

DECLARATION OF RESTRICTIONS

FOR

THE VILLAGE AT ELK HILLS

A Residential Condominium Development

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THIS DECLARATION IS SUBJECT TO ARBITRATION IN ACCORDANCE
WITH THE MONTANA UNIFORM ARBITRATION ACT

DECLARATION OF RESTRICTIONS

FOR

THE VILLAGE AT ELK HILLS

THIS DECLARATION OF RESTRICTIONS is made on the day and year hereinafter written, by R & H DEVELOPMENT, a Montana Limited Liability Company ("Declarant"), with reference to the following Recitals.

RECITALS

A. Declarant is a Montana Limited Liability Company that is the owner of that certain real property in the City of Missoula, County of Missoula, State of Montana, more particularly described in Exhibit "A" attached to this Declaration and made a part of it (hereinafter "Property"). The Property is the residential portion of the approved plat of The Village at Elk Hills.

B. The Property is being developed as a residential condominium project, as defined by the Montana Unit Ownership Act [Montana Code Annotated ("MCA") sections 70-23-101 *et seq.*] and consists of forty six (46) Condominium Units and related General Common Elements and Limited Common Elements.

C. Pursuant to the Declaration of Unit Ownership (the "Condominium Plan") recorded immediately preceding the recording of this Declaration, Declarant has subjected the Property to unit ownership.

D. Owners of a Condominium will receive title to a Unit, the use of Limited Common Elements, and a one-forty sixth (1/46) interest in Common Elements (all as hereinafter defined). Each Condominium includes a membership in The Village at Elk Hills Homeowners' Association ("Association"), which will be the management body for the Project (as hereinafter defined).

NOW, THEREFORE, Declarant hereby declares that all of the Property is and shall continue to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the declarations, limitations, covenants, conditions, restrictions, reservations, rights, and easements set forth in this Declaration, and as may be amended from time to time, all of which are declared and agreed to be in furtherance of a plan established for the purpose of enhancing and perfecting the value, desirability, and attractiveness of the Property. All provisions of this Declaration shall constitute covenants running with the land and enforceable equitable servitudes upon the Property, and shall be binding on and for the benefit of all of the Property and all parties having or acquiring any right, title, or interest in all or any part of the Property, including the heirs,

executors, administrators, and assigns of these parties and all subsequent owners and lessees of all or any part of a Condominium.

DECLARATION

ARTICLE 1 - DEFINITIONS

1.1 **"Articles"** means the Articles of Incorporation of The Village at Elk Hills Homeowners' Association, filed in the Office of the Secretary of State of the State of Montana on November 4, 1996, as File No. D-088497, and any amendments hereafter adopted.

1.2 **"Association"** means The Village at Elk Hills Homeowners' Association, a Montana nonprofit mutual benefit corporation created for the purpose of managing the Project.

1.3 **"Board"** means the Board of Directors of the Association.

1.4 **"Borrower"** means a Person who mortgages his, her, or its property to another (i.e., the maker of a mortgage), and shall include the trustor of a trust indenture. The term "Mortgagor" shall be synonymous with the term "Borrower."

1.5 **"Bylaws"** means the Bylaws of the Association and any duly adopted amendments to those bylaws.

1.6 **"Commercial Property"** means Lot 7 of the approved plat of The Village at Elk Hills and includes any improvements to be constructed on that property and any persons who use or own that property.

1.7 **"Common Elements"** means the General Common Elements and the Limited Common Elements. The Common Elements are owned by the Owners as tenants-in-common, in equal undivided one forth-sixth (1/46) fractional interests.

1.8 **"Condominium"** means an estate in real property consisting of a separate interest in a Unit, the boundaries of which are shown and described on the Condominium Plan, a fractional undivided interest as a tenant-in-common in the Common Elements of the Project, a membership in the Association, and the exclusive right to use any Limited Common Elements appurtenant to each Unit as shown on the Condominium Plan or deed of conveyance.

1.9 **"Condominium Plan"** means the Declaration of Unit Ownership recorded immediately preceding the recording of this Declaration.

1.10 **"Eligible Lender"** means a holder, insurer or guarantor of a First Mortgage that provides a written request to the Association stating the name and address of such holder, insurer or guarantor and the Unit number, and requesting notice to which such Eligible Lender is due under the Governing Documents.

1.11 **"General Common Elements"** means the entire Property except all Units or Limited Common Elements as defined in this Declaration and as shown on the Condominium Plan.

1.12 **"Governing Documents"** means this Declaration and any other documents such as the Articles, Bylaws, Condominium Plan or Rules and Regulations which govern the operation of the Association.

1.13 **"Lender"** means a Person to whom a Mortgage is made and includes the beneficiary under or holder of a trust indenture as well as a mortgagee and any guarantor or insurer of a mortgage. "Institutional Lender" means a mortgagee that is a financial intermediary or depository, such as a bank, savings and loan, or mortgage company, that is chartered under federal or state law and that lends money on the security of real property or invests in such loans, or any insurance company or governmental agency or instrumentality, including the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), and the Government National Mortgage Association (GNMA). "First Lender" means a mortgagee that has priority over all other mortgages or holders of mortgages encumbering the same Condominium or other portions of the Project. The term "Mortgagee" shall be synonymous with the term "Lender."

1.14 **"Limited Common Elements"** means those portions of the Common Elements designated herein for the exclusive use of one (1) or more, but fewer than all, of the Owners and which is appurtenant to a Unit or Units as described in or shown on the Condominium Plan or deed of conveyance and pursuant to the provisions herein. "Limited Common Elements" shall consist of patios/balconies, stairways providing direct unit access, garages and those driveways immediately in front of garages that accommodate parking, porches or stoops, walkways, and landings as shown and described on the Condominium Plan, and any doorsteps, exterior doors, door frames and hardware incident thereto, screens and windows and other fixtures, and internal and external telephone wiring designed to serve a Unit but located outside the boundaries of the Unit.

1.15 **"Member"** means every person or entity entitled to membership in the Association as provided in this Declaration.

1.16 **"Mortgage"** means a mortgage or trust indenture under the Small Tract Financing Act of Montana (MCA, §§ 71-1-301 through 71-1-321) encumbering a Condominium or any other portion of the Project. "First Mortgage" means a mortgage that has priority over all other mortgages encumbering the same Condominium or other portions of the Project.

1.17 **"Owner"** means any natural person, firm, corporation, partnership, trust or other entity which owns a fee simple interest in any Unit, including Declarant, and any contract purchasers who have filed a Notice of Purchaser's Interest in accordance with Montana law or whose purchase contract has been recorded. "Owner" shall not include any persons or entities who hold an interest in a Condominium merely as security for performance of an obligation. For purposes of exercising membership rights and incurring membership obligations when an Owner is a corporation, any director, officer, employee or agent designated by corporate resolution may exercise the membership rights attributable to the corporation. When an Owner is a trust, the trustee may exercise the membership rights attributable to the trust unless otherwise designated in writing by the trustee.

1.18 **"Person"** means a natural individual, a corporation, or any other entity with the legal right to hold title to real property.

1.19 **"Project"** means the property which is a residential condominium project as described herein and on the Condominium Plan, including all improvements constructed or to be constructed on the property. The Project does not include the Commercial Lot shown as Lot 7 on the plat of The Village of Elk Hills.

1.20 **"Property"** means the real property described in Exhibit "A" attached to this Declaration.

1.21 **"Rules and Regulations"** means any Rules and Regulations adopted for the Association by the Board pursuant to subsection 3.6.2 below, regulating the use of the Units, the Limited Common Elements, the General Common Elements, the Project and any facilities located thereon.

1.22 **"Unit"** means that portion of a Condominium that consists of a separate interest. "Unit" does not include the other elements of the Project. Each Unit shall be a separate freehold estate, as separately shown, numbered, and designated on the Condominium Plan. Each Unit consists of a living area space or spaces bounded by and contained within the upper, lower and perimetrical boundaries set forth on the Condominium Plan including the interior finished surfaces of the perimeter walls, floors, ceilings, windows, and doors (including the wall coverings and floor coverings).

ARTICLE 2 - THE PROPERTY

2.1 **Project Subject to Declaration.** The entire Project shall be subject to this Declaration.

2.2 **Description of Land and Improvements; Ownership of Common Elements.** The Project consists of the real property described in Exhibit "A," and is divided between the Common Elements and the Units. Each of the Units is owned by the individual Owners as separate property. The Common Elements are owned by Owners of Units as tenants-in-common, in equal one forty-sixth (1/46th) fractional interests. The Owners of Units shall have appurtenant nonexclusive rights for ingress, egress and support through the General Common Elements subject to the rights and restrictions contained in the Governing Documents.

2.3 **Equitable Servitudes.** The covenants and restrictions set forth in this Declaration shall be enforceable equitable servitudes and shall inure to the benefit of and bind all Owners. These servitudes may be enforced by any Owner or by the Association or by both.

2.4 **Prohibition Against Partition.** There shall be no judicial partition of the Project or any part of it, nor shall Declarant or any person acquiring an interest in the Project or any part of it seek any judicial partition, except upon showing that such partition is consistent with the requirements of sections 70-23-801 through 70-23-806 of the Montana Unit Ownership Act.

2.5 ***Presumption Regarding Boundaries of Units.*** In interpreting deeds, declarations and plans, the existing physical boundaries of a Unit, including any Unit reconstructed in substantial accordance with the Condominium Plan and the original construction plans for the Project, shall be conclusively presumed to be its boundaries, rather than the description expressed in the deed, Condominium Plan, or this Declaration. This presumption applies regardless of settling or lateral movement of the building and regardless of minor variances between boundaries shown on the Condominium Plan or described in the deed and those of the building as constructed or reconstructed. In the event a structure is partially or totally destroyed and then repaired or rebuilt, the Owners agree that minor encroachments over adjoining Condominiums or Common Elements shall be permitted and that there shall be appropriate rights for the maintenance of said encroachments so long as they shall exist.

2.6 ***Prohibition Against Severance of Elements.*** Any conveyance, judicial sale, or other voluntary or involuntary transfer of a Unit shall include all interests and appurtenances as shown in the original deed of conveyance. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the Owner's entire estate shall also include the Owner's membership interest in the Association, as provided in Article 3 herein. Any transfer that attempts to sever those component interests shall be void.

ARTICLE 3 - ASSOCIATION

3.1 ***Organization of the Association.*** The Association is incorporated as a nonprofit corporation organized under the Montana Nonprofit Corporation Act. The Association is created for the purpose of managing the Project and is charged with the duties and granted the powers prescribed by law and set forth in the Governing Documents.

3.2 ***Board of Directors.*** The affairs of the Association shall be managed and its duties and obligations performed by an elected Board of Directors, as provided in Article 3 of the Bylaws.

3.3 ***Membership.*** Every Owner, upon becoming an Owner, shall automatically become a Member of the Association. Ownership of a Condominium is the sole qualification for membership. Each Member shall have the rights, duties, privileges, and obligations as set forth in the Governing Documents. Membership shall automatically cease when the Owner no longer holds an ownership interest in a Condominium. All memberships shall be appurtenant to the Condominium conveyed, and cannot be transferred, assigned, conveyed, hypothecated, pledged, or alienated except as part of a transfer of the Owner's entire ownership interest, and then only to the transferee. Any transfer of the Owner's title to his or her Condominium shall automatically transfer the appurtenant membership to the transferee.

