in variance with the general appearance of windows of similar Units. The Retail Condominium Owners shall have the exclusive right to paint, repaint, tile, paper, or otherwise maintain, refinish and decorate the interior surfaces of the walls, ceilings, floors, and doors and to clean the exterior and interior surfaces of windows contained within their respective Retail Store and all walls, ceilings, floors, and doors within such boundaries.

Section 4.11 Easements for Encroachments. If any part of the Common Area encroaches or shall hereinafter encroach upon a Unit(s) or Retail Store(s), an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit or Retail Store encroaches or shall hereafter encroach upon the Common Area or upon an adjoining Unit(s) or Retail Store(s), an easement for such encroachment and for the maintenance of the same shall and does exist. Such encroachments shall not be considered to be encumbrances either on the Common Area or a Condominium. Encroachments referred to herein include, but are not limited to, encroachments caused by settling, rising, or shifting of the earth or by changes in position caused by repair or reconstruction of the Project or any part thereof.

Section 4.12 Easements of Access for Repair, Maintenance, and Emergencies. Some of the Common Area is or may be located within the Units or Retail Store or may be conveniently accessible only through the Units or the Retail Store. The Owners shall have the irrevocable right, to be exercised by the Association as their agent, to have access to all parts of the Project from time to time during such reasonable hours as may be necessary, and with such notice as may be specified in tenant leases except in cases of emergency, for the maintenance, repair, or replacement of any of the Common Area located therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Project. The Association shall also have such right independent of any agency relationship. Damage to the interior of any part of a Unit(s) or Retail Store(s) resulting from the maintenance, repair, emergency repair, or replacement of any of the Common Area or as a result of emergency repairs within another Unit or Retail Store at the insistence of the Association or of Owners shall be an expense of all of the Owners; provided, however, if such damage is the result of negligence or willful misconduct of the Owner of a Unit or Retail Store, then such Owner shall be financially responsible for all of such damage. Amounts owing by Owners pursuant hereto shall be collected by the Association by assessment pursuant to Article IX below.

Section 4.13 Owner's Right to Ingress, Egress, and Support. Each Owner shall have the right to ingress and egress over, upon, and across the Common Area necessary for access to such Owner's Condominium and to the Limited Common Area designated for use in connection with such Owner's Condominium and shall have the right to the horizontal and lateral support of such Owner's Condominium, and such rights shall be appurtenant to and pass with the title to each.

Section 4.14 Association's Right to Use of Common Area. The Association shall have a nonexclusive easement to make such use of the Common Area as may be necessary or appropriate to perform the duties and functions which the Association is obligated or permitted to perform pursuant to this Declaration, including the right to construct and maintain in the Common Area maintenance and storage facilities for use by the Association.

Section 4.15 Easements and Utilities. In order to adequately serve each Retail Store and Unit, utility facilities may be constructed and may encroach on Common Area, Limited Common Area, Retail Store(s) or Unit(s). An easement for such encroachment and for the maintenance of the same shall and does exist.

Section 4.16 Declarant's Right to Incident to Construction. Declarant (and persons Declarant shall select) shall have the right to and hereby reserve an easement and right-of-way for ingress and egress over, upon, and across the Common Area and the right to store materials thereon and to make such other use thereof as may be reasonably necessary incident to complete development of the Project.

Section 4.17 **Easements Deemed Created.** All conveyances of Condominiums, whether by the Declarant or otherwise, shall be construed to grant and reserve such reciprocal easements as shall give effect to this Article IV, even though no specific reference to such easements or to this Article appears in any such conveyance.

Section 4.18 **Association's Management of Retail Common Area.** The Association may (but shall not be obligate to) hire an outside building management company. If the Association so elects to hire an outside building management company, such company shall be approved by a majority vote of the Retail Condominium Owners and shall be instructed to act prudently and diligently to manage and control the Retail Common Area in a manner compatible with good business practices and for the benefit of all Owners.

ARTICLE V

Description of a Condominium

Section 5.01 **Description.** Every contract for the sale of a Condominium and every other instrument affecting title to a Condominium may describe that Condominium by the number shown on the Condominium Map and by reference to the Condominium Map and to this Declaration as each appears on the records of the County Recorder of Blaine County, Idaho, in the following fashion:

> Condominium (Unit/Retail Store) as shown on the Condominium Map for The Shops and Residences at Copper Ridge appearing in the Records of Blaine County, Idaho, as Instrument: No. _____ and as defined and described in that Condominium Declaration and Covenants, Conditions and Restrictions for The Shops and Residences at Copper Ridge recorded in the records of Blaine County, Idaho, as Instrument No. ________________

Such description will be construed to describe the Unit or Retail Store, together with the appurtenant undivided interest in the appropriate Common Area, and to incorporate all the rights incident to ownership of a Condominium and all the limitations on such ownership as described in this Declaration.

ARTICLE VI

Mechanic's Lien Rights

Section 6.01 Condominium Labor. No labor performed or services or materials furnished with the consent or at the request of an Owner or such Owner's agent, contractor, or subcontractor shall be the basis for the filing of a lien against the Condominium of any other Owner or against any part thereof or against any other property of any other Owner unless such other Owner has expressly consented to or requested the performance of such labor or furnishing of such materials or services. Such express consent shall be deemed to have been given by the Owner of any Condominium in the case of emergency repairs thereto. Labor performed or services or materials furnished for the Project, if duly authorized by the Association, shall be deemed to be performed or furnished with the express consent of each Owner. Any Owner may remove such Owner's Condominium from a lien against two or more Condominiums or any part thereof by payment to the holder of the lien of the fraction of the total sum secured by such lien which is attributable to such Owner's Condominium.

ARTICLE VII

The Association

Section 7.01 Membership. Every Owner shall be entitled and required to be a member of the Association. If title to a Condominium is held by more than one person, the membership related to that Condominium shall be shared by all such persons in the same proportionate interests and by the same type of tenancy in which the title to the Condominium is held. A Condominium Owner shall be entitled to one membership for each Condominium owned by that Owner. No person or entity other than an Owner may be a member of the Association, and the Articles of Incorporation or Bylaws of the Association always shall so state and shall in addition state that the memberships in the Association may not be transferred except in connection with the transfer of a Condominium; provided, however, the rights of membership may be assigned to a Mortgagee as further security for a loan secured by a lien on a Condominium.

Section 7.02 Voting Rights. The total number of votes which may be cast by all members of the Association shall be set forth in the Articles of Incorporation and Bylaws of the Association, and each Owner shall be entitled to the number of votes or fractional votes, as set forth in Exhibit B attached hereto.

Section 7.03 Election of Directors. In any election of the members of the Board of Directors, the candidates receiving the highest number of votes, up to the number of Board of Directors members to be elected, shall be deemed elected. Any director may be removed from office by a vote of the majority of the members entitled to vote at an election of directors. If any or all directors are so removed, new directors may be elected at the same meeting.

Section 7.04 **Transfer.** Except as otherwise expressly stated herein, any of the rights, interests, and obligations of the Association set forth herein or reserved herein may be transferred or assigned to any other person or entity; provided, however, no such transfer or assignment shall relieve the Association of any of the obligations set forth herein. Any such transfer or assignment shall not revoke or change any of the rights or obligations of any Owner as set forth herein.

Section 7.05 **Amplification.** The provisions of this Article VII are amplified by the Articles of Incorporation of the Association and by the Bylaws of the Association; provided, however, no present or future provision of such Articles of Incorporation or Bylaws shall substantially alter or amend any of the rights or obligations of the Owners set forth herein.

