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**Instrument # 524899**  
HAILEY, BLAINE, IDAHO  
2005-08-22 04:09:00 No. of Pages: 62  
Recorded for : AMERITITLE  
MARSHA RIEMANN Fee: 186.00  
Ex-Officio Recorder Deputy   
Index to: AMENDED COVENANTS & RESTRICTIONS

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**Ketchum, Idaho  
Amended and Restated Condominium  
Declaration and Covenants, Conditions and Restrictions**

**AMENDED AND RESTATED CONDOMINIUM DECLARATION  
AND COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
SHUM'S FRENCHMAN'S PLACE CONDOMINIUMS**

THIS AMENDED AND RESTATED CONDOMINIUM DECLARATION AND COVENANTS, CONDITIONS AND RESTRICTIONS FOR SHUM'S FRENCHMAN'S PLACE CONDOMINIUMS ("**Amended Declaration**") is made and entered into this 3<sup>rd</sup> day of August, 2005, by Frenchman's Place, LLC, an Idaho limited liability company ("**Declarant**").

A. Declarant recorded the Condominium Declaration and Covenants, Conditions, and Restrictions for Frenchman's Place, dated September 13, 2004, and recorded that September 23, 2004 as Instrument # 510241 in the official records of Blaine County, Idaho.

B. Declarant is the sole owner of all of the real property encumbered by the Declaration.

C. Declarant desires to amend the exhibits attached to the Declaration by deleting them in their entirety and replacing them with the Exhibits attached to this Amended Declaration.

D. Declarant desires to amend certain other provisions of the Declaration including, but not limited to providing limitations on assessments for certain units subject to additional deed restrictions regarding the use and transfer of such units and changing the name of the project to Shum's Frenchman's Place Condominiums.

**ARTICLE I  
RECITALS AND CERTAIN DEFINITIONS**

Frenchman's Place, LLC, an Idaho limited liability company ("**Declarant**") does hereby amend and restate the Condominium Declaration and Covenants, Conditions and Restrictions

for Shum's Frenchman's Place Condominiums in its entirety as set forth herein upon the basis of the following facts, understandings and intentions:

Section 1.1 The Declarant; The Real Property. Declarant is the Owner of all that certain real property (the "**Real Property**") located in the City of Ketchum, Blaine County, Idaho, which is more particularly described in Exhibit A attached hereto and made a part hereof. Declarant is presently constructing upon the Real Property certain improvements consisting of a mixed-use, light industrial and residential building known as Shum's Frenchman's Place Condominiums with three (3) aboveground stories, balconies, landscaped areas, and an underground parking and storage structure, and other exterior features (all of said improvements being referred to herein as the "**Improvements**"). The Real Property and the Improvements together constitute the "**Project.**"

Section 1.2 Intention of Declarant. Declarant intends (i) to divide the residential portion of the Building which is located on the second and third floors and the light industrial portion of the Building which is located on the first floor, into condominiums as defined in Chapter 15 of title 55, Idaho Code (the "**Condominium Property Act**"); and (ii) to sell the residential and light industrial condominiums thus created. The portion of the Project, together with appurtenant interests, to be used for residential purposes is referred to herein as the "**Residential Units**"; and the portion of the Project, together with appurtenant interests, to be used for light industrial purposes is referred to herein as the "**Light Industrial Units.**"

Section 1.3 The Project. The Residential Units, and the Light Industrial Units are all integral parts of an overall development, which comprise a single architectural entity. The utility and enjoyment of each Unit is dependent upon common elements of the Improvements and requires the establishment of easements and covenants for the common and joint government of the Real Property and Improvements in a manner beneficial to all of the Units, all components thereof and all interests therein. Accordingly, Declarant desires to establish and create easements, covenants and restrictions to provide for the joint use, management, government and operation of the Residential Units, and the Light Industrial Units as integral parts of a single architectural entity and as part of a common plan for the joint use and occupancy of each and every part of the Project and interest therein.

Section 1.4 Light Industrial Units. Declarant further seeks to address stated desire of the City of Ketchum to maintain light industrial uses within the Project and has therefore incorporated certain provisions in this document related to the use and enjoyment of the Real Property, the amendment and revocation of this Amended Declaration, and specific requirements regarding the consent and approval of Owners of Light Industrial Units with respect to voting and the revocation and/or amendment of this Amended Declaration to ensure that the light industrial uses permitted and set forth herein, together with whatever other use of the Project the City of Ketchum may permit from time to time are maintained and permitted.

NOW, THEREFORE, incorporating the foregoing Recitals, Declarant hereby creates and establishes easement, covenants and restrictions which shall run with the land and be binding upon and inure to the benefit of the successors and assigns of the Owners of the Residential Units, and the Light Industrial Units and every part thereof and every interest therein as part of a common plan to regulate and govern the joint use and occupancy of the Real Property and Improvements, to enhance the value thereof, and for other beneficial purposes.

## ARTICLE II ADDITIONAL DEFINITIONS

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

Section 2.1        **“Articles”** shall mean the Articles of Incorporation of the Association, which have been filed in the office of the Secretary of State of the State of Idaho, a copy of which is attached hereto marked as Exhibit B and made a part hereof.

Section 2.2        **“Assessment”** shall mean that portion of the cost of maintaining, improving, operating and managing the Project, which is to be paid by each Owner as determined by the Association.

Section 2.3        **“Association”** shall mean and refer to the Frenchman’s Place Association, Inc., an Idaho nonprofit corporation, the Members of which shall be Owners of the Units.

Section 2.4        **“Association Easements”** shall mean easements granted to Owners and the Association for the benefit of its Members.

Section 2.5        **“Association Property”** shall mean all real and personal property now or hereafter owned by or leased to the Association.

Section 2.6        **“Association Rules”** and/or **“Regulations”** shall mean the rules and regulations of the Association as adopted and/or amended from time to time.

Section 2.7        **“Board”** and **“Board of Directors”** shall mean and refer to the governing body of the Association.

Section 2.8        **“Building”** shall mean the mixed-use, light industrial and residential structure located upon the Real Property, comprised of three (3) aboveground stories, and one (1) underground story (basement) containing mechanical, storage and parking areas.

Section 2.9        **“Bylaws”** shall mean or refer to the Bylaws of the Association, as amended from time to time, a copy of which is attached hereto marked as Exhibit C and made a part hereof.

Section 2.10       **“Common Area”** shall mean, collectively, the Light Industrial Common Area, the Residential Common Area, the Limited Common Area and the General Common Area.

Section 2.11       **“Condominium”** shall mean a Light Industrial Condominium, or a Residential Condominium as meaning and context may require.

Section 2.12       **“Condominium Plan”** shall mean and refer to a diagrammatical floor plan, pursuant to the Condominium Property Act, subdividing the Building into condominium regimes.

Section 2.13      **“Declarant”** shall mean and refer to Frenchman’s Place, LLC, an Idaho limited liability company, together with its successors and assigns.

Section 2.14      **“Declaration”** shall mean and refer to this Amended Declaration.

Section 2.15      **“General Common Area”** shall mean all of the Common Area, excepting the Residential Common Area, the Light Industrial Common Area and the Limited Common Area, but including, without limitation, the stairwells, and the elevator(s), the elevator lobby(ies) which service and provide ingress and egress to all floors in the Building, and that area designated as Common Area on the Parcel Map.

Section 2.16      **“Improvements”** shall mean all of the improvements located upon the Real Property including, but not limited to, the Building, exterior sidewalk and landscaped areas, and all other improvements referenced in Paragraph A of the Recitals, above.

Section 2.17      **“Light Industrial Common Areas”** shall mean all those portions and components on the first floor of the Building (other than Light Industrial Units and other exclusively occupied areas) devoted or to be devoted to, or for the common use and benefit of Occupants of the Light Industrial Units, such portions and components to include, but without limitation, all utility pipes, security and life safety systems, lines, conduits, ducts and flues to the outlets thereof, all structural bearing portions of the Building and all columns and girders, regardless of location, common hallways and service areas on the first floor of the Building.

Section 2.18      **“Light Industrial Condominium”** shall mean a Unit on the first floor of the Building or condominium interest therein as defined in the Condominium Property .

Section 2.19      **“Light Industrial Unit”** shall mean that portion of a Light Industrial Condominium intended to be exclusively occupied by an Occupant. The Light Industrial Units are specifically identified in Exhibit E.

Section 2.20      **“Limited Common Area”** shall mean any portion of the General Common Area allocated by this Declaration or by operation of law for the exclusive use of one or more, but fewer than all, of the Units as provided in Article VI.

Section 2.21      **“Member”** shall mean and refer to a member in the Association.

Section 2.22      **“Mortgage”** shall mean any mortgage, deed of trust, or other security instrument by which a Condominium or any part thereof is encumbered.

Section 2.23      **“Mortgagee”** shall mean any Person, partnership, corporation, trust, bank, savings and loan association, insurance company or other financial institution holding a recorded mortgage or deed of trust which constitutes an encumbrance upon any Light Industrial Unit and/or any Residential Unit securing payment of money other than this Agreement and liens for real estate taxes and assessments.

Section 2.24      **“Mortgagor”** shall include the trustor or grantor of a deed of trust as well as a mortgagor.

