


<p>RECORDED AT THE REQUEST OF: (Please Return a Copy to:)</p>   <p>Brent G. Schlotthauer Vasseur &amp; Schlotthauer, PLLC PO Box 1560 Coeur d' Alene, Idaho 83816-1560</p>	<p>DANIEL J. ENGLISH 70P I 2073134000 KOOTENAI CO. RECORDER Page 1 of 70 BBB Date 12/19/2006 Time 14:30:15 REC-REQ OF WELCH COMER &amp; ASSOCIATES RECORDING FEE: 210.00 2073134000 SC</p>  <p style="text-align: right;">10</p> <p style="text-align: center;"><i>(This Space for Recorder's Use Only)</i></p>
---	---

*Declaration of*  
*Covenants, Conditions & Restrictions*

---

*Skywagon Commercial Condominiums*  
*Owners' Association, Inc.*  
*[Skywagon Commercial Condominiums- Post Falls, Idaho]*

**DECLARATION OF  
COVENANTS, CONDITIONS & RESTRICTIONS**

**SKYWAGON COMMERCIAL CONDOMINIUMS OWNERS' ASSOCIATION, INC.**  
*[Skywagon Commercial Condominiums- Post Falls, Idaho]*

**TABLE OF CONTENTS**

ARTICLE 1.	DEFINITIONS .....	3
1.1	Defined Terms .....	3
1.2	Construction .....	7
SECTION 2.	CONDOMINIUM DECLARATION .....	7
2.1	Submission to Condominium Act .....	7
2.2	Division into Condominiums .....	7
2.3	Application to Declarant .....	7
SECTION 3.	CONDOMINIUM DECLARATION .....	8
3.1	Description of Project .....	8
3.2	Buildings and Improvements .....	8
3.3	Description of Units .....	8
3.4	Description of Common Areas .....	8
SECTION 4.	NATURE AND INCIDENTS OF CONDOMINIUM OWNERSHIP .....	8
4.1	Unit Interiors .....	8
4.2	Maintenance of Units .....	8
4.3	Title .....	9
4.4	Common Areas .....	9
4.4.1	Ownership of Common Areas .....	9
4.4.1	No Partition .....	9
4.5	Parking .....	9
4.6	Recreational or Nonoperating Vehicle Parking .....	9
4.7	Inseparability .....	9
4.8	Separate Mortgages by Owners .....	10
4.9	Separate Taxation .....	10
4.10	Mechanics Liens .....	10
4.11	Description of Condominium .....	10
SECTION 5.	EASEMENTS AND OTHER RIGHTS .....	10
5.1	Easements for Encroachments .....	10
5.2	Easements of Maintenance, Cleaning and Repair .....	11

5.3	Right to Ingress, Egress and Support	11
5.4	Association's Right to Use Common Areas	11
5.5	Easements Deemed Created	11
SECTION 6.	RESTRICTIONS ON USE	11
6.1	Unit Use	11
6.2	Restrictions on Signs	12
6.3	Rules and Regulations	12
SECTION 7.	THE ASSOCIATION	12
7.1	Membership	12
7.2	Votes	13
7.3	Amplification	13
SECTION 8.	CERTAIN RIGHTS AND OBLIGATIONS OF THE ASSOCIATION AND ITS MEMBERS	13
8.1	The Common Areas	13
8.2	Special Common Areas	14
8.3	Common Area Manager	14
8.4	Miscellaneous Goods and Services	14
8.5	Real and Personal Property	14
8.6	Rules and Regulations	14
8.7	Granting Easement	15
8.8	Implied Rights	15
8.9	Power of Attorney and Amendments	15
8.10	Failure to Maintain	15
SECTION 9.	ASSESSMENTS	15
9.1	Agreement to Pay Assessments	15
9.2	Annual Assessment	15
	(a) Common Expense	15
	(b) Apportionment	16
	(c) Annual Budget	16
	(d) Notice and Payment	16
	(e) Inadequate Funds	17
9.3	Special Assessments	17
9.4	Lien for Assessments	17
9.5	Personal Obligation of Owner	18
9.6	Statement of Account	18
9.7	Personal Liability of Purchaser	18
9.8	Reserve Fund	18
9.9	Amendment of Article	18

SECTION 10.	INSURANCE	19
10.1	Types of Insurance	19
	(a) Hazard Insurance	19
	(b) Liability Insurance	20
	(c) General Requirements Concerning Insurance	20
10.2	Owner's Own Insurance	21
10.3	Review of Insurance	21
SECTION 11.	DAMAGE OR DESTRUCTION	21
11.1	Association as Attorney in Fact	21
11.2	Definition of Repair and Reconstruction	22
11.3	Procedures	22
	(a) Notice to First Mortgagees	22
	(b) Estimate of Costs	22
	(c) Sufficient Insurance	22
	(d) Insufficient Insurance - Less than 75% Destruction	22
	(e) Insufficient Insurance - 75% or More Destruction	22
	(f) First Mortgagee Priority	23
11.4	Repair or Reconstruction	23
11.5	Disbursement of Funds for Repair and Reconstruction	24
11.6	Amendment of Article	24
SECTION 12.	CONDEMNATION	24
12.1	Condemnation	24
12.2	Proceeds	24
12.3	Complete Taking	24
12.4	Partial Taking	24
	(a) Allocation of Award	24
	(b) Continuation and Reorganization	25
	(c) Repair and Reconstruction	26
SECTION 13.	MORTGAGE PROTECTION	26
13.1	Notice of Action	26
13.2	Matters Requiring Prior First Mortgagee and/or Owner Approval	27
13.3	Prior Liens Relate Only to Individual Condominiums	28
13.4	Subordination of Common Expense Lien	28
13.5	Information Made Available to Owners, Lenders & Holders of First Mortgages	28
13.6	Additional Information Made Available to Holders of First Mortgages	28
13.7	Priority of First Mortgagee in Event of Damage	28
13.8	Priority of First Mortgagee in Event of Condemnation	28
13.9	First Mortgagee Rights in Event of Foreclosure	28
13.10	No Right of First Refusal	29

SECTION 14.	COMPLIANCE WITH DECLARATION AND BYLAWS .....	29
14.1	Compliance .....	29
14.2	Enforcement and Remedies .....	29
SECTION 15.	GENERAL PROVISIONS .....	29
15.1	Intent and Purpose .....	29
15.2	Notices and Registration of Mailing Address .....	29
15.3	Audit .....	30
15.4	Amendment .....	30
15.5	Effective Date .....	30
15.6	Limitation on Association's Liability .....	30
15.7	Severability .....	30
15.8	Owner's Obligations .....	30
15.9	Governing Law .....	31
CERTIFICATE OF CONSENT .....		33

Exhibit "A" - Reduced Copy of Project Plat Map

Exhibit "B" - Schedule of Unit Descriptions and Percentage Ownership Interest

Exhibit "C" - Articles of Incorporation

Exhibit "D" - Association Bylaws

Exhibit "E" - Legal Description of Surface of Ground Within the Project

*Declaration of  
Covenants, Conditions & Restrictions*

---

*Skywagon Commercial Condominiums  
Owners' Association, Inc.*  
*[Skywagon Commercial Condominiums- Post Falls, Idaho]*

**DECLARATION OF  
COVENANTS, CONDITIONS & RESTRICTIONS**

**SKYWAGON COMMERCIAL CONDOMINIUMS OWNERS' ASSOCIATION, INC.**  
*[Skywagon Commercial Condominiums- Post Falls, Idaho]*

THIS DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS is made and entered into this 14 day of DECEMBER, 2006, by HIGH WING CONSTRUCTION, INCORPORATED, an Idaho corporation (herein the "Declarant"), with reference to the following:

**RECITALS:**

A. Declarant is the fee Owner of the real property located in the City of Post Falls, Kootenai County, Idaho, which is more particularly described as follows (herein the "Property"):

*All of Lot 1, Block 1, of the plat of SKYWAGON SUBDIVISION, recorded in Book J of Plats, Pages 333 and 333A, and being located in the Southwest Quarter of the Southwest Quarter of Section 34, Township 51 North, Range 5 West, Boise Meridian, City of Post Falls, Kootenai County, Idaho, as more particularly set forth and described in Exhibit E hereto.*

B. The Property has been approved by Kootenai County for development as a commercial condominium project.

C. Declarant has improved or is in the process of improving the Property to consist of a three (3) Unit commercial condominium project.

D. By this Declaration, Declarant intends to submit and dedicate the Property, and all easements, buildings, improvements and appurtenances thereon or thereto, to the condominium form of ownership, in accordance with the Idaho Condominium Property Act, sections 55-1501, et. seq., Idaho Code, and to the restrictions, covenants, reservations, easements, liens and charges hereinafter set forth, for the benefit of the Property and for each owner of a Unit therein.

## DECLARATION:

**NOW, THEREFORE**, in order to promote the best use and the most appropriate development and improvement of each Unit, Declarant hereby declares that the Property and each Unit shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold and improved subject to the mutually beneficial covenants, restrictions, conditions, reservations, liens, easements and charges set forth herein.

### ARTICLE I DEFINITIONS

**1.1 Defined Terms.** For purposes of this Declaration and any amendments thereto, the following definitions shall apply:

1.1.1 Articles. The Articles of Incorporation of the Association as restated or amended from time to time. A true and correct copy of said Articles are attached to this Declaration as Exhibit "C" and by this reference are incorporated herein.

1.1.2 Assessment. That portion of the cost of maintaining, improving, repairing, operating, and managing the Property which is to be paid by the Unit Owners as determined by the Association under this Declaration. Assessments may be designated as Regular Assessments or Special Assessments, as those terms are more specifically defined in Article IX of this Declaration.

1.1.3 Association. The SKYWAGON COMMERCIAL CONDOMINIUMS OWNERS' ASSOCIATION, INC., an Idaho nonprofit corporation formed by declarant in conjunction with the recordation of this Declaration, the Members of which shall be Owners of Units within the Property as provided herein. The Association shall manage and administer the Project.

1.1.4 Board and/or Board of Directors. The governing body of the Association, consisting of the Board of Directors of SKYWAGON COMMERCIAL CONDOMINIUMS OWNERS' ASSOCIATION, INC.

1.1.5 Buildings. Any and all structures located on the Property, which contain or are comprised of one or more Units and certain Common Areas, included as part of such Buildings, as it is shown on the Map.

1.1.6 Bylaws. The Bylaws of the Association as amended from time to time. The initial Bylaws shall be as adopted by the original Directors of the Association. A true and correct copy of said Bylaws are attached to this Declaration as Exhibit "D" and by this reference are incorporated herein.



1.1.7 Common Area(s). All portions of the Project except the Units, including without limitation the open space, landscaping, private roads, approaches, open parking areas, common easements, drainage areas and similar amenities. That part of the Common Area which has not been specifically identified as Limited Common Area, shall be owned and/or maintained by the Association for the common use and enjoyment of all Owners. Additionally, the Common Area shall include any other property conveyed to the Association for the use and benefit of the Owners of all Units in the Project. The Common Area is designated as such on Exhibit "A" attached hereto and by this reference incorporated herein.

The Common Area(s) shall be owned and maintained by the Association for the common use and enjoyment of all Owners in accordance with any applicable best management practices and/or approved management practices. Additionally, the Common Area shall include any other property conveyed to the Association for the use and benefit of the Owners of all Units in the Project.

1.1.8 Common Expenses. The actual and/or estimated expenses of maintenance, improvement, repair, operation, insurance and management of the Common Areas, expenses of administration of the Association by Owners, and all sums designated Common Expenses by or pursuant to the Project Documents.

1.1.9 Common Facilities. All furniture, furnishings, equipment (electrical and mechanical), facilities and other property (real, personal or mixed) and interests therein at any time leased, acquired, owned, used, maintained or held by the Association for the use and benefit of the Owners, and all other property (real, personal or mixed) hereafter purchased in accordance with this Declaration with monies from the Common Expense Fund. Common Facilities shall be deemed to be part of the Common Areas, except to the extent otherwise expressly provided in this Declaration or by the Association.

1.1.10 Condominium. An estate in real property as described in the Condominium Act, consisting of any Unit identified on the Map, together with the undivided ownership interest (expressed as a percentage of the entire ownership interest) in the Common Areas appurtenant to such Unit as set forth in Exhibit "A" attached hereto and by this reference made a part hereof. The ownership of each individual Condominium Unit shall include: (i) the appropriate airspace; (ii) an undivided interest in the Common Area; (iii) exclusive use of the portion of the Limited Common Area which is appurtenant to that Unit; and (iv) membership in the Association.

1.1.11 Condominium Act. The Idaho Condominium Property Act, Idaho Code Sections 55-1501, et seq. (as amended).

1.1.12 Declarant. HIGH WING CONSTRUCTION, INCORPORATED, an Idaho corporation, and any successors or assigns who come to stand in the same relationship to the Project as their predecessor. The term "Declarant" shall specifically exclude any independent third-parties that purchase a complete Unit.

1.1.13 Declaration. This DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS, as it may be amended from time to time.

1.1.14 Development. The Project to be undertaken by the Declarant, resulting in the improvement of the Skywagon Commercial Condominiums, including landscaping, amenities, construction of roadways, utility services and other improvements.

1.1.15 Director. A member of the Board of Directors of the Association.

1.1.16 First Mortgagee. Any Mortgagee which has a first Mortgage lien on any Condominium in the Project.

1.1.17 Horizontal Boundaries. The upper and lower boundaries of a Unit.

1.1.18 Limited Common Area. Those portions of the Common Areas in the Project designated by the Map, the Declarant or the Association for use of a certain Owner or Owners to the exclusion, limitation or restriction of others.

1.1.19 Map / Plat. Refers to the plat of the Skywagon Commercial Condominiums recorded in the office of the Kootenai County Recorder in Book J of Plats at Pages 420, 420A-420C as Instrument No. 2073133000 official records of Kootenai County, Idaho, a reduced copy of the preliminary version thereof which is likewise attached hereto as Exhibit "A" and by this reference incorporated herein, and any amendments thereto hereafter recorded in the office of the County Recorder of Kootenai County, Idaho.

1.1.20 Member: A person entitled to membership in the Association as provided in the Declaration, and Association Articles and Bylaws.

1.1.21 Mortgage. Any security instrument, including but not limited to a recorded mortgage, deed of trust, real estate contract, or other instrument creating a security interest in any Unit.

1.1.22 Mortgagee. Includes a mortgagee, beneficiary or holder of a deed of trust, real estate contract vendor, or other holder of a Mortgage on any Unit, and any successor to the interest of such person or entity under such Mortgage.

1.1.23 Mortgagor. Any person or entity including, but not limited to, a Mortgagor, the grantor of a deed of trust, real estate contract vendee or other individual, person, partnership or entity granting a security interest in any Unit.

1.1.24 Occupant. Any person, association, corporation or other entity who has acquired the legal right to rent, use or otherwise occupy any Unit whether or not such right is exercised, including said Occupant's heirs, personal representatives, successors and assigns. The seller under any recorded or unrecorded contract of sale of any Unit and any holder of a life estate of a Unit shall, for purposes of this Declaration, be considered Occupants.

1.1.25 Owner or Owners. The person or persons, including the Declarant, owning in fee simple a Condominium in the Project, as such ownership is shown by the records of the County Recorder of Kootenai County, State of Idaho. Further, if the sale of a Unit is contemplated under a recorded or unrecorded contract of sale to a purchaser, the fee owner, rather than the purchaser, shall be considered the Owner. In the event a Unit is conveyed and a life estate is created, the remainderman and not the holder of the life estate shall be considered the Owner. The term "Owner" shall not refer to any Mortgagee unless such Mortgagee has obtained title in fee simple to a Condominium pursuant to judicial or nonjudicial action, including, without limitation, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure.

1.1.26 Person. Shall mean any individual, corporation, partnership, joint venture, association, firm, trust, trustee, limited liability company or other legal entity.

1.1.27 Project Documents. This Declaration, the Map, the Articles and Bylaws of the Association, and any architectural or other rules promulgated by the Declarant or the Association pursuant to this Declaration or the Articles or Bylaws, as each shall be amended from time to time.

1.1.28 Property or Project. The real property submitted by this Declaration and the Map to the provisions of the Condominium Act, together with all Units, buildings and improvements thereon and all easements, rights and appurtenances belonging thereto, all constituting the "Skywagon Commercial Condominiums."

1.1.29 Rules and Regulations. Such rules and regulations as are promulgated by the Board from time to time pursuant to the authority conferred in the Articles and Bylaws.

1.1.30 Skywagon Commercial Condominiums. The whole of the land described above as the Property, also as described and set forth in Exhibit "A" hereto.

1.1.31 Unit. All elements of an individual condominium, as defined herein. While the term "Unit" legally encompasses all elements of an individual condominium, the context may sometimes require the term to only refer to the airspace element, legal or equitable title to which shall be vested in the Owner. In that context, the physical boundaries of the Unit (airspace) shall be the interior surfaces of the perimeter walls, floors, ceilings, windows and doors thereof, and the airspace shall include both the portions of the building so described and the airspace so encompassed and further together with all the fixtures and improvements therein contained. In interpreting this Declaration, the Plat or any deed relating to a Unit, the existing physical boundaries of the Unit as originally constructed or as reconstructed in lieu thereof, shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed or depicted in the Declaration, Plat or deed, regardless of any variance between the boundaries shown in the Declaration, Plat or deed and the actual boundaries of the Units within the Project.

1.1.32 Vertical Boundaries. The side to side boundaries of a Unit.

**1.2 Construction.** The provisions of this Declaration shall be in addition and supplemental to the provisions of the Condominium Act and all other provisions of law. Whenever used herein, unless the context shall otherwise require, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof and any gender shall include both genders. The article and section headings set forth herein are for convenience and reference only and are not intended to expand, limit or otherwise affect the meaning or interpretation of this Declaration or any provision hereof. The provisions hereof shall be deemed independent and several, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provisions hereof. To the extent of any inconsistency, the provisions of the Declaration shall control over the Bylaws of the Association.