ARTICLE VIII

Certain Rights and Obligations of the Association

Section 8.01 **The Management Body.** The Association is hereby designated to be the "Management Body" as provided in Sections 55-1503 and 55-1506 of the Idaho Code and shall administer the Project in accordance with the Condominium Property Act of the State of Idaho, the Idaho Code, the Articles of Incorporation and Bylaws of the Association, and the provisions of this Declaration.

Section 8.02 **The Common Area.** The Association, subject to the rights of the Owners set forth in Article IV hereof, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon (including furnishings and equipment related thereto) and shall keep the same in good, clean, attractive and sanitary condition, order and repair; however, each Owner of a Unit or Retail Store shall keep the Limited Common Area designated for use in connection with such Owner's Unit or Retail Store in a clean, sanitary, and attractive condition and shall maintain and repair the heating equipment and hot water heater servicing such Owner's Unit or Retail Store exclusively. The Association shall be responsible for the maintenance and repair of exterior surfaces of Buildings and improvements located on the Project including, without limitation, the painting of the same as often as necessary, the replacement of trim and caulking, the maintenance and repair of roofs, and the maintenance and repair of other Common Area, including utility lines and all other improvements or materials located within or used in connection with the Common Area. The Association shall be responsible for the removal and disposal of all snow and ice so as to maintain clear access, ingress and egress, to all driveways, parking areas, and pedestrian pathways and sidewalks; provided, however, that each Unit Owner shall be responsible for snow and ice removal from any decks that are appurtenant Limited Common Areas. The specification of duties of the Association with respect to particular Common Area shall not be construed to limit the Association's duties with respect to other Common Area, as set forth in the first sentence in this Section. To the extent the duties set forth in this Section relate to the Retail Common Area alone, the Association shall oversee the management and performance of such duties by the outside management company set forth in Section 4.18, if one is hired, and the costs of such maintenance and management shall be divided among the Retail Condominium Owners. For all other duties as set forth in this Section, the Association may hire an outside building manager and may oversee such manager in the performance of these duties. The cost of such management, maintenance, and repair by the Association shall be borne as provided in Article IX.

The Association by and through the Association's officers shall have the right to grant easements for utility purposes over, upon, across, under, or through any portion of the Common Area, and each Owner hereby irrevocably appoints this Association and the Association's officers as attorney-in-fact for such purposes.

Section 8.03 **<u>Miscellaneous Services</u>.** The Association may obtain and pay for the services of any person or entity to manage the Association's affairs, or any part thereof, to the extent the Association 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 the Association contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Project or the enforcement of this Declaration. The Association may arrange with others to furnish electrical, water, sewer, trash collection, and other common services to each Unit and Retail Store.

Section 8.04 **<u>Personal Property for Common Use</u>.** The Association may acquire and hold for the use and benefit of all the Owners tangible and intangible personal property and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be deemed to be owned by the Owners in the same proportion as the Owner's respective ownership of the General Common Area as set forth in <u>Exhibit C</u>. Such interest shall not be transferable except with the transfer of a Condominium. A transfer of a Condominium shall transfer to the transferee ownership of the transferor's beneficial interest in such property without any reference thereto. Each Owner may use such property in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of other Owners. The transfer of title to a Condominium under foreclosure shall entitle the purchaser to the interest in such personal property associated with the foreclosed Condominium.

Section 8.05 **Rules and Regulations.** The Association may make reasonable rules and regulations governing the use of the Residential Condominiums, the Retail Condominiums, and the Common Area, which rules and regulations shall be consistent with the rights and duties established in this Declaration. Such rules and regulations may include, without limitation, assignment of particular portions of garage areas, parking areas and storage areas within the Common Area for exclusive use by Owners of particular Retail Condominiums or for exclusive use by Retail Area tenants or customers, and use of Limited Common Area decks. Notwithstanding the foregoing, any rules and regulations that regulate the use of the Penthouse Limited Common Area must be approved by the Penthouse Owners representing a majority of the votes allocated to all Penthouse Owners. The Association may suspend any Owner's voting rights in the Association during any period or periods during which such Owner fails to comply with such rules and regulations or with any other obligations of such Owner under this Declaration. The Association may also take judicial action against any Owner to enforce compliance with such rules, regulations, or other obligations or to obtain damages for noncompliance, all to the extent permitted by law.

The Association may make reasonable rules and regulations governing the use of Retail Common Areas, which rules and regulations shall be consistent with the rights and duties established in this Declaration. Such rules and regulations may differ from the rules and regulations for Owners of Residential Condominiums. The Association is hereby appointed as the Owners' representative for the purpose of enforcing compliance with such rules and regulations and other obligations, and to obtain damages for non-compliance by tenants with respect to the Retail Area. The Association may appoint an outside management company to serve as the Owner's representative so long as the Association provides adequate supervision of the activities of the outside management company.

Section 8.06 **Implied Rights.** The Association may exercise any other right or privilege given to the Association expressly by this Declaration or by law, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association herein or reasonably necessary to effectuate any such right or privilege.

ARTICLE IX

Assessments

Section 9.01 **Agreement to Pay Assessment.** Declarant, for each Condominium owned by Declarant within the Project and for and as the owner of the Project and every part thereof, hereby covenants, and each Owner of any Condominium by the acceptance of a deed, whether or not it be so expressed in the deed, shall be deemed to covenant and agree with each other and with the Association to pay to the Association periodic assessments made by the Association for the purposes provided in this Declaration and special assessments for capital improvements and other matters as provided in this Declaration. In the case of joint or co-ownerships this liability shall be joint and several. Such assessments shall be fixed, established, and collected from time to time in the manner provided in this Article IX.

Section 9.02 **Amount of Total Periodic Assessments.** The total periodic assessments against all Condominiums shall be based upon advance estimates of cash requirements by the Association to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Area and furnishing electrical, water, sewer, trash collection, and other common services to each Condominium to the extent not separately metered and/or billed to a specific Condominium, which estimates may include, among other things, expenses of management, taxes and special assessments, premiums for all insurance which the Association is required or permitted to maintain pursuant hereto, landscaping and care of grounds, common lighting and heating, water charges, trash collection, sewer service charges, repairs and maintenance, wages for Association employees, legal and accounting fees, any deficit remaining from a previous period, the creation of a reasonable contingency reserve, surplus, and/or sinking fund, and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under or by reason of this Declaration.

Section 9.03 **Apportionment of Periodic Assessments.** The expenses attributable to the Residential Common Area shall be apportioned among all Owners of Units in proportion to the interest in the Residential Common Area owned by each Owner of a Unit as set forth in Exhibit B hereof. The expenses attributable solely to the Penthouse Limited Common Area (e.g., special amenities) shall be apportioned among all Penthouse Owners in proportion to their interest respective interest in the Penthouse Limited Common Area as set forth in Exhibit B hereof. The expenses attributable to the Retail Common Area shall be apportioned among all Owners of Retail Stores in proportion to the interest in the Retail Common Area owned by each Owner of Retail Store as set forth in Exhibit B hereof. Expenses which are incurred for maintenance and operation of those items which are either common to the

Residential Common Area and Retail Common Area or which are not associated with either the Residential Common Area or Retail Common Area in particular but rather with the Project as a whole, shall be paid by the Owners in proportion to the General Common Area interest of each Owner as set forth in Exhibit C hereof.