Section 2.25      **“Occupant”** shall mean the Owner and/or tenant of a Unit or interest therein.

Section 2.26      **“Owner”** or **“Owners”** shall mean or refer to the record holder or holders of title, if more than one, of a Unit, or a portion thereof. This shall include any Person having fee simple title to any Unit, but shall not include contract sellers under a recorded installment land sale contract of any specific Unit. “Owner” shall not include Declarant unless Declarant otherwise qualifies as an “Owner” hereunder, and those Persons or entities having any interest merely as security for the performance of any obligation. If a Unit, or any portion thereof is sold under a recorded installment land sale contract to a purchaser, such purchaser, rather than the fee owner, shall be considered the “Owner” for the purposes hereof.

Section 2.27      **“Parcel Map”** shall mean that certain Condominium or Parcel Map for Shum’s Frenchmans Place Condominiums filed or to be filed for record in the office of the County Recorder of Blaine County, Idaho, a reduced copy of which is attached marked as Exhibit D and made a part hereof, consisting of a plat or survey map of the surface of the ground of the Real Property showing a survey and legal description thereof, the location of the Building with respect to the boundaries of the Real Property, together with the diagrammatic floor plans of the Building showing the boundaries of each Unit within the Building, including horizontal and vertical locations and dimensions of all boundaries of each Unit and the Unit number identifying the Units, together with such other information as may be included therein in the discretion of Declarant.

Section 2.28      **“Person”** shall mean a natural Person, a corporation, a partnership, a trustee or other legal entity.

Section 2.29      **“Project”** shall mean the Real Property and Improvements, together with all appurtenant rights and interests.

Section 2.30      **“Proportionate Share”** shall mean the respective share of the Residential Units or the Light Industrial Units in Shared Expenses, as allocated and determined in accordance with Section 4.9 below.

Section 2.31      **“Real Property”** shall mean all that certain real property more particularly described and shown on the Parcel Map.

Section 2.32      **“Residential Common Areas”** shall mean all those portions and components on the second and third floors of the Building (other than the Residential Units and other exclusively occupied areas) devoted or to be devoted to, or for the common use and benefit of Occupants of the Residential Units, such portions and components to include, but without limitation, all utility pipes, security and life safety systems, lines, conduits, ducts and flues to the outlets thereof, all structural bearing portions of the Building and all columns and girders, regardless of location, common hallways, and service areas on the second and third floors of the Building.

Section 2.33      **“Residential Condominium”** shall mean a Unit on the second and third floors of the Building or condominium interest therein as defined in the Condominium Property Act.

Section 2.34       **“Residential Unit”** shall mean that portion of the Residential Condominium intended to be exclusively occupied by an Occupant. The Residential Units are specifically identified in Exhibit E.

Section 2.35       **“Parking and Storage Areas”** shall mean those areas in the underground story (basement) of the Building, including the interior surfaces of the perimeter walls, floors, ceilings and doors thereof, as shown and numbered on the Parcel Map to be filed for record, together with all fixtures and improvements therein contained. Notwithstanding such markings, the following are not part of the Parking and Storage Areas: bearing walls, columns, floors, and roofs (except for the interior surfaces thereof within the Parking and Storage Areas) foundations, shafts, central heating systems, reservoirs, tanks, pumps and other services used by more than one Unit, pipes, vents, ducts, flues, chutes, conduits and wires, except the outlets thereof when located within the Parking and Storage Areas. The interior surfaces of a perimeter door means at the points at which such surface is located when such doors are closed; the physical doors themselves are part of the Common Area as herein defined.

Section 2.36       **“Unit”** shall mean the separate interest in a Condominium as bounded by the interior surfaces of the perimeter walls, floors, ceilings, windows, and doors thereof and, where applicable, the interior surfaces of built-in fireplaces, as shown and numbered on the Parcel Map to be filed for record, together with all fixtures and improvements therein contained. Notwithstanding the foregoing, the following are not part of a “Unit”: bearing walls, columns, floors, and roofs (except for the interior surfaces thereof within a Unit), foundations, shafts, central heating systems, reservoirs, tanks, pumps, and other services used by more than one Unit, pipes, vents, ducts, flues, chutes, conduits, and wires, except the outlets thereof when located within the Unit. The interior surfaces of a perimeter window or door means at the points at which such surfaces are located when such windows or doors are closed; the physical windows and doors themselves are part of the Common Area as herein defined.

Section 2.37       **“User”** shall mean all Owners and Occupants of a Unit, and all licensees, invitees, employees and agents thereof.

Section 2.38       **“Deed Restricted Unit”** shall mean those Units encumbered by a deed restriction in favor of the Blaine Ketchum Housing Authority limiting the transferability and use of the Units.

### **ARTICLE III STATEMENT OF INTENTION AND PURPOSE AND RESERVATION OF RIGHTS**

Section 3.1       Declaration. Declarant hereby declares that the Project and every part thereof is held and shall be held, conveyed, devised, leased, rented, encumbered, used, occupied, improved, and otherwise affected in any manner, subject to the provisions of this Declaration, each and all of which provisions are hereby declared to be in furtherance of the general plans and scheme of condominium ownership referred to in Article I and are further declared to be for the benefit of the Project and every part thereof and for the benefit of each Owner. All provisions hereof shall be deemed to run with the land as covenants running with the land or as equitable servitudes, as the case may be, and shall constitute benefits and

burdens to the Declarant and the Declarant's assigns and to all Persons hereafter acquiring or owning any interest in the Project, however such interest may be obtained.

Section 3.2 Reservation of Rights. Declarant, for itself and its successors and assigns, hereby reserves the right to complete the Project and related improvements indicated on the plat without limitation or interference by any Owner or the Association; to maintain signs advertising the Project; and to elect or remove members of the Board as set forth in Article VIII until seventy-five percent (75%) of the total square footage of all Units created by the plat are sold.

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

Section 4.1 Estates of an Owner. The Project is hereby divided into Condominiums, each consisting of a separate interest in a Unit, plus the Limited Common Area appurtenant to that Unit. Each Unit shall also consist of an undivided interest in common in either the Residential Common Area or the Light Industrial Common Area in accordance with the Parcel Map. In addition, each Condominium includes a share of the General Common Area not otherwise allocated above in the proportions set forth in Exhibit E which further identifies the status of each Unit as a Light Industrial Unit or as a Residential Unit. The percentage of ownership interest in the Common Area, which is to be allocated to each Unit for purposes of tax assessment under Section 55-1514 of the Idaho Code and for purposes of liability as, provided by Section 15-1515 of the Idaho Code shall be the same as set forth in Exhibit E. The percentage of ownership interest in the Common Area is based upon the size (square feet of floor space) of each Unit. The percentage of ownership interest in the Common Area is calculated by dividing the number of square feet of floor area of each Unit by the number of square feet of floor area of all Units in the Condominium. Notwithstanding that square feet of floor area may be measured differently, the number of square feet of floor area set forth on Exhibit E shall be conclusive and final for purposes of this Declaration. For the purpose of complying with Section 55-1505(c) of the Idaho Code, Declarant has determined that the best way to determine the value of each Unit is to base the value upon the size of each Unit compared to the size of each other Unit in the Condominium.

Section 4.2 Limited Common Area. In addition to the items set forth in Article VI, Limited Common Area shall consist of decks, roof decks and balconies adjacent to each Unit for the exclusive use of that Unit. In addition, Limited Common Area shall consist of the parking garages and storage spaces located in the underground story (basement) of the Building designated on the Parcel Map which are provided exclusively for the use of the Residential and Light Industrial Units. The Limited Common Areas shall be used in connection with, and maintained separately by the Owner of such Unit to the exclusion of the use thereof by the other Owners except by invitation.

Section 4.3 General Common Area--Underground Story (Basement). The Association shall, maintain as part of the General Common Area the Parking and Storage Areas as shown on the Parcel Map for the use of those Owners and Occupants, and their tenants and/or invitees as designated by the Declarant.

Section 4.4 Right to Combine Units. Declarant reserves the right to combine physically the area or space of one Unit with the area or space of one or more adjoining Units. Such combination shall not prevent separate ownership of such Condominiums in the future. Declarant reserves the right to designate and convey to any purchaser of such combined Units as additional Limited Common Area any walls, floors, or other structural separations between Units so combined, or any space which would be occupied by such structural separations but for the combination of the Units. Such structural separations and such space shall automatically become General Common Area if the combined Units become subject to separate ownership in the future. Combination of Units shall not affect the percentage of ownership interest calculation as set forth in Exhibit E.

Section 4.5 Title. Title to a Condominium may be held or owned by any entity and in any manner in which title to any other real property may be held or owned in the State of Idaho.

Section 4.6 Inseparability. No part of a Condominium or of the legal rights comprising ownership of that Condominium may be separated from any other part of that Condominium during the period of Condominium ownership prescribed herein, so that each Condominium and the undivided interest and/or share in the Common Area appurtenant or allocated to such Condominium shall always be conveyed, devised, encumbered, and otherwise affected only as a complete Condominium. Every gift, devise, bequest, transfer, encumbrance, conveyance, or other disposition of a Condominium or any part thereof shall be presumed to be a gift, devise, request, transfer, encumbrance, or conveyance, respectively, of the entire Condominium, together with all appurtenant rights created by law or by this Declaration.

