

**CONDOMINIUM DECLARATION
FOR
WATERMARK ON FLATHEAD LAKE**

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**CONDOMINIUM DECLARATION
FOR
WATERMARK ON FLATHEAD LAKE**

THIS CONDOMINIUM DECLARATION FOR WATERMARK ON FLATHEAD LAKE (the "Declaration") dated _____, 200_, shall be effective upon recordation and is made by Mill Creek Lakefront LLC, a Delaware limited liability company ("Declarant"). Declarant is the owner and developer of certain real property in Lake County, Montana, more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "Property"). The Property is wholly owned by Declarant. The address of the Project (as defined below) is 1401 Highway 93 East, Polson, Montana 59860. Declarant hereby makes the following grants, submissions, and declarations:

ARTICLE 1 IMPOSITION OF COVENANTS

Section 1.1. Purpose. The purpose of this Declaration is to create a condominium project known as the Watermark on Flathead Lake (the "Project") by submitting the Property to the condominium form of ownership and use pursuant to the Montana Unit Ownership Act, Chapter 23, Title 70, Montana Code Annotated (the "Act"), to elect to have the Property treated as a condominium and thereby subject the Project to the provisions of the Act and not to the general common law of tenancy-in-common, and to establish a uniform plan for the development, sale and ownership of Units (as defined below). The Project contains individual Units for residential and commercial use, as more particularly described herein and in the Bylaws (as defined below). Each Unit is capable of individual utilization on account of having its own entrance from and exit to a Common Element (as defined below). The approval of the State of Montana Department of Revenue as to the name of the Project and the taxes paid is attached as Exhibit C attached hereto and incorporated herein by this reference.

Section 1.2. Intention of Declarant. Declarant desires to protect the value and desirability of the Project, to further a plan for the improvement, sale and ownership of the Units in the Project, to create a harmonious and attractive development and to promote and safeguard the health, comfort, safety, convenience, and welfare of the Owners.

Section 1.3. Condominium Declaration. To accomplish the purposes and intentions recited above, Declarant hereby submits the Property, together with all improvements, appurtenances, and facilities relating to or located on the Property now and in the future, to condominium ownership under the Act, and hereby imposes upon all of the Property the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions of this Declaration, and Declarant hereby declares that all of the Property shall be held, sold, conveyed, encumbered, leased, rented, occupied, and improved subject to the provisions of this Declaration.

Section 1.4. Covenants Running With the Land. All provisions of this Declaration shall be deemed to be covenants running with the land, or as equitable servitudes, as the case may be. The benefits, burdens, and other provisions contained in this Declaration shall be binding upon and shall inure to the benefit of Declarant, all Owners and their respective heirs, executors, administrators, personal representatives, successors, and assigns.

ARTICLE 2 DEFINITIONS

The following words, when used in this Declaration, shall have the meanings designated below unless the context expressly requires otherwise:

Section 2.1. “Act” has the meaning set forth in Section 1.1. In the event the Act is repealed, the Act, on the effective date of this Declaration, shall remain applicable to this Declaration.

Section 2.2. “Additional Improvements” has the meaning set forth in Section 15.2.

Section 2.3. “Additional Reserved Rights” has the meaning set forth in Section 14.1.

Section 2.4. “Allocated Interests” means the undivided interest in the Common Elements and the Common Expense Liability and the votes in the Association allocated to each of the Units in the Project. The formulae used to establish the Allocated Interests are described in ARTICLE 4. The Allocated Interests for each Unit are set forth on Exhibit B attached hereto and incorporated herein by this reference.

Section 2.5. “Applicable Laws” has the meaning set forth in Section 3.5.

Section 2.6. “Articles of Incorporation” means the Articles of Incorporation of the Watermark Condo Association, Inc., filed with the Montana Secretary of State, as amended from time to time.

Section 2.7. “Assessments” means the annual, special and Default Assessments levied pursuant to this Declaration.

Section 2.8. “Association” means the Watermark Condo Association, Inc., a Montana nonprofit mutual benefit corporation, and its successors and assigns.

Section 2.9. “Board of Directors” or “Board” means the governing body of the Association, as provided in this Declaration and in the Articles of Incorporation and Bylaws of the Association, and defined as the “Manager” in the Act.

Section 2.10. “Budget” means the annual budget of the projected revenues, expenditures (both ordinary and capital) and reserves for the Association.

Section 2.11. “Bylaws” means the bylaws adopted by the Association, as amended from time to time.

Section 2.12. “Commercial Activities” has the meaning set forth in Section 12.3.

Section 2.13. “Common Elements” means all of the Project, other than the Units, but including, without limiting the generality of the foregoing, the following components:

- (a) the Property;

(b) the Improvements (including, but not by way of limitation, the foundations, columns, girders, beams, supports, perimeter and supporting walls, fireplaces, chimneys, flues, chimney chases, roofs, patios, decks, balconies, elevator(s), corridors, lobbies, vestibules, entrances and exits, exterior doors and windows on a perimeter wall of a Unit, and the mechanical and utility installations and systems consisting of the equipment and materials making up any central services such as power, light, gas, hot and cold water, sewer, cable television, telecommunications systems and heating and central air conditioning which exist for use by one or more of the Owners, including the pipes, vents, ducts, flues, cable conduits, wires, telephone wire, and other similar utility installations used in connection therewith) and the areas designated on the Map as including those installations; trash rooms and storage rooms; elevators and stairs except for the Units;

(c) the yards, sidewalks, walkways, paths, grass, shrubbery, trees, planters, driveways, roadways, landscaping, gardens, parking areas, and related facilities upon the Property;

(d) the pumps, tanks, motors, fans, storm drainage structures, compressors, ducts, and, in general, all apparatus, installations, and equipment of the Improvements existing for use of one or more of the Owners;

(e) in general, all other parts of the Project designated by Declarant as Common Elements and existing for the use of one or more of the Owners; and

(f) any parcels of real property, and improvements and fixtures located thereon, that are (i) owned by a Person other than the Association but in which the Association has rights of use or possession pursuant to this Declaration or to a lease, license, easement or other agreement, and (ii) used or possessed by the Association for the benefit of all Owners.

The Common Elements shall be owned by the Owners, each Unit being allocated an undivided interest in the Common Elements as allocated pursuant to ARTICLE 4.

Section 2.14. “Common Expenses” means expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves, including, without limiting the generality of the foregoing, the following items:

(a) expenses of administration, insurance, operation, and management, repair or replacement of the Common Elements except to the extent such repairs and replacements are responsibilities of an Owner as provided in this Declaration;

(b) expenses identified as Common Expenses by the provisions of this Declaration or the Bylaws;

(c) all sums lawfully assessed against the Units by the Board of Directors;

(d) expenses agreed upon as Common Expenses by the members of the Association; and

(e) expenses to be paid pursuant to any Management Agreement.

Section 2.15. “Common Expense Liability” means the liability for Common Expenses allocated to each Unit pursuant to this Declaration.

Section 2.16. “Condominium Documents” means the basic documents creating and governing the Project, including, but not limited to, this Declaration, the Articles of Incorporation and Bylaws, the Map, and any Rules and Regulations, procedures, or policies relating to the Project adopted under such documents by the Association or the Board of Directors.

Section 2.17. “Costs of Enforcement” means all monetary fees, fines, late charges, interest, expenses, costs, including receiver’s and appraiser’s fees, collection agency fees, and reasonable attorneys’ fees and disbursements, including legal assistants’ fees, incurred by the Association in connection with the collection of Assessments or in connection with the enforcement of the terms, conditions and obligations of the Condominium Documents.

Section 2.18. “Declarant” means Mill Creek Lakefront, LLC, a Delaware limited liability company, and its successors and assigns as the same may be specified in a recorded instrument specifically describing those rights of Declarant transferred to a successor or assignee.

Section 2.19. “Declaration” means this Declaration, together with any supplement or amendment to this Declaration, and any other recorded instrument however denominated that exercises a Development Right and is executed by Declarant and recorded in the Records. The term Declaration includes the Map and all amendments and supplements to this Declaration and the Map without specific reference thereto.

Section 2.20. “Deed” means each initial deed recorded after the date hereof by which Declarant conveys a Unit and, after the initial sale by Declarant, any deed or other instrument by which an Owner transfers title to a Unit (expressly excluding an instrument creating a Security Instrument).

Section 2.21. “Default Assessment” means an Assessment levied pursuant to this Declaration in connection with an unpaid amount for which an Owner is responsible including, without limitation, for Costs of Enforcement, overdue amounts charged by the Association to an Owner, liability for negligence and indemnification obligations.

Section 2.22. “Development Rights” means all of the expansion rights, withdrawal rights and development rights set forth in ARTICLE 15 of this Declaration, and in the Act.

Section 2.23. “Eligible First Mortgagee” means a First Mortgagee that has notified the Association in writing of its name and address and status as a First Mortgagee and has requested that it receive the notices provided for in ARTICLE 19 entitled “Mortgagee Protections”.

Section 2.24. “Expansion Property” has the meaning set forth in Section 15.1.

Section 2.25. “First Mortgagee” means a holder of a Security Interest in a Unit which has priority over all other Security Interests in the Unit.

Section 2.26. “Improvement(s)” means the building(s) (including all fixtures and improvements contained within it) located on the Property in which Units or Common Elements are located, together with landscaping and hardscaping located on the Property.

Section 2.27. “Limited Common Elements” means those parts of the Common Elements that are limited to and reserved for the use in connection with one or more, but fewer than all, of the Units. Without limiting the foregoing, the Limited Common Elements shall include any balcony, deck, patio, courtyard or porch appurtenant to and accessible only from a Unit, any shutters, awnings, window boxes, doorsteps, hallways, lobbies, entryways, stoops, porch, balcony or patio designated or designed to serve a single Unit but located outside the Unit’s boundaries, any maid/maintenance closets, laundry facilities, storage spaces, parking spaces, and ski lockers located outside of the Units and designated as Limited Common Elements in this Declaration or on the Map, if any. If any chute, flue, duct, wire, conduit, bearing wall, bearing column or other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion thereof outside of the Unit but serving only that Unit is a Limited Common Element allocated solely to that Unit, and any portion thereof serving more than one Unit or any portion of the Common Elements is a part of the Common Elements. Limited Common Elements also include any portion of the Common Elements allocated by this Declaration or on the Map as Limited Common Elements. All Limited Common Elements shall be used in connection with the appurtenant Unit(s) to the exclusion of the use thereof by the other Owners, except by invitation and except as otherwise set forth in ARTICLE 13. No reference to Limited Common Elements need be made in any instrument of conveyance or encumbrance in order to convey or encumber the Limited Common Elements appurtenant to a Unit.

Section 2.28. “Majority of Owners” means a majority of the Total Voting Power of all of the Owners, regardless of Class or Sub-Class (rather than a majority of those present or voting by proxy at a meeting or the majority of a quorum). Votes allocated to any Units owned by the Association may not be cast and shall not be included in any calculation of voting power.

Section 2.29. “Management Agreement” means any contract or arrangement entered into for purposes of discharging the responsibilities of the Board of Directors relative to the operation, maintenance, and management of the Project.

Section 2.30. “Managing Agent” means a person, firm, corporation or other entity employed or engaged as an independent contractor pursuant to a Management Agreement to perform management services for the Association.

Section 2.31. “Map” means the site plan and floor plans for the Project required to be made a part of this Declaration pursuant to Section 70-23-306 of the Act.

Section 2.32. “Mark” has the meaning given to that term in Section 22.11.

Section 2.33. “Nonprofit Act” means the Montana Nonprofit Corporations Act, Chapter 2, Title 35, Montana Code Annotated.

Section 2.34. “Occupant” means any member of an Owner’s family or an Owner’s guests, invitees, servants, tenants, employees, or licensees who occupy a Unit or are on the Common Elements for any period of time or any other person who occupies a Unit or is on the Common Elements for any period of time as part of the Plan.

Section 2.35. “Owner” means Declarant or any other Person who owns record title to a Unit or Fractional Interest (including a contract seller, but excluding a contract purchaser) but excluding any Person having a Security Interest in a Unit or Fractional Interest unless such Person has acquired record title to the Unit or Fractional Interest pursuant to foreclosure or other proceedings or by conveyance in lieu of foreclosure. For purposes of clarification, the term “Owner” includes both “Class A” and “Class B” Owners.

Section 2.36. “Person” means an individual, association, partnership, limited liability company, corporation, trust, governmental agency, political subdivision or other legal entity or any combination thereof.

Section 2.37. “Plan of Fractional Ownership” or “Plan” means the system of mutual use rights and mutual obligations created and established by this Declaration for Owners of Fractional Interests as set forth in ARTICLE 21. Additional definitions related to the Plan are set forth in ARTICLE 21

Section 2.38. “Project” has the meaning set forth in Section 1.1.

Section 2.39. “Property” means the real property described in the attached Exhibit A.

Section 2.40. “Real Estate” means any leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests that, by custom, usage or law, pass with the conveyance of land though not described in the contract of sale or instrument of conveyance. Real Estate includes parcels with or without horizontal boundaries and spaces that may be filled with air or water.

Section 2.41. “Records” means the Office of the Clerk and Recorder in every county in which any portion of the Project is located.

Section 2.42. “Reserved Declarant Rights” means all rights reserved by Declarant in this Declaration, including, without limiting the generality of the foregoing, those rights reserved to Declarant in ARTICLE 14 and ARTICLE 15 hereof.

Section 2.43. “Rules and Regulations” means the rules and regulations promulgated by the Association for the management, preservation, safety, control, and orderly operation of the Project in order to effectuate the intent and to enforce the obligations set forth in the Condominium Documents, as amended and supplemented from time to time. Separate Rules and Regulations may be promulgated to apply only to Fractional Units.

Section 2.44. “Security Interest” means an interest in Real Estate or personal property created by contract or conveyance which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed,

land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an Association, and any other consensual lien or title retention contract intended as security for an obligation. The holder of a Security Interest includes any insurer or guarantor of a Security Interest.

Section 2.45. “Special Declarant Rights” has the meaning set forth in Section 14.1 hereof.

Section 2.46. “Sub-Class” has the meaning set forth in Section 7.5.

Section 2.48. “Total Voting Power” means the aggregate number of votes of (a) all the members of the Association, (b) either “Class A” or “Class B” Owners, or (c) a Sub-Class, as applicable, that are eligible and entitled to vote on or consent to or reject the decision or action in question.