## **ARTICLE II**

### **CONDOMINIUM DECLARATION**

**2.1 Submission to Condominium Act.** The Declarant hereby submits the Property and all other improvements now or hereafter made in or upon the Property to the provisions of the Condominium Act. All of said property is and shall be held, conveyed, hypothecated, encumbered, leased, rented, used and improved as a fee simple condominium project to be known as the SKYWAGON COMMERCIAL CONDOMINIUMS. All of the Property is and shall be subject to the covenants, conditions, restrictions, uses, limitations and obligations set forth in the Project Documents, each and all of which are declared and agreed to be for the benefit of the Project and in furtherance of a plan for improvement of the Property and division thereof into Condominiums. Each and all of the provisions hereof shall be deemed to run with the land and shall be a burden and a benefit on the land and shall be binding upon the Declarant, its successors and assigns, and to any person acquiring, leasing (including persons renting a Unit on a daily basis) or owning an interest in the real property and improvements composing the Project and to their respective personal representatives, heirs, successors and assigns.

**2.2 Division into Condominiums.** The Project is hereby divided into Condominiums, each such Condominium consisting of a Unit and an appurtenant undivided interest in the Common Areas as set forth in Exhibit "B" attached hereto and incorporated herein by reference.

**2.3 Application to Declarant.** No provision of this Declaration shall be construed or enforced to prevent or limit the Declarant's right to complete the refurbishment, remodeling, construction and/or conversion of the Property in accordance with the plan thereof as the same exists or may be modified from time to time by the Declarant nor prevent the Declarant from undertaking any construction activities during the refurbishment, remodeling, construction and/or conversion activities relating to the development of the Project. No such construction activities undertaken or commissioned by the Declarant shall be deemed to constitute a nuisance or violation of this Declaration by reason or noise, dust, presence of vehicles or construction machinery, erection of temporary structures, posting of signs or similar activities.

**ARTICLE III**  
**BUILDINGS AND IMPROVEMENTS**

**3.1 Description of Project.** The project is commercial in nature and the Buildings and Units shall be set out on the property in compliance with this Declaration and the Map. The total Units constructed on the Property shall be as set forth on the Plat and shall consist of one (1) building containing three (3) separate Units. Unit A shall consist of a convenience store. Unit B shall initially consist of a two-level (including basement) hair salon; and (iii) Unit C shall initially consist of a two-level (including basement) professional office space.

**3.2 Buildings and Improvements.** The Buildings and other improvements constructed on the land are as described and set forth on the Map.

**3.3 Description of Units.** The Map contains the Unit number, location and dimensions of each Unit in the Project and all other information necessary to identify each such Unit. For so long as the Declarant remains the Owner of more than one Unit, Declarant reserves the right to combine or divide the spaces set forth on the Map, with respect to the Units owned by the Declarant, which may result in larger or smaller Units, or fewer or more Units in the Project. If alterations in Unit space are made for the purpose of conveyancing, Declarant shall record said alterations in a supplement or supplements to the Map, describing the spaces created in the same detail and with the same particularity required in the case of Units which are depicted in the Map.

**3.4 Description of Common Areas.** The Map identifies certain of the Common Areas of the Project.

**ARTICLE IV**  
**NATURE AND INCIDENTS OF CONDOMINIUM OWNERSHIP**

**4.1 Unit Interiors.** Each Owner shall have the exclusive right to paint, repaint, tile, wax, paper, carpet and otherwise maintain, refinish and decorate the interior surfaces of the walls, ceilings, floors, windows and doors forming the boundaries of his Unit or the surfaces of any walls, ceilings, floors and doors within such boundaries. Partition walls or structural improvements within the boundaries of any Unit are permitted so long as they: (i) comply with all applicable laws, ordinances and building codes, (ii) do not affect or interfere with any of the Common Areas or other facilities necessary for the support, use or enjoyment of any other part of the Project, (iii) do not impair the structural soundness or integrity of the Buildings in which they are located, and (iv) do not encroach upon the Common Areas or any part thereof, unless the Association shall consent in writing to such encroachment.

**4.2 Maintenance of Units.** In order to preserve a uniform exterior appearance of the Buildings, no Owner may modify or decorate the exterior of the Buildings, screens, doors, awnings or any other portion of a Unit or Building visible from the exterior thereof without the prior written approval of the Board or in accordance with the Board's written rules and regulations, if any. No exterior radio or television antennae or satellite dishes may be installed with the Board's prior written approval. No garments, rugs, other household items, or wash lines of any kind may be hung,

erected, or maintained outside of a Unit. All trash containers shall be architecturally screened except on the day of pickup. Windows shall be covered by drapes, shades or shutters and shall not be painted or covered with foil, cardboard or similar material. Each Owner shall at all times keep his Unit, including without limitation, interior and exterior walls, windows, ceilings, roofs, floors and permanent fixtures and appurtenances thereto, and all Limited Common Areas specifically assigned to the Unit by this Declaration or the Association, in a clean and sanitary condition and in a state of good repair.

**4.3 Title.** Title to a Condominium within the Project may be held or owned by any person or entity, or any combination thereof, and in any manner in which title to any other real property may be held or owned in the State of Idaho, including, without limitation, community property or tenancy in common. However, no Unit shall be held by more than four (4) tenants in common (unrelated by marriage or blood) without the prior consent of the Association.

**4.4 Common Areas.** The following provisions shall apply with respect to all Common Areas located within the project.

**4.4.1 Ownership of Common Areas.** The undivided interest in the Common Areas appurtenant to each Unit in the Project is based upon the number of Units in the Project, divided equally, as set forth on Exhibit "B" attached hereto. This method of allocation shall not be altered except upon the approval of all of the Owners affected by such alteration, expressed in an amendment to this Declaration duly recorded. The percentage of ownership interest in the Common Areas shall be used for purposes of tax assessment and liability as specified by Idaho Code § 55-1514 and Idaho Code § 55-1515, respectively.

**4.4.2 No Partition.** The Common Areas shall be owned in common by all of the Owners, and, except as provided by Section 55-1511 of the Condominium Act, no owner may bring any action for partition thereof.

**4.5 Parking.** Each Unit shall be afforded a minimum average of 7.5 off-street parking spaces. No vehicles shall be permanently stored within or on any street or roadway located within the Project.

**4.6 Recreational or Nonoperating Vehicle Parking.** All recreational vehicles and nonoperating vehicles including, without limitation, automobiles being restored, automobiles in need of mechanical assistance, off road vehicles, motor homes, boats, golf carts, campers and camper shells being parked for longer than 24 hours within any portion of the Project.

**4.7 Inseparability.** Title to no part of a Condominium within the Project may be separated from any other part thereof, and each Unit and the undivided interest in the Common Areas appurtenant to each Unit shall always be conveyed, devised, encumbered and otherwise affected only as a complete Condominium. Every devise, encumbrance, conveyance or other disposition of a Condominium, or any part thereof, shall be construed to be a devise, encumbrance, conveyance or

other disposition, respectively of the entire Condominium, together with all appurtenant rights created by law or by this Declaration, including appurtenant membership in the Association as hereinafter set forth.

**4.8 Separate Mortgages by Owners.** Each Owner shall have the right to mortgage or otherwise encumber his Condominium. No Owner shall attempt to or shall have the right to mortgage or otherwise encumber the Common Areas or any part thereof, except the undivided interest therein appurtenant to his Condominium. Any Mortgage or other encumbrance of any Condominium within the Project shall be subordinate to all of the provisions of this Declaration, and in the event of foreclosure the provisions of this Declaration shall be binding upon any Owner whose title is derived through foreclosure by private power of sale, judicial foreclosure or otherwise.

**4.9 Separate Taxation.** Each Condominium within the Project, including each Unit and appurtenant undivided interest in the Common Areas, shall be deemed to be a parcel and shall be assessed separately for all taxes, assessments and other charges of the State of Idaho or of any political subdivision or of any special improvement district or of any other taxing or assessing authority. For purposes of such assessment, the valuation of the Common Areas shall be apportioned among the Units in proportion to the undivided interests in the Common Areas appurtenant to such Units. All such taxes and assessments on each respective condominium shall be separately levied against the owner thereof. No forfeiture or sale of any Condominium for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Condominium.

**4.10 Mechanics Liens.** No labor performed or material furnished for use in connection with any Unit with the consent or at the request of an Owner or his agent or subcontractor shall create any right to file a statement of mechanic's lien against the Unit of any other Owner not expressly consenting to or requesting the same, or against any interest in the Common Areas except the undivided interest therein appurtenant to the Unit of the Owner for whom such labor shall have been performed and such materials shall have been furnished.

**4.11 Description of Condominium.** Every contract for the sale of a Condominium and every other instrument affecting title to a Condominium within the Project may describe a Unit by its identifying number or symbol as indicated in this Declaration or as shown on the Map. Such description will be construed to describe the Unit, together with its appurtenant undivided interest in the Common Areas, and to incorporate all of the rights incident to ownership of a Condominium within the Project and all of the limitations on such ownership.

## **ARTICLE V**

### **EASEMENTS AND OTHER RIGHTS**

**5.1. Easements for Encroachments.** If any part of the Common Areas encroaches or shall hereafter encroach upon any Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon

the Common Areas, or upon an adjoining Unit (through no fault or intentional act on the part of that Unit Owner), an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of the Common Areas or any part of a Unit shall hereafter encroach on real property now owned by the Declarant outside the boundaries of the Property, an easement for such encroachment shall and does exist. Such encroachments shall not be considered to be encumbrances either on the Common Areas or the Units. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of any improvements constructed or to be constructed within the Project, by error in the Map, 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, in accordance with the provisions of this Declaration.

**5.2 Easements of Maintenance, Cleaning and Repair.** Some of the Common Areas are or may be located within the Units or may be conveniently accessible only through the Units. The Association and its agents, contractors and subcontractors shall have the irrevocable right to have access to each Unit and to all Common Areas from time to time during such reasonable hours as may be necessary for the maintenance, cleaning, repair or replacement of any Common Areas or for making emergency repairs at any time therein necessary to prevent damage to the Common Areas or to any Unit. Such entry shall be made upon reasonable notice, except in the event of emergency, and with as little inconvenience to the Owners or occupants as practicable.

**5.3 Right to Ingress, Egress and Support.** Subject to the rules and regulations of the Association, each Owner shall have the right to ingress and egress over, upon and across the Common Areas as necessary for access to such Owner's Unit and shall have the right to horizontal, vertical and lateral support of such Unit, and such rights shall be perpetual and shall be appurtenant to and pass with title to each Condominium. The Bylaws and/or regulations duly promulgated by the Association may limit the right of ingress and egress to, or use of, the Limited Common Areas, consistent with their respective purposes and uses.

**5.4 Association's Right to Use Common Areas.** The Association shall have an easement to make such use of the Common Areas as may be necessary or convenient to perform the duties and functions that it is obligated or permitted to perform pursuant to this Declaration or the Condominium Bylaws.

**5.5 Easements Deemed Created.** All conveyances of Condominiums within the Project hereafter made, whether by the Declarant or otherwise, shall be construed to grant and reserve such reciprocal easements as are provided herein, even though no specific reference to such easements appears in any such conveyance.

## **ARTICLE VI RESTRICTIONS ON USE**

**6.1 Unit Use.** The Units are intended to be used for commercial purposes and are restricted to such use. No residential uses shall be allowed. All leases or rental agreements for a Unit shall be in writing and subject to the requirements of this Declaration, the Association Bylaws,



the Map and such rules, regulations, and procedures as may be promulgated by the Association. No Unit shall be used, occupied, or altered in violation of law, so as to detract from the appearance or value of any other Unit, so as to create a nuisance, or so as to interfere with the rights of any other Owner, or in a way which would result in an increase in the cost of any insurance covering the Project as a whole. The Common Areas shall be used only in a manner which is consistent with their community nature and with the use restrictions applicable to the Units. Without limiting the generality of the foregoing: (i) No sidewalk, entrance, passage, vestibule, stairway, corridor, or hall comprising a part of the Common Areas (other than Limited Common Areas) may be obstructed or encumbered or used for any purpose other than ingress or egress to and from Units; (ii) No Unit Owner shall discard or permit to fall any items from the windows of his or her Unit; and (iii) No articles belonging to Owners shall be kept within or upon Common Areas (other than Limited Common Areas associated with his Unit). No leases, charges for use, rental agreements, licenses, or similar arrangements shall be employed or entered into with respect to any portion of the Common Areas and Facilities separate and apart from the use of the Unit or Units to which it is appurtenant.

**6.2 Restrictions on Signs.** Except for those signs erected or maintained by the Declarant or his agents, no signs, flags or advertising devices of any nature, including, without limitation, commercial, political, informational or directional signs or devices, shall be erected or maintained on any part of the Project, without the prior inspection and written approval of the Association, except as may be necessary temporarily to caution or warn of danger. If the Association consents to the erection of any such signs or devices, the same shall be removed promptly at the Association's request. All approved signs shall be in compliance with all applicable laws, rules and regulations relating thereto, including those of the Association, if any.

**6.3 Rules and Regulations.** Each Owner shall comply strictly with all rules and regulations adopted by the Association for the governance of the Units, the Common Areas and the Project, as such rules and regulations may be modified, amended and construed by the Association, so long as they do not conflict with this Declaration or the Bylaws of the Association.

## **ARTICLE VII** **THE ASSOCIATION**

**7.1 Membership.** Each Owner shall be entitled and required to be a member of the Association. Membership shall begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. The owner of lot within the Project, by acceptance of a deed or other conveyance, is deemed to consent to membership in the Association and thereby covenants and agrees to the terms and requirements of this Declaration, which constitute a contract between the Association and each Unit Owner. If title to a Condominium is held by more than one person, the membership appurtenant to that Condominium shall be shared by the same proportionate interest and by the same type of tenancy in which title to the Condominium is held. An Owner shall be entitled to one membership for each Condominium owned by him. Each membership shall be appurtenant to the Condominium to which it relates and shall be transferred automatically by conveyance of that Condominium. Ownership of a Condominium within the Project cannot be separated from membership in the Association

appurtenant thereto, and any devise, encumbrance, conveyance or other disposition, respectively, of a Condominium shall include the Owner's membership in the Association and rights appurtenant thereto. No person or entity other than an Owner may be a member of the Association, and membership in the Association may not be transferred except in connection with the transfer of a Condominium. The Association shall make available to the Owners, Mortgagees and the holders of the First Mortgage on any Unit current copies of the Declaration, Bylaws and other rules governing the Project, and other books, records and financial statements of the Association. "Available" shall mean available for inspection, upon not less than ten (10) days prior request, during normal business hours or under other reasonable circumstances. The voting rights of the owners shall be as set forth in the Articles or Bylaws.

**7.2 Votes.** The number of votes appurtenant to each respective Condominium shall be based upon the percentage of interest of each Unit in the Common Areas, as set forth in section 4.4.1, above, and in Exhibit "B".

**7.3 Amplification.** The provisions of this Article VII may be amplified by the Bylaws; provided, however, that any such amplification shall conform to the rights or obligations of the Owners set forth in this Declaration. A certified copy of the initial Bylaws of the Association are attached hereto as Exhibit "D", and by this reference incorporated herein.

**ARTICLE VIII**  
**CERTAIN RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**  
**AND ITS MEMBERS**

**8.1 The Common Areas.** The Association, subject to the obligations and duties of the Owners as set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Areas and all improvements thereon (including the Common Facilities) and shall keep the same in a good, clean, attractive, safe and sanitary condition, order and repair; provided, however, that unless otherwise stated herein, each owner shall keep the Limited Common Areas designated for use in connection with his Unit, if any, in a clean, sanitary and attractive condition. The Association shall be responsible for the maintenance and repair of the exterior of the Buildings, other improvements and grounds, including, without limitation, painting thereof, repair and replacement of exterior trim, roofs and fences and maintenance of landscaping and walkways. The Association shall also be responsible for maintenance, repair and replacement of Common Areas within the Buildings, Common Facilities and all improvements and other items located within or used in connection with the Common Areas. The Association shall likewise be responsible for the irrigation and maintenance of adjacent right-of-way landscaping and swales, if any. The specification of duties of the Association with respect to particular Common Areas shall not be construed to limit its duties with respect to other Common Areas. All goods and services procured by the Association in performing its responsibilities under this section shall be paid for with funds from the Common Expense Fund.

**8.2 Special Common Areas.** The Association shall have the authority to designate certain portions of the Common Area as Limited Common Area for the exclusive use of the Owners, or any one of them, as it deems fit, so long as such designations do not interfere with the rights of access and other rights granted to such Unit Owners elsewhere in this Declaration. In that event, the use, operation and control of any such Limited Common Area (including but not limited to the construction of improvements within common areas) shall be managed by the Association at the cost of and subject to the oversight and control the Unit Owner granted an exclusive right of use therein.

**8.3 Common Area Manager.** While the Association has the obligation to operate and manage the Common Areas, it also has the right to employ a Common Area Manager to perform certain services on behalf of the Association, including but not limited to the responsibilities of the Association related to the Common Areas. Appropriate fidelity bond coverage shall be required for the Common Area Manager and for any officer, employee and agent of the Common Area Manager who handles funds of the Association. Such fidelity bond coverage shall meet the requirements of section 10.1(d). The Association may by written contract delegate in whole or in part to the Common Area Manager such of the duties, responsibilities, functions and powers hereunder of the Association as are delegable. The services of the Common Area Manager retained by the Association shall be paid for with funds from the Common Expense Fund.