3.4 ***Membership Classes; Voting Rights.*** The Association shall have two classes of membership and the rights, duties, obligations and privileges of the Members shall be as set forth in the Governing Documents.

3.4.1 **Class A.** Class A Members shall be all Owners of a Condominium with the exception of Declarant. Each Class A Member shall be entitled to one (1) vote for each Condominium owned. When more than one person holds an interest in any Condominium, all such persons shall be Members. The vote for such Condominium shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Condominium. If more than one person holds an interest in any Condominium but those persons cannot agree upon the manner in which the vote for such Condominium shall be cast, then the vote attributable to that Condominium shall not be counted.

3.4.2 **Class B.** The Class B Member shall be the Declarant, and the Declarant shall be entitled to forty-eight (48) votes regardless of the number of Condominiums it may own. The Class B membership shall terminate, automatically and without any further action or filing, on the first anniversary of the date upon which the Declarant for the first time ceases to own any Condominiums.

3.5 **Membership Meetings.** Meeting of Members shall be held in accordance with Article 2 of the Bylaws.

3.6 **General Powers and Authority.** The Association shall have all the powers of a nonprofit mutual benefit corporation organized under the Montana Nonprofit Corporation Act, subject to any limitations set forth in the Governing Documents. It may perform all acts that may be necessary for or incidental to the performance of the obligations and duties imposed upon it. Its powers shall include, but are not limited to:

3.6.1 The power to establish, fix, levy, collect, and enforce the payment of assessments against the Owners in accordance with the procedures set forth in Article 4 herein.

3.6.2 The power to adopt reasonable Rules and Regulations governing the use of the Units, the Common Elements, any common facilities and Association-owned property, and the conduct at Board and Members' meetings, in accordance with the following:

(a) The Rules and Regulations may include, but are not limited to: reasonable restrictions on use by the Owners and their families, guests, employees, tenants and invitees; rules of conduct; the setting of reasonable fees, deposits and use fees for any recreational facilities; and reasonable hearing procedures and a schedule of monetary penalties and fines (which shall be deemed common expenses pursuant to the Montana Unit Ownership Act) which may be imposed for violations of any provisions of the Governing Documents, subject to Section 3.11 of the Bylaws.

- (b) A copy of the current Rules and Regulations, if any, and all modifications, revisions and updates shall be given to each Owner.
 - (c) If any provision of the Rules and Regulations conflicts with any provision of this Declaration, the Articles, or the Bylaws, the Declaration, Articles, or Bylaws shall control to the extent of the inconsistency.
- 3.6.3 The right to institute, defend, settle, or intervene in litigation, arbitration, mediation, or administrative proceedings in its own name as the real party in interest and without joining with it the Owners as authorized by section 70-23-901, MCA.
 - 3.6.4 Subject to the limitations set forth in Section 3.11 of the Bylaws, the right to discipline Owners for violation of any of the provisions of the Governing Documents by (i) suspending the Member's membership rights, including the Member's voting rights and the rights and privileges to use the Common Elements, and (ii) imposing monetary fines.
 - 3.6.5 The right for its agents and employees to enter any Unit when necessary in connection with any maintenance, landscaping, or construction work for which the Association is responsible. This entry shall be made only upon reasonable notice to the Owner (except in the case of an emergency) and with as little inconvenience to the Owner as is practicable. Any damage caused thereby shall be repaired by the Association at its own expense.
 - 3.6.6 The power to grant permits, licenses and easements over, under and through the Common Elements for roads, utilities, cable television, sewer facilities and other purposes in accordance with section 5.2.5(h) of Article 5 (a) to serve the Common Elements or the Condominiums, or (b) where necessary or convenient to satisfy or achieve appropriate governmental purposes or requests.
 - 3.6.7 Notwithstanding any nonexclusive easement rights to the Common Elements granted herein or by any deed or other conveyance, the right to allow one or more Owners to exclusively use portions of the Common Elements, provided that such portions of the Common Elements are nominal in area and adjacent to the Owner's Unit, and, provided further, that such use does not unreasonably interfere with any other Owner's use or enjoyment of the Project, subject, however, to the provisions of section 5.2.6.
 - 3.6.8 The power to remove any vehicle within the Project parked in violation of this Declaration or the Rules and Regulations.

- 3.6.9 The power to enter into agreements with the Commercial Property regarding that property's use of the public access easements of record that are located on the Property.

3.7 ***Duties of the Association.*** In addition to the duties of the Association, its agents and employees set forth elsewhere in the Governing Documents, the Association shall be responsible for the following:

- 3.7.1 The Association, acting through the Board, shall operate, maintain, repair, and replace those components described in Sections 6.4, 6.5 and 6.6 or contract for the performance of that work, subject to the provisions of the Governing Documents.
- 3.7.2 The Association shall use the maintenance fund described in Article 4 herein to, among other things, acquire and pay for goods and services for the Project, including, but not limited to:
- (a) Water, sewer, refuse, electrical, gas, and other necessary utility service for the General Common Elements, and, to the extent not separately metered and charged, for the Units.
 - (b) The insurance policies described herein.
 - (c) The services of any personnel that the Board determines are necessary or proper for the operation of the Common Elements and the Association.
 - (d) Legal and accounting services necessary or proper in the operation of the Common Elements and the Association or the enforcement of the Governing Documents.

3.8 ***Inspection of Accounting Books and Records.*** The rights of Owners and Directors to obtain and inspect the accounting books and records of the Association shall be in accordance with Article 6 of the Bylaws.

ARTICLE 4 - ASSESSMENTS AND COLLECTION PROCEDURES

4.1 ***Covenant to Pay.*** Each Owner by acceptance of the deed to the Owner's Condominium is deemed to covenant and agrees to pay to the Association regular, special, and individual assessments, which shall be deemed common expenses pursuant to the Montana Unit Ownership Act, as well as all other charges duly levied by the Association pursuant to the provisions of this Declaration. A regular, special, or individual assessment and any late charges, reasonable costs of collection, and interest, as assessed in accordance with the provisions of this Article, shall

also be a personal debt of the Owner of the Condominium at the time the assessment or other sums are levied. The Owner may not waive or otherwise escape liability for these assessments by nonuse of the Common Elements or abandonment of the Owner's Condominium.

4.2 **Purpose of Assessments.** Except as provided herein, the Association shall levy regular, special, and individual assessments sufficient to perform its obligations. The assessments levied by the Association shall be used exclusively to promote the welfare of the Owners, and for the operation, replacement, improvement, and maintenance of the Project, and to discharge any other obligations of the Association under this Declaration. All assessment payments shall be put into general operating and reserve funds to be used for the foregoing purposes.

4.3 **Regular Assessments.** The Board shall estimate the net charges to be paid during the next fiscal year, including a reasonable provision for contingencies, replacements and reserves, with adjustments made for any expected income and surplus from the prior year's fund. The resulting amount shall constitute the regular assessments for the budgeted year. Regular assessments shall be divided equally among all Units and allocated among, assessed against and charged to each Owner according to the ratio of the number of Units owned by the assessed Owner to the total number of Units subject to assessment. Each Unit shall bear an equal share of the total assessment. Each Owner is obligated to pay assessments to the Association in equal monthly installments on or before the first day of each month unless the Board adopts an alternative method for payment.

4.3.1 The regular assessments shall commence as to all Condominiums in building of the Project on the first day of the month following the conveyance of the first Condominium to an Owner in that Phase, subject to the Declarant's obligation set forth in Section 4.3.2. The first regular assessments shall be adjusted according to the number of months remaining in the fiscal year after the first conveyance.

4.3.2 Until all of the units contemplated at The Village at Elk Hills are completed, regular assessments for the common expenses, which include maintenance, repair and operation of the Common Elements and provision of services contemplated by Section 4.2, shall be allocated in the following manner:

- (a) The purchaser of a Unit shall pay one-forty-sixth ($1/46$) of the regular assessment.
- (b) The Declarant shall pay the remainder of the actual common expenses, which includes the costs for provision of common services and maintenance, repair and operation of the Common Elements until all of the units contemplated in the Condominium Plan are completed.
- (c) In the event the Condominium Plan and Declaration are amended to provide for the creation of a fewer number of units, the denominator of 46 units utilized in section (a) shall be revised to

reflect the corrected number of units included in the Condominium Plan and Declaration as amended.

4.4 **Special Assessments.** If the Board determines that the amount to be collected from regular assessments will be inadequate to defray the common expenses for the year due to the cost of any construction, unexpected repairs or replacements of capital improvements upon the Common Elements, or any other reason, it shall make a special assessment for the additional amount needed, subject to any limitations imposed by law or the Governing Documents. Special assessments shall be levied and collected in the same manner as regular assessments.

4.5 **Individual Assessments.** Subject to the limitations of the Governing Documents and in addition to regular and special assessments, the Board may levy individual assessments against Owners and Units whenever the Association (i) performs any service or accomplishes any item of repair or maintenance which is the duty of any Owner to accomplish, but which has not been accomplished by such Owner, or (ii) incurs any costs which by law or as required by the Governing Documents must be reimbursed by an Owner. Such individual assessment shall include the cost thereof, together with any financing costs and administrative costs incurred by the Association. Prior to levying such an individual assessment, the Board shall provide the Owner with notice and a hearing in accordance with Section 3.11 of the Bylaws. The notice and hearing regarding the levy of an individual assessment may be combined with the notice and hearing regarding the underlying violation.

4.6 **Collection of Individual Assessments.** Duly levied individual assessments shall be subject to the provisions in the Governing Documents regarding costs, late charges and interest for delinquent payment, and may become a lien on the Unit, in the same manner as regular and special assessments.

4.7 **Monetary Penalty Assessments.** The Board of Directors may levy, subject to the limitations of the Governing Documents, monetary penalties or fines against an Owner and his or her Unit. In the event the Board of Directors imposes a monetary penalty or fine, that fine shall be subject to costs, late charges and interest as described in Section 4.11 for delinquent payment and may become a lien on the Unit, collectable by the Association as allowed by Section 4.14 herein.

4.8 **Units Not Subject To Assessment.** Assessments which would normally become due on Units, but which Units are owned by the Association, shall be deemed to be common expenses collectible from all of the remaining Units in the same proportion that each Unit bears to the others less the number of Units owned by the Association.

4.9 **Limitations on Assessments.** Except in emergency situations, the Board may not, without the approval of Members constituting a quorum of the Owners and casting a majority of the votes at a meeting or election of the Association, impose a regular assessment per Unit that is more than twenty percent (20%) greater than the regular assessment for the preceding fiscal year, or levy special assessments that in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. For purposes of this Section, a "quorum" means more than fifty percent (50%) of the Owners of the Association. These limitations shall not apply to

assessment increases that are necessary for emergency situations. An emergency situation is an extraordinary expense that is:

- 4.9.1 Required by a court order.
- 4.9.2 Necessary to repair or maintain the Project or any part of it for which the Association is responsible when a threat to personal safety in the Project is discovered.
- 4.9.3 Necessary to repair or maintain the Project or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing the pro forma operating budget. Before the Board may impose or collect an assessment in this emergency situation, it shall pass a resolution containing written findings as to the necessity of the extraordinary expense and why the expense was not or could not have been reasonably foreseen in the budgeting process, and shall distribute the resolution to the Owners with the notice of assessment.

