



**CONDOMINIUM DECLARATION  
AND  
COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATIONS  
FOR  
COHIBA CONDOMINIUMS**

**ARTICLE 1. DEFINITIONS.**

**Section 1.1 Words Defined.**

For the purposes of this Declaration and any amendments hereto, the following definitions shall apply:

Section 1.1.1 Articles shall mean the articles of incorporation of the Association defined below.

Section 1.1.2 Association shall mean the Association of unit owners described in Article 14 of this Declaration.

Section 1.1.3 Board shall mean the board of directors of the Association.

Section 1.1.4 Bylaws shall mean the bylaws of the Association.

Section 1.1.5 Common Area and Common Areas and Facilities shall mean the common areas and facilities described in Article 6 and in Article 7.

Section 1.1.6 Condominium shall mean a separate interest in a unit, together with its undivided interest in common in the common area (expressed as a percentage of the entire ownership interest in the common area, as set forth in Article 9 hereinbelow), together with all appurtenances.

Section 1.1.7 Condominium Statute shall mean the Condominium Property Act of the State of Idaho (S.L. 1965, Chapter 225), presently codified in Chapter 15, Title 55, Idaho Code, as I.C. Section 55-1501 through I.C. Section 55-1527, and amendments thereto.

Section 1.1.8 Declarant shall mean Asin - Moody, and its representatives, successors and assigns.

Section 1.1.9 Declaration shall mean this Declaration and Covenants, Conditions Restrictions and Reservations for Cohiba Condominiums, as it may from time to time be amended.

Section 1.1.10 First Mortgage and First Mortgagee shall mean, respectively, (a) a recorded mortgage on a unit that has legal priority over all other mortgages thereon, and (b) the holder, insurer or guarantor of a first mortgage.

Section 1.1.11 Institutional Holder of a mortgage shall mean a mortgagee which is a bank or savings and loan association or established mortgage company, or other entity chartered under federal or state laws, any corporation in the business of owning or servicing real estate mortgages, or insurance company, or any federal or state agency, including insurers or guarantors of such mortgages.

Section 1.1.12 Management shall mean the person designated by Declarant under Section 16.2 or by the Board under Section 17.4.

Section 1.1.13 Mortgage shall mean a recorded mortgage, deed of trust or other security instrument by which a condominium is encumbered.

Section 1.1.14 Mortgagee shall mean the beneficial owner, or the designee of the beneficial owner, of an encumbrance on a unit created by a mortgage, deed of trust or other security instrument, or the insurer or guarantor of such mortgage, deed of trust or other security instrument.

Section 1.1.15 Owner shall mean the legal owner of a unit. Where a real estate contract for the sale of a condominium has been executed, the contract purchaser, and not the contract seller, shall be deemed to be the owner for the purposes of this Declaration.

Section 1.1.16 Person shall mean an individual, corporation, partnership, association, trustee, or other legal entity.

Section 1.1.17 Project shall mean the property covered by this Declaration.

Section 1.1.18 Property shall mean the land and the buildings and all improvements and structures now or hereafter placed on the land described in Article 3 hereinbelow.

Section 1.1.19 Survey Map and Plans shall mean the survey map or plat and the plans recorded with respect to the property and any amendments, corrections and addenda thereto subsequently recorded.

Section 1.1.20 Transition Date is defined in Article 16, Section 16.1 hereinbelow.

Section 1.1.21 Unit shall mean a unit composed of a suite of rooms and other enclosed spaces in a building. The boundaries of a unit are the unfinished interior surfaces of its perimeter walls, floors, ceilings, windows and doors, and the unit includes both the portions of the building so described and the air space so encompassed.

**Section 1.2 Form of Words.**

The singular form of words shall include the plural and the plural shall include the singular. Masculine, feminine and neuter pronouns shall be used interchangeably.

**Section 1.3 Statutory Definitions.**

Some of the terms defined above are also defined in the Condominium Statute. The definitions in this Declaration are not intended to limit or contradict the definitions in the Condominium Statute, insofar as it might apply in a particular situation. If there is any inconsistency or conflict in a situation where the Condominium Statute is intended to apply and govern, the statutory definitions will prevail over those set forth herein to the extent necessary to give full force and effect to the Statute.

**ARTICLE 2. SUBMISSION OF THE PROPERTY TO THE CONDOMINIUM STATUTE.**

Declarant, being the record owner of the property, makes this Declaration for the purpose of submitting the property to the condominium form of use and ownership and to the provisions of the Condominium Statute. Declarant declares that the property shall be held, used, conveyed, encumbered, leased, occupied, rented and improved subject to the covenants, conditions, restrictions, reservations and easements stated in this Declaration, all of which are in furtherance of the division of the property into condominium units and common areas and facilities, and shall be deemed to run with the land and be a burden and benefit to Declarant and all persons who own or acquire an interest in the property or any part thereof, and their grantees, successors, heirs, executors, administrators and assigns.

**ARTICLE 3. DESCRIPTION OF LAND.**

The land on which the buildings and improvements provided for in this Declaration are or will be located consists of that certain real property described as Lot 2 Block 1 of the Merrill Subdivision #1 according to the official plat thereof recorded in Book 78 of Plats, pages 8286 and 8287 recorded as Instrument No. 199073839 records of Ada County, Idaho. See Exhibit "A"

**ARTICLE 4. DESCRIPTION OF BUILDINGS.**

There will be one building and seven units in the project. The building is further described and its location shown in the survey map and plans.

**ARTICLE 5. UNIT NUMBERS, LOCATION AND DESCRIPTION.**

Each unit is identified by an assigned letter from A through G. The location and configuration of each unit are shown on the survey map and plans. See Exhibits "B1" & "B2"

**ARTICLE 6. COMMON AREAS AND FACILITIES.**

**Section 6.1 Description.**

The common areas and facilities consist of those specified in the Condominium Statute, as well as the following:

- (a) The land described in Article 3 hereinabove;
- (b) The roofs, foundations, studding, joists, beams, supports, main walls (excluding nonbearing interior partitions of units, if any), and all other structural parts of the buildings, to the unfinished interior surfaces of the units' perimeter walls, floors, ceilings, windows, and doors;
- (c) The pipes, wires, conduits and other fixtures and equipment for utilities.
- (d) The grounds, trees, landscaped areas, exterior fixtures, walkways, driveways, trash enclosure and irrigation water system;
- (e) Parking spaces and parking areas;
- (f) Any attics and crawl spaces in the buildings; and
- (g) Certain items which might ordinarily be considered common areas such as, but not limited to, air conditioning units, screen doors, window screens, awnings, planter boxes and the like may, pursuant to specification in the Bylaws or administrative rules and regulations, be designated as items to be furnished and maintained by unit owners at their individual expense, in good order, according to standards and requirements set forth in the bylaws or rules adopted by the Board.

**Section 6.2 Use.**

Each unit owner shall have the right to use the common areas and facilities in common with all other unit owners. The right to use the common areas and facilities shall extend not only to each unit owner, but also to his agents, servants, tenants, family members, invitees and licensees. The right to use the common areas and facilities, including the limited common areas and facilities, shall be governed by the provisions of the Condominium Statute, this Declaration, the Bylaws and the rules and regulations of the Association. The owners shall not by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the common areas and facilities, and no other person shall have the right to have them partitioned or divided. The granting of easements for utilities or for other purposes consistent with the intended use of the common areas and facilities by the unit owners and occupants shall not be deemed a partition or division.

**ARTICLE 7. LIMITED COMMON AREAS AND FACILITIES.**

None.

**ARTICLE 8. ACCESS.**

Each unit has direct access to the common area adjacent to the unit entrance and thence across the common areas to the public streets and sidewalks. There shall be no restriction upon the right of ingress to and egress from each unit, which right shall be perpetual and appurtenant to the respective units.

**ARTICLE 9. PERCENTAGE OF OWNERSHIP INTEREST IN COMMON AREAS AND FACILITIES.**

For the purpose of meeting certain requirements of the Condominium Statute, the percentage of ownership interest in the common areas and facilities appertaining to each unit and its owner for all purposes, including voting, tax assessment and liability, is set forth in Exhibit "C" attached hereto. Such percentage has been fixed by taking as a basis the value of each unit in relation to the value of the property as a whole.

**ARTICLE 10. PARKING.**

**Section 10.1 General.** No parking shall be permitted on the common driveway providing access to the units; provided, however, that, subject to the limitations set forth in this paragraph, an owner and its guests and invitees may park passenger motor vehicles on the paved area adjacent to the rear doors to that owner's unit, and further provided that such parking areas may be used only for the parking of operable motor vehicles. Use of such parking spaces for parking trucks, trailers or commercial vehicles, or for other purposes shall be permitted only to the extent expressly allowed by rules and regulations adopted by the Association. Improperly parked vehicles may be removed by the Association at the risk and expense of the owner thereof.

## **ARTICLE 11. PERMITTED USES; MAINTENANCE OF UNITS; CONVEYANCES.**

**Section 11.1 Residential Use.** The buildings and units are intended for and restricted to commercial and office use only, on an ownership, rental or lease basis and for other reasonable activities normally incident to such use, and for the purposes of operating the Association and managing the project, if required. In addition to the foregoing, Declarant may use units it owns as sales offices and models for sales of units. Except for the condominiums contemplated hereby, the construction of separate principal buildings shall be prohibited.

### **Section 11.2 Leases.**

Any lease or rental agreement must be in writing and must provide that its terms shall be subject in all respects to the provisions of this Declaration and the Bylaws and rules and regulations of the Association and that any failure by the tenant to comply with the terms of such documents, rules and regulations shall be a default under the lease or rental agreement and that the unit owner grants to the Board and/or managing agent the authority to evict the tenant on the unit owner's behalf for such default upon only such notice as is required by law; if any lease does not contain the foregoing provisions, such provisions shall nevertheless be deemed to be a part of the lease and binding upon the unit owner and the tenant by reason of their being stated in this Declaration. Neither the Board nor the managing agent shall be liable to the unit owner or the tenant for any eviction under this section that is made in good faith. Other than as stated in this Section 11.2, there is no restriction on the right of any unit owner to lease or otherwise rent his unit; and no owner shall be required to participate in a rental pool or otherwise make his unit available for lease or rental.

**Section 11.3 Maintenance of Units.** Each unit owner shall, at the owner's sole expense, keep the interior of said owner's unit and its equipment, appliances and appurtenances in a clean and sanitary condition, free of rodents and pests, and in good order, condition and repair, and shall do all interior redecorating and interior painting at any time necessary to maintain the good appearance and condition of his unit. Each owner shall be responsible for the maintenance, repair or replacement of any plumbing fixtures, water heaters, fans, HVAC equipment, electrical fixtures or appliances which are in the unit or portions thereof that serve that unit only, and shall replace any glass in the windows and in the exterior doors of the unit that becomes cracked or broken.

### **Section 11.4 Exterior Appearance.**

In order to preserve a uniform exterior appearance of the buildings, the Board shall provide for the painting or staining of the buildings and prescribe the type and color of paint or stain. No owner may modify or decorate the exterior of the buildings or screens, doors, awnings or other portions of any unit visible from outside the unit without the prior written consent of the Board, or in accordance with rules or regulations of the Board. No

exterior radio or television antennae or satellite dishes may be installed without the prior written consent of the Board.

**Section 11.5 Maintenance by Association.**

Except where the owners are responsible for maintenance and repair under Section 11.3, the Association shall be responsible for the maintenance and repair of the following: the exterior surfaces (except exterior glass) of the buildings and improvements located on the project, including without limitation the painting or staining of the same as often as necessary, the replacement of trim and caulking and the maintenance and repair of roofs; other common area improvements and facilities; utility lines through the common area to the point where utility companies assume maintenance responsibility; water system, lines and facilities serving the project (unless accepted for maintenance by a governmental entity or water district); sewer lines, manholes, and other sewer facilities (unless accepted for maintenance by a governmental entity or sewer district); drainage sumps and other drainage facilities, a map of which shall be provided to the Association by Declarant; lights in the common area and electricity lines serving the same; parking areas and road accesses; and all other improvements or materials located within or used in connection with the common area. The Association shall maintain in a proper first class manner all landscaping and natural vegetation constituting part of the common area, including assuring the preservation of good visual continuity between landscaped areas and natural vegetation. The specification of duties of the Association with respect to the foregoing items shall not be construed to limit its duties with respect to maintenance and control of the common area. The cost of such management, maintenance and repair by the Association shall be borne as provided in Article 18.

**Section 11.6 Effect on Insurance.**

Nothing shall be done or kept in any unit or in any common area that will increase the rate of insurance on the property without the prior written consent of the Board. Nothing shall be done or kept in any unit or in any common area that will result in the cancellation of insurance on any part of the property, or that would be in violation of any laws.