**8.4 Miscellaneous Goods and Services.** The Association may, on behalf of the Owners, obtain and pay for the services of such personnel as the Association shall determine to be necessary or desirable for the proper operation of the Project, whether such personnel are furnished directly by the Association or by any person or entity with whom or with which it contracts. Whenever reasonable and advisable, all such personnel shall be independent contractors. Any contracts between the Association or the Common Area Manager, on the one hand, and any affiliate of the Common Area Manager, on the other, shall be competitive with those available from unrelated third parties. The Association may, on behalf of the Owners, 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. In addition to the foregoing, the Association may, on behalf of the Owners, acquire and pay for out of the Common Expense Fund water, sewer, garbage collection, snow removal, electrical, gas and other necessary or desirable utility services for the Common Areas (and for the Units to the extent not separately metered or billed), insurance, bonds, and other goods and services common to the Units.

**8.5 Real and Personal Property.** The Association may acquire and hold on behalf of the Owners real, personal and mixed property of all types for the use or benefit of all of the Owners and may dispose of such property by sale or otherwise.

**8.6 Rules and Regulations.** The Board may make reasonable rules and regulations governing the use of the Units, the Common Areas, the Limited Common Areas and all parts of the Project, which rules and regulations shall be consistent with the rights and duties established by this Declaration. The Association, on behalf of the Owners, may take judicial action against any Owner or occupant to enforce compliance with such rules and regulations or other obligations of such Owner or occupant arising hereunder, or to obtain damages for noncompliance therewith, as

permitted by law. In the event of such judicial action, the Association shall be entitled to recover its costs, including reasonable attorneys' fees, from the offending Owner or occupant.

**8.7 Granting Easement.** The Association may, without the vote or consent of the Owners or of any other person, grant or create, on such terms as it deems advisable, easements, licenses and rights-of-way over, under, across and through the Common Areas for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Project.

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

**8.9 Power of Attorney and Amendments.** Each Owner makes, constitutes and appoints the Association his true and lawful agent in his name, place and stead to make, execute, sign, acknowledge and file with respect to the Project such amendments to this Declaration and the Map as may be required by law or by vote taken pursuant to the provisions of the Declaration.

**8.10 Failure to Maintain.** The Association shall not divest itself of responsibility for operating and/or maintaining any portion of the Common Areas. In the event the Association fails to operate and maintain any portion of the Common Area in accordance with any applicable best management practices, then Kootenai County may contract for the necessary operation and maintenance and bill the individual Unit Owners on a pro-rata basis. In the event it becomes necessary for Kootenai County to assume this operation/maintenance responsibility, then the County shall have the same authority as the Association to effectuate the same, including the power to enforce the payment of assessments.

## **ARTICLE IX ASSESSMENTS**

**9.1 Agreement to Pay Assessments.** The Declarant, as the Owner of the Project and every part thereof, hereby covenants and each Owner of any Condominium by the acceptance of instruments of conveyance and transfer therefor, whether or not it be so expressed in said instruments, shall be deemed to covenant and agree with each other and with the Association to pay to the Association all assessments made by the Association for the purposes provided in this Declaration. Such assessments shall be fixed, established and collected from time to time as provided in this Article IX. Each owner shall be required to utilize and accept the services provided by the Association.

**9.2 Annual Assessment.** Annual Assessments shall be computed and assessed against all completed Units in the Project as follows:

- (a) **Common Expense.** Annual Assessments shall be based upon advance estimates of the Association's cash requirements to provide for payment of all estimated expenses arising out of or connected with the maintenance and operation of the Common

Areas and/or furnishing utility services and other common items to the Units. Such estimated expenses may include, without limitation, the following: expenses of management; real property taxes and special assessments (unless and until the Condominiums are separately assessed); premiums for all insurance that the Association is required or permitted to maintain hereunder; repairs and maintenance; wages for Association employees; fees for the Common Area Manager; utility charges, including charges for utility services to the Units to the extent not separately metered or billed; legal and accounting fees; any deficit remaining from a previous period; creation of an adequate contingency reserve, major maintenance reserve and/or sinking fund; creation of an adequate reserve fund for maintenance repairs, and replacement of those Common Areas that must be replaced on a periodic basis (such reserve shall be funded by quarterly payments rather than extraordinary Special Assessments); assessments levied by the Association, 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. Such items shall constitute the Common Expenses, and all funds received from assessments under this section 9.2, except for reserves which shall be established pursuant to Section 9.8, shall be part of the Common Expense Fund.

(b) **Apportionment.** Expenses attributable to the General Common Areas or to the Project as a whole shall be apportioned among and assessed to all Owners in proportion to their respective undivided interests in the Common Areas. The Declarant shall be liable for the amount of any assessments against completed Condominiums owned by it.

(c) **Annual Budget.** Annual Assessments shall be determined on the basis of a fiscal year beginning January 1 and ending December 31 next following, provided the first fiscal year shall begin on the date this Declaration is recorded. On or before December 15 of each year, the Association shall prepare and furnish to each Owner, or cause to be prepared and furnished to each Owner, an operating budget for the upcoming fiscal year. The budget shall itemize the estimated amounts of Common Expenses for such fiscal year, anticipated receipts (if any) and any deficit or surplus from the prior operating periods. The budget shall serve as the supporting document for the Annual Assessment for the upcoming fiscal year and as the major guideline under which the Project shall be operated during such annual period.

(d) **Notice and Payment.** Except with respect to the first fiscal year, the Association shall notify each Owner as to the amount of the Annual Assessment against his or her Condominium on or before December 15 each year for the fiscal year beginning on January 1 next following. Each Annual Assessment shall be due and payable in full on or before the fifteenth day of January of the fiscal year to which the assessment relates; provided, however, the Annual Assessment for the first fiscal year shall be based upon such portion of the first fiscal year. All unpaid Annual Assessment shall bear interest at the highest lawful rate, but not to exceed eighteen percent (18%) per annum from the date each such installment became due until paid (or at such other lawful rate as the Association shall establish). The failure of the Association to give timely notice of any Annual Assessment as provided herein shall not be deemed a waiver or modification in any respect of the

provisions of this Declaration, or a release of any Owner from the obligation to pay such assessment or any other assessment; but the date when the payment shall become due in such case shall be deferred to a date fifteen (15) days after notice of such assessment shall have been given to the Owner in the manner provided in this Declaration.

(e) **Inadequate Funds.** In the event that the Common Expense Fund proves inadequate at any time by reason of nonpayment of any Owner's assessment, the Association may, on behalf of the Owners, levy additional assessments in accordance with the procedure set forth in Section 9.3 below, except that the vote therein specified shall be unnecessary.

**9.3 Special Assessments.** In addition to the Annual Assessments authorized by this Article, the Association may, on behalf of the Owners, levy, at any time and from time to time, upon the affirmative vote of at least fifty-one percent (51%) of the total votes of the Association, Special Assessments, payable over such periods 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 for any other expenses incurred or to be incurred as provided in this Declaration (including, without limitation, Common Expenses). This section shall not be construed as an independent source of authority for the Association to incur expenses but shall be construed to prescribe the manner of assessing for expenses authorized by other Sections or Articles hereof. Any amounts assessed pursuant hereto shall be assessed to Owners in proportion to their respective undivided interests in the Common Areas. Notice in writing of the amount of each such Special Assessment and the time for payment thereof shall be given promptly to the owners; no payment shall be due less than fifteen (15) days after such notice shall have been given. All unpaid portions of any Special Assessment shall bear interest at the rate of eighteen percent (18%) per annum (or such other lawful rate as the Association may establish) from the date such portions become due until paid. All funds received from assessments under this section shall be part of the Common Expense Fund.

**9.4 Lien for Assessments.** All sums assessed to Owners of any Condominium within the Project pursuant to the provisions of this Article IX, together with penalties and interest thereon as provided herein, shall be secured by a lien on such Condominium in favor of the Association. To evidence a lien for sums assessed pursuant to this Article IX, the Association may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the 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 for Kootenai County, Idaho. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Upon payment of all delinquent assessments, plus interest, costs and expenses of such delinquency (including reasonable attorneys' fees), or other satisfaction thereof, the Association shall cause to be recorded a further notice stating the satisfaction and the release of the lien thereof. If the delinquency is not cured, such lien may be enforced by sale or foreclosure conducted in accordance with the provisions of law applicable to the exercise of powers of sale or foreclosure in deeds of trust or mortgages or in any other manner permitted by law. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees), and 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, and all such assessments shall be secured by the lien being foreclosed. The Association shall have the right and power on behalf of the Owners to bid in at any foreclosure sale and to hold, lease, mortgage or convey the subject Condominium in the name of the Association. Unless sooner satisfied and released, or the enforcement of the lien is initiated as provided above, such lien shall expire and be of no further force and effect following the date which is one (1) year from the recording date of the lien notice; provided, however, said one-year period may be extended by the Association for a period of one (1) additional year by recording a written extension thereof.

**9.5 Personal Obligation of Owner.** The amount of any Annual or Special Assessment against any Condominium shall be the personal obligation of the Owner of such Condominium to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Areas or by abandonment of his Condominium or by waiving any services or amenities provided for in this Declaration. In the event of any suit to recover a money judgment for unpaid assessments hereunder, the involved Owner shall pay the costs and expenses incurred by the Association in connection therewith, including reasonable attorneys' fees.

**9.6 Statement of Account.** Upon payment of a reasonable fee set by the Association (but not to exceed any statutory limitation thereon) and upon written request of any Owner, Mortgagee or prospective purchaser of a Condominium, the association shall issue a written statement setting forth the following: (i) the amount of the unpaid assessments, if any, with respect to such Condominium; (ii) the amount of the current Annual Assessment and the date or dates upon which installments thereof become due; and (iii) credit for advance payments or prepaid items, including, without limitation, the Owner's share of prepaid insurance premiums. Such statements shall be conclusive upon the Association in favor of persons who rely thereon in good faith.

**9.7 Personal Liability of Purchaser.** Subject to the provisions of Section 13.9, a purchaser of a Condominium shall be jointly and severally liable with the seller thereof for all unpaid assessments against such Condominium up to the time of the grant or conveyance; provided, however, that the provisions of this section shall not prejudice the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.

**9.8 Reserve Fund.** The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Areas and to the Limited Common Areas the Association may be obligated to maintain. The reserve fund shall be maintained out of regular assessments for Common Expenses. Such regular assessments must be adequate to cover anticipated capital expenses. Funds collected and held in the reserve fund shall be deposited in a separate account and held in trust for the collective benefit of the Owners.

**9.9 Amendment of Article.** This Article IX shall not be amended unless the Owners of Units or undivided interests in Units to which not less than sixty-six percent (66%) of the undivided

interest in the Common Areas appertain consent and agree to such amendment in the manner provided in section 15.4 of this Declaration.

## **ARTICLE X** **INSURANCE**

**10.1 Types of Insurance.** The Association shall obtain and keep in full force and effect at all times the following types of insurance coverage, provided by companies authorized or licensed to do business in the State of Idaho:

(a) **Hazard Insurance.** The Association shall at all times maintain in force, and pay the premiums for, hazard insurance meeting the following requirements:

(i) A "master" or "blanket" or "umbrella" type policy of property insurance shall be maintained covering the entire Project, including: Common Areas; Units; fixtures; personal property and supplies comprising a part of the Common Areas and Facilities or owned by the Association; and fixtures, equipment, or other property comprising a part of or located within any Unit and which are of a class typically encumbered by mortgages held by the Federal National Mortgage Association (hereinafter "FNMA") or other similar institutional mortgage investors; but excluding land, foundations, excavations, and other items normally not covered by such policies. References herein to a "master" or "blanket" type policy of property insurance are intended to denote single entity condominium insurance coverage. At a minimum, such "master" or "blanket" policy shall afford protection against loss or damage by fire, by other perils normally covered by the standard extended coverage endorsement, and by all other perils which are customarily covered with respect to condominium projects similar to the Project in construction, location, and use, including (without limitation) all perils normally covered by the standard "all risk" endorsement, where such endorsement is available, and further including coverage for upgrades required for building code compliance. Such "master" or "blanket" policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all elements of the Project covered by such policy, exclusive of land, foundations, excavation, and other items normally excluded from coverage. The maximum deductible amount for such policy shall be the lesser of Ten Thousand Dollars (\$10,000) or one percent (1%) of the policy face amount.

(ii) The name of the insured under each policy required to be maintained shall be set forth therein substantially as follows: "Skywagon Commercial Condominiums Owners' Association, Inc." Loss payable shall be in favor of the Association, as a trustee for each Unit Owner and each such Owner's Mortgagee. Each Unit Owner and each such Owner's Mortgagee, if any, shall be beneficiaries of such policy in the percentage of such Owner's undivided ownership interest in the Common Areas and Facilities. Evidence of insurance shall be issued to each Unit Owner and Mortgagee upon request.



(iii) Each policy required to be maintained shall contain the standard mortgage clause, or equivalent endorsement (without contribution), commonly accepted by private institutional mortgage investors in the area in which the Project is located. In addition, such mortgage clause or another appropriate provision of each such policy shall provide that the policy may not be canceled or substantially modified without at least ten (10) days' prior written notice to the Association.

(iv) Each policy required to be maintained shall provide for the following: a waiver of the right of subrogation against Owners individually; the insurance is not prejudiced by any act or neglect of individual Owners which is not in the control of such Owners collectively; and the policy is primary, even in the event the Owner has other insurance covering the same loss. The requirements stated in this item (iv) are generally provided by the insurer in the form of a "Special Condominium Endorsement" or its equivalent.

(b) **Liability Insurance.** The Association shall maintain in force, and pay the premium for a policy providing comprehensive general liability insurance coverage covering all of the Common Areas, public ways in the Project, if any, and all other areas of the Project that are under the Association's supervision, including any improvements located within the Property and leased by the Association. The coverage limits under such policy shall be in amounts generally required by private institutional mortgage investors for condominium projects similar to the Project in construction, location, and use. Nevertheless, such coverage shall be for at least One Million Dollars (\$1,000,000) for bodily injury, including deaths of persons, and property damage arising out of a single occurrence. Coverage under such policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance, or use of the Common Areas, and legal liability arising out of lawsuits related to employment contracts of the Association. Additional coverages under such policy shall include protection against such other risks as are customarily covered with respect to condominium projects similar to the Project in construction, location, and use. If such policy does not include "severability of interest" in its terms, the policy shall include a special endorsement to preclude an insurer's denial of any Owner's claim because of negligent acts of the Association or any Owner. Such policy shall provide that it may not be canceled or substantially modified, by any party, without at least ten (10) days' prior written notice to the Association.

(c) **General Requirements Concerning Insurance.** Notwithstanding any of the foregoing provisions and requirements relating to property or liability insurance, there may be named as an insured on behalf of the Association, the Association's authorized representative, who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance. Each Owner hereby appoints the Association as his or her attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds hereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association shall

receive, hold, or otherwise properly dispose of any proceeds of insurance in trust for the use and benefit of the Owners and their mortgagees, as their interests may appear.

Each insurance policy maintained pursuant to the foregoing Sub-sections (a) and (b) shall be written by an insurance carrier which is licensed to transact business in the State of Idaho and which has a financial rating by Best's Key Rating Guide of Class VI or better. No such policy shall be maintained where: (i) under the terms of the carrier's charter, bylaws, or policy, contributions may be required from, or assessments may be made against, an Owner, a borrower, a Mortgagee, the Association, FNMA, FHA, or the designee of FNMA or FHA; (ii) by the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent the party entitled (including, without limitation, the Association, an Owner, FNMA, FHA, or their borrowers) from collecting insurance proceeds.

**10.2 Owner's Own Insurance.** Each Owner shall procure and maintain at all times fire and extended coverage insurance covering personal property of such Owner and additional fixtures and improvements of such Owner against loss by fire and other casualties, including without limitation, vandalism and malicious mischief. All policies providing such casualty insurance shall provide that they do not diminish the insurance carrier's coverage for liability arising under insurance policies obtained by the Association pursuant to this Article. Each Owner shall, at his own expense, obtain insurance covering liability for damages caused to other Units or Common Areas arising from the overflowing or spillage of water within his Unit, and may provide such other coverage upon his Condominium, his personal property, for his personal liability and for such other risks as he may deem appropriate, provided that each such policy shall provide that it does not diminish the insurance carrier's coverage for liability arising under insurance policies obtained by the Association pursuant to this Article. If obtainable under industry practice without an unreasonable additional charge for such waiver, all such insurance shall contain a waiver of the insurance company's right of subrogation against the Association, the Declarant, the Common Area Manager, other Owners and their respective servants, agents and guests.

**10.3 Review of Insurance.** The Association shall review bi-annually the coverage and policy limits of all insurance on the Project and adjust the same at its discretion, consistent with the guidelines and requirements of Section 10.1. Such bi-annual review may include an appraisal of the improvements in the Project by a representative of the insurance carrier or carriers or insurance broker providing the policy or policies on the Project or by such other qualified appraisers as the Association may select.

## **ARTICLE XI**

### **DAMAGE OR DESTRUCTION**

**11.1 Association as Attorney in Fact.** All of the Owners irrevocably constitute and appoint the Association their true and lawful attorney in fact in their name, place and stead for the purpose of dealing with the Project upon its damage or destruction as hereinafter provided. Acceptance by any grantee of a deed from the Declarant or from any Owner shall constitute an appointment by said grantee of the Association as his attorney in fact as herein provided. As attorney

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

**11.2 Definition of Repair and Reconstruction.** Repair and reconstruction of the improvements as used herein means restoring the Project to substantially the same condition in which it existed prior to the damage or destruction, with each Unit and the Common Areas having substantially the same vertical and horizontal boundaries as before.

**11.3 Procedures.** In the event all or any part of the Project is damaged or destroyed, and subject to the provisions of Article XIII below, the Association shall proceed as follows:

(a) **Notice to First Mortgagees.** The Association shall give timely written notice to each First Mortgagee with respect to a Unit in the event of substantial damage or to destruction of any Unit or any part of the Common Areas.