Section 4.7 Partition Not Permitted. The Common Area shall be owned in common by all Owners of Condominiums, and no Owner may bring any action for partition thereof.

Section 4.8 Owner's Right to Common Area. Subject to the limitations contained in this Declaration and to the Association Rules and Regulations, each Owner shall have the nonexclusive right to use and enjoy the General Common Area, and shall have the exclusive right to use and enjoy the Limited Common Area designated herein for exclusive use by such Owner. Also subject to the limitations contained in this Declaration and to the Association Rules and Regulations, each Owner of a Light Industrial Condominium shall also have the nonexclusive right to use and enjoy the Light Industrial Common Area; and each Owner of a Residential Condominium shall also have the nonexclusive right to use and enjoy the Residential Common Area.

Section 4.9 Taxes and Assessments. Each Owner shall execute such instruments and take such actions as may reasonably be specified by the Association to obtain separate real property tax assessments of the interest of each Owner in each Condominium. If any taxes or special district or other assessments may, in the opinion of the Association, nevertheless be a lien on the Project or any part thereof, the Association shall pay the same and assess the same to the Owner or Owners responsible therefor. Each Owner shall pay the taxes or assessments assessed against such Owner's Condominium or interest therein, or such Owner's interest in the Common Area or any part thereof. Each Owner shall pay all taxes, rates, impositions, and assessments levied against the Project or any part of the Common Area

in proportion to such Owner's interest in such Common Area as set forth in Exhibit E, and such payment is to be made to the Association at least thirty (30) days prior to the delinquency of such tax or assessment. Each such unpaid tax or assessment shall bear interest at the rate of ten percent (10%) per annum from and after the time the same becomes payable by each Owner and shall be secured by the lien created by Section 10.6 hereof. Notwithstanding the foregoing, taxes, assessments, or other charges attributable to the Common Area shall be apportioned among the Owners as provided in Article X hereof.

Section 4.10 Owner's Rights With Respect to Interiors. Each Owner shall have the exclusive right to paint, repaint, tile, paper, or otherwise maintain, refinish and decorate the interior surfaces of the walls, ceilings, floors, and doors and to clean the interior surfaces of windows, all of which form the boundaries of that Owner's Unit and all walls, ceilings, floors, and doors within such boundaries.

Section 4.11 Windows. The cleaning of exterior surfaces of windows (except for those windows between a Unit and that Unit's Limited Common Area) is expressly reserved to the Association, provided, however, the Association may require the Owners of all Units to clean the exterior surfaces of all windows located within their Unit regardless of the fact that such exterior surfaces are not actually part of the Owner's Unit. No Owner may, without the consent of the Association, place anything in or on the Unit windows, which is in variance with the general appearance of windows of similar Units.

Section 4.12 Easements for Encroachments. If any part of the Common Area encroaches or shall hereinafter encroach upon a Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Area or upon an adjoining Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. Such encroachments shall not be considered to be encumbrances either on the Common Area or the Unit. Encroachments referred to herein include, but are not limited to, encroachments caused by settling, rising, or shifting of the earth or by changes in position caused by repair or reconstruction of the Project or any part thereof.

Section 4.13 Easements of Access for Repair, Maintenance, and Emergencies. Some of the Common Area is or may be located within the Units or may be conveniently accessible only through the Units. The Owners shall have the irrevocable right, to be exercised by the Association as their agent, to have access to all parts of the Project from time to time during such reasonable hours as may be necessary, and with such notice as may be specified in tenant leases, if any, except in cases of emergency, for the maintenance, repair, or replacement of any of the Common Area located therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Project. (As used herein "**emergency**" means repair, maintenance, or replacement, which is required to rectify or mitigate any condition that imposes a real and immediate risk of injury to a Person, or serious and irreparable damage to property). The Association shall also have such right independent of any agency relationship. Damage to the interior of any part of a Unit resulting from the maintenance, repair, emergency repair, or replacement of any of the Common Area or as a result of emergency repairs within another Unit at the insistence of the Association or of Owners shall be an expense of all of the Owners; provided however, if such damage is the result of negligence of the Owner of a Unit, then such Owner shall be financially responsible for all of

such damage. Amounts owing by Owners pursuant hereto shall be collected by the Association by assessment pursuant to Article X below.

Section 4.14 Owner's Right to Ingress, Egress and Support. Each Owner shall have the right to ingress and egress over, upon, and across the Common Area reasonably necessary for access to such Owner's Condominium, any parking space or spaces and any storage space or spaces which such Owner has the right to use and to the Limited Common Area designated for use in connection with such Owner's Condominium and shall have the right to the horizontal and lateral support of such Owner's Condominium, and such rights shall be appurtenant to and pass with the title to each Condominium.

Section 4.15 Association's Right to Use of Common Area. The Association shall have a nonexclusive easement to make such use of the Common Area as may be necessary or appropriate to perform the duties and functions which the Association is obligated or permitted to perform pursuant to this Declaration, including the right to construct and maintain in the General Common Area maintenance and storage facilities for use by the Association.

Section 4.16 Easements and Utilities. In order to adequately serve each Unit, utility facilities may be constructed and may encroach on Common Area or on the Units. An easement for such encroachment and for the maintenance of the same shall and does exist.

Section 4.17 Declarant's Right Incident to Construction. Declarant shall have the right to and does hereby reserve an easement and right-of-way for ingress and egress over, upon, under, through and across the Common Area and the right to store materials thereon and to make such other use thereof as may be reasonably necessary incident to Declarant's development of the Project.

Section 4.18 Easements Deemed Created. All conveyances of Condominiums, whether by the Declarant or otherwise, shall be construed to grant and reserve such reciprocal easements as shall give effect to this Article IV, even though no specific reference to such easements or to this Article IV in any such conveyance.

Section 4.19 Maintenance and Management of Common Areas. The Association may hire an outside building management company, building manager or maintenance company, which shall be instructed to act prudently and diligently to manage, control and maintain the Common Area in a manner compatible with good business practices and for the benefit of all Owners. Maintenance of the General Common Area shall be an expense of all Owners. Expense of maintenance of the Light Industrial and Residential Common Areas shall be allocated to the respective Light Industrial Condominium Owners and the Residential Condominium Owners by the Association. The Residential Condominium Owners shall not be liable for any of the costs of maintaining the Light Industrial Common Areas. The Light Industrial Condominium Owners shall not be liable for any of the costs of maintaining the Residential Common Areas. Maintenance of the Limited Common Areas shall be an expense of the Owner of the Unit to which such Limited Common Area is appurtenant.

**ARTICLE V**  
**DESCRIPTION OF A CONDOMINIUM**

Section 5.1 Description of Condominium. Every contract for the sale of a Condominium and every other instrument affecting title to a Condominium shall describe that Condominium by the number shown on the Condominium Map or Parcel Map and in this Declaration as each appears on the records of the County Recorder of Blaine County, Idaho in the following fashion:

Unit \_\_\_\_\_ as shown on the Condominium Map for Shum's Frenchman's Place Condominiums recorded in the Records of Blaine County, Idaho as Instrument No. 524898 and as defined and described in that Condominium Declaration and Covenants, Conditions and Restrictions for Frenchman's Place recorded in the Records of Blaine County, Idaho as Instrument No. 510241, and as described in that Amended and Restated Condominium Declaration and Covenants, Conditions and Restrictions for Shum's Frenchman's Place Condominiums recorded in the Records of Blaine County, Idaho as Instrument No. 524899

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

**ARTICLE VI**  
**LIMITED COMMON AREA**

Section 6.1 Description. Any tanks, pumps, motors, ducts, chutes, flues, pipes, plumbing, wires, conduits, and other utility or life safety system, equipment, installation, or fixture serving only one Unit is Limited Common Area of that Unit. Any decks, roof decks, patios, and all exterior doors and windows or other fixtures designed to serve a single Unit but which are located outside the appurtenant Unit's boundaries, are Limited Common Areas allocated exclusively to that Unit.

Section 6.2 Reallocation. Limited Common Area may be reallocated between Units or Common Area reallocated as Limited Common Area or Limited Common Area may be incorporated into an existing Unit with the approval of the Owners by amendment of this Declaration as provided herein. The reallocation or incorporation shall be reflected in an amendment to the Declaration and Parcel Map. The Owner or Owners benefited thereby shall bear all costs associated therewith in proportion to the relative benefits to each such Unit as determined by the Board.

Section 6.3 Use and Access. The Owner of the Unit to which Limited Common Area is allocated shall have the right to the exclusive use of the Limited Common Area, which right shall extend to the Owner's Occupants, tenants, family members, invitees, guests and other Users authorized by the Owner.

## **ARTICLE VII MECHANIC'S LIEN RIGHTS**

Section 7.1 Condominium Labor. No labor performed or services or materials furnished with the consent or at the request of an Owner or such Owner's agent, contractor, or subcontractor shall be the basis for the filing of a lien against the Condominium of any other Owner or against any part thereof or against any other property of any other Owner unless such other Owner has expressly consented to or requested the performance of such labor or furnishing of such materials or services. Such express consent shall be deemed to have been given by the Owner of any Condominium in the case of emergency repairs thereto. Labor performed or services or materials furnished for the Project, if duly authorized by the Association, shall be deemed to be performed or furnished with the express consent of each Owner. Any Owner may remove such Owner's Condominium from a lien against two or more Condominiums or any part thereof by payment to the holder of the lien of the fraction of the total sum secured by such lien, which is attributable to such Owner's Condominium.