**Section 11.7 Alteration of Common Area.**

Nothing shall be altered or constructed in or removed from any common area or facility except upon the prior written consent of the Board.

**Section 11.8 Signs.**

No sign of any kind shall be displayed to the public view on or from any unit or common area or limited common area without the prior consent of the Board; provided, that the Board shall designate an area or areas for display of "For Sale" signs. This section shall not apply to Declarant.

**Section 11.9 Offensive Activity.**

No noxious or offensive activity shall be carried on in any unit or common area, nor shall anything be done therein that may be or become an annoyance or nuisance to other owners.

**Section 11.10 Conveyances; Notice Required.**

The right of a unit owner to sell, transfer or otherwise convey a unit shall not be subject to any right of approval, disapproval, first refusal or similar restriction by the Association or the Board, or anyone acting on their behalf. An owner intending to sell a unit shall deliver a written notice to the Board at least two (2) weeks before closing, specifying: the unit being sold; the name and address of the purchaser, of the closing agent and of the title insurance company insuring the purchaser's interest; and the estimated closing date. The Board shall have the right to notify the purchaser, the title insurance company and the closing agent of the amount of unpaid assessments and charges outstanding against the unit, whether or not such information is requested.

**ARTICLE 12. ENTRY FOR REPAIRS.**

The Association and its agents or employees may enter any unit and limited common areas appurtenant thereto to effect repairs, improvements, replacements or maintenance deemed by the Board to be necessary in the performance of its duties, to do necessary work that a unit owner has failed to perform, or to prevent damage to the common areas and facilities or to another unit. Except in cases of great emergency that preclude advance notice, the Board shall cause the unit occupant to be given notice and an explanation of the need for entry as far in advance of entry as is reasonably practicable. Such entry shall be made with as little inconvenience to the owners and occupants as practicable. Any damage caused by such entry shall be repaired by the Association as a common expense unless the repairs or maintenance were necessitated by the acts or default of the owner or occupant of the unit entered in which event the costs of the repairs or maintenance shall be specially assessed to that unit.

**ARTICLE 13. SERVICE OF PROCESS.**

Gary Asin, whose address is 500 West Idaho, Suite 240, Boise, Idaho, as the registered agent of the Association, is hereby designated to receive service of process for the purposes provided in the Condominium Statute. The Board may at any time designate a different agent for such purpose by filing an amendment to this Declaration limited to the sole purpose of making such change, and notwithstanding the general amendment provisions contained herein, such amendment need be signed and acknowledged only by the president of the Association.



## **ARTICLE 14. ASSOCIATION OF UNIT OWNERS.**

### **Section 14.1 Form of Association.**

The Cohiba Condominium Association, Inc., a nonprofit corporation formed under the laws of the State of Idaho, is hereby designated the "Management Body" within the meaning of the Condominium Statute. The rights and duties of the members (owners) and of the corporation shall be governed by the provisions of the Condominium Statute and of this Declaration.

### **Section 14.2 Articles and Bylaws.**

A copy of the Association's Articles of Incorporation and a copy of its Bylaws are attached hereto as Schedules B and C, respectively. Declarant may amend the Association's Bylaws from time to time until the Transition Date. After the Transition Date, the Articles or Bylaws may be amended by the affirmative vote of two-thirds (2/3) of the voting power at any duly called regular or special meeting of the Association. However, no material amendment of the Articles or Bylaws may be made without the prior written approval of at least seventy-five percent (75%) of all first mortgagees (based upon one vote for each first mortgage held).

### **Section 14.3 Qualification for Membership.**

Each fee owner of a unit (including Declarant) shall be a member of the Association and shall be entitled to one membership for each unit owned; provided, however, that if a unit has been sold on contract, the contract purchaser shall exercise the rights of the unit owner for purposes of the Association, this Declaration and the Bylaws, except as hereinafter limited, and shall be the voting representative unless otherwise specified. Ownership of a unit shall be the sole qualification for membership in the Association.

### **Section 14.4 Transfer of Membership.**

The Association membership of each owner (including Declarant) shall be appurtenant to the unit giving rise to such membership, and shall not be transferred in any way except upon the transfer of title to the unit and then only to the transferee of title to the unit. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a unit shall operate automatically to transfer the membership in the Association to the new owner.

### **Section 14.5 Number of Votes.**

The total voting power of all owners shall be one hundred (100) votes and the total number of votes available to the owner of any one unit shall be equal to the percentage of undivided interest in the common areas and facilities appertaining to the unit (whether or not construction of the unit has been completed). A person (including Declarant) who owns more than one unit shall have the votes appertaining to each unit owned.

**Section 14.6 Voting Representative.**

A unit owner may, by written notice to the Board, designate a voting representative for that unit. The voting representative need not be an owner. The designation may be revoked at any time by written notice to the Board from a person having an ownership interest in a unit, or by actual notice to the Board of the death or judicially declared incompetence of any person with an ownership interest in the unit, except in cases in which the person designated is a mortgagee of the unit. This power of designation and revocation may be exercised by the guardian of an owner, the attorney-in-fact for the owner under a durable power of attorney, and the administrators, executors or personal representatives of an owner's estate. If no designation has been made, or if a designation has been revoked and no new designation has been made, the voting representative of each unit shall be the group composed of all of its owners. If a unit is owned by husband and wife and only one of them is at a meeting, the one who is present will represent the marital community.

**Section 14.7 Joint Owner Disputes.**

The vote for a unit must be cast as a single vote; and in no event shall the percentage of votes assigned to a particular unit be further fractionalized or split. If joint owners are unable to agree how their vote shall be cast, they shall lose their right to vote on the matter in question.

**Section 14.8 Pledged Votes.**

If an owner is in default under a first mortgage on a unit for ninety (90) consecutive days or more, the mortgagee shall automatically be authorized to declare at any time thereafter that said owner has pledged his or her vote on all issues to the mortgagee during the continuance of the default. If the Board has been notified of any such pledge to a mortgagee, only the vote of the mortgagee will be recognized on the issues that are subject to the pledge.

**Section 14.9 Annual and Special Meetings.**

There shall be an annual meeting of the members of the Association in the first quarter of the fiscal year at such reasonable place and time as may be designated by written notice from the Board delivered to the owners no less than thirty (30) days before the meeting. The audited financial statement for the preceding year and the budget adopted by the Board for the current year shall be presented at the annual meeting for the information of the members. Special meetings of the members of the Association may be called at any time, in the manner provided in the Bylaws, for the purpose of considering matters which require the approval of all or some of the owners, or for any other reasonable purpose. Any first mortgagee may attend or designate a representative to attend the meetings of the Association.

**Section 14.10**     **Financial Statements and Audits.**

As soon as is convenient after the close of each fiscal year, the Board shall have a financial statement prepared for that year by a certified or licensed public accountant who is not a member of the Board or an owner. Said statement shall be completed in time for the Association's annual meeting and in any event within ninety (90) days following the end of the fiscal year. Any mortgagee shall, upon request, be entitled to receive the annual financial statement within ninety (90) days following the end of the fiscal year. The Board, or persons having thirty-five percent (35%) of the voting power of the Association, may require that an audit of the Association and management books be presented at any special meeting. Any owner, at his or her expense, may at any reasonable time conduct an audit of the books of the Board and Association. The holders of fifty-one percent (51%) or more of first mortgages shall be entitled to have such an audited statement prepared at their own expense if one is not otherwise available. Any financial statement requested pursuant to this Section shall be furnished within a reasonable time following such request.

**Section 14.11**     **Books and Records.**

The Board shall cause to be kept complete, detailed and accurate books and records of the receipts and expenditures of the Association, in a form that complies with generally accepted accounting principles.

**Section 14.12**     **Inspection of Project Documents, Books and Records.**

During normal business hours and at other reasonable times, current copies of this Declaration, the Articles, the Bylaws and other rules governing the operation of the project shall be available for inspection by the owners, mortgagees (including holders, insurers or guarantors of any first mortgage), prospective purchasers and their prospective mortgagees, and the agents or attorneys of any of them; and, in addition, at such times the books and records, authorizations for payment of expenditures, and all contracts, documents, papers, and other records of the Association shall be available for inspection by the owners, mortgagees and the agents or attorneys of either of them.

**Section 14.13**     **Appointment of Association as Attorney-in-Fact.**

Each owner, by acceptance of title subject to this Declaration, hereby appoints the Association as said owner's attorney-in-fact for the purpose of handling any losses or proceeds from condemnation, destruction or liquidation of all or a part of the project, or from the termination of the project, and for the purpose of representing the unit owners in any proceedings, negotiations, settlements or agreements relating thereto.

## **ARTICLE 15. NOTICES.**

### **Section 15.1 Form and Delivery of Notice.**

All notices given under the provisions of this Declaration or the Bylaws or rules or regulations of the Association shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, the notice shall be deemed to have been delivered on the day it has been deposited in the United States mail, first class, postage prepaid, addressed to the person entitled to such notice at the most recent address known to the Board. Notice to the owner of any unit shall be sufficient if mailed to the unit unless another mailing address has been given to the Board. Mailing addresses may be changed by notice in writing to the Board. Notices to the Board shall be given to Declarant until the Transition Date and thereafter shall be given to the president or secretary of the Association.

### **Section 15.2 Notices to Mortgagees.**

Any mortgagee may file with the Association a written request that it be given copies of notices, which request shall specify the name and address of such mortgagee and the unit number or address of the unit encumbered by its mortgage. Until such time thereafter as such mortgagee withdraws the request or satisfies its mortgage of record, the Association shall send to the requesting mortgagee timely written notice of:

- (a) Any condemnation loss or any casualty loss which affects either a material portion of the project or any unit on which there is a mortgage held, insured or guaranteed by such requesting mortgagee;
- (b) Any delinquency in the payment of assessments or charges owed by an owner of a unit subject to a mortgage held, insured or guaranteed by such requesting mortgagee (or any other default in the performance of said owner's obligations under any of the documents that create or govern the project, or its rules or regulations), which delinquency or default remains uncured for a period of sixty (60) days;
- (c) Any lapse, cancellation or material alteration of any insurance policy or fidelity bond maintained by the Association;
- (d) Any proposed action which requires the consent of a specified percentage of mortgagees or the consent of the mortgagee of a particular unit, as specified in this Declaration;
- (e) If expressly requested by such mortgagee, all notices of meetings of the Association; and
- (f) If expressly requested by such mortgagee, all other notices sent to the owner of the unit covered by the requesting mortgagee's mortgage.

The provisions of this Section 15.2 shall prevail over any inconsistent or contrary provisions in this Declaration or in the Articles or Bylaws.

**ARTICLE 16. ADMINISTRATION OF PROPERTY; RIGHTS RETAINED BY DECLARANT.**

**Section 16.1 Transition Date.**

The "Transition Date" shall be the date upon which the authority and responsibility to administer and manage the Association and the project, subject to this Declaration and the Bylaws, passes to the Association. The Transition Date will be either (1) the date designated by Declarant in a written notice to the owners, which date may, at Declarant's election, be any date after this Declaration has been recorded; or (2) the one hundred twentieth (120th) day after Declarant has transferred title to purchasers of 5 units within the project; or (3) the fifth anniversary of the recording of this Declaration; whichever of the foregoing occurs first.

**Section 16.2 Declarant's Powers Until Transition Date.**

Until the Transition Date, Declarant shall have the full power and authority to exercise all of the rights, duties and functions of the Board of Directors and the officers of the Association, including but not limited to the adoption of rules and regulations, contracting for the purchase of goods and services, buying insurance, and collecting and expending all assessments and other Association funds. Declarant shall have the power to contract with an experienced professional managing agent and delegate to the managing agent all of the powers and duties of the Board that the Board is authorized to delegate under Section 17.4. All such management contracts made by Declarant shall be subject to the same requirements as are set forth in Section 17.4 for management contracts made by the Board. Any contract or lease made by Declarant or its managing agent (including management contracts) that would otherwise extend beyond the Transition Date shall be terminable by the Board without penalty after the Transition Date upon ninety (90) days' notice to the other party thereto.

**ARTICLE 17. AUTHORITY OF THE BOARD.**

**Section 17.1 Adoption of Rules and Regulations.**

The Board is empowered, on behalf of the Association, to adopt, amend and revoke detailed administrative rules and regulations necessary or convenient from time to time to insure compliance with the general guidelines of this Declaration and to promote the comfortable use and enjoyment of the property. The rules and regulations of the Association shall be binding upon all owners and occupants and all other persons claiming any interest in any condominium.

**Section 17.2 Enforcement of Declaration; Attorney's Fees.**

The failure of any unit owner to comply with the provisions of the Declaration, Articles of Incorporation or Bylaws, shall give rise to a cause of action in favor of the Association and any aggrieved unit owner for the recovery of damages, or for injunctive relief, or both.