Section 2.49. “Unit” means a physical portion of the Project which is designated for separate ownership or occupancy and the boundaries of which are described in or determined by this Declaration and depicted on the Map. A Unit shall consist of enclosed rooms and shall be bounded by the interior surfaces of Unfinished Perimeter Walls, Unfinished Floors and Unfinished Ceilings thereof, each of which shall be defined as follows:

(a) “Unfinished Perimeter Wall” means the studs, supports, and other wooden, metal, or similar structural materials which constitute the interior face of a wall of a Unit.

(b) “Unfinished Ceiling” means the beams, joists, and wooden, metal or other structural materials which constitute the ceiling of a Unit.

(c) “Unfinished Floor” means the beams, floor joists, and floor deck material which constitute the floor of a Unit.

A Unit shall include any lath, furring, wallboard, plasterboard, plaster, drywall, wall paneling, wood, tile, paint, paper, carpeting, or any other wall, ceiling, or floor covering, any fireplace or stove hearth, facing brick, tile or firebox, fixtures and hardware, all improvements contained within the area bounded by the Unfinished Perimeter Walls, Ceilings, and Floors, and any heating and refrigerating elements or related equipment, utility lines and outlets, telecommunications lines, electrical and plumbing fixtures, pipes, and all other related equipment required to provide heating, air conditioning, hot and cold water, electrical, communications, or other utility services to such Unit and located within the Unfinished Perimeter Walls, Ceilings, and Floors; provided, however, that such Unit shall not include any of the structural components of the Improvements or utility or service lines located within such Unit but serving more than one Unit. Each Unit shall be designated by a separate number, letter, address or other symbol or combination thereof that identifies only one Unit in the Project as more specifically set forth on Exhibit B.

Section 2.50. “Withdrawn Property” has the meaning set forth in Section 15.7.

ARTICLE 3. DIVISION OF PROJECT INTO CONDOMINIUM OWNERSHIP

Section 3.1. Division Into Units. The Property is hereby and hereafter divided into those Units identified on Exhibit B, as amended from time to time. The undivided interests in the Common Elements, as allocated in Exhibit B, are hereby declared to be appurtenant to the respective Units.

Section 3.2. Delineation of Unit Boundaries. The boundaries of each Unit are delineated and designated by an identifying number on the Map, and those numbers are set forth in Exhibit B.

Section 3.3. Inseparability of Unit. Except as provided in Section 3.5 below, and in the Article entitled "Reservation of Development Rights" and in the Article entitled "Plan of Fractional Ownership": (a) no part of a Unit or of the legal rights comprising ownership of a Unit may be partitioned or separated from any other part thereof during the period of condominium ownership prescribed in this Declaration; (b) each Unit shall always be conveyed, transferred, devised, bequeathed, encumbered, and otherwise affected only as a complete Unit; and (c) every conveyance, transfer, gift, devise, bequest, encumbrance, or other disposition of a Unit or any part thereof shall be presumed to be a disposition of the entire Unit, together with the undivided interests in the Common Elements and all appurtenant rights and interests created by Applicable Law or by this Declaration, including the Owner's membership in the Association. Notwithstanding the foregoing provisions of this Section, nothing herein shall prevent or limit Declarant's exercise or enjoyment of any Reserved Declarant Rights.

Section 3.4. Non-Partitionability of Common Elements. The Common Elements shall be owned in common by all of the Owners and shall remain physically undivided, and no Owner shall bring any action for partition or division of the Common Elements. By acceptance of a Deed or other instrument of conveyance or assignment to a Unit, each Owner shall be deemed to have specifically waived such Owner's right, if any, to institute or maintain a partition action or any other cause of action designed to cause a division of the Common Elements, and this Section may be pleaded as a bar to the maintenance of such an action. Any Owner who shall institute or maintain any such action shall be liable to the Association and hereby agrees to reimburse the Association for the Costs of Enforcement in defending any such action.

Section 3.5. Subdivision of Units; Relocation of Boundaries Between Adjoining Units. Except as expressly otherwise set forth herein in connection with the Reserved Declarant Rights, Owner(s) may only subdivide their Units, relocate boundaries between their Unit and an adjoining Unit, and/or reallocate Limited Common Elements between or among Units after obtaining the prior approval of the Board of Directors pursuant to the Rules and Regulations and the consent of all Owners and Eligible First Mortgagees of the Units affected by such change. Any such approved change shall also be subject to the applicable provisions and requirements of this Declaration and of the Act and any other law, ordinance, regulation, or requirement of any governmental authority having jurisdiction over the Units or the Project ("Applicable Laws"). Owners shall be responsible for ensuring that all alterations comply with all Applicable Laws and that all necessary approvals are obtained from governmental authorities. No approval given by Declarant or the Association shall be deemed to imply that Declarant or the Association has reviewed any applicable requirements or the requesting Owner's compliance therewith. In no event shall anything in Sections 3.3, 3.4 or this 3.5

be deemed to prohibit a submission of a Unit to the Plan or withdrawal of a Unit or Common Elements from the Project by Declarant in accordance with applicable provisions of this Declaration and of the Act.

ARTICLE 4 ALLOCATED INTERESTS

Section 4.1. Allocation of Interests. The Allocated Interests assigned to each Unit are set forth on Exhibit B. These interests have been allocated in accordance with the formulae set out in Section 4.2 below. These formulae are to be used in reallocating interests if Units are added to the Project, if Units are converted to a different type of Unit or if Units are converted to Common Elements or Limited Common Elements.

Section 4.2. Formulae for the Allocation of Interests. The interests allocated to each Unit have been calculated by the following formulae and are shown on Exhibit B.

(a) Undivided Interest in the Common Elements. The percentage of the undivided interest in the Common Elements allocated to each Unit is based upon the relative floor area of each Unit as compared to the floor area of all Units in the Project, provided, however, that all Units containing the same number of bedrooms shall have an equal percentage interest in the Common Elements.

(b) Common Expense Liability. The percentage of the Common Expense Liability allocated to each Unit is based upon and is equivalent to the percentage of the undivided interest in the Common Elements allocated to the Unit pursuant to Subsection (a). Allocations for Common Expense Liability may be further adjusted as set forth in Section 9.2 of this Declaration.

(c) Votes. The Association shall have two (2) classes of voting membership:

(i) "Class A". "Class A" Owners shall be all Owners except Declarant, who shall be entitled to one (1) vote per Unit owned by each such Owner (regardless of Sub-Class of ownership); and

(ii) "Class B". The "Class B" Owner shall be Declarant, who shall be entitled to five (5) votes per Unit owned by Declarant (regardless of Sub-Class of ownership).

"Class B" membership shall cease and Declarant's membership shall be converted to "Class A" membership on the happening of (A) the tenth (10th) anniversary of the recording of this Declaration, (B) when Declarant determines in its sole and absolute discretion that more than ninety-five percent (95%) of all of the Units Declarant may ultimately construct in the Project have been sold to third party purchasers, or (C) Applicable Law otherwise requires.

Allocations based on square footage shall be based on Declarant's determination of square footage as of the date of this Declaration, as reflected on Exhibit B, and variations in actual as-built square footage shall have no effect on the Allocated Interests, as described herein.

Section 4.3. Rounding Convention. Any Allocated Interest, expressed as a percentage, shall be rounded up to the nearest one percent (1%). The total of all Allocated Interests shall be deemed to equal to one hundred percent (100%) for purposes of this Declaration.

Section 4.4. Effective Date of Reallocation. The effective date for reallocating Allocated Interests to Units as a result of the exercise of Development Rights set forth in ARTICLE 15 of this Declaration shall be the date on which the amendment required by Section 15.3 hereof is recorded in the Records.

ARTICLE 5 MAP AND CONSTRUCTION MATERIALS

Section 5.1. Map.

(a) The Map attached hereto as Exhibit F and incorporated herein by reference accurately depicts the Units and the Project layout, as located (or to be located) on the Property, with the square footage, design and dimensions of each Unit. As shown on the Map, the Project consists of one building, subject to the right of Declarant to add additional property and improvements to the Project pursuant to the terms hereof.

(b) The Map contains or shall contain (as incorporated herein by an amendment to this Declaration) a certificate of a registered and licensed land surveyor certifying that the Map was (i) prepared subsequent to the substantial completion of the Improvements and (ii) contains all information required by this Declaration and the Act. Each supplement shall set forth a like certificate when appropriate. In interpreting the Map, the existing physical boundaries of each separate Unit as constructed shall be conclusively presumed to be its boundaries; provided, however, that any variation in actual as-built square footage for a Unit shall have no effect on the Allocated Interests, as described herein.

Section 5.2. Construction Materials. The list of principal construction materials used in the Project are listed on Exhibit D attached hereto.

ARTICLE 6 LEGAL DESCRIPTION AND TAXATION OF UNITS

Section 6.1. Contracts to Convey Entered into Prior to Recording of Condominium Declaration and Map. A contract or other agreement for the sale of a Unit entered into prior to the filing of this Declaration in the Records may legally describe such Unit in substantially the manner set forth in this ARTICLE 6 and may indicate that this Declaration and the Map are to be recorded.

Section 6.2. Contracts to Convey and Conveyances Subsequent to Recording of Declaration and Map. Subsequent to the recording of this Declaration and the Map, contracts to convey, instruments of conveyance of Units, and every other instrument affecting title to a Unit shall be in substantially the following form with such omissions, insertions, recitals of fact, or other provisions as may be required by the circumstances or appropriate to conform to the requirements of any governmental authority, practice or usage or requirement of law with respect thereto:

Unit _____, according to the Condominium Declaration for
Watermark on Flathead Lake, recorded _____, 200__, at

(Reception No.) in the office of the Clerk and Recorder of Lake County, Montana.

Section 6.3. Conveyance Deemed to Include an Undivided Interest in Common Elements. Every instrument of conveyance, Security Interest, or other instrument affecting the title to a Unit which legally describes the Unit substantially in the manner set forth above shall be construed to include the Unit, together with the undivided interest in the Common Elements appurtenant to such Unit, as allocated on Exhibit B, and together with all fixtures and improvements contained in such Unit, and to incorporate all the rights incident to ownership of a Unit and all the limitations of ownership as described in the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions contained in this Declaration, including the easement of enjoyment to use the Common Elements.

Section 6.4. Separate Tax Assessments. Upon the filing for record of this Declaration and the Map in the Records, Declarant shall deliver a copy of this Declaration to the assessor of each county specified in the Records. The lien for taxes assessed shall be confined to the Unit(s). No forfeiture or sale of any Unit for delinquent taxes, assessments, or other governmental charge shall divest or in any way affect the title to any other Unit, including, without limitation, the Common Elements appurtenant to any other Unit.

ARTICLE 7 MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

Section 7.1. Association Membership. The Articles of Incorporation shall be filed no later than the date Declarant delivers the first Deed conveying a Unit in the Project. Every Owner shall be a member of the Association and shall remain a member for the period of the Owner's ownership of a Unit. No Owner, whether one or more Persons, shall have more than one membership per Unit owned, but all of the Persons owning a Unit shall be entitled to rights of membership and of use and enjoyment appurtenant to ownership of a Unit. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Unit. If title to a Unit is held by more than one Person, such Persons shall appoint and authorize one Person or alternate Persons to represent the Owners of the Unit pursuant to the Bylaws, and there shall be a single registered address for each Unit, as applicable, for notice and delivery purposes as further set forth in the Bylaws.

Section 7.2. Voting Rights and Meetings. Each Unit in the Project shall have the votes allocated in accordance with Section 4.2; provided, however, no vote allocated to a Unit owned by the Association may be cast. Cumulative voting shall not be allowed in the election of the Board of Directors or for any other purpose. The voting power required for any action or determination shall be calculated in accordance with the Bylaws. A meeting of the Association shall be held at least once each year, and special meetings of the Association may be called in accordance with the Bylaws.

Section 7.3. Meeting to Approve Annual Budget. At the annual meeting of the Association or at a special meeting of the Association called for such purpose, the Owners shall be afforded the opportunity to review the Budget proposed by the Board of Directors for the Association's next fiscal year. Unless at the meeting sixty-seven percent (67%) of the Total Voting Power of the "Class A" Owners, and the "Class B" Owner (if any), reject the proposed Budget, such

Budget shall be deemed ratified whether or not a quorum is present at the meeting. In the event the proposed Budget is rejected, the then existing Budget shall continue in effect until such time as a subsequent Budget is proposed by the Board of Directors and is not rejected in accordance with the above procedures. Notwithstanding the foregoing, specific Budget line items applicable only to one Sub-Class may be modified pursuant to Section 7.6.

Section 7.4. Transfer Information. All Persons who acquire Unit(s) other than from Declarant shall provide written notice of the transfer, together with all information required under the Bylaws and/or the Rules and Regulations, to the Association within ten (10) days after the date of transfer. Such Person shall also provide a true and correct copy of the recorded instrument conveying or transferring the Unit or such other evidence of the conveyance or transfer as is reasonably acceptable to the Association. The Association or Managing Agent shall have the right to charge the Person a reasonable administrative fee for processing the transfer in the records of the Association.

Section 7.5. Sub-Class of Membership. Owners of Fractional Units shall make up a separate class of voting members in the Association (the “Sub-Class”) for purposes of voting on certain issues as described in Exhibit E and in ARTICLE 21. All Sub-Class issues shall be voted upon or otherwise acted upon by the Owners in the Sub-Class at a regular or special meeting of the Association or at such other special meeting of the Sub-Class as may be called by the members of the Board of Directors. For purposes of any such meeting of the Sub-Class, the Association shall distribute to the Owners of the Sub-Class such notices of the meeting and other information required to be delivered to Owners by the Association for a meeting of the Association as provided in the Bylaws. The decision on whether an issue relates solely to a particular Sub-Class or otherwise fits within the categories of the Sub-Class issues described in this Declaration shall be determined in the reasonable discretion of the Board of Directors based on the provisions of the Condominium Documents and Section 35-2-224 of the Nonprofit Act.

Section 7.6. Reserved Powers: Directions to Board of Directors. Notwithstanding anything to the contrary set forth in this Declaration, no issue, action or decision which would operate to discriminate against any Sub-Class or otherwise unreasonably interfere with the operation of the Units owned by the Sub-Class as otherwise permitted under the Condominium Documents, shall be effective without a vote or agreement of at least sixty-seven percent (67%) of the Total Voting Power of the Sub-Class. The Board of Directors shall be required to act in accordance with the directions of at least sixty-seven percent (67%) of the Total Voting Power of the Sub-Class with respect to any Sub-Class issue acted upon by such Sub-Class, including, without limitation, in the following circumstances:

- (a) If at least sixty-seven percent (67%) of the Total Voting Power of the Sub-Class within the Sub-Class votes to change specific items reflected in the Budget that affect only the Sub-Class including, without limitation, a change in services available to the Sub-Class, the Board of Directors shall be so notified in writing and the Budget proposed by the Board of Directors pursuant to Section 9.2 for the following year shall include the requested changes.