4.10 *Owner Notice of Assessments.* The Association shall provide notice by first-class mail to the Owners of any increase in the regular assessments or the imposition of a special assessment not less than thirty (30) nor more than sixty (60) days prior to the increase in the regular assessment or special assessment becoming due.

4.11 *Costs, Late Charges and Interest.* Late charges may be levied by the Association against an Owner for the delinquent payment of regular, special, and individual assessments, fines and monetary penalties. An assessment, including any installment payment, is delinquent fifteen (15) days after its due date. If an assessment is delinquent the Association may recover all of the following from the Owner:

- 4.11.1 Reasonable costs incurred in collecting the delinquent assessment, including actual attorneys' fees.
- 4.11.2 A late charge not exceeding ten percent (10%) of the delinquent assessment or ten dollars (\$10.00), whichever is greater, or the maximum amount allowed by law.
- 4.11.3 Interest on the foregoing sums, at an annual percentage rate of twelve percent (12%) commencing thirty (30) days after the assessment becomes due.

No late charge may be imposed more than once for the delinquency of the same payment. However, the imposition of a late charge on any delinquent payment shall not eliminate or supersede charges imposed on prior delinquent payments. The amounts delinquent, including the entire unpaid balance and any related costs described herein, may be collected by the Association as provided in Section 4.14 hereinbelow.

4.12 **Priority of Payments.** Payments received by the Association from Owners shall be applied towards (1) collection costs, including attorneys fees, (2) monetary penalties, (3) interest, (4) late charges, (5) individual assessments, (6) special assessments, and (7) regular assessments, in that order.

4.13 **No Offsets.** All assessments shall be payable in the amounts specified by the Association, and no offsets against such amount shall be permitted for a claim that the Association is not properly exercising its duties of maintenance, operation or enforcement.

4.14 **Enforcement of Assessments and Late Charges.** A delinquent regular, special, or individual assessment, fine, monetary penalty, and any related late charges, reasonable costs of collection (including actual attorneys' fees), penalties, and interest assessed in accordance with Section 4.11 above shall become a lien upon the Condominium when a claim is duly recorded in the Office of the County Clerk and Recorder of Missoula County, Montana, as provided in section 70-23-607 of the Montana Unit Ownership Act. The claim shall contain a true statement of the account due for such common expenses after deducting all just credits and offsets; the name of the owner of the unit or reputed owner, if known; and a description of the property where the common expenses were furnished and the designation of the unit, sufficient for identification. The claim shall be verified by the oath of the President, Vice President or manager of the Association.

Unless the Board considers the immediate (without notice) recording of the claim to be in the best interests of the Association, the claim may not be recorded until ten (10) calendar days after the Association has mailed, via first-class mail, a written demand for payment to the delinquent Owner. If the delinquent assessment or installment and related charges are paid or otherwise satisfied in accordance with the demand for payment, the Association shall not record the claim.

Immediately upon recording of the claim pursuant to the foregoing provisions of this section, the amounts delinquent, as set forth in such claim, together with the costs (including attorney's fees), late charges and interest accruing thereon, shall be and become a lien upon the Condominium described therein, which lien shall also secure all other payments and/or assessments which shall become due and payable with respect to said Condominium following such recording, and all costs (including attorney's fees), late charges and interest accruing thereon.

In the event the delinquent assessments and all other assessments which have become due and payable with respect to the same Condominium, together with all costs (including attorney's fees), late charges and interest which have accrued on such amounts, are fully paid or otherwise satisfied prior to the completion of any sale held to foreclose the lien provided for in this Article, the Board shall record a further notice, similarly signed, stating the satisfaction and releasing of such lien.

Each lien, including liens for assessment, may be foreclosed as provided for by the laws of the State of Montana. Suit to recover a money judgment for unpaid assessments, late charges, interest and costs (including attorney's fees) shall be maintainable without foreclosing or waiving the lien securing the same.

The claim is not required to be amended by the Association to reflect any partial payments made on the account of the delinquent Owner after its recordation, and any such partial payments received shall not be construed to invalidate the claim and said claim may be foreclosed upon as set forth herein even though the delinquent Owner has made one or more partial payments.

4.15 **Priority of Assessment Lien.** As set forth below, the assessment lien referred to in Section 4.14 shall be superior to all other liens, except (i) all taxes, bonds and governmental assessments which, by law, would be superior to it, and (ii) the lien or charge of any First Mortgage or trust indenture of record. Notwithstanding any other provision to the contrary, the following provisions shall govern the priority and obligation for payment of the assessment lien:

- 4.15.1 Only the judicial or non-judicial foreclosure of the First Mortgage shall operate to transfer title free of the assessment lien or obligation for any assessment lien which became due prior to the date title was acquired.
- 4.15.2 Should any person or entity other than a First Lender foreclose on a Condominium, the new Owner shall be personally liable for all unpaid assessments whether or not a lien has been recorded if such new Owner expressly assumed such personal liability. In the event the new Owner assumes such liability, the Association may elect to collect such unpaid assessments, including late charges, interest and other costs, from the new Owner, either personally or against the Condominium, upon the transfer of title.
- 4.15.3 Neither the transfer of a Condominium pursuant to a foreclosure of any Mortgage, nor an election by the Association to proceed against any new Owner for payment, shall serve to cancel the personal obligation of the prior Owner for payment of the delinquent assessments and charges which accrued during such Owner's period of ownership. The personal obligation of any Owner for payment of delinquent assessments and charges may only be satisfied, and therefore discharged, by payment of the entire amount of the delinquent assessments and charges, whether or not such Owner remains in possession of his or her Unit.
- 4.15.4 No sale or transfer of any Condominium shall relieve such Condominium or its new Owner from liability for any future assessments which accrue during such new Owner's period of ownership.

4.16 **Estoppel Certificate.** The Association shall furnish, upon demand by any person, a certificate signed by an officer of the Association setting forth whether the assessments on a specified Condominium have been paid. A properly executed certificate of the Association as to the status of assessments on a Condominium is binding upon the Association as of the date of its issuance.

4.17 **Capitalization of Association.** Unless waived by the Association, upon acquisition of record title to a Condominium from Declarant, each Owner shall contribute to the capital of the Association an amount equal to one-twelfth (1/12) the amount of the then annual assessment for that Condominium as determined by the Board. This amount shall either be paid directly by the buyer to the Association or be deposited by the buyer into the purchase and sale escrow, if established, and disbursed from escrow to the Association. Amounts paid pursuant to this section are not advance payments of assessments and are in addition to and not in lieu of annual and special assessments of the Association. The obligation to make capital contributions pursuant to the section shall apply to each Condominium in the Project. This section shall not apply to any resales of any Condominium.

4.18 **Distribution of Common Profits.** Any common profits of the Association shall be distributed among the Owners according to the percentage of undivided interest of each in the Common Elements.

ARTICLE 5 - USE RESTRICTIONS AND COVENANTS

5.1 **General.** The use and enjoyment of the Project by Owners and their tenants, guests, invitees or any other person deriving rights from such Owner, shall be subject to the covenants and restrictions contained in the Governing Documents. Each such person shall comply with the provisions hereof and be subject to any enforcement actions in the event of violations. Unless otherwise stated in the Governing Documents, the Association, through the Board of Directors, shall be responsible for the enforcement of these provisions.

5.2 **Common Elements.** The following provisions govern the use and enjoyment of the Common Elements:

- 5.2.1 The Association shall have an easement in, to, and throughout the Common Elements and the improvements thereon to perform its duties and exercise its powers.
- 5.2.2 Subject to a concomitant obligation to restore, Declarant and its sales agents, employees and independent contractors shall have a non-exclusive easement over the Common Elements for the purpose of making repairs, provided access thereto is otherwise not reasonably available, and for the purpose of constructing, marketing and maintaining the Property with the understanding that nothing stated in this section shall obligate Declarant to make such repairs.
- 5.2.3 Except as provided in this Declaration, there shall be no judicial partition of the Common Elements, nor shall the Association or any person acquiring an interest in all or any part of the Project seek any judicial partition.

- 5.2.4 Subject to the provisions of this Declaration, each Owner has non-exclusive rights of ingress, egress, and support through the General Common Elements. These rights shall be appurtenant to any deed of conveyance. However, these rights shall not interfere with, and shall be subordinate to, any exclusive right to use an area.
- 5.2.5 The Owners' rights of use and enjoyment of the Common Elements shall be subject to the restrictions set forth in the Governing Documents, and the right of the Association, subject to the limitations of any laws or the Governing Documents, to:
- (a) Adopt and enforce reasonable Rules and Regulations for the use of the Common Elements and the Project.
 - (b) Reasonably limit the number of Persons using the Common Elements.
 - (c) Charge a fee or deposit for use of any recreational facilities.
 - (d) Assign or otherwise control the use of any unassigned parking spaces within the Common Elements.
 - (e) Remove any vehicle within the Project parked in violation of this Declaration or the Rules and Regulations of the Board.
 - (f) Suspend the voting rights of any Owner, and the rights of any Owner, and the persons deriving rights from any Owner, to use and enjoy the General Common Elements for any period during which the Owner is delinquent in the payment of any assessment or as otherwise provided in the Governing Documents.
 - (g) Cause the construction of additional improvements on the Common Elements, or cause the alteration or removal of existing improvements on the Common Elements.
 - (h) Dedicate, grant, or join in the grant or conveyance of easements, licenses or rights-of-way in, on and over the Common Elements to any public agency, authority or utility as may be determined by the Board to be in the best interests of the Association; provided that no such easement, license or right-of-way may be granted if it would unreasonably interfere with any exclusive easement, or with any Owner's use, occupancy, or enjoyment of his or her Unit.
 - (i) Reasonably restrict access to roofs, maintenance facilities or areas, landscaped areas, and similar areas of the Project.

- (j) Approve any proposed alteration of or modification to the Common Elements or any Unit.

5.2.6 The Board, with the approval of two-thirds (2/3) of the total voting power of the Association, may:

- (a) Dedicate, grant or join in the grant or conveyance of easements, licenses or rights-of-way in, on, and over the Common Elements, other than those allowed by Section 5.2.5(h), above, to (i) third parties for purposes reasonably related to the operation of the Project, or to (ii) one or more Owners to exclusively use portions of the General Common Elements, subject to the Governing Documents. No such easement, license or right-of-way may be granted if it would unreasonably interfere with any exclusive easement, or with any Owner's use, occupancy, or enjoyment of his or her Unit. Each Owner, in accepting his or her deed to the Unit, expressly consents to these easements.
- (b) Mortgage or encumber the Common Elements or portions thereof.

5.2.7 Notwithstanding the easement rights or other rights contained herein, an Owner who has sold his or her Condominium to a contract purchaser or who has leased or rented the Condominium shall be deemed to have assigned his or her rights to use and enjoy the Common Elements to the contract purchaser or tenant who resides in the Owner's Condominium, subject to reasonable regulation by the Board. If the Owner is deemed to have assigned such rights, the Owner and the Owner's family, guests, employees, and invitees shall not be entitled to use and enjoy the Common Elements for so long as the assignment remains effective.