The Board (or Declarant or Declarant's managing agent) shall have the power to enforce the provisions of this Declaration, the Articles, the Bylaws, and the rules and regulations of the Association, as the same may be lawfully amended from time to time, for the benefit of the Association. If legal action is brought to interpret or enforce compliance with the provisions of this Declaration, the Articles, the Bylaws or the rules and regulations of the Association, the prevailing party shall be entitled to judgment against the other party for its reasonable expenses, court costs and attorney's fees in the amount awarded by the court.

**Section 17.3 Goods and Services.**

The Board shall acquire and pay for, as common expenses of the Association, all goods and services reasonably necessary or convenient for the efficient and orderly functioning of the project. The goods and services shall include (by way of illustration and not limitation) utility services for the common areas and facilities; policies of insurance and fidelity bonds, legal and accounting services; maintenance, repair, landscaping, gardening, and general upkeep of the common and limited common areas and facilities (except where the owners have such responsibility under the provisions hereof); and all supplies, materials, fixtures, and equipment that are in the Board's judgment necessary or desirable for the operation of the project and enjoyment of it by the owners. The Board may hire such full-time or part-time employees as it considers necessary.

**Section 17.4 Managing Agent.**

The Board may contract with an experienced professional managing agent to assist the Board in the management and operation of the project and may delegate such of its powers and duties to the managing agent as it deems to be appropriate, except as limited herein. The managing agent shall not enter any unit (directly or through agents) without the consent of the occupant unless entry has been directed by the Board. Only the Board can approve an annual budget or a supplemental budget, and only the Board can impose a special assessment on a unit or authorize foreclosure of an assessment lien. Any contract with a managing agent shall have a term no longer than three (3) years and during such term shall be terminable by the Board without payment of a termination fee, either (1) for cause, on thirty (30) days' written notice, or (2) without cause, on not more than ninety (90) days' written notice.

**Section 17.5 Protection of Property.**

The Board may spend such funds and take such action as it may from time to time deem necessary to preserve the property, settle claims, or otherwise act in what it considers to be the best interests of the project or the Association.

## **ARTICLE 18. BUDGET AND ASSESSMENT FOR COMMON EXPENSES.**

### **Section 18.1 Fiscal Year.**

The Board may adopt such fiscal year for the Association as it deems to be convenient. Unless another year is adopted, the fiscal year will be the calendar year.

### **Section 18.2 Preparation of Budget.**

Not less than thirty (30) days before the end of the fiscal year, the Board shall prepare a budget for the Association for the coming year. In preparing its budget, the Board shall estimate the common expenses of the Association to be paid during the year, make suitable provision for accumulation of reserves, and shall take into account any surplus or deficit carried over from the preceding year and any expected income to the Association. Declarant may prepare a budget for the remainder of the fiscal year in which this Declaration is recorded and for subsequent years until the Transition Date. If, during the year the budget proves to be inadequate for any reason, including nonpayment of any owner's assessment, the Board may prepare a supplemental budget for the remainder of the year.

### **Section 18.3 Monthly Assessments for Common Expenses.**

The sums required by the Association for common expenses as reflected by the annual budget and any supplemental budgets shall be divided into equal installments to be paid each month over the period of time covered by the budget or supplemental budget. The monthly installments shall be assessed in the units (including units owned by Declarant) and their respective owners in proportion to the units' percentages of undivided interest in the common areas and facilities. Assessments begin accruing with respect to each unit upon the closing of the initial sale of that unit by Declarant or upon its initial occupancy, whichever occurs first; and, in any event, with respect to all completed units (including unsold units owned by Declarant), sixty (60) days after the conveyance by Declarant of the first unit in the project (or phase, if expandable). During such time as garbage collection charges and any other utility or service charges are based on the number of occupied units, any units owned by Declarant and not occupied shall be exempt from assessment for such charges.

### **Section 18.4 Special Assessments.**

If a special assessment becomes chargeable against a unit under the authority of this Declaration or the Bylaws, the Board shall determine the amount of such special assessment and fix the month or months in which it is to be paid. The special assessment shall be added to the unit's monthly installment of common expenses and be included in the assessment against such unit.

**Section 18.5 Notice of Assessment.**

The Board shall notify each unit owner in writing of the amount of the monthly assessments to be paid for his unit and shall furnish copies of each budget on which the assessments are based to all unit owners and, if so requested, to their respective mortgagees.

**Section 18.6 Payment of Monthly Assessments.**

On or before the first day of each calendar month, each unit owner shall pay or cause to be paid to the treasurer of the Association the assessment against his unit for that month. Any assessment not paid by the first day of the calendar month for which it is due shall be delinquent and subject to late charges, interest charges and collection procedures as provided in Article 19 hereinbelow.

**Section 18.7 Proceeds Belong to Association.**

All assessments and other receipts received by the Association pursuant to the provisions hereof shall belong to the Association.

**Section 18.8 Limitation on Assessments.**

During such time as Declarant continues to be the original owner of a unit and is offering it for sale, no budget shall be adopted or special assessment imposed that will cause the total assessments against any unit in any month to be more than ten percent (10%) greater than the total assessments against the unit for the same month of the preceding calendar year. This limitation may be waived in writing, by Declarant only, for any one or more assessments. No person other than Declarant shall have the power either to assert or waive the limitation stated in this Section.

**Section 18.9 Failure to Assess.**

Any failure by the Board or the Association to make the budget and assessments hereunder before the expiration of any year for the ensuing year shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of the owners from the obligation to pay assessments during that or any subsequent year, and the monthly assessment amount established for the preceding year shall continue until a new assessment is established.

**Section 18.10 Certificate of Unpaid Assessments.**

Upon the request of any owner or mortgagee of a particular unit, the Board will furnish a certificate in recordable form stating the amount, if any, of unpaid assessments charged to that unit. The certificate shall be conclusive upon the Board and the Association as to the amount of such indebtedness on the date of the certificate in favor of all purchasers and mortgagees of such unit who rely on the certificate in good faith.



The Board may establish a reasonable fee to be charged to reimburse it for the cost of preparing the certificate.

**Section 18.11 Reserves and Initial Capital Payment.**

The Board shall build up and maintain reasonable reserves for working capital, operations, contingencies, and periodic maintenance repair and replacement of improvements which the Association is obligated to maintain. Upon the initial sale of units by Declarant, the Association shall collect from each initial purchaser an "initial capital payment" in the amount of \$500.00. The Declarant may collect such initial capital payments at the closing of each sale, in which event the funds so collected shall be delivered to the Treasurer of the Association to provide it with necessary working capital. Such funds may be used for certain prepaid items, organizational equipment and supply costs, and for such other purposes as the Board may determine. Such initial capital payments shall be in addition to and not a prepayment of the regular monthly assessments due and payable under Section 18.3 above. The initial capital payment for each completed unit (including unsold units owned by Declarant) shall be paid to the Association within sixty (60) days after the date of the conveyance of the first unit in the project (or the first unit in that particular phase, if an expandable project); in the event Declarant pays such initial capital payments for any unit or units, Declarant shall be entitled to reimbursement therefor at the time of closing of the sale thereof.

**ARTICLE 19. LIEN AND COLLECTION OF ASSESSMENTS.**

**Section 19.1 Assessments are a Lien; Priority.**

All unpaid sums assessed by the Association for the share of the common expenses chargeable to any unit and any sums specially assessed to any unit under the authority of this Declaration or the Bylaws (together with interest, late charges, costs and attorney's fees in the event of delinquency) shall constitute a continuing lien on such unit and all its appurtenances from the date the assessment became due until fully paid. The lien for such unpaid assessments shall be subordinate to tax liens on the unit in favor of any assessing agency and/or special district, and to all sums unpaid on all mortgages of record, but shall have priority over all other liens against the unit. A mortgagee of a mortgage of record that obtains possession through a mortgage foreclosure or deed of trust sale, or by taking a deed in lieu of foreclosure or sale, or a purchaser at a foreclosure sale, shall take the unit free of any claims for the share of common expenses or assessments by the Association chargeable to the unit that became due before such possession, but will be liable for the common expenses and assessments that accrue after the taking of possession; in such event, the unit's past due share of common expenses or assessments shall become new common expenses chargeable to all of the owners, including the mortgagee or foreclosure sale purchaser and their successors and assigns, in proportion to their respective percentages of undivided interest in the common areas and facilities; provided, however, that the owner and any contract purchaser shall continue to be personally liable for such past due assessments, as provided in Section 19.3. For the purpose of this Section, the terms "mortgages" and "mortgagee" shall not

mean real estate contracts or a vendor or a designee or assignee of a vendor under a real estate contract.

**Section 19.2 Lien May Be Foreclosed.**

The lien for delinquent assessments may be foreclosed by suit by the managing agent or the Board, acting on behalf of the Association, in like manner as the foreclosure of a mortgage of real property. The managing agent or the Board, acting on behalf of the Association, shall have the power to bid in the amount owing at the foreclosure sale, and to acquire the unit in question and hold, lease, mortgage and convey the same.

**Section 19.3 Assessments are Personal Obligations.**

In addition to constituting a lien on the unit and all its appurtenances, all sums assessed by the Association chargeable to any unit (together with interest, late charges, costs and attorney's fees in the event of delinquency) shall be the joint and several personal obligations of the owner and any contract purchaser of the unit when the assessment is made. Suit to recover personal judgment for any delinquent assessments shall be maintainable without foreclosing or waiving the liens securing them.

**Section 19.4 Late Charges and Interest on Delinquent Assessments.**

The Board may from time to time establish late charges and a rate of interest to be charged on assessments that may thereafter become delinquent. In the absence of another established non-usurious rate, delinquent assessments shall bear interest at the rate of twelve percent (12%) per annum. If a monthly assessment against a unit is not paid when due, the Board may elect to declare all monthly assessments against that unit for the remainder of the fiscal year to be immediately due and payable.

**Section 19.5 Recovery of Attorney's Fees and Costs.**

In any action to collect delinquent assessments, the prevailing party shall be entitled to recover as a part of its judgment a reasonable sum for attorney's fees and expenses reasonably incurred in connection with the action, in addition to taxable costs permitted by law.

**Section 19.6 Termination of Utility Service.**

If an assessment becomes delinquent, the Board may give notice to the delinquent owner to the effect that unless the delinquent assessment is paid within ten (10) days (or such longer time as is specified in the notice), any or all utility services furnished to the unit in question by the Association or under the Association's control will be severed and shall remain severed until the delinquent assessment has been paid. If the delinquency is not cured in the time specified, the Board may take the action described in the notice.

**Section 19.7 Remedies Cumulative.**

The remedies provided herein are cumulative, and the Board may pursue them and any other remedies which may be available under law although not expressed herein, either concurrently or in any order.

**Section 19.8 Security Deposit.**

A unit owner who has been delinquent in paying his monthly assessments for three of the five preceding months may be required by the Board, from time to time, to make and maintain a security deposit not in excess of three months' estimated monthly assessments, which shall be collected and shall be subject to penalties for nonpayment as are other assessments. The deposit shall be held in a separate fund, credited to such owner, and may be resorted to at any time when such owner is ten (10) days or more delinquent in paying his assessments.

**ARTICLE 20. FAILURE TO INSIST ON STRICT PERFORMANCE; NO WAIVER.**

The failure of any interested party in any instance to insist upon the strict compliance with this Declaration or the Bylaws or rules and regulations of the Association, or to exercise any right contained in such documents, or to serve any notice or to institute any action, shall not be construed as a waiver or a relinquishment for the future of any term, covenant, condition or restriction. The receipt by the Board of payment of an assessment from an owner, with knowledge of a breach by the owner, shall not be a waiver of the breach. No waiver of any requirement shall be effective unless expressed in writing and signed for the party waiving such requirement.

**ARTICLE 21. LIMITATION OF LIABILITY.**

**Section 21.1 Liability for Utility Failure, etc.**

Except to the extent covered by insurance obtained by the Board, neither the Association nor the Board (nor the Declarant or Declarant's managing agent) shall be liable for: the failure of any utility or other service to be obtained and paid for by the Board; or for injury or damage to person or property caused by the elements, or resulting from electricity, water, rain, dust or sand which may lead or flow from outside or from any parts of the buildings, or from any of their pipes, drains, conduits, appliances or equipment, or from any other place; or for inconvenience or discomfort resulting from any action taken to comply with any law, ordinance, or orders of a governmental authority. No diminution or abatement of common expense assessments shall be claimed or allowed for any such utility or service failure, or for such injury or damage, or for such inconvenience or discomfort.