Section 9.04 **Notice of Periodic Assessments and Time for Payment Thereof.** The Association shall make periodic assessments, which assessments shall be annually, quarterly, or monthly, as the Association shall from time to time determine. The Association shall give written notice of assessments to each Owner, which notice shall specify the amount of the assessment and the date or dates of payment of the same. No payment shall be due less than fifteen (15) days after the said written notice has been given. Each periodic assessment shall bear interest at the rate of twelve percent (12%) per annum from the date it becomes due and payable if not paid within thirty (30) days after such date and shall be subject to an automatic late charge of Fifty Dollars ($50.00) or five percent (5%) of the delinquent amount, whichever is greater. Failure of the Association to give notice of the assessment shall not affect the liability of any Owner for such assessment, but the date when payment shall become due in such a case shall be deferred to a date fifteen (15) days after such notice shall have been given.

Section 9.05 **Special Assessments.** In addition to the periodic assessments authorized by this Article IX, the Association may, at any time, levy a special assessment payable over such a period as the Association may determine for the purpose of defraying in whole or in part the cost of any construction or reconstruction, unexpected repair or replacement of the Project or any part thereof, or any other expense incurred or to be incurred as provided in this Declaration. This Section shall not be construed as an independent source of authority for the Association to incur expenses, but this Section shall be construed to prescribe the manner of assessing for expenses authorized by other sections hereof which shall make specific reference to this Article IX. Any amounts assessed pursuant hereto shall be assessed to Owners in the same manner as provided in Section 9.03. Notice in writing of the amount of such special assessments and the time for payment thereof shall be given promptly to the Owners, and no payment shall be due less than thirty (30) days after such notice shall have been given. The Association shall have the power to incur expenses for maintenance and repair of any Unit or Retail Store if such maintenance or repair is necessary, in the opinion of the Board of Directors of the Association, to protect the Common Area or any other portion of the Project and if the Owner or Owners of said Unit or Retail Store have failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair has been delivered by the Board of Directors to said Owner or Owners; the Board of Directors shall levy a special assessment against the Owner or Owners of any such Unit or Retail Store to pay for the cost of such maintenance and repair and any other costs or expenses arising out of or incident to such maintenance and repair and the assessment therefor. A special assessment shall bear interest at the rate of twelve percent (12%) per annum from the date it becomes due and payable if not paid within thirty (30) days after such date and shall be subject to an automatic late charge of Fifty Dollars ($50.00) or five percent (5%) of the delinquent amount, whichever is greater.

Section 9.06 **Lien for Assessments.** All sums assessed to any Condominium pursuant to this Article IX, together with interest thereon as provided herein, shall be secured by a lien on such Condominium ownership in favor of the Association upon recordation of a notice of assessment as herein provided. Such lien shall be superior to all other liens and encumbrances on such Condominium except only for: (a) valid tax and special assessment liens on the Condominium in favor of any governmental assessing authority; (b) a lien for all sums unpaid on a first Mortgage or on any Mortgage to Declarant duly recorded in Blaine County, Idaho, real estate records, including all unpaid obligatory advances to be made pursuant to such Mortgage and secured by the lien thereof in accordance with the terms of such instrument; and (c) labor or materialmen's liens, to the extent required by law. All other lienors acquiring liens on any Condominium after this Declaration shall have been recorded in said records shall be deemed to consent that such liens shall be inferior liens to future liens for assessments as provided herein, whether or not such consent be specifically set forth in the instruments creating such liens.

To create a lien for sums assessed pursuant to this Article IX, the Association shall prepare a written notice of assessment setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the record Owner of the Condominium and a description of the Condominium. Such a notice shall be signed by an officer of the Association and shall be recorded in the office of the County Recorder of Blaine County, Idaho. No notice of assessment shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by sale of said Condominium by the Association after failure of the Owner to pay such an assessment in accordance with its terms, such sale to be conducted in the manner permitted by law in Idaho for the exercise of power of sale in deeds of trust or in any other manner permitted by law. The Owner shall be required to pay the costs and expenses of such proceeding, the costs and expenses of filing the notice of assessment and all reasonable attorneys' fees. All such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any assessments against the Condominium which shall become due during the period of foreclosure. The Association shall have the right and power to bid at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, use, and otherwise deal with the same as the Owner thereof.

A further notice stating the satisfaction and release of any such lien shall be executed by the Association and recorded in the Blaine County, Idaho, real estate records upon payment of all sums secured by a lien which has been made the subject of a recorded notice of assessment.

Any encumbrancer holding a lien on a Condominium may pay, but shall not be required to pay, any amounts secured by the lien created by this Section, and upon such payment such encumbrancer shall be subrogated to all rights of the Association with respect to such lien, including priority.

The Association shall report any unpaid assessment remaining unpaid for longer than ninety (90) days after the same shall have become due to any encumbrancer of a Condominium; provided, however, such encumbrancer first shall have furnished written notice of such encumbrance to the Association and provided the Association with an address for receipt of notices.

Unless sooner satisfied and released or the enforcement thereof initiated as provided earlier in this Section, any lien created pursuant to this Section shall expire and be of no further force or effect one (1) year from the date of recordation of said notice of assessment; provided, however, said one-year period may be extended by the Association for not to exceed one (1) additional year by a written extension signed by an officer of the Association and recorded in the office of the County Recorder of Blaine County, Idaho, prior to expiration of said first one-year period.

Section 9.07 **Personal Obligation of Owner.** The amount of any periodic or special assessment against any Condominium shall be the personal obligation of the Owner thereof to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosure or waiver of the lien securing the same. No Owner may avoid or diminish such personal obligation by waiver of the use and enjoyment of any of the Common Area or by abandonment of the Owner's Condominium.

Section 9.08 **Statement of Account.** Upon payment of a reasonable fee and upon written request of any Owner, Mortgagee, prospective Mortgagee or prospective purchaser of a Condominium, the Association shall issue a written statement setting forth: the amount of the unpaid assessments, if any, with respect to such Condominium; the amount of the current periodic assessment; the date that such assessment becomes or became due; and credit for advanced payments or prepaid items, including, but not limited to, an Owner's share of prepaid insurance premiums; which statement shall be conclusive upon the Association in favor of persons who rely thereon in good faith. Unless such request for a statement of account shall be complied with within twenty (20) days, all unpaid assessments which became due prior to the date of making such request shall be subordinate to the lien of a Mortgagee which acquired such Mortgagee's interest subsequent to requesting such statement. Where a prospective purchaser makes such request, both the lien for such unpaid assessments and the personal obligation of the purchaser shall be released automatically if the statement is not furnished within the 20-day period provided herein and if thereafter an additional written request is made by such purchaser, is not complied with within ten (10) days, and the purchaser subsequently acquires the Condominium.

Section 9.09 **<u>Personal Liability of Purchaser for Assessments.</u>** Subject to the provisions of Section 9.08, a purchaser of a Condominium shall be jointly and severally liable with the seller for all unpaid assessments against the Condominium up to the time of the grant or conveyance, without prejudice to the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.

ARTICLE X

Use of Condominiums

Section 10.01 **<u>Condominiums.</u>** Each Residential Condominium may be used for residential purposes, or for any trade or business which creates no greater burden on the remaining Units as would be created by reasonable residential use, including, but not limited to any unreasonable additional burden on parking, foot traffic, noise, odors, trash, heating, air conditioning or common area maintenance. Declarant shall have the right to use any portion of the Project, including any Unit owned by Declarant, for a model condominium site and display and sales office during the construction and sales periods.

Each Retail Condominium shall be used in conjunction with all other Retail Condominiums for commercial uses and shall only be used or rented to tenants whose uses are contained within those allowed by "community commercial zoning" as that term is defined by Municipal Code and are approved by the Association.