## **ARTICLE VIII THE ASSOCIATION**

Section 8.1 Membership. The Articles of Incorporation and Bylaws of the Association copies of which are attached hereto are made a part of this Declaration. Every Owner shall be entitled and required to be a Member of the Association. If title to a Condominium is held by more than one Person, the membership related to that Condominium shall be shared by all such Persons in the same proportionate interests and by the same type of tenancy in which the title to the Condominium is held. An Owner shall be entitled to one membership for each Condominium owned by that Owner. No Person or entity other than an Owner may be a Member of the Association, and the Articles of Incorporation or Bylaws of the Association always shall so state and shall in addition state that the memberships in the Association may not be transferred except in connection with the transfer of a Condominium; provided, however, the rights of membership may be assigned to a Mortgagee as further security for a loan secured by a lien on a Condominium.

Section 8.2 Voting Rights. Initially there shall be two (2) classes of voting Members, Class A and Class B.

(a) Class A Members. Class A Members shall be all Owners, with the exception of Declarant until the Class B Membership, as defined below, has been converted to Class A Membership, and after such conversion all Owners shall be Class A Members. Each Class A Member's voting right shall be based upon a percentage basis. The percentage basis to which each Class A Member is entitled shall be the percentage of ownership interest in the Common Area which is set forth in Exhibit E attached hereto. When more than one (1) Person owns a portion of a Unit, each such Person shall be a Member of the Association and any vote allowed for such Unit shall be exercised as said Persons determine, but in no event shall more than one (1) Class A Member vote be cast with respect to any one (1) Unit. The Association may, but shall not be obligated to recognize the vote or written consent of any co-Owner except the vote or consent of the co-Owner designated in writing executed by all such co-Owners and delivered to the Association.

(b) Class B Members. The Class B Member shall be the Declarant. The Class B Member's voting rights shall be based upon a percentage basis multiplied by three (3). The percentage basis to which the Class B Member is entitled shall be the percentage basis which is set forth in Exhibit E attached hereto. The Class B Membership shall cease and be converted to Class A Membership on the earlier of when (i) Declarant owns less than twenty-five percent (25%) of the total square footage of all Units; (ii) Declarant voluntarily elects to terminate its Class B Membership by written notice to the Board; or (iii) December 31, 2016.

Section 8.3 Election of Directors. In any election of the members of the Board of Directors, the candidates receiving the highest number of votes up to the number of Directors to be elected shall be deemed elected. Any director may be removed from office by a vote of the majority of the Members entitled to vote at an election of directors. If any or all Directors are so removed, new directors may be elected at the same meeting. Provided, however, that until such time as seventy-five percent (75%) of the total square footage of all Units created by the plat are sold, Declarant as the Class B Member shall have the sole and exclusive right to elect and remove the Directors.

Section 8.4 Transfer. Except as otherwise expressly stated herein, any of the rights, interests, and obligations of the Association set forth herein or reserved herein may be transferred or assigned to any other Person or entity; provided, however, no such transfer or assignment shall relieve the Association of any of the obligations set forth herein. Any such transfer or assignment shall not revoke or change any of the rights or obligations of any Owner as set forth herein.

Section 8.5 Amplification. The provisions of this Article VIII are amplified by the Articles of Incorporation of the Association and by the Bylaws of the Association; provided, however, no present or future provision of such Articles of Incorporation or Bylaws shall substantially alter or amend any of the rights or obligations of the Owners set forth herein.

Section 8.6 Voting and Approvals. No action requiring a vote, the consent or the approval of the Members, with the exception of the election of the Board of Directors as set forth in Section 8.3 above, shall be deemed passed or approved except upon the affirmative vote of seventy-five (75%) of the Members based upon the percentage basis to which each Member is entitled as set forth in Section 8.2, including the affirmative vote, consent or approval of seventy-five (75%) of the Members owning Light Industrial Units based upon the percentage basis to which each Member is entitled as set forth in Section 8.2.

## ARTICLE IX CERTAIN RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 9.1 The Management Body. The Association is hereby designated to be the "**Management Body**" as provided in Sections 55-1503 and 55-1506 of the Idaho Code and shall administer the Project in accordance with the Condominium Property Act of the State of Idaho, the Idaho Code, the Articles of Incorporation and Bylaws of the Association, and the provisions of this Declaration.

Section 9.2 The Common Area. The Association, subject to the rights of the Owners set forth in Article IV hereof, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon (including furnishings and equipment related thereto) and shall keep the same in good, clean, attractive and sanitary condition, order and repair; however, each Owner of a Unit shall keep the Limited Common Area designated for use in connection with such Owner's Unit in a clean, sanitary, and attractive condition and shall maintain and repair the heating equipment and hot water heater, and/or any other equipment servicing such Owner's Unit exclusively. Each Owner of a Residential Unit shall also be required to keep its respective deck or roof deck in a clean, sanitary and attractive condition and shall maintain and repair the same as well as any snow removal system installed for the sole use of such Residential Unit. The Association shall be responsible for the maintenance and repair of exterior surfaces of Buildings and Improvements located on the Project including, without limitation, the painting of the same as often as necessary, the replacement of trim and caulking, the landscaping and the care of the grounds, the maintenance and repair of roofs, and the maintenance and repair of other Common Area, including utility lines and all other improvements or materials located within or used in connection with the Common Area. The Association shall be responsible for the removal and disposal of all snow and ice so as to maintain clear access, and ingress and egress, to all driveways, parking areas, and pedestrian pathways and sidewalks. The specification of duties of the Association with respect to particular Common Area shall not be construed to limit the Association's duties with respect to other Common Area, as set forth in the first sentence in this section. For all other duties as set forth in this section, the outside building management company or building manager hired by the Association under Section 4.9 shall attend to the same, and the Association shall oversee such company or manager in the performance of these duties. The cost of such management, maintenance, and repair by the Association shall be borne as provided in Article X.

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

Section 9.3 Miscellaneous Services. From time to time, the Association may obtain and pay for the services of any Person or entity to manage the Association's affairs, or any part thereof, to the extent the Association deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Project, whether such personnel are furnished or employed directly by the Association or by any Person or entity with whom or which the Association contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Project or the enforcement of this Declaration. The Association may arrange with others to furnish electrical, water, sewer, trash collection, and other common services to each Unit.

Section 9.4 Personal Property for Common Use. The Association may acquire and hold for the use and benefit of all Owners tangible and intangible personal property and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be deemed to be owned by the Owners in the same proportion as the Owner's respective voting interests. Such interest shall not be transferable except with the transfer of a Condominium. A transfer of a Condominium shall transfer to the transferee ownership of transferor's beneficial interest in such property without any reference thereto. Each Owner may

use such property in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of other Owners. The transfer of title to a Condominium under the foreclosure shall entitle the purchaser to the interest in such personal property associated with the foreclosed Condominium.

Section 9.5 Rules and Regulations. The Association may make reasonable rules and regulations governing the use of the Units and of the Common Area, which Rules and Regulations shall be consistent with the rights and duties established in this Declaration. Such Rules and Regulations, may include, without limitation, assignment of particular portions of garage areas, parking areas and storage spaces within the Common Area for exclusive use by Owners of particular Residential and/or Light Industrial Condominiums or for exclusive use by Light Industrial Condominium Users. The Association may suspend any Owner's voting rights in the Association during any period or periods during which such Owner or such Owner's Users fail to comply with such Rules and Regulations or with any other obligations of such Owner under this Declaration. The Association may also take judicial action, including, without limitation, injunctive action against any Owner to enforce compliance with such Rules, Regulations, or other obligations or to obtain damages for noncompliance, all to the extent permitted by law.

The Association is hereby appointed as the Owners' representative for the purpose of enforcing compliance with such Rules and Regulations. The outside building management company or building manager hired by the Association under Section 4.19 may also be appointed by the Association to serve as such Owner's representative, so long as the Association provides adequate supervision of the activities of such company or manager.

Section 9.6 Implied Rights. The Association may exercise any other right or privilege given to the Association expressly by this Declaration or by law, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association herein or reasonably necessary to effectuate any such right or privilege.

Section 9.7 Association Property. The Association may accept and exercise jurisdiction over all property, real and personal, conveyed free and clear of all liens and encumbrances to the Association by Declarant, including (a) easements for operation and maintenance purposes over any portion of the Project and (b) The Association Easements. For purposes of this section, a nonexclusive easement, license or other contractual right to use in favor of the permitted users or any of them shall not be deemed a lien or encumbrance.

Section 9.8 Title to Property Upon Dissolution. The Association may convey, upon dissolution of the Association, the assets of the Association to an appropriate public agency or agencies to be used for purposes similar to those for which the Association was created, or to a nonprofit corporation, association, trust or other organization organized and operated for such similar purposes.