(b) If at least sixty-seven percent (67%) of the Total Voting Power of the Sub-Class within the Sub-Class votes to change specific items reflected in the Rules and Regulations that affect only the Sub-Class, the Board of Directors shall be so notified, in writing, and the Board of Directors shall, at its next meeting, act to effectuate such amendment to the Rules and Regulations accordingly.

Notwithstanding anything to the contrary set forth herein, the Board shall not be required to take any action that would cause a breach of any legal duty of the Board or that would result in a violation of the Act.

ARTICLE 8 ASSOCIATION POWERS AND DUTIES

Section 8.1. Association Management Duties. Subject to the rights and obligations of Declarant and other Owners as set forth in this Declaration, the Association shall be responsible for the administration and operation of the Project and for the exclusive management, control, maintenance, repair, replacement, and improvement of the Common Elements, including the maintenance, repair and replacement of the Limited Common Elements, other than routine maintenance for which the Owners are responsible pursuant to Section 10.1. The Association shall keep the same in good, clean, attractive, and sanitary condition, order, and repair. The expenses, costs, and fees of such management, operation, maintenance, and repair by the Association shall be part of the Assessments, and prior approval of the Owners shall not be required in order for the Association to pay any such expenses, costs, and fees. The Association shall establish and maintain, out of the installments of the annual Assessments, an adequate reserve account for maintenance, repair, or replacement of those Common Elements that must be maintained, repaired and/or replaced on a periodic basis. The Association shall adopt and amend, annually and in accordance with the provisions hereof, a Budget which will be the basis for collection of Assessments from Owners. Financial and other records of the Association shall be made reasonably available for examination by any Owner and such Owner's authorized agents and requesting First Mortgagees, all in accordance with the Bylaws.

Section 8.2. Association Powers. The Association shall have, subject to the limitations contained in this Declaration, the Bylaws, and the Act, all powers necessary or appropriate for the administration of the affairs of the Association and the upkeep of the Project, which shall include, but not be limited to, the following:

- (a) Adopt and amend the Bylaws and the Rules and Regulations;
- (b) Adopt and amend the Budget;
- (c) Collect Assessments from Owners;
- (d) Suspend the voting interests allocated to a Unit, and the right of an Owner to cast such votes, or by proxy the votes of another, during any period in which such Owner is in default in the payment of any Assessment, or during any time in which an Owner is in violation of any other provision of the Condominium Documents;

(e) Hire and discharge Managing Agents and delegate to such Managing Agents the power and duty to enforce the Rules and Regulations and other powers and duties of the Association, subject to the requirements of the Act;

(f) Hire and discharge employees, independent contractors and agents other than Managing Agents;

(g) Institute, defend or intervene in litigation or administrative proceedings or seek injunctive relief for violations of the Condominium Documents in the Association's name, on behalf of the Association or on behalf of two or more Owners in matters affecting the Project;

(h) Adjust and settle insurance claims;

(i) Receive notices, join in any litigation or administrative proceeding, and execute any and all documents in the Association's name, on behalf of the Association, or on behalf of the two or more Owners, in connection with any change in zoning, annexation, subdivision approval, building permit, or other type of governmental approval required to accomplish or maintain the purposes of the Association;

(j) Make contracts and incur liabilities;

(k) Regulate the use, maintenance, repair, replacement, and modification of all Common Elements (other than those Common Elements required to be maintained and repaired by Owners as provided herein), all Association property within the Project or property which serves the Project but which is outside its boundaries;

(l) Establish policies and procedures for entry into Units under authority granted to the Association in the Condominium Documents for the purpose of cleaning, maintenance and repair (including emergency repair) and for the purpose of abating a nuisance, or a known or suspected dangerous or unlawful activity;

(m) Cause additional improvements to be made as a part of the Common Elements;

(n) Acquire, hold, encumber and convey, in the Association's name, any right, title or interest to real estate or personal property;

(o) Grant easements, including permanent easements, and grant leases, licenses and concessions, through or over the Common Elements;

(p) Impose and receive a payment, fee, or charge for (i) services provided to Owners, and (ii) for the use, rental or operation of the Common Elements (other than for the use or rental of the Limited Common Elements);

(q) Establish from time to time, and thereafter impose, charges for late payment of Assessments or any other sums due and levy a reasonable fine for a violation of the Condominium Documents;

(r) Impose a reasonable charge for the preparation and recording of amendments to the Declaration or statements of unpaid Assessments and for services provided to Owners;

(s) Recover Costs of Enforcement for collection of Assessments and other actions to enforce the powers of the Association, regardless of whether or not suit was initiated;

(t) Provide for the indemnification of the Association's officers and the Board of Directors to the extent permitted by law and maintain directors' and officers' liability insurance;

(u) Assign the Association's right to future income, including the right to receive Assessments;

(v) Declare the office of a member of the Board of Directors to be vacant in the event such member is absent from three (3) regular meetings of the Board of Directors during any one year period;

(w) Appoint any committee as required or permitted by the Declaration or the Bylaws, and by resolution, establish committees, permanent and standing, to perform any of the above functions under specifically delegated administrative standards as designated in the resolution establishing the committee;

(x) By resolution, set forth policies and procedures which provide for corporate actions and powers which are different than those set forth in the Nonprofit Act, which are permitted to be "otherwise set forth in the Bylaws." Such resolutions shall be given the same force and effect as if specifically enumerated in the Declaration or the Bylaws;

(y) Exercise any other powers conferred by the Condominium Documents, the Act, or the Nonprofit Act or that may otherwise be exercised by entities of the same type as the Association under Montana law; and

(z) Exercise any other power necessary or proper for the governance and operation of the Association.

Section 8.3. Actions by Board of Directors. Except as specifically otherwise provided in this Declaration, the Bylaws or the Act with respect to powers reserved to the Owners and the Sub-Class, the Board of Directors may act in all instances on behalf of the Association. Notwithstanding anything to the contrary contained herein, those matters that constitute Sub-Class issues as described in Exhibit E are subject to the exclusive jurisdiction of the Sub-Class and the Board of Directors shall have no power or authority to act in contravention or frustration of any action properly taken by a Sub-Class with respect to a Sub-Class issue and shall, instead, take all actions required to effectuate such properly taken actions of the Sub-Class.

Section 8.4. Payments to Working Capital Account. In order to provide the Association with adequate working capital funds, the Association may collect from purchasers, at the time of the initial sale by Declarant of each Unit, an amount not to exceed two (2) months' worth of annual Assessments based on the Association's Budget in effect at the time of the conveyance. Such payments to this fund shall not be considered advance payments of annual Assessments.

ARTICLE 9 ASSESSMENTS

Section 9.1. Annual Assessments. The Association shall levy annual Assessments to pay for the Common Expense Liability allocated to each Unit pursuant to this Declaration. The total annual Assessments shall be based upon the Budget and fixed by resolution of the Board of Directors. Any surplus funds of the Association remaining after payment of or provision for Common Expenses and after any prepayment of or provision for reserves, as determined by the Board of Directors, shall be refunded to the Owners in proportion to their Common Expense Liability or credited to them to reduce their future Assessments for Common Expenses, as determined by the Board of Directors in its discretion.

Section 9.2. Apportionment of Annual Assessments. The total annual Assessments for any fiscal year of the Association shall be assessed to the Units in proportion to their percentage of Common Expense Liability as allocated pursuant to Section 4.2, subject to: (a) Common Expenses which are separately metered or assessed to the Units by third parties or pursuant to service agreements with third parties; (b) Common Expenses associated with the operation, maintenance, repair or replacement of Limited Common Elements, which shall be assessed equally or on such other equitable basis as the Board of Directors shall determine to the Units to which the specific Limited Common Elements are appurtenant; (c) Common Expenses or portions thereof benefiting fewer than all of the Units which shall be assessed exclusively against the Units benefited, and Common Expenses or portions thereof which benefit certain Units more than others which shall be allocated in proportion to such benefit; (d) any increased cost of insurance based upon risk which shall be assessed to Units in proportion to the risk; (e) any Common Expense caused by the misconduct of any Owner(s), which may be assessed exclusively or on such other equitable basis as the Board of Directors shall determine against such Owner(s); and (f) any expenses which are otherwise charged equally to the Units. All such allocations of Common Expense Liability to the Units on a basis other than the Units' percentage of Common Expense Liability shall be determined by the Board of Directors. To the extent certain items or services benefit only the Owners of a certain type of Unit and/or within a certain Sub-Class and/or to the extent real or personal property owned by the Association is only available for use by or only benefits the Owners of a certain type of Unit and/or within a certain Sub-Class, costs and expenses associated with such items shall be assessed only against the Owners of such type of Unit or within the applicable Sub-Class.

Section 9.3. Special Assessments. In addition to the annual Assessments authorized above, the Board of Directors may at any time and from time to time determine, levy, and assess in any fiscal year a special Assessment applicable to that particular fiscal year (and for any such longer period as the Board of Directors may determine) for the purpose of defraying, in whole or in part, the unbudgeted costs, fees, and expenses of any construction, reconstruction, repair, demolishing, replacement, renovation or maintenance of the Project, specifically including any fixtures and personal property related to it and any other unbudgeted or unanticipated costs of the Association.

Any amounts determined, levied, and assessed pursuant to this Declaration shall be assessed to the Units pursuant to the provisions in Section 9.2 above.

Section 9.4. Due Dates for Assessment Payments. Unless otherwise determined by the Board of Directors, the Assessments which are to be paid in installments shall be paid monthly in advance and shall be due and payable to the Association at its office or as the Board of Directors may otherwise direct in any Management Agreement, without notice (except for the initial notice of any special Assessment), on the date and in the installments determined by the Board of Directors, as set forth in the Rules and Regulations. The Association shall be responsible for charging, collecting, and enforcing the obligations of the Owners to pay Assessments, including any Assessments levied solely against any Sub-Class. If any such installment shall not be paid when due and payable, then the Board of Directors may assess a late charge, default interest charge (not to exceed the rate from time to time allowed by Applicable Law), fee, or such other charge as the Board of Directors may fix by rule from time to time to cover the extra expenses involved in handling such delinquent Assessment installment. An Owner's Assessment shall be prorated if the ownership of a Unit commences or terminates on a day other than the first day or last day, respectively, of the applicable payment period. However, if the Common Expense Liability is re-allocated in accordance with this Declaration, any installment(s) of an Assessment not yet due shall be recalculated to reflect the re-allocated Common Expense Liability.

Section 9.5. Default Assessments. All Costs of Enforcement assessed against an Owner pursuant to the Condominium Documents, or any expense of the Association which is the obligation of an Owner pursuant to the Condominium Documents and is not paid when due shall become a Default Assessment assessed against the Owner's Unit. Notice of the amount and demand for payment of such Default Assessment shall be sent to the Owner prior to enforcing any remedies for non-payment hereunder.

Section 9.6. Covenant of Personal Obligation for Assessments. Declarant, by creating the Units pursuant to this Declaration, and all other Owners, by acceptance of the Deed or other instrument of transfer of such Owner's Unit (whether or not it shall be so expressed in such Deed or other instrument of transfer), are deemed to personally covenant and agree, jointly and severally, with all other Owners and with the Association, and hereby do so covenant and agree to pay to the Association the (a) annual Assessments, (b) special Assessments, and (c) Default Assessments applicable to the Owner's Unit. No Owner may waive or otherwise escape personal liability for the payment of the Assessments provided for in this Declaration by not using the Common Elements or the facilities located on or in the Common Elements or by abandoning or leasing such Owner's Unit.

Section 9.7. Lien for Assessments; Assignment of Rents.

(a) The Association shall have a lien against each Unit to secure payment of delinquent Assessments, as well as interest, late charges (subject to the limitations of Applicable Law) and all costs of collection (including attorneys' fees). Such lien shall be superior to all other liens with the exception of (i) any liens for taxes, bonds or assessments that are deemed superior pursuant to Applicable Law, and (ii) the lien of a First Mortgagee's Security Interest. Such lien of the Association may be enforced by any means permitted by Applicable Laws.

(b) The sale or transfer of any Unit shall not affect the assessment lien described above or relieve such Unit from the lien for any future Assessments.

Section 9.8. Remedies for Nonpayment of Assessments. If any Assessment (or any installment of the Assessment) is not fully paid within thirty (30) days after the same becomes due and payable, then as often as the same may happen, (a) the Association may charge a fee for late payment as set forth in the Rules and Regulations, (b) interest shall accrue at the default rate set by the Rules and Regulations on any amount of the Assessment in default plus any late fee imposed, accruing from the due date until date of payment, (c) the Association may declare due and payable all unpaid installments of the annual Assessment or any special Assessment otherwise due during the fiscal year during which such default occurred, (d) the Association may thereafter bring an action at law or in equity, or both, against any Owner personally obligated to pay the same, (e) the Association may proceed to file and foreclose its lien described in Section 9.7 in the manner and form provided by Applicable Law, and (f) the Association may suspend the Owner's right to vote in Association matters until the Assessment is paid. An action at law or in equity by the Association (or counterclaims or cross-claims for such relief in any action) against an Owner to recover a money judgment for unpaid Assessments (or any installment thereof) may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien for the Assessments. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to stop or otherwise preclude the Association from again foreclosing or attempting to foreclose its lien for any subsequent Assessments (or installments thereof) which are not fully paid when due or for any subsequent Default Assessments. The Association shall have the power and right to bid in or purchase any Unit at foreclosure or other legal sale and to acquire and hold, lease, mortgage, and to convey, or otherwise deal with the Unit acquired in such proceedings.

