

TRAIL CREEK PLACE CONDOMINIUM DECLARATION AND RESTRICTIONS
UNDER THE IDAHO CONDOMINIUM PROPERTY ACT

Article 1: Background, Declaration and Definitions.

- 1.1 Party. This declaration of condominium is made under the Idaho Condominium Property Act by Pan Pacific Medical Development, Inc., a Hawaiian corporation, referred to as the declarant.
- 1.2 Effective Date. The effective date of this declaration shall be its recording date.
- 1.3 Legal Description of Project. The real property that is the subject of this declaration of condominium is:

Lot 2, PTARMIGAN Subdivision, Ketchum, Blaine County, Idaho.
- 1.4 Ownership. The property is owned by declarant. It is not encumbered.
- 1.5 Improvements. Declarant will construct five (5) condominium units on the real property. Attachment 1 shows common areas and the units which are the numbered or shaded areas. The numbered or shaded areas shall be the separate areas, and all other areas shall be the common areas under this declaration. Attachment 1 designates the relative locations of those areas.
- 1.6 Property. This condominium project includes the real property, the Buildings as described on attachment 1 and all facilities of the project. The facilities of the project include tangible and intangible personal property and accounts owned for the use and benefit of the entire project, whether now owned or hereafter acquired.
- 1.7 Name. The project shall be known as the Trail Creek Place. It shall be a residential condominium project as described under the Idaho Condominium Property Act.
- 1.8 Declaration of Condominium Status. Declarant submits, declares, and establishes, by the declaration, that the project is and shall be held in the condominium form of ownership. The common, and separate areas of the project are declared to be as set forth in this declaration and its attachments. All of the property shall be held, conveyed, encumbered, leased, used, occupied and maintained subject to the Idaho Condominium Property Act and all rights and restrictions as set forth in this

declaration. All of the provisions of this declaration shall run with the land and shall be equitable servitudes burdening and benefiting the declarant and its successors and assigns and all present and subsequent owners or other persons holding any ownership or possessory interest in the project. All rights, interests, obligations and restrictions created under this declaration shall be appurtenant to each condominium and shall not be separable from the condominium. Any conveyance or encumbrance of a condominium shall be considered a conveyance or encumbrance of the appurtenant rights, interests, obligations and restrictions even though such rights, interests, obligations and restrictions are not expressly referred to in the conveyance or encumbrance.

1.9 Statement of Purpose. It is the purpose of declarant to establish by this declaration a residential condominium project. The use of the project will be limited to one family residence per condominium unit. An object of this condominium declaration is to assure a well maintained residential condominium project.

1.10 Definitions.

- a. Allocated interest means the undivided interest in the common areas, the common expense liability and the votes in the home owners association.
- b. Association or home owners association means the unit owners association as described in section 3 of this declaration. It shall be Trail Creek Place Home Owners Association, and is referred to in this declaration as TCP.
- c. Common areas means all portions of a common interest community other than units. The undivided interests in the common areas shall always be vested in the unit owners. Common areas includes common systems described in article 2.
- d. Common expenses means expenditures made by, or financial liabilities of, the association together with any allocations to reserves.
- e. Common interest community means real estate with respect to which a person by virtue of his ownership of a unit, is obligated to pay for real estate taxes, insurance premiums, maintenance, or improvement of other real estate as described in the declaration.

- f. Condominium means a common interest community in which portions of the real estate (units) are designated for separate ownership and the remainder of the real estate (common areas) is designated for common ownership by the unit owners.
- g. Dispose or disposition means a voluntary transfer by a purchaser of any legal or equitable interest in a unit, but the term does not include the transfer or release of a security interest.
- h. Executive board means the board of directors of the Trail Creek Place Home Owners Association. The executive board is also the management body, as defined in the Idaho Condominium Property Act.
- i. Limited common area means a common area allocated by the declaration for the exclusive use of one or more, but fewer than all of the units.
- j. The term owner or condominium owner means any person holding an ownership interest in a condominium in the project to the extent such ownership interest is reflected in the records of the Recorder's Office of Blaine County, Idaho. A purchaser under a contract of purchase shall be an owner if the contract is of record in the records of the Recorder's Office of Blaine County, Idaho. The purchaser shall, after recording the contract, be an owner and the seller shall not be an owner until the contract of purchase is rescinded and the agreement or judgment of rescission is recorded in the Blaine County Recorder's Office. Owner does not refer to any holder of a security interest unless the holder of the security interest has acquired title to the condominium pursuant to foreclosure or other proceedings in lieu of foreclosure. All forms of ownership, including but not limited to, community, tenancies-in-common, joint tenancies, partnerships, trusts, are permitted. If ownership of a unit is held by one or more persons or entities, the multiple owners of that unit shall be considered a single owner for voting purposes. All votes associated with any unit must be cast as a block. Only one of multiple owners may represent the owners at all meetings of the Association, and only one owner may cast the vote for the owners. That person shall be elected by a majority vote of the unit owners or if no majority by the first name on the earliest deed establishing ownership in the then current multiple

ownership form. Owners shall have the absolute right to lease and sublease their condominiums subject to limitations set forth in this document. Lessees shall not be considered owners unless the lease specifically provides they are to be considered owners or unless the lease is for twenty (20) years or more. Leases may be subleased or assigned unless the lease prohibits such assignment or sublease, but all such subleases and assignments shall be subject to the terms and conditions of article 6 of this declaration.

- k. Person means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, or other legal or commercial entity.
- l. Purchaser means a person other than a declarant who by means of a voluntary transfer acquires a legal or equitable interest in a unit other than (i) a leasehold interest (including renewal options) of less than twenty (20) years, or (ii) as security for an obligation.
- m. Real estate means a leasehold or other estate in; over, or under land, including structures, fixtures and other improvements and interest that by custom, usage or law pass with the conveyance of land though not described in a contract of sale or instrument of conveyance. Real estate includes parcels with or without upper or lower boundaries and spaces that may be filled with air or water.
- n. Security interest means an interest in real estate or personal property, created by contract or conveyance which secures payment for performance of an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, leases intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an association, and any other consensual lien or title retention contract intended as security for an obligation.
- o. Unit means the physical portion of the common interest community designated for separate ownership or occupancy. The boundaries of units in this project are described in article 2 of this declaration. Condominium unit means a unit together with the percentage of the common areas assigned to

that unit. So long as this condominium declaration continues in force, such common areas shall be appurtenant to the units in the percentages declared in this declaration.

p. "Declarant Control Period" means the time period commencing on the date of recordation of this declaration and ending on the earlier of:

(i) Seven (7) years after the date of the first conveyance of a unit to a person other than the declarant; or

(ii) One hundred and twenty days (120) days after the conveyance of four (4) of the five (5) units to unit owners other than the declarant.

Article 2: Allocation of Common and Separate Areas.

2.1 Division Into Units; Common Areas. Attachment 2 is a list of condominium unit numbers. It describes the square footage assigned to each unit and the percent of the total project represented by each unit. Each condominium unit shall have a proportionate ownership of the common areas in the percentages set forth. The responsibility of each owner for taxes and assessments against the entire condominium project and the responsibility for any liability for claims, judgments or awards arising out of or in connection with the ownership, use, operation and management of the common areas shall be in proportion to the percentages set forth on attachment 2. The owner of each unit shall be solely responsible for all taxes and assessments levied against the portion of the common areas appurtenant to that unit. The assignment of percentages of common areas as set forth in this section represents the proportionate value of each condominium in relation to the value of the project as a whole. Minor differences in value because of interior finishes shall be included in total value but shall be disregarded in allocation of percentages or values.

2.2 Physical Boundaries. The physical boundaries of the units are set forth on attachment 1. Specifically, the boundaries of a unit are as follows:

- The unpainted interior surface of the perimeter walls of a unit. The paint shall be considered separately owned by the unit owner.
- The interior surface of the roof.