(b) **Estimate of Costs.** As soon as practicable after an event causing damage to or destruction of any part of the Project, the Association shall obtain complete and reliable estimates of the costs to repair and reconstruct the part of the Project damaged or destroyed.

(c) **Sufficient Insurance.** If the proceeds of the insurance maintained by the Association exceed the estimated costs to repair and reconstruct the damaged or destroyed part of the Project, such repair and reconstruction shall be carried out.

(d) **Insufficient Insurance--Less than Seventy-five Percent (75%) Destruction.** If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Project and if less than seventy-five percent (75%) of the Project is damaged or destroyed, such repair and reconstruction shall nevertheless be carried out. The Association shall levy a Special Assessment sufficient to provide funds to pay the actual costs of such repair and reconstruction to the extent that such insurance proceeds are insufficient to pay such costs. Such Special Assessment shall be allocated and collected as provided in section 9.3, above, except that the vote therein specified shall be unnecessary. Further levies may be made in like manner if the amounts collected (together with the proceeds of insurance) are insufficient to pay all actual costs of such repair and reconstruction.

(e) **Insufficient Insurance--Seventy-Five Percent (75%) or More Destruction.** If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Project, and if seventy-five percent (75%) or more of the Project is damaged or destroyed, such damage or destruction shall be repaired and reconstructed if, but only if, either not enough First Mortgagees approve the termination of the Project pursuant to Section 13.2(a) or, within one hundred (100) days following the damage or destruction, the Owners shall elect by a vote of at least fifty-one percent (51%) of the total votes of the Association to carry out such repair

and reconstruction. If, however, the termination of the Project is approved by a sufficient number of First Mortgagees pursuant to Section 13.2(a) and the Owners, elect by a vote of at least fifty-one percent (51%) of the total votes of the Association to not carry out such repair and construction, the Association shall record in the office of the County Recorder of Kootenai County, State of Idaho, a notice setting forth such facts. Upon the recording of such notice, the following shall occur:

- (i) The Project shall be deemed to be owned in common by the Owners;
  - (ii) The undivided interest in the Project owned in common which shall appertain to each Owner shall be the percentage of the undivided interest previously owned by such Owner in the Common Areas;
  - (iii) Any liens affecting any of the Condominiums shall be deemed to be transferred, in accordance with the existing priorities, to the undivided interest of the respective Owner in the Project; and
  - (iv) The Project shall be subject to an action for partition at the suit of any Owner, in which event the net proceeds of any sale resulting from such suit for partition, together with the net proceeds of the insurance of the Project, if any, shall be considered as one fund and shall be divided among all Owners in a percentage equal to the percentage of undivided interest owned by each respective Owner in the Common Areas, after first paying out of the respective share of each Owner, to the extent sufficient for the purposes, all liens on the undivided interest in the Project owned by such Owner.
- (f) **First Mortgagee Priority.** In no event shall an Owner of a Unit or any other party have priority over any First Mortgagee on such Unit with respect to the distribution to such Owner of any insurance proceeds.

**11.4 Repair or Reconstruction.** If the damage or destruction is to be repaired and reconstructed as provided above, the Association shall, as soon as practicable after receiving the said estimate of costs, commence and diligently pursue to completion the repair and reconstruction of that part of the Project damaged or destroyed. The Association may take all necessary or appropriate action to effect repair and reconstruction, as attorney in fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith, except as otherwise expressly provided herein. The Project shall be restored or repaired to substantially the same condition in which it existed prior to the damage or destruction, with each Unit and the Common Areas having substantially the same vertical and horizontal boundaries as before. Any restoration or repair of the Project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the Declaration and the original architectural plans and specifications, unless other action is first approved in writing by a sufficient number of First Mortgagees pursuant to Section 13.2.

**11.5 Disbursement of Funds for Repair and Reconstruction.** If repair or reconstruction is to occur, the insurance proceeds held by the Association and any amounts received from assessments made pursuant to Section 11.3(d) hereof shall constitute a fund for the payment of costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for costs of repair and reconstruction shall be made from insurance proceeds; if there is a balance after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to their respective percentages of Ownership of the Common Areas.

**11.6 Amendment of Article.** This Article XI shall not be amended unless at least sixty-six percent (66%) of the total votes of the Condominiums in the Project consent and agree to such amendment.

## **ARTICLE XII CONDEMNATION**

**12.1 Condemnation.** If at any time or times all or any part of the Project shall be taken or condemned by any public authority under power of eminent domain, the provisions of this Article shall apply. A voluntary sale or conveyance of all or any part of the Project in lieu of condemnation, but under threat of condemnation, shall be deemed to be a taking by power of eminent domain. If any Unit or portion thereof or the Common Areas or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the Association shall give prompt written notice of any such proceeding or proposed acquisition to each Owner in the Project and to any First Mortgagee. The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Areas, or, any part thereof, and each Owner hereby appoints the Association as such Owner's attorney in fact for the purposes of such representation.

**12.2 Proceeds.** All compensation, damages and other proceeds from any such taking by power of eminent domain (hereinafter the "Condemnation Award") shall be made payable to the Association and shall be distributed by the Association, on behalf of the Owners as herein provided.

**12.3 Complete Taking.** In the event the entire Project is taken by power of eminent domain, condominium ownership pursuant hereto shall terminate and the Condemnation Award shall be allocated among and distributed to the Owners in proportion to their respective undivided interests in the Common Areas. Such distribution shall be made by check payable jointly to the respective Owners and their respective Mortgagees, as appropriate.

**12.4 Partial Taking.** In the event less than the entire Project is taken by power of eminent domain, the following shall occur:

(a) **Allocation of Award.** As soon as practicable, the Association shall, on behalf of the Owners, reasonably and in good faith, apportion the Condemnation Award between compensation, severance damages or other proceeds, and shall allocate such apportioned amounts and pay the same to the Owners as follows:

(i) The total amount apportioned to taking of or injury to the Common Areas shall be allocated among and distributed to all Owners (including Owners whose entire Units have been taken) in proportion to their respective undivided interests in the Common Areas;

(ii) The total amount apportioned to severance damages shall be allocated among and distributed to the Owners of those Condominiums that have not been taken in proportion to their respective undivided interests in the Common Areas;

(iii) The respective amounts apportioned to the taking of or injury to a particular Unit shall be allocated and distributed to the Owner of such Unit;

(iv) The total amount apportioned to consequential damages and any other takings or injuries shall be allocated and distributed as the Association determines to be equitable under the circumstances;

(v) If apportionment or allocation is already established by negotiation, judicial decree, statute or otherwise, the Association shall employ such apportionment and allocation to the extent it is relevant and applicable;

(vi) Distribution of allocated proceeds shall be made by check payable jointly to individual Owners and their respective Mortgagees, as their interests may appear; and

(vii) No provision of this Article XII or any other provisions in this Declaration or the Bylaws shall entitle the Owner of a Unit or other party to priority over any First Mortgagee holding such Unit with respect to the distribution to such Unit of the proceeds of any award, settlement or proceeds from any eminent domain or condemnation proceeding.

**(b) Continuation and Reorganization.** If less than the entire Project is taken by power of eminent domain, condominium ownership pursuant hereto shall not terminate but shall continue. In such event the Project shall be reorganized as follows:

(i) If any partial taking results in the taking of an entire Unit, then the Owner thereof shall cease to be a member of the Association and all voting rights and the undivided interest in the Common Areas appertaining to such Unit shall be reallocated to, and shall appertain to, the remaining Units in proportion to their respective undivided interests in the Common Areas;

(ii) If any partial taking results in the taking of a portion of a Unit and if no determination is made by the Association, after duly considering any recommendations, proposals or other input from the Owners, that such taking does

not make it impractical to use the remaining portion of such Unit for any lawful purpose permitted by this Declaration, then all voting rights and the undivided interest in the Common Areas appertaining to such Unit shall be reduced in proportion to the reduction in square footage of floor area of such Unit resulting from the taking. The voting rights and undivided interest in the Common Areas so divested from such Unit shall be reallocated to, and shall appertain to, such Unit and the other Units in the Project in proportion to their respective undivided interests in the Common Areas;

(iii) If any partial taking results in the taking of a portion of a Unit and if there is a determination made by the Association, after duly considering any recommendations, proposals, or other input from the Owners, that such taking makes it impractical to use the remaining portion of such Unit for any lawful purpose permitted by this Declaration, then all voting rights and the entire undivided interest in the Common Areas appertaining to such Unit shall be reallocated to, and shall appertain to, the remaining Units in proportion to their respective undivided interests in the Common Areas, and the remaining portion of such Unit shall thenceforth be part of the Common Areas;

(iv) The Association, after duly considering any recommendations, proposals or other input from the members, shall have the duty and authority to make all determinations and to take all actions necessary or appropriate to effectuate reorganization of the Project under the provisions of this Section 12.4(b); provided, however, that if any such determination shall have been or such action taken by judicial decree, the Association shall defer thereto and proceed in accordance therewith.

(c) **Repair and Reconstruction.** Any repair and reconstruction necessitated by condemnation shall be governed by the provisions specified in Article XI hereof for cases of damage or destruction; provided, however, that the provisions of said Article dealing with sufficiency or insufficiency of insurance proceeds shall not be applicable.

### **ARTICLE XIII** **MORTGAGE PROTECTION**

**13.1 Notice of Action.** From and after recordation of a Mortgage by a First Mortgagee, any such First Mortgagee shall be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Project or any Condominium on which there is a First Mortgage held, by such First Mortgagee;

(b) Any default in the performance by the Owner of a Condominium which is held or is subject to a First Mortgage held by such First Mortgagee of any obligation under this Declaration, including, without limitation, any delinquency in the payment of

assessments or charges owed by such Owner, which default remains uncured for a period of sixty (60) days; and

(c) Any lapse, cancellation or material modification of any insurance policy maintained by the Association.

**13.2 Matters Requiring Prior First Mortgagee and/or Owner Approval.** Except as provided under this Declaration in case of condemnation or substantial loss, the prior written consent of Owners entitled to vote at least sixty-six percent (66%) of the total votes in the Association (unless pursuant to a specific provision of this Declaration the consent of Owners entitled to vote a greater percentage of the total votes in the Association is required, in which case such specific provisions shall control), and First Mortgagees holding First Mortgages on Condominiums have at least sixty-six percent (66%) of the votes of the Condominiums subject to First Mortgages held by First Mortgagees shall be required to:

(a) Abandon or terminate the legal status of the Project (whether by act or omission);

(b) Add or amend any material provision of the Declaration, Bylaws or Map, which establishes, provides for, governs or regulates any of the following (an addition or amendment to such documents shall not be considered material if it is for the purpose of correcting technical errors or for clarification only):

(i) Insurance;

(ii) The method for establishing the undivided Ownership interests in the Common Areas, or Common Facilities; and

(iii) Any provisions which are for the express benefit of First Mortgagees.

(c) Use hazard insurance proceeds for losses to any portion of the Project (whether to Units or to Common Areas) for other than the repair, replacement or reconstruction of the Project; and

(d) Effect any restoration or repair of the Project, after a partial condemnation or damage due to an insurable hazard, which will not be substantially in accordance with the Declaration and the original architectural plans and specifications of the Project.

Any First Mortgagee who receives a written request from the Association to approve additions or amendments to the constituent documents and who fails to deliver or post to the Association a negative response within thirty (30) days shall be deemed to have approved such request.



**13.3 Prior Liens Relate Only to Individual Condominiums.** All taxes, assessments and charges which may become liens prior to the First Mortgage under local law shall relate only to the individual Condominiums and not to the Project as a whole.

**13.4 Subordination of Common Expense Lien.** Any lien which the Association may have on any Condominium in the Project for the payment of common Expense assessments attributable to such Condominium and any fees, late charges, taxes or interest levied by the Association in connection therewith shall be subordinate to the lien or equivalent security interest of any First Mortgage on the Condominium recorded prior to the date on which any such Common Expense assessments become due.

**13.5 Information Made Available to Owners, Lenders and Holders of any First Mortgages.** Any Owner, lender or holder of any First Mortgage shall, upon request, be entitled to inspect current copies of the Declaration, Bylaws, other rules and regulations concerning the Project and the books, records and financial statements of the Association during normal business hours or under other reasonable circumstances. Such documents, or suitable copies thereof, shall be maintained by the Secretary of the Association at the Association's principal office.

**13.6 Additional Information Made Available to Holders of First Mortgages.** In addition to the rights granted in Section 13.5, any holder, insurer or guarantor of any First Mortgage shall, upon written request, be entitled to written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings. Such representative shall not have any voting rights at such meetings except to the extent of any voting right held by reason of Ownership of one or more Condominiums in the Project.

**13.7 Priority of First Mortgagee in Event of Damage.** In the event of substantial damage to or destruction of any Unit or any part of the Common Areas, no provision of the Declaration or Bylaws or any amendment thereto shall entitle the Owner of a Unit or other party to priority over any First Mortgagee with respect to the distribution to such Owner of any insurance proceeds.

**13.8 Priority of First Mortgagee in Event of Condemnation.** If any Unit or portion thereof or the Common Areas or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, no provision of the Declaration or Bylaws or any amendment thereto shall entitle the Owner of the Unit, or any other party, to priority over any First Mortgagee with respect to the distribution to such Unit of the proceeds of any award or settlement.

**13.9 First Mortgagee Rights in Event of Foreclosure.** Each First Mortgagee who obtains title to a Unit pursuant to the remedies provided in the Mortgage, or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the Unit free of any claims for unpaid assessments and charges against the Unit which accrue prior to the acquisition of title to such Unit by the First Mortgagee.

**13.10 No Right of First Refusal.** No "right of first refusal" shall be included or added by amendment to the Declaration or Bylaws.

**ARTICLE XIV**  
**COMPLIANCE WITH DECLARATION AND BYLAWS**

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

**14.2 Enforcement and Remedies.** The obligations, provisions, covenants, restrictions and conditions contained in this Declaration, or in any supplemental or amended Declaration, with respect to the Association or Condominiums within the Project shall be enforceable by the Declarant or by any Owner of a Condominium within the Project, subject to this Declaration, by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages or to recover any amount due or unpaid. The obligations, provisions, covenants, restrictions and conditions contained in this Declaration, or in any supplemental or amended Declaration, with respect to a person or entity or property of a person or entity other than the Association shall be enforceable by the Declarant or by the Association or, in a proper case, by an aggrieved Owner by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages or to recover any amount due or unpaid. No summary abatement or similar procedure may be utilized through nonjudicial means to alter or demolish items of construction.

**ARTICLE XV**  
**GENERAL PROVISIONS**

**15.1 Intent and Purpose.** The provisions of this Declaration, and any supplemental or amended Declaration, shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of a Condominium Project. Failure to enforce any provision, restriction, covenant or condition contained in this Declaration, or in any supplemental or amended Declaration, shall not operate as a waiver of any such provision, restriction, covenant or condition or of any other provisions, restrictions, covenants or conditions.

**15.2 Notices and Registration of Mailing Address.** Each Owner shall register from time to time with the Association his current mailing address. All notices, demands and other communications to any Owner as provided for in this Declaration shall be in writing and shall be sufficient for all purposes if personally served or if sent by first-class U.S. Mail, postage prepaid, addressed to the Owner at his registered mailing address or, if no address has been registered, to the tax notice address of such Owner. All notices, demands and other communications to the Association as provided for in this Declaration shall be in writing and shall be sufficient for all purposes if personally served or if sent by first-class U.S. Mail, postage prepaid, addressed to the

Association at its offices at or to such other address as the Association may hereinafter specify to the Owners in writing. Any notice, demand or communication referred to in this Declaration shall be deemed to have been given and received when personally served or when deposited in the U.S. Mail, postage prepaid, and in the form provided for in this section, as the case may be.

**15.3 Audit.** Any Owner may at any reasonable time, upon appointment and at his own expense, cause an audit or inspection to be made of the books and records maintained by the Association. The Association, at the expense of the Common Expense Fund, may, at any time, obtain an audit, by certified public accountants, of all books and records pertaining to the Project, and copies thereof shall be furnished to the Owners.

**15.4 Amendment.** Except as otherwise provided herein, this Declaration may be amended by the affirmative vote of at least sixty-six percent (66%) of the total votes in the Association cast at a meeting duly called, at which meeting Owners may either attend and vote in person or by proxy. Any such amendment shall be evidenced by an instrument containing a certification from an officer of the Association that the appropriate consent has been obtained and shall be duly recorded in the office of the Kootenai County Recorder.

**15.5 Effective Date.** This Declaration shall take effect upon recording.

**15.6 Limitation on Association's Liability.** The Association shall not be liable for any failure of water service or other utility service (if any) to be obtained and paid for by the Association hereunder, or for injury or damage to any person in or upon the Project, or resulting from electricity, water, rain, snow or ice which may leak or flow from outside or from any parts of the Building or the drains, pipes, conduits, appliances or equipment, or from any other place, unless caused by the grossly negligent or willful misconduct of the Association. No diminution or abatement of any assessments under this Declaration shall be claimed or allowed for inconvenience or discomfort arising from the making of any repairs or improvements to or maintaining the Project or any part thereof, or from any action taken to comply with the provisions of this Declaration or with the laws, ordinances, regulations, rules or order of any governmental authority.

**15.7 Severability.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement and the application of such term or provision to persons or circumstances other than those to which it is specifically held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

**15.8 Owner's Obligations.** All obligations of an Owner, under and by virtue of the provisions contained in this Declaration, shall continue, notwithstanding that he may be leasing, renting or selling under contract his Condominium. The Owner of a Condominium within the Project shall have no obligation for expenses or other obligations accruing after he conveys such Condominium.

**15.9 Governing Law.** This Agreement shall be interpreted, governed by, construed and enforced in accordance with the laws of the State of Idaho.