Section 9.9. Purchaser's Liability for Assessments. Notwithstanding the personal obligation of each Owner to pay all Assessments on the Unit, and notwithstanding the Association's right to file a lien upon a Unit for such Assessments, all purchasers of a Unit shall be jointly and severally liable with the prior Owner(s) of such Unit for any and all unpaid Assessments against such Unit, without prejudice to any such purchaser's right to recover from any prior Owner any amounts paid thereon by such purchaser. A purchaser's obligation to pay Assessments shall commence upon the date the purchaser becomes the Owner. For Assessment purposes, the date a purchaser becomes the Owner shall be determined as follows: (a) in the event of a conveyance or transfer by foreclosure, the date a purchaser becomes the Owner shall be deemed to be upon the expiration of all applicable redemption periods; (b) in the event of a conveyance or transfer by deed in lieu of foreclosure a purchaser shall be deemed to become the Owner of the Unit upon the execution and delivery of the deed or other instruments conveying or transferring title to the Unit, irrespective of the date the deed is recorded; and (c) in the event of conveyance or transfer by Deed, a purchaser shall be deemed to become the Owner upon the execution and delivery of the Deed or other instruments conveying or transferring title of the Unit, irrespective of the date the Deed is recorded. However, such purchaser shall be entitled to rely upon the existence and status of unpaid Assessments as shown upon any certificate issued by or on behalf of the Association to such named purchaser pursuant to the provisions of this Declaration.

Section 9.10. Limitation of Assessments on Foreclosed Unit. An Owner who obtains title to a Unit as a result of foreclosure of a First Mortgagee's Security Instrument shall not be liable for any

Assessments levied against the Unit prior to the date such Owner takes title to the Unit. All unpaid Assessments levied prior to the date such Owner takes title to the Unit shall become Common Expenses of the Association and charged to the Owners (including the new Owner of the foreclosed Unit) in accordance with each Owner's share of Common Expense Liability.

Section 9.11. Assessments Not Paid by Declarant. From and after the recording of this Declaration in the Records and expiring twelve (12) months after the closing of the first sale of a Unit by Declarant to a third party purchaser, Declarant shall not be obligated to pay any Assessments on any Unit it owns, provided Declarant shall reimburse the Association for any reasonable and necessary expenses incurred by the Association that are not otherwise covered by Assessments levied against other Units.

Section 9.12. Liens. Except for Assessment liens as provided in this Declaration, mechanics' liens (except as prohibited by this Declaration), tax liens, judgment liens and other liens validly arising by operation of law, and liens arising under Security Interests, there shall be no other liens obtainable against the Common Elements or against the interest of any Owner in the Common Elements (except a Security Interest in the Common Elements that may be granted by the Association pursuant to the requirements of the Act).

ARTICLE 10 MAINTENANCE RESPONSIBILITY

Section 10.1. Rights and Duties of Owners.

(a) Except as may be provided in the purchase and sale agreement or other conveyancing documents executed by Declarant in connection with sales to initial purchasers of the Units and subject to the requirements of ARTICLE 12, each Owner shall have the exclusive right and duty to paint, tile, wax, paper, or otherwise decorate or redecorate and to maintain and repair the interior surfaces of the walls, floors, ceilings, windows and doors forming the boundaries of such Owner's Unit and all walls, floors, ceilings, and doors within such boundaries. Notwithstanding the foregoing, no Owner shall be permitted to install any hardwood floor or other hard surface improvements in any Unit that might affect adjoining Units by increasing noise or vibrations, without the prior written approval of the Board of Directors, which approval may be denied, or conditioned, in the Board's sole discretion.

(b) The Owner of any Unit shall, at the Owner's expense, maintain and keep in repair all fixtures, equipment, and utilities installed and included in a Unit commencing at a point where the fixtures, equipment, and utilities enter the Unit. An Owner shall not allow any action or work that will impair the structural soundness of the Improvements, impair the proper functioning of the utilities, heating, ventilation, or plumbing systems or integrity of the Improvement(s), or impair any easement or hereditament. Without limiting the generality of the foregoing, with respect to any utility line, cable, conduit, pipe or similar improvement serving a Unit, the Owner shall be responsible for its maintenance and repair from the point at which the improvement meets the boundary of the Limited Common Elements appurtenant to and accessible only from that Unit and the Association shall be responsible for such maintenance and repair where such improvements run on or under the Common Elements to such point. These clarifying provisions are not intended to and shall

not be deemed to expand or alter the obligations of Owners or the Association, as applicable, with respect to utility providers or other service providers. Each Owner shall be responsible for routine maintenance and care of the walls, floors, ceilings, windows and doors of any Limited Common Element balcony and of any other Limited Common Elements appurtenant to and accessible only from the Owner's Unit, and for keeping the same in a good, clean, sanitary, and attractive condition, provided that the Association (a) shall be responsible for all structural repairs, replacements, and non-routine maintenance and repairs such as painting, and (b) may choose to maintain all or any portion of the Limited Common Elements for reasons of uniformity or structural considerations.

Section 10.2. Owner's Negligence. Except as expressly provided in ARTICLE 17, regarding insurance, in the event that the need for maintenance, repair, or replacement of all or any portion of the Project is caused through or by the negligent or willful act or omission of an Owner or Occupant, then the expenses incurred by the Association for such maintenance, repair, or replacement shall be a personal obligation of such Owner; and, if the Owner fails to repay the expenses incurred by the Association within seven days after notice to the Owner of the amount owed, then the failure to so repay shall be a default by the Owner, and such expenses shall automatically become a Default Assessment determined and levied against such Unit, enforceable by the Association in accordance with this Declaration.

Section 10.3. Responsibility of the Association. The Association, without the requirement of approval of the Owners, shall maintain and keep in good repair, replace, and improve, as a Common Expense, all of the Project not required in this Declaration to be maintained and kept in good repair by an Owner.

ARTICLE 11 MECHANICS' LIENS

Section 11.1. Mechanics' Liens. Subsequent to recording of this Declaration and the filing of the Map in the Records, no labor performed or materials furnished for use and incorporated in any Unit with the consent of or at the request of the Owner or the Owner's agent, contractor or subcontractor, shall be the basis for the filing of a lien against a Unit of any other Owner not expressly consenting to or requesting the same, or against any interest in the Common Elements except as to the undivided interest therein appurtenant to the Unit of the Owner for whom such labor shall have been performed or such materials shall have been furnished. Each Owner shall indemnify and hold harmless each of the other Owners and the Association from and against any liability or loss arising from the claim of any mechanics' lien or for labor performed or for materials furnished in work on such Owner's Unit, against the Unit of another Owner or against the Common Elements, or any part thereof.

Section 11.2. Enforcement by the Association. At its own initiative or upon the written request of any Owner, if the Association determines that further action by the Association is proper, the Association shall enforce the indemnity provided by the provisions of this ARTICLE 11 by collecting from the Owner of the Unit on which the labor was performed or materials furnished the amount necessary to discharge by bond or otherwise any such mechanics' lien, to pay all costs and reasonable attorneys' fees incidental to the lien, and to obtain a release of such lien. If the Owner of the Unit on which the labor was performed or materials furnished refuses or fails to indemnify

within five (5) days after the Association shall have given notice to such Owner of the total amount of the claim, then the failure to so indemnify shall be a default by such Owner under the provisions of this ARTICLE 11, and such amount to be indemnified shall automatically become a Default Assessment determined and levied against such Unit, and enforceable by the Association pursuant to this Declaration.

ARTICLE 12 USE RESTRICTIONS

Section 12.1. Use of Units. Except for uses reserved to Declarant in ARTICLE 14 entitled “Special Declarant Rights and Additional Reserved Rights,” all Units shall be used for dwelling purposes only and shall otherwise be used only in accordance with all Applicable Laws. Except as otherwise restricted herein or in the Rules and Regulations, an Owner may rent or lease such Unit(s) to others for residential purposes and may otherwise use its Unit(s) for any residential purpose that does not cause unreasonable disturbance to other Owners and that are permitted by Applicable Law. Notwithstanding anything to the contrary set forth in the Condominium Documents, Declarant shall have the right to rent any Units (including Fractional Units) owned by Declarant.

Section 12.2. Use of Common Elements. Except as may be permitted in the Limited Common Elements pursuant to the provisions hereof or the Rules and Regulations, there shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements by any Owner without the prior written approval of the Board of Directors. Nothing shall be altered on, constructed in, or removed from the Common Elements by any Owner without the prior written approval of the Board of Directors. Owners and Occupants shall not disturb, damage, or have access to, certain restricted access areas in the Common Elements such as those specified in Section 13.1 and any other areas so designated on the Map or in the Rules and Regulations.

Section 12.3. Commercial Activities. A variety of commercial activities may be conducted adjacent to or otherwise near the Project (as further described below, the “Commercial Activities”). The Commercial Activities may generate an unpredictable amount of visible, audible and odorous impacts and disturbances. The Commercial Activities may include, without limitation, to the extent permitted by Applicable Law: (i) office and retail uses, (ii) retail sales and rentals, (iii) restaurant and bar operations (including, without limitation, sales of food and alcoholic and non-alcoholic beverages for consumption immediately adjacent to the Project and at other locations, preparation of hot and cold food and beverages at indoor and outdoor facilities adjacent to or otherwise near the Project), (iv) sales of services relating to recreational activities, (v) the installation, operation and maintenance of illuminated and non-illuminated signage, (vi) meetings and conferences, (vii) recreation and club-related activities, including, without limitation, the operation of the adjacent marina and other water-related activities; and (viii) any other uses or activities permitted by Applicable Law. The Commercial Activities may occur during the day or night.

Section 12.4. Use of Flathead Lake. The Association does not control the use, operation or appearance of Flathead Lake. As of the date of recording of this Declaration, the Confederated Salish and Kootenai Tribes of the Flathead Reservation control portions of the waterfront around the Flathead Lake.

Section 12.5. Prohibition of Increases in Insurable Risks and Certain Activities. Nothing shall be done or kept in any Unit or in or on the Common Elements, or any part thereof, which would result in the cancellation of the insurance on all or any part of the Project or in an increase in the rate of the insurance on all or any part of the Project over what the Association, but for such activity, would pay, without the prior written approval of the Board of Directors. Nothing shall be done or kept in any Unit or in or on the Common Elements which would be in violation of any Applicable Law. No damage to or waste of the Common Elements shall be committed by any Owner or Occupant, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by such Owner or an Occupant of such Owner's Unit (including all Costs of Enforcement incurred in the defense of claims arising by reason of this Section or incurred in establishing the right to indemnification). Failure to so indemnify shall be a default by such Owner under this Section and shall give rise to a Default Assessment against such Owner's Unit. At its own initiative or upon the written request of any Owner, if the Association determines that further action by the Association is proper, the Association shall enforce the foregoing indemnity as a Default Assessment levied against such Unit.

Section 12.6. Structural Alterations and Exterior Appearance. No structural alterations to any Unit, including the construction of any additional skylight, window, door or other alteration visible from the exterior of the Unit or to any Common Element and no window coverings or other improvements, alterations or decorations visible from outside a Unit shall be made or caused to be made by any Unit Owner without the prior written approval of the Board of Directors. Notwithstanding the foregoing, Fractional Owners shall not be permitted to apply for or make any alterations to their Fractional Units. The Association shall promulgate Rules and Regulations establishing procedures for the approvals required by this Section 12.6. Such Rules and Regulations shall include, but shall not be limited to, requirements that the Owner submit (a) plans and specifications showing the nature, kind, shape, height, color, materials, and location of the proposed alterations in sufficient detail for the Association and Declarant to review them; and (b) processing and/or review fees, which may include any professional fees the Association or Declarant might incur in retaining architects or engineers to review the plans and specifications. Unit Owners shall be responsible for ensuring that all alterations comply with all Applicable Laws and that all necessary approvals are obtained from governmental authorities. No approval given by Declarant or the Association shall be deemed to imply that Declarant or the Association has reviewed any applicable requirements or the requesting Owner's compliance therewith.

Section 12.7. Pet and Use Restrictions. No animal pens, sheds, fences or other outbuildings or structures of any kind shall be erected by any Owner. No activity shall be allowed which interferes unduly with the peaceful possession and proper use of the Project by the Owners, nor shall any fire hazard or unsightly accumulation of refuse be allowed. No lights shall be emitted which are unreasonably bright or cause unreasonable glare; no sound shall be emitted which is unreasonably loud or annoying; and no odor shall be emitted which is nauseous or unreasonably offensive to others. No animals, birds, insects, or livestock of any kind shall be raised, bred, or kept on or in the Project other than properly licensed and certified service animals for disabled Persons. The Board of Directors may (but shall not be obligated to) approve a request of an Owner of a Unit to keep a personal household pet with such conditions as the Board of Directors in its discretion may impose, including, without limitation, that such pet shall be registered, licensed and inoculated as may be required by the Board of Directors or Applicable Law from time to time, and that the Board of

Directors may impose a special Assessment on such Owner to defray the maintenance costs associated with the pet. The Association may adopt additional restrictions regarding pets in the Rules and Regulations.

Section 12.8. Limit on Timesharing. No Owner, excluding Declarant, shall offer or sell any interest in a Unit under a “timesharing,” “vacation club,” “private residence club,” “non-equity club,” “fractional plan” or “interval ownership” or membership plan, or any similar plan without the specific prior written approval of the Board of Directors. Any such approval shall be subject to the requesting Owner’s compliance with all Applicable Laws.

Section 12.9. Restriction on Signs. No signs, billboards, posterboards, or advertising structure of any kind shall be displayed, erected, or maintained for any purpose whatsoever except such signs as have been approved by the Board of Directors, as applicable. Such approval shall be given only if such signs are of attractive design and as small a size as reasonably possible and shall be placed or located as directed or approved by the Board of Directors. Any signs which are permitted under the foregoing restrictions shall be erected or maintained only if and to the extent they are in compliance with all Applicable Laws.

Section 12.10. Restrictions on Use of Parking and Storage Areas. Unless written permission is granted by the Board of Directors, (a) no parking shall be permitted at any location on the Common Elements unless specifically designated for parking by the Association, or in a location designated as a Limited Common Element appurtenant to a specific Unit, and (b) no storage is permitted outside of Units except in specifically designated storage areas, if any. No Owner may use any parking or storage space assigned to another without permission of the Owner to whom the parking or storage space is assigned. No Owner may use any parking space for storage or use any parking or storage space in any manner that obstructs or interferes with any other Owner’s parking or storage rights or that constitutes a safety hazard. Without limiting the generality of the powers of the Association with respect to parking or storage, the Association may promulgate Rules and Regulations governing parking and storage, and the Association is specifically authorized, but not obligated, to (i) remove any abandoned or inoperable vehicle, any vehicle parked in any area not designated for parking, or any vehicle parked in any space that is assigned to another Person or reserved for a specific use, or any vehicle parked in an obstructing or hazardous manner, except if and to the extent such parking of such vehicle is expressly required to be permitted under the Act, and (ii) remove any improperly stored or hazardous materials, in all cases at the expense of the Owner or Occupant that owns such vehicle or materials. Expenses incurred by the Association in connection with such removal (and storage, if necessary) shall be a personal obligation of such Owner and, if the Owner fails to pay such amount within seven (7) days after notice to the Owner of the amount owed, then the failure to pay shall be a default by the Owner. Notwithstanding the foregoing provisions of this Section, nothing herein shall be construed to prevent Declarant's use of parking spaces or Common Elements to park vehicles and equipment necessary or desirable for the development and construction of Improvements within the Property or improvements adjacent to the Property.