**Section 21.2 No Personal Liability.**

So long as a Board member, or Association committee member, or Association officer, or Declarant or the managing agent has acted in good faith, without willful or intentional misconduct, upon the basis of such information as is then possessed by such person, no such person shall be personally liable to any owner, or to any other person, including the Association, for any damage, loss, or prejudice suffered or claimed on account of any act, omission, error or negligence of such person; provided, however, that this Section shall not apply where the consequences of such act, omission, error or negligence is covered by insurance obtained by the Board.

**ARTICLE 22. INDEMNIFICATION.**

Each Board member and the Association committee member and Association officer, and Declarant and the managing agent shall be indemnified by the Association against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed in connection with any proceeding to which he or she may be a party, or in which he may become involved, by reason of holding or having held such position, or any settlement thereof, whether or not he or she holds such position at the time such expenses or liabilities are incurred, except to the extent such expenses and liabilities are covered by any type of insurance and except in such cases wherein such person is adjudged guilty of willful misfeasance in the performance of his or her duties; provided, however, that in the event of a settlement, the indemnification shall apply only when the Board approves such settlement and reimbursement as being for the best interests of the Association.

**ARTICLE 23. INSURANCE.**

**Section 23.1 General Requirements.**

The Board shall cause the Association to purchase and maintain at all times as a common expense a policy or policies and bonds necessary to provide casualty insurance; comprehensive liability insurance and worker's compensation insurance, as necessary, to the extent required by applicable laws; insurance against loss of personal property of the Association by fire, theft or other causes with such deductible provisions as the Board deems advisable; insurance, if available, for the protection of the Association's directors, officers and representatives from personal liability in the management of the Association's affairs; and such other insurance as the Board deems advisable. The Board shall review at least annually the adequacy of the Association's insurance coverage. All insurance shall be obtained from (or covered by reinsurance of) an insurance carrier which is licensed to do business in the State of Idaho.

**Section 23.2 Property Insurance: Master or Blanket Policy.**

The Association shall obtain, maintain, and pay the premiums, as a common expense, upon a "master" or "blanket" type policy of property insurance covering all of the general common elements and limited common elements (except land, foundation, excavation and other items normally excluded from coverage), including fixtures and building service equipment to the extent that they are part of the common elements of the project, as well as common personal property belonging to the Association.

**Section 23.3 Perils Covered.**

The insurance policy referred to in Section 23.2 shall afford, as a minimum, protection against the following:

- (a) loss or damage by fire and all other hazards that are normally covered by the standard extended coverage endorsement; and
- (b) all other perils customarily covered for similar types of projects, including those covered by the standard "all perils" endorsement.

**Section 23.4 Amount of Insurance: Deductible.**

The policy referred to in Section 23.2 shall cover 100% of the current replacement cost of the project facilities, not including the individual units in the project. However, coverage does not need to include land, foundations, excavations or other items that are usually excluded from insurance coverage. The deductible under such policy shall not exceed the lesser of \$10,000.00 or 1% of the face value of the policy.

**Section 23.5 Named Insured and Loss Payable.**

The name of the insured under policies required by this Article 23 must be set forth therein substantially as follows:

"Cohiba Condominium Association, Inc., for the use and benefit of the individual owners of units in the project."

The policies may also be issued in the name of an authorized representative of the Association, including any insurance trustee with whom the Association has entered into an insurance trust agreement, or any successor to such trustee, for the use and benefit of the individual owners. Loss payable shall be in favor of the Association (or insurance trustee), as a trustee for each unit owner and each such owner's mortgagee. Each unit owner and each such owner's mortgagee, if any, shall be beneficiaries of the policy in the percentage of common ownership appurtenant to the respective unit, as set forth in this Declaration. Evidence of insurance shall be issued to each unit owner and mortgagee upon request.

**Section 23.6 Mortgage Clause.**

All policies required by this Article 23 shall contain the standard mortgage clause, or equivalent endorsement (without contribution), which is commonly accepted by private institutional mortgage investors in the area in which the property is located and which appropriately names mortgagees and their successors and assigns (including institutional holders).

**Section 23.7 Unacceptable Policies.**

Policies required hereunder are unacceptable where (a) under the terms of the insurance carrier's charter, bylaws or policy, contributions or assessments may be made against the Association, owners, mortgagees, or their respective designees or assigns; or (b) by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members; or (c) the policy includes any limiting clauses (other than insurance conditions) which could prevent owners or mortgagees from collecting insurance proceeds.

**Section 23.8 Notice of Cancellation or Modification.**

Policies required hereunder may not be canceled or substantially modified without at least ten (10) days' prior written notice to the Association, to each owner, and to each mortgagee which is listed as a scheduled holder of a mortgage in the insurance policy, including any designated servicers of mortgagees.

**Section 23.9 Property Insurance--Special Endorsements.**

The following endorsements shall be obtained on all policies required by this Article 23:

- (a) A Special Condominium Endorsement, or its equivalent, shall be obtained which shall provide that: any insurance trust agreement will be recognized; the right of subrogation against unit owners will be waived; the insurance will not be prejudiced by any acts or omissions of individual unit owners that are not under the control of the owners' association; and the policy will be primary, even if a unit owner has other insurance that covers the same loss.
- (b) Agreed Amount and Inflation Guard Endorsement shall be obtained, if available.
- (c) Construction Code Endorsements (such as a Demolition Cost Endorsement, a Contingent Liability from Operation of Building Laws Endorsement and an Increased Cost of Construction Endorsement) shall be obtained if the project is subject to a construction code provision which would become operative and require changes to undamaged portions of the building(s), even when only part of the project is destroyed by an insured hazard.

**Section 23.10**    Flood Insurance.

If any part of the project is in a special flood hazard area, as defined by the Federal Emergency Management Agency, the Association shall maintain a "master" or "blanket" policy of flood insurance and pay the premiums for such insurance as a common expense. Said flood insurance policy shall cover all buildings and any other property located within the property of the association, with coverage limits at least equal to the lesser of:

- (a) 100% of the current replacement cost of all buildings and other insurable property located in the flood hazard area; or
- (b) the maximum coverage available for the property under the National Flood Insurance Program.

The said policy of insurance shall be in the name of the Association, and the deductible under said policy shall not exceed the lesser of \$5,000.00 or 1% of the face amount of the policy.

**Section 23.11**    Liability Insurance.

- (a) General. The Association shall obtain and maintain comprehensive general liability insurance coverage covering all of the common areas, public ways of the project, and any other areas that are under the Association's supervision.
- (b) Amount of Insurance. The amount of liability insurance coverage shall be at least equal to the greater of:
  - (1) \$1,000,000.00 for bodily injury and property damage for any single occurrence; or
  - (2) The coverage limits usually required by mortgage investors in other similar projects in the area.
- (c) Scope of Coverage. The Association's liability insurance shall provide coverage for:
  - (1) Bodily injury and property damage that results from the operation, maintenance or use of the project's common areas; and
  - (2) Any legal liability that results from lawsuits or other claims related to employment contracts to which the Association is a party.
- (d) Notice of Cancellation or Modification. Liability policies must provide that they may not be canceled or substantially modified, by any party, without at least ten (10) days' prior written notice to the Association, to each owner, and to each

mortgagee listed as a scheduled holder of a mortgage in the insurance policy, including designated servicers of mortgagees.

- (e) Supplemental Coverage. Additional coverages shall be obtained as necessary to protect against such other risks as are customarily covered with respect to projects similar in construction, location and use, including but not limited to host liquor liability, contractual and all-written contract insurance, employers liability (workmen's compensation) insurance and comprehensive automobile liability insurance.

**Section 23.12**    Fidelity Bonds.

- (a) General. The Association, at their discretion, may obtain and maintain blanket fidelity bonds for all directors, officers, managers, trustees, employees, and other persons who either handle or are responsible for funds held or administered by the Association, whether or not they receive compensation for their services. The premiums for such fidelity coverage shall be paid by the Association as a common expense. If the Association has retained a management agent who handles Association funds, said management agent must also be covered by its own fidelity bond.
- (b) Amount of Coverage. Fidelity bonds required hereby should cover at least the greater of:
  - (1) the maximum funds that will be in the custody of the Association or its management agent at any time while the bond is in force; or
  - (2) an amount equal to the sum of 3 months' assessments on all units in the project, plus the Association's reserve fund; or
  - (3) an amount equal to one and one-half times the Association's estimated annual operating expenses and reserves.

**Section 23.13**    Insurance Trustee; Power of Attorney.

- (a) Notwithstanding any of the foregoing provisions and requirements relating to property or liability insurance, there may be named as an insured, on behalf of the Association, the Association's authorized representative, including any trustee with whom such Association may enter into any insurance trust agreement or any successor to such trustee (each of whom shall be referred to herein as the "insurance trustee"), who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance.



- (b) By acceptance of title to a unit, each owner appoints the Association, or any insurance trustee or substitute insurance trustee designated by the Association, as attorney-in-fact for the purpose of purchasing and maintaining the insurance required by this Article, and for the purpose of negotiating amounts payable thereunder, including the collection and appropriate disposition of the proceeds thereof, the execution of all documents, and the performance of all other acts necessary to accomplish such purposes. The Association or any insurance trustee shall receive, hold or otherwise properly dispose of any proceeds of insurance in trust for unit owners and their first mortgage holders, as their interests may appear.

**Section 23.14** Owner's Individual Insurance.

Each owner may obtain additional insurance on his unit and its contents at his own expense but only if the owner's insurance does not decrease the amount that the Board, or any trustee for the Board, on behalf of all of the owners, will realize under any insurance policy that the Board may have in force on the property. Each owner shall notify the Board of all improvements by the owner to his unit, the value of which is in excess of One Thousand Dollars (\$1,000.00). Any owner who obtains individual insurance policies covering any portion of the property other than personal property belonging to him shall file a copy of his individual policy or policies with the Board within thirty (30) days after he buys it, and the Board shall immediately review its effect with the Board's insurance broker, agent or carrier.

**ARTICLE 24. DAMAGE AND REPAIR OF DAMAGE TO PROPERTY.**

**Section 24.1** Initial Board Determination.

In the event of damage to any part of the property, the Board shall promptly, and in all events within thirty (30) days after the date of damage, make the following determinations with respect thereto, employing such advice as the Board deems advisable:

- (a) The nature and extent of the damage, together with an inventory of the improvements and property directly affected thereby;
- (b) A reasonably reliable estimate of the cost to repair the damage, which estimate shall, if reasonably practicable, be based upon two or more firm bids obtained from responsible contractors;
- (c) The expected insurance proceeds, if any, to be available from insurance covering the loss based on the amount paid or initially offered by the insurer;
- (d) The amount, if any, by which the estimated cost of repair exceeds the expected insurance proceeds, and the amount of the assessments that

would have to be made against each unit if the excess cost were to be paid as a maintenance expense and specially assessed against all the units in proportion to their percentages of undivided interest in the common areas and facilities; and

- (e) The Board's recommendation whether the damage should be repaired.

**Section 24.2 Notice of Damage.**

The Board shall promptly, and in all events within thirty (30) days after the date of damage, provide each owner and each holder of a first mortgage with a written notice describing the damage and summarizing the initial Board determinations made under Section 24.1. If the Board fails to do so within said 30 days, any owner or mortgagee may make the determinations required under Section 24.1 and give the notice required under this Section 24.2.

**Section 24.3 Damage, Substantial Damage, Repair, Emergency Work.**

As used in this Article 24:

Section 24.3.1 Damage shall mean all kinds of damage, whether of slight degree or total destruction.

Section 24.3.2 Substantial damage shall mean that in the judgment of a majority of the Board the estimated special assessment determined under Section 24.1(d) for any one unit exceeds ten percent (10%) of the full, fair market value of the unit before the damage occurred, as determined by a majority of the Board or, in case of their inability to agree, by an MAI or SRPA appraisal.

Section 24.3.3 Repair shall mean restoring the improvements to substantially the condition they were in before they were damaged, with each unit and the common areas and facilities having substantially the same vertical and horizontal boundaries as before. Modifications to conform to applicable governmental rules and regulations or available means of construction may be made.

Section 24.3.4 Emergency work shall mean work that the Board deems reasonably necessary to avoid further damage or substantial diminution in value to the improvements and to protect the owners from liability from the condition of the site.

**Section 24.4 Execution of Repairs.**

Section 24.4.1 The Board shall promptly repair the damage and use the available insurance proceeds therefor unless, before the repairs (other than emergency work) are begun, the owners decide in accordance with this Article not to repair. If the cost of repair exceeds the available insurance proceeds, the Board shall impose a special assessment against all units in proportion to their percentages of undivided interest in the common areas in an amount sufficient to pay the excess costs.