**IN WITNESS WHEREOF**, the undersigned Declarant has executed this Declaration the day and year first above written.

HIGH WING CONSTRUCTION, INCORPORATED

  
By: ROBERT GUINDON  
Its: President

STATE OF IDAHO )

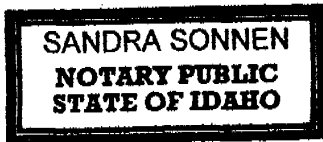
ss.

County of Kootenai )

On this 14 day of DECEMBER 20006 before me personally appeared **ROBERT GUINDON**, who by me being personally sworn, declared that he is the President of **HIGH WING CONSTRUCTION, INCORPORATED**, that he signed the foregoing document in his duly authorized capacity as President, for the uses and purposes therein mentioned.

GIVEN UNDER MY HAND AND OFFICIAL SEAL the day and year in this certificate first written above.

(SEAL)



Sandra Sonnen  
Notary Public in and for the State of Idaho  
Residing At: DALTON GARDENS  
My Commission Expires: 11-02-12

**CERTIFICATE OF CONSENT TO RECORDATION OF DECLARATION**

*(I.C. § 55-1504)*

The undersigned, being all the record owners of the real property described herein and all holders of any and all recorded security interests in said property hereby consent to the recordation of the foregoing document with the County Recorder of Kootenai County, Idaho.

**HOLDERS OF RECORDED SECURITY INTERESTS: NONE.**

**RECORD OWNER:**

HIGH WING CONSTRUCTION, INCORPORATED



By: ROBERT GUINDON

Its: President

STATE OF IDAHO )

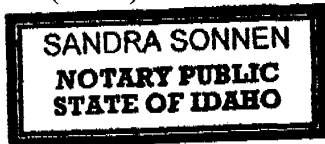
ss.

County of Kootenai )

On this 14 day of DECEMBER 2000 before me personally appeared **ROBERT GUINDON**, who by me being personally sworn, declared that he is the President of **HIGH WING CONSTRUCTION, INCORPORATED**, that he signed the foregoing document in his duly authorized capacity as President, for the uses and purposes therein mentioned.

GIVEN UNDER MY HAND AND OFFICIAL SEAL the day and year in this certificate first written above.

(SEAL)



Notary Public in and for the State of Idaho

Residing At: DALTON GARDENS

My Commission Expires: 11-02-2012

---

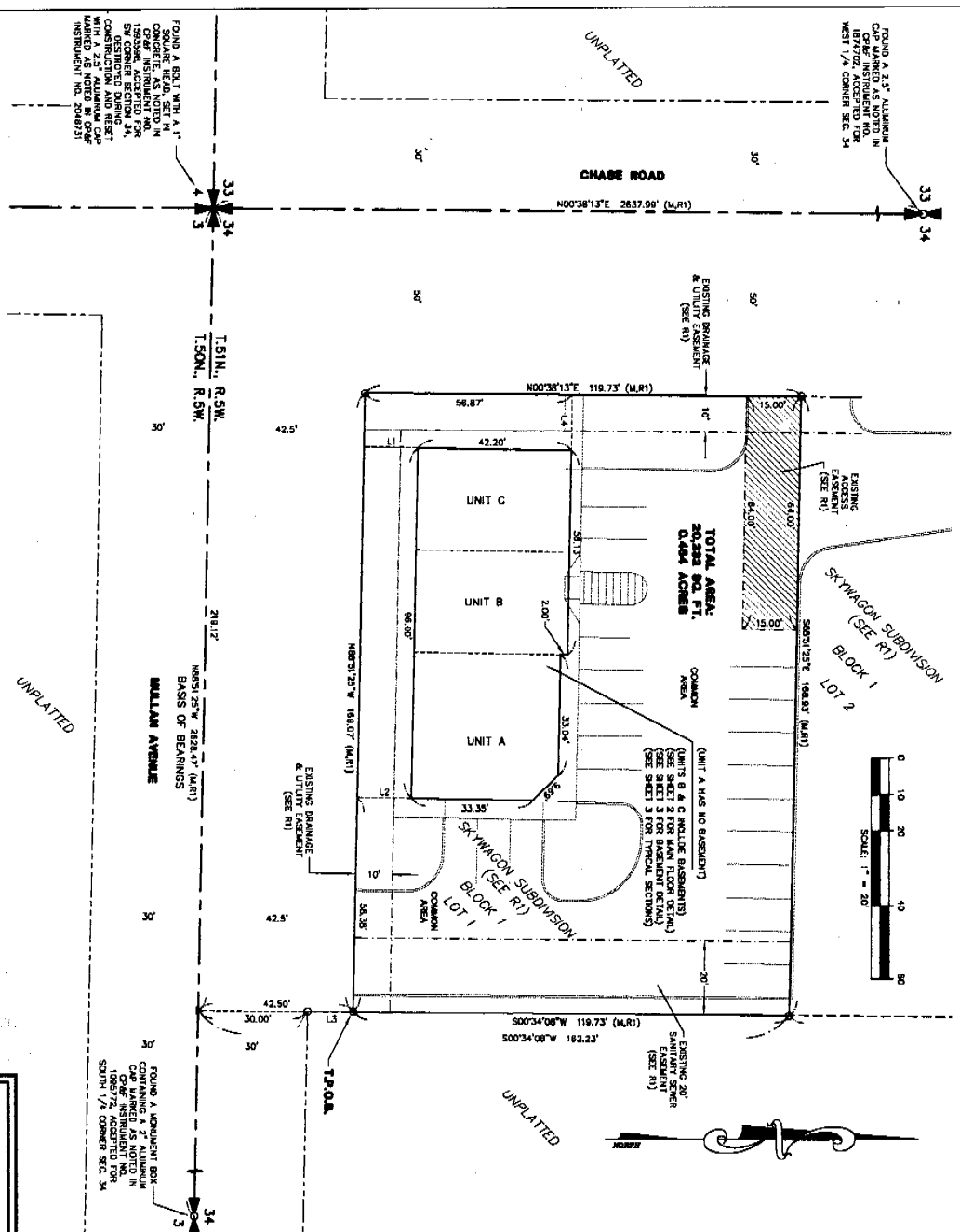
**Exhibit "A"**

**[Reduced Copy of Project Plat Map]**

**SEE ATTACHED**

# SKYWAGON COMMERCIAL CONDOMINIUMS

LOCATED IN LOT 1, BLOCK 1, SKYWAGON SUBDIVISION, IN A PORTION OF THE SW 1/4 OF THE SW 1/4 OF SECTION 34, TOWNSHIP 51 NORTH, RANGE 5 WEST, BOISE MERIDIAN, CITY OF POST FALLS, KOOTENAI COUNTY, IDAHO



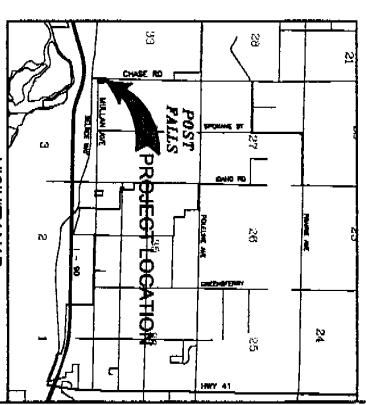
LINE DATA	BEARING	LENGTH
1	S02°13'23\" W	13.00'
2	S02°13'23\" W	13.50'
3	S82°21'17\" W	13.22'
4	N82°21'17\" W	13.22'



**W. J. CONNER**  
**ENGINEERS & SURVEYORS**  
 1600 Lincoln Hwy, Coeur d'Alene, Idaho 83814  
 Phone (208) 864-8282 Fax (208) 864-8448

Skywagon Commercial Condominiums  
 in the SW 1/4 of the SW 1/4 of Section 34, T49N, R5W,  
 B1E, City of Post Falls, Kootenai County, ID

Drawn By	DATE	Scale	Sheet	of
Checked By	07/03	Scale: 1" = 20'	1	1



- LEGEND**
- FOUND 3/4\" 3/4\" CAP BEARS WITH CAP INSURED T.M.S. 10888
  - △ CALCULATED SURVEY POSITION
  - (M) MEASURED BEARING AND/OR DISTANCE
  - (R) RECORD BEARING AND/OR DISTANCE. SEE CORRESPONDING REFERENCE NOTE HEREON.
  - C/L DENOTES CENTERLINE
  - R/W DENOTES RIGHT-OF-WAY

**BASIS OF BEARINGS**

THE BASIS OF BEARINGS FOR THIS SURVEY IS THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SECTION 34, WHICH IS TYPED TO BEAR SOUTH 89°31'23\" EAST PER R1, RECORD DRAWING - 16970 2E.

**REFERENCES:**

R1 PLAN OF SKYWAGON SUBDIVISION, RECORDED IN BOOK 2 OF PLATS, PAGE 333

**NOTES:**

1. BEARING ACCURACY FOR MEASUREMENT AND/OR MEASUREMENTS NOTED HEREON MAY BE ADJUSTED, FOR ANGLE DATA, AND 3-D.O.F. FOR DISTANCE DATA.
2. ALL AREA NOT COVERED BY CONDOMINIUM UNITS IS COMMON AREA, UNLESS SPECIFICALLY DENIED. REFER TO FLOOR PLANS AND TYPICAL SECTIONS SHOWN ON SHEETS 2 AND 3 OF 5 FOR FLOOR PLANS PROVIDED BY ALL VENTURE DEVELOPERS OF UNITS. DATA.
3. THE LIMITED COMMON AREAS SHOWN ON SHEETS 2 AND 3 OF 5 OF THIS PLAN ARE RESERVED EXCLUSIVELY FOR USE BY THE RESIDENT UNITS IN UNITS B AND C. FOR PURPOSES TO AND EXTENT OF THE RESIDENT PORTION OF THE SKYWAGON SUBDIVISION. THE COMMON AREAS FOR AS LONG AS THEY SHALL REMAIN WITHIN THE RESIDENT PORTION OF UNITS B AND C.

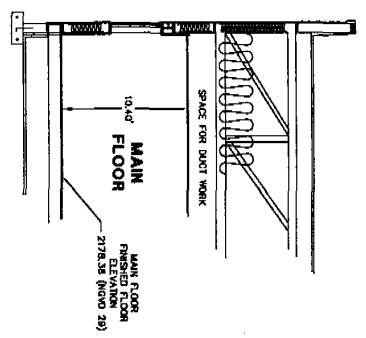
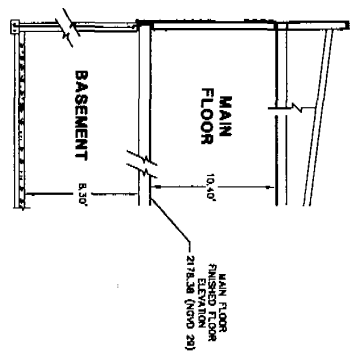
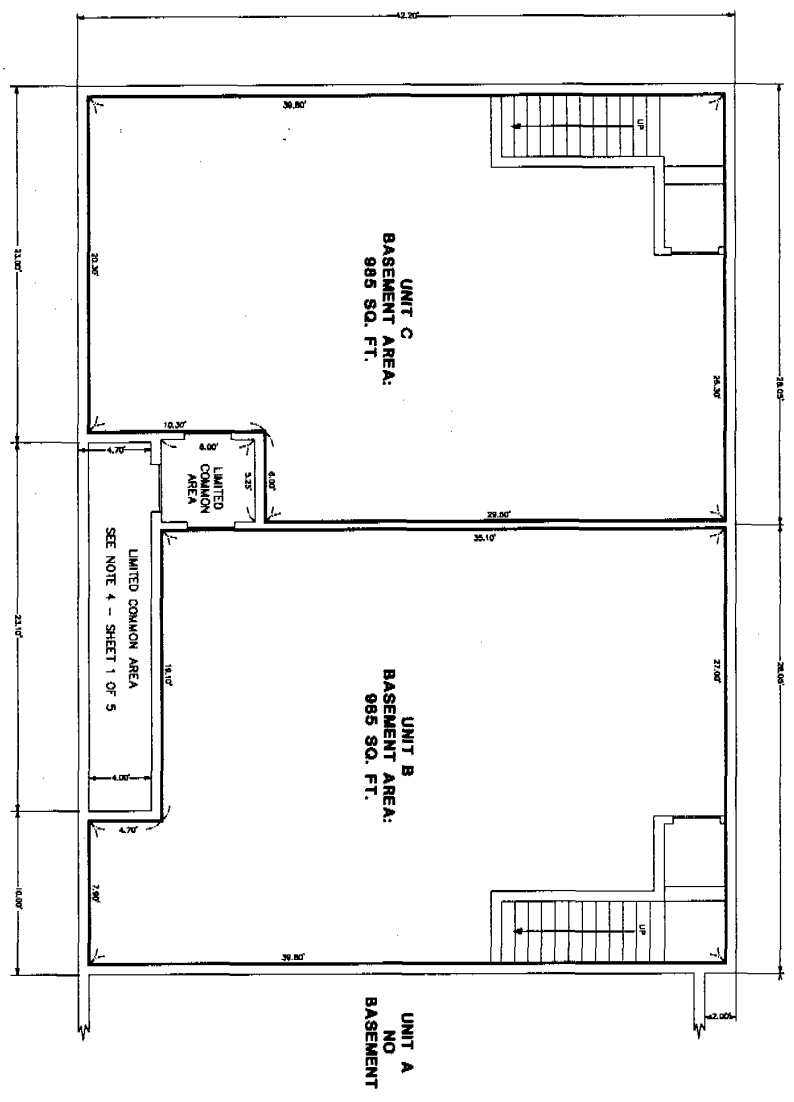
FOUND 4 3/4\" 3/4\" ALUMINUM CAP BEARS SET IN CONCRETE, AS NOTED IN RECORD DRAWING FOR SW CORNER SECTION 34, CONSTRUCTION AND RESET WITH A 2 1/2\" ALUMINUM CAP BEARS SET IN CONCRETE, AS NOTED IN RECORD DRAWING NO. 16972 2E.

FOUND 4 3/4\" 3/4\" ALUMINUM CAP BEARS AS NOTED IN RECORD DRAWING FOR WEST 1/4 CORNER SEC. 34





# SKY WAGON COMMERCIAL CONDOMINIUMS



**WELCH CONNER**  
REGISTERED PROFESSIONAL ENGINEERS & SURVEYORS

1408 Lumbia Way, Center of Mass, Dallas 75204  
Phone (214) 944-0282 Fax (214) 944-5848

Skywagon Commercial Condominiums  
in the SW 1/4 of the SW 1/4 of Section 24, T43N, R37E,  
B.L. City of Fort Worth, Tarrant County, TX

Drawn By:	ESB	Date:	05-25-98	Sheet:	3. of 4.
Checked By:	CSB	Scale:	1" = 5'	Dwg. No.:	UNITSB

# SKYWAY A G O N C O M M E R C I A L C O N D O M I N I U M S

## OWNER'S CERTIFICATE AND DEDICATION

BE IT KNOWN BY THESE PRESENTS THAT HERBERT CONSTRUCTION, INC. AND DAVID CORPORATION, HERETOFORE KNOWN AS SKYWAY A G O N COMMERCIAL CONDOMINIUMS, HAVE HEREBY DEEDED AND DEDICATED TO THE CITY OF POST FALLS, IDAHO, THE FOLLOWING DESCRIBED PROPERTY:

**PARCELS:** PARCELS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

THESE PARCELS ARE SITUATED IN THE NORTHWEST QUARTER OF SECTION 34, TOWNSHIP 51 NORTH, RANGE 5 WEST, BOISE MERIDIAN, CITY OF POST FALLS, KOOTENAI COUNTY, IDAHO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**PARCELS 1-10:** COMMENCING AT A 2.21 INCH DIAMETER ALUMINUM CORNER MARKED AS SHOWN IN THE CORNER REPERTITION AND PLUMB RECORD FILED AS INSTRUMENT NO. 1055772, AND CONTAINING 0.446 ACRES, MORE OR LESS, BEING THE NORTHWEST CORNER OF SAID SECTION 34, AS SHOWN IN CORNER REPERTITION AND PLUMB RECORD INSTRUMENT NO. 1055772.

**PARCELS 11-20:** THENCE, ALONG THE SOUTH LINE OF SAID SOUTHWEST QUARTER OF SECTION 34, SOUTH 89°17'25" EAST, 218.12 FEET, TO A POINT OF INTERSECTION WITH THE SOUTHWEST EXTENSION OF THE EAST BOUNDARY LINE OF SAID LOT 1;

**PARCELS 21-30:** THENCE, ALONG SAID SOUTHWEST EXTENSION OF THE EAST BOUNDARY LINE OF SAID LOT 1, NORTH 07°34'07" EAST, 42.50 FEET, TO A POINT OF INTERSECTION WITH THE SOUTH BOUNDARY LINE OF SAID LOT 1, SAID LINE TAKEN TO BE CONCORDANT WITH THE NORTH LINE OF THE RIGHT-OF-WAY FOR MULTIPLE PURPOSES SAID TRAIL TAKEN TO BE A 75 FEET WIDE RIGHT-OF-WAY TAKEN TO BE THE SOUTHWEST CORNER OF SAID LOT 1, AND SAID POINT BEING THE TRAIL POINT OF BEGINNING;

**PARCELS 31-40:** THENCE, ALONG SAID SOUTH BOUNDARY LINE OF SAID LOT 1, NORTH 89°17'25" WEST, 180.07 FEET, TO THE SOUTHWEST CORNER OF SAID LOT 1, TAKEN TO BE MONUMENTED BY A 7/8" MONUMENT;

**PARCELS 41-50:** THENCE, ALONG THE WEST BOUNDARY LINE OF SAID LOT 1, TAKEN TO BE CONCORDANT WITH THE EAST LINE OF THE RIGHT-OF-WAY FOR CHASE ROAD, NORTH 06°31'12" EAST, 118.73 FEET, TO THE NORTHWEST CORNER OF SAID LOT 1, TAKEN TO BE MONUMENTED BY A 7/8" MONUMENT;

**PARCELS 51-60:** THENCE, ALONG THE NORTH BOUNDARY LINE OF SAID LOT 1, SOUTH 89°17'25" EAST, 180.03 FEET, TO THE NORTHWEST CORNER OF SAID LOT 1, TAKEN TO BE MONUMENTED BY A 7/8" MONUMENT;

**PARCELS 61-70:** THENCE, ALONG THE EAST BOUNDARY LINE OF SAID LOT 1, SOUTH 06°34'07" WEST, 118.73 FEET, TO THE TRUE POINT OF BEGINNING, CONTAINING 0.446 SQUARE FEET (0.446 ACRES), MORE OR LESS.