ARTICLE 13 EASEMENTS

Section 13.1. Easement of Enjoyment; Common Elements. Every Owner shall have a perpetual non-exclusive right and easement for the use and enjoyment of, and for access over, across, and upon, any portion of the Common Elements designated for common use (but specifically excluding Common Elements designated for uses such as maintenance, storage, utility installations and service areas), which includes the benefit of a non-exclusive easement of access over, across and upon the Common Elements for the purpose of access to and from the Unit from public ways for both pedestrian and, where appropriate, vehicular travel, which right and easement shall be appurtenant to and pass with the transfer of title to such Unit; provided, however, that such right and easement shall be subject to the following:

- (a) the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions contained in this Declaration, and the Map;
- (b) the right of the Association from time to time to assign on an equitable basis portions of the Common Elements such as parking spaces or storage for the exclusive use of the Owner of a particular Unit by a resolution of the Board or other appropriate written instrument;
- (c) the right of the Association to adopt, from time to time, Rules and Regulations concerning vehicular traffic and travel upon, in, under, and across the Project;
- (d) the right of the Association to adopt, from time to time, such Rules and Regulations concerning the Project as the Association may determine are necessary or prudent for the management, preservation, safety, control, orderly operation, or use of the Project for the benefit of all Owners; and
- (e) the agreement of all Owners, pursuant to this Declaration, to use reasonable and good faith efforts not to interfere with the use and enjoyment of other Owners of the Common Elements and such other Owners' respective Units.

Section 13.2. Easement of Enjoyment; Limited Common Elements. Subject to the provisions of this Declaration and the Rules and Regulations, every Owner shall have the right to use and enjoy the Limited Common Elements appurtenant to such Owner's Unit.

Section 13.3. Delegation of Use. Any Owner may delegate, in accordance with the Condominium Documents, the Owner's right of enjoyment in the Common Elements to an Occupant of the Owner's Unit.

Section 13.4. Recorded Easements. The Property shall be subject to any easements as shown on any recorded plat affecting the Property, as shown on the recorded Map, or as reserved or granted under this Declaration.

Section 13.5. Easements for Encroachments. The Project, and all portions of it, is subject to easements hereby created for encroachments between Units and the Common Elements as follows:

(a) in favor of all Owners, so that they shall have no legal liability when any part of the Common Elements encroaches upon a Unit;

(b) in favor of each Owner, so that the Owner shall have no legal liability when any part of such Owner's Unit encroaches upon the Common Elements or upon another Unit; and

(c) in favor of all Owners, the Association, and the Owner of any encroaching Unit for the maintenance and repair of such encroachments.

Encroachments referred to in this Section 13.5 include, but are not limited to, encroachments caused by error or variance from the original plans in the construction of the Improvements or any Unit constructed on the Property, by error in the Map, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of any part of the Project. Such encroachments shall not be considered to be encumbrances upon any part of the Project; provided, however, that encroachments created by the intentional act of an Owner shall not be deemed to create an easement on the Property and shall be considered an encroachment upon the Project. Such encroachment shall be removed at Owner's expense immediately upon notice from the Association. In the event such encroachment is not timely removed, the Association may effect removal of the encroachment and the expense thereof shall be a Default Assessment to the Owner.

Section 13.6. Utility Easements. There is hereby created a general non-exclusive easement upon, across, over, in, and under all of the Property for ingress and egress and for the purpose of installation, replacement, repair, and maintenance of all utilities and services for the Owners, including but not limited to water, sewer, gas, telephone, electricity, security systems, cable television, cable, and other communication systems. By virtue of this easement, it shall be expressly permissible and proper for the companies providing such utilities to erect and maintain the necessary equipment on the Common Elements and to affix and maintain electrical, communications, and telephone wires, circuits, and conduits under the Property. Any utility or service company using this general easement shall (i) use its best efforts to install and maintain the utilities provided without disturbing the uses of other utilities, the Owners, the Association, or Declarant; (ii) complete its installation and maintenance activities as promptly as reasonably possible; and (iii) restore the surface to its original condition as soon as possible after completion of its work. Should any utility or service company furnishing a service covered by this general easement request a specific easement by separate recordable document, the Association, shall each have the right and authority, but not the obligation, to grant such easement upon, across, over, or under any part or all of the Property without conflicting with the terms hereof. The easements provided for in this Section 13.6 shall in no way void, extinguish, or modify any other recorded easement on the Property.

Section 13.7. Emergency Access Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and all other similar emergency agencies or Persons to enter upon the Property in the proper performance of their duties.

Section 13.8. Maintenance Easement. An easement is hereby granted to the Association and any Managing Agent and their respective officers, agents, employees and assigns upon, across, over, in, and under the Common Elements and a right to make such use of the Common Elements as

may be necessary or appropriate to perform the duties and functions which they are obligated or permitted to perform pursuant to this Declaration.

Section 13.9. Easements of Access for Repair, Maintenance, and Emergencies. Some of the Common Elements are or may be located within the Units or may be conveniently accessible only through the Units. The Owners and the Association shall have the irrevocable right, to be exercised by the Association as the Owners' agent, to have access to each Unit and to all Common Elements from time to time during such reasonable hours as may be necessary for the maintenance, repair, removal, or replacement of any of the Common Elements therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Elements or to any Unit. Unless caused by the negligent or willful act or omission of an Owner or Occupant, damage to the interior of any part of a Unit resulting from the maintenance, repair, emergency repair, removal, or replacement of any of the Common Elements or as a result of emergency repair within another Unit at the instance of the Association or of the Owners shall be a Common Expense. In order to effectuate this right, the Association shall retain a pass key or other access device to each Unit and an Owner shall not change the exterior lock or other access system on its Unit without the Board's prior written consent and providing the Association with a replacement key or access device to accommodate the new lock or other access system.

Section 13.10. Easements Deemed Created. All conveyances of Units hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve the easements contained in this ARTICLE 13, even though no specific reference to such easements or to this ARTICLE 13 appears in the instrument for such conveyance.

Section 13.11. Easement for Warranty Work. To the extent that and for as long as any Person remains liable under any warranty, whether statutory, express or implied, for any act or omission in the development or construction of any portion of the Project, then such Person and its contractors, agents and designees shall have the right, from time to time, to enter the Units (after reasonable notice to the affected Owner) and/or the Common Elements for the purpose of making any necessary inspections, tests, repairs, improvements and/or replacements required for such Person to fulfill any of its warranty obligations. Failure of the Association or any Owner to grant such access may result in the applicable warranty being nullified and of no further force or effect.

Section 13.12. Additional Easements. In the event an additional easement is reasonably requested by an Owner or the Association for purposes consistent with the intent of this Declaration, each Owner and the Association, as applicable, will act reasonably and in good faith in evaluating the request and will not unreasonably withhold its consent to the granting of any such easement.

ARTICLE 14 SPECIAL DECLARANT RIGHTS AND ADDITIONAL RESERVED RIGHTS

Section 14.1. Special Declarant Rights. Declarant hereby reserves the right, from time to time, to perform the acts and exercise the rights hereinafter specified (the "Special Declarant Rights"). Declarant's Special Declarant Rights include the following:

(a) Completion of Improvements. The right to complete Improvements indicated on the Map(s) filed with this Declaration.

(b) Exercise of Development Rights. The right to exercise any Development Right reserved in ARTICLE 15 of this Declaration.

(c) Fractional Ownership. The right to submit any of the Units owned by Declarant to a plan of fractional ownership.

(d) Sales, Management and Marketing. The right to locate, relocate and maintain sales offices, management offices, operational facilities or officers, signs advertising the Project, and models within the Common Elements and any Unit or Units owned by Declarant, and the right to remove the same. Declarant shall have the right to show Units and the Common Elements to prospective purchasers and to arrange for the use of any parking, storage, or recreational facilities within the Common Elements by prospective purchasers.

(e) Easements. The right to create and grant easements through the Common Elements to any party for any purpose including, without limitation, for purposes of (i) making Improvements within the Project, (ii) the construction and development of Real Estate which may be added to the Project, including, without limitation, the Expansion Property, and/or (iii) exercising any Reserved Declarant Rights.

(f) Master Association. The right to annex into and make the Project subject to a master association.

(g) Subassociation(s). The right to create one or more subassociations to govern particular Sub-Classes and/or types of Units, including the right to record additional declarations applicable thereto.

(h) Amendment of Declaration. The right to amend this Declaration in connection with the exercise of any Development Rights.

(i) Amendment of Map. The right to amend the Map in connection with the exercise of any Development Rights.

(j) Signs. The right to maintain signs on the Common Elements advertising the Project.

(k) Post-Sales. The right to use the Common Elements to maintain customer relations and provide post-sale and re-sale services to Owners.

(l) Merger. The right to merge or consolidate the Project with another project of the same form of ownership.

(m) Parking/Storage. The right to use and to allow others to use all parking and storage areas (other than parking or storage areas designated as Limited Common Elements appurtenant to Units not owned by Declarant) in connection with its marketing efforts.

Section 14.2. Additional Reserved Rights. In addition to the Special Declarant Rights set forth in Section 14.1 above, Declarant also reserves the following additional rights (the “Additional Reserved Rights”):

(a) Dedications. The right to establish, from time to time, by grant, dedication or otherwise, utility and other easements for purposes including but not limited to streets, paths, walkways, tramways, ski-ways, drainage, recreation areas, club access, parking areas, driveways, ducts, shafts, flues, conduit installation areas, and to create other reservations, exceptions and exclusions for the benefit of and to serve the Owners within the Project.

(b) Use Agreements. The right to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair, maintenance or regulation of parking and/or recreational facilities, which may or may not be a part of the Project, for the benefit of the Owners and/or the Association.

(c) Easement Rights. The right to grant easements in, on, over or through the Common Elements to any third party for the development or improvement of the Property or other Real Estate, as determined by Declarant.

(d) Other Rights. The right to exercise any Additional Reserved Right created by any other provision of this Declaration.

Section 14.3. Limitations on Special Declarant Rights and Additional Reserved Rights. Special Declarant Rights and Additional Reserved Rights may be exercised at any time unless terminated (i) by an amendment to this Declaration executed by Declarant; or (ii) if and to the extent otherwise required under the Act. Notwithstanding anything to the contrary, the Special Declarant Rights and the Additional Reserved Rights will expire on the thirtieth (30th) anniversary of the recording of this Declaration in the Records.

Section 14.4. Interference with Special Declarant Rights or Additional Reserved Rights. Neither the Association nor any Owner may take any action or adopt any rule and/or regulation that will interfere with or diminish any Special Declarant Rights or Additional Reserved Rights without the prior written consent of Declarant.

Section 14.5. Rights Transferable. Any Special Declarant Rights or Additional Reserved Right created or reserved under this ARTICLE 14 for the benefit of Declarant may be transferred to any Person by an instrument expressly describing the rights transferred and recorded in the Records. Such instrument shall be executed by the transferor Declarant and the transferee.

ARTICLE 15 RESERVATION OF DEVELOPMENT RIGHTS

Section 15.1. Expansion Rights. Declarant expressly reserves the right to subject all or any part of any Real Estate around or near Flathead Lake (the “Expansion Property”) to the provisions of

this Declaration upon the substantial completion of Improvements on the Expansion Property or to grant owners of any project constructed by Declarant or its affiliates on the Expansion Property access to the Common Elements of the Project. The consent of the existing Owners, First Mortgagees or other holders of Security Interests shall not be required for any such expansion or access rights, and Declarant may proceed with such expansion or grant of access without limitation at its sole option.

Section 15.2. Development and Withdrawal Rights. Declarant expressly reserves the right to create Units, Common Elements (including Limited Common Elements) (the “Additional Improvements”), to combine Units, to subdivide Units, to convert Units into Common Elements, to convert Common Elements into Units, and to allocate Real Estate as Limited Common Elements on all or any portion of the Real Estate reserved for future development in this Declaration. Declarant may exercise any or all of the Development Rights so reserved at any time within the thirty (30) year period following the recording of this Declaration in the Records with respect to all or any of the Real Estate identified as subject to Development Rights in the Declaration. No assurances are made with respect to the boundaries of any parcels that may be developed or the order in which the parcels may be developed. Exercise of a Development Right with respect to any one parcel does not require exercise of a Development Right on any other parcel of Real Estate subject to Development Rights. No assurances are made that any further development will occur. If all or any part of the Expansion Property is submitted to this Declaration, this right to reserve property for future development shall apply to such property as well. Declarant expressly reserves the right to withdraw all or any portion of the Property that is designated as subject to withdrawal in this Declaration from the Project by recording a document evidencing such withdrawal in the Records; provided, however, that no portion of the Property may be withdrawn after a Unit in that portion of the Property has been conveyed to a purchaser. The Real Estate withdrawn from the Project shall be subject to whatever easements, if any, are reasonably necessary for access to or operation of the Project. Declarant shall prepare and record in the Records whatever documents are necessary to evidence such easements and shall amend Exhibit C to this Declaration to include reference to the recorded easement. Declarant alone is liable for all expenses in connection with Real Estate subject to Development Rights for as long as the same remains subject to Development Rights.

Section 15.3. Amendment of Declaration. If Declarant elects to submit the Expansion Property, or any part thereof, or Additional Improvements to this Declaration, or to subdivide or to convert Units or Common Elements, then Declarant shall record an amendment to this Declaration reallocating the Allocated Interests so that the Allocated Interests appurtenant to each Unit will be apportioned according to the total number of Units submitted to this Declaration. The Allocated Interests apportioned to each Unit in the Project shall be based on the formulae set forth in Section 4.2. Mere subdivision of a Unit shall not change the Allocated Interests of any Unit not included in such subdivision. The amendment to this Declaration shall contain, at a minimum, the legal description of the Expansion Property, or a part thereof, or a description of the Real Estate on which the Additional Improvements being submitted to this Declaration are located and a revised schedule of the Allocated Interests appurtenant to the Units in the Project.