- The interior top surface of the concrete floor.
- The interior surface of windows and external doors.

The common areas include all roofs, exterior surface of floors, all areas outside the building, all exterior walls, all interior walls that separate a unit, and all windows and doors on the perimeter walls of a unit. The following systems are separate or common as set forth:

- Electrical. The electrical systems are common in common areas and separate in separate areas. The electrical service to each unit is separately metered. Each unit owner shall be responsible for all charges arising from the meter servicing his unit.
- Heating. The heating systems is a separate system and belong to the unit they service. Each unit shall be responsible for servicing its own heating system.
- Sewer system. The sewer system servicing each unit is separate. Each unit shall be responsible for servicing their own portion of the system. If blockage occurs within the main line servicing the entire project, or more than one unit it shall be a common expense.
- Outside Sprinkler System. The lawn sprinkler system is a common system.
- Hot and Cold Water and Water Softening Systems. These systems are separate in separate areas, but common lines running through common areas shall be a common system.
- Natural Gas. The natural gas system is common in common areas, and separate in separate areas.
- Telephone and Television Systems. These systems are common in common areas and separate in separate areas.
- ✓ The garage to each unit is a separate area, but the exterior walls, windows, and doors shall be limited use common areas.
- Patios. Patios adjoining or adjacent to a unit shall be a limited use common area. The owner of the unit adjacent to the patio shall be entitled to the exclusive use of the patio and shall be responsible

for its maintenance and upkeep. The patio may be damaged or removed by public or quasi public entities for access in the event of a fire or sewer damage. Absent municipal indemnification the owner of the unit is responsible for the cost of removal and replacement of the patio.

- Decks. Adjacent to a unit shall be a limited use common area. The owner of the unit adjacent to the deck shall be entitled to the exclusive use of the deck and shall be responsible for its maintenance and upkeep.

All common facilities shall be considered common areas of the project.

2.3 Easements and Reserved Rights.

- a. Access, Support and Utilities. Each unit shall have a nonexclusive easement for access to his unit from the common areas. Each unit shall have a nonexclusive easement over the common areas within the unit of another owner for horizontal and lateral support of the unit and for utility service to that unit, including water, ventilation, sewer, gas, electricity, telephone and television service.
- b. Maintenance, TCP Cleaning and Repair. Some of the common areas may be conveniently accessible only through units. TCP shall have the irrevocable right to have access to each unit and to all common areas from time to time during such reasonable hours as may be necessary for the maintenance, cleaning, repair or replacement of any common area accessible from a unit or for making emergency repairs at any time to common areas accessible through a unit and to prevent damage to the common areas or to a unit or units. In addition, TCP or its agents may enter any unit when necessary in connection with any cleaning, maintenance, repair, replacement, landscaping or construction for which TCP is responsible. The entry shall be made with as little inconvenience to the owner of the unit as practicable and any damage caused by the access shall be repaired by TCP.
- c. Easements for Encroachments. If any part of the common areas encroaches or shall later encroach upon a unit or units an easement for the encroachment and for the maintenance shall and does exist. If any part of a unit encroaches or shall later encroach

upon common areas or upon an adjoining unit or units, an easement for the encroachment and for the maintenance of the unit shall and does exist. Encroachments shall not be considered to be encumbrances, either on the common areas or on the unit. Encroachments as referred to in this section include, but are not limited to encroachments caused by error in original construction of any improvement constructed or to be constructed within the project, by error in the plat, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the project or any part of it.

- d. Common Systems. Easements for the location of all common lines and systems that may be located in units or separate areas are hereby reserved. Those common lines and systems are part of the common areas and easement pertaining to common areas shall also pertain to those systems.
- e. Easements Appurtenant. The easements and rights created by this declaration shall be appurtenant to each unit and each unit shall be subject to all such easements and rights and all conveyances and other instruments affecting title to any unit shall be considered subject to all such easements and rights, even though they are not specifically mentioned in the conveyance.

2.4 Personal Property. TCP may acquire and hold, for the benefit of the condominium owners, tangible and intangible personal property and may maintain accounts in the name of TCP and may dispose of all such tangible and intangible personal property and accounts by sale or otherwise. The beneficial ownership and the personal property and accounts shall be owned by TCP and shall not be transferrable by the owners. However, the stock of TCP is appurtenant to each condominium unit and cannot be transferred separate from the unit it is appurtenant to. All personal property located in common areas shall be owned by TCP.

2.5 Incidence of Ownership.

- a. Title. Title to a condominium unit within the project may be held or owned by any person or entity in any manner in which title to any other real property may be held or owned in the State of Idaho.

b. Indivisibility of Separate and Common Areas. The common areas are not subject to partition from the separate areas of the project. Any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an undivided interest in the common areas other than as an appurtenance to the unit to which that interest is allocated is void. The undivided allocated share of the common areas that are appurtenant to a unit shall not be separated from it and shall be transferred automatically with the transfer of the unit whether or not separately described. If any unit is encumbered, the encumbrance shall apply both to the unit and to all common areas appurtenant to that unit. No action for partition of the common areas shall lie, excepting under Idaho Code Section 55-1511(1)-(3). Section 55-1511(a)(4), (b)-(c) shall have no application to this project. Also, a condominium shall not be subject to partition as between multiple owners, but if grounds for such partition exists, the condominium unit shall be sold in its entirety subject to the restrictions of article 6 of this declaration. If the project is subject to partitioning under the terms of Section 55-1511(a)(1)-(3) of the Idaho Code, TCP shall have an irrevocable power of attorney to sell and convey the entire project for the benefit of all owners. The power of attorney shall not be exercised until two-thirds of the owners vote in favor of having TCP exercise the power of attorney and until the owners of two-thirds of the voting rights have executed and recorded a certificate certifying the power of attorney has been duly authorized and properly exercised under the terms of this section.

c. Compliance. TCP and all present and future owners and tenants or any other person using facilities or separate areas of the project are subject to and must comply with condominium property laws of the State of Idaho, this declaration, and the articles of incorporation, bylaws and rules and regulations of TCP. The acquisition, occupancy or rental of a unit shall signify that all of those documents are accepted and ratified by the person having ownership or possessory rights in any portion of the project. In the event of a conflict in any of the provisions of those documents, the documents shall govern or control in the following order of preference: (1) the declaration, (2) the Act, (3) articles of incorporation of TCP, (4) the bylaws of TCP, (5) the

rules and regulations of TCP. All agreements, decisions and determinations lawfully made by the executive board of TCP shall be binding on all condominium unit owners and shall inure to the benefit of all those owners.

- d. Separate Taxation. All taxes, assessments and other charges of the State of Idaho, any political subdivision of the State of Idaho, any special improvement district or any other taxing or assessing authority shall be assessed against and collected on each condominium unit separately and not on the project as a whole. Each condominium unit shall be carried on the tax records as a separate and distinct parcel.
- e. Separate Mortgages. Each owner shall have the right to mortgage or otherwise encumber the condominium unit. However, no owner shall attempt to or shall have the right to mortgage or otherwise encumber any part of the common areas except the undivided interest appurtenant to his unit.
- f. Use of Common Areas. Subject to other provisions of the declaration, each owner shall have a nonexclusive right to use and enjoy (i) so much of the common areas as may be required for access and ingress and egress to and use and occupancy and enjoyment of the respective condominium unit owned by that owner. The right to use the common areas shall extend to each unit owner and the agents, servants, tenants, family members, guests, and invitees of each unit owner. The rights to use the common areas shall be consistent with the rights of use and enjoyment of other owners and shall be subject to and governed by the provisions of this declaration, and the articles of incorporation, bylaws, rules and regulations of TCP.
- g. Owners Right In Unit. Subject to other provisions of this declaration, each owner shall have the complete dominion and ownership of his unit which is part of the condominium unit owned by that owner. Each owner and the owner's agents, servants, tenants, family members, guests and invitees shall have the exclusive right to use and enjoy that unit. Each owner may freely transfer his or her unit subject to restrictions on those rights of transfer as set forth in article 6 of this declaration.