5.2.8 All internal and external telephone wiring designed to serve a single Unit, but located outside the boundaries of the Unit, is allocated exclusively to that Unit. The Owner of the Unit shall be entitled to reasonable access to the Common Elements for the purpose of maintaining this wiring, subject to the consent of the Association and to any other conditions reasonably imposed by the Association. The Association's consent shall not be unreasonably withheld.

5.3 **General Restrictions on Use.** In exercising the right to occupy or use a Unit or the Common Elements and their improvements, the Owner and the Owner's family, guests, employees, tenants, and invitees shall not do any of the following, in furtherance of a plan established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property:

- 5.3.1 Modify, alter or otherwise change his or her Unit except as provided in Article 7 herein.

5.3.2 Occupy or use a Unit, or permit all or any part of a Unit to be occupied or used without Board approval, for any purpose other than as a private residence by not more than three (3) adults or by four (4) persons; provided, however, Declarant may use any of the Condominiums owned by Declarant as model homes and sales offices for the Project during that period of time commencing when the Condominiums are first sold or offered for sale to the public and ending when (a) all the Condominiums of the Project are sold and conveyed by Declarant to separate owners thereof, or (b) seven (7) years after the first sale of a Condominium in the Project, whichever shall first occur. The Board may establish guidelines in the Rules and Regulations to allow certain home occupations which (a) are consistent with the normal residential usage of the Project, (b) do not cause any external effects which are detrimental to neighboring Units or the Project, or (c) are compatible with the characteristics of residential use in the Project.

5.3.3 Lease a Unit in derogation of the following:

- (a) All leases must be in writing.
- (b) All leases must be for the entire Unit and not merely parts thereof, unless the Owner remains in occupancy.
- (c) No lease shall be for a period of less than thirty (30) days.
- (d) All leases shall be subject in all respects to the Governing Documents, and shall provide that failure to comply with the requirements of the Governing Documents shall constitute a default under the lease which may be cured by eviction of the tenant either by the Owner or the Association.
- (e) Owners who lease their Unit shall promptly notify the Association in writing of the names of all tenants and members of tenants' families occupying such Unit.
- (f) Owners leasing their Unit shall promptly notify the Association of the address and telephone number where such Owner can be reached.
- (g) Owners shall provide their tenants with copies of the Governing Documents, including the Rules and Regulations. Owners shall be responsible for the costs of reproducing the Governing Documents.

- (h) All leases shall contain a provision appointing the Owner the tenant's proxy-holder to exercise all voting rights that may be granted to the tenant by the Montana Unit Ownership Act.
- 5.3.4 Permit anything to obstruct the General Common Elements or store anything on the General Common Elements without the prior written consent of the Board, except as otherwise provided in the Governing Documents.
- 5.3.5 Perform any act or keep anything on or in any Unit or the Common Elements that will increase the rate of insurance on the Common Elements without the Board's prior written consent. Further, no Owner shall permit anything to be done or kept in his or her Unit or in or on the Common Elements that would result in the cancellation of insurance on any Unit or on any part of the Common Elements or that would violate any law.
- 5.3.6 Disconnect, damage, tamper with or otherwise modify any protection system, including, but not limited to fire sprinklers, fire alarms and fuse boxes.
- 5.3.7 Store gasoline, kerosene, cleaning solvents, or other flammable liquids or substances, or any toxic or hazardous materials on the Common Elements or in any Unit, provided, however, that amounts of these liquids, substances or materials which are reasonable for household use may be placed in appropriate containers and properly stored.
- 5.3.8 Erect or display more than one (1) sign not to exceed eighteen (18) inches by twenty-four (24) inches in size advertising a Condominium for sale or rent so that it is visible from without the Condominium, without the prior written permission of the Board. All signs must conform with applicable City of Missoula ordinances. No signs may be erected or displayed on the Common Elements except (i) those signs allowed by this provision, and (ii) with the prior written approval of the Board. Notwithstanding this provision or any other provision in this Declaration, Declarant shall have the right to install and maintain in any Condominium owned by it and on the Common Elements during the sales period set forth in Section 5.3.3 above, such signs, poles, flags, banners and advertisements as it deems appropriate in connection with its sales program for the sale to the public of Condominiums.
- 5.3.9 Erect or display any radio or television antenna, satellite dish or other equipment or apparatus for transmitting or receiving transmissions, without the prior written permission of the Board.

- 5.3.10 Keep animals, reptiles, rodents, birds, fish, livestock or poultry in any Unit or elsewhere within the Project, except that no more than two (2) domestic dogs or cats of less than twenty-five (25) pounds, fish in aquariums and birds inside bird cages may be kept as household pets within any Unit. Notwithstanding the foregoing, no Owner or other occupant of a Unit may raise or keep pets which interfere with, or have a reasonable likelihood of interfering with, the rights of any Owner or other occupant of a Unit to the peaceful and quiet enjoyment of the Unit. In the event the Board determines that any such pet(s) or other animal(s) create an unreasonable annoyance or nuisance to any Owner or other occupant of a Unit, the raising or keeping thereof shall be discontinued within a reasonable time after such determination. No pets or other animals shall be permitted in the General Common Elements except as specifically permitted by regulations adopted by the Board. The owner of a pet shall at no time allow the pet to run unrestricted or be tied or confined within the General Common Elements and such Owner shall immediately remove and clean up such pet's waste. No owners may raise or keep animals for commercial purposes. The Association, its Board, officers, employees and agents shall have no liability to any Owner, their family members, guests, invitees, tenants and contract purchasers, or any other person on the Project, for any damage or injury to persons or property caused by any pet, absent any willful or wanton negligence on the part of the Association, or its Board, officers, employees and agents.
- 5.3.11 Engage in any illegal, noxious or offensive activity in any part of the Project, or do any act which unreasonably threatens the health, safety and welfare of other residents of the Project.
- 5.3.12 Alter, attach, construct, or remove anything on or from the Common Elements except upon the written consent of the Board.
- 5.3.13 Park more than two automobiles or other motor vehicles at the Project; the primary vehicle shall be parked in the Unit's garage and any secondary vehicle shall be parked in the driveway of that garage, or in a space designated for the Owner by the Board or the Rule and Regulations. Garage doors will be kept closed except as necessary for vehicle removal and return. The Board, in its discretion, may adopt reasonable rules governing the operation, maintenance, storage and parking of any vehicle, including but not limited to trucks, campers, recreational vehicles, trailers, boats or commercial vehicles on the Common Elements. Any vehicles violating the rules may be removed as provided in Section 3.6.8. Subject to the time limitations stated in Section 5.3.3 above, nothing herein stated shall restrict Declarant and its agents, contractors and employees from using trailers as temporary structures for uses incidental to the sales and construction within the Project.

5.3.14 Keep or maintain any fixture, personal property or other object upon any patio or balcony which interferes with the enjoyment of adjacent Units, the adjacent Unit's patio or balcony or which may be in derogation of any Rules and Regulations duly adopted by the Board.

5.3.15 Assemble, repair, change the oil of or disassemble any vehicle in the street or upon any Lot, unless the activity is conducted inside the garage.

5.4 **Damage Liability.** Each Owner shall be liable to the Association for any damage to the Common Elements or to Association-owned property if the damage is sustained because of the negligence, willful misconduct, or unauthorized or improper installment or maintenance of any improvement by the Owner or the Owner's family, guests, tenants, contract purchasers, or invitees. In the case of joint ownership of a Condominium, the liability of the co-owners shall be joint and several, unless the co-owners and the Association have agreed in writing to an alternative allocation of liability.

5.5 **Vacating Unit; Costs.** The Association shall have the power to temporarily remove any Unit resident for such periods and at such times as may be necessary in connection with any maintenance or repair work performed by the Association. The costs of any temporary relocation during such maintenance or repair work shall be paid by the Unit owner affected. The Association shall give notice of the need to temporarily vacate a Unit to the record Owners and occupants not less than fifteen (15) days nor more than thirty (30) days prior to the date of the temporary relocation. The notice shall state the reason for the relocation, the date and time of the beginning of work, the anticipated date and time of termination of work and that the occupants will be responsible for all necessary accommodations during the relocation.

ARTICLE 6 - REPAIR AND MAINTENANCE

6.1 **General.** The Association and all Owners are required to fulfill the maintenance requirements imposed by the Governing Documents. For purposes of this Article "maintenance" shall include without limitation painting, weatherproofing and cleaning to keep a clean, safe and sanitary condition necessary to preserve the attractive appearance of each Condominium and the Project and protect the values thereof. The Board shall have the power to determine the standards of such maintenance.

6.2 **Failure to Maintain.** In the event an Owner fails to maintain the areas described herein pursuant to the standards set by the Board, the Board may notify the Owner of the work required and request that the same be done within a reasonable time from the giving of such notice. In the event the Owner fails to carry out such maintenance within said time period, the Board may, following notice and a hearing, cause such work to be done and the cost thereof shall immediately be paid by such Owner to the Association and until paid shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate authorized by law). Said costs are deemed to be Individual Assessments and are subject to Article 4 above.

6.3 *Maintenance by Owners.* Each Owner shall be responsible for the maintenance, repair and replacement of those items within the Unit and those items used exclusively by that Owner, in a clean manner, consistent with the surrounding properties, and to ensure that such area does not pose a threat to the health, safety or welfare of other Owners, provided that replacement of exterior items shall be subject to the requirements of Article 7, herein. Such areas include, but are not limited to, the following items, provided they are used or operated exclusively by such Owner and not in common:

- 6.3.1 The interior areas and surfaces of such Owner's Unit, including interior doors, and interior finished surfaces of the walls, floors, and ceilings.
- 6.3.2 All floor, ceiling and wall coverings and decorations, whether installed by such Owner or otherwise, including, but not limited to, paint, wallpaper, carpets, linoleum, tile, and hardwood.
- 6.3.3 All glass doors.
- 6.3.4 All door and window decoration and hardware, including any sashes, frames, tracks, fittings, glazes, stops, gaskets, knobs and other attached fixtures.
- 6.3.5 All appliances whether "built-in" or "free-standing" within the Unit, and any cabinets, drawers, shelves and closets, and their respective tracks, stays, stops, doors and fixtures.
- 6.3.6 All utility service facilities and connections, including any water, sewer and gas pipes and plumbing, electrical wires and cables, and any heating and/or air-conditioning systems, wherever located, provided that an Owner's responsibility shall end where such facility connects to a common line.
- 6.3.7 The television and telephone cable equipment, wires and connections, and all related appliances, equipment and fixtures exclusively servicing such Owner's Unit.
- 6.3.8 The maintenance, repair and replacement of the lighting fixtures, including light bulbs, located within such Unit, and replacement of the light bulbs in any Limited Common Elements and any other areas, including the light bulbs in any lighting fixtures attached to the exterior of any Unit, provided such fixtures are not used in common with other Owners, in which case the Association shall be responsible for replacement of the light bulbs.