Section 10.02 **<u>Use of Common Area.</u>** 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 Association. Nothing shall be altered on, constructed in, or removed from the Common Area except upon the prior written consent of the Association. No modification or alteration of the open space or parking area of the Common Area which would affect the quantity or quality of such areas shall be made without the written consent of the Planning and Zoning Commission of the City of Ketchum, Idaho.

Section 10.03 **<u>Prohibition of Damage and Certain Activities.</u>** Nothing shall be done or kept in any part of the Project which would result in the cancellation of the insurance on the Project or any part thereof or increase the rate of insurance on the Project or any part thereof over what the Association, but for such activity, would pay, without the prior written consent of the Association. Nothing shall be done or kept in any part of the Project that would 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 or any tenant or 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 caused by such Owner or such Owner's tenants and invitees; provided, however, any invitee of the Declarant shall not under any circumstances be deemed to be an invitee of any other Owner. No noxious, destructive, or offensive activity shall be carried on in any part of the Project nor shall anything 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 or operating a business in the Project.

Section 10.04 **Animals.** The Association hereby prohibits the raising, breeding, or keeping of animals, livestock, or poultry in any part of the Project except for a pet store or other pet related business within the Retail Area. Notwithstanding the foregoing, each Unit Owner shall be entitled to keep no more than one (1) dog, two (2) cats, two (2) birds and aquarium fish in any Unit; provided that (a) such pets are of a size and nature that does not cause disruption or nuisance to other Owners, (b) such pets are not allowed to run at large, chase humans or wild animals or bark excessively, and (c) the owner thereof complies with any further restrictions contained in any supplemental Declaration, and any reasonable rules and regulations adopted by the Association regarding such pets; provided further, however, that the Association may from time to time, by adoption of rules and regulations, permit Unit Owners to keep up to two (2) small dogs as defined by such rules and regulations.

Section 10.05 **Rules and Regulations.** No Owner shall violate the rules and regulations for the use of that portion of the Project to which such rules apply as adopted from time to time by the Association. Except as otherwise provided herein, any Owner shall have the right to enforce any or all of the provisions of any restriction contained in this Declaration or any rule or regulation adopted by the Association. Any violation of any state, municipal or local law, ordinance or regulation pertaining to ownership, occupation or use of any property within the Project is hereby declared to be a violation of a restriction in this Declaration and subject to any or all of the enforcement procedures set forth below.

Section 10.06 **Maintenance of Interiors.** Each Owner shall keep the interior of such Owner's Unit or Retail Store, including, without limitations interior walls, windows, glass, ceilings, floors, and permanent fixtures and appurtenances thereto, in a clean, sanitary, and attractive condition and good state of repair; shall keep the Limited Common Area designated for use in connection with such Owner's Unit or Retail Store in clean, sanitary, and attractive condition; and shall keep the heating equipment and water heater servicing such Owner's Unit or Retail Store exclusively in a good state of maintenance and repair.

Section 10.07 **<u>Structural Alterations</u>.** No structural alterations or modification to any interior walls shall be made to any Condominium and no plumbing, electrical, or similar work within the Common Area shall be done by any Owner without the prior written consent of the Association, except that an Owner may do such work as may be appropriate to maintain and repair any Limited Common Area appurtenant to such Owner's Unit or Retail Store.

Section 10.08 **<u>Parking Restrictions</u>.** No vehicle shall be parked or left on the property subject to this Declaration other than on the designated parking area. The parking area shall be used for parking operable vehicles only and shall not be converted for living, recreational, or business purposes, nor shall anything be stored in any parking area so as to prevent the parking of an automobile thereon. No exposed storage shall be permitted anywhere on the Project. Camper, recreational vehicle, trailer and boat storage on the Common Area shall be permitted only pursuant to Association rules or regulations.

Section 10.09 **<u>Signs</u>.** Except for signs as may be used by Declarant in connection with the sale of Condominiums, no sign of any kind shall be displayed to the public view by Owners of Residential Condominiums without the approval of the Board. Owners of Retail Condominiums shall have the right to install or enter into lease agreements which provide for lighting and signage for retail uses on the exterior face of the ground floor and glazing/awning area provided that such signage and lighting complies with the Project's uniform signage plan and is approved by the Board in its sole discretion.

Section 10.10 **<u>Nuisances</u>.** No rubbish or debris of any kind shall be placed or permitted to accumulate, and no odors shall be permitted to arise from the property or any Condominium so as to render any portion of the Project unsanitary, unsightly, offensive, or detrimental to any other property or Condominium in the vicinity thereof or to its occupants. No noise or other nuisance shall be permitted to exist or operate upon any such property or any Condominium so as to be offensive or detrimental to any other property or Condominium in the vicinity thereof or its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells, or other sound devices (other than security systems used exclusively for security purposes) shall be located, used, or placed on any such property or Condominium without the prior written approval of the Board, except as may be installed by Owners of Retail Condominiums to service the Retail Area, so long as such items do not constitute a nuisance to other Owners. Fireplace wood shall only be stored in containers and locations approved by the Board and shall only be transported in enclosed containers approved by the Board. Fireplace wood shall only be obtained from vendors approved by the Board.

Section 10.11 **Outside Installations.** No clotheslines, television antennas, or satellite dishes shall be installed on the exterior of the Building for the use of any Unit or Retail Store or be allowed to protrude through the walls, windows, or roof of the Building for the use of any Unit or Retail Store. Owners shall only use the satellite television provider approved by the Board. No wiring or installation of air conditioning, or other machines shall be installed on the exterior of the Building for the use of any Unit or Retail Store or be allowed to protrude through the walls, windows, or roof of the Building for the use of any Unit or Retail Store unless properly screened from view or contained within roof wells as part of the original construction of the Project and unless the prior written approval of the Board is secured.

Section 10.12 **Community Housing.** Unit 7 consists of three (3) apartments which are designated Category 2 community housing units by the Blaine County Housing Authority and one (1) apartment which is designated a Category 3 community housing unit, and shall at all times be used as affordably priced rental apartments. Occupancy shall be limited to tenants with household income of not more than seventy percent (70%) of the Blaine County Area Median Income and the maximum gross rent shall not exceed the limits as promulgated by the Blaine County Housing Authority. Tenants in these apartments must be pre-qualified as financially eligible by the Blaine County Housing Authority. Qualified persons who are employed as full-time police officers, firefighters or emergency medical personnel shall be given priority in renting the two (2) studio apartments and one (1) of the one-bedroom apartments. The remaining one-bedroom apartment may be rented to an on-site property manager whether or not such person meets the financial eligibility criteria.

Section 10.13 **Enforcement of Violations.** No violation of any duly adopted rule or regulation, inclusive of those items described in Section 10.05 above, shall be allowed. If any Owner, Owner's family, tenant, licensee, or invitee commits such violation, the Board may, in addition to any other legal remedies it may have, impose a Special Assessment upon such Owner of not more than Fifty Dollars ($50) for each such violation for each day that such violation continues. Before invoking such assessment, the Board shall give such person thirty (30) days written notice to cure such violation and/or to be heard by the Board regarding the violation and any potential assessment. If such violation is of a nature that it cannot be remedied within thirty (30) days, no assessment shall be invoked so long as the Owner submits a remediation plan to the Board to remedy the violation within a reasonable time and such Owner diligently pursues such plan to completion. If an Owner violates any rule or regulation more than twice within any three (3) year period, regardless of whether the rule that has been violated is the same, the accrual of such assessment shall begin three (3) days after the Board gives notice of such violation rather than thirty (30) days after such notice. Such additional assessments may be collected and enforced in the same manner as any other assessment under Article IX. Each remedy provided in this Declaration or by law shall be cumulative and not exclusive. The failure to enforce any of the provisions of this Declaration at any time shall not constitute a waiver of the right to enforce such provision thereafter.