- h. TCP's Right to Use Common Areas. TCP shall have the nonexclusive right and easement to make such use of the common areas as may be necessary or convenient to perform the duties and functions that it is obligated or permitted to perform pursuant to this declaration, including, without limitation, the right to construct and maintain in the common areas facilities for use by owners generally or by TCP and its agents exclusively.
- i. Alterations and Improvements. The owners of each condominium shall have the exclusive right to decorate the interior of the condominium owned by that owner. The owner of any condominium shall have the right to alter or change any interior non-bearing and nonperimeter walls within its condominium. The owners of the condominium shall not have the right without the consent of the board of directors of TCP to make any other changes in the project. No owner shall have the right to alter any separate system which functions as a part of a common system without the prior approval of the board of directors of TCP.
- j. Binding Effect. All present and future owners, tenants and any other person who might use the facilities of the project in any manner are subject to the provisions of this declaration. The purchasing of a condominium, the rental of a condominium, or the mere act of occupying a condominium in this project shall signify the acceptance by the buyer, lessee or occupier of the provisions of this declaration. The provisions of this declaration shall constitute covenants that run with the land.

Article 3: Government.

- 3.1 Association of Owners. This condominium project shall be managed by TCP, an Idaho corporation incorporated specifically for the development and management of this project. All agreements, decisions, or determinations lawfully made by the board of directors of TCP shall be binding on all condominium owners and shall inure to the benefit of all such owners. TCP shall act as the management agent of the project. The articles of incorporation of TCP require one share of stock to be issued for each condominium unit and provide for that share of stock to be appurtenant to the condominium unit it is issued for. It shall always belong to the owners of

that condominium and cannot be transferred separate from the condominium.

- 3.2 Articles of Incorporation and Bylaws of TCP. TCP has adopted bylaws governing shareholders, shareholder meetings, board of directors, board of director meetings, officers, and other miscellaneous items. The condominium project shall be governed by TCP in accordance with its articles of incorporation and bylaws as now in effect or as may be amended from time to time and in accordance with any resolutions, rules or regulations adopted by TCP. The articles of incorporation and bylaws of TCP are attached respectively as attachments 3 and 4.
- 3.3 Powers. As the executive board, TCP shall have all powers authorized by the general corporation laws of the State of Idaho and in particular, the following specific powers. TCP may:
- a. Adopt and amend bylaws (pursuant to the Idaho Business Corporation Act) and rules and regulations.
 - b. Adopt and amend budgets for revenues, expenditures and reserves and collect assessments for common expenses from unit owners.
 - c. Hire and discharge managing agents and other employees, agents and independent contractors.
 - d. Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the common interest community.
 - e. Make contracts and incur liabilities.
 - f. Regulate the use, maintenance, repair, replacement and modification of common areas.
 - g. Cause additional improvements to be made as a part of the common areas.
 - h. Acquire, hold, encumber and convey in its own name any right, title, or interest to real estate or personal property.
 - i. Grant easements, leases, licenses and concessions through or over the common areas.

- j. Impose and receive any payments, fees, or other charges for the use, rental or operation of the common areas, and for services provided to unit owners.
- k. Impose charges for late payment of assessments and after notice and opportunity to be heard, levy reasonable and uniformly applied fines for violation of the declaration, bylaws, rules and regulations of TCP.
- l. Impose reasonable charges for the preparation and recording of amendments to the declaration, or statements of unpaid assessments.
- m. Provide for the indemnification of its officers and board of directors and maintain directors and officers liability insurance.
- n. Exercise any other laws conferred by the declaration or bylaws.
- o. Exercise any powers necessary and proper for the governance and operation of TCP.

3.4 Voting. Each share of TCP represents a right to one vote. The number of shares assigned to each unit is one.

Voting rights shall be subject to suspension as provided in section 3.6 of this declaration.

3.5 Mandatory or Discretionary Duties of TCP.

- a. Enforcement. TCP shall have the affirmative obligation to enforce all provisions of this declaration and of its articles of incorporation, bylaws, resolutions, rules and regulations and to bill, collect, and receive the collection of all assessments and to enforce the collection of those assessments.
- b. Recording Instruments. TCP shall record in the Blaine County Recorder's Office all instruments affecting this project or in which any owner waives any right under the provisions of the Idaho Condominium Property Act, all amendments to this declaration, or to any of the foregoing documents. The executive board shall, during January of each year, record in the Blaine County Recorder's Office a certificate of identity of the person or persons then

comprising the executive board of TCP in accordance with Idaho Code Section 55-1505(i). TCP shall record in the Blaine County Auditor's Office a designation of person to receive service of process in any action relating to the common areas and facilities together with an acknowledgement in writing of the acceptance of the designation by the person so designated. Upon termination of the person's capacity or authority to receive service of process, a new designation shall be duly made and filed. If any assessments are not paid within ninety (90) days, TCP shall prepare and execute notice of lien assessment, which shall be filed in the Blaine County Recorder's Office. Upon payment of the assessment and collection costs as set forth in the notice of assessment or other satisfaction of the delinquent assessment, TCP shall cause to be recorded a further notice stating satisfaction and release of lien. If the lien is not satisfied within six (6) months from the date of filing, TCP shall immediately initiate enforcement action.

- c. Rules and Regulations. TCP shall distribute to all owners copies of all rules and regulations adopted by the executive board within thirty (30) days after their adoption and shall distribute to the owners once a year an updated copy of all rules and regulations then in force.
- d. Insurance. TCP shall obtain and continue in force all insurances as set forth in section 7.
- e. Compliance With Law. TCP shall take such action as may be necessary to comply with orders, requirements, rules, regulations or laws affecting the property adopted by any federal, state, county or municipal authority having jurisdiction.
- f. Notice to Mortgagee. TCP shall give to the holder of any recorded mortgage that has furnished to TCP its name and current address, written notice of any default by any mortgagor of performance of the mortgagor's obligations under this declaration or any duly adopted rules or regulations pertaining to the project which default has been demanded to be corrected by TCP but which remains uncorrected for thirty (30) days after the demand. The notice shall be given thirty (30) days prior to when any notice of lien is filed or suit is filed by TCP to correct the default.

- g. Management. Subject to the rights and duties of owners, TCP shall be responsible for the exclusive management and control of the common areas and shall keep the common areas in good, clean, attractive, safe and sanitary condition, order, maintenance and repair.
- h. Books of Accounts. TCP shall maintain accounts showing its revenues and expenditures and shall maintain individual accounts for each owner showing the charge and payment of all assessments. Upon ten days notice to TCP and payment of a reasonable fee, any unit owner shall be furnished a statement of his account setting forth the amount of any unpaid assessments or other charges due and owing from the owner.
- i. Personnel and Contractors. TCP may obtain and pay for the services of any person or entity to manage its affairs or any part of its affairs to the extent it considers advisable as well as such other personnel or contractors as TCP shall determine to be necessary or desirable for the proper operation of the project.
- j. Services. TCP may acquire and pay for the following services out of the common expense fund: water, sewer, garbage collection, electrical, lawn and yard maintenance, exterior building maintenance, road maintenance, snow removal and other goods and services common to the units.
- k. Personal Property. Subject to the rules and regulations of TCP, each owner and his family, guests, tenants and invitees may make reasonable use of the tangible personal property of TCP located in the common spaces.

3.6 Rules and Regulations. TCP may make and enforce reasonable and uniformly applied rules and regulations governing the use of the separate and common areas. The rules and regulations shall be consistent with the rights and duties established in this declaration. The rules and regulations may, without limitation, include:

- (1) Regulating the use of common areas to assure equitable use and enjoyment by all persons entitled to use those areas;

- (ii) Assigning particular storage or parking areas within the common areas for exclusive use by owners of particular condominium units, etc.