## **ARTICLE X ASSESSMENTS**

Section 10.1 Agreement to Pay Assessment. Declarant, for each Condominium owned by Declarant within the Project and for and as the Owner of the Project and every part thereof, hereby covenants, and each Owner of any Condominium by the acceptance of a deed, whether or not it be so expressed in the deed, shall be deemed to covenant and agree with each other and with the Association to pay to the Association periodic assessments made by the Association for the purposes provided in this Declaration and special assessments for capital improvements and other matters as provided in this Declaration. In the case of joint or co-ownerships this liability shall be joint and several. Such assessments shall be fixed, established, and collected from time to time in the manner provided in this Article X.

Section 10.2 Amount of Total Periodic Assessments. The total periodic assessments against all Condominiums shall be based upon advance estimates of cash requirements by the Association to provide for the payment of all estimated expenses connected with the maintenance and operating of the Common Area, the Parking and Storage Areas, or the furnishing of electrical, water, sewer, trash collection, and other common services to each Unit or the extent not separately metered and/or billed to a specific Unit, which estimates may include, among other things, expenses of management, taxes and special assessments, premiums for all insurance which the Association is required or permitted to maintain pursuant hereto, landscaping and care of grounds, common lighting and heating, water charges, trash collection, sewer service charges, repairs and maintenance, wages for Association employees, legal and accounting fees, any deficit remaining from a previous period, the creation of a reasonable contingency reserve, surplus, and /or sinking fund, and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under or by reason of this Declaration.

Section 10.3 Apportionment of Periodic Assessments. The expenses attributable to the Residential Common Area shall be apportioned among all Owners of Residential Units in proportion to the interest in the Residential Common Areas owned by each Owner of a Residential Unit as set forth in Exhibit E hereof. The expenses attributable to the Light Industrial Common Areas shall be apportioned among all other Owners of Light Industrial Units in proportion to their ownership interest in the Light Industrial Common Areas owned by each Owner of a Light Industrial Unit as set forth in Exhibit E hereof. Expenses which are incurred for maintenance and operation of those items which are either common to the Residential and Light Industrial Common Areas or which are not associated with either the Residential or Light Industrial Common Areas in particular but rather with the Project as a whole, shall be paid by the Owners in proportion to the Common Area interest of each Owner as set forth in Exhibit E hereof. The Residential Condominium Owners shall not be liable for any of the costs of maintaining the Light Industrial Common Areas. The Light Industrial Condominium Owners shall not be liable for any of the costs of maintaining the Residential Common Areas.

Section 10.4 Notice of Periodic Assessments and Time Payment Thereof. The Association shall make periodic assessments, which assessments shall be annually, quarterly, or monthly, as the Association shall from time to time determine. The Association may, in the Association's discretion, send notice of assessments to each Owner, which notice shall specify the amount of the assessment and the date or dates of payment of the same. No payment shall

be due less than fifteen (15) days after the said written notice has been given. Each periodic assessment shall bear interest at the rate equal to the then current U.S. Bank, N.A. prime rate plus five percent (5%) per annum from the date it becomes due and payable if not paid within thirty (30) days after such date and shall be subject to an automatic late charge of Fifty Dollars (\$50.00). Failure of the Association to give notice of the assessment shall not affect the liability of any Owner for such assessment, but the date when payment shall become due in such a case shall be deferred to a date fifteen (15) days after such notice shall have been given.

Section 10.5 Special Assessments. In addition to the annual assessments authorized by this Article X, the Association may, at any time, levy a special assessment payable over such a period as the Association may determine for the purpose of defraying in whole or in part the cost of any construction or reconstruction, unexpected repair or replacement of the Project or any part thereof, or any other expense incurred or to be incurred as provided in this Declaration. This section shall not be construed as an independent source of authority for the Association to incur expenses, but this section shall be construed to prescribe the manner of assessing for expenses authorized by other sections hereof that shall make specific reference to this Article X. Any amounts assessed pursuant hereto shall be assessed to Owners in the same manner as provided in Section 10.3 of this Article X. Notice in writing of the amount of such special assessments and the time for payment thereof shall be given promptly to the Owners, and no payment shall be due less than thirty (30) days after such notice shall have been given. The Association shall have the power to incur expenses for maintenance and repair of any Unit if such maintenance or repair is necessary, in the opinion of the Board of Directors of the Association to protect the Common Area, the Parking and Storage Areas or any other portion of the Project and if the Owner or Owners of said Unit have failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair has been delivered by the Board of Directors to said Owner or Owners, the Board of Directors shall levy a special assessment against the Owner or Owners or Occupant or User of any such Unit to pay for the cost of such maintenance and repair and any other costs or expenses arising out of or incident to such maintenance and repair and the assessment therefor. A special assessment shall bear interest at the rate equal to the then current U.S. Bank, N.A. prime rate plus five percent (5%) per annum from the date it becomes due and payable if not paid within thirty (30) days after such date and shall be subject to an automatic late charge of Fifty Dollars (\$50.00).

Section 10.6 Lien for Assessments. All sums assessed to any Condominium pursuant to this Article X, together with interest thereon as provided herein, shall be secured by a lien on such Condominium in favor of the Association upon recordation of a notice of assessment lien as herein provided. Such lien shall be superior to all other liens and encumbrances on such Condominium except only for: (a) valid tax and special assessment liens on the Condominium in favor of any governmental assessing authority; (b) a lien for all sums unpaid on any Mortgage which encumbers such Condominium and which has been duly recorded in Blaine County, Idaho, real estate records, including all unpaid obligatory advances to be made pursuant to such Mortgages and secured by the lien thereof in accordance with the terms of such instrument; and (c) labor or materialmen's liens, to the extent required by law. All other lienors acquiring liens on any Condominium after this Declaration shall have been recorded in said records shall be deemed to consent that such liens shall be inferior liens to future liens for assessments as provided herein, whether or not such consent be specifically set forth in the instruments creating such liens.

To create a lien for sums assessed pursuant to this Article X, the Association may prepare a written notice of the assessment lien setting forth the amount of the assessment, giving rise to the lien, the date due, the amount remaining unpaid, the name of the record Owner of the Condominium and a description of the Condominium. Such notice shall be signed by the Association and may be recorded in the office of the County Recorder of Blaine County, Idaho. No notice of an assessment lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by sale by the Association after failure of the Owner to pay such an assessment in accordance with its terms, such sale to be conducted in the manner permitted by law in Idaho for the exercise of power of sale in deeds of trust or in any other manner permitted by law, including, without limitation, judicial foreclosure. The Owner shall be required to pay the costs and expenses of such proceeding, the costs and expenses of filing the notice of assessment lien and all costs and expenses related thereto, including, without limitation, reasonable attorney fees. All such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any assessments against the Condominium, which shall become due during the period of foreclosure. The Association shall have the right and power to bid at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, use, and otherwise deal with the same as the Owner thereof.

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

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

Without imposing any liability upon the Association for its failure to do so, the Association shall be entitled to report any unpaid assessment remaining unpaid for longer than ninety (90) days after the same shall have become due to any encumbrancer of a Condominium; provided, however, such encumbrancer first shall have furnished written notice of such encumbrance to the Association.

Section 10.7 Personal Obligation of Owner. The amount of any periodic or special assessment against any Condominium shall be the personal obligation of the Owner thereof to the Association. If permitted under applicable law, suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosure or waiver of the lien securing the same. No Owner may avoid or diminish such personal obligation by waiver of the use and enjoyment of any of the Common Area or by abandonment of the Owner's Condominium.

Section 10.8 Statement of Account. Upon payment of a reasonable fee, not to exceed Fifty Dollars (\$50.00), and upon written request of any Owner, Mortgagee, prospective Mortgagee, or prospective purchaser of a Condominium, the Association shall issue a written statement setting forth the amount of the unpaid assessments, if any, with respect to such Condominium, the amount of the current periodic assessment, the date that such assessment

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

Section 10.9 Personal Liability of Purchaser for Assessments. Subject to the provisions of Section 10.8, a purchaser of a Condominium shall be jointly and severally liable with the seller for all unpaid assessments against the Condominium up to the time of the grant or conveyance, without prejudice to the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.

Section 10.10 Limitation on Assessments For Deed Restricted Units. Notwithstanding anything to the contrary set forth in this Declaration, the Deed Restricted Units shall not be subject to any Assessment or special assessment except as set forth in this Section 10.10. The Assessments or special assessments for Deed Restricted Units shall not be increased by the Association except in an amount equal to the Proportionate Share for all Units. Deed Restricted Units shall initially be assessed by the Association no more than fifty dollars (\$50.00) per month for the Deed Restricted Units' share of all Assessments or special assessments. Thereafter, Assessments or special assessments for Deed Restricted Units shall not increase except in an amount equal to the Proportionate Share for each of the Deed Restricted Units.

## **ARTICLE XI USE OF CONDOMINIUMS**

Section 11.1 Residential Condominiums. Each Residential Condominium shall be used for residential purposes, only in accordance with the ordinances of the City of Ketchum, Idaho, and no trade or business of any kind may be carried on therein. Notwithstanding anything to the contrary stated in this Section 11.1, the leasing or rental of a Residential Condominium for lodging or residential purposes for any length of time shall not be considered to be a violation of this Section 11.1. Declarant shall have the right to use any portion of the Project, including any Unit owned by Declarant, for a model condominium site and display and sales office during the construction and sale periods.