ARTICLE XI

Insurance

Section 11.01 **Types of Insurance.** The Association shall obtain and keep in full force and effect at all times the following insurance coverage provided by companies duly authorized to do business in Idaho. The provisions of this Article XI 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. In order to facilitate the providing and maintaining of adequate and proper insurance, it is contemplated that Declarant may contract for blanket insurance coverage covering the Project as contemplated by this Article XI prior to or concurrently with the first conveyance of a Condominium. Any obligation or commitment for the payment of premiums or expenses otherwise incurred by Declarant under any such blanket policy or coverage, whether or not the same is also a personal obligation of the purchaser or purchasers of any Condominium, shall become an obligation of the Association and shall be paid for out of Association funds.

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

(b) Public Liability Insurance. The Association shall obtain commercial general liability insurance or equivalent liability coverage in such amounts and in such forms as the Association deems advisable to provide adequate protection. Coverage shall include, without limitation, liability for personal injury, bodily injury (including death) and property damage arising out of operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other use of the Project.

(c) Worker's Compensation and Employer's Liability Insurance. The Association shall purchase worker's 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.

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

(e) Other. The Association may obtain insurance against such other risks of a similar or dissimilar nature as the Association shall deem appropriate with respect to the Project, including any personal property of the Association located thereon.

Section 11.02 Optional Insurance. The Association may obtain the following types of insurance coverage, but the Association is not required to do so.

(a) Personal Property Insurance. The Association may, in the Association's discretion, obtain insurance on the personal property and furnishings initially placed in the Condominiums of Owners by Declarant upon completion of construction of the Project in amounts equal to the replacement cost less depreciation in the event of damage or destruction from casualties against which such insurance is obtained.

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

(c) Other Property Insurance. The Association may purchase other property insurance, such as flood, etc., in such amounts and in such forms as the Association deems advisable to provide adequate protection.

Section 11.03 Form. Property insurance shall be carried in a form or forms naming the Association the insured as trustee for the Owners, which policy or policies shall specify the interest of each Condominium Owner (Owner's name, Condominium number, the appurtenant undivided interest in the Common Area), and which policy or policies shall provide a standard loss payable clause providing for payment of insurance proceeds to the Association as trustee for the Owners and for the respective first Mortgagees that from time to time give notice to the Association of such first Mortgages, such proceeds to be used in accordance with this Declaration. Each policy shall also provide that it cannot be canceled by either the insured or the insurance company until after ten (10) days prior written notice is first given to each Owner and to each first Mortgagee. The Association shall furnish to each Owner and Mortgagee who requests it and to Declarant a true copy of such policy, together with a certificate identifying the interest of the Owner. All policies of insurance shall provide for a waiver of subrogation by the insurer as to claims against its Association, its Board, employees and agents, and against each Owner and each Owner's employees, agents and guests and shall provide that the insurance cannot be canceled, invalidated, or suspended on account of the conduct of the Association or its Board, employees or agents, or on account of any Owner or such Owner's employees, agents or guests.

Liability insurance shall name the Association as the insured, as trustee for the Owners, and shall protect each Owner against liability for acts of the Association in connection with the ownership, operation, maintenance, or other use of the Project.

Section 11.04 **<u>Owner's Responsibility</u>.** Insurance coverage on the furnishings initially placed in a Condominium by Declarant, unless the Association elects to arrange for such property insurance pursuant to Section 11.02 hereof (in which event Owner shall be responsible for the amount, if any, the replacement cost exceeds the insurance proceeds), and public liability insurance coverage within each individual Condominium and for activities of the Owner, not acting by the Association, with respect to the Common Area, unless the Association elects to arrange for such insurance pursuant to Section 11.02 hereof, and regardless of the Association's election, insurance coverage against loss from theft on all personal property, and insurance coverage on items of personal property placed in the Condominium by Owner shall be the responsibility of the respective Owners. Retail Area Owners shall require retail tenants to carry appropriate personal property insurance for the contents of their respective Retail Store Area as well as all other forms of insurance as are customary for retail tenants as shall be set forth in each Retail Area lease.

Section 11.05 **<u>Insurance Proceeds</u>.** The Association shall receive the proceeds of any property insurance payments received under policies obtained and maintained pursuant to this Article XI. The Association shall apportion the proceeds to the portions of the Project which have been damaged and shall determine the amount of the proceeds attributable to damage to the Common Area. To the extent that reconstruction is required herein, the proceeds shall be used for such purpose. To the extent that reconstruction is not required herein and there is a determination that the Project shall not be rebuilt, the proceeds shall be distributed in the same manner herein provided in the event of sale of obsolete Project, as set forth in Section 13.04. Each Owner and each Mortgagee shall be bound by the apportionments of damage and of the insurance proceeds made by the Association pursuant hereto.

Section 11.06 **Owner's Own Insurance.** Notwithstanding the provisions of Sections 11.01 and 11.02 hereof, each Owner shall obtain insurance at the Owner's own expense providing coverage upon the Owner's Condominium, the Owner's personal property, for the Owner's personal liability, and covering such other risks as the Owner may deem appropriate, but each such policy shall provide that it does not diminish the insurance carrier's coverage for liability arising under insurance policies which the Association obtains pursuant to this Article XI. All such insurance of the Owner's Condominium shall waive the insurance company's right of subrogation against the Association, the other Owners, and the servants, agents, and guests of any of the Owners, the Declarant, and Mortgagees. If any Owner violates this provision, any diminution in insurance proceeds otherwise payable under the policies described in this Section that results from the existence of such other insurance will be chargeable to the Owner who acquired such other insurance, and the Owner shall be liable to the Association to the extent of any such diminution. In addition, any improvements made by a Residential Condominium Owner within such Owner's Unit may be separately insured by the Owner, but such insurance shall be limited to the type commonly known as "tenant's improvements" insurance.

ARTICLE XII

Casualty Damage or Destruction

Section 12.01 **Affects Title.** Title to each Condominium is hereby made subject to the terms and conditions hereof which bind the Declarant and all subsequent Owners, whether or not it be so expressed in the deed by which any Owner acquires such Owner's Condominium.

Section 12.02 **Association as Agent.** All of the Owners irrevocably constitute and appoint the Association by and through the Association's elected officers as each Owner's true and lawful attorney-in-fact in the Owner's name, place, and stead for the purpose of dealing with the Project upon its damage or destruction as hereinafter provided. Acceptance by any grantee of a deed from the Declarant or from any Owner shall constitute such appointment.

Section 12.03 **General Authority of the Association.** As attorney-in-fact, the Association by and through the Association's elected officers shall have full and complete authorization, right, and power to make execute, and deliver any contract, deed or other instrument with respect to the interest of a Condominium Owner which may be necessary or appropriate to exercise the powers herein granted. Repair and reconstruction of the improvements as used in the succeeding subparagraphs mean restoring the Project to substantially the same vertical and horizontal boundaries as before. The proceeds of any insurance collected shall be available to the Association for the purpose of repair or reconstruction unless the Owners and all first Mortgagees unanimously agree not to rebuild in accordance with the provisions set forth hereinafter.

In the event any Mortgagee should not agree not to rebuild, the Association shall have the option to purchase such Mortgage by payment in full of the amount secured thereby unless if the Owners and Mortgagees are in unanimous agreement not to rebuild, in which case the provisions of Section 12.08 shall apply. The Association shall obtain the funds for such purpose by special assessments under Article IX of this Declaration.