TCP may take judicial action against any owner to enforce compliance with its rules and regulations or other obligations of owners arising under this declaration and to obtain damages or specific performance for noncompliance, all to the fullest extent permitted by law. TCP may also suspend any owner's voting rights in the association during any period or periods during which the owner fails to comply with rules and regulations of TCP or any other obligation of the owner under this declaration. Provided, however, the association shall first provide the owner with notice of the claimed violation and an opportunity for hearing regarding the violation.

- 3.7 Limitation on TCP's Liability. TCP shall not be liable for any failure of water service or snow removal or any other service to be obtained and paid for by TCP or for injury or damage to personal property caused by the elements or by any other owner or person in the project resulting from electricity, water, rain, snow, or snow removal or ice which may leak, flow or accumulate from outside or inside the project or from any parts of the building or the common areas, or from any other place, unless caused by the gross negligence of TCP. No diminution or abatement of any assessments under this declaration shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs, maintenance or improvements to the property or the common areas or any part of the common areas or from any action taken to comply with any law, ordinance or orders of a governmental authority.

Article 4: Assessments.

- 4.1 Owners Obligation To Pay Assessments and Other Amounts. Each owner of a condominium in this project shall be obligated to pay to TCP all assessments made by TCP for the purposes provided in this declaration as well as such reasonable and uniformly applied charges for use of property and uniformly applied fines imposed for violation of rules and regulations adopted by TCP. The assessments shall be fixed, established and collected from time to time as provided in the bylaws of TCP. The assessments may include any items provided for in the bylaws of TCP or in this declaration. The assessments may also include any

items approved by a majority vote of the owners that are convenient to the owners. Such convenient items might include charitable contributions. The assessments shall specifically include costs of maintaining common area (i) street lighting, (ii) street, sewer line and water line maintenance, and (iii) street snow removal to the extent they are not provided by public entities.

- 4.2 Apportionment of Assessments. Assessments of TCP shall be apportioned to the owners as set forth in section 4.10.
- 4.3 Inadequate Funds. In the event the funds of TCP are inadequate during any fiscal year, for whatever reason, including nonpayment of any owner's assessment, TCP may levy special assessments. The special assessments shall be due thirty (30) days after an owner receives notice of the assessment. The special assessment shall not exceed the amount reasonably estimated to cover the cash shortfall.
- 4.4 Individual Assessments. In addition to other assessments authorized under this article, TCP may levy against any owner an individual assessment, payable to the association over such period (with reasonable interest) as the association may determine, for the purpose of paying, in whole or in part, the cost of replacing, repairing, cleaning or otherwise correcting any damage to units or common areas caused by the intentional or negligent act or omission of any such owner, his family, guests, tenants, or invitees, except damages arising from normal wear and tear.
- 4.5 No Waiver of Assessment. The failure of the association before the expiration of any fiscal year to fix and/or give notice of assessment for the next year shall not be considered a waiver or modification in any respect of the provisions of this declaration, or a release of the owner from the obligation to pay assessments or any installment for that or any subsequent year. However, the date on which payment for such assessment shall become due shall be deferred to a date thirty (30) days after notice of the assessment shall have been made, and in no event sooner than the first date of the fiscal year to which the assessment relates. No owner may exempt himself from liability for his contribution toward the common expenses by waiver of use or enjoyment of any of the common areas, the personal property of TCP or by abandonment of his unit.
- 4.6 Expenditure of Funds. All funds received by TCP shall be used exclusively for the benefit of this condominium project.

4.7

Lien for Assessments. An assessment upon any condominium made in accordance with the declaration, and any recorded bylaws, or any duly promulgated project regulation, shall be a debt of the owner or owners of the condominium at the time the assessment is made. The amount of the assessment, together with other charges on the assessment, such as interest, cost, including attorneys fees, and penalties (as allowed in this declaration) shall be a lien upon the condominium. The lien shall be created by the executive board recording with the County Recorder of Blaine County, Idaho notice of assessment setting forth the amount of the assessment and other charges associated with the assessment, a description of the condominium against which the assessment has been made, and the names of the record owners of the condominium. The notice shall be signed by an authorized representative of TCP. Upon payment of the assessment and charges in connection with the assessment for which the notice has been recorded, or other satisfaction, TCP shall cause to be recorded a further notice stating the satisfaction and release of the lien. Except as otherwise provided in Article 8, the lien shall be prior to all other liens filed and recorded subsequent to recordation of the notice of assessment. The lien may be enforced by TCP, its attorney or other person authorized to make the sale, after failure of the owner to pay the assessment in accordance with his terms. The enforcement of the lien shall be in accordance with the manner permitted by law for the exercise of powers of sale in deeds of trust and by any other manner permitted by law. TCP shall have the power to purchase the condominium at foreclosure sale and to hold, lease, encumber and convey the same. The amount of all assessments, regular or special, all charges or fines as allowed by this declaration, including interest, costs, and attorneys fees shall be the personal obligation of the owner of the condominium unit at the time the assessment is made. Suit to recover money judgment for the personal obligation may be maintained by TCP without foreclosing or waiving the lien securing the same. In the event of any foreclosure, the obligation of the owner shall include interest at the rate of 18% per annum, all costs and all legal fees incurred by TCP in connection with the delinquent assessment prior to filing the lien and after the filing of the lien, for the collection of money judgment or enforcement of the lien. The liability for any assessment payable with respect to multiple owners of a condominium unit shall be joint and several.

4.8 Liability of Purchasers and Encumbrancers. The personal obligation for delinquent assessments shall not pass to successors in title or interest as a result of any bona fide sale, unless a notice of lien has been filed prior to the transfer or sale or unless the purchaser has assumed or specifically taken subject to the delinquent assessments. The lien for any such assessments, charges, fines or penalties shall be junior to any lien or encumbrance on the condominium unit taken in good faith and for value and perfected by recording in the office of the County Recorder of Blaine County, Idaho, prior to the time of notice of failure to pay such amount is recorded in the same office describing the condominium unit and naming the owner of the condominium unit.

4.9 Estoppel Certificate. Upon payment of a reasonable fee not to exceed \$25.00 and upon written request of any owner or any person with any right, title or interest in the condominium unit or intending to acquire any right, title or interest in the condominium unit, TCP shall furnish a written statement setting forth the amount of any assessments, charges, fines or penalties, if any, due or accrued and then unpaid with respect to an owner of the condominium unit and the amount of the assessment for the current fiscal year of the association payable with respect to the condominium unit, which statement shall, with respect to the party to whom it is issued, be conclusive against TCP and all parties, for all purposes that no greater or other amounts were then due or accrued and unpaid.

4.10 Allocation of Assessments.

- a. Common Areas. All assessments for expenses related to common areas shall be based upon the percentages set forth on attachment 2.
- b. Insurance. All costs of insurance shall be assumed to be for the benefit of all units and assessed on the basis of the percentages set forth on attachment 2, except if insurance pertains solely to a unit its costs shall be allocated in full to that unit.
- c. Utilities. All costs of utilities shall be assessed separately to the unit for which that utility is separately metered.
- d. Misconduct. Any expense caused by the misconduct of any unit owner shall be assessed exclusively against the unit owned by that owner.

- e. Claims. Assessments to pay claims, judgments or awards arising out of or in connection with the ownership, use, operation or management of common areas shall be assessed in accordance with the percentages set forth on attachment 2.
- f. Repairs. Any repairs or maintenance undertaken for the benefit of a unit owner shall be assessed solely to the unit owner. All other repairs and maintenance shall be assessed on the basis of the percentages set forth on attachment 2.
- g. Capital Expenditures. All capital expenditures shall be considered undertaken for the benefit of all units and shall be apportioned on the basis of the percentages set forth on attachment 2, except capital expenditures that do not relate to the buildings shall be shared equally by each unit. All increases in working capital shall be considered for the benefit of all owners and assessed on the basis of the percentages set forth on attachment 2.
- h. Other. All other expenses shall be considered for the benefit of all owners and assessed on the basis of the percentages set forth on attachment 2.