Section 24.4.2 The Board shall have the authority to employ architects and engineers, advertise for bids, let contracts to contractors and others, and take such other action as is reasonably necessary to make the repairs. Contracts for the repair work shall be awarded when the Board, by means of insurance proceeds and sufficient assessments, has provided for paying the cost. The Board may authorize the insurance carrier to make the repairs if the Board is satisfied that the work will be done satisfactorily, and if such authorization does not contravene any insurance trust agreement or requirement of law.

Section 24.4.3 The Board may enter into a written agreement with a reputable financial institution or trust or escrow company that the institution or company shall act as an insurance trustee to adjust and settle any claim for casualty loss in excess of \$50,000.00, or for the institution or company to collect the insurance proceeds and carry out the provisions of this Article 24.

**Section 24.5 Damage Not Substantial.**

If the damage, as determined under Section 24.3.2 is not substantial, the following provisions shall apply:

Section 24.5.1 Either the Board or the requisite number of owners, within fifteen (15) days after the notice required under Section 24.2 has been given, may, but shall not be required to, call a special owners' meeting in accordance with Section 14.9 and the Bylaws to decide whether to repair the damage.

Section 24.5.2 Except for emergency work, no repairs shall be commenced until after the 15-day period and until after the conclusion of the special meeting, if such a special meeting is called within the fifteen (15) days.

Section 24.5.3 A unanimous decision of the owners and the holders of first mortgages will be required to elect not to repair the damage. The failure of the Board and the owners to call a special meeting within the 15-day period shall be deemed a decision to repair the damage.

**Section 24.6 Substantial Damage.**

If the damage determined under Section 24.3.2 is substantial, the following provisions shall apply:

Section 24.6.1 The Board shall promptly, and in all events within thirty (30) days after the date of damage, call a special owners' meeting to consider repairing the damage. If the Board fails to do so within said 30 days, then notwithstanding the provisions of Section 14.9 and the Bylaws, any owner or first mortgagee may call and conduct the meeting.

Section 24.6.2 Except for emergency work, no repairs shall be commenced until the conclusion of the special owners' meeting.

Section 24.6.3 A concurring vote of more than two-thirds (2/3) of the total voting power will be required to elect not to repair the damage. Failure of the Board, the owners and the first mortgagees to conduct the special meeting provided for under Section 24.6.1 within ninety (90) days after the date of damage shall be deemed a unanimous decision not to repair the damage.

**Section 24.7 Effect of Decision Not to Repair.**

In the event of a decision under with Section 24.5.3 or Section 24.6.3 not to repair the damage, the Board may nevertheless expend so much of the insurance proceeds and common funds as the Board deems reasonably necessary for emergency work (which emergency work may include, but is not necessarily limited to, removal of the damaged improvements and clearing, filling and grading the land), and the remaining funds, if any, and the property shall thereafter be held and distributed as follows:

Section 24.7.1 The property shall be owned in common by the owners and shall no longer be subject to this Declaration or to condominium ownership.

Section 24.7.2 Each owner's percentage of undivided interest in the property shall be the same as the percentage of undivided interest he previously owned in the common areas and facilities.

Section 24.7.3 Any mortgages or liens affecting any of the units shall be deemed transferred in accordance with the existing priorities to the owner's percentage of the undivided interest in the property.

Section 24.7.4 The property shall be subject to an action for partition at the suit of any owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the property, if any, shall be considered as one fund. The fund shall be divided into separate shares, one for each owner in a percentage equal the percentage of undivided interest owned by each such owner in the property. After first paying out of the respective share of each owner, to the extent sufficient for the

purpose, all mortgages and liens on the owner's interest, the balance remaining in each share shall be distributed to the owner.

## **ARTICLE 25. CONDEMNATION.**

### **Section 25.1 Consequences of Condemnation; Notices.**

If any unit or portion thereof or the common areas and facilities or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority (referred to herein as a "taking"), notice of the proceeding or proposed acquisition shall promptly be given to each owner and to each holder of a first mortgage and the provisions of this Article 25 shall apply.

### **Section 25.2 Proceeds.**

All compensation, damages, or other proceeds of the taking, the sum of which is hereinafter called the "condemnation award," shall be payable to the Association.

### **Section 25.3 Complete Taking.**

If the entire property is taken, the condominium ownership shall terminate. The condemnation award shall be apportioned among the owners in proportion to their respective percentages of undivided interest in the common areas and facilities; provided, however, that if a standard different from the value of the property as a whole is employed to measure the condemnation award in the taking, then, in determining such shares, the same standard shall be employed to the extent it is relevant and applicable. On the basis of the foregoing principle, the Board shall, as soon as practicable, determine the share of the condemnation award to which each owner is entitled. Each owner's share shall be applied first to the payment of all mortgages and liens on the owner's interest in accordance with the existing priorities, and the balance of each share shall be distributed to the owner.

### **Section 25.4 Partial Taking.**

If less than the entire property is taken, the condominium ownership shall not terminate. Each owner shall be entitled to a share of the condemnation award determined in the following manner:

**Section 25.4.1** As soon as practicable the Board shall, reasonably and in good faith, allocate the condemnation award among compensation for property taken, severance damages or other proceeds.

**Section 25.4.2** The Board shall apportion the amounts so allocated to taking of or injury to the common areas and facilities, which in turn shall be apportioned among

owners in proportion to their respective undivided interests in the common areas and facilities.

Section 25.4.3 The total amount allocated to severance damages apportioned to the units that were not taken.

Section 25.4.4 The amounts allocated to the taking of or injury to a particular unit and/or improvements an owner had made within the unit shall be apportioned to the unit.

Section 25.4.5 The amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Board determines to be equitable in the circumstances.

Section 25.4.6 If an allocation of the condemnation award has already been established in negotiation, judicial decree, or otherwise, then in apportioning the condemnation award the Board shall employ that allocation to the extent it is relevant and applicable.

Section 25.4.7 Distribution of apportioned proceeds shall be made to the owners and their respective mortgagees in the manner provided in Section 25.3.

#### **Section 25.5 Reconstruction and Repair.**

Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified in Article 24 for repair of damage, provided that the Board may retain and apply such portion of each owner's share of the condemnation award as is necessary to discharge the owner's liability for any special assessment arising from the operation of Article 24.

### **ARTICLE 26. EASEMENTS.**

#### **Section 26.1 In General.**

Each owner shall have the unrestricted right of ingress and egress to his or her unit, which right shall be perpetual and appurtenant to such unit. Each unit has an easement in and through each other unit and the common areas and facilities for all support elements and utility, wiring, heat and service elements, and for reasonable access thereto, as required to effectuate and continue proper operation of the project. In addition, each unit and all the common areas and facilities are specifically subject to easements as required for the electrical wiring and plumbing for each unit. The specific mention or reservation of any easement in this Declaration does not limit or negate any easement incident to a condominium grant under the provisions of the Condominium Statute.

#### **Section 26.2 Encroachments.**

Each unit and all common areas and facilities are hereby declared to have an easement over all adjoining units and common areas and facilities for the purpose of accommodating any present or future encroachment as a result of engineering errors, construction, reconstruction, repairs, settlement, shifting or movement of any portion of the property, or any other similar cause, and any encroachment due to building overhang or projection. There shall be valid easements for the maintenance of the encroaching units, areas and facilities so long as the encroachments shall exist, and the rights and obligations of owners shall not be altered in any way by the encroachment; provided, however, that in no event shall a valid easement for encroachment be created in favor of a unit if the encroachment was caused by the willful act with full knowledge of the owner of said unit. The encroachments described in this Section 26.2 shall not be construed to be encumbrances affecting the marketability of title to any unit.

**Section 26.3 Easement Specifically Reserved by Declarant.**

Declarant reserves an access easement over, across, and through the common areas and facilities of the project for the purpose of completing any unfinished units or other improvements and exhibiting and preparing units for sale and for the purposes of developing any contiguous land owned by Declarant.

**Section 26.4 Power of Association to Grant Easements.**

The Association shall have the right to grant permits, licenses and easements over, upon, across, under or through any portion of the common area for utilities, roads or other purposes reasonably necessary or useful for the proper maintenance or operation of the project; and each owner hereby irrevocably appoints the Association as attorney-in-fact for such purpose.

**ARTICLE 27 PROCEDURES FOR SUBDIVIDING OR COMBINING UNITS.**

**Section 27.1 Submission of Proposal.**

No unit or units shall be subdivided and/or combined either by agreement or legal proceedings, except as provided in this Article. A unit owner may propose subdividing and/or combining of a unit or units by submitting the proposal in writing to all other owners and the mortgagees of the units to be subdivided or combined. If the proposal contemplates the subdivision of a unit, the proposal must also be given to every first mortgagee of any unit in the project. The proposal must include complete plans and specifications for accomplishing the subdivision or combination and proposed amendments of this Declaration and the Plans and, if necessary, the Survey Map.

**Section 27.2 Approval Required for Subdivision.**

A proposal that contemplates subdivision of a unit will be accepted only if approved in writing by all owners and mortgagees of the unit or units to be subdivided, the owners

of eighty percent (80%) of the total undivided interest in the common areas and facilities, every first mortgagee, and the City of Eagle.

**Section 27.3 Approval Required for Combination.**

A proposal that contemplates only combination of units without subdividing any of them will be accepted if approved in writing by the owners of sixty percent (60%) of the total undivided interest in the common areas and facilities and all owners and mortgagees of the units to be combined.

**Section 27.4 Procedure After Approval.**

Upon approval of the proposal, the owner making it may proceed according to the proposed plans and specifications; provided that the Board may, in its discretion, require that the Board administer the work or that provisions for the protection of other units or common areas and facilities or that reasonable deadlines for completion of the work be inserted in the contracts for the work. The changes in the Survey Map, if any, and the changes in the Plans and Declaration shall be placed of record as amendments thereto.

**ARTICLE 28. AMENDMENTS OF DECLARATION OR SURVEY MAP AND PLANS.**

**Section 28.1 Amendments by the Association.**

A unit owner may propose amendments to this Declaration or the Survey Map and Plans to the Board. A majority of the members of the Board may cause a proposed amendment to be submitted to the members of the Association for their consideration. If an amendment is proposed by owners of twenty percent (20%) or more of the units in the project, then, irrespective of whether the Board concurs in the proposed amendment, it shall be submitted to the members of the Association for their consideration at their next regular or special meeting for which timely notice may be given. Notice of a meeting at which an amendment is to be considered shall include the text of the proposed amendment. Amendments may be adopted at a meeting of the Association or by written consent of the requisite number of persons entitled to vote, after notice has been given to all persons (including mortgagees) entitled to receive notice of a meeting of the Association. The unanimous consent of all owners shall be required for adoption of either (1) an amendment altering the value of the property and of each unit or the percentages of undivided interest in the common areas and facilities, or (2) a decision that the property be removed from condominium status pursuant to Article 30, or (3) an amendment of Section 14.8, Section 18.8 or this Article 28. All other amendments shall be adopted if approved by a sixty percent (60%) vote of the owners (based upon percentage of ownership interest in the common areas), provided there is compliance with Section 28.2.

Once an amendment has been adopted by the Association and any necessary approval of mortgagees has been obtained, the amendment will become effective when a certificate of the amendment, executed by two officers of the Association, has been recorded in the public records. Notwithstanding any other provision contained in this Declaration, no easement or other right or privilege reserved by or granted to Declarant



by this Declaration may be modified, deleted or otherwise affected by any amendment to this Declaration, unless such amendment is approved in writing by said Declarant.

**Section 28.2 Requirement of Mortgagee Approval.**

In addition to other requirements of this Declaration and of the Condominium Statute, mortgagee approval is required for certain amendments, as specified in Article 29 (Mortgagee Protection) hereinbelow.

**Section 28.3 Amendment at Request of Mortgagee.**

Subject only to the provisions of Article 29 hereinbelow, Declarant may amend this Declaration from time to time for the purpose of adopting any amendment which may reasonably be requested by any proposed mortgagee or by any institutional holder intending to purchase a mortgage, in order to assure such mortgagee or institutional holder that its interests are adequately protected. Such an amendment need be signed and acknowledged only by Declarant, notwithstanding the provisions of Section 28.1 above.

**ARTICLE 29. MORTGAGEE PROTECTION.**

For the purposes of this Article, the term "eligible mortgagee" shall mean any holder, insurer or guarantor of a first mortgage who has requested notice of certain matters from the Association in accordance with Section 15.2 of this Declaration; and the term "eligible mortgage" shall mean any first mortgage held, insured or guaranteed by such eligible mortgagee. Notwithstanding anything to the contrary contained in this Declaration, or in the Articles or Bylaws of the Association:

**Section 29.1**

The Association must establish and maintain an adequate reserve fund for maintenance, repair and replacement of those common area elements that must be periodically maintained, repaired, or replaced; and such reserve shall be funded out of the regular monthly assessments for common expenses (rather than by special assessments). In addition, there must be established a working capital fund for the initial months of operation of the project equal to at least two (2) months' estimated common-area charge for each unit.