Section 12.04 **Estimate of Costs.** As soon as practicable after an event causing damage to or destruction of all or any part of the Project, the Association shall obtain estimates that the Association deems reliable and complete of the costs of repair or reconstruction of that part of the Project damaged or destroyed.

Section 12.05 **Repair or Reconstruction.** As soon as practicable after receiving these estimates the Association shall diligently pursue to completion the repair or reconstruction of that part of the Project damaged or destroyed. The Association may take all necessary or appropriate action to effect repair or reconstruction, as attorney-in-fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith. Such repair or reconstruction shall be in accordance with the original plans and specifications of the Project or may be in accordance with any other plans and specifications the Association may approve; provided, however, in such latter event in the absence of the consent of each affected Owner, the number of cubic feet and the number of square feet of any Unit may not vary by more than five percent (5%) from the number of cubic feet and the number of square feet for such Unit as originally constructed pursuant to such original plans and specifications, and the location of the Building shall be substantially the same as prior to damage or destruction.

Section 12.06 **Funds for Reconstruction.** The proceeds of any insurance collected shall be available to the Association for the purpose of repair or reconstruction. If the proceeds of the insurance are insufficient to pay the estimated or actual cost of such repair or reconstruction, the Association, pursuant to Article IX hereof, may levy in advance a special assessment sufficient to provide funds to pay such estimated or actual costs of repair or reconstruction. Such assessment shall be allocated and collected as provided in Article IX. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair or reconstruction.

Section 12.07 **<u>Disbursement of Funds for Repair or Reconstruction</u>.** The insurance proceeds held by the Association and the amounts received from the assessments provided for in Section 12.06 constitute a fund for the payment of the cost 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 Association under Section 12.06 of this Declaration.

Section 12.08 **<u>Decision Not to Rebuild</u>.** If all Owners and all holders of first Mortgages on Condominiums agree not to rebuild, as provided herein, the Project shall be sold and the proceeds distributed in the same manner herein provided in the event of sale of obsolete Condominiums, as set forth in Section 13.04.

ARTICLE XIII

<u>Obsolescence</u>

Section 13.01 **<u>Adoption of a Plan</u>.** The record Owners, as reflected in the real estate records of Blaine County, Idaho, representing an aggregate seventy-five percent (75%) or more of the votes allocated to the Owners of Units may agree that the Residential portion of the Project is obsolete and adopt a written plan for the renewal and reconstruction of all of the Residential Area, which plan must have the unanimous approval of all first Mortgagees of record of Units at the time of the adoption of such plan. The record Owners, as reflected in the real estate records of Blaine County, Idaho, representing an aggregate seventy-five percent (75%) or more of the votes allocated to the Owners of Retail Stores may agree that the Retail Area is obsolete and adopt a written plan for the renewal and reconstruction of the Retail Area, which plan must have the unanimous approval of all first Mortgagees of record of Retail Stores at the time of the adoption of such plan. If Owners representing seventy-five percent (75%) or more of the votes allocated both to the Owners of Units and to the Owners of Retail Stores agree that the Project as a whole is obsolete, the Owners may adopt a joint written plan for the renewal and reconstruction of the entire Project, which plan must have the unanimous approval of all first Mortgagees of record for the Project at the time of the adoption of such plan. Written notice of adoption of any such plans shall be given to all Owners. Such plans shall be recorded in Blaine County, Idaho, real estate records.

Section 13.02 Payment for Renewal and Reconstruction. The expense of renewal or reconstruction of Residential Area shall be payable by each of the Owners of Residential Condominiums as an assessment against that Owner's respective Condominium in accordance with the proportions of Residential Common Area as set forth in Exhibit B. The expense of renewal or reconstruction of Retail Area shall be payable by all of the Retail Condominium Owners as assessments against each Owner's respective Retail Condominium in accordance with the proportions of Retail Common Area as set forth in Exhibit B. These assessments shall be levied in advance pursuant to Article IX hereof and shall be allocated and collected as provided in Article IX. Further levies may be made in like manner if the amounts collected prove insufficient to complete the renewal and reconstruction. The expenses of a joint plan shall be apportioned into Residential Area and Retail Area expenses, which apportionment must be approved by Owners representing both seventy-five percent (75%) or more of the votes allocated to Residential Condominium Owners and seventy-five percent (75%) or more of the votes allocated to Retail Condominium Owners. The apportioned amounts shall then be divided among the Owners as set forth in this paragraph.

Section 13.03 Dissents From the Plan. An Owner of a portion of the area involved in a plan not a party to such a plan for renewal or reconstruction may give written notice of dissent to the Association within fifteen (15) days after the recordation of such plan. The Association shall then give written advice of such dissents to all the Owners within five (5) days after the expiration of such fifteen (15) day period. Within fifteen (15) days of receipt of such notice from the Association, the record Owners representing an aggregate record ownership of more than fifteen percent (15%) of the affected area may cancel the plan by written instrument recorded in Blain County, Idaho, real estate records. If the plan is not canceled, then the ownership interest of each dissenter shall be purchased by the Association according to the following procedures. If the Owner and the Association can agree on the fair market value thereof, then such sale and conveyance shall be completed within sixty (60) days thereafter. If the parties are unable to agree, the date when either party notifies the other that he, she, or it is unable to agree with the other shall be the "Commencing Date" from which all periods of time mentioned hereinafter in this Section shall be measured. Within ten (10) days following the Commencing Date each party shall nominate a qualified appraiser by written notice of such nomination to the other. If either party fails to make such nomination, the appraiser nominated shall, within five (5) days after default by the other party appoint and associate with that appraiser another qualified appraiser. If the two appraisers designated by the parties, or selected pursuant hereto in the event of default of one party, are unable to agree, the two appraisers shall appoint another qualified appraiser to be umpire between them, if they can agree on such person. If they are unable to agree upon such umpire, then each appraiser previously appointed shall nominate two (2) qualified appraisers, and from the names of the four persons so nominated one shall be drawn by lot by a judge of any court of record in Idaho, and the person whose name is so drawn shall be the umpire. The nominations from among which the name of the umpire is to be drawn by lot shall be submitted within ten (10) days after the failure of the two appraisers to agree, which, in any event shall not be later than twenty (20) days following the appointment of the second appraiser. The decision of the appraisers as to the fair market value, or in the case of their disagreement, the decision of such umpire shall be final and binding. The expenses and fees of such appraisers shall be borne equally by the Association and the Owner. The sale shall be consummated within sixty (60) days after decision of the appraisers. The obligation of the Association to make such purchase shall be conditioned on the fair market value of the affected ownership interest exceeding the obligations secured by liens on such ownership interest and upon the marketability of the title of the Owner. The Owner shall furnish the Association an appropriate abstract of title or commitment for title insurance evidencing marketability of such Owner's title not less than fifteen (15) days prior to the date set for completion of the sale.

The Association, pursuant to Article IX hereof, may levy a special assessment sufficient to provide funds to pay for the ownership interests of the dissenters, provided that such assessments shall not apply to any of the Owners who are among the dissenters and shall not be liens against the Condominium of such Owners and that such assessments shall apply only to those Owners in the same category of Ownership (Residential or Retail) as the dissenters. If the Association later sells such ownership interests so acquired, then the Association as attorney-in-fact shall disburse the proceeds in the same manner provided in Section 13.04 of this Declaration.