6.4 ***Maintenance by Association.*** The Association shall be responsible for the maintenance, repair and replacement of those items for which the maintenance, repair and replacement are not allocated to the Owners and which are not used exclusively by one or more Owners, including the following General Common Element items:

- 6.4.1 All improvements in the Common Elements including all building roofs, exterior siding and foundations.
- 6.4.2 All General Common Element utility fixtures, including lighting fixtures, hose bibs and other utility fixtures not used exclusively by one Owner.
- 6.4.3 All common landscaping, both "soft-scape" and "hard-scape," including trees, shrubs, lawns, drainage facilities, brow ditches and other items, if any.
- 6.4.4 All furnishings, equipment and property that is owned by, or may be acquired by the Association.
- 6.4.5 All General Common Element walls, railings and fences; the maintenance and repair of the outside of any Limited Common Element walls, railings or fences and the replacement thereof, provided replacement is not due to the negligence of the Owners, their families, guests, employees, tenants or invitees.
- 6.4.6 All common utility service facilities, including common water, sewer and gas pipes and plumbing, and common electrical and telephone lines and cables not otherwise maintained by a utility company.
- 6.4.7 The maintenance and repair of all Common Element pavement and walkways, whether concrete, asphalt or otherwise, and all exterior parking spaces.

6.5 ***Glass, Screens, Window Frames and Door Frames.*** The responsibility for maintenance and repair of glass windows, window and door screens, window frames and door frames is as follows:

- 6.5.1 The Association shall be responsible for the maintenance and repair of the caulking around the windows and exterior entry doors.
- 6.5.2 Each Owner shall be responsible for maintenance and repair of all screens, and the cleaning of the interior and exterior surface of all glass surfaces. Nothing herein shall preclude the Association from contracting for a project-wide exterior window cleaning on a periodic basis.
- 6.5.3 The Association shall be responsible for the replacement of glass in windows and of window screens, provided replacement is not due to the

negligence of the Owners, their families, guests, employees, tenants or invitees, in which case the cost of replacement shall be charged to the Owner as an individual assessment.

6.6 **Limited Common Elements.** The responsibilities for maintenance and repair of Limited Common Elements are as follows:

- 6.6.1 Other than those areas that are assigned to the Owners herein, the Association shall be responsible for the repair and replacement of all Limited Common Elements.
- 6.6.2 Each Owner shall clean, maintain and repair the interiors of the Limited Common Elements appurtenant to such Owner's Unit including, but not limited to, the garage, exterior entry doors, walkways, landings, doorsteps and any enclosed or partially enclosed stoop, entryway or porch, a patio or balcony, and any enclosing walls, railings and fences.
- 6.6.3 For purposes of this Section, Limited Common Elements shall include those areas described in Section 1.14 and in the Condominium Plan.

6.7 **Termite Control.** The responsibility for control of wood destroying pests or organisms shall be as follows:

- 6.7.1 Each Owner shall be responsible for the maintenance and repair of their personal property and their Unit as required to control the presence of or damage caused by wood-destroying pests or organisms.
- 6.7.2 The Association shall be responsible for the maintenance and repair of the Common Elements as required to control the presence of or damage caused by wood destroying pests or organisms.
- 6.7.3 The Association shall have the power to temporarily remove any Unit resident for such periods and at such times as may be necessary for prompt, effective treatment of such pests or organisms. The costs of any temporary relocation during such maintenance or repair shall be paid by the Unit owner affected. The Association shall give notice of the need to temporarily vacate a Unit to the record Owners and occupants not less than fifteen (15) days nor more than thirty (30) days prior to the date of the temporary relocation. The notice shall state the reason for the relocation, the date and time of the beginning of treatment, the anticipated date and time of termination of treatment and that the occupants will be responsible for all necessary accommodations during the relocation.

- 6.7.4 Neither the Association, the Board, officers, agents and employees shall have any liability, absent willful or wanton negligence, to any Owner, family member, guest, invitee or tenant for any damage caused by the treatment.
- 6.7.5 Notwithstanding anything else herein, in the event that an Owner wishes to obtain a termite clearance certificate for any purpose, the Owner shall be solely responsible for any and all costs associated with obtaining the certificate, including, without limitation, the costs of maintenance and repair of the Unit, Limited Common Elements, or General Common Elements which may be necessary to obtain the termite clearance certificate. An Owner or group of Owners may agree, in a signed writing delivered to the Association, with such reasonable assurances as the Board may request, to agree to share the above costs.

6.8 ***Damage Caused by Owner or Item Under Control of Owner.*** Should any damage to the Common Elements or any Unit result from the willful or negligent act or neglect of any Owner, or such Owner's family member, residents, tenants, guests, employees, invitees, pets or other person or entity deriving any interest through such Owner, or from any item the maintenance, repair or replacement of which an Owner is responsible, the cost of all repairs shall be borne solely by the culpable Owner.

The Association shall be responsible for performing the repair of any damage to the Common Elements or items over which the Association has control, at the culpable Owner's expense. The culpable Owner shall be responsible for performing the repair of any damage to his or her Unit or to such item under the control of that Owner. The Owner of any other Unit which sustained damage shall be responsible for performing the repair of any such damage to his or her Unit, and may charge the cost thereof to the culpable Owner.

If the culpable Owner disputes or refuses to pay any repair costs incurred by the Association, the Association, after reasonable notice and hearing procedures as provided for the imposition of monetary fines or suspensions, may charge the cost of those repairs to such Owner as an individual or special assessment, with the full authority to lien on such amount in the event of non-payment. If the damage is such as may be covered by any insurance carried by the Association, the Board may, in its sole discretion, elect to submit the claim for the cost of repairs to its insurance carrier. Provided the submitted claim is covered by the Association's insurance, the culpable Owner shall be responsible for the cost of any deductible applicable to the covered claim. If the submitted claim is not covered by the Association's insurance, the culpable Owner shall be responsible for the total cost of repair.

All repairs performed to correct any damage shall be sufficient to return the damaged property only to its condition prior to the damage, with upgrades as may be required to conform with any applicable building codes in effect at the time the damage is repaired.

ARTICLE 7 - ARCHITECTURAL AND DESIGN CONTROL

7.1 **General.** As presently constructed, there does not appear to be any circumstance in which an owner would make any change or improvement to the exterior of a Unit, or to the interior which affects the exterior of a Unit, or to the structural integrity of any building, but if such a circumstance occurs, such change or improvement shall be governed by this Article. No change or improvement shall be made without permission of the Board. Changes or improvements to the Common Elements by the Association or the Declarant do not need to comply with the requirements of this Article.

7.2 **Architectural Rules.** The Board may, in its sole discretion, adopt, amend and repeal, as it deems necessary and by majority vote, rules and regulations to be known as "Architectural Rules." Said Architectural Rules shall interpret and implement the provisions of this Article by setting forth the standards for review by the Board and the architectural committee, if any, as guidelines for architectural design, color schemes, exterior finishes and materials and similar features which are recommended for use in the Project, provided, however, that said Architectural Rules shall not be in derogation of the standards required by this Declaration. The Board may appoint an architectural committee to assist the Board in reviewing architectural submittals and to provide recommendations to the Board with regard to approval or disapproval of any submittal. The Board shall be solely responsible for approving or rejecting any architectural submittal.

7.3 **General Changes Requiring Prior Approval.** Nothing may be erected, placed or planted on the exterior of any Unit, on the Limited Common Elements, or on the General Common Elements by any Owner, including any building, fence, wall, pool, spa, obstruction, outside or exterior wiring, balcony, screen, patio, patio cover, tent, awning, carport, carport cover, trellis, tree, grass, shrub or other landscaping, or any improvement or structure of any kind without the prior written approval of the Board. Modifications to the interior of Units which have the potential to affect the Common Element walls, roofs or other areas also shall require prior approval. Additionally, and except as provided in Section 7.5 below, prior written Board approval shall be required for any alteration, modification, painting or other change or addition to any existing improvement. Said restrictions do not apply to Declarant during the period set forth in section 5.3.3 above.

7.4 **Architectural Restrictions.** Subject to other applicable restrictions contained in the Governing Documents, Owners are subject to and may modify their Units as follows:

- 7.4.1 Any replacement floor covering must have prior approval of the Board or architectural committee. The Board or architectural committee review shall be limited to a review of the potential sound transfer between Units.
- 7.4.2 Any shutters, screens, blinds, curtains, drapes or other appurtenance in or on any window or door must be non-reflective and neutral in color (e.g., white, gray or beige) so that the item blends with the color of the building exterior.

- 7.4.3 No Owner may enclose his or her Unit's patio, or change the enclosure of the balcony or the front landings, without the prior written consent of the Board or the architectural committee.
- 7.4.4 Except as provided by the Governing Documents, Owners shall not have the right to paint, decorate, remodel or alter any Limited Common Element or the General Common Elements without the prior written consent of the Board or the architectural committee.
- 7.4.5 No Owner shall make a repair or alteration or perform any other work on his or her Condominium which would jeopardize the soundness or safety of the Project, reduce the value thereof, or impair any easement or hereditament unless the consent of all the other units owners affected is first obtained.

7.5 Changes Not Requiring Prior Approval. Notwithstanding Section 7.3 above, no permission or approval shall be required to repaint in accordance with the original color scheme or as previously approved by the Board, or to rebuild or replace in accordance with plans and specifications previously approved by the Board. Nothing contained herein shall be construed to limit the right of an Owner to paint the interior of his or her Unit any color desired, or to improve or alter any improvements within the interior of the Unit, provided such improvement or alteration does not impair or alter the Common Elements, any utilities, or other systems servicing the Common Elements or other Units.

ARTICLE 8 - INSURANCE

8.1 Fire and Casualty Insurance. The Association shall obtain and maintain a policy or policies of fire and casualty insurance with glass coverage and an extended coverage endorsement for the full insurable replacement value of the improvements in the Common Elements. "Improvements" does not refer to any items, such as appliances, carpet and window coverings located within a Unit, and any window treatment installed by the owner on the outside of a Unit. The amount of any deductible shall be determined by the Board. This insurance shall be maintained for the benefit of the Association, the Owners, and their Lenders, as their interests may appear as named insureds, subject, however, to any loss payment requirements set forth in this Declaration. If required by any First Lender who notifies the Association of its requirement, and if economically feasible and available, such policies shall contain an agreed amount endorsement, an inflation guard endorsement, and a construction code endorsement.

8.2 General Liability Insurance. The Association shall obtain and maintain a policy or policies insuring the Association, its officers, directors, agents and employees, the Declarant, the Owners, and the Owners' relatives, invitees, guests, employees, and their agents against any liability for bodily injury, death, and property damage arising from the activities of the Association and its Members, with respect to the Common Elements and any Units owned by the Association. Limits of liability under the insurance shall not be less than one million dollars (\$1,000,000.00) covering all claims for death, personal injury, and property damage arising out of a single occurrence.

8.3 ***Directors and Officers Liability Insurance.*** The Association shall obtain and maintain one or more policies of insurance which include coverage for individual liability of officers and directors of the Association for negligent acts or omissions of those persons acting in their capacity as officers and directors. Limits of liability under this insurance shall be determined by the Board at its sole discretion.

8.4 ***Fidelity Bond Coverage.*** The Association shall also purchase and maintain fidelity bond coverage which names the Association as an obligee, for any person or entity handling funds of the Association, whether or not such persons or entities are compensated for their services. If there is a management agent who handles Association funds, such agent shall also be covered by a fidelity bond. This coverage may be in an amount that is at least equal to the estimated maximum amount of funds, including reserve funds, in the custody of the Association or its managing agent at any given time during the term of each bond. However, in no event may the aggregate amount of these bonds be less than a sum equal to three (3) months' aggregate assessments on all units plus reserve funds. The bonds must contain a provision that they may not be canceled or substantially modified without at least ten (10) days' prior written notice to the Association.