Article 5: Maintenance.

- 5.1 Maintenance of Units. Each owner shall maintain his unit in a clean, safe and sanitary condition. Each owner shall use due care to avoid damaging any of the common areas or any other unit. Each owner shall be responsible for his negligence or misuse of the common areas or his own unit resulting in damage to the common areas or any other unit. Each owner shall be obligated to keep his unit in good condition. The walls must be painted or covered and the paint or covering must not be peeling, chipping, dirty or marked. Each unit owner shall maintain his carpets so that they are clean and do not show significant wear from heavy traffic. The interior glass services of each unit shall be kept clean by each unit owner. Carpets shall be cleaned as frequently as necessary to avoid the appearance of spots and traffic patterns. If any unit owner fails to comply with the terms of this section, TCP may perform those duties for and at the cost of that unit owner.
- 5.2 Common Areas. TCP shall have the responsibility to maintain, repair, replace and keep in a clean, sanitary,

and safe condition at TCP's expense (which shall be assessed to the owners as provided in article 4) all common areas.

5.3 Type of Maintenance and Repair. It is intended the project at all times have a well-maintained attractive appearance in all separate and common areas. TCP shall have the affirmative obligation to keep the exterior of the building attractive, clean and in a good state of repair. TCP shall have the affirmative duty to immediately replace all broken glass facing the exterior of the building. TCP shall have the affirmative duty as quickly as reasonable to repair all roof leaks or any casualty damage occurring to the property. TCP shall have the affirmative duty to provide for reasonable landscaping and reasonable snow removal. TCP shall have the responsibility to effect emergency repairs as may be needed in any part of the project, whether separate or common. All of the foregoing maintenance and repairs shall be performed at TCP's expense, but those expenses shall be assessed to the owners as provided in article 4.

5.4 Mechanic's Lien. No labor performed or materials furnished for use in connection with any condominium unit with the consent or at the request of the owner of that unit or his agent, contractor or subcontractor shall create any right to file a statement of mechanic's lien against the unit of any other owner not expressly consenting to or requesting the same or against any interest in the common areas, except as to the undivided interest appurtenant to the unit of the owner for which such labor and/or materials shall have been furnished. Such express consent shall be considered to have been given by the owner of any condominium unit receiving emergency or other repairs or maintenance authorized by TCP. Each owner shall indemnify and hold harmless each of the other owners from liability or loss arising from any claim against the condominium unit of the owner or any part thereof for labor performed or for materials furnished on or to such owner's unit. At the written request of any owner, the association shall enforce this indemnity by collecting from the owner of the condominium unit on which the labor was performed and materials furnished the amount necessary to discharge the lien and all costs incidental thereto including attorneys fees. If not promptly paid, TCP may collect the amounts due in the manner provided for collection of assessments for the purpose of discharging the lien.

- 5.5 Utility Easements. TCP shall have the right to grant utility easements under, through or over the common areas which are reasonably necessary to the ongoing development and operation of the project.

Article 6: Restrictions.

- 6.1 Residential Use Only. A condominium may be used only as a residence for a single family.

- 6.2 To Violation of Law. No owner and no owner's guests, invitees, employees, tenants or family members shall do anything or keep anything in or on the project that would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.

- 6.3 Miscellaneous Reductions.

- a. Offensive Activities. No noxious or offensive activity shall be carried on, in or upon any part of the project nor shall anything be done or placed in or upon any part of the project that is or may become a nuisance or may cause embarrassment, disturbance or annoyance to any owner. No sound shall be permitted from any part of the project which is unreasonably loud or annoying. No activity shall be conducted, nor improvements constructed, upon any parts of the project that are or may become unsafe or hazardous to any person or property. No advertising, nameplates, informational, directional or other signs or devices may be erected or maintained on any part of the project without the approval of TCP, except as may be necessary temporarily to caution or warn of danger.
- b. Prohibitions. No swimming pool, spa, or hot tub shall be constructed on the project without the unanimous consent of all owners.
- c. Obstructions. There shall be no obstructions of the common areas by any owner or his guests. Owners shall neither store nor leave any of their property in the common areas except with the prior consent of TCP.
- d. Windows. All windows facing the exterior of the project are common areas. As common areas, no owner can obstruct, maintain, cover, or post decals or signs in those windows. TCP may regulate and control the covering of windows in order to have a uniform exterior appearance. To the extent necessary to have

a uniform exterior appearance, it can regulate types of drapes, levelors, shades or other items covering any exterior windows.

- e. Protrusions. Owners shall not cause or permit anything to be hung or displayed outside of any window, extruding from any wall or on top of any roof without the prior consent of TCP.
- f. Unsightliness. No trash, rubbish, junk, or other unsightly items of property or waste shall be collected or placed or permitted to remain anywhere within the project. Such objects shall be removed immediately by owner if within a separate area upon demand by TCP and shall be removed by TCP if within a common area upon demand of any owner. If the responsible party fails to remove it, the demanding party may so remove it and charge the expense of the removal to the responsible party.

Article 7: Risk Control.

7.1 Indemnifications.

- a. Nonliability. Neither TCP, the board of directors of TCP, nor any officer, agent or employee of TCP shall be liable to TCP or any owner for any action or for any failure to act with respect to any matter so long as such person or entity was not guilty of fraud, gross negligence or bad faith in taking the action or in failing to act.
- b. Corporation Indemnification. TCP shall indemnify to the full extent authorized or permitted by the Idaho Business Corporation Act any person made, or threatened to be made, a party to an action, suit or proceeding (whether civil, criminal, administrative or investigative) by reason of the fact he or his personal representative is or was a director, officer or employee of the corporation or served any other enterprise at the request of TCP.
- c. Owner Indemnifications. No owner shall act or purport to act for TCP unless he is at the time, an officer acting pursuant to his position as an officer or is acting pursuant to duly adopted resolutions of the board of directors of TCP specifically authorizing that person to take such action. Each owner agrees to

indemnify and hold TCP and all other owners harmless from any violation of this subsection. Each owner will indemnify and save harmless all other owners because of any debts, liens, judgments, or charges of any nature accruing against any other owner, by reason of any act of the first owner, other than an act of an officer acting within the scope of his authority or the act of an owner acting within the scope of resolutions of the board of directors specifically authorizing that person to take such action.

- d. Scope of Indemnifications. All indemnifications provided under this section shall include payment of (i) reasonable attorneys fees and expenses, (ii) court costs, witness fees and deposition fees, and (iii) expenses incurred in the removal of liens. The indemnifications shall apply to informal settlement efforts, arbitration or any litigation.

7.2 Subrogation Rights. Neither an owner nor TCP shall be liable to the other or to any other owner for any business interruption, loss, or damage to property or injury to or death of persons occurring on the project or in any manner arising out of or in connection with an owner or TCP's use and occupation of any portion of the project, or the condition of the project, whether or not caused by the negligence or other fault of the owner or TCP, or the respective agents, employees, tenants, subtenants, licensees, assignees, invitees or otherwise. This release shall apply only to the extent the business interruption, loss or damage to the property or injury to or death of the persons is covered by insurance regardless of whether the insurance is payable to or protects the owner or TCP. Nothing in this section shall be construed to enforce any other or greater liability upon either an owner or TCP than would have existed in the absence of this section. This release shall be in effect only so long as applicable insurance policies contain a clause that causes this release not to affect the right of the insured to recover under such policies. Such clauses shall be obtained by the parties whenever possible.

7.3 Allocation of Risk. Each condominium owner's liability for claims, judgments and awards arising out of or in connection with the ownership, use, occupation or management of the common areas, is limited to a proportionate sum that equals the amount of any such claim, judgment or award multiplied by the percentage interest of that owner as set forth on attachment 2.