Section 13.04 **Sale of Obsolete Project.** The Owners representing an aggregate ownership interest of seventy-five percent (75%) or more of the total square footage of the Project may agree that the Project is obsolete and that the Project should be sold. Such an agreement must have the unanimous approval of every first Mortgagee of record at the time such agreement is made. In such instance the Association shall forthwith record a notice setting forth such fact or facts. Upon the recording of such notice by the Association, the Project shall be sold by the Association as attorney-in-fact for all of the Owners free and clear of the provisions contained in this Declaration, the Condominium Map, and the Bylaws. The sale proceeds shall be apportioned among the Owners pro rata based on the percentage ownership of the Common Area of such Owner as defined in Exhibit C. Such apportioned proceeds shall be paid into separate accounts, each account representing one ownership interest. Each such account shall remain in the name of the Association and shall be further identified by the Condominium designation and the name of the Owner. From each separate account the Association, as attorney-in-fact, shall use and disburse the total amount of such accounts without contribution from one account to the other, first to Mortgagees and other lienors in the order of priority of their Mortgagee and other liens and the balance remaining to each respective Owner.

Section 13.05 **Distribution of Excess.** In the event amounts collected pursuant to Section 13.02 are in excess of the amounts required for renewal and reconstruction, the excess shall be returned to the Owners by the Association by a distribution to each Owner in an amount proportionate to the respective amount collected from each such Owner.

ARTICLE XIV

Condemnation

Section 14.01 **Consequences of Condemnation.** If at any time or times during the continuance of the ownership pursuant to this Declaration, all or any part of the Project 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.

Section 14.02 **Proceeds.** All compensation, damages, or other proceeds therefrom, the sum of which is hereinafter called the "Condemnation Award," shall be payable to the Association.

Section 14.03 **Complete Taking.** In the event that the entire Project is taken, condemned, sold, or otherwise disposed of in lieu of or in avoidance thereof, the Condominium ownership pursuant hereto shall terminate. The Condemnation Award shall be apportioned among the Owners in the proportions each Owner's square footage in the Project bears to the total square footage, provided that if a standard different from the value of the Project as a whole is employed to measure the Condemnation Award in the negotiation, judicial decree, or otherwise, then in determining such shares the same standard shall be employed to the extent it is relevant and applicable.

On the basis of the principle set forth in the last preceding paragraph, the Association shall as soon as practicable determine the share of the Condemnation Award to which each Owner is entitled. Such shares shall be paid into separate accounts and disbursed as soon as practicable in the same manner provided in Section 13.04 of this Declaration.

Section 14.04 **Partial Taking.** In the event that less than the entire Project is taken, condemned, sold, or otherwise disposed of in lieu of or in avoidance thereof, the Condominium ownership hereunder shall not terminate. Each Owner shall be entitled to a share of the Condemnation Award to be determined in the following manner. As soon as practicable, the Association shall reasonably and in good faith allocate the Condemnation Award between Residential Area and Retail Area. The Association shall then, reasonably and in good faith, allocate the respective Residential Area and Retail Area portions of the Condemnation Award between compensation, damages, or other proceeds, and shall apportion the amounts so allocated among the Owners as follows: (a) the total amount allocated to taking of or injury to the Residential Common Area or the Retail Common Area shall be apportioned among those Owners based upon their respective interest in the Retail Common Area or Residential Common Area in accordance with the attached Exhibit B; (b) the total amount allocated to severance damages shall be apportioned to those Condominiums which were not taken or condemned; (c) the respective amounts allocated to the taking of or injury to a particular Condominium and/or improvements an Owner has made within such Owner's own Condominium shall be apportioned to the particular Owner involved; and (d) the total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances. If an allocation of the Condemnation Award is already established in negotiation, judicial decree, or otherwise, then in allocating the Condemnation Award the Association shall employ such allocation to the extent it is relevant and applicable. Distribution of apportioned proceeds shall be made in the same manner provided in Section 13.04 of this Declaration.

Section 14.05 Reorganization. In the event a partial taking results in the taking of a complete Unit or Retail Store, the Owner thereof automatically shall cease to be a member of the Association. Thereafter the Association shall reallocate the ownership, voting rights, and assessment ratio determined in accordance with this Declaration according to the same principles employed in this Declaration at its inception and shall submit such reallocation to the Owners of remaining Condominiums for amendment of this Declaration as provided in Article XV hereof.

Section 14.06 Reconstruction and Repair. Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified in Article XII above.

ARTICLE XV

Revocation or Amendment

This Declaration shall not be revoked unless the Owners (as reflected in the real estate records of Blaine County, Idaho) representing seventy-five percent (75%) or more of the votes, and all holders of any recorded mortgage or deed of trust covering or affecting any or all of the Condominiums (a "Mortgage"), whose interests as mortgagee appears in such records, consent and agree to such revocation or amendment by instruments duly recorded. Amendments to the Declaration shall be made by an instrument in writing entitled "Amendment to Declaration" which sets forth the entire amendment. Except as otherwise specifically provided for in this Declaration, any proposed amendment must be approved by a majority of the Board prior to its adoption by the Owners. Amendments may be adopted at a meeting of the Owners if Owners representing seventy-five percent (75%) or more of all the allocated votes affirmatively vote for such amendment, or without any meeting if all Owners have been duly notified and Owners representing seventy-five percent (75%) or more of all the allocated votes consent in writing to such amendment. Notwithstanding the foregoing, any amendment to a provision of the Declaration establishing, providing for, governing or regulating the following shall require the consent of Owners representing seventy-five percent (75%) or more of all the allocated votes and the consent of seventy-five percent (75%) or more of all the Mortgagees and the consent of the Declarant (so long as Declarant owns any Condominiums): voting; assessments, assessment liens or subordination of such liens; reserves for maintenance, repair and replacements of Common Areas; insurance or bonds; use of Common Areas; responsibility for maintenance or repairs; expansion or construction of the Project or the addition, annexation or withdrawal of property to or from the Project; boundaries of Condominiums; converting of Condominiums into Common Areas or vice versa; leasing of Condominiums; provisions for the benefit of the Declarant; provisions for benefit of first Mortgagees, or holders, insures or guarantors of first Mortgages; the interests in Common Areas; or imposition of any right of first refusal or similar restrictions on the right of an Owner to sell, transfer or otherwise convey a Condominium; responsibility for maintenance and repair; reallocation of interests in Common Area or Limited Common Area, or rights to their use; the purposes to which any Condominium or Common Area is restricted; and restoration or repair after damage or partial condemnation in a manner other than as specified in this Declaration; provided, that a Mortgagee who fails to respond in writing within thirty (30) days of a written request to approve an amendment shall be deemed to have approved the request. In all events, the amendment when adopted shall bear the signature of the president of the Association and shall be attested by the secretary, who shall state whether the amendment was properly adopted, and shall be acknowledged by them as officers of the Association. Amendments once properly adopted shall be effective upon recording in the appropriate governmental offices where real estate conveyances are recorded for the county in which the Project is located. It is specifically covenanted and understood that any amendment to this Declaration properly adopted will be completely effective to amend any or all of the covenants, conditions and restrictions contained herein that may be affected and any or all clauses of this Declaration unless otherwise specifically provided in the section being amended or the amendment itself. Notwithstanding the foregoing, any amendment to this Declaration that solely or primarily affects only the Penthouse Units must be approved by Penthouse Owners representing seventy-five percent (75%) or more of the votes allocated to Penthouse Owners.

ARTICLE XVI

Period of Condominium Ownership

The Condominium ownership created by this Declaration and the Condominium Map shall continue until this Declaration is revoked in the manner provided in Article XV or until terminated in the manner provided in Article XIII or Article XIV.