Section 15.4. Supplement to the Map. Declarant shall, contemporaneously with the amendment of this Declaration, file a supplement to the Map showing the location of the Additional Improvements constructed on the Expansion Property or the construction, combination, subdivision,

conversion or allocation of Units or Common Elements allowed by this Article. The supplement to the Map shall conform to the requirements of the Act regarding site plans and floor plans.

Section 15.5. Interpretation. Recording of amendments to this Declaration and supplements to the Map in the Records shall automatically:

(a) vest in each existing Unit the reallocated Allocated Interests appurtenant to such Unit; and

(b) vest in each existing holder of a Security Interest a perfected Security Interest in the reallocated Allocated Interests appurtenant to the encumbered Unit.

Upon the recording of an amendment to this Declaration, the definitions used in this Declaration shall automatically be extended to encompass and to refer to the Property as expanded. The Expansion Property, or any part thereof, or the Additional Improvements constructed on the Property as expanded shall be added to and become a part of the Project for all purposes. All conveyances of Units after such expansion shall be effective to transfer rights in all Common Elements as expanded, whether or not reference is made to any amendment to this Declaration or supplement to the Map. Reference to this Declaration and Map in any instrument shall be deemed to include all amendments to this Declaration and supplements to the Map without specific reference thereto.

Section 15.6. Construction Easement. Declarant reserves an easement through, over and across the Common Elements and Units as may be reasonably necessary for the purpose of discharging Declarant's obligations and exercising Declarant's reserved rights in this Declaration without consent of any party. Such easement includes the right to construct underground utility lines, pipes, wires, ducts, conduits, and other facilities across the Property not designated as reserved for future development in this Declaration or on the Map for the purpose of furnishing utility and other services to buildings and Improvements to be constructed on any of the Property reserved for future development. Declarant's reserved construction easement includes the right to grant easements to public utility companies and to convey improvements within those easements anywhere in the Common Elements not occupied by an Improvement containing Units. If Declarant grants any such easements, Exhibit C to this Declaration will be amended to include reference to the recorded easement.

Section 15.7. Reciprocal Easements. If all or part of the Expansion Property is not submitted to this Declaration, or if property is withdrawn from the Project ("Withdrawn Property"):

(a) the owner(s) of the Expansion Property and/or Withdrawn Property shall have whatever easements are necessary or desirable, if any, for access, utility service, repair, maintenance and emergencies over and across the Project; and

(b) the Owner(s) in the Project shall have whatever easements are necessary or desirable, if any, for access, utility service, repair, maintenance, and emergencies over and across the Expansion Property and Withdrawn Property.

Declarant shall prepare and record in the Records whatever documents are necessary to evidence such easements. Such recorded easement(s) shall specify that the owner(s) of the Expansion

Property and the Withdrawn Property and the Owners in the Project shall be obligated to pay a proportionate share of the cost of the operation and maintenance of any easements utilized by either one of them on the other's property upon such reasonable basis as Declarant shall establish in the easement(s). Preparation and recordation by Declarant of an easement pursuant to this Section 15.7 shall conclusively determine the existence, location and extent of the reciprocal easements that are necessary or desirable as contemplated by this Section 15.7.

Section 15.8. Interference With Development Rights. Neither the Association nor any Owner may take any action or adopt any rule or regulation that will interfere with or diminish any Development Rights reserved by this ARTICLE 15 without the prior written consent of Declarant. In the event Owner or Association takes any such action, or is the losing party in litigation related to such action, Owner or Association shall be responsible for Declarant's costs, including reasonable attorney's fees, and shall also be responsible for any and all consequential damages, including damages as the result of any delay, related to such action.

Section 15.9. Transfer of Development Rights. Any Development Rights created or reserved under this ARTICLE 15 for the benefit of Declarant may be transferred, in whole or in part to any person by an instrument expressly describing the rights transferred and recorded in the Records. Such instrument shall be executed by the transferor Declarant and the transferee.

ARTICLE 16 INSURANCE

Section 16.1. Coverage. Commencing not later than the first conveyance of a Unit to a purchaser and to the extent reasonably available, the Association shall obtain and maintain insurance coverage as set forth in this Article. The Association shall have the power and authority to obtain additional policies or coverages not specified herein in the Board's discretion. If such insurance is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy, or if the Board of Directors determines that any insurance described herein will not be maintained, the Board of Directors shall promptly cause notice of that fact to be delivered to all Owners and Eligible First Mortgagees at their respective last known addresses.

(a) Property Insurance. The Association shall maintain property insurance on the Project for special form covered causes of loss (or such equivalent coverage as may hereafter be customarily offered in the insurance industry) in an amount not less than the full insurable replacement cost of the insured property (as determined by the Board of Directors) less applicable deductibles at the time insurance is purchased and at each renewal date, exclusive of land and other items normally excluded from property insurance policies. Co-insurance shall not be permitted.

(b) Liability Insurance. The Association shall maintain commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the Project, insuring the Board of Directors, the Association, the Managing Agent, and their respective employees, agents and all Persons acting as agents therefor. The Declarant shall be included as an additional insured in Declarant's capacity as an Owner and member of the Board of Directors. Owners shall be included as additional insureds but only for claims and liabilities arising in connection with

the ownership interest in, existence, use or management of the Common Elements or membership in the Association. The insurance shall cover claims of one or more insured parties against the other insured parties.

(c) Fidelity Insurance. The Association shall maintain fidelity insurance on all persons who control or disburse funds of the Association. Coverage shall not be less in the aggregate than two months' current annual Assessments plus reserves, as calculated from the current Budget of the Association. Any person employed as an independent contractor by the Association, including the Managing Agent, shall be an insured employee in the policy of fidelity insurance specified above.

(d) Other Insurance. The Board of Directors may also procure insurance against such additional risks of a type normally carried with respect to properties of comparable character and use that the Board of Directors deems reasonable and necessary in order to protect the Project, the Association and the Owners.

(e) Owners' Policies. Each Owner of a Unit shall maintain casualty insurance coverage for its Unit at full replacement value of the Unit at such Owner's sole cost and expense. Each Owner shall be required to provide a certificate of insurance proving such continuous coverage to the Association. Each Owner acknowledges that insurance obtained by the Association does not obviate the need for an Owner to obtain separate insurance for such Owner's benefit. Each Owner may also obtain general liability insurance at such Owner's own cost for such Owner's own benefit covering operations and activities within such Owner's Unit. Such coverage may also extend to cover any legal liability imposed on an Owner due to such Owner's interest in the Common Elements.

Section 16.2. Claims by Owner. An Owner may file a claim against the policy of the Association to the same extent, and with the same effect, as if the Owner were a named insured if the following conditions are met: (a) the Owner has contacted the Board of Directors or Managing Agent in writing, and in accordance with any applicable association policies or procedures for owner-initiated insurance claims, regarding the subject matter of the claim, (b) the Owner has given the Association at least fifteen (15) days to respond in writing, and, if so requested, has given the Association's agent a reasonable opportunity to inspect the damage; and (c) the subject matter of the claim falls within the Association's insurance responsibilities. The Association's insurer, when determining premiums to be charged to the Association, shall not take into account any request by an Owner for a clarification of coverage.

Section 16.3. Adjustment of Claims. The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. To the extent the Association settles a property insurance claim, it shall have the authority to assess negligent Owners causing such loss or benefiting from such repair or restoration all deductibles paid by the Association. In the event more than one Unit is damaged by a loss, the Association in its reasonable discretion may assess each Owner a pro rata share of any deductible paid by the Association.

ARTICLE 17 RESTORATION UPON DAMAGE OR DESTRUCTION

Section 17.1. Duty to Restore. Any portion of the Project, for which the Association is required to carry insurance under the Act, or for which insurance carried by the Association is in effect, that is damaged or destroyed must be repaired or replaced promptly by the Association unless:

- (a) the Project is terminated;
- (b) repair or replacement would be illegal under Applicable Law;
- (c) seventy-five percent (75%) of the actual Total Voting Power of the Owners, including every Owner of a Unit or Limited Common Element that will not be rebuilt, vote not to rebuild; or
- (d) prior to the conveyance of any Unit to a purchaser, the holder of a Security Interest on the damaged portion of the Project rightfully demands all or a substantial part of the insurance proceeds.

In the event the Project is not repaired or replaced as allowed by Subsections (a), (b) and (c) above, then the Real Estate in the Project shall be sold and the proceeds distributed pursuant to the procedures provided for in the Act for termination of condominium projects.

Section 17.2. Cost. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense.

Section 17.3. Plans. The Property must be repaired and restored in accordance with either the original plans and specifications or other plans and specifications which have been approved by the Board of Directors and any percentage of Owners required to approve the same under the Act.

Section 17.4. Replacement of Less Than Entire Property. If the entire Project is not repaired or replaced, the 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 and, except to the extent that other persons will be distributees:

- (a) the insurance proceeds attributable to a Unit and Limited Common Elements that are not rebuilt must be distributed or credited to the Owner(s) of the Unit and to the Owner(s) of the Unit to which the Limited Common Elements were allocated, or to holders of Security Interests, as their interests may appear;
- (b) the remainder of the proceeds must be distributed or credited to each Owner or holder of a Security Interest, as their interests may appear, in proportion to the Allocated Interests in the Common Elements of all the Units; and
- (c) if the Owners vote not to rebuild a Unit, the Allocated Interests of the Unit shall be reallocated as if the Unit had been condemned, and the Association promptly shall prepare, execute and record an amendment to this Declaration reflecting the reallocation.

Section 17.5. Certificates by Attorneys or Title Insurance Companies. If payments are to be made to Owners or holders of Security Interests, the Board of Directors shall obtain and may rely on a title insurance company or attorney's certificate of title or a title insurance policy based on a search of the Records from the date of recording of this Declaration stating the names of the Owners and the holders of Security Interest.

ARTICLE 18 CONDEMNATION

If all or part of the Project is taken by any power having the authority of eminent domain, all compensation and damages for and on account of the taking shall be payable in accordance with the provisions on eminent domain in the Act.

ARTICLE 19 MORTGAGEE PROTECTIONS

Section 19.1. Introduction. This ARTICLE 19 establishes certain standards and covenants which are for the benefit of Eligible First Mortgagees. This ARTICLE 19 is supplemental to, and not in substitution for, any other provisions of this Declaration, but in the case of any conflict, this Article shall control.

Section 19.2. Percentage of First Mortgagees. Unless specifically provided otherwise, wherever in this Declaration the approval or consent of a specified percentage of Eligible First Mortgagees is required, it shall mean the approval or consent of the stated percentage of the voting power of Eligible First Mortgagees. Each Eligible First Mortgagee shall be entitled to the same voting power as allocated to the encumbered Unit.

Section 19.3. Notice of Actions. The Association shall give prompt written notice of the following to each Eligible First Mortgagee:

- (a) any condemnation loss or any casualty loss which affects a material portion of the Common Elements or any Unit in which an interest is held by the Eligible First Mortgagee;
- (b) if requested by such Eligible First Mortgagee, any delinquency in the payment of Assessments which remains uncured for sixty (60) days by an Owner whose Unit is encumbered by a Security Interest held by such Eligible First Mortgagee;
- (c) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;
- (d) any proposed action which would require the consent of Eligible First Mortgagees as set forth in this Article;
- (e) any judgment rendered against the Association having a material effect on the ability of the Association to perform its obligations herewith; and
- (f) if requested by such Eligible First Mortgagee, a copy of any financial statement of the Association.

Section 19.4. Consent Required. The Association may not take any of the following actions, except as such rights have been specifically reserved by Declarant under the provisions of this Declaration, without the consent of sixty-seven percent (67%) of the Eligible First Mortgagees:

- (a) sale, conveyance or encumbrance of the Common Elements (provided, however, that the granting of easements for public utilities, for construction and maintenance of roads within the Project, or for other purposes provided for in this Declaration will not be deemed a transfer within the meaning of this clause);
- (b) restoration or repair of the Project (after hazard damage or partial condemnation) in a manner other than that specified in this Declaration;
- (c) termination of this Declaration for reasons other than substantial destruction or condemnation, subject to the approval percentages required for such termination;
- (d) merger of the Project with any other common interest community; or
- (e) any decision not to repair or to replace the Common Elements when repair or replacement is otherwise required under this Declaration.

Section 19.5. Notice of Objection. Unless an Eligible First Mortgagee provides the Secretary of the Association with written notice of its objection, if any, to any proposed action requiring the approval of Eligible First Mortgagees within sixty (60) days following the receipt of notice of such proposed action, the Eligible First Mortgagee will be deemed conclusively to have consented to or approved the proposed amendment or action.

Section 19.6. First Mortgagees' Rights.

- (a) Advances. First Mortgagees, jointly or singly, may pay taxes or other charges which are in default and which may or have become a charge against any of the Common Elements or improvements thereon, and may pay overdue premiums on hazard insurance policies for the Common Elements. First Mortgagees making such payments shall be owed immediate reimbursement from the Association.
- (b) Cure Rights. First Mortgagees shall be entitled to cure any delinquency of the Owner of a Unit encumbered by a First Mortgage in the payment of Assessments. In that event, the First Mortgagee shall be entitled to obtain a release from the lien imposed or perfected by reason of such delinquency.

Section 19.7. Limitations on First Mortgagee's Rights. No requirement for approval or consent by a First Mortgagee provided in this ARTICLE 19 shall operate to:

- (a) deny or delegate control over the general administrative affairs of the Association by the Owners or the Board of Directors;
- (b) prevent the Association or Board of Directors from commencing, intervening and/or settling any legal proceeding; or

(c) prevent any insurance trustee or the Association from receiving and distributing any insurance proceeds in accordance with the requirements of ARTICLE 17 entitled “Restoration Upon Damage or Destruction”.

Section 19.8. Reserved Declarant Rights. No provision or requirement of this ARTICLE 19 entitled “Mortgagee Protections” shall apply to or contravene any Reserved Declarant Rights reserved to Declarant in this Declaration.

Section 19.9. Lien Protection for Mortgagees. Except as set forth in the Act or as required by other Applicable Law, no violation or breach of or failure to comply with any provision of the Declaration and no action to enforce any such provision shall affect, defeat, render invalid or impair the lien of any Security Interest taken in good faith or for value and perfected by recording in the Records, nor shall such violation, breach, failure to comply or action to enforce affect, defeat, render invalid or impair the title or interest of the holder of any such Security Interest or the title or interest acquired by any purchaser upon foreclosure of any such Security Interest or other lien.