7.4 Types of Insurance. TCP shall obtain and keep in full force and effect at all times the following insurance coverages provided by responsible companies duly authorized to do business in the State of Idaho:

- a. Fire and Casualty Insurance. TCP shall obtain a policy or policies of insurance on the project (except land, foundation, excavation and other items normally excluded from coverage), but specifically including building, fixtures, facilities, and systems regardless of whether separate, or common. The coverage may include separate personal property of the owners moved into the project after their condominium unit was deeded to them. The coverage shall cover separate ownership of walls located entirely within a unit and all portions of the following systems: heating and cooling, water, sewer, water softening, electrical, and telephone. Such insurance shall be on a replacement cost basis and shall be sufficient to fully rebuild the original structure in accordance with the original construction contract regardless of allocations between common and separate ownership. The insurance shall cover all exposures normally covered by all risk insurance. TCP may elect such deductible provisions as it considers good business practice.
- b. Public Liability and Property Damage Insurance. TCP shall obtain an all risks form of comprehensive general liability insurance coverage in such amounts and in such forms as it considers advisable to provide adequate protection. Coverage shall include, without limitation, all of the common areas of the project and may include separate areas. The coverage shall insure against death, liability for personal injuries, property damage, operation of automobiles on behalf of TCP, liability of TCP, its officers, directors and employees arising from ownership, operation, maintenance, administration, management, use or occupation of the project and liability arising out of lawsuits related to employment contracts of TCP as well as such other coverages customarily covered with respect to similar office condominiums. The limits of the policies shall be not less than one million dollars for each person and not less than one million dollars for each occurrence with respect to personal liability and with limits of not less than one hundred thousand dollars for each accident with respect to property damage liability.

- c. Workers Compensation Insurance. TCP shall obtain workers compensation and employers liability insurance and all other similar insurance with respect to employees of TCP in the amount and in the forms now or later required by law.

7.5 Form of Insurance.

- a. Casualty Insurance. Casualty insurance shall be carried in the form or forms naming the insured as TCP for the use and benefit of the individual owners. The loss payable shall be in favor of TCP as trustee for each unit owner and the owner's mortgagee as their interest may appear, and those parties shall be beneficiaries of the policy based upon ownership percentages of the common areas. Each policy shall provide a standard, noncontributory mortgagee clause in favor of each mortgagee or insurer or guarantor of the mortgage, in a form commonly accepted by private institutional mortgagees in the area. Each policy shall also provide it cannot be cancelled by either the insured or the insurer until after 30 days prior written notice is first given to each owner and to TCP and to each mortgagee who is listed as a scheduled mortgage holder in the policies. TCP shall, upon request furnish to each owner or mortgagee, a certificate of coverage, including an identification of the owner's interest.
- b. Public Liability and Property Damage Insurance. Public liability and property damage insurance shall name TCP and each owner and shall protect each insured against liability from acts of TCP, each owner and their guests, invitees, licensees, agents, and employees in connection with the ownership, operation, maintenance or other use of the property. Each such policy shall provide that it cannot be cancelled either by any insured or the insurer until after 10 days written notice to each of the insureds.
- c. Adjustment. Exclusive authority to adjust losses under policies shall be vested in the board of directors of TCP. Insurance proceeds for any loss shall be payable to TCP. TCP shall hold any insurance proceeds in trust for TCP, the unit owners, and lien holders as their interest may appear. The proceeds shall be disbursed by TCP first for the repair and restoration of the damaged property. TCP, the unit owners and lien holders are not entitled to receive payment of any portion of the proceeds unless there is

a surplus of the proceeds after the property has been completely repaired or restored or the common interest community is terminated. Any portion of the common interest community for which insurance is required under this article which is damaged or destroyed must be repaired or replaced promptly by TCP unless (i) the common interest community is terminated, (ii) the repair or replacement would be illegal under state or local statute or ordinance governing health or safety, or (iii) 75% of all unit owners (if only partial destruction of the project, the 75% must include every owner of the unit that will not be rebuilt) vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If the entire common interest community is not repaired or replaced, (i) the insurance proceeds attributable to the damaged common areas must be used to restore the damaged area to a condition compatible with the remainder of the common interest community, and (ii) except to the extent that other persons will be distributees, (a) the insurance proceeds attributable to the units that are not rebuilt must be distributed to the owners and lien holders of those units in proportion to the square footages of the affected units. All checks shall be made payable jointly to the lien holders and owner.

- d. Contribution. In no event shall the insurance coverage obtained and maintained by TCP be brought into contribution with insurance purchase by individual owners or their mortgagees.
- e. Individual Insurance. Each owner may obtain additional insurance at his own expense above coverage provided in policies obtained by TCP. However, no owner shall be entitled to exercise his right to maintain insurance coverage in any way that would decrease the amount TCP may realize under any insurance policy TCP may have in force on the project at any particular time.
- f. Notice of Improvement. Each owner shall be required to notify TCP of all improvements made by him to his unit, if the value of the improvement exceeds \$1,000. This subsection shall not be construed as authorizing any such improvement.
- g. Policy. TCP shall be required to secure insurance policies that will provide for the following:

- (i) The insurer shall waive subrogation as to any claims against TCP, the owners and their respective employees, agents, guests and invitees;
 - (ii) The policy or policies on the property cannot be cancelled, invalidated or suspended on account of conduct of any one or more individual owner, not representing of the owners collectively;
 - (iii) The policy or policies on the project cannot be cancelled, invalidated or suspended on account of the conduct of any director, officer or employee of TCP without prior demand in writing that TCP cure the defect;
 - (iv) Any "no other insurance" clause in the policy or policies on the property exclude individual owner's policies from consideration;
 - (v) A special condominium endorsement or its equivalent;
 - (vi) If available, the policy shall include an agreed amount endorsement and an inflation guard endorsement;
 - (vii) Each unit owner is an insured person under the policy with respect to liability arising out of his interest in the project (separate and/or common) or membership in TCP.
- h. Review of Insurance. TCP shall review annually the coverage and policy limits of all insurance on the project and adjust those limits where appropriate. The annual review shall include an appraisal of the improvements on the property by a representative of the insurer or other qualified appraiser that TCP may obtain.
- i. Partial Destruction. Partial destruction for purposes of this article shall mean destruction or substantial damage to less than three-fourths of the project.

7.6 Damage or Destruction to Project.

- a. TCP As Attorney In Fact. All of the owners irrevocably constitute and appoint TCP their true and lawful attorney in fact in their name, place and stead for the purpose of dealing with the project upon its

damage or destruction as provided in this article. Acceptance by any grantee of the deed from TCP or from any owner shall constitute appointment by the grantee of the association as his attorney in fact under this article. As attorney in fact, TCP shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or other instrument with respect to the interest of an owner that may be necessary or appropriate to exercise the powers granted in this article.