Section 11.2 Light Industrial Condominiums. Each Light Industrial Condominium shall be used for general light industrial purposes in accordance with the ordinances of the City of Ketchum, Idaho and the development agreement between the City of Ketchum and the Declarant; provided, however, that no Light Industrial Condominium shall be used for any purpose prohibited by the ordinances of the City of Ketchum or the development agreement between the City of Ketchum and Declarant, or for a bar, tavern, cocktail lounge, movie theater,

adult book or adult video store, massage parlor, or abortion or family planning clinic or any other similar business. In the event any Light Industrial Condominium Owner is found in violation of these use restrictions, the Association expressly reserves the right to terminate or cause the termination of and close the offending business and to seek damages from the Owner or Occupant of the Light Industrial Unit in question.

Section 11.3 Parking and Storage Areas. The Parking and Storage Areas shall be used exclusively for the purposes of providing parking, and storage to the Owners or Occupants or the general public and other lawful light industrial uses as permitted by the applicable zoning and other land use plans and regulations (but excluding use as a dwelling unit) in compliance with all applicable laws and regulations, all subject to the limitations contained in this Declaration.

Section 11.4 Use of Common Area. Except as specifically set forth with respect to Limited Common Area, there shall be no obstruction of the Common Area, nor shall anything be stored on any part of the Common Area without the prior written consent of the Association.

Section 11.5 Prohibition of Damage and Certain Activities. Nothing shall be done or kept in any part of the Project which would result in the cancellation of the insurance on the Project or any part thereof or increase the rate of insurance on the Project or any part thereof over what the Association or any Occupant but for such activity, would pay, without the prior written consent of the Association and each Occupant. Nothing shall be done or kept in any part of the Project that would be in violation of any statute, rule, ordinance, regulation, permit, or other validly imposed requirement of any governmental body. No damage to or waste of the Common Area or any part thereof shall be committed by any Owner or any of Owner's Occupants or Users, and each Owner shall release the Association and indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by such Owner or such Owner's Occupants or Users. No noxious, destructive, or offensive activity shall be carried on in any part of the Project nor shall anything be done therein which may be or may become an annoyance or nuisance to any other Owner or to any Person at any time lawfully residing in or operating a business in the Project. Provided, however, that notwithstanding the foregoing no use or activity otherwise permitted by the City of Ketchum Zoning Ordinance shall be prohibited within the Project.

Section 11.6 Rules and Regulations. No Owner shall violate the Rules and Regulations for the use of that portion of the Project to which such Rules and Regulations apply as adopted from time to time by the Association. Except as otherwise provided herein, any Owner shall have the right to enforce any or all of the provisions of any restriction contained in this Declaration or any Rule or Regulation adopted by the Association. Any violation of any state, municipal or local law, ordinance or regulation pertaining to ownership, occupation or use of any property within the Project is hereby declared to be a violation of a restriction in this Declaration and subject to any or all of the enforcement procedures set forth below.

Section 11.7 Maintenance of Interiors. Consistent with Sections 4.10 and 4.11, above, each Owner or Occupant shall keep the interior of such Owner's or Occupant's Unit or Storage Space, including, without limitations interior walls, windows, glass, ceilings, floors, and permanent fixtures and appurtenances thereto, if any, in a clean, sanitary, and attractive condition and good state of repair; shall keep the Limited Common Area designated for use in

connection with such Owner's Unit; and shall keep the heating equipment and water heater servicing such Owner's Unit exclusively in a good state of maintenance and repair.

Section 11.8      Structural Alterations. No structural alterations or modification to any interior walls shall be made to any Condominium and no plumbing, electrical, or similar work within the Common Area shall be done by any Owner without the prior written consent of the Association, except that an Owner may do such work as may be appropriate to maintain and repair Limited Common Area appurtenant to such Owner's Unit.

Section 11.9      Construction Work Generally.

(a) All construction, alteration, replacement or repair work undertaken upon any portion of a Unit or the Project ("**Construction Work**"), shall be accomplished in the most expeditious, diligent and speedy manner possible. Any Person undertaking Construction Work shall take all necessary measures to minimize any damage, disruption or inconvenience caused by the Construction Work to the Occupants or Users of any affected Unit or the Project, and shall make adequate provisions for the safety and convenience of all Occupants and Users of the Project. Specifically, from and after the initial occupancy of any Unit, any Construction Work shall be conducted in a manner and during restricted hours so as to avoid interference with ingress and egress to and the quiet use and enjoyment of the Occupants and Users of the Project.

(b) Any Occupant or User undertaking Construction Work shall promptly repair, at its own cost and expense, any and all damage caused thereby and shall restore the affected portion of the improvements upon which the Construction Work is performed to a condition equal or superior to the condition existing prior to beginning the Construction Work and shall pay all costs and expenses associated therewith and shall indemnify and hold all Occupants and Users harmless from any and all loss, cost, damages, liability, injury or expense (including, but without limitation, claims of lien for work or labor performed, and materials or supplies furnished in connection with Construction Work or the voiding or terminating of any existing warranty applicable to any item or element installed in the Project) caused by or arising out of the performance of the Construction Work.

(c) Except in the event of an emergency, Construction Work shall be undertaken only after giving the Board thirty (30) days' prior written notice of the Construction Work to be undertaken, the scope, nature and extent of the Construction Work, the duration of the work period, and the area in which the Construction Work is to be performed. Such notice shall include copies of any plans and specifications for the Construction Work to be undertaken.

Section 11.10      Compliance With Plans, Laws and Rules. All Construction Work shall comply with the plans and specifications therefor approved under this Declaration, and with all applicable laws, ordinances, rules, regulations and other requirements of all governmental authorities, public bodies and other authorities having jurisdiction (such as public utilities), including, without limitation, environmental and zoning laws and building codes. The Person performing the Construction Work shall also secure all licenses and permits required therefor by said authorities. All Construction Work shall be performed in accordance with rules and regulations from time to time promulgated by the Board.

Section 11.11 Emergency Work. Notwithstanding any requirement for prior notice or approval contained in this Declaration, in the event of an emergency condition, any Occupant or User may undertake the necessary Construction Work to remedy any emergency condition, provided that such Occupant or User does so in good faith, gives notice thereof to the Board upon the occurrence of the emergency condition or as soon thereafter as possible, and otherwise conforms to the applicable provisions of this Section 11, to the extent feasible under the circumstances.

Section 11.12 Enforcement Responsibility. Without limitation upon its general powers, the Association shall be responsible for enforcement of all of the covenants of this Section 11 with respect to all Construction Work performed within the Project.

Section 11.13 Parking Restrictions. No vehicle shall be parked or left on the property subject to this Declaration other than on the designated parking area. The parking area shall be used for parking operable vehicles only and shall not be converted for living, recreational or business purposes, nor shall anything be stored in any parking area so as to prevent the parking of an automobile thereon. No exposed storage shall be permitted anywhere on the property. Camper and boat storage on the Common Area shall not be permitted.

Section 11.14 Signs. Except for signs as may be used by Declarant in connection with the sale of Condominiums, no sign of any kind shall be displayed to the public view by Owners of Residential Condominiums without the approval of the Board of Directors, which approval shall not be unreasonably withheld. Owners of Light Industrial Condominiums shall have the right to erect such signs as may be, from time to time, approved by the Board of Directors, which approval shall not be unreasonably withheld.

Section 11.15 Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate, and no odors shall be permitted to arise from the Project or any Condominium so as to render any portion of the Project unsanitary, unsightly, offensive, or detrimental to any other portion of the Project, any Condominium, or to any Occupants. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Project or any Condominium so as to be offensive or detrimental to any other portion of the Project, any Condominium or any Occupants. Without limiting the generality of any of the following provisions, no exterior speakers, horns, whistles, bells, or other sound devices (other than security systems used exclusively for security purposes) shall be located, used, or placed on any such portion of the Project or any Condominium without the prior written approval of the Board of Directors. Provided, however, that notwithstanding the foregoing no use or activity otherwise permitted by the City of Ketchum Zoning Ordinance or the development agreement between Declarant and the City of Ketchum shall be deemed to be a nuisance or shall be prohibited on the Project.

Section 11.16 Outside Installations. No clotheslines, television antennas, wiring, or installation of air condition, or other machines, unless properly screened from view or contained within roof wells as part of the original construction of the Project, shall be installed on the exterior of the Building for the use of any Unit or Storage Space or be allowed to protrude through the walls, windows, or roof of the Building for the use of any Unit or Storage Space unless the prior written approval of the Board of Directors, which approval shall not be unreasonably withheld, is secured.