**Section 29.2**

Any "right of first refusal" contained in any constituent document pertaining to the project shall not impair the rights of a first mortgagee to foreclose or take title to a unit pursuant to the remedies provided in the mortgage, or accept a deed (or assignment) in lieu of foreclosure in the event of default, or interfere with a subsequent sale or lease of a unit so acquired by the mortgagee.

### **Section 29.3**

The Association shall maintain the following project documents and make them available, during normal business hours or under other reasonable circumstances, for inspection by owners or by first mortgagees: current copies of the Declaration, the Articles, the Bylaws and other rules concerning the project as well as the Association's own books, records and financial statements. If there is no audited financial statement available, any mortgagee shall have the right to have an audited statement prepared at said mortgagee's own expense.

### **Section 29.4**

Any management agreement for the project or common areas and facilities, or any other contract providing for services of the developer, sponsor or builder, shall expire within three (3) years and within said 3-year period shall be terminable (a) by the Association for cause upon thirty (30) days' written notice thereof, and (b) by either party without cause and without payment of a termination fee upon ninety (90) days' or less written notice thereof.

### **Section 29.5**

The Association shall notify the institutional holder of any first mortgage whenever: (a) damage to a unit covered by its mortgage exceeds \$1,000.00, or (b) damage to the common areas and related facilities exceeds \$10,000.00. No owner or other party shall be entitled to priority over such institutional holder with respect to the distribution of any insurance proceeds for damage to a unit or to the common areas and facilities.

### **Section 29.6**

If any unit or portion thereof or the common areas or any portion thereof is made the subject matter of any condemnation or eminent domain proceedings, or is otherwise sought to be acquired by a condemning authority, the institutional holder of any first mortgage shall be entitled to timely written notice of any such proceeding or proposed acquisition, and no owner or other party shall have priority over such institutional holder with respect to the distribution to such owner of the proceeds of any award or settlement.

### **Section 29.7**

Any provision in this Declaration restricting leases of units shall not apply to a lender in possession of a unit following a default in a first mortgage, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure.

### **Section 29.8**

Each holder of a first mortgage (including any purchaser from such holder) on a unit who comes into possession of a title to said unit by virtue of foreclosure of the mortgage,

or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the unit free of and shall not be liable for any unpaid claims or assessments and charges against the unit which accrue prior to the time of such possession or acquisition of title.

#### **Section 29.9**

All taxes, assessments and charges that may become liens prior to the first mortgage under local laws relate only to the individual units and not to the project as a whole.

#### **Section 29.10**

First mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any common area property and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy, for such common area property and first mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

#### **Section 29.11**

Any lien which the Association may have on any unit for the payment of assessments attributable to such unit will be subordinate to the lien or equivalent security interest of any mortgage on the unit recorded prior to the date notice of such assessment lien is duly recorded.

#### **Section 29.12**

In case of condemnation or substantial loss to the units or common areas, unless prior written approval has been obtained from at least sixty-seven percent (67%) of all first mortgagees (based upon one vote for each first mortgage held) and from eligible mortgagees with mortgages upon units having a total of at least fifty-one percent (51%) of the votes appurtenant to units subject to eligible mortgages, the Association and/or the owners shall not:

- (a) Change the pro rata interest or obligations of any unit for purposes of (1) levying assessments or allocating distributions of hazard insurance proceeds or condemnation awards or for (2) determining the pro rata share of ownership of each unit in the appurtenant common areas.
- (b) Partition or subdivide any unit (and no partition or subdivision shall be accomplished without the prior written approval of the holder of any first mortgage, institutional or otherwise, on the unit to be partitioned or subdivided).

- (c) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the common areas or any portion thereof. (This clause shall not be deemed applicable to the granting of easements for public utilities or for other public purposes consistent with the intended use of such common areas).
- (d) By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of units, the exterior maintenance of said units, the maintenance of the common area property, party walks or common fences and driveways, or the upkeep of laws and plantings in the project.
- (e) Fail to maintain fire and extended coverage casualty insurance on insurable common area property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost).
- (f) Use hazard insurance proceeds for losses to any property in the project (whether to units or to the common areas) for other than repair, replacement or reconstruction of such property.

#### **Section 29.13**

The abandonment of the project or the termination of the legal status of the project as a condominium (whether by act or omission) shall not be effective without (a) the prior written approval of at least two-thirds (2/3) of all first mortgagees (based upon one vote for each first mortgage held) and (b) the consent of owners owning units having a total of at least sixty-seven percent (67%) of the voting power of the Association and the approval of eligible mortgagees with mortgages on units having a total of at least sixty-seven percent (67%) of the votes appurtenant to units subject to eligible mortgages.

#### **Section 29.14**

The consent of the owners representing at least 67% of the total allocated votes in the Association, and the approval of eligible mortgagees holding mortgages on units which have at least 51% of the votes of unit estates that are subject to eligible mortgages, shall be required to materially amend any of the project documents. A change to any of the following shall be deemed material for the purposes of this Section 29.14:

- (a) Voting rights;
- (b) Assessments, assessment liens or subordination of assessment liens;
- (c) Reserves for maintenance, repair and replacement of common areas;
- (d) Responsibility for maintenance and repair;

- (e) Reallocation of interests in the general or limited common areas, or rights to their use;
- (f) Boundaries of any unit;
- (g) Convertibility of units into common areas or vice versa;
- (h) Expansion or contraction of the project or the addition, annexation or withdrawal of property to or from the project;
- (i) Insurance or fidelity bonds;
- (j) Leasing of units;
- (k) Imposition of any restrictions on an owner's right to sell or transfer his or her unit;
- (l) A decision by the Association to establish self-management when professional management had been required previously by an eligible mortgagee;
- (m) Restoration or repair of the project (after a hazard damage or partial condemnation) in a manner other than that specified in the documents;
- (n) Any action to terminate the legal status of the project after substantial destruction or condemnation occurs; or
- (o) Any provisions that expressly benefit mortgage holders, insurers or guarantors.

Provided, however, that no addition or amendment to the project documents shall be considered "material" if it is for the purpose of correcting a technical error or for clarification, or if it is made pursuant to Section 28.3 hereinabove; if a particular addition or amendment to the project documentation does not constitute a material change, an eligible mortgagee's approval shall be conclusively presumed if said eligible mortgagee fails to respond in writing within 30 days after it receives a copy of the proposed amendment. Any such proposed amendment shall be submitted to each eligible mortgagee in writing at its address furnished pursuant to Section 15.2 hereinabove.

#### **Section 29.15**

Upon written request of any first mortgagee, the Association agrees to provide such mortgagee with a letter wherein the Association agrees to notify the mortgagee or its designee whenever: (a) damage to a unit covered by its mortgage exceeds \$1,000.00, or (b) damage to the common areas and related facilities exceeds \$10,000.00.

**Section 29.16**

Any eligible mortgagee who receives a written request to approve additions or amendments and falls to deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request, except where this Declaration expressly requires the written approval of such mortgagee.

**ARTICLE 30. ABANDONMENT OR TERMINATION OF CONDOMINIUM STATUS.**

Except in cases of substantial damage to the property as provided in Article 24 or condemnation of the entire property as provided in Section 25.3, the condominium status of the property shall not be abandoned or terminated by reason of any act or omission of the owners or the Association except with the requisite consent of owners and mortgagees as provided in Article 29 hereinabove. Upon recordation of instruments evidencing such consent, the project shall be deemed removed from the provisions of the Condominium Statute within the meaning of Idaho Code § 55-1510, in which event all mortgages shall be deemed forthwith, and without change in seniority, transferred to the mortgagor's undivided interest in the property, as provided in said § 55-1510.

**ARTICLE 31. SEVERABILITY.**

The provisions of this Declaration shall be independent and severable, and the unenforceability of any one provision shall not affect the enforceability of any other provision, if the remainder complies with the Condominium Statute or, as covenants, effect the common plan.

**ARTICLE 32. EFFECTIVE DATE.**

This Declaration shall take effect upon recording.



**EXHIBIT "A"**

**DESCRIPTION FOR  
PROPOSED COHIBA CONDOMINIUMS**

October 29, 2003

A CONDOMINIUM PLAT BEING OVER LOT 2, BLOCK 1, MERRILL SUBDIVISION NO. 1, AS FILED FOR RECORD AT THE ADA COUNTY RECORDERS OFFICE IN BOOK 78, PAGE 8286 OF PLATS, LOCATED IN THE NORTH 1/2 OF SECTION 16, TOWNSHIP 4 NORTH, RANGE 1 EAST, BOISE MERIDIAN, CITY OF EAGLE, ADA COUNTY, IDAHO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SECTION 16, T. 4 N., R. 1 E., B.M., THENCE S 00°27'18" W 734.45 FEET ALONG THE EAST LINE OF SAID SECTION 16 TO A POINT; THENCE N 89°32'42" W 318.29 FEET TO THE NORTHEAST CORNER OF LOT 2, BLOCK 1, MERRILL SUBDIVISION NO.1, THE REAL POINT OF BEGINNING OF THIS DESCRIPTION;

ALONG THE BOUNDARY OF SAID LOT 2, BLOCK 1 THE FOLLOWING:

THENCE S 00°27'18" W 197.89 FEET TO A POINT;

THENCE N 90°00'00" W 266.48 FEET TO A POINT;

THENCE N 00°00'00" E 229.20 FEET TO A POINT;

THENCE S 73°02'42" E 5.62 FEET TO A POINT;

THENCE S 72°29'42" E 134.00 FEET TO A POINT;

THENCE N 85°59'18" E 129.80 FEET TO A POINT;

THENCE N 74°03'18" E 5.62 FEET TO THE REAL POINT OF BEGINNING OF THIS DESCRIPTION, SAID PARCEL COMPRISING 1.23 ACRES, MORE OR LESS.

Michael E. Marks, P.L.S. No.4998





EXHIBIT "C "  
TO CONDOMINIUM DECLARATION

UNIT DESCRIPTIONS AND  
PERCENTAGE OF OWNERSHIP INTEREST

UNITS                      PERCENTAGE

A .....	17.89%
B .....	16.41%
C .....	12.89%
D .....	10.99%
E .....	12.89%
F .....	11.04%
G .....	17.89%

100.00%



SCHEDULE B TO CONDOMINIUM DECLARATION

ARTICLES OF INCORPORATION  
OF  
COHIBA CONDOMINIUM ASSOCIATION, INC.

The undersigned, acting as an incorporator under the provisions of the Idaho Nonprofit Corporation Act, adopts the following Articles of Incorporation.

ARTICLE I.  
Name of Corporation.

The name of this Corporation is COHIBA CONDOMINIUM ASSOCIATION, INC.

ARTICLE II.  
Duration of Existence.

The period of existence and the duration of the life of this Corporation shall be perpetual.

ARTICLE III.  
Registered Agent and Office.

The address of the registered office of this Corporation shall be at 500 West Idaho, Suite 240, Boise, Idaho 83702. The registered agent at that address shall be Gary Asin.

ARTICLE V.  
Management Body.

This Corporation is formed to be a management body as permitted by the provisions of the Idaho Condominium Property Act, Idaho Code Title 55, Chapter 15, and its powers are and shall be consistent with the provisions of said Act.

ARTICLE VI.  
Purposes and Powers.

A. The nature of the business and the object and the purpose of this Corporation shall be as follows:

(1) This Corporation (hereinafter sometimes referred to as the "Association") shall be the management body as defined in Section 55-1503, Idaho Code, and as provided for in the terms and conditions of the certain

Condominium Declaration for Cohiba Condominiums (hereinafter referred to as the "Declaration"), to be executed by ASIN - MOODY, which delegates and authorizes this Association to exercise certain functions as the management body. The Declaration shall be recorded in the office of the County Recorder of Ada County, State of Idaho, together with a copy of these Articles of Incorporation appended thereto.

(2) The management body shall have the power to have, exercise and enforce all rights and privileges, and to assume, incur, perform, carry out and discharge all duties, obligations and responsibilities of a management body as provided for in the Idaho Condominium Property Act and in the Declaration, as such Declaration is originally executed or, if amended, as amended. The management body shall have the power to adopt and enforce rules and regulations covering the use of any condominium project or any area or units thereof, to levy and collect the annual and special assessments and charges against the condominiums and the members thereof and in general to assume and perform all of the functions to be assumed and performed by the management body as provided for in the Declaration. It shall have the power to transfer, assign or delegate such duties, obligations or responsibilities to other persons or entities as permitted or provided for in the Idaho Condominium Property Act, the Declaration, or any agreement executed by the Association with respect thereto. The management body shall actively foster, promote and advance the interest of owners of the condominium units within the condominium project.