- b. General Authority. Repair and reconstruction of the improvements as used in this section means restoring the project to substantially the same condition in which it existed prior to damage, with each unit and the common areas having substantially the same vertical and horizontal boundaries, common areas, facilities and systems as before. Systems include heating and cooling, water, sewer, water softening, electrical, and telephone. Proceeds of any insurance collected shall be available to TCP for the purpose of repair or reconstruction unless the owners upon an affirmative vote of at least 75% of the total votes of owners (if a partial destruction, the 75% must include all of the votes of the destroyed or substantially damaged units) agree not to rebuild within 100 days after the destruction or damage in accordance with the provisions of this article.
- c. Estimate of Costs. As soon as possible, after an event causing damage to or destruction of any part of the project, TCP shall obtain complete and reliable estimates of the costs of repair or reconstruction of that part of the property damaged or destroyed.
- d. Timeliness. As soon as practical after receiving these estimates, TCP shall diligently pursue to completion of any repair or reconstruction of the part of the property damaged or destroyed. TCP shall 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 with the repair or reconstruction. The project shall be restored or repaired to substantially the same condition in which it existed prior to the fire or other destruction.
- e. Funds for Reconstruction. The proceeds of any insurance collected or insurance maintained by TCP shall be available to TCP for the purpose of repair or

reconstruction. If the proceeds of the insurance are insufficient to pay the estimated cost or actual cost of the repair or reconstruction, TCP may levy in advance a special assessment sufficient to provide funds to pay the estimated or actual cost of repair or reconstruction. The assessment shall be allocated and collected as provided in the sections relating to assessments, except that the vote specified shall not be necessary. Further levies may be made in like manner if the amount collected is insufficient to complete the repair or reconstruction.

f. Disbursement of Funds for Repair or Reconstruction. The amounts received from assessments pursuant to this subparagraph shall be held in trust for the payment of costs of repair and reconstruction of the building and for replacement of the common areas after casualty.

g. Partition and Distribution. In the event that 75% of the owners agree within 100 days after destruction or substantial damage to three-fourths of the project not to repair or rebuild, TCP shall file with the County Clerk of Blaine County, Idaho a notice setting forth such facts. Upon filing such notice, the following shall occur:

(i) The property shall be considered to be owned in common by the owners;

(ii) The undivided interest in the property owned in common shall be the percentage of undivided interests previously owned by that owner in the common areas as set forth on attachment 2.

(iii) Any mortgages or liens affecting any of the condominium units shall be considered to be transferred in accordance with existing priorities to the undivided interest of the owner in the property.

(iv) The property in the project shall be subject to an action for partition at the suit of any owner, in which event the net proceeds of any sale resulting from the suit to partition together with the net proceeds of the insurance on the property, if any, shall be considered as one fund and shall be divided among all the owners in the percentage equal to the percentage of undivided interest owned by each owner in the common areas as set forth on attachment 2 after

first paying out the respective share of each owner to the extent sufficient for the purposes, all sums owed to mortgagees as well as other holders of liens on the undivided interest of the property owned by that owner.

7.7 Sale of Property. Notwithstanding all other provisions of this declaration, the owners may, by an affirmative vote of at least 75% of all votes held by all owners, at a meeting of owners duly called for that purpose, elect to sell or otherwise dispose of the property. Such action shall be binding upon all owners and it shall become the duty of every owner to execute and deliver such instruments and to perform all acts in such manner and form as may be necessary to effect the sale. The proceeds of any sale shall be divided among all owners and their mortgagees in proportion to the undivided interest in the common areas owned by each owner as set forth on attachment 2.

7.8 Condemnation. If at any time or times during the continuance of the condominium ownership pursuant to this declaration, all or any part of the property shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance of condemnation, the following provisions shall apply:

- a. Proceeds. All compensation, damages or other proceeds therefrom, the sum of which is from now on called the "condemnation award" shall be payable to TCP to be held in trust for the unit owners and their first mortgage holders as their interest may appear.
- b. Complete Taking. In the event the entire property is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance of condemnation, the condominium ownership shall terminate and the condemnation award shall be divided among all owners and their mortgage owners in a percentage equal to the percentages of the undivided interest owned by each owner and the common areas in accordance with attachment 2.
- c. Partial Taking. In the event less than the entire project is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance of condemnation, the condominium ownership under this declaration shall not terminate. Each owner and his mortgagee shall be entitled to a share of the condemnation award to be determined in the following

manner: As soon as practical, TCP shall, reasonably and in good faith, allocate the condemnation award between compensation, severance damages, and other proceeds and shall apportion the amounts so allocated among and pay the same to owners and their mortgagees as follows:

- (i) The total amount allocated to taking of or injury to the common areas shall be apportioned among all owners in proportion to their respective undivided interest in the common areas as set forth in attachment 2;
 - (ii) The total amount allocated to severance damages shall be apportioned to those condominium units not taken or condemned;
 - (iii) The respective amounts allocated to the taking of or injury to a particular unit shall be apportioned to that particular unit, and
 - (iv) The total amount allocated to consequential damages and any other taking or injury shall be apportioned as TCP determines to be equitable in the circumstances. If an allocation of the condemnation award is already established in negotiation, judicial decree or otherwise, then in allocating the condemnation award, TCP shall employ that allocation to the extent it is relevant and applicable.
 - (v) Distribution of apportioned proceeds shall be made by checks payable jointly to respective owners and their respective mortgagees, as applicable.
- d. Reorganization. In the event a partial taking results in the taking of a complete unit, the owner automatically shall cease to be a member of TCP. Thereafter, TCP shall reallocate the ownership, voting rights and assessment ratio in accordance with the remaining square footages, applying the same allocation methods as set forth on attachment 2.
- e. Reconstruction and Repair. Any reconstruction and repairs necessitated by condemnation shall be governed by the procedures specified in this declaration in case of damage or destruction.

Article 8: Miscellaneous

- 8.1 Protection of Mortgagees. The holder of any security interest encumbering any unit who comes into possession of the unit pursuant to the remedies provided in the security agreement including foreclosure of a mortgage, or deed (or assignment) in lieu of foreclosure, deed of trust sale or otherwise, shall take the property free of any claims for unpaid assessments or charges against the mortgage unit which accrued subsequent to the date the lien was recorded in Blaine County, Idaho and prior to the time the mortgagee comes into possession of the unit. The sale or transfer of a unit pursuant to a foreclosure of a mortgage shall extinguish a subordinate lien for association assessments and charges which became payable prior to the sale or transfer. The liens created under the Idaho Condominium Property Act or pursuant to this declaration or the bylaws of TCP upon any unit shall be subject and subordinate to and shall not affect the rights of senior mortgages or lien upon that interest made in good faith and for value. After the foreclosure sale or transfer pursuant to the mortgage, liens for charges and assessments accruing thereafter shall apply against the then owner of the unit and shall be enforceable as provided in this declaration. Subsequent purchasers or transferees shall not be relieved from liability for, nor the units sold or transferred free of the liens arising from any assessment or charges accruing after the foreclosure, sale or transfer.
- 8.2 Amendments. This declaration may be amended by TCP in a duly constituted meeting called for such purpose, but no amendment shall take effect unless approved by owners representing 51% of the voting powers of the owners in the project. An amendment approved by 51% of the voting powers of the owners in the project shall be binding upon every owner and every condominium whether the burdens thereon are increased or decreased and whether the owner of each condominium consents to the amendment. No amendment may be made to a provision requiring a vote of a greater percentage of owners than a majority, unless at least that required percentage approves the amendment. Also, each amendment shall be recorded in the Blaine County Recorder's Office.
- 8.3 Dispute Resolution. All condominium disputes between individuals owning or possessing any interest in the condominium project that is the subject of this declaration shall be resolved by arbitration conducted under the rules of the American Arbitration Association and under the laws of Idaho.