8.5 ***Other Association Insurance.*** The Association shall purchase and maintain workers' compensation insurance to the extent necessary to comply with any applicable laws. The Association also may purchase and maintain a blanket policy of flood insurance, and demolition insurance in an amount that is sufficient to cover any demolition that occurs following the total or partial destruction of the Project and a decision not to rebuild. The Association may purchase such other insurance the Board considers necessary or advisable.

8.6 ***Review of Insurance; Notice of Cancellation or Modification.*** The limits and coverage of insurance carried by the Association shall be reviewed at least annually by the Board and increased or decreased in its discretion. Such policies shall include a provision for at least ten (10) days' prior written notice to the Association, and, if available, to each First Lender which is listed as a scheduled holder of a First Mortgage in the insurance policy, of any cancellation or substantial modification by any party.

8.7 ***Qualifications of Insurance Carriers.*** The Association shall use generally acceptable insurance carriers from which to purchase and maintain the coverage required herein.

8.8 ***Failure to Acquire Insurance.*** The Association, and its directors and officers, shall have no liability to any Owner or Lender if, after a good faith effort, it is unable to obtain any insurance required hereunder, because the insurance is no longer available or, if available, can be obtained only at a cost that the Board in its sole discretion determines is unreasonable under the circumstances, or the Members fail to approve any assessment increase needed to fund the insurance premiums. In such event, the Board immediately shall notify each Member and any Lender entitled to notice that the specific insurance will not be obtained or renewed.

The Association, and its directors and officers, shall also have no liability to any Owner or Lender if it does not obtain any of the insurance referenced hereunder which is not required but may be obtained at the discretion of the Association. The Board may, in good faith in its sole discretion, determine that obtaining any of the discretionary insurance is unreasonable or unnecessary under

the circumstances. In making a determination as to whether to acquire any such discretionary insurance, the Board may base its decision upon, among other things, a vote of the Owners.

8.9 **Trustee for Policies.** The Association, acting through its Board, is appointed and shall be deemed trustee of the interests of all named insureds under all insurance policies purchased and maintained by the Association. All insurance proceeds under any of those policies shall be paid to the Board as trustee. The Board shall use the proceeds for the repair or replacement of the property for which the insurance was carried or for the purposes described in Article 9 herein. The Board also is authorized to negotiate loss settlements with the appropriate insurance carriers, to compromise and settle any claim or enforce any claim by any lawful action, and to execute loss claim forms and release forms in connection with such settlements.

8.10 **Insurance Premiums.** Insurance premiums for any insurance coverage obtained by the Association shall be included in the regular or special assessments and shall be deemed common expenses. That portion of the assessments necessary for the required insurance premiums shall be used solely for the payment of the premiums when due.

8.11 **Insurance Policy Deductibles.** As provided in Section 8.1 above, the Board of Directors shall have the power, in its sole discretion, to determine the amount of any deductible applicable to any insurance policy carried by the Association. In the event of a loss for which Association insurance coverage is used, the responsibility for payment of any deductible shall be as follows:

- 8.11.1 If the damage or loss occurs to an item of personal property or other item for which an Owner is responsible, the Owner shall be responsible for the cost of any deductible.
- 8.11.2 If the damage or loss occurs to an item owned by the Association or for which the Association is responsible, the Association shall be responsible for the cost of any deductible.
- 8.11.3 If the damage or loss occurs to any Unit and the Common Elements, or to more than one Unit, the responsibility for the payment of any deductible shall be apportioned among the affected parties on the basis of the ratio of each parties' cost of repair to the total costs of repair.
- 8.11.4 The foregoing notwithstanding, if the damage or loss is caused by the negligence or misconduct of any Owner, or family member, resident, guest, tenant, employee, pet or invitee of an Owner, the responsible party shall be liable for the cost of the deductible.

8.12 **Insurance Disclosures.** The Association shall disclose such information regarding insurance coverage as and when required by any applicable statute or law. Failure to disclose such information shall not impose any liability upon the Association or Board other than that provided for in such statute or law.

8.13 **Individual Property Insurance.** Except as provided in this section, no Owner can separately insure his or her Unit or any part of it, against loss by fire or other casualty covered by the Association's blanket insurance carried under section 8.1. If any Owner violates this provision, any diminution in insurance proceeds otherwise payable pursuant to the provisions of section 8.1 that results from the existence of such other insurance will be chargeable to the Owner who acquired such other insurance, and the Owner will be liable to the Association to the extent of any diminution. An Owner may insure his or her personal property against loss. In addition, any improvements made by an Owner may be separately insured by the Owner, but the insurance is to be limited to the type and nature of coverage commonly known as "tenant's improvements." All such insurance that is individually carried must contain a waiver of subrogation rights by the carrier as to other Owners, the Association, and any institutional First Lender of such Unit.

8.14 **Individual Liability Insurance.** An Owner may carry whatever personal liability and property damage liability insurance with respect to his or her Unit that he or she desires. However, any such policy shall include a waiver of subrogation clause acceptable by the Board and to any institutional First Lender of such Unit.

8.15 **Water Intrusion Damage.** An Owner shall be responsible for, and may obtain and maintain such insurance, at his or her sole expense, to protect against any damage to, loss of, or the cost of repair or replacement of (a) personal property, (b) decorations, (c) floor or wall coverings, (d) appliances, (e) fixtures and (f) other similar items within a Unit due to water intrusion. The Association shall not be liable to any Owner or his or her tenants, guests or others, for damage to such property resulting from water which may leak or flow from outside of any Unit or from any part of the building, or from any pipes, drains, irrigation system, conduits, appliances or equipment or from any other place or cause, unless caused by the gross negligence of the Association, its Board, officers, agents or employees.

8.16 **Damage to or Loss of Owner Property; Insurance; Limitation of Liability.** An Owner is responsible for obtaining and maintaining such insurance, at his or her sole expense, to protect against any damage to, or loss of property, and the cost of repair or replacement of damaged items, including, but not limited to, any personal property, decorations, floor and wall coverings, appliances, fixtures or other items in the Owner's Unit, or any exterior items which is caused by any Common Element component or any component maintained by the Association. The Association shall not be liable to any Owner or his or her tenants, guests or others, for damage to or loss of any such property, or the cost of repair or replacement of any damaged property or portions of such Owners' Unit or Limited Common Elements unless such damage is caused by the gross negligence of the Association, its Board, officers, agents or employees.

ARTICLE 9 - DAMAGE OR DESTRUCTION

9.1 **Duty to Restore.** Any portion of the Project that is damaged or destroyed must be repaired or replaced promptly by the Association unless:

9.1.1 The Project is terminated.

9.1.2 Repair or replacement would be illegal under a state statute or municipal ordinance.

9.1.3 Ninety percent (90%) of Owners, including each Owner of a Unit or Limited Common Elements that will not be rebuilt, vote not to rebuild.

9.2 **Cost of Repair.** Any cost of repair or replacement in excess of any insurance proceeds and reserves shall be a common expense, levied against the Condominiums in the same proportion as regular assessments are levied.

9.3 **Repair Plans.** The Project must be repaired and restored in accordance with either (a) the original plans and specifications, updated as required to reflect applicable building codes, or (b) other plans and specifications which have been approved in writing by the Board, a majority of Owners, and at least fifty-one percent (51%) Eligible Lenders holding Mortgages on Units subject to the repair.

9.4 **Replacement of Less Than Entire Project.**

9.4.1 Any insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Project.

9.4.2 Except to the extent that other persons or entities will be distributees:

(a) Any insurance proceeds attributable to a Unit and Limited Common Elements that are not rebuilt must be distributed to the Owner of that Unit and the Owner of the Unit to which the Limited Common Element is appurtenant, or to lien holders, as their interests may appear.

(b) The remainder of any proceeds must be distributed to each Unit Owner or lien holder, as their interests may appear, in proportion to the interests of all the Units.

(c) If the Owners vote not to rebuild a Unit, the percentage interest attributable to that Unit shall be reallocated among all other Units, and the Association shall prepare, execute and record an amendment to the Declaration reflecting the reallocations.

9.5 **Minor Repair.** The Board shall have the duty to repair and reconstruct all Common Elements without the consent of Members and regardless of the amount of available insurance proceeds, in all cases of partial destruction when the estimated cost of repair and reconstruction does not exceed \$5,000.00. In the case of damage to the Common Elements which does not exceed \$5,000.00, all Units shall be assessed for an equal portion of any uninsured expense, if necessary. The Board may waive this absolute duty to repair by a unanimous vote, which shall be duly noted in the minutes of the meeting at which the vote was taken, and shall be communicated to Owners.

9.6 **Insurance Proceeds.** The Association, acting through its Board as trustee, as provided in Section 8.9 above, shall hold any insurance proceeds in trust for the Association, Owners and lien holders as their interests may appear. Subject to the provisions of this Declaration, the proceeds shall be disbursed first for the repair or restoration of the damaged property. The Association, Owners and lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus after the Project has been completely repaired or restored, or unless the Project is terminated.

9.7 **Disbursements to Owners and Lenders.** Any insurance proceeds distributed to Owners and Lenders shall be distributed proportionately according to the fair market values of the Units at the time of the destruction as determined by an independent appraisal. That appraisal shall be performed by an independent appraiser who shall be selected by the Board and who shall be a member of, and apply the standards of, a nationally recognized appraiser organization.

9.8 **Certificates By Board.** The trustee, if any, may rely on the following certifications in writing made by the Board:

9.8.1 Whether or not damaged or destroyed property is to be repaired or restored.

9.8.2 The amount or amounts to be paid for repairs or restoration and the names and addresses of the parties to whom such amounts are to be paid.

9.9 **Certificates by Attorneys or Title Insurance Companies.** If payments are to be made to Owners or Lenders, then the Board and the trustee, if any, shall obtain and may rely on a title insurance company's or attorney's title certificate or a title insurance policy based on a search of the Official Records of the County Recorder, stating the names of the Owners and the mortgagees.

ARTICLE 10 - EMINENT DOMAIN

10.1 **Representation by Association.** The Association shall represent the Owners in the event of any threatened condemnation, condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Elements, or any part thereof. In furtherance of this purpose, each Owner, by acceptance of a deed to his or her Condominium, irrevocably appoints the Association as an attorney-in-fact to represent the Owner in any such condemnation proceeding(s).

10.2 **Common Elements Taking.** In the event of a taking or acquisition of part or all of the Common Elements by a condemning authority, the award or proceeds of settlement, less any fees or costs incurred in collection thereof, shall be payable to the Association, or any trustee appointed by the Association, for the use and benefit of the Owners and their Lenders as their interests may appear according to the relative values of the Condominiums affected by the condemnation where Condominiums are not valued separately by the condemning authority or by the court.