B. In addition to the forgoing, where not inconsistent with either the Idaho Condominium Property Act, Title 55, Chapter 15, Idaho Code or Title 30, Chapter 3, Idaho Code, the Corporation shall have the following powers:

(1) The authority set forth in Title 30, Chapter 3 of the Idaho Code relating to the organization and conduct of nonprofit corporations.

(2) To buy, sell, acquire, hold or mortgage or enter into security agreements, pledge, lease, assign, transfer, trade and deal in and with all kinds of personal property, goods, wares and merchandise of every kind, nature and description.

(3) To buy, sell, lease, let, mortgage, exchange or otherwise acquire or dispose of land, lots, houses, buildings and real property, hereditaments and appurtenances of all kinds and wheresoever situated, and of any interest and rights therein, to the same extent as natural persons might or could do, and without limit as to amount.

(4) To borrow money, to draw, make, accept, enforce, transfer and execute promissory notes, debentures and any other evidences of indebtedness, and for the purpose of securing any of its obligations or contracts to convey,

transfer, assign, deliver, mortgage and/or pledge all or any part of the property or assets, real or personal, at any time owned or held by this Corporation.

(5) To have one or more officers to carry on all or any part of its operations and business, and to do all and everything necessary, suitable, convenient or proper for the accomplishment of any of the purposes, or the attainment of any one or more of the objects herein named, or which shall at any time appear conducive or expedient for the protection or benefit of the Association, and which now or hereafter may be authorized by law, and this to the same extent and as fully as natural persons might or could do, as principals, agents, contractors, trustees or otherwise, and either alone or in connection with any firm, person, association or corporation.

(6) The forgoing clauses are to be construed both as objects and powers. As hereby expressly provided, an enumeration herein of the objects, powers and purposes shall not be held to restrict in any manner the general powers of the Corporation. The Corporation shall have the power to do all acts that are necessary and convenient to obtain the objects and purposes herein set forth to the same extent and as fully as any natural person could or might do, within the framework of the Idaho Condominium Property Act, these Articles of Incorporation, and the Nonprofit Corporation Laws of the State of Idaho.

#### ARTICLE VII.

##### Membership, Voting Power and Determination of Property Rights and Interest.

A. There shall be one membership in the Corporation for each condominium in the Cohiba Condominium Project as established in the Declaration. The members of the Corporation must be and remain owners of the condominiums within the project set forth in the Declaration to be recorded in Ada County, State of Idaho, and the Association shall include owners of condominiums within the project. If title to a condominium is held by more than one person, the membership relating to that condominium shall be shared by all such persons in the same proportions that interest and the same type of tenancy in which the title to the condominium is held.

B. No person or entity other than an owner may be a member of the Association. A member shall not assign or transfer his membership except in connection with the transfer or sale of a condominium. Every person or entity who is an owner of any condominium unit included in any condominium project for which the Association has been or may be designated as a management body shall be required to be a member of the Association and remain a member so long as such person or entity shall retain the ownership of the condominium unit. Membership in the Association is declared to be appurtenant to the title of the condominium unit upon which such membership is based and automatically shall pass with the sale or transfer of title of the unit. Members shall

not have preemptive rights to purchase other memberships in the Association or other condominium units in the project.

C. The voting rights and interests of a member of the association shall be determined by the owner member's percentage interest in the common area of the condominium project described in the Declaration, as the term "common area" is defined in Section 55-1503 of the Idaho Code; therefore, the voting rights and interests of each member owner may not in all cases be equal. The Declaration or an exhibit attached hereto, shall set forth the percentage interest of each member in the common area which interest depends upon the number and type of condominium units. The voting rights and interests of new members shall be determined in the same way as such percentage interests and rights were determined for old members.

D. The total number of votes that attach to membership shall be exercised by the members of the Corporation from and after the date of incorporation. Each member shall be entitled to vote the same percentage of the 1,000 votes as he is given percentage in the common area.

#### ARTICLE VIII. Assessment Liability.

Each member shall be liable for the payment of assessments provided for in the Declaration and for the payment and discharge of the liabilities of the Corporation as provided for in the Declaration, the Idaho Condominium Property Act and as set forth in the Bylaws of the Corporation.

#### ARTICLE IX. Amendment of Bylaws.

The Articles or Bylaws of this Corporation may be altered, amended or new Bylaws adopted by any regular or special meeting of the Corporation called for that purpose by the affirmative vote of two-thirds of the voting power of the Association.

#### ARTICLE X. Incorporation of Declaration by Bylaws.

For the purpose of specifying in detail the rights, responsibilities, duties and obligations of the Board of Directors, the officers, Employees and Agents of the Corporation and the members thereof including the liability of the members payment of assessments, the Bylaws may incorporate by reference the provisions of the Declaration recorded in Ada County, State of Idaho, provided that a true and correct copy of such Declaration is attached to and made a part of the Bylaws of the Corporation.

ARTICLE XI.  
Initial Board of Directors.

The business and affairs of the Association shall be managed and controlled by a Board of Directors. The original Board of Directors shall be five (5); however, the Bylaws of the Association may provide for an increase or decrease in their number, provided that the number of Directors shall not be greater than seven (7) or less than three (3). The names and addresses of the initial Board of Directors are as follows:

Gary C. Asin & Lori J. Asin  
5287 North Lakemont Lane  
Boise, Idaho 83703

John W. Moody  
8285 West Equest Lane  
Eagle, Idaho 83616

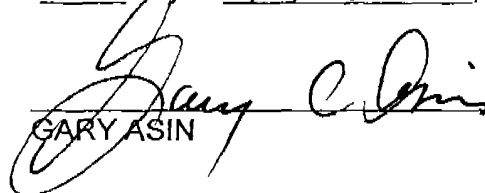
ARTICLE XII.  
Name of Incorporator.

The name and post office address of the Incorporator of this Incorporation is Gary Asin, 500 West Idaho, Suite 240, Boise, Idaho 83702.

ARTICLE XIII.  
Beneficial Interest; Dissolution.

No part of the net earnings of the Association shall inure, other than by acquiring, constructing or providing management, maintenance and care of property held by the Association, commonly held by members of the Association or located in the development and owned by the members of the Association and other than by rebate of excess membership dues, fees or assessments, to the benefit of any private member or individual. Upon dissolution or final liquidation of the corporation, the assets of the Corporation shall be distributed in accordance with the provisions of the Idaho Nonprofit Corporation act, the Idaho Condominium Property Act and the Condominium Declaration.

IN WITNESS WHEREOF, the undersigned, being the incorporator of this Corporation, executes these Articles of Incorporation, in duplicate, and certifies to the truth of the facts herein stated, this 30 day of November, 2003.

  
GARY ASIN

## SCHEDULE C TO CONDOMINIUM DECLARATION

### BYLAWS

### OF

### COHIBA CONDOMINIUM ASSOCIATION, INC.

The following are bylaws of COHIBA CONDOMINIUM ASSOCIATION, INC., a nonprofit Idaho corporation. Each owner of a condominium unit in Cohiba Condominiums automatically, by virtue of such ownership, becomes a member of the Association. All present and future owners, mortgagees and other encumbrancers, lessees, tenants, licensees and occupants of units and their guests and employees, and any other person who may use the facilities of the condominium project are subject to these Bylaws, the Condominium Declaration and Covenants, Conditions, Restrictions and Reservations for Condominiums ("Declaration"), and the rules and regulations adopted by the Board of Directors of the Association. In the event of any conflict between the Declaration and these Bylaws, the Declaration shall be controlling.

Words and phrases that are defined in the Declaration shall have the same meaning in these Bylaws.

Until the Transition Date occurs, these Bylaws shall be administered and may be amended (subject to such mortgagee approval as may be required) by Declarant, or by a managing agent appointed by Declarant. All references herein to the "Board" shall apply with equal force and effect to Declarant, the managing agent, or the Association's Board of Directors, whichever has the responsibility for administering the project.

#### ARTICLE 1 MEMBERSHIP; REGISTER; VOTING.

Section 1.1 Membership. The owners of units in the project shall constitute the Association of Unit Owners. Corporations, partnerships, associations and other legal entities, trustees under an express trust, and other fiduciaries, as well as natural persons may be members of the Association. Owners of a unit as joint tenants, tenants in common, community property, or other ownership involving more than one owner, shall be joint members of the Association, but the sum total of their vote shall not exceed the percentage of interest for voting power appurtenant to the unit owned. In the event of such joint ownership, the vote for a unit shall be cast as a single vote; and in no event shall the percentage of votes assigned to a particular unit be further fractionalized or split.



Section 1.2 Persons Under Disability. Minors and persons declared legally incompetent shall be eligible for membership in the Association, if otherwise qualified, but shall not be permitted to vote except through a legally appointed, qualified and acting guardian of their estate voting on their behalf, or, in the case of a minor with no legal guardian of his estate, through a parent having custody of the minor.

Section 1.3 Register of Members. The Board shall cause a register to be kept containing the names and addresses of all members of the Association. Persons who purchase an interest in a unit shall promptly inform the Board of their interest. Persons who claim to be members of the Association shall, upon request, furnish the Board with copies of any documents under which they assert ownership of a unit or any interest therein, and any mortgages thereon.

## ARTICLE 2 MEETINGS OF MEMBERS.

Section 2.1 Place. Meetings of the members of the Association shall be held at such suitable place as may be convenient to the membership and designated from time to time by the Board.

Section 2.2 Annual Meetings. The annual meeting of the Association shall be held in the first quarter of each year, on a date fixed by the Board. At such annual meeting there shall be a financial report, the owners shall elect members to the Board or fill vacancies therein, and such other business as shall come before the meeting may be transacted.

Section 2.3 Special Meetings. It shall be the duty of the president to call a special meeting of the Association as directed by resolution of the Board or upon the written request of a majority of the Board or upon the written request of owners having one-third (1/3) of the total voting power, of the Association. A meeting called at the request of the members shall be held at such time as the president may fix, which time shall not be less than fifteen (15) nor more than thirty (30) days after the receipt of the written request therefor.

Section 2.4 Notice of Meetings. It shall be the duty of the secretary to give notice of each annual and special meeting, stating the purpose thereof and the time and place where it is to be held, to each member of the Association and to each mortgagee that has requested notice, all as provided in Article 15 of the Declaration. Notice shall be given at least thirty (30) days before annual meetings and at least ten (10) days before special meetings. Before any meeting of the Association, any member may, in writing, waive notice of such meeting. Attendance by a member at a meeting of the Association shall be a waiver by him of timely and adequate notice unless he expressly challenges the notice when the meeting begins.

Section 2.5 Quorum. The presence in person or by proxy of members of the Association or voting representatives holding fifty percent (50%) of the total voting power shall constitute a quorum for the transaction of business at any meeting of members of the Association.

Section 2.6 Proxies. Any unit owner or voting representative may vote by proxy. Proxies shall be in writing, signed by the owner, or voting representative, and filed with the Board. Proxies may be revoked at any time by written notice to the Board. Any designation of proxy must be signed by all owners of a unit; but where husband and wife are owners, the proxy need be signed by only one spouse unless the other spouse notifies the Board not to accept the proxy.

Section 2.7 Majority Vote. Except as otherwise provided by statute, by the Declaration, or by these Bylaws, passage of any matter submitted to vote at a meeting where a quorum is in attendance shall require the affirmative vote of at least fifty-one percent (51%) of the voting power present.

Section 2.8 Order of Business. The order of business at meetings of the Association shall be as follows unless dispensed with on motion:

- (a) Roll call;
- (b) Proof of notice of meeting or waiver of notice;
- (c) Minutes of preceding meeting;
- (d) Reports of officers;
- (e) Reports of committees;
- (f) Election of directors (annual meeting or special meeting called for such purpose);
- (g) Unfinished business;
- (h) New business;
- (i) Adjournment.

Section 2.9 Parliamentary Authority. In the event of dispute, the parliamentary authority for the meetings shall be the most current available edition of Robert's Rules of Order.

### ARTICLE 3. BOARD OF DIRECTORS.

Section 3.1 Number and Qualifications. The affairs of the Association shall be governed by a Board of not fewer than three (3) nor more than seven (7) directors, who shall be elected by ballot from the members of the Association. The members of the Association at any annual meeting may change the number of directors within those limits, but shall not reduce the number in such a manner to deny an incumbent director (unless removed for cause) a full term of office. If a corporation is a member of the Association, any one of its officers, directors, or shareholders may be elected to the Board; if a partnership is a member, any one partner of such partnership may be elected to the Board.