DOMESTIC WATER AND SEWER DISPOSAL SHALL BE PROVIDED BY THE CITY OF POST FALLS.

RESERVING ANY SUCH DESIGN AS MAY BE OF RECORD OR IN VIEW, AS WELL AS THE DEDICATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SKYWAY COMMERCIAL CONDOMINIUMS.

HERBERT CONSTRUCTION, INC.  
ROBERT GARDNER, PRESIDENT

## ACKNOWLEDGEMENT

STATE OF IDAHO ) S.S.  
COUNTY OF KOOTENAI )  
ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_, BEFORE ME, the undersigned authority, personally appeared \_\_\_\_\_, known or identified to me to be the president of the corporation that executed the instrument on which this acknowledgment is based, and acknowledged to me that such corporation executed the same.

NOTARY PUBLIC \_\_\_\_\_  
BY COMMISSION EXPIRES \_\_\_\_\_

## COUNTY RECORDERS CERTIFICATE

THIS PLAT HAS BEEN FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF KOOTENAI COUNTY, IDAHO, DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_, AT \_\_\_\_\_ O'CLOCK \_\_\_\_\_ M., AND WAS DULY RECORDED IN PLAT BOOK \_\_\_\_\_, PAGE \_\_\_\_\_.

KOOTENAI COUNTY RECORDER \_\_\_\_\_

## COUNTY SURVEYOR'S CERTIFICATE

I HAVE EXAMINED AND DEEDED THIS PLAT AND THE COMPUTATIONS OF SAID PLAT, AND HAVE DETERMINED THAT THE REQUIREMENTS OF THE IDAHO STATE CODE RELATIVE TO PLATS AND SURVEYS HAVE BEEN MET AND SATISFIED.

DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

KOOTENAI COUNTY SURVEYOR \_\_\_\_\_

## CITY ENGINEER'S CERTIFICATE

I HEREBY ATTEST THAT THE CITY OF POST FALLS REQUIREMENTS FOR PUBLIC UTILITIES AND ROADWAYS HAVE BEEN MET.

CITY ENGINEER \_\_\_\_\_ DATE \_\_\_\_\_

## COUNTY TREASURER'S CERTIFICATE

TAXES DUE FOR THE PROPERTY DESCRIBED IN THE OWNER'S CERTIFICATE AND DEDICATION FOR THIS PLAT HAVE BEEN PAID.

DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

KOOTENAI COUNTY TREASURER \_\_\_\_\_

## PANHANDLE HEALTH DISTRICT CERTIFICATE

NOTICE: THIS PLAT IS SUBJECT TO THE HEALTH DISTRICT OF PANHANDLE HEALTH DISTRICT. ANY VIOLATION OF ANY HEALTH DISTRICT ORDINANCE OR RULE SHALL BE DEEMED TO BE A VIOLATION OF THE HEALTH DISTRICT ORDINANCE AND RULES. THIS PLAT HAS BEEN DEEDED WITH SANITARY RESERVATION REQUIREMENTS AS SHOWN ON THIS PLAT.

APPROVED, DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

PANHANDLE HEALTH DISTRICT \_\_\_\_\_  
SANITARY RESERVATIONS FOR THIS PLAT HAVE BEEN SAUNTERED AND LIFTED, DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

PANHANDLE HEALTH DISTRICT \_\_\_\_\_

## CITY OF POST FALLS

THIS PLAT HAS BEEN EXAMINED BY THE POST FALLS CITY COUNCIL, AND IS HEREBY APPROVED FOR PLUMB, DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

MAYOR \_\_\_\_\_ CITY CLERK \_\_\_\_\_

## SURVEYOR'S CERTIFICATE

I, GERRARD W. BRANT, HEREBY CERTIFY THAT THIS PLAT WAS PREPARED UNDER MY DIRECTION AND IS BASED UPON AN ACTUAL SURVEY AND MEASUREMENT OF LAND, AND THAT ALL MONUMENTS SHOWN ON THIS PLAT HAVE BEEN PLACED BY ME OR BY MY DEPUTY, AND THAT THE PROVISIONS OF STATE LAWS AND LOCAL ORDINANCES FOR PLATS AND SURVEYS DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.



**WELCH CONNER**  
ENGINEERS & SURVEYORS  
LABORERS IN THE ARTS

1606 Lincoln Hwy, Coeur d'Alene, Idaho 83814  
Phone (208) 664-8282 Fax (208) 664-5945

Skyway Commercial Condominiums  
in the SW 1/4 of the SW 1/4 of Section 34, T49N, R39E,  
H.W. City of Post Falls, Kootenai County, ID.

Prepared by	WGB	Date	8-25-88	Sheet 1 of 1	
Checked by	WGB	Scale	N/A	Drawn by	WGB

**Exhibit "B"**

**(Schedule of Unit Descriptions and Percentage Ownership Interest)**

<u>Unit No.</u>	<u>Square Feet</u>	<u>Ownership Interest</u>	<u>Type</u>	<u>Votes Per Unit</u>
<i>(3 Commercial Condominiums)</i>				
A.	1526	27.43 %	Commercial	1
B.	1988	35.74 %	Commercial	1
C.	2049	36.83 %	Commercial	1

---

**Exhibit "C"**

**Articles of Incorporation**

**SEE ATTACHED**

FILED EFFECTIVE

2006 SEP 14 AM 8:30

SECRETARY OF STATE  
STATE OF IDAHO

ARTICLES OF INCORPORATION  
OF  
SKYWAGON COMMERCIAL CONDOMINIUMS  
OWNERS' ASSOCIATION, INC.

KNOWN ALL MEN BY THESE PRESENTS that HIGH WING CONSTRUCTION, INCORPORATED, an Idaho corporation, for the purpose of forming a corporation under the Idaho Nonprofit Corporation Act, hereby certifies and adopts, in duplicate, the following Articles of Incorporation.

ARTICLE I.  
NAME

The name of the corporation (hereinafter referred to as the "Corporation") is "SKYWAGON COMMERCIAL CONDOMINIUMS OWNERS' ASSOCIATION, INC."

ARTICLE II.  
DURATION

The duration of this Corporation shall be perpetual.

ARTICLE III.  
PURPOSE AND POWERS

3.1 This Corporation is not organized for profit and no part of its gains or earning shall inure or be distributed to its members. The specific primary purposes for which it is formed are to: (i) carry out and enforce the DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS of SKYWAGON COMMERCIAL CONDOMINIUMS OWNERS' ASSOCIATION, INC. (herein the "Declaration"); (ii) provide for the acquisition, construction, management, operation, administration, maintenance, repair, improvement, preservation, insurance and architectural control of association property within that certain commercial development known as the SKYWAGON COMMERCIAL CONDOMINIUMS project (herein the "Project") located in the city of Post Falls, Kootenai County, Idaho; (iii) promote the health, safety and welfare all of all property owners and tenants occupying or otherwise utilizing any portion of the property as defined in the Declaration for the Project and any additions thereto as may hereafter be brought within the jurisdiction of this Corporation for such purposes, all according to the Declaration recorded or to be

ARTICLES OF INCORPORATION OF SKYWAGON COMMERCIAL  
CONDOMINIUMS OWNERS' ASSOCIATION, INC. -1

IDAHO SECRETARY OF STATE  
09/14/2006 05:00  
CK: 6818 CT: 173163 BH: 975164  
1 @ 30.00 = 30.00 INC NONP # 2

C168881

recorded with respect to such property in the office of the County Recorder of Kootenai County, Idaho; and (iv) the transaction of any lawful activity in which corporations may engage within the State of Idaho.

3.2 In furtherance of said purposes, and subject to the approval of members as required by law, the Declaration and the remaining Project Documents, the Corporation shall have the power to:

3.2.1 Perform all of the duties and obligations of the Corporation as set forth in the Declaration;

3.2.2 Fix, levy, collect and enforce assessments and fines as set forth in the Declaration and other Project Documents and secure the payment of assessments through liens upon real property as allowed under Idaho law;

3.2.2.1 Pursuant to Idaho Code Section 30-3-17 (5), assessments may be made enforceable by civil action and/or by the forfeiture of membership and/or lien upon any real property to which membership rights are appurtenant, upon notice given in writing twenty (20) days before commencement of such action or such forfeiture.

3.2.3. Pay all expenses and obligations incurred by the Corporation in the conduct of its business, including, without limitation, all licenses, taxes or governmental charges levied or imposed against the Corporation's property;

3.2.4 Acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, exchange, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Corporation;

3.2.5 Make contracts and incur liabilities, borrow money and mortgage, pledge, deed in trust or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

3.2.6 Dedicate, sell, transfer or grant easements over all or part of any of the Corporation's property to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members;

3.2.7 Participate in mergers and consolidations with other nonprofit corporations organized for the same purposes, or annex additional property to the property managed by the Corporation;

3.2.8 Litigate, mediate, arbitrate any and/or all corporate rights and obligations specified in law and/or by Declaration or other Project Documents. This Corporation in addition to other provisions, may provide for the qualification of members, the terms and conditions of admission, the time, mode, conditions and effect of expulsion or withdraw from the restoration of membership, admission fees, charges and assessments; and for reimbursement for services rendered to and expenses incurred on behalf of the Corporation by any member to the Corporation, and such other rules and regulations as are not repugnant to the laws of the State of Idaho or the purposes of the project;

3.2.9 Exercise the same powers as an individual to do all things necessary or convenient to carry out its affairs; and

3.2.10 Have and exercise any and all powers, rights and privileges which a corporation organized under the Idaho Nonprofit Corporation Act, which may now or hereafter exist.

#### **ARTICLE IV. MEMBERS AND MEMBERSHIP**

4.1 Non-Stock Corporation. Participation in management and ownership of the Corporation shall be by membership only. The Corporation shall issue no stock and shall have no shareholders.

4.2 Membership. The Owner of a Unit in the SKYWAGON COMMERCIAL CONDOMINIUMS project shall automatically, upon becoming an Owner, be a member of the Corporation, and shall remain a member thereof until such time as a member's ownership ceases for any reason at which time its membership in the Corporation shall automatically cease. Membership shall be in accordance with these Articles of Incorporation and the Bylaws of the Corporation. The Declarant shall obtain membership rights for each Project Unit as specified in the Declaration upon recording of the Declaration.

4.3 Transferred Membership. Membership in the Corporation shall not be transferred, pledged or alienated in any way except upon the transfer of ownership of a Unit to which it is appurtenant, and then only to the new owner thereof. Any attempt to make a prohibited transfer is void. In the event the owner of any Unit should fail or refuse to transfer the membership registered in its name to the purchaser of its Unit, the Corporation shall have the right and authority to transfer the membership to the purchaser and record the transfer upon the books; thereupon the old membership outstanding in the name of the seller shall be null and void.

4.4 Classes of Membership. The Corporation shall have multiple classes of voting membership established according to the following provisions:



4.4.1 Class "A" Membership.- Class A membership shall be that held by each Owner of a Unit other than Developer (including any successor in interest as Developer of the Project). Each Class A Member shall be entitled to one (1) vote for each Unit owned within the Project. If a Unit is owned by more than one person, each such person shall be a member of the Corporation, but there shall be no more than one (1) vote for each Unit. The voting power attributable to each Unit shall not be increased by joint ownership and the vote attributable to each Unit shall not be split. Multiple owners of a Unit have joint rights and obligations but in the event they cannot agree how to vote on any particular issue, then they shall lose their collective right to vote and may not exercise any vote with respect to that specific issue.

4.4.2 Class "B" Membership. Class B Membership shall be that held by the Declarant (including any successor in interest as Developer of the Project), who shall be entitled to triple the voting power otherwise attributable to any specific Unit. Class B voting rights shall exist with respect to all Units expected to be constructed within the Project, whether completed or subject to future construction. Class B membership shall be converted to Class A membership and shall forever cease to exist on the occurrence of whichever of the following is first in time:

- (i) When the total outstanding voting power held by Class A members equals the total outstanding voting power (tripled as stated above) held by the Class B member; or
- (ii) On the tenth (10<sup>th</sup>) anniversary of the recordation of the Declaration and other original Project Documents.

4.5 Voting Requirements. Except where otherwise expressly provided in the Declaration, these Articles of Incorporation or Bylaws, any action by the Corporation must have the approval of the Corporation membership before being undertaken and shall require the vote or written assent of the prescribed percentage of the total power of all combined classes of the Corporation membership.

4.6 Limitation of Payment to Dissenting Member. Membership in the Corporation is appurtenant to and cannot be segregated from ownership of a Unit within the Jurisdiction of the Corporation. Except under dissolution of the Corporation, a dissenting member shall not be entitled to any return of any contribution or other interest in the Corporation.

#### **ARTICLE V. INITIAL REGISTERED OFFICE AND AGENT**

The initial registered office of the Corporation shall be 409 Coeur d'Alene Avenue, Coeur d'Alene, Idaho, 83814, and the name of its registered agent at such address is Brent G. Schlotthauer, Esq.

**ARTICLE VI.**  
**BOARD OF DIRECTORS; INCORPORATORS**

The affairs of this Corporation shall initially be managed by a Board of three (3) Directors. All subsequent directors must be members of the Corporation. The number of directors may be increased by amendment of Bylaws to an odd number not exceeding five (5) Directors at any time after the termination of Class B membership. The names and addresses of the initial Directors of the Corporation until the nomination and election of their successors, are:

<u>Name</u>	<u>Address</u>
ROBERT R. GUINDON	601 E. Seltice Way, Suite 2-B Post Falls, ID 83854
DONNA M. GUINDON	601 E. Seltice Way, Suite 2-B Post Falls, ID 83854
BRENT G. SCHLOTTHAUER	409 Coeur d'Alene Avenue Coeur d'Alene, ID 93914

The name and address of the incorporator of the Corporation is as follows:

<u>Name</u>	<u>Address</u>
ROBERT R. GUINDON	601 E. Seltice Way, Suite 2-B Post Falls, ID 83854

**ARTICLE VII.**  
**INDEMNIFICATION**

A Director of the Corporation shall not be personally liable to the Corporation for monetary damages arising from any conduct as a Director, except this limitation on liability shall not apply to: (i) acts or omissions involving intentional misconduct by the Director or a knowing violation of law by the Director; or (ii) any transaction from which the Director will personally receive a benefit in money, property or services to which the Director is not legally entitled. In the event the Idaho Business Corporation Act and/or the Idaho Nonprofit Corporation Act is amended to authorize corporate action further eliminating or limiting the personal liability of corporate Directors, then the liability of a Director of this Corporation shall be eliminated or limited to the fullest extent permitted by such law or laws, as so amended.

Any repeal or modification of the forgoing paragraph shall not adversely affect the right or protection of a Director of the Corporation existing at the time of such repeal or modification. The Corporation shall have all powers set forth in Idaho Code Section 30-3-88 or any revised or successor statute.

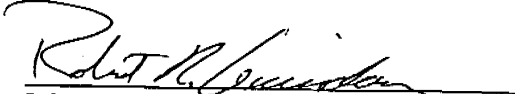
**ARTICLE VIII.  
DISSOLUTION**

In the event of dissolution, liquidation or winding up of the Corporation, after paying off or adequately providing for the debts and obligation of the Corporation, the Directors or persons in charge of the liquidation shall distribute any remaining assets, properties and/or money to such public entity or nonprofit organization with similar purposes of the Corporation in a manner consistent with the purposes of the Corporation.

**ARTICLE IX.  
AMENDMENT OF ARTICLES**

These Articles shall be amended only by the vote or willing assent of at least two-thirds (2/3) of the membership; provided, the percentage of the voting power necessary to amend a specific clause or provision herein shall not be less than the percentage of affirmative votes prescribed for action to be taken under said clause or provision. Any amendment shall not be inconsistent with Idaho law.

For the purposes of forming this Corporation under the laws of the State of Idaho, the undersigned, constituting the incorporator of the Corporation, has executed these Articles of Incorporation on the 11<sup>th</sup> day of September, 2006.

  
ROBERT R. GUINDON, Incorporator

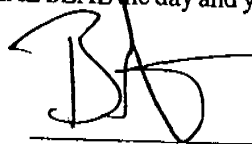
STATE OF IDAHO )

: ss.

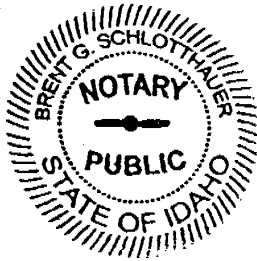
County of Kootenai )

On this 11<sup>th</sup> day of September, 2006, before me, Brent G. Schlotthauer, a notary public, personally appeared **ROBERT R. GUINDON**, to me known to be the individual described in and who executed the foregoing instrument and acknowledged that he signed and sealed the same as his own free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN UNDER MY HAND AND OFFICIAL SEAL the day and year in this certificate first written above.