10.3 **Condominium Unit Taking.** In the event of an award for the taking of any Condominium in the Project by eminent domain, the Owner of such Condominium shall be entitled to receive the award for such taking, less any fees and costs incurred in collecting such amount and only up to the fair market value of his or her Condominium, and after acceptance thereof he or she and the Lender shall be divested of all interest in the Project if such Owner shall vacate his Condominium as a result of such taking. The remaining Owners shall decide by majority vote whether to rebuild or repair the Project, or take other action. The remaining portion of the Project shall be resurveyed, if necessary, and the Declaration shall be amended to reflect such taking and to readjust proportionately the percentages of undivided interest of the remaining Owners in the Project based on the number of Units remaining in the Project.

10.4 **Substantial Taking.** If there is a substantial taking of the Project (more than fifty percent), the Owners may terminate the legal status of the Project in accordance with section 70-23-802 of the Montana Codes Annotated, and, if necessary, bring a partition action under section 70-23-805, MCA, with the proceeds from the partition sale to be distributed in accordance with that section.

ARTICLE 11 - RIGHTS OF LENDERS

11.1 **General.** No breach of any of the covenants, conditions and restrictions herein contained, nor the enforcement of any lien provisions herein, shall render invalid the lien of any First Mortgage on any Unit made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure, or otherwise.

11.2 **No Right of First Refusal.** This Declaration neither contains nor shall be amended to contain any provision creating a "right of first refusal" to the Association before a Unit can be sold. Should any such rights nevertheless be created in the future, such rights shall not impair the rights of any First Lender to: (a) foreclose or take title to a Unit pursuant to the remedies provided in the mortgage, (b) accept a deed (or assignment) in lieu of foreclosure in the event of a default by a mortgagor, or (c) sell or lease a Unit acquired by the Lender.

11.3 **Unpaid Dues or Charges.** Where the Lender of a First Mortgage of record or other purchaser of a Unit obtains title to the same pursuant to the remedies in the Mortgage or as a result of foreclosure, such acquirer of title, its successors and assigns, shall not be liable for the share of the common expenses or assessments made by the Association chargeable to such Unit which became due prior to the acquisition of title to such Unit by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the Units including such acquirer, its successors and assigns.

11.4 **Action Requiring Lender Approval.** Except as provided by statute in case of substantial loss to the Condominiums and General Common Elements or in the event the property becomes obsolete, unless at least sixty-seven percent (67%) of the First Lenders (based upon one (1) vote for each mortgage owned), or sixty-seven percent (67%) of the voting power of the

Association have given their written approval, the Association and/or the Owners shall not be entitled to:

- 11.4.1 Change the pro rata interest or obligations of any individual Condominium for the purpose of (i) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each Condominium in the Common Elements, provided that no Owner's undivided interest in the Common Elements may be changed without the consent of that Owner.
- 11.4.2 By act or omission, change, waive or abandon any scheme of regulations, or enforcement of those regulations, pertaining to the architectural design or exterior appearance of residences, the exterior maintenance of residences, the maintenance of the General Common Element walks, roads and driveways, or the upkeep of lawns and plantings in the Project.
- 11.4.3 Fail to maintain fire and general liability coverage on the Common Elements 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).
- 11.4.4 Use hazard insurance proceeds for losses to any of the Project (whether to Condominiums or to General Common Elements) for other than the repair, replacement or reconstruction of such property.

11.5 ***Payment of Taxes and Insurance.*** First Lenders may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Element 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 Element property. First Lenders making such payments shall be owed immediate reimbursement from the Association.

11.6 ***Priority of Proceeds or Award Distribution.*** Any other provision herein contained to the contrary notwithstanding, no provision of the Governing Documents shall give an Owner, or any other party, priority over any rights of the First Lender pursuant to its Mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Elements.

11.7 ***Notification of Lender.*** Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the Unit number or address, any Eligible Lender will be entitled to timely written notice of:

- 11.7.1 Any condemnation loss or any casualty loss which affects a material portion of the Project or the Unit insured or guaranteed by such Eligible Lender;

- 11.7.2 Any default in the performance by an Owner of any obligation under the Governing Documents not cured within sixty (60) days;
- 11.7.3 Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and
- 11.7.4 Any proposed action which would require the consent of a specified percentage of Eligible Lenders as required by the Governing Documents.

11.8 **Inspection of Documents, Books and Records.** The Association shall make available to Eligible Lenders current copies of the Governing Documents and the accounting books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances.

11.9 **Non-Curable Breach.** Any Lender who acquires title to a Condominium by foreclosure or by deed in lieu of foreclosure or assignment-in-lieu of foreclosure shall not be obligated to cure any breach of this Declaration that is non-curable or of a type that is not practical or feasible to cure.

11.10 **Loan to Facilitate.** Any First Mortgage given to secure a loan to facilitate the resale of a Condominium after acquisition by foreclosure or by a deed-in-lieu of foreclosure or by an assignment-in-lieu of foreclosure shall be deemed to be a loan made in good faith and for value and entitled to all of the rights and protections of this Article.

11.11 **Lenders Furnishing Information.** Any Lender can furnish information to the Board concerning the status of any Mortgage.

11.12 **Termination without Substantial Destruction.** Except as provided by statute or by other provision of the Governing Documents in case of substantial destruction or condemnation of the Project, the consent of at least ninety percent (90%) of the voting power of the Association and ninety percent (90%) of the holder of all liens affecting any of the Units shall be required to deem the Project obsolete and thus remove it from the provisions of the Montana Unit Ownership Act. Termination of the Project for any other reason requires the agreement of one hundred percent (100%) of Owners and Lenders to remove the Project from the Montana Unit Ownership Act.

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ARTICLE 12 - ENFORCEMENT

12.1 ***Right to Enforce; Remedies.*** Subject to the Arbitration provision in section 14.12 below, the Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the Governing Documents. Each Owner of a Condominium shall have a right of action against the Association or any Owner for failure to comply with the provisions of the Governing Documents. The remedies provided for herein are to be considered cumulative and the use of one remedy shall not preclude the use of any other.

12.2 ***Nuisance.*** The result of every act or omission, whereby any provision, condition, restriction, covenants, easement, or reservation contained in the Governing Documents is violated in whole or in part, is declared to be and constitute a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result and may be exercised by any Owner and the Association. Each remedy provided herein shall be cumulative and not exclusive.

12.3 ***Failure to Enforce.*** Failure by the Association or any Owner to enforce any provisions of the Governing Documents shall in no event be deemed a waiver of the right to do so thereafter.

12.4 ***Violation of Law.*** Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any Condominium within the Project is declared to be a violation of the Governing Documents and subject to any or all of the enforcement procedures herein set forth.

12.5 ***Compliance with Statute.*** All activities to enforce the provisions of the governing documents shall be conducted in accordance with all applicable laws, statutes and ordinances. This section shall apply to both the Association and to all Owners.

ARTICLE 13 - AMENDMENTS

13.1 ***Owner Approval of Amendments.*** This Declaration may be amended by the vote or written consent of Owners representing not less than sixty-seven percent (67%) of the voting power of the Association. Notwithstanding any contrary provision in this Section, the percentage of the voting power necessary to amend a specific clause or provision of this Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause or provision.

An amendment becomes effective after (a) the approval of the required percentage of Owners has been given, (b) that fact has been certified in the form of a written document executed and acknowledged by an officer designated by the Association for that purpose or, if no such designation is made, by the President of the Association and (c) the document has been recorded in the Office of the County Recorder of Missoula County.

13.2 ***Approval of Specified Amendments.*** Notwithstanding Section 13.1 above, and except as provided by statute or by other provision of the Governing Documents in case of substantial destruction or condemnation of the Project, the consent of sixty-seven percent (67%) of the voting power of the Association and the approval of fifty-one percent (51%) of Eligible Lenders shall be required to add or amend (i) any provision of this Declaration which is for the express benefit of holders or insurers of First Mortgages and (ii) any material provisions of this Declaration which establish, provide for, govern or regulate:

- 13.2.1 Voting rights.
- 13.2.2 Assessments, assessment liens or subordination of such liens.
- 13.2.3 Reserves for maintenance, repair and replacement of the Common Elements.
- 13.2.4 Insurance or fidelity bonds.
- 13.2.5 Rights to use the General Common Elements.
- 13.2.6 Responsibility for maintenance and repair of the several portions of the Project.
- 13.2.7 Expansion or contraction of the Project, or the addition, annexation or withdrawal of property to or from the Project.
- 13.2.8 Boundaries of any Unit.
- 13.2.9 An Owners' interest in the Common Elements.
- 13.2.10 Convertibility of Units into Common Elements or Common Elements into Units.
- 13.2.11 The fundamental purpose for which the Project was created (such as a change from residential use to a different use).
- 13.2.12 Imposition of any rights of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey his or her Condominium.

13.3 ***Eligible Lender Approval Response Time.*** An Eligible Lender who receives a written request to approve additions or amendments by certified or registered mail, return receipt requested, addressed to the address provided by such Eligible Lender, and who does not deliver or post to the requesting party a negative response within thirty (30) days after the notice of the proposed addition or amendment, shall be deemed to have approved such request.

ARTICLE 14 - GENERAL PROVISIONS

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14.1 **Term.** The provisions of this Declaration shall continue in effect for a term of fifty (50) years from the date of execution. Thereafter, it shall be automatically extended for successive periods of ten (10) years, until the membership of the Association decides to terminate it.

14.2 **Nonwaiver of Remedies.** Each remedy provided for in this Declaration is separate, distinct, and nonexclusive. Failure to exercise a particular remedy shall not be construed as a waiver of the remedy.

14.3 **Severability.** The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one (1) provision shall not affect the validity or enforceability of any other provision.

14.4 **Binding.** This Declaration, as well as any amendment thereto and any valid action or directive made pursuant to it, shall be binding and the Owners and their heirs, grantees, tenants, successors, and assigns.

14.5 **Interpretation.** The provisions of this Declaration shall be liberally construed and interpreted to effectuate its purpose of creating a uniform plan for the development and operation of a condominium project. Failure to enforce any provision of this Declaration shall not constitute a waiver of the right to enforce that provision or any other provision of this Declaration.

14.6 **Limitation of Liability.** The liability of any Owner for performance of any of the provisions of this Declaration shall terminate upon sale, transfer, assignment, or other divestment of the Owner's entire interest in his or her Condominium with respect to obligations arising from and after the date of the divestment.

14.7 **Fair Housing.** Neither Association nor any Owner shall, either directly or indirectly, forbid the conveyance, encumbrance, renting, leasing, or occupancy of the Owner's Lot to any person on the basis of race, color, sex, sexual orientation, religion, ancestry, national origin, age, marital status or physical handicap.

14.8 **Limitation of Restrictions on Declarant.** Declarant is undertaking the work of construction of residential condominium dwellings and incidental improvements upon the Property. The completion of that work, and the sale, rental and other disposal of said Condominiums is essential to the establishment and welfare of the Project as a residential community. In order that this work may be completed and the Project be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

14.8.1 Prevent Declarant, its contractors or subcontractors from doing on the Property or in any Condominium whatever is reasonably necessary or advisable in connection with the completion of said work.

14.8.2 Prevent Declarant or its representatives from erecting, constructing and maintaining on any part or parts of the Property such structures as may be

reasonable and necessary for the conduct of its business of completing said work and establishing the Project as a residential community and disposing of the same by sale or otherwise.