Section 3.2 Powers and Duties. The Board shall have the powers and duties provided for the administering authority of the project in the statutes and in the Declaration, and all other power necessary for the administration of the affairs of the Association, and may do all such acts and things as are not prohibited by statute or by the Declaration required to be done in another manner. No contract made by the Board or any officer for the Association shall have a fixed term longer than one (1) year.

Section 3.3 Managing Agent. Management of the project may initially be carried out by Declarant or a managing agent appointed by Declarant as provided in Article 16 of the Declaration. An experienced professional managing agent may be employed by the Declarant or the Board to assist in the management and operation of the project, subject to the contractual limitations set forth in the Declaration.

Section 3.4 Election and Term of Office. The initial directors named in the Articles shall serve until the first day of the calendar month following the date of adjournment of the first annual meeting. Thereafter, the term of office for directors shall begin on the first day of the calendar month following the date of adjournment of the annual meeting at which they are elected. The normal term of office for directors will be for three (3) years and until their successors are elected and take office. However, to provide for staggered terms, at the first annual meeting, one-third (1/3) of the number of directors (or the whole number nearest to one-third) shall be elected for one (1) year, the same number shall be elected for two (2) years, and the remainder shall be elected for three (3) years.

Section 3.5 Vacancies. Vacancies on the Board caused by reasons other than the removal of a director by a vote of the Association shall be filled by vote of the majority of the remaining directors, even though they may constitute less than a quorum. Each person so selected shall be a director until a successor is elected at the next annual meeting of the Association to serve the balance of the unexpired term.

Section 3.6 Removal of Directors. At any regular or special meeting after the Transition Date, any one or more of the directors may be removed, with or without cause, by the holders of a majority of the total voting power of the Association and a successor may then and there be elected to fill the vacancy thus created and to serve the balance of the unexpired term. Any director whose removal has been proposed shall be given an opportunity to be heard at the meeting.

Section 3.7 Compensation. No compensation shall be paid to directors for their services as directors.

Section 3.8 Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined from time to time by a majority of the directors, but at least two (2) such meetings shall be held during each fiscal year. Notice of regular meetings of the Board shall be given to each director personally or by mail, telephone or telegraph, at least three (3) days before the day fixed for the meeting.

Section 3.9 Special Meetings. Special meetings of the Board may be called by the president on three (3) days' notice to each director, given personally or by mail, telephone or telegraph, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board shall be called by either the president or the secretary in like manner and on like notice on the written request of any two (2) directors.

Section 3.10 Waiver of Notice. Before any meeting of the Board, any director may, in writing, waive notice of such meeting. Attendance by a director at any meeting of the Board shall be a waiver by him of timely and adequate notice unless he expressly challenges the notice when the meeting begins.

Section 3.11 Quorum. At all meetings of the Board, a majority of the directors shall constitute a quorum for the transaction of business, and the acts of the majority of the directors present at a meeting at which a quorum is present shall be the acts of the Board.

Section 3.12 Open Meeting. Any unit owner or voting representative may attend any meeting of the Board, but shall not be entitled to participate.

#### ARTICLE 4 OFFICERS.

Section 4.1 Designation. The principal officers of the Association shall be a president, a vice president, a secretary and a treasurer, all of whom shall be elected by the Board. The directors may appoint such other officers as in their judgment may be necessary or desirable. Two or more offices may be held by the same person, except that a person may not hold the offices of president and secretary simultaneously.

Section 4.2 Election of Officers. The officers of the Association shall be elected annually by the Board at the first Board meeting after the annual meeting of the Association. They shall hold office at the pleasure of the Board.

Section 4.3 Removal of Officers. At any regular meeting of the Board or at any special meeting of the Board called for such purpose, upon an affirmative vote of a majority of the members of the Board, any officer may be removed, either with or without cause. A successor to the removed officer may be elected at any such meeting.

Section 4.4 President. The president shall be the chief executive officer of the association. He shall, when present, preside at all meetings of the Association and of the Board and shall have all powers and duties usually vested in the office of the president.

Section 4.5 Vice President. The vice president shall perform the duties of the president when the president is absent or unable to act, and shall perform such other duties as may be prescribed by the Board.

Section 4.6 Secretary. The secretary shall keep the minutes of all meetings of the Board and of the Association and shall have custody of the business records of the Board and the Association, other than financial records kept by the treasurer. He shall also perform such other duties as may be prescribed by the Board.

Section 4.7 Treasurer. The treasurer shall have responsibility for the Association funds and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association.

Section 4.8 Other Officers and Employees. Other officers of the Association and any persons employed to assist the officers shall have such authority and shall perform such duties as the Board may prescribe within the provisions of the applicable statutes, the Declaration and these Bylaws.

Section 4.9 Compensation. The Board may pay reasonable compensation to any officer or unit owner who performs substantial services for the project in carrying out the management duties of the Board. The Board's decision to compensate an officer shall not become final until sixty (60) days after notice of it (including the amount of compensation to be paid) has been given to all persons entitled to notice of meetings of the Association, and such decision may be reversed by the members of the Association at a meeting duly called and held within sixty (60) days after the notice of the decision was given.

Section 4.10 Declarant's Powers. In accordance with the Declaration, the Declarant or Declarant's managing agent may exercise the powers of the officers until the Transition Date.

## ARTICLE 5 COMMITTEES.

Section 5.1 Committees of Directors. The Board may appoint one or more committees that consist of one or more directors. Such committees, if composed entirely of Board members, shall have and exercise, to the extent provided in the resolution establishing the committee, the authority of the Board in the management of the Association. The appointment of any such committee shall not relieve the Board of its ultimate responsibility for the administration and management of the project.

Section 5.2 Other Committees. Other committees, not having or exercising the authority of the Board in the management of the Association, may be appointed by the president or the directors, and such committees may be composed of one or more members of the Association other than Board members but at least one member must be a Board member.

## ARTICLE 6 OBLIGATION OF OWNERS.

Section 6.1 Contribution to Working Capital. The original first purchaser of each unit from Declarant shall pay to the Association as a contribution to the Association's initial working capital an amount equal to twice the estimated monthly assessment against such unit.

Section 6.2 Monthly Assessments. Owners are obligated to pay monthly assessments imposed by the Association to meet the common expenses of the project as provided in the Declaration.

Section 6.3 Compliance with Covenants, Bylaws and Administrative Rules and Regulations. Each unit owner shall comply strictly with the Declaration, these Bylaws, and with the administrative rules and regulations adopted pursuant thereto, as they may be lawfully amended from time to time, and with any covenants, conditions and restrictions set forth in the deed to his unit. Failure to comply with any of the foregoing shall be ground for an action to recover sums due, damages, and for injunctive relief, or any or all of them, maintainable by the Board or the managing agent on behalf of the Association or by a particularly aggrieved unit owner.

## ARTICLE 7 HANDLING OF FUNDS.

Section 7.1 Accounts. The Association shall establish the necessary funds or accounts to provide properly for the operation and maintenance of the project. Overall superintendence of these funds shall be the responsibility of the treasurer of the Association. All accounts with banks or other depositories shall require the signature of two (2) officers on checks or other withdrawals. There shall be at least three (3) separate funds as described in Sections 7.2, 7.3 and 7.4.

Section 7.2 Working Capital Fund. The treasurer shall cause to be established a checking account in a commercial bank to be known as the "Working Capital Fund." This fund will be used for the normal operation of the project and will receive all monthly assessments, first purchasers' initial contributions to the fund, and other monies received by the Association. Checks shall be issued from this account for all management and operation expenditures necessary for the project and maintenance expenses of a routine or minor nature that do not require resorting to the Reserve Fund for Common Areas and Facilities. Funds for the Reserve Fund for Insurance Premiums and the Reserve Fund for Common Areas and Facilities will normally be deposited in the Working Capital Fund and checks immediately issued to the other fund so an overall account of the funds received and disbursed by the Association is centralized in the check register of the Working Capital Fund account.

Section 7.3 Reserve Fund for Insurance Premiums. The treasurer shall cause to be established an interest-bearing savings account in a bank or savings and loan association, or with a money market fund, which shall be known as the "Reserve Fund for Insurance Premiums." Each month the treasurer shall cause to be deposited into this fund an amount equal to at least one-twelfth (1/12) of the total cost of all premiums for the policy or policies and bonds the Association is required by the Declaration to purchase. Such premiums shall be paid out of this fund.

Section 7.4 Reserve Fund for Common Areas and Facilities. The Association shall maintain an interest-bearing savings account in a bank or savings and loan association, or with a money market fund, which account shall be known as the "Reserve Fund for Common Areas and Facilities." The purpose of the reserve account will be to provide for the periodic maintenance, repair and replacement of the common areas and facilities. An amount adequate for this purpose shall be included in each annual budget and collected as a part of the monthly assessments.

## ARTICLE 8 AMENDMENT OF PERCENTAGE OF INTEREST IN COMMON AREAS AND FACILITIES.

Section 8.1 Appraisal. The project and all parts thereof shall be reappraised upon the happening of any event which, in the judgment of the Board, requires a reappraisal and reapportionment of the values of one or more units or appurtenant common areas and facilities. The appraisal shall be made by a competent MAI or SRPA appraiser selected by the Board. After the appraisal has been made, it shall be considered by the unit owners at an annual or special meeting. Any unit owner shall have the right to be heard at the meeting and to introduce evidence if he desires.

Section 8.2 Consent Required. Except as otherwise provided in the Declaration, (a) the value of the property and of each unit and the percentage of undivided interest in the common areas and facilities shall not be altered without first amending the Declaration, and (b) any such amendment shall require the unanimous consent of the unit owners and prior written approval of seventy-five percent (75%) of all first mortgagees

(based upon one vote for each first mortgage held).

#### ARTICLE 9 KEEPING RECORDS AND REPORTS.

Section 9.1. General. The Board shall cause to be kept complete, detailed and accurate books and records of the receipts and expenditures of the Association, in a form that complies with generally accepted accounting principles. The books and records, authorizations for payment of expenditures, and all contracts, documents, papers and other records of the Association shall be available for examination by the owners, mortgagees and the agents or attorneys of either of them, during normal business hours and at any other reasonable time or times.

Section 9.2. Financial Reports. The Board shall cause to be issued and mailed to all members of the Association and to all mortgagees that request them, within ninety (90) days following the end of each fiscal year of the project, an audited financial statement for that fiscal year, which shall include a balance sheet and a statement of operations and a comparison between the actual expenses of operation and the expenses that had been projected for that year. Holders of first mortgages may require the submission of additional financial data concerning the project as is reasonably required by prudent mortgage loan management.

#### ARTICLE 10 AMENDMENTS.

These Bylaws may be altered, amended or repealed and new Bylaws may be adopted by the Board of Directors or by the shareholders at any regular or special meeting. The amendment of these Bylaws is subject to the limitations set forth in the Declaration.

#### ARTICLE 11 ABANDONMENT OR TERMINATION OF CONDOMINIUM STATUS.

Except in cases of substantial damage to the property as provided in Article 24 of the Declaration or condemnation of the entire project as provided in Section 25.3 of the Declaration, the condominium status of the property shall not be abandoned or terminated by reason of any act or omission by the owners or the Association, except with the consent of all owners by an instrument to that effect duly recorded, and then only if the mortgagees and holders of all liens affecting any of the units consent thereto or agree, in either case by an instrument duly recorded, that their mortgages and liens be transferred to the percentage of the undivided interest of the owner in the property.

#### ARTICLE 12 INDEMNIFICATION.

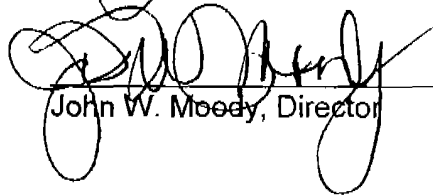
To the full extent permitted by applicable law, each member of the Board, each member of an Association committee, each officer, the Declarant who filed the Declaration, and the managing agent shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed in



connection with any proceeding to which he may be a party, or in which he may become involved, by reason of holding or having held such position, or any settlement thereof, whether or not he or she holds such position at the time such expenses or liabilities are incurred, except to the extent such expenses and liabilities are covered by insurance and except in such cases wherein such person is adjudged guilty of willful misfeasance in the performance of his or her duties; provided, however, that in the event of a settlement, the indemnification shall apply only when the Board approves such settlement and reimbursement as being for the best interest of the Association; and further provided that this right of indemnification shall be inapplicable to the extent necessary, if at all, for the Association to obtain any insurance required by the Declaration.

The foregoing Bylaws shall be effective the 30 day of November, 2003.

  
\_\_\_\_\_  
Gary C. Asin & Lori J. Asin Directors

  
\_\_\_\_\_  
John W. Moody, Director