Section 11.17 Enforcement of Violations. No violation of any Association Rule or Regulation, inclusive of those items described in Section 11.7 above, shall be allowed. If any Owner, Owner's Occupants, tenants, family members, invitees, guests and other users authorized by the Owner commits such violation, the Board may, in addition to any other legal remedies it may have, impose a Special Assessment upon such Owner of not more than Fifty Dollars (\$50.00) for each such violation for each day that such violation continues. Before invoking such assessment, the Board shall give such Owner sixty (60) days' written notice to cure such violation and/or to be heard by the Board regarding the Violation and any potential assessment. If such violation is of a nature that it cannot be remedied within sixty (60) days, no assessment shall be invoked so long as the Owner submits a remediation plan to the Board to remedy the violation within a reasonable time and such Owner diligently pursues such plan to completion. If an Owner violates any Rule or Regulation more than twice within any three (3) year period, regardless of whether the Rule or Regulation that has been violated is the same, the accrual of such assessment shall begin three (3) days after the Board gives notice of such violation rather than sixty (60) days after such notice. Such additional assessments may be collected and enforced in the same manner as any other assessment under Article X. Each remedy provided in this Declaration or by law shall be cumulative and not exclusive. The failure to enforce any of the provisions of this Declaration at any time shall not constitute a waiver of the right to enforce such provision thereafter.

Section 11.18 Owner's Responsibility for Acts of Others. Each Owner shall be responsible for compliance with, and any violation of, the provisions of this Declaration, the Association Rules and Regulations, or the resolutions of the Board, by his contract purchasers, lessees or tenants, and invites and licensees.

Section 11.19 Indemnification. Each Owner shall be liable to the remaining Owners and the Association for any damage to the Common Area or the Units of the other Owners that may be sustained by reason of the negligence or willful misconduct of the Owner, his contract purchasers, lessees or tenants, and their invitees or licensees, to the extent any such damage is not covered by insurance. Each Owner shall indemnify each of the other Owners against, and hold him harmless from, and defend him against, any claim of any person for personal injury or property damage occurring within the Unit of the indemnifying Owner, unless the injury or damage to which such indemnity would apply occurred by reason of the active negligence or willful misconduct of the party claiming indemnification.

## **ARTICLE XII INSURANCE**

Section 12.1 Types of Insurance. The Association shall obtain and keep in full force and effect at all times the following insurance coverage provided by companies duly authorized to do business in Idaho. The provisions of this Article XII shall not be construed to limit the power of authority of the Association to obtain and maintain insurance coverage in addition to any insurance coverage required hereunder in such amounts and in such forms as the Association may deem appropriate from time to time. In order to facilitate the providing and maintaining of adequate and proper insurance, it is contemplated that Declarant may contract for blanket insurance coverage covering the Project as contemplated by this Article XII prior to or concurrently with the first conveyance of a Condominium. Any obligation or commitment for

the payment of premiums or expenses otherwise incurred by Declarant under any such blanket policy or coverage, whether or not the same is also a personal obligation of the purchaser or purchasers of any Condominium, shall become an obligation of the Association and shall be paid for out of Association funds.

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

(b) Public Liability and Property Damage Insurance. The Association shall purchase broad-form, commercial general liability coverage in such amounts and in such forms as the Association deems advisable to provide adequate protection. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance, and other use of the Project.

(c) Worker's Compensation and Employer's Liability Insurance. The Association shall purchase worker's compensation and employer's liability insurance and all other similar insurance in respect to employees of the Association in the amounts and in the forms now or hereafter required by law.

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

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

Section 12.2 Form. Casualty insurance shall be carried in a form or forms naming the Association the insured as trustee for the Owners, which policy or policies shall specify the interest of each Condominium Owner (Owner's name, Unit number and the appurtenant undivided interest and/or share in the Common Area), and which policy or policies shall provide a standard loss payable clause providing for payment of insurance proceeds to the Association as trustee for the Owners and for the respective first Mortgagees which from time to time shall give notice to the Association of such first Mortgage, such proceeds to be used in accordance with this Declaration. Each policy shall also provide that it cannot be canceled by either the insured or the insurance company until after thirty (30) days' prior written notice is first given to each Owner and to each first Mortgagee. The Association shall furnish to each Owner who

requests it and to Declarant a true copy of such policy, together with a certificate identifying the interest of the Owner. All policies of insurance shall provide for a waiver of subrogation by the insurers as to claims against the Association, the Board of Directors, employees, and agents and against each Owner and each Owner's employees, agents, and guests and shall provide that the insurance cannot be canceled, invalidated, or suspended on account of the conduct of the Association, the Board of Directors, employees, and agents or on account of any Owner or such Owner's employees, agents, or guests and shall provide that any "no other insurance" clause in the insurance policy shall exclude any policies of insurance maintained by any Owner or Mortgagee and that the insurance policy shall not be brought into contribution with insurance maintained by any Owner or Mortgagee.

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

Section 12.3 Insurance Proceeds. The Association shall receive the proceeds of any casualty insurance payments received under policies obtained and maintained pursuant to this Article XII. The Association shall apportion the proceeds to the portions of the Project, which have been damaged and shall determine the amount of the proceeds attributable to damage to the Common Area. To the extent that reconstruction is required herein, the proceeds shall be used for such purpose. To the extent that reconstruction is not required herein and there is a determination that the Project shall not be rebuilt, the proceeds shall be distributed in the same manner herein provided in the event of sale of obsolete Condominiums. Each Owner and each Mortgagee shall be bound by the appointments of damage and of the insurance proceeds made by the Association pursuant hereto.

Section 12.4 Owner's Own Insurance. Each Owner shall obtain insurance at the Owner's own expense providing coverage upon the Owner's Condominium, the Owner's personal property located in the Owner's Unit or in the Storage Space, for the Owner's personal liability, and covering such other risks as the Owner may deem appropriate, but each such policy shall provide that it does not diminish the insurance carrier's coverage for liability arising under insurance policies which the Association obtains pursuant to this Article XII. All such insurance of the Owner's Condominium shall waive the insurance company's right of subrogation against the Association, the other Owners, and the servants, agents, and guests of any of the Owners, the Declarant, and Mortgagee. If any Owner violates this provision, any diminution in insurance proceeds otherwise payable under the policies, described in this section that results from the existence of such other insurance will be chargeable to the Owner who acquired such other insurance, and the Owner shall be liable to the Association to the extent of any such diminution. In addition, any improvements made by an Owner within such Owner's Unit may be separately insured by the Owner, but such insurance shall be limited to the type commonly known as "tenant's improvements" insurance.

## ARTICLE XIII CASUALTY DAMAGE OR DESTRUCTION

Section 13.1 Affects Title. Title to each Condominium is hereby made subject to the terms and conditions hereof which bind the Declarant and all subsequent Owners, whether or not it is so expressed in the deed by which any Owner acquires such Owner's Condominium.

Section 13.2 Association as Agent. All of the Owners irrevocably constitute and appoint the Association by and through the Association's elected officers as the Owners' true and lawful attorney-in-fact in the Owner's name, place, and stead for the purpose of dealing with the Project upon its damage or destruction as hereinafter provided. Acceptance by any grantee of a deed from the Declarant or from any Owner shall constitute such appointment.

Section 13.3 General Authority of the Association. As attorney-in-fact, the Association by and through the Association's elected officers shall have full and complete authorization, right and power to make, execute, and deliver any contract, deed or other instrument with respect to the interest of a Condominium Owner which may be necessary or appropriate to exercise the powers herein granted to the Association. Repair and reconstruction of the improvements as used in the succeeding subparagraphs mean restoring the Project to substantially the same vertical and horizontal boundaries as before. The proceeds of any insurance collected shall be available to the Association for the purpose of repair or reconstruction unless the Owners representing an aggregate of eighty percent (80%) or more of the total square footage of the Project and said Owner's first Mortgagees, if any, agree not to rebuild in accordance with the provisions set forth hereinafter.

Section 13.4 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 estimates that the Association deems reliable and complete of the costs of repair or reconstruction of that part of the Project damaged or destroyed.

Section 13.5 Repair or Reconstruction. As soon as practicable after receiving the estimates, the Association shall diligently pursue to completion the repair or reconstruction of that part of the Project damaged or destroyed. The Association may take all necessary or appropriate action to effect repair or reconstruction, as attorney-in-fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith. Such repair or reconstruction shall be in accordance with the original plans and specifications of the Project or may be in accordance with any other plans and specifications the Association may approve; provided, however, in such latter event in the absence of the consent of each affected Owner, the number of cubic feet and the number of square feet of any Unit may not vary by more than five percent (5%) from the number of cubic feet and the number of square feet for such Unit, as originally constructed pursuant to such original plans and specifications, and the location of the Building shall be substantially the same as prior to damage or destruction.

Section 13.6 Funds for Reconstruction. The proceeds of any insurance collected shall be available to the Association for the purpose of repair or reconstruction. If the proceeds of the insurance are insufficient to pay the estimated or actual cost of such repair or reconstruction, the Association, pursuant to Article X hereof, may levy in advance a special assessment sufficient to provide funds to pay such estimated or actual costs of repair or

reconstruction. Such assessment shall be allocated and collected as provided in Article X. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair or reconstruction.

Section 13.7 Disbursement of Funds for Repair or Reconstruction. The insurance proceeds held by the Association and the amounts received from the assessments provided for in Section 13.6 constitute a fund for the payment of cost or repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the cost of repair or reconstruction shall be made from insurance proceeds; if there is a balance after payment of all costs of such repair or reconstruction, such balance shall be distributed to the Owners in proportion to the contributions by each Owner pursuant to the assessments by the Association under Section 13.6 of this Declaration.