(SEAL)



Notary Public in and for the State of Idaho

Residing At: Hayden - ID

My Commission Expires: 01/06/12

**Exhibit "D"**

**Association Bylaws**

**SEE ATTACHED**

**BYLAWS  
OF  
SKYWAGON COMMERCIAL CONDOMINIUMS  
OWNERS' ASSOCIATION, INC.**

(An Idaho Nonprofit Corporation)

**ARTICLE I.  
NAME AND LOCATION**

The name of this Association is the SKYWAGON COMMERCIAL CONDOMINIUMS OWNERS' ASSOCIATION, INC. The principal place of business of this Association shall be in the City of Post Falls, Kootenai County, Idaho. The Corporation may have such other offices either within or without the State of Idaho as the Board of Directors may designate from time to time.

**ARTICLE II.  
PURPOSE**

**Section 1. Administer Commercial Condominium Project.** The purposes for which this Corporation (herein the "Association") is formed and the powers which it may exercise are as set forth in the Articles of Incorporation and any corrections or amendments thereto. The provisions of these Bylaws are applicable to the commercial development known as:

*All of Lot 1, Block 1, of the plat of SKYWAGON SUBDIVISION, recorded in Book J of Plats, Pages 333 and 333A, and being located in the Southwest Quarter of the Southwest Quarter of Section 34, Township 51 North, Range 5 West, Boise Meridian, City of Post Falls, Kootenai County, Idaho.*

**Section 2. General Responsibilities.** The Association shall have the responsibility of administering the Common Area owned and/or managed by the Association, approving the annual budget, establishing and collecting all assessments and may arrange for the management of the same pursuant to a written agreement containing provisions relating to the duties, obligations, removal and compensation of the Directors, as defined below.

**Section 3. Enforcement of Declaration.** The Project is also encumbered by a certain Declaration of Covenants, Conditions & Restrictions recorded on 12-19-06 as Instrument No. 2075134000, records of the County Recorder, Kootenai County, Idaho (herein the "Declaration"). The terms and conditions of the Declaration are hereby incorporated herein by reference, including, but not limited to, all of the definitions contained therein.

**Section 4. Deemed Ratification.** All present and future Owners, and their present and future tenants, guests, invitees, agents and employees and any other person who might use the improvements located on the Project or who acquires, owns, occupies, leases or otherwise possesses any Unit thereof, either hereby accepts and/or is hereby deemed to have accepted and ratified these Bylaws and shall be unconditionally bound thereby.

**ARTICLE III.  
CORPORATE OFFICES**

**Section 1. Principal Office.** The Corporation shall initially maintain its principal office at 601 E. Seltice Way Suite 2B, Post Falls, ID 83854.

**Section 2. Registered Office.** The Association shall continuously maintain within the State of Idaho a registered office and a registered agent whose office is identical with such registered office. Until changed by resolution of the Board of Directors, the registered agent and the registered office in the State of Idaho shall be:

Brent G. Schotthauer, Esq.  
409 Coeur d'Alene Avenue  
Coeur d'Alene, Idaho 83814

**ARTICLE IV.  
MEMBERSHIP**

**Section 1. Unit Owners as Members.** Each Owner of a Unit located with the Project shall be entitled and required to be a member of the Association. Membership shall begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. The owner of lot within the Project, by acceptance of a deed or other conveyance, is deemed to consent to membership in the Association and thereby covenants and agrees to utilize the services furnished by the Association and to abide by the terms of the Association's Bylaws, Rules and Regulations and association Declaration of Covenants, Conditions and Restrictions, each of which shall be deemed to constitute a contract between the Association and each Unit Owner

**Section 2. Classes of Membership.** The Association shall have two (2) classes of voting membership as established and set forth in the Articles of Incorporation. Except for the Class B Membership as provided for in the Articles of Incorporation and the Declaration, and except as may be otherwise provided in the Declaration, each Member shall be entitled to one vote for each Unit owned by such Member.

**Section 3. Transfer of Membership.** The rights of each Owner shall be appurtenant to his or her ownership of a Unit, may not be separated from said ownership, and shall automatically pass to the heirs, successors and assigns (including mortgagees) of an Owner upon the recordation

of the change in ownership of the Unit in the public records of Kootenai County, Idaho, and in the records of the Association.

**Section 4. Joint Owner Disputes.** The vote for a Unit must be cast as a single vote, and the vote assigned to a particular Unit shall not be fractionalized or split. If joint owners are unable to agree how their collective vote shall be cast, then they shall lost their right to vote on the matter in question.

**ARTICLE V.**  
**MEMBER MEETINGS**

**Section 1. Annual Meeting.** An annual meeting of the Members shall be held in Kootenai County, Idaho, at a time, place and location to be determined by the Board in the Notice of Meeting. If the Board shall fail to set another time and date, then the meeting shall occur on the third Friday of September in each year, at the hour of 7:00 p.m., at a meeting place to be announced in the call of the meeting. The purpose of the meeting shall be to elect directors and for the transaction of such other business as may come before the meeting. At the first annual meeting, the Directors shall be elected to serve until the second annual meeting, and at the second annual meeting, and annually thereafter, Directors shall be elected for a term of one (1) year beginning with such annual meeting. In the event that an annual meeting is not held, or the Directors are not elected at such meeting, the Directors may be elected at any special meeting held for that purpose. Each Director shall hold office until a successor has been elected or until death, resignation, removal or judicial adjudication of mental incompetence. The failure to hold an annual meeting shall in no way affect the terms of officers or directors of the Association, or the validity of actions of the Association.

**Section 2. Special Meetings.** It shall be the duty of the President to call a special meeting of the Association as called by either the President or by a resolution of the Board of Directors, or upon a petition signed by Members who are entitled to vote one-fourth (1/4) of all the votes of the Class A Membership. The notice of all regular and special meetings shall be given as provided in Section 3 of Article V of these Bylaws, and shall state the nature of the business to be undertaken. No business shall be transacted at a special meeting except as specifically stated in the notice, unless by consent of the Members holding at least four-fifths (4/5) of each class of voting Membership in the Association, either in person or by proxy.

**Section 3. Notice of Meetings.** It shall be the duty of the Secretary to mail a notice of each annual or special meeting of the Association, stating the purpose thereof as well as the day, hour and place where such meeting is to be held, to each Member of record, and any person in possession of a Unit, at least ten (10) but not more than thirty (30) days prior to such meeting. The notice may set forth time limits for speakers and nominating procedures for the meeting.

3.1 The mailing of a notice, postage prepaid, in the manner provided in this Section 3, shall be considered notice served, after said notice has been deposited in a regular depository of the United States mail. If no address has been furnished the Secretary, notice



shall be deemed to have been given to a Member if posted in a conspicuous place on the Property.

3.2 A written waiver of notice signed by a Member, whether before or after a meeting, shall be equivalent to the giving of such notice. Attendance of a Member at a meeting shall constitute a waiver of notice of such meeting, except when the Member attends for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

**Section 4. Voting List.** The officers having charge of the membership records of the Association shall maintain a complete list of the Members entitled to vote at each meeting of Members or any adjournment thereof. The list shall be kept on file at the registered office of the Association or at the principal place of business of the Association, and any Member shall be entitled to inspect the list at any time during usual business hours. The list shall also be produced and kept open at the time and place of the meeting, and shall be subject to the inspection of any Member at any time prior to the commencement of the meeting. If the requirements of this section have not been substantially complied with, then upon demand of any Member in person or by proxy, the meeting shall be adjourned until the requirements are complied with. If no such demand is made, failure to comply with the requirements of this section shall not affect the validity of any action taken at such meeting.

**Section 5. Member Quorum and Voting.** Fifty-one percent (51%) of the voting interest of the Members present at a meeting, represented in person or by proxy, shall constitute a quorum. The vote of the majority of the votes entitled to be cast by the Members present or represented by proxy at a meeting, shall be the act of Members, unless the vote of a greater number is required by law or these Bylaws or the Declaration. The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum.

**Section 6. Adjourned Meetings.** If any meeting of the Association cannot be organized because a quorum has not attended, the Members who are present, either in person or by proxy, may adjourn the meeting to a time not less than ten (10) days nor more than thirty (30) days from the time the original meeting was called, at which meeting the quorum requirement shall be the presence in person or by proxy of the Members holding at least thirty percent (30%) of the total votes entitled to be cast at such meeting. Such adjourned meetings may be held without notice thereof as provided in this Article 5, except that notices shall be given by announcement at the meeting at which such adjournment is taken. If a meeting is adjourned for more than thirty (30) days, notice of the adjourned meeting shall be given as in the case of an original meeting.

**Section 7. Order of Business.** The order of business at all meetings shall be as follows: (a) roll call to determine the voting power represented at the meeting; (b) proof of notice of meeting or waiver of notice; (c) reading of minutes of preceding meeting; (d) reports of officers; (e) reports of committees; (f) election of Directors; (g) unfinished business; and (h) new business. Meetings shall be conducted by the officers of the Association in the order of their priority.

**Section 8. Voting by Ballot.** Voting on any question or in any election may be by voice, unless the presiding officer shall order or any Member shall demand that voting be by ballot.

**Section 9. Action Without Meeting.** Any action, which under the provisions of the Idaho Nonprofit Corporation Act may be taken at a meeting of the Corporation, may be taken without a meeting if authorized in a writing setting forth the action so taken is signed by all of the Members who would be entitled to vote at a meeting for such purpose. Any such writing must be filed with the Secretary. Any action so approved, upon proper filing with the Secretary, shall have the same effect as though taken at a meeting of the Members.

**Section 10. Proxies.** Each Member entitled to vote at a meeting of Members or to express consent or dissent without a meeting may authorize another person or persons to act for him by proxy. Every proxy shall be in writing and shall be signed by the Member or his otherwise duly authorized attorney in fact. No proxy shall be valid after the expiration of eleven months from the date thereof, unless otherwise provided in the proxy. Every proxy shall be revokable at the pleasure of the Member executing it, except as otherwise provided by law.

**Section 11. Minutes, Presumption of Notice.** Minutes or a similar record of the proceedings of meetings, when signed by the President or Secretary, shall be presumed truthfully to evidence the matters set forth therein. A recitation in the minutes of any meeting that notice of the meeting was properly given shall be prima facie evidence that such notice was in fact given.

## **ARTICLE VI. ELECTION OF DIRECTORS**

**Section 1. Number and Qualification.** The Property, business and affairs of the Association shall be governed and managed by a Board of Directors initially composed of at least three (3) persons. All subsequent Directors must be Members of the Association or an agent of a corporate Member. Directors shall not receive any salary or other compensation for their services as Directors; provided, however, that nothing herein contained shall be construed to preclude any Director from serving the Association in some other capacity and receiving compensation therefor.

**Section 2. Nomination, Election and Term of Office.** Nomination for election to the Board of Directors shall be made by the floor at the annual meeting of the Association. At the first annual meeting of the Association, and thereafter at each annual meeting of the Association, new Directors shall be elected by secret written ballot by a Majority of Members present at such meeting as provided in these Bylaws. Cumulative voting is not permitted. The term of the Directors shall be for one (1) year. In the event that an annual meeting is not held, or the Directors are not elected thereat, the Directors may be elected at any special meeting held for that purpose. Each Director shall hold office until a successor has been elected or until death, resignation, removal or judicial adjudication of mental incompetence. Any person serving as a Director may be re-elected, and there shall be no limitation on the number of terms during which a Director may serve.

**Section 3. Removal.** Any director may be removed with or without cause by the Members in accordance with Idaho law for removal of a Director whenever the Members, in their judgment, deem such to be in the best interests of the Association and a successor may then and there be elected to fill the vacancy thus created. Provided, an individual Director shall not be removed prior to the expiration of his or her term of office if the number of votes cast against his or her removal is at least equal to the number of votes which would be required to elect that Director in an election of the entire Board. Any Director whose removal has been proposed by the Members shall be given an opportunity to be heard at the meeting.

**Section 4. Vacancies.** Vacancies in the Board of Directors caused by any reason other than the removal of a Director by a vote of the Members shall be filled by vote of the majority of the remaining Directors, even though they may constitute less than a quorum, and each person so elected shall be a Director until a successor is elected at the next annual meeting, or at a special meeting called for that purpose. A vacancy or vacancies shall be deemed to exist in case of death, resignation, removal or judicial adjudication of mental incompetence of any Director, or in the case the Members fail to elect the full number of authorized Directors at any meeting at which such election is to take place.

## **ARTICLE VII. DIRECTOR POWERS AND DUTIES**

**Section 1. Powers and Duties.** The Board of Directors has the powers and duties necessary for the administration of the affairs of the Association, as more fully set forth in the Declaration, and may do all such acts and things as are not by law or by these Bylaws directed to be exercised and done exclusively by the Owners; provided, however, that prior to the first annual meeting of the Association, the Board of Directors shall not enter into any management service contract for a term in excess of one (1) year without the approval of a Majority of Members, unless such contract contains reasonable provisions for cancellation (such as upon sixty (60) days written notice by the Association following one (1) year from the date of commencement of such contract).

**Section 2. Special Powers and Duties.** Without prejudice to such foregoing general powers and duties and such powers and duties as set forth in the Declaration, the Board of Directors is vested with, and responsible for, the following powers and duties:

2.1 To select, appoint and remove all officers, agents, and employees of the Association, to prescribe such powers and duties for them as may be consistent with law, with the Articles of Incorporation, the Declaration, and these Bylaws; to fix their compensation and to require from them security for faithful service when deemed advisable by the Board of Directors.

2.2 To conduct, manage and control the affairs and business of the Association, and to make and enforce such rules and regulations therefore consistent with law, with the Articles of Incorporation, the Declaration, and these Bylaws, as the Board of Directors may deem necessary or advisable.

2.3 To change the principal office for the transaction of the business of the Association from one location to another within the County of Kootenai, State of Idaho; to designate any place within said County for the holding of any annual or special meeting or meetings of the Association, and to adopt and use a corporation seal and to alter the form of such seal from time to time as the Board of Directors in its sole judgment may deem best, provided that such seal shall at all times comply with the provisions of law.

2.4 To borrow money and to incur indebtedness for the purposes of the Association, and to cause to be executed and delivered therefor, in the Association's name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations or other evidence of debt and securities therefor; subject, however, to the limitations set forth in the Articles of Incorporation and the Declaration.

2.5 To fix and levy from time to time Regular Assessments, Special Assessments, and Limited Assessments upon the Owners, as provided in the Declaration; to determine and fix the due date for the payment of such Assessments, and the date upon which the same shall become delinquent; provided, however, that such Assessments shall be fixed and levied only to provide for the payment of the expenses of the Association, and of the taxes and assessments upon real or personal property owned, leased, controlled or occupied by the Association, or for the payment of expenses for labor rendered or materials or supplies used and consumed, or equipment and appliances furnished for the maintenance, improvement or development of such property or for the payment of any and all obligations in relation thereto, or in performing or causing to be performed any of the purposes of the Association for the general benefit and welfare of the Owners, in accordance with the provisions of the Declaration. The Board of Directors is hereby authorized to incur any and all such expenditures for any of the foregoing purposes and to provide, or cause to be provided adequate reserves for replacements as the Board of Directors shall deem to be necessary or advisable in the interest of the Association or welfare of the Owners. The funds collected by the Board of Directors from the Owners, attributable for replacement reserves, for maintenance recurring less frequently than annually, and for capital improvements, shall at all times be held in trust for the Owners and shall not be commingled with other Assessments collected from the Owners. Such Regular Assessments, Special Assessments and Limited Assessments shall be fixed in accordance with the provisions of the Declaration. Should any Owner fail to pay such Assessments before delinquency, the Board of Directors in its discretion, is authorized to enforce the payment of such delinquent Assessments as provided in the Declaration.

2.6 To enforce the provisions of the Declaration covering the Property, these Bylaws or other agreements of the Association.

2.7 To contract for and pay for, casualty, blanket, liability, malicious mischief, vandalism and other insurance, insuring the Owners, the Association, the Board of Directors and other interested parties, in accordance with the provisions of the Declaration, covering and protecting against such damages or injuries as the Board deems advisable, which may

include without limitation, medical expenses of persons injured on the Property, and to bond the agents and employees of any management body, if deemed advisable by the Board of Directors.

2.8 To operate, maintain and otherwise manage or provide for the operation, maintenance and management of the Common Area, if any, and to contract for and pay maintenance, gardening, utilities, materials and supplies, and services relating to the Common Area, if any, and to employ personnel necessary for the operation of the Common Area, if any, including legal and accounting services, and to contract for and pay for improvements and any recreational facilities on the Common Area, if any.

2.9 To grant easements where necessary for utilities and sewer facilities over the Common Area to serve the Property.

2.10 To fix, determine and name from time to time, if necessary or advisable, the public agency, fund, foundation or corporation which is then or there organized or operated for charitable purposes, to which the assets of this Association may be distributed upon liquidation or dissolution according to the Articles of Incorporation of the Association unless such assets shall be distributed to Owners of Building Lots as more particularly provided in the Articles of Incorporation. The assets so distributed shall be those remaining after satisfaction of all just debts and obligations of the Association, and after distribution of all property held or acquired by the Association under the terms of a specific trust or trusts.

2.11 To adopt, amend, and repeal by majority vote of the Board of Directors, rules and regulations as to the Association deemed reasonable and necessary.

2.12 To pay all real and personal property taxes and assessments levied against the Common Area owned or managed by the Association and to prepare and file annual tax returns with the federal and state governments and to make such elections as may be necessary to reduce or eliminate the tax liability of the Association.

2.13 To bring, prosecute, and settle litigation for itself, the Association and the Project, provided that it shall make no settlement which results in a liability against the Members, the Association, or the Property in excess of \$5,000.00 without prior approval of a majority of Owners.

2.14 To open bank accounts on behalf of the Association and to designate the signatures therefor and to approve and sign checks and issue payment vouchers.

2.15 To pay off liens against any portion of the Common Areas.

2.16 To do all other acts necessary for the operation and maintenance of the Common Areas as necessary to protect or preserve the same.

**Section 3. Management Agent.** The Board of Directors may contract or employ for the Association a management agent ("Manager") at a compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize, including, but not limited to the duties listed in Section 2 of this Article VII.