ARTICLE XVII

Miscellaneous

Section 17.01 **Compliance With Provisions of Declaration and Bylaws of the Association.** Each Owner shall comply with the provisions of this Declaration, the Articles of Incorporation, the Bylaws, rules and regulations of the Association, and the decisions and resolutions of the Association adopted pursuant thereto as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due and for damages or injunctive relief, or both, maintainable by the Association on behalf of the Owners or, in a proper case, by an aggrieved Owner.

Section 17.02 **Registration of Mailing Address.** Each Owner shall register such Owner's mailing address with the Association. All notices or demands intended to be served upon any Owner shall be sent by either registered or certified mail, return receipt requested, postage prepaid, addressed in the name of the Owner at such registered mailing address or, if the Owner fails to register an address, then to the mailing address of the Owner's Condominium. All notices or demands intended to be served upon the Association shall be given by registered or certified mail, return receipt requested, postage prepaid, to the address of the Association as designated in the Bylaws of the Association. All notices or demands to be served on Mortgagees pursuant thereto shall be sent by either registered or certified mail, return receipt requested, postage prepaid, addressed in the name of the Mortgagee at such address as the Mortgagee may have furnished to the Association in writing. Unless the Mortgagee furnishes the Association such address, the Mortgagee shall be entitled to receive none of the notices provided for in this Declaration. Any notice referred to in this Section shall be deemed given three (3) days after deposited in the United States mail in the form provided for in this Section.

Section 17.03 **Transfer of Declarant's Rights.** Any right or any interest reserved hereby to the Declarant may be transferred or assigned by the Declarant, either separately or with one or more of such rights or interests, to any person or entity.

Section 17.04 **Mediation/Arbitration/Waiver of Trial.** The Association and all Owners agree to and shall first mediate any controversy, dispute, or claim of whatever nature arising out of, in connection with, or in relation to the interpretation, performance or breach of this Agreement or such rules and regulations as the Association may promulgate under its responsibilities as set forth in this Agreement. The mediation shall be held prior to any arbitration. The mediation shall be confidential. In the event the parties are not able to agree on a mediator within thirty (30) days, then the parties shall request that the presiding judge of Blaine County, Idaho, acting in his/her individual capacity, appoint a mediator. In the event the mediator determines that a second mediation session is necessary, it shall be conducted in accordance with this paragraph. Should the prevailing party attempt an arbitration before attempting to mediate, THE PREVAILING PARTY SHALL NOT BE ENTITLED TO ATTORNEYS' FEES THAT MIGHT OTHERWISE BE AVAILABLE TO THEM IN A COURT ACTION OR ARBITRATION, AND IN ADDITION THERETO, THE PARTY WHO IS DETERMINED BY THE ARBITRATOR TO HAVE RESISTED MEDIATION SHALL BE SANCTIONED BY THE ARBITRATOR. With respect to any matter not resolved by the mediation process given above, the Association and each Owner hereby expressly waive any right to trial or other court action of any claim, demand, action or cause of action either arising under this Agreement or any other instrument, document, rules, regulations or agreement in any way connected with or related to or incidental to this Agreement now existing or hereafter arising, and whether sounding in contract or tort or otherwise; and the Association and each Owner hereby agree and consent that any such claim, demand, action or cause of action shall be decided by arbitration by a single arbitrator, who shall conduct the arbitration in accordance with the American Arbitration Association's applicable rules, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. In the event the parties are not able to agree on a single arbitrator within thirty (30) days, then the parties shall request that the presiding judge of Blaine County, Idaho, acting in his/her individual capacity, appoint a single arbitrator.

Section 17.05 **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 or rented said 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.

Section 17.06 **Number and Gender.** Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

Section 17.07 **Severability.** If any of the provisions of this Declaration or any clause, paragraph, sentence, phrase, or word or the application thereof in any circumstance shall be invalidated, such invalidity shall not affect the validity of the remainder of the Declaration, and the application of any such provision, paragraph, sentence, clause, phrase, or word in any other circumstance shall not be affected thereby.

Section 17.08 **Construction by Declarant.** Nothing in this Declaration or any action taken by the Association shall limit the right of Declarant to complete construction of any phases of the Project.

Section 17.09 **Statute.** The provisions of this Declaration shall be in addition and supplemental to the Condominium Property Act of the State of Idaho and to all other provisions of law.

Section 17.10 **Exhibits.** The following attached exhibits are part of this Declaration:

Exhibit A – Project Legal Description
Exhibit B – Voting and Interests in Retail and Residential Areas
Exhibit C – Percentage of Ownership in Common Area

This Declaration is executed on this 7 day of July, ~~2003~~ 2005.

KGF DEVELOPMENT LLC,
a Washington limited liability company

By: Kevin G. Fortun
Kevin G. Fortun
Its Manager

State of ~~Idaho~~ Washington)
)ss.
County of ~~Blaine~~ King)

On this 7 day of July in the year ~~2003~~ 2005, before me, the undersigned, personally appeared **KEVIN G. FORTUN** known or identified to me to be the

383328.7/019166.00011

Manager of the limited liability company that executed the foregoing instrument, and acknowledged to me that such limited liability company executed the same.

WITNESS my hand and official seal

Susan K. Knipfel

Notary Public

Commission Expires: 6-10-09

SUSAN K. KNIPFEL
COMMISSION EXPIRES
NOTARY
PUBLIC
6-10-09
STATE OF WASHINGTON

383328.7/019166.00011

EXHIBIT A

Project Legal Description

Lots 1, 2, 3 and 4, Block 38, City of Ketchum, County of Blaine, State of Idaho.

EXHIBIT B

Voting and Interests in Retail Area and Residential Area

RESIDENTIAL AREA

Unit	Sq. Ft.	% Residential Common Area	% Penthouse Limited Common Area	Votes
1	2,686.74	14.25%	16.52%	1.28
2	2,309.24	12.25%	14.20%	1.10
3	2,611.46	13.86%	16.05%	1.25
4	3,199.61	16.98%	19.67%	1.53
5	3,120.75	16.56%	19.18%	1.49
6	2,339.97	12.41%	14.38%	1.12
7	2,581.01	13.69%	N/A	1.23
TOTAL	18,848.78	100%	100%	9.00

RETAIL AREA

Retail Store	Sq. Ft.	% Retail Common Area	Votes
C-1	2,787.09	11.78%	1.24
C-2	1,858.41	11.85%	0.83
C-3	1,117.07	7.13%	0.50
C-4	731.32	4.67%	0.33
C-5	1,806.86	11.52%	0.81
C-6	1,993.46	12.71%	0.89
C-7	801.64	5.11%	0.36
C-8	800.00	5.10%	0.36
C-9	1,031.13	6.58%	0.46
C-10	1,060.50	6.76%	0.47
C-11	854.84	5.45%	0.38
C-12	837.03	5.34%	0.37
TOTAL	15,679.41	100%	7.00

EXHIBIT C

Percentage of Ownership Interest in Common Area

The percentage of ownership in the Common Area of the Project which is allocated to each Condominium for purposes of (1) tax assessment under Section 55-1514, Idaho Code; (2) liability as provided in Section 55-1515, Idaho Code; and, (3) assessment for General Common Area operation and maintenance are as follows:

Condominium Number	% of Common Area of Project
1	8.02%
2	6.89%
3	7.80%
4	9.55%
5	9.31%
6	6.98%
7	7.70%
C-1	7.78%
C-2	5.18%
C-3	3.12%
C-4	2.04%
C-5	5.04%
C-6	5.56%
C-7	2.24%
C-8	2.23%
C-9	2.88%
C-10	2.96%
C-11	2.38%
C-12	2.34%
TOTAL	100%

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