Section 13.8 Decision Not to Rebuild. If the record Owners, as reflected on the real estate records of Blaine County, Idaho, representing an aggregate ownership interest of eighty percent (80%) or more of the total square footage of the Project and said Owners' first Mortgagees, if any, agree not to rebuild, as provided herein, the Project shall be sold and the proceeds distributed to the Owners according to their respective percentage ownerships.

## **ARTICLE XIV OBSOLESCENCE**

Section 14.1 Adoption of a Plan. The record Owners, as reflected on the real estate record of Blaine County, Idaho, representing an aggregate record ownership interest of eighty percent (80%) of total square footage of the Project may agree that the Project is obsolete and adopt a written plan for renewal and reconstruction, which plan has the unanimous approval of all first Mortgagees of record at the time of the adoption of such plan. Written notice of adoption of such plan shall be given to all Owners. Such plan shall be recorded in the Blaine County, Idaho, real estate records.

Section 14.2 Payment of Renewal and Reconstruction. The expense of renewal or reconstruction shall be payable by all of the Owners as assessments against their respective Condominiums. These assessments shall be levied in advance pursuant to Article X, hereof, and shall be allocated and collected as provided in that Article. Further levies may be made in like manner if the amounts collected prove insufficient to complete the renewal and reconstruction.

Section 14.3 Sale of Obsolete Units. The Owners representing an aggregate ownership interest of eighty percent (80%) or more of the total square footage of the Project may agree that the Condominiums are obsolete and that the Project should be sold. Such an agreement must have the unanimous approval of every first Mortgagee of record at the time the agreement is made. In such instance, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association, the Project shall be sold by the Association as attorney-in-fact for all the Owners free and clear of the provisions contained in this Declaration, the Parcel Map and the Bylaws. The sale proceeds shall be apportioned among the Owners in proportion to the respective amounts originally paid to Declarant for the purchase of the Condominium exclusive of the amounts paid for personal

property, and such apportioned proceeds shall be paid into separate accounts, each account representing one (1) Condominium. Each such account shall remain in the name of the Association and shall be further identified by the Condominium designation and the name of the Owner. From each separate account, the Association, as attorney-in-fact, shall use and disburse the total amount of such accounts without contribution from one account to the other, first to Mortgagees and other liens, and the balance remaining to each respective Owner.

Section 14.4 Distribution of Excess. In the event amounts collected pursuant to Section 14.2 are in excess of the amounts required for renewal and reconstruction, the excess shall be returned to the Owners by the Association by a distribution to each Owner in an amount proportionate to the respective amount collected from each such Owner.

## ARTICLE XV CONDEMNATION

Section 15.1 Consequences of Condemnation. If, at any time or times during the continuance of the Condominium ownership pursuant to this Declaration, or any part of the Project shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions shall apply.

Section 15.2 Proceeds. All compensation, damages or other proceeds therefrom, the sum of which is hereinafter called the "**condemnation award**," shall be payable to the Association.

Section 15.3 Complete Taking. In the event that the entire Project is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the Condominium ownership pursuant hereto shall terminate. The condemnation award shall be apportioned among the Owners in proportion to the respective amounts paid to Declarant for the purchase of the Condominium exclusive of the amounts paid for personal property; provided that if a standard different from the value of the Project as a whole is employed to measure the condemnation award in the negotiation, judicial decree or otherwise, then in determining such shares the same standard shall be employed to the extent it is relevant and applicable.

On the basis of the principal set forth in the last preceding paragraph, the Association shall as soon as practicable determine the share of the condemnation award to which each Owner is entitled. Such shares shall be paid into separate accounts and disbursed as soon as practicable in the same manner provided in Section 14.4 of this Declaration.

Section 15.4 Partial Taking. In the event that less than the entire Project is taken or condemned, or sold, or otherwise disposed of in lieu of or in avoidance thereof, the Condominium ownership hereunder shall not terminate. Each Owner shall be entitled to a share of the condemnation award to be determined in the following manner: as soon as practicable, the Association shall, reasonably and in good faith, allocate the condemnation award between compensation, damages or other proceeds, and shall apportion the amounts so allocated among the Owners as follows: (a) the total amount allocated to taking of or injury to the Common Area shall be apportioned equally among the Owners; (b) the total amount allocated to severance damages shall be apportioned to those Condominiums which were not

taken or condemned; (c) the respective amounts allocated to the taking of or injury to a particular Unit and/or improvements an Owner has made within his own Unit shall be apportioned to the particular Unit involved; and (d) the total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determined to be equitable in the circumstances. If an allocation of the condemnation award is already established in negotiation, juridical decree, or otherwise, then in allocating the condemnation award the Association shall employ such allocation to the extent it is relevant and applicable. Distribution of apportioned proceeds shall be made in the same manner provided in Section 14.4 of this Declaration.

Section 15.5 Reorganization. In the event a partial taking results in the taking of a complete Unit, the Owner thereof automatically shall cease to be a Member of the Association. Thereafter, the Association shall reallocate the Ownership, voting rights and assessment ratio determined in accordance with this Declaration according to the same principles employed in this Declaration at its inception, and shall submit such reallocation to the Owners of remaining units for amendment of this Declaration as provided herein.

Section 15.6 Reconstruction and Repair. Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified in Article XIII above.

## **ARTICLE XVI REVOCATION OR AMENDMENT**

Section 16.1 Revocation or Amendment. Except where specifically provided for a higher percentage, this Declaration shall not be revoked, nor shall any of the provisions herein be amended, except upon the affirmative vote or consent of the except upon the affirmative vote of seventy-five percent (75%) of the Owners based upon the percentage basis to which each Owner is entitled as a Member and as set forth in Section 8.2, including the affirmative vote, consent or approval of seventy-five percent (75%) of the Light Industrial Unit Owners based upon the percentage basis to which each Light Industrial Unit Owner is entitled as a Member and as set forth in Section 8.2 and as reflected on the real estate records of Blaine County, Idaho, and all holders of any recorded Mortgage covering or affecting any or all of the Condominiums, whose interests as Mortgagees appear in such records, consent and agree to such revocation or amendment by instruments recorded. Any such revocation or amendment shall be binding upon every Owner and every Condominium whether the burdens thereon are increased or decreased by any such amendment and whether or not the Owner of each and every Condominium consents thereto.

## **ARTICLE XVII PERIOD OF CONDOMINIUM OWNERSHIP**

Section 17.1 Duration. The Condominium ownership created by this Declarant and the Parcel Map shall continue until this Declaration is revoked in the manner provided in Article XVI of this Declaration.

## **ARTICLE XVIII MISCELLANEOUS**

Section 18.1 Compliance With Provisions of Declaration and Bylaws of the Association. Each Owner shall comply with the provisions of this Declaration, the Articles of Incorporation, the Bylaws, Association Rules and Regulations, and the decisions and resolutions of the Association adopted pursuant thereto as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due and for damages or injunctive relief, or both, maintainable by the Association on behalf of the Owners, in a proper case, by an aggrieved Owner.

Section 18.2 Registration of Mailing Address. Each Owner shall register such Owner's mailing address with the Association. All notices or demands intended to be served upon any Owner shall be sent by either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. All notices or demands intended to be served upon the Association shall be given by registered or certified mail, postage prepaid, to the address of the Association as designated in the Bylaws of the Association. All notices or demands to be served on Mortgagees pursuant thereto shall be sent by either registered or certified mail, postage prepaid, addressed in the name of the Mortgagee at such address as the Mortgagee may have furnished to the Association in writing. Unless the Mortgagee furnishes the Association such address, the Mortgagee shall be entitled to receive none of the notices provided for in this Declaration. Any notice referred to in this section shall be deemed given when deposited in the United States mail in the form provided for in this section.

Section 18.3 Transfer of Declarant's Rights. Any right or any interest reserved hereby to the Declarant may be transferred or assigned by the Declarant, either separately or with one or more of such rights or interests, to any Person or entity.

Section 18.4 Dispute Resolution. In the event the Owners are unable to resolve any significant dispute among themselves arising out of the operation or management of the Project, then the dispute shall be submitted to arbitration under the Rules of the American Arbitration Association. The prevailing Owner(s) in any arbitration or judicial proceeding shall be awarded reasonable costs and attorneys fees from the other Owner(s). Any unpaid award shall be imposed as a special assessment secured by a lien of the Unit(s) of the Owner(s) liable for such award as set forth in Article X of this Declaration.

Section 18.5 Owner's Obligations Continue. All obligations of the Owner under and by virtue of the provisions contained in this Declaration shall continue, notwithstanding that such Owner may have leased or rented said interest as provided herein, but the Owner of a Condominium shall have no obligation for expenses or other obligations accruing after the Owner conveys such Condominium.

Section 18.6 Number and Gender. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

Section 18.7 Severability. If any of the provisions of this Declaration or any clause, paragraph, sentence, phrase, or word or the application thereof in any circumstance shall be invalidated, such invalidity shall not affect the validity of the remainder of the Declaration, and the application of any such provision, paragraph, sentence, clause, phrase, or word in any other circumstance shall not be affected thereby.

This Declaration is executed on this \_\_\_\_\_ day of August, 2005.

FRENCHMAN'S PLACE, LLC, an  
Idaho limited liability company

By:   
Its: Manager Partner