**Section 4. Books, Records and Financial Statements.** The Board of Directors shall cause to be maintained a full set of books and records showing the financial condition of the affairs of the Association in a manner consistent with generally accepted accounting principles.

**Section 5. Committees.** The Board of Directors, by resolution, may from time to time designate such committees as the Board of Directors shall desire, and may establish the purposes and powers of each such committee created. The resolution designating and establishing a committee shall provide for the appointment of its members, as well as a chairperson, shall state the purpose of the committee, and shall provide for reports, termination, and other administration matters as deemed appropriate by the Board of Directors. Each committee shall be comprised of at least three (3) Members, one of which shall be a Director.

## **ARTICLE VIII. DIRECTOR MEETINGS**

**Section 1. Organizational Meeting.** The first regular meeting of a newly elected Board of Directors shall be held within ten (10) days of the election of the Board of Directors, at such place as shall be fixed and announced by the Directors at the meeting at which such Directors were elected, for the purpose of organization, election of officers, adopting these Bylaws, and the transaction of other business. No notice shall be necessary to the newly elected Directors in order legally to constitute such meeting, provided a majority of the whole Board of Directors shall be present.

**Section 2. Regular Meetings.** Regular meetings of the Board of Directors shall be held monthly without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday. Notice of regular meetings of the Board of Directors shall be given to each Director, personally or by mail, telephone or telegraph, at least three (3) days prior to the day named for such meetings, unless the time and place of such meetings is announced at the organization meeting, in which case such notice of other regular meetings shall not be required. One of the regular meetings shall be the annual meeting, which shall be held within ten (10) days following the annual meeting of Members.

**Section 3. Special Meetings.** Special meetings of the Board of Directors may be called by the President, or, if the President is absent or refuses to act, by the Vice President, or by any two (2) Directors. At least seven (7) days notice shall be given to each Director, personally or by mail, telephone or telegraph, which notice shall state the time, place (as hereinabove provided) and the purpose of the meeting. If served by mail, each such notice shall be sent, postage prepaid, to the address reflected on the records of the Association, and shall be deemed given, if not actually

received earlier, at 5:00 o'clock p.m. on the second day after it is deposited in a regular depository of the United States mail as provided herein. Whenever any Director has been absent from any special meeting of the Board of Directors, an entry in the minutes to the effect that notice has been duly given shall be conclusive and incontrovertible evidence that due notice of such meeting was given to such Director, as required by law and as provided herein.

**Section 4. Waiver of Notice.** Before or at any meeting of the Board of Directors, any Director may in writing waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board of Directors shall be waiver of notice by that Director of the time and place thereof, except where such attendance is for the limited and express purpose of objecting to the transaction of any business on the grounds that the meeting is allegedly unlawful or called for an improper purpose. If all Directors are present at any meeting of the Board of Directors, no notice shall be required and any business may be transacted at such meeting. The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present, and if, either before or after the meeting, each of the Directors not present signs such a written waiver of notice, a consent to holding such meeting, or an approval of the minutes thereof. All such waivers, consents and approvals shall be filed with the records of the Association or made a part of the minutes of the meeting.

**Section 5. Quorum and Adjournment.** Except as otherwise expressly provided herein, at all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors. If at any meeting of the Board of Directors there is less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

**Section 6. Action Without Meeting.** The Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written vote or written consent of all the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Directors.

**Section 7. Executive Session.** The Board may, with approval of a majority of a quorum of the Directors, adjourn a meeting and reconvene in executive session to discuss and vote upon matters of a personal and/or sensitive nature. The nature of any and all business to be considered in executive session shall first be announced during the proceeding open session.

**Section 8. Board Meeting Open to All Members.** Regular and special meetings of the Board shall be open to all Members of the Association; provided, however, that Members who are not on the Board may not participate in any deliberation or any discussion unless expressly so authorized by a majority vote of a quorum of the Board.

**ARTICLE IX.**  
**OFFICERS**

**Section 1. Designation of Officers.** The officers of the Association may be a President, Vice-President, Secretary and Treasurer, or other officers as may be elected by the Board of Directors from time to time. Any two or more offices may be held by the same person, except the offices of President and Secretary. The Board of Directors may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board of Directors may, from time to time, determine.

**Section 2. Election and Term of Officers.** The officers of the Association shall be elected annually by the Board of Directors at the Board's first meeting following the annual meeting of the Members. The officers shall hold office for a term of one (1) year unless any such officer shall sooner resign or shall be removed or otherwise disqualified to serve.

**Section 3. Resignation and Removal of Officers.** Upon an affirmative vote of a majority of the entire Board of Directors, any officer may be removed, either with or without cause, and a successor elected at any regular meeting of the Board of Directors, or any special meeting of the Board of Directors called for such purpose. Any officer may resign at any time by giving written notice to the Board of Directors or to the President or Secretary of the Association. Any such resignation shall take effect at the date of receipt of such notice or at any later time specified therein; and unless otherwise specified in said notice, acceptance of such resignation by the Board of Directors shall not be necessary to make it effective.

**Section 4. Vacancies.** A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer so replaced.

**Section 5. Compensation.** Officers, agents, and employees may receive such reasonable compensation for their services as may be authorized or ratified by the Board of Directors; provided, no such compensation is required to be authorized or ratified. Appointment of any officer, agent or employee shall not of itself create contractual rights of compensation for services performed by such an officer, agent or employee. No officer, employee or Director of Grantor or any affiliate of Grantor may receive any compensation.

**Section 6. Duties of Officers.** The officers of the Association shall have the general duties proscribed as follows.

**6.1 President.** The President shall be the chief executive officer of the Association. The President shall preside at all meetings of the Association and of the Board of Directors. The President shall have all of the general powers and duties which are usually vested in the office of the President of a nonprofit corporation, including but not limited to



the power to appoint committees from among the Members and Owners from time to time as the President alone may decide are appropriate to assist in the conduct of the affairs of the Association. The President shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business of the Association. The President shall be ex officio a member of all standing committees, and the President shall have such other powers and duties as may be prescribed by the Board of Directors or these Bylaws.

**6.2 Vice President.** The Vice President shall take the place of the President and perform such duties whenever the President shall be absent, disabled or unable to act. If neither the President nor the Vice President is able to act, the Board of Directors shall appoint some other member of the Board of Directors to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed by the Board of Directors or these Bylaws.

**6.3 Secretary.** The Secretary shall record the votes and keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of the Association at the principal office of the Association or such other place as the Board of Directors may order. The Secretary shall keep the seal of the Association in safe custody and shall have charge of such books and papers as the Board of Directors may direct, and the Secretary shall, in general, perform all the duties incident to the office of Secretary. The Secretary shall give, or cause to be given, notices of meetings of the Association and of the Board of Directors required by these Bylaws or by law to be given. The Secretary shall maintain a book of record Owners, and any person in possession of a Unit that is not an Owner, listing the names and addresses of the Owners, and any person in possession of a Unit that is not an Owner, as furnished to the Association and such book shall be changed only at such time as satisfactory evidence or a change in ownership of a Unit is presented to the Secretary. The Secretary shall perform such other duties as may be prescribed by the Board of Directors or these Bylaws.

**6.4 Treasurer.** The Treasurer shall have responsibility for the Association funds and securities and shall be responsible for keeping, or causing to be kept, full and accurate accounts of the Property owned by the Association, tax records and business transactions of the Association including accounts of all assets, liabilities, receipts and disbursements, all in books belonging to the Association. The Treasurer shall be responsible for the deposit of all monies and other valuable effects in the name and to the credit of the Association in such depositories as may from time to time be designated by the Board of Directors. The Treasurer shall disburse the funds of the Association as may be ordered by the Board of Directors in accordance with the Declaration, shall render to the President and Directors upon request, an account of all transactions as Treasurer and of the financial condition of the Association, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or these Bylaws.

**ARTICLE X.**  
**MEMBERS' OBLIGATIONS**

**Section 1. Assessments.** The assessments levied and collected by the Association shall be used exclusively to promote the recreation, health, safety and general welfare of the Members; to protect the value of the property located within the Project; for the improvement and maintenance of Common Areas and for the common good of the Development, as set forth in the Declaration. All Owners are obligated to pay, in accordance with the provisions of the Declaration, all Assessments imposed by the Association to meet all expenses of the Association, which may include, without limitation, a liability insurance policy premium and an insurance premium for a policy to cover repair and reconstruction work in case of fire, earthquake or other hazard, or to meet the expenses of the Director's various powers and duties as more fully provided in these Bylaws. The Board of Directors shall have the rights and remedies contained in the Declaration and these Bylaws to enforce the collection of assessments for expenses. Except as otherwise provided in the Declaration, the Assessments shall be made equally per Unit for all Members of the Corporation obligated to pay such Assessment. Any regular assessments shall commence on the first day of the first full month following the closing of the sale of the first unit in the Project.

**Section 2. Maintenance and Repair.** Every Owner must perform promptly, at the Owner's sole cost and expense, all maintenance and repair work on such Owner's Unit as required under the provisions of the Declaration. As further provided in the Declaration, all plans for alterations and repair of improvements on any Unit must receive the prior written consent of the Board of Directors. The Board of Directors shall establish reasonable procedures for the granting and denial of such approval in accordance with the Declaration. As further provided in the Declaration, each Owner shall reimburse the Corporation for any expenditures incurred in repairing or replacing any portion of any Unit or Common Area owned or controlled by the Association which are damaged through the fault of the Owner, and each Owner shall promptly reimburse the Association for the costs of repairing, replacing and/or maintaining that portion of the Property which the Corporation has repaired, replaced or maintained pursuant to the Declaration. Such expenditures shall include all court costs and reasonable attorneys' fees and costs incurred in enforcing any provision of these Bylaws or the Declaration.

**ARTICLE XI.**  
**BOOKS, RECORDS AND REPORTS**

**Section 1. Report to Members.** Upon the written request of any Member, the Association shall mail to such Member a copy of the most recent balance sheet and revenue and disbursement statement. If such request is received by the Association before such financial statements are available for its last fiscal year, the Association shall mail such financial statements as soon as they become available. In any event, the financial statements must be mailed within four months after the close of the last fiscal year.

**Section 2. Inspection of Association Records.** Any Member shall have the right, for any proper purpose and at any reasonable time, on written demand stating the purpose thereof, to

examine and make copies from the relevant books and records of accounts, minutes and records of meetings of the Association. Additionally, balance sheets and revenue and disbursement statements shall be filed in the registered office of the Association in Coeur d'Alene, Idaho, shall be kept for at least five (5) years, and shall be subject to inspection during business hours by any Member, in person or by duly authorized agent.

**Section 3. Statement of Account.** Upon ten (10) days written notice to the Board and payment of a reasonable fee, any Unit owner shall be furnished a statement of its account setting forth the amount of any unpaid Assessments or other charges due and owing from any such Owner.

## **ARTICLE XII. NONPROFIT OPERATION**

The Association will not have or issue shares of stock. No dividends will be paid. No part of the income or assets of the Association will be distributed to its Members, directors, officers without full consideration. The Association may contract in due course with its Members, directors and officers without violating this provision.

## **ARTICLE XIII. FISCAL YEAR**

The fiscal year of the Association shall begin the first day of January of each year and end on the 31<sup>st</sup> day of December of said year.

## **XIV. MISCELLANEOUS PROVISIONS**

**Section 1. Indemnification.** The Association shall indemnify each officer and director, including former officers and directors, to the full extent permitted by the Idaho Uniform Unincorporated Nonprofit Association Act and the Idaho Uniform Unincorporated Nonprofit Association Act.

**Section 2. Waiver of Notice.** Whenever any notice is required to be given under the provisions of these Bylaws or under the provisions of the Idaho Uniform Unincorporated Nonprofit Association Act, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

**Section 3. Receipt of Non-Corporate Assets.** The membership or the Board of Directors of the Association may accept on behalf of the Association any contribution, gift, bequest or devise for general purposes or for any special purpose of the Association.

**Section 4. Rules and Regulations.** The Board of Directors shall have the right and power to promulgate rules and regulations for the general welfare of the Association and its

Members. The Board shall keep and maintain a record of the adoption, amendment, interpretation and compliance approvals with respect to any such rules and regulations. Acquisition, rental or occupancy of any Unit or any portion thereof shall constitute acceptance and ratification of the provisions of all such rules and regulations.

**Section 5. Enforcement of Declaration.** The Association shall be primarily responsible for the enforcement of the Declaration. The definitions, duties and rights specified in the Declaration shall guide the management of the Association and shall likewise guide in the interpretation of these Bylaws of the Association's Articles of Incorporation. These Bylaws are to be construed together with the Declaration for the operation and management of the Property and the Project. Capitalized terms used herein are to have the meaning as defined in the Declaration.

5.1 Nothing herein shall prohibit any interested Owner from independently taking action to enforce the Declaration.

5.2 In no event shall the Association have the power to cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of a Member's individually owned Unit on account of a Member's failure to comply with the terms of the Declaration or other Project Documents.

5.3 Notwithstanding the Forgoing, the Board shall have the power to impose monetary penalties and temporary suspensions of an Owner's rights as a Member of the Association (including without limitation voting rights and /or the right to utilize social/recreational facilities within the Common Area) or other appropriate and lawful disciplinary measures.

**Section 6. Seal.** The Board of Directors shall acquire a corporate seal, which shall be in circular form and shall have inscribed thereon the name of the Association, the state of its incorporation and the words "Corporate Seal".

**Section 7. Execution of Documents.** The Board of Directors, except as in these Bylaws otherwise provided, may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name and on behalf of the Corporation, and such authority may be general or confined to specific instances; and unless so authorized by the Board of Directors, no officer, agent or employee shall have the power or authority to bind the Corporation by any contract or engagement or to pledge the Corporation's credit or to render the Corporation liable for any purpose or in any amount.

**Section 8. Conflicting Provisions.** In case any of these Bylaws conflict with any provisions of the laws of the State of Idaho, such conflicting Bylaws shall be null and void upon final court determination to such effect, but all other Bylaws shall remain in full force and effect. In case of any conflict between the Articles of Incorporation and these Bylaws the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

**Section 9. Severability.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement and the application of such term or provision to persons or circumstances other than those to which it is specifically held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

**Section 10. Governing Law.** This Agreement shall be interpreted, governed by, construed and enforced in accordance with the laws of the State of Idaho.

**ARTICLE XV.  
AMENDMENT OF BYLAWS**

The power to initiate the alteration, amendment or repeal the Bylaws of the Association shall be vested in the Board of Directors; provided that any such amendment may be altered, amended or repealed by vote of not less than sixty-six percent (66%) of the Members, or a new Bylaw in lieu thereof may be adopted by the Members upon not less than sixty-six percent (66%) approval. Any such amendment must be evidenced in writing and signed by the Board of Directors.

**CERTIFICATE OF ADOPTION OF BYLAWS**


We, the undersigned, being the initial members of the Corporation's Board of Directors and the duly elected Secretary of the Corporation do hereby certify that the foregoing Bylaws were duly adopted as the official Bylaws of the Corporation by unanimous consent of the Directors of the Corporation on the \_\_\_ day of September, 2006.

  
\_\_\_\_\_  
ROBERT R. GUINDON

“Director”

  
\_\_\_\_\_  
DONNA M. GUINDON

“Director”

  
\_\_\_\_\_  
BRENT G. SCHLOTTHAUER

“Director”

  
\_\_\_\_\_  
ROBERT R. GUINDON

“Secretary”

## Exhibit "E"

### (Legal Description for Skywagon Commercial Condominiums)

All of Lot 1, Block 1, of the plat of SKYWAGON SUBDIVISION, recorded in Book J of Plats, Pages 333 and 333A, and being located in the Southwest Quarter of the Southwest Quarter of Section 34, Township 51 North, Range 5 West, Boise Meridian, City of Post Falls, Kootenai County, Idaho, more particularly described as follows:

Commencing at a 2.5 inch diameter aluminum cap marked as shown in the Corner Perpetuation and Filing Record filed as Instrument No. 2048731, and situated in a monument box, taken to monument the Southwest Corner of said Section 34, and being situated North 88°51'25" West, 2628.47 feet, from a 2 inch aluminum cap in a monument box taken to monument the South Quarter Corner of said Section 34, as noted in Corner Perpetuation and Filing Record Instrument No. 1095772;

Thence, along the South line of said Southwest Quarter of Section 34, South 88°51'25" East, 219.12 feet, to a point of intersection with the Southerly extension of the East boundary line of said Lot 1;

Thence, along said Southerly extension of the East boundary line of said Lot 1, North 00°34'08" East, 42.50 feet, to a point of intersection with the South boundary line of said Lot 1, said line taken to be coincidental with the North line of the Right-of-Way for Mullan Avenue, said point taken to be monumented by a 5/8 inch rebar with a yellow plastic cap marked "RYA PLS 10699" (similar monuments hereinafter referenced as a "RYA Monument"), said point taken to be the Southeast corner of said Lot 1, and said point being the TRUE POINT OF BEGINNING;

Thence, along said South boundary line of said Lot 1, North 88°51'25" West, 169.07 feet, to the Southwest corner of said Lot 1, taken to be monumented by a "RYA Monument";

Thence, along the West boundary line of said Lot 1, taken to be coincidental with the East line of the Right-of-Way for Chase Road, North 00°38'13" East, 119.73 feet, to the Northwest corner of said Lot 1, taken to be monumented by a "RYA Monument";

Thence, along the North boundary line of said Lot 1, South 88°51'25" East, 168.93 feet, to the Northeast corner of said Lot 1, taken to be monumented by a "RYA Monument";

Thence, along the East boundary line of said Lot 1, South 00°34'08" West, 119.73 feet, to the TRUE POINT OF BEGINNING.

Containing 20,232 square feet (0.464 acres), more or less.