- 8.4 Enforcement and Remedies. The obligations, provisions, covenants, restrictions and conditions contained in this declaration or in any supplemental or amended declaration, the by laws, or any decision of TCP with respect to TCP within the project shall be enforceable by any owner of a condominium unit within the project subject to this declaration, by a proceeding for a prohibitive or mandatory injunction. The obligations, provisions, covenants, restrictions and conditions contained in this declaration or in any supplemental or amended declaration with respect to a person or entity or property of a person or entity other than TCP shall be enforceable by TCP or any aggrieved unit owner by a proceeding for a prohibitive or mandatory injunction or to recover damages. All expenses of the board of directors of TCP in connection with the action or proceedings, including costs and attorneys fees and expenses and all damages, liquidated or otherwise, together with interest at the rate of 18% per annum may be charged to and assessed against the person proceeded against. In addition to the foregoing, if any unit owner shall violate any of the obligations, provisions, covenants, restrictions and conditions contained in this declaration or in any supplemental or amended declaration or in the articles of incorporation or bylaws of TCP, TCP may, after reasonable notice and opportunity for the owner to be heard, levy such reasonable fines or penalties as it may have previously established and published to all owners. All prohibitive and mandatory injunctions shall specifically be considered an appropriate order for the arbitration panel to be made and shall be subject to court enforcement. By accepting any transfer of ownership in this project, the transferee agrees the scope of the arbitrator's authority shall specifically include the awarding of mandatory or prohibitive injunctive relief in all matters subject to arbitration.
- 8.5 Agent for Service of Process. The agent for service of process shall be designated by TCP. In the absence of designation, it shall be John G. St. Clair, whose address is 683 N. Capital, Idaho Falls, Idaho. Upon any change in the person designated to receive service of process, TCP shall file with the County Auditor in Blaine County, Idaho a new designation and an acknowledgement of acceptance of the designation by the person so designated.
- 8.6 Availability. TCP shall make available to unit owners, lenders and holders and insurers of the first mortgage of any unit, current copies of the declaration, by-laws and other rules governing the condominium and shall make

available for inspection at reasonable times the books, records and financial statements of TCP. In addition, TCP shall make available to prospective purchasers current copies of the declaration, by-laws and rules governing the condominium and the most recent annual audited financial statement if such is prepared.

- 8.7 Financial Statements. TCP shall prepare and furnish owners, within a reasonable time, financial statements of TCP for the immediate preceding fiscal year. Any owner may request an audit thereof. If discrepancies greater than five percent (5%) of the income assessed to the owners are found, the TCP will pay the cost of the audit. Otherwise, the cost shall be borne by the owner requesting the audit.
- 8.8 Holder, insurer or guarantor of a first mortgage, upon written request to TCP will be entitled to timely written notice of:
- A. Any proposed amendment of the condominium declaration affecting a change in:
 - (i) the boundaries of any unit or the exclusive easement rights appertaining thereto,
 - (ii) The interests in the general limited common areas appertaining to any unit or the liability for common expenses appertaining thereto,
 - (iii) The number of votes in owner's association appertaining to any unit or;
 - (iv) The purpose to which any unit or common areas are restricted;
 - B. Any proposed termination of the condominium regime;
 - C. Any condemnation, loss or casualty loss which affects a material portion of the condominium or which affects any unit on which there is a first mortgage held, insured or guaranteed by such eligible holder;
 - D. Any delinquency in the payment of assessments or charges owed by the owner of the unit subject to the mortgage of such eligible holder, insurer or guarantor, where such delinquency has continued for a period of sixty (60) days;

E. Any lapse, cancellation or material modification of any insurance policy maintained by the owner's association.

8.9 TCP shall maintain a blanket fidelity bond for all officers, directors and employees of TCP and for all other persons handling or responsible for funds or administered by TCP. The fidelity bond shall name TCP as an obligee and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of TCP. In no event shall the aggregate amount of the bond be less than a sum equal to three months aggregate assessments on all units plus reserve funds. The premiums on all bonds required under this paragraph shall be paid by TCP as a common expense. The bond so provided shall not be cancellable or substantially modified without at least ten days prior written notice to TCP.

Article 9: Special Declarant Provisions.

The provisions of this article 9 shall be in effect only during the declarant control period. During that period they shall take precedence over any conflicting provisions in this declaration or in the by-laws.

9.1 Declarant's Easements.

- a. Declarant reserves an easement until the later of the declarant control period or completion and sale of all 5 units contemplated for this project to use portions of the common areas and any units owned by declarant for construction or renovation related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work respecting the project.
- b. Declarant reserves an easement until the later of the declarant control period or completion and sale of all 5 units contemplated for this project on, over and under those portions of the common areas not located within a building for the purpose of maintaining and correcting drainage of surface, roof or storm water. The easement created by this section 9.1 expressly includes the right to cut any trees, bushes, or shrubbery, to grade the soil or to take any other action reasonably necessary, following which the declarant shall restore the affected property as closely to its original condition as practicable.

c. The declarant reserves the right to use any units owned or leased by the declarant as models, management offices, sales offices (for this and other projects) or customer service offices. The declarant reserves the right to relocate the same from time to time within the project upon relocation, the furnishings may be removed. The declarant further reserves the right to maintain on the project such advertising signs as may comply with applicable governmental regulations, which may be placed in any location on the project and may be relocated or removed, all at the sole discretion of the declarant until the later of the declarant control period or completion and sale of all 5 units contemplated for this project. The declarant shall have the right to restrict the use of certain common element parking spaces for sales purposes and to use such spaces for sales purposes. Further, until the later of the declarant control period or completion and sale of all 5 units contemplated for this project, the declarant shall have the right to erect temporary offices on certain common areas for models, sales, management, customer service and similar purposes. The reservation of these rights shall continue until the declarant has conveyed all units in the condominium to unit owners other than the declarant.

d. The declarant shall have the right, prior to the termination of the declarant control period, to grant and reserve easements and rights-of-way through, under, over and across the project for construction purposes, and for the installation, maintenance and inspection of the lines and appurtenances for public or private water, sewer, drainage, gas, electricity, telephone and other utilities.

9.2 Declarant Control of the Association. Notwithstanding any other provisions of this declaration, The declarant may, at its option, control TCP during the declarant control period. During the declarant control period the declarant may appoint and remove the officers and members of the executive board except as otherwise provided in this section. Not later than sixty (60) days after conveyance of three (3) of the units to unit owners other than declarant, a transition election shall be held at which time two additional members shall be elected to the executive board by unit owners other than the declarant who shall not be subject to removal by the declarant. Those two shall have 40% of the voting rights on the board during the transition period. Declarant shall through his designees have 60% of the vote rights.

- 9.3 Special Declarant Rights. Special declarant rights are those rights reserved for the benefit of the declarant as provided for in the condominium act and the condominium instruments, and shall include without limitation the following rights: (a) to complete improvements indicated on the Plats and Plans filed with the Declaration; (b) to convert convertible land; (c) to add additional land; (d) to withdraw withdrawable land; (e) to convert convertible space; (f) to maintain sales offices, management offices, customer service offices, signs advertising the Condominium and models; (g) to use easements through the common areas for the purpose of making improvements within the Condominium or any convertible land or additional land; and (h) to appoint or remove any Officer of the Association or director during the Declarant Control Period.
- 9.4 Amendments to the Condominium Documents. During the declarant control period, no amendments shall be effected impairing the rights of declarant. During the declarant control period and notwithstanding any other provisions of this declaration to the contrary, if any amendment necessary in the judgment of the declarant to cure any ambiguity or to correct or supplement any provisions of the condominium documents that are defective, missing or inconsistent with any other provisions thereof, or if such amendment is necessary to conform to the requirements of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or other secondary mortgage market lenders guarantors, or insurers with respect to condominium projects, then at any time and from time to time the declarant may effect an appropriate corrective amendment without the approval of the Unit Owners or the holders of any liens on all or any part of the Property, upon receipt by the declarant of an opinion from independent legal counsel to the effect that the proposed amendment is permitted by the terms of this sentence. Each amendment of the type described in this Section 9.4 shall be effective upon the recording of an appropriate instrument setting forth the amendment and its

due adoption, which instrument has been executed and acknowledged by the declarant one or more officers of the Executive Board.

Dated: 8/13/91, 1991.

DECLARANT:

PAN PACIFIC MEDICAL DEVELOPMENT, INC.

By: [Signature]

Its President

ATTEST:

[Signature]
Secretary

State of Washington)
County of Snohomish) ss.

THIS IS TO CERTIFY than on this 13th day of AUGUST, 1991, before me, the undersigned, a notary public in and for the State of Washington, duly commissioned and sworn, personally appeared BRUCE BEARD, President of PAN PACIFIC MEDICAL DEVELOPMENT, INC., to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged to me that he signed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year in this certificate first written.



[Signature]
NOTARY PUBLIC
My Commission Expires: 7/31/92

BLAINE CO. REQUEST
Pechner & Williams
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