- 14.8.3 Prevent Declarant from conducting on any part of the Property its business of completing said work and of establishing a plan of condominium ownership and of disposing of said Condominiums by sale or otherwise.
- 14.8.4 Prevent Declarant from maintaining such sign or signs on any of the Property as may be necessary for the sale, lease or disposition of Condominiums; provided, however, that the maintenance of any such sign shall not unreasonably interfere with the use by any Owner of his Condominium or the Common Elements.

The rights of Declarant provided in subparagraphs 1 through 4 above may be exercised during the period of time commencing when the Condominiums are first sold or offered for sale to the public and ending when (i) all 46 Condominiums have been sold, or (ii) seven (7) years following the date of conveyance of the first Condominium, whichever shall first occur.

14.9 *Documents to be Provided to Prospective Purchasers.*

- 14.9.1 *By Owners.* Each Owner shall, as soon as practicable before transfer of title to his or her Condominium or execution of a real property sales contract for it, provide the following to the prospective purchaser:
 - (a) A copy of this Declaration, the Association's Articles and Bylaws, and the Condominium Plan which describes the Condominium offered for sale; and
 - (b) A true statement, in writing, from an authorized representative of the Association, as to the respective amounts levied upon the Owner's Condominium, which are unpaid on the date of the statement. The statement shall also include true information on the late charges, interest and costs of collection which, as of the date of the statement, are or may be a lien upon the Owner's Condominium.
- 14.9.2 *By the Association.* Upon written request to the Association, it shall provide to an Owner a copy of the requested Association documents specified in subsections (a) and (b) above. The Association may charge a fee for this service which may not exceed the cost to prepare and reproduce the requested items.

14.10 **Conflict with Montana Law.** If any provision of this Declaration conflicts with the mandatorily applicable provisions of the Montana Unit Ownership Act (§§ 70-23-101 through 70-23-1002, MCA) such mandatorily applicable provisions shall supersede and apply in place of the provisions of this Declaration so in conflict with the Montana Unit Ownership Act.

14.11 **Gender, Number and Headings.** As used in this Declaration, pronouns in masculine, feminine and neuter genders shall be construed to include any other gender, and words in the singular form shall include the plural, unless the context requires the contrary. The headings are not a part of this Declaration, and shall not affect the interpretation of any provision.

14.12 **Arbitration.** Excepting a dispute involving a first mortgage holder, an action for collection of money or an injunction sought to prevent or compel an action, all other disputes ("dispute") shall be settled and finally determined by binding arbitration in the City of Missoula, Montana, in accordance with the Commercial Arbitration Rules of the American Arbitration Association now in force or as hereafter amended. The Board shall select one arbitrator, the homeowner or homeowners that are adverse to the Board shall select one arbitrator, and the two arbitrators shall select a third arbitrator. The parties involved in the dispute shall confer with the arbitrators and together shall decide upon the time and place for the hearing. The arbitrators' fees and all arbitration costs shall be shared by the parties involved in the dispute, unless the panel of arbitrators unanimously determines that a party has asserted an unreasonable position during the arbitration; if this determination is made then the arbitrators' fees shall be paid by the party who asserted the unreasonable position.

14.13 **Attorneys' Fees.** In the event an attorney is engaged by the Board to enforce the Governing Documents, the Association shall be entitled to recover from the adverse party to the controversy its actual attorneys' fees and costs so incurred. In the event litigation is commenced to enforce the Governing Documents, the prevailing party shall be entitled to its attorneys' fees and costs. Said costs and attorneys' fees shall be deemed common expenses and constitute a lien on the Unit which is enforceable pursuant to Article 4 herein. This Section shall also apply to actual attorneys' fees incurred to collect any post-judgment costs.

14.14 **Variances.** The Board may authorize variances from compliance with any of the architectural or use provisions of this Declaration as follows:

- 14.14.1 Variances may be granted, without limitation, to restrictions upon use contained in Article 5, restrictions on repair and maintenance in Article 6, and architectural restrictions in Article 7, when circumstances such as topography, location, engineering, economy, hardship, aesthetic or environmental considerations warrant.
- 14.14.2 Variances shall be in writing and shall become effective upon final approval by the Board or an authorized committee.
- 14.14.3 When a variance is granted, no violation of the Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of a variance shall not operate to

waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and particular provision covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the use of the premises, including, but not limited to, zoning ordinances and lot setback lines or requirements imposed by the County of Missoula or any other governmental authority.

- 14.14.4 The Association may charge a reasonable fee to cover any costs associated with the variance approval process, or for issuance of a variance.
- 14.14.5 The Board may enact additional rules and regulations regarding the variance approval process, the circumstances under which a variance may be granted, and the execution of indemnity or other agreements by the Owner as a condition to issuance of a variance.

14.15 ***Governing Document Priorities.*** In the event of a conflict between the Governing Documents, or any provision thereof, the following documents shall take precedence in the order given: (1) the Articles, (2) the Condominium Plan, (3) this Declaration, (4) the Bylaws, and (5) the Rules and Regulations.

IN WITNESS WHEREOF, the undersigned being Declarant herein, has executed this instrument this 18 day of October, 1996.

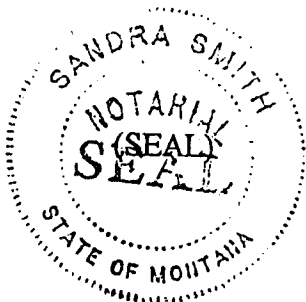
DECLARANT:

R & H DEVELOPMENT,
a Montana Limited Liability Company

By: *Edwin V. Russo*
Its Member

STATE OF MONTANA)
) ss.
COUNTY OF MISSOULA)

This instrument was acknowledged before me on October 18, 1996 by Edwin V. Russo, as a member of R & H DEVELOPMENT, a Montana Limited Liability Company.



Sandra Smith
Notary Public for State of Montana
Residing at Missoula
My commission expires: 10/7/99

EXHIBIT "A"

BOOK 490 PAGE 0141

LEGAL DESCRIPTION

THE VILLAGE AT ELK HILLS
LOTS 1, 2, 3, 4, 5, 6 AND COMMON AREAS

A PORTION OF THE VILLAGE AT ELK HILLS BEING A PORTION OF THE SOUTHEAST QUARTER OF SECTION 6, TOWNSHIP 12 NORTH, RANGE 19 WEST, P.M.M., CITY OF MISSOULA, MONTANA AND BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF ELK HILLS - PHASE 1, A RECORDED SUBDIVISION IN MISSOULA COUNTY, THENCE S88°15'00"W ALONG THE SOUTHERN BOUNDARY OF SAID ELK HILLS - PHASE 1, 232.18 FEET TO THE POINT OF BEGINNING; THENCE, CONTINUING S88°15'00"W, 90.82 FEET; THENCE S84°20'45"W, 169.73 FEET; THENCE S05°31'30"E, 152.30 FEET; THENCE S84°00'00"W, 100.00 FEET; THENCE S40°00'00"W, 50.00 FEET; THENCE S15°00'00"E, 125.00 FEET; THENCE S67°04'30"E, 123.64 FEET; THENCE S61°51'24"E, 204.56 FEET; THENCE S48°05'43"E, 189.96 FEET; THENCE N22°47'57"E, 187.34 FEET; THENCE NORTHERLY 175.24 FEET ALONG THE ARC OF A TANGENT CURVE WITH A RADIUS OF 924.93 FEET; THENCE N76°35'13"W, 50.07 FEET; THENCE N62°59'29"W, 170.81 FEET; THENCE N04°46'56"W, 183.86 FEET TO THE POINT OF BEGINNING.

SUBJECT TO THOSE RIGHTS, RESERVATIONS, EXCEPTIONS AND EASEMENTS OF RECORD INCLUDING THE EASEMENT FOR INGRESS, EGRESS AND UTILITY PURPOSES FOR LOT 7 AS SHOWN ON THE APPROVED PLAT FOR THE VILLAGE AT ELK HILLS.

SAID TRACT CONTAINING 4.4 ACRES, MORE OR LESS.

9624621

I RECEIVED AND FILED THIS INSTRUMENT FOR RECORD ON THE 7 DAY OF Nov 1996 AT 953 O'CLOCK A M AND IT IS RECORDED
 IN VOL. 490 OF RECORDS OF THE COUNTY OF MISSOULA, STATE OF MONTANA, ON PAGE 95 FEE 282 PAID CK
 RETURN TO Myra Shults BY Allen O'Brien COUNTY RECORDER
 ADDRESS PO Box 9261 Missoula MT 59807 DEPUTY DOC DM

EXHIBIT "A"

BOOK 490 PAGE 0074

LEGAL DESCRIPTION

THE VILLAGE AT ELK HILLS
LOTS 1, 2, 3, 4, 5, 6 AND COMMON AREAS

A PORTION OF THE VILLAGE AT ELK HILLS BEING A PORTION OF THE SOUTHEAST QUARTER OF SECTION 6, TOWNSHIP 12 NORTH, RANGE 19 WEST, P.M.M., CITY OF MISSOULA, MONTANA AND BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF ELK HILLS - PHASE 1, A RECORDED SUBDIVISION IN MISSOULA COUNTY, THENCE S88°15'00"W ALONG THE SOUTHERN BOUNDARY OF SAID ELK HILLS - PHASE 1, 232.18 FEET TO THE POINT OF BEGINNING; THENCE, CONTINUING S88°15'00"W, 90.82 FEET; THENCE S84°20'45"W, 169.73 FEET; THENCE S05°31'30"E, 152.30 FEET; THENCE S84°00'00"W, 100.00 FEET; THENCE S40°00'00"W, 50.00 FEET; THENCE S15°00'00"E, 125.00 FEET; THENCE S67°04'30"E, 123.64 FEET; THENCE S61°51'24"E, 204.56 FEET; THENCE S48°05'43"E, 189.96 FEET; THENCE N22°47'57"E, 187.34 FEET; THENCE NORTHERLY 175.24 FEET ALONG THE ARC OF A TANGENT CURVE WITH A RADIUS OF 924.93 FEET; THENCE N76°35'13"W, 50.07 FEET; THENCE N62°59'29"W, 170.81 FEET; THENCE N04°46'56"W, 183.86 FEET TO THE POINT OF BEGINNING.

SUBJECT TO THOSE RIGHTS, RESERVATIONS, EXCEPTIONS AND EASEMENTS OF RECORD INCLUDING THE EASEMENT FOR INGRESS, EGRESS AND UTILITY PURPOSES FOR LOT 7 AS SHOWN ON THE APPROVED PLAT FOR THE VILLAGE AT ELK HILLS.

SAID TRACT CONTAINING 4.4 ACRES, MORE OR LESS.

549-7224

9624617

I RECEIVED AND FILED THIS INSTRUMENT FOR RECORD ON THE 7 DAY OF Nov 1996 AT 853 O'CLOCK A M AND IT IS RECORDED
IN VOL 490 OF MICRO RECORDS OF THE COUNTY OF MISSOULA, STATE OF MONTANA, ON PAGE 20 FEE 330 PAID CK
RETURN TO Myra Shults WITH MY LAND VICKIE M. ZEIGER COUNTY RECORDER
ADDRESS PO Box 9261 BY [Signature] DEPUTY DOC DM
Missoula MT 59807

96 NOV 7 AM 8 53