ARTICLE 20 DURATION OF COVENANTS; AMENDMENT AND TERMINATION

Section 20.1. Term. The covenants, conditions, restrictions, reservations, easements, assessments, charges and liens set forth in this Declaration shall run with and bind the Property until this Declaration is terminated pursuant to the terms hereof.

Section 20.2. Amendment of Declaration. This Declaration may be amended as follows:

(a) General Amendments. So long as there is a “Class B” member in the Association, Declarant shall have the unilateral right to amend this Declaration in such manner as it deems advisable, in its sole discretion, without the consent or vote of any of the other Owners, First Mortgagees or other holder of Security Interests. After the “Class B” membership is converted to “Class A” membership as described in Section 4.2(c) and except as otherwise expressly permitted or restricted by this Section 20.2, this Declaration may be amended by a vote or agreement of a Majority of Owners. To the extent the proposed amendment involves an issue subject to Sub-Class Voting, a majority of a quorum of the Owners in the affected Sub-Class will also be required, such that the Majority of Owners must include a majority of a quorum of the Owners in such Sub-Class. Notwithstanding the foregoing provision, the percentage of the Total Voting Power necessary to amend a specific clause or provision of this Declaration shall not be less than the percentage of affirmative voting power prescribed for action to be taken under that clause or provision.

(b) Permitted Use Amendments. Except to the extent otherwise expressly permitted or required in this Declaration, this Declaration may be amended to change the uses to which any Unit is restricted only by a vote or agreement of Owners holding at least sixty-seven percent (67%) of the Total Voting Power, including a majority of the voting power allocated to any Sub-Class directly affected by such amendment.

(c) Allocated Interest Amendments. Except to the extent otherwise expressly permitted or required in this Declaration or under the Act, this Declaration may be amended

to increase Reserved Declarant Rights, increase the number of Units or change the boundaries of any Unit or the Allocated Interests of a Unit or Fractional Interest only by a vote or agreement of Owners holding at least sixty-seven percent (67%) of the Total Voting Power, including sixty-seven percent (67%) of the voting power allocated to Units and Fractional Interests not owned by Declarant.

(i) Reserved Amendment Rights. For a period of five (5) years from the date this Declaration is recorded in the Records, Declarant may unilaterally amend this Declaration for any reason, provided that no such amendment shall have any materially adverse effect on any of the Units, as determined by Declarant in its reasonable discretion. In addition, so long as Declarant owns any portion of the Property, it may unilaterally amend this Declaration for any of the following purposes: (i) as is necessary to bring this Declaration into conformance with Applicable Law, (ii) as required by a reputable title insurance company to issue title insurance over any portion of the Project, or (iii) as is required by an institutional or governmental lender or purchaser of mortgage loans to enable such lender or purchaser to make or purchase mortgage loans on any Unit.

Upon the recording of such an amendment to this Declaration, the definitions used in this Declaration shall automatically be extended to encompass and to refer to the Property, as expanded. All conveyances of Units after such expansion shall be effective to transfer rights in all Common Elements as expanded, whether or not reference is made to any amendment to this Declaration or supplement to the Map. Reference to this Declaration and Map in any instrument shall be deemed to include all amendments to this Declaration and supplements to the Map without specific reference thereto.

Section 20.3. Amendment of Other Condominium Documents. The Articles of Incorporation and Bylaws may be amended in accordance with the terms of such documents and the Nonprofit Act. The Rules and Regulations may be amended as determined by the Board of Directors.

Section 20.4. Execution of Amendments; Expenses. Any amendment shall be prepared, executed and recorded either by Declarant or by an officer of the Association designated for that purpose or, in the absence of a designation, by the President of the Association. All expenses associated with preparing and recording an amendment to this Declaration shall be the sole responsibility of: (a) any Owners desiring an amendment as provided for in this Declaration or the Act; (b) Declarant, to the extent the right to amend this Declaration is reserved to Declarant and exercised by Declarant; or (c) in all other cases by the Association as a Common Expense.

Section 20.5. Rights of Declarant. Notwithstanding anything to the contrary contained herein, and expiring on the thirtieth (30th) anniversary of the recording of this Declaration or such earlier time as required by the Act, no amendment or modification to, or impairment of any of the rights contained in, any of Section 4.2(c), ARTICLE 14, ARTICLE 15 or this Section 20.5 shall be effective or enforceable without the prior consent of Declarant.

Section 20.6. Rights of Eligible First Mortgagees. To the extent allowed by the Act, Eligible First Mortgagees shall have the rights to approve specified action of the Owners or the

Association as a condition to the effectiveness of those actions as provided in ARTICLE 19 entitled "Mortgagee Protections".

Section 20.7. Termination of the Project. The Project may only be terminated as provided in the Act.

ARTICLE 21 PLAN OF FRACTIONAL OWNERSHIP

Section 21.1. Submission of Units to the Plan. Declarant reserves the right to submit all or some of the Units in the Project to the Plan of Fractional Ownership as set forth in this Article. The provisions of this Article relate only to those Units submitted to the Plan and shall govern the ownership of Fractional Interests in said Fractional Units and the rights, duties and obligations of Fractional Owners. So long as Declarant: (a) holds a Development Right; (b) owns any Unit or Fractional Interest; (c) holds a Security Interest in any Unit or Fractional Interest; or (d) for thirty (30) years after the date of recording this Declaration, the right to submit a Unit to the Plan shall extend only to Declarant and shall specifically not be available to purchasers of Units in the Project, their successors, or assigns except with the prior written consent of Declarant. Thereafter, any Unit Owner may submit a Unit to the Plan, with the prior written consent of the Association, subject to the Owner's compliance with all Applicable Laws. Submission of a Unit to the Plan shall be subject to the prior written consent of any First Mortgagee of the Unit. The provisions of the Declaration shall apply to all Fractional Units and Fractional Interests created hereunder; provided, however, in the event of an inconsistency between this Article and the remaining provisions of the Declaration with respect to the ownership of a Fractional Unit or Fractional Interest and the rights, duties, and obligations of Fractional Owners, then the provisions of this Article shall control. References to Units are hereby expressly deemed to include references to Fractional Interests.

Section 21.2. Definitions. Unless the context expressly requires otherwise, words shall have the meanings designated below with respect to those Units which are submitted to the Plan.

(a) "Fractional Assessment" means the assessment paid by the Fractional Owners pursuant to Section 21.8.

(b) "Fractional Calendar" means the calendar prepared each year by the Association, which shall at all times establish the dates of each Use Period at least five (5) years into the future.

(c) "Fractional Interest" means an estate consisting of an undivided interest as tenant-in-common in a Fractional Unit of an identified type, together with the exclusive right to possession and occupancy of the Fractional Unit during a specified number of Use Periods reserved by the Fractional Owner pursuant to the Reservation Procedures.

(d) "Fractional Owner" means each Owner vested with legal title to a Fractional Interest, all of which are members of the Association.

(e) "Fractional Unit" means a Unit which is submitted to the Plan.

(f) “Fractional Furnishings” means all furniture, appliances, moveable equipment, utensils, carpeting, accessories, and other personal property located within a Fractional Unit or in the Limited Common Elements appurtenant to the Fractional Units.

(g) “Fractional Year” means the period from January 1 each year to December 31 of that year.

(h) “Repurchase Option” has the meaning set forth in Section 21.12.

(i) “Repurchase Option Price” has the meaning set forth in Section 21.12.

(j) “Reservation Procedures” means the reservation procedures for use of the Fractional Units by Fractional Owners established by the Association from time to time as part of the Rules and Regulations.

(k) “Services” has the meaning set forth in Section 21.7(l).

(l) “Space Available Vacations” means any period of time not otherwise reserved which is used by a Fractional Owner pursuant to the short term reservation provisions of the Reservation Procedures and is in addition to the Use Period(s) the Fractional Owner is entitled to reserve. The purpose of this period is to allow Fractional Owners to use and occupy Use Periods, or portions thereof, on a space available basis which might otherwise remain unoccupied.

(m) “Transfer” has the meaning set forth in Section 21.12.

(n) “Use Period” means a period of exclusive possession and occupancy of a Fractional Unit reserved pursuant to the Reservation Procedures. Use Periods for each Fractional Unit are established each year for the dates set forth in the Fractional Calendar. Use Periods will usually consist of seven (7) consecutive days beginning on a Friday, Saturday, Sunday, or Monday. All Use Periods in a Fractional Unit shall be computed on the same basis and shall commence and end at the same time, on the same day of the week, according to this subsection.

Section 21.3. Submission of Unit to Fractional Ownership. Declarant may submit a Unit to the Plan either by recording a properly acknowledged notice executed by Declarant describing the Unit to be submitted to the Fractional and reciting Declarant’s intention to do so or by Declarant’s execution, delivery and recordation of a Deed conveying a Fractional Interest to a Fractional Owner. By acceptance of a Deed to a Fractional Interest, each Fractional Owner waives such Fractional Owner’s right to bring a suit for partition. As of the date of recording of this Declaration, the Units submitted to the Plan are those set forth on Exhibit G.

Section 21.4. Conveyance by Purchaser. Each Fractional Interest shall constitute an estate in real property separate and distinct from all other Fractional Interests in the Fractional Unit, which estate may be separately conveyed and encumbered. A purchaser may acquire more than one Fractional Interest and thereafter convey or encumber each Fractional Interest so acquired separately (subject to the Resale Restriction described below and the transfer requirements set forth in the

Bylaws and/or Rules and Regulations). In no event, however, shall a Fractional Owner convey or encumber less than a Fractional Interest as defined herein, or attempt to subdivide a Fractional Interest into lesser interests. In the event all Fractional Interests in a Fractional Unit are acquired by one Fractional Owner, such Fractional Unit may, at such Fractional Owner's election, to the extent permitted by Applicable Law and with the prior written consent of the Association by notice duly recorded, be withdrawn from the Plan.

Section 21.5. Legal Description of a Fractional Interest. A contract for sale of a Fractional Interest written prior to the date this Declaration is filed in the Records may legally describe a Fractional Interest in substantially the manner set forth below and may indicate that the Declaration is to be recorded. Subsequent to the recording of the Declaration and Map, every contract for sale, Deed, lease, mortgage, trust deed, or other instrument relating to a Fractional Interest will legally describe the Fractional Interest as follows:

Fractional Interest (insert Fractional Interest number designation), consisting of an undivided ____% interest as tenant-in-common in Fractional Unit ____, according to the Condominium Declaration for Mill Creek Lakefront recorded on (date), at (Reception No.) in the office of the Clerk and Recorder of Lake County, Montana, together with the exclusive right to possession and occupancy of the Fractional Unit during the time reserved by the Owner of the Fractional Interest pursuant to the Reservation Procedures.

Any legal description substantially in the form provided above or which is otherwise sufficient to identify the Fractional Interest shall be good and sufficient for all purposes to sell, convey, transfer and encumber or otherwise affect a Fractional Interest and all Common Elements, Limited Common Elements and easements appurtenant thereto.

Section 21.6. Administration and Management. The administration and management of the Plan shall be performed by the Association. The Association shall have all powers necessary or desirable to effectuate any of the purposes provided for herein. A Fractional Owner, upon becoming the owner of a Fractional Interest, shall be a member of the Association and of the Fractional Class and shall remain a member for the period of time the Fractional Interest is owned by such Fractional Owner. A Fractional Owner shall be entitled to a vote, the size of which vote shall be based upon the vote allocated to the Unit pursuant to ARTICLE 4, further allocated based upon each Fractional Owner's undivided interest as tenant-in-common in a Fractional Unit.

Section 21.7. Powers and Duties of the Association with Respect to Fractional Interests. By way of enumeration and without limitation and in addition to the powers and duties of the Association provided for in the Bylaws, the Association shall also have the following specific powers and duties with respect to Fractional Interests:

- (a) coordinate the plans of Fractional Owners for moving their personal effects into and out of the Fractional Units with a view toward scheduling such moves, so that there will be a minimum of inconvenience to other Fractional Owners;

(b) without limiting the powers of the Association pursuant to Section 8.2, make contracts and incur liabilities related to managing any permitted external exchange programs on the Owners' behalf;

(c) cause each Fractional Unit to be maintained in a first class manner and condition. The Association shall determine the color scheme, decor, and furnishing of each Fractional Unit as well as the proper time for refurbishment, redecorating, and replacement thereof;

(d) acquire and hold title to all Fractional Furnishings. The Association shall, on behalf of all Fractional Owners, hold title in its name to all Fractional Furnishings, and no Fractional Owner shall have any right, title, or claim thereto, and the Association shall have the right to deal with Fractional Furnishings for all purposes;

(e) maintain property insurance for covered causes of loss to the Fractional Units and Fractional Furnishings in an amount of insurance not less than the full insurable replacement cost of the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date and containing the required provisions set forth in ARTICLE 16;

(f) bill each Fractional Owner for the expense of occupancy of a Fractional Unit during which occupancy the Association determines the individual expenses of the particular Fractional Owner which are not included as part of the Fractional Assessment, including, but not limited to long-distance and other extraordinary telephone charges, extraordinary repairs or charges for damage to the Fractional Unit, the Fractional Furnishings, equipment, fixtures, appliances, and carpeting caused by a Fractional Owner or such Fractional Owner's Occupant, firewood, other charges rendered by the Managing Agent on behalf of the particular Fractional Owner and additional maid or housekeeping service in addition to the standard maid service provided for each Use Period and included within the Fractional Assessment provided for in this Article;

(g) collect the Fractional Assessment provided for in this Article;

(h) establish, subject to modification at any time, publish, and administer the Reservation Procedures as provided for in this Article and such other rules and regulations as the Association deems necessary or desirable, specifically including but not limited to fines and restrictions on use and occupancy if a Fractional Owner is not current on Assessments or is otherwise in violation of the provisions of this Article;

(i) prepare the Fractional Calendar;

(j) enter into license agreements or other like agreements with respect to the operation, management, maintenance and/or benefits related to the Plan;

(k) enforce the remedies for non-payment of the Fractional Assessments set forth in this Article; and

(l) establish, subject to modification at any time, publish a list of and administer any services to be offered by the Association to the Fractional Owners (the “Services”), the cost of which shall be included in the Fractional Assessment for Owners of Fractional Interests.

Section 21.8. Fractional Assessment. In addition to the Assessment for Common Expenses established by the Association to meet the Common Expenses of the Project, the Association shall also establish a separate Fractional Assessment that will be assessed against Fractional Units to cover the additional costs of operating the Fractional Interests as part of the Plan. The Fractional Assessment for each Fractional Unit may include but is not limited to, the following:

(a) the allocated share of the Common Expense Liability attributable to each Fractional Interest in a Fractional Unit;

(b) maintenance, and regularly scheduled cleaning and maid service and upkeep of the Fractional Unit as described in the Rules and Regulations;

(c) repair and replacement of the Fractional Furnishings;

(d) any additional premium for property or liability insurance occasioned by the operation of the Plan;

(e) real and personal property taxes assessed against the Fractional Interests;

(f) management fees assessed by the Managing Agent to cover the costs of operating the Plan that are in addition to the management fees set by the Managing Agent for management of the Project;

(g) a reserve for refurbishment and/or replacement of Fractional Furnishings;

(h) premiums attributable to commercial general liability insurance coverage for death, bodily injury and property damage resulting from the use of a Fractional Unit within the Project by Owners of Fractional Interests, their Occupants or other users;

(i) membership or similar dues payable by the Association on behalf of all or some of the Fractional Owners for membership in any clubs or facilities; and

(j) any other expenses incurred in the normal operation of the Project attributable to operation of the Fractional Units as part of the Plan and not otherwise within the definition of Common Expenses provided for in the Declaration.

The Fractional Assessment shall be allocated among the Fractional Owners of each Fractional Unit on the basis of each Fractional Owner’s undivided interest in the Fractional Unit. The Fractional Assessment shall be paid by the Fractional Owner pursuant to a schedule established by the Association. These Assessments shall be the personal and individual debt of the Fractional Owner and all sums assessed but unpaid shall constitute a lien on the Fractional Interest. The Association shall have all of the rights in connection with the collection thereof as it has in connection with the collection of unpaid Assessments for Common Expenses.

Section 21.9. Acceptance; Enforcement; Indemnification. By acceptance of a Deed to a Fractional Interest, a Fractional Owner agrees to be bound by the terms and conditions of the Declaration, specifically including, but not limited to, the provisions of this Article. In addition to all remedies provided to the Association elsewhere in the Declaration, the Association shall also have the following special remedies with respect to any Fractional Owner who fails to pay the Fractional Assessment or is otherwise in default of any provision of this Article:

(a) In the event any Fractional Owner fails to vacate a Fractional Unit after termination of a reserved Use Period or otherwise uses or occupies or prevents another Fractional Owner from using or occupying a Use Period, that Fractional Owner shall be in default hereunder and shall be subject to immediate removal, eviction or ejection from the Fractional Unit wrongfully occupied; shall be deemed to have waived any notices required by law with respect to any legal proceedings regarding the removal, eviction or ejection; and shall pay to the Fractional Owner entitled to use the Fractional Unit during such wrongful occupancy, as liquidated damages for the wrongful use of the Fractional Unit, a sum equal to two hundred percent (200%) of the estimated expense of providing the arriving Fractional Owner with equivalent lodging and amenities, as determined by the Association in its sole discretion for each day, or portion thereof, including the day of surrender, during which the Fractional Owner wrongfully occupies a Unit, plus all Costs of Enforcement, which amounts may be collected by the Association in the manner provided herein for the collection of Default Assessments;

(b) If a Fractional Owner suffers or allows a mechanics' lien or other lien to be placed against such Fractional Owner's Fractional Interest or the entire Fractional Unit such Fractional Owner shall indemnify, defend and hold each of the other Fractional Owners harmless from and against all liability or loss arising from the claim or such lien. The Association may enforce such indemnity by collecting from the Fractional Owner who suffers or allows such a lien the amount necessary to discharge the lien and all Costs of Enforcement incidental thereto. If such amount is not promptly paid, the Association may collect the same in the manner provided herein for the collection of Default Assessments;

(c) Withhold use or possession of the Fractional Owner's Fractional Interest during the assigned Use Period, prohibit the Fractional Owner from making any reservation pursuant to the Reservation Procedures, and upon notice, cancel any reservation previously made by the Fractional Owner and rent or reallocate any Use Period to which a Fractional Owner is entitled;

(d) Suspend all of such Person's rights and privileges as a member of the Association, including but not limited to, the right to participate in any vote or other determination provided for in the Condominium Documents; and

(e) Except as to a transfer to a First Mortgagee by foreclosure or deed in lieu of foreclosure, no transfer of a Fractional Interest shall be permitted unless and until the proposed transferor is current as to all Assessments due to the Association and is otherwise not in default under any other provision of the Declaration. Any purported transfer of a

Fractional Interest while a Fractional Owner is delinquent or is in default on any other obligation shall be null and void.

All of the remedies granted by the Condominium Documents, specifically including the specific remedies provided for in this Article are cumulative, and the exercise of one right or remedy by the Association shall not impair the Association's right to exercise any other remedy. The Association shall not be limited to the remedies set forth herein and may invoke any other or additional remedies provided for or allowed by the Act, in law or in equity. The Association may pursue any of the remedies provided for in whatever order is determined by the Association. The failure by the Association to insist in any one or more instances upon the strict compliance with any provision of the Condominium Documents, to exercise any right or option contained therein, to serve any notice or to institute any action or proceeding, shall not be construed as a waiver or relinquishment of any such provision, option or right.

Section 21.10. Cross Use Easements Pertaining to Fractional Interests. All Fractional Interests are subject to the following cross use easement rights and reservation procedures:

(a) Reservation Procedures. All Fractional Owners shall be entitled to make reservations with the Association for the Use Period(s), or portions thereof, the Fractional Owner desires to use pursuant to the Reservation Procedures. The Reservation Procedures shall specify the manner in which reservations are to be requested and confirmed. The right to reserve a Use Period, if unused in any year, is lost and does not accrue. The Reservation Procedures shall contain such schedules, conditions, restrictions and limitations as are deemed necessary or desirable by the Association. The Sub-Class of Fractional Owners may from time to time, without the consent of Eligible First Mortgagees, cause the Association to amend the Reservation Procedure to include, by way of enumeration and without limitation, one or more of the following features:

(i) A preferential reservation system for Use Periods which include holidays, such as New Year's Day, Martin Luther King Jr. Day, Presidents Weekend, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving, Christmas or other holiday period which allocates the opportunity to reserve the more popular holidays among the Owners of Fractional Interests;

(ii) A procedure for determining priority of reservation by lot, drawing, rotation, or otherwise on an annual or rotating basis;

(iii) Restrictions on use and occupancy of a Use Period if a Fractional Owner is not current on Assessments or is otherwise in violation of the provisions of the Condominium Documents;

(iv) Penalties, including forfeitures of reservation rights for the calendar year, for untimely cancellations or reservations;

(v) Short term reservation procedures for Space Available Vacations, or portions thereof;

(vi) A schedule of fees to be separately charged to Fractional Owners who use a portion of a Use Period or who use a Use Period on a Space Available basis to cover the additional expenses of such use, including but not limited to, additional administrative, janitorial and maid service costs; or

(vii) Such other conditions, restrictions and limitations as the Association shall deem necessary under the circumstances to assure a manageable and fair system.

(b) Rental. The Reservation Procedures may prohibit or limit the right of Fractional Owners to rent or to allow use by an unaccompanied guest of any Use Period otherwise properly reserved by a Fractional Owner. Notwithstanding anything to the contrary in the Condominium Documents, the Declarant shall have a right to rent Use Periods associated with Fractional Interests owned by Declarant.

Section 21.11. Transfer of Fractional Interests. For the twelve (12) month period following the recording of this Declaration, a Fractional Owner may only Transfer (defined below) its Fractional Interest by listing such Fractional Interest with Declarant or a real estate brokerage company designated by Declarant. In such event, Declarant will charge the Owner its then standard commission (as a percentage of the sales price) for the Fractional Interest. So long as sufficient inventory exists, Declarant shall cause to be sold Owner resale Fractional Interests on a rotating basis with and at the same price point as similar unsold Fractional Interests held by Declarant so that every fifth sale of a Fractional Interest shall be a Fractional Interest listed pursuant to this paragraph. In the event Declarant has no existing inventory of similar sized Fractional Interests, the price point for the resale shall not be lower than the per square foot price of the next most comparable Fractional Interest in Declarant's remaining inventory.

Section 21.12. Right of Repurchase. The Fractional Interests, and any and all rights and interests now or hereafter appurtenant to each of them, shall be subject to a right of first refusal to repurchase ("Repurchase Option") by Declarant if, during the two (2) year commencing on the date this Declaration is recorded in the Records, an Owner wants to or is required to sell, assign, or otherwise transfer its Fractional Interest (not including a Deed in lieu of foreclosure, transfer by public trustee or sheriff's Deed, or any transfer in connection with the merger, consolidation, liquidation or reorganization in Owner) (a "Transfer"). A Transfer shall not include the sale, assignment or other transfer of a First Mortgagee of its right or interest in a Fractional Interest. Declarant shall have the right to exercise the Repurchase Option by giving written notice at any time within sixty (60) calendar days after the date upon which Owner shall have given written notice to Declarant of the a potential Transfer, together with a copy of the proposed contract of sale or other document affecting the Transfer, which includes all material terms to the Transfer. If any such notice shall not be so given by Declarant to Owner on or before the expiration of the respective 60 day period and if Owner completes the Transfer to a third party, Declarant's right to exercise the Repurchase Option with regard to the Fractional Interest shall thereupon cease and terminate. If Owner does not complete the Transfer within ninety (90) days of giving written notice to Declarant, the Repurchase Option with regard to the Fractional Interest shall not terminate and Owner shall be required to provide a successive written notice(s) of a proposed Transfer.

(a) The “Repurchase Option Price” shall mean the bona fide purchase price offered to an Owner with respect to a Fractional Interest.

(b) Within 60 days after Declarant gives notice of the exercise of the Repurchase Option, Owner shall tender to Declarant Owner’s Warranty Deed for the Fractional Interest to be exchanged for good funds from Declarant in the amount of the Repurchase Option Price. Owner shall deliver title to the Fractional Interest to Declarant at the closing of the Repurchase Option in the same condition as when delivered by Declarant to Owner, except as to nondelinquent property taxes and assessments for the year of said closing, which taxes and assessments shall be prorated between Declarant and Owner to the date of such closing, so that Owner bears such taxes and assessments for the period of its ownership of the Fractional Interest. Owner agrees to pay all costs and expenses for such closing, including the premium for an extended owners title insurance policy in the amount of the Repurchase Option Price, insuring that title to the Fractional Interest is vested in Declarant.

(c) In the event Declarant fails to exercise the Repurchase Option within the time and in the manner set forth above, Declarant shall not have any further right to exercise the Repurchase Option with regard to such Fractional Interest and Declarant agrees, upon Owner’s written request, to record in the Records a duly executed and acknowledged release releasing Declarant’s right to exercise the Repurchase Option with regard to such Fractional Interest. Upon expiration of the term of Declarant’s Additional Reserved Rights or, at any earlier time in Declarant’s sole and absolute discretion, Declarant shall duly execute and record in the Records an acknowledgment of termination of the Repurchase Option with regard to all Fractional Interests.

(d) This Repurchase Option shall be subordinate and junior to the legal operation and effect of the Security Interests of First Mortgagees.

ARTICLE 22 MISCELLANEOUS

Section 22.1. Enforcement. The provisions of the Act and the provisions of the Condominium Documents may be enforced by any Person subject to this Declaration through proceedings at law or in equity against any Person subject to this Declaration who has violated or is violating or attempting to violate such provisions.

Section 22.2. Notices. All notices, demands, or other communications required or permitted to be given hereunder shall be in writing, and any and all such items shall be deemed to have been duly delivered upon personal delivery; upon actual receipt, in the case of notices forwarded by certified mail, return receipt requested, postage prepaid; as of 12:00 Noon on the immediately following business day after deposit with Federal Express or a similar overnight courier service; or as of the third business hour (a business hour being one of the hours from 8:00 a.m. to 5:00 p.m. on business days) after transmitting by telecopier, facsimile, or electronic mail.

Section 22.3. Nonwaiver. Failure by Declarant, the Association, or any Owner or Eligible First Mortgagee to enforce any covenant, condition, restriction, easement, reservation, right-of-way,

or other provision contained in the Condominium Documents shall in no way or event be deemed to be a waiver of the right to do so thereafter.

Section 22.4. Severability. The provisions of this Declaration shall be deemed to be independent and severable, and the invalidity of any one or more of the provisions of this Declaration by judgment or court order or decree shall in no way affect the validity or enforceability of any of the other provisions, which provisions shall remain in full force and effect. Any provision which would violate the rule against perpetuities and the rule prohibiting unlawful restraints on alienation shall be construed in a manner as to make this Declaration valid and enforceable.

Section 22.5. Number and Gender. Unless the context provides or requires to the contrary, the use of the singular herein shall include the plural, the use of the plural shall include the singular, and the use of any gender shall include all genders.

Section 22.6. Captions. The captions to the Articles and Sections and the Table of Contents at the beginning of this Declaration are inserted only as a matter of convenience and for reference, and are in no way to be construed to define, limit, or otherwise describe the scope of this Declaration or the intent of any provision of this Declaration.

Section 22.7. Conflicts in Legal Documents. In case of conflicts between the provisions in this Declaration and the Articles of Incorporation or the Bylaws, this Declaration shall control. In case of conflicts in the provisions in the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control.

Section 22.8. Exhibits. All the Exhibits attached to and described in this Declaration are incorporated in this Declaration by this reference.

Section 22.9. Choice of Law. This Declaration shall be construed and interpreted in accordance with the laws of the State of Montana, and specifically, the provisions of the Act and not the general common law (including remedies) of tenancy-in-common.

Section 22.10. Third Party Beneficiary. This Declaration is submitted, imposed, and declared solely for the benefit of Declarant, Owners, First Mortgagees, and their respective successors, assigns, heirs, executors, administrators, and personal representatives. No party shall be deemed a third party beneficiary of this Declaration.

Section 22.11. License.

(a) Declarant or its affiliate is the owner of the trademark “Mill Creek” and all derivations thereof (the “Mark”) and has and intends to continue to use the Mark in the labeling and marketing of other projects.

(b) The license granted hereby to use the Mark shall be revocable by Declarant at any time upon not less than ninety (90) days written notice thereof delivered to the Association. The Association shall have no right to use the Mark other than solely in connection with the operation of the Project without Declarant’s prior written consent. No

Owner shall have any right to use the Mark except as may be granted by Declarant in writing.

Section 22.12. Owner Waiver. By virtue of purchasing a Unit or Fractional Interest, each Owner, for itself and its successors and assigns, waives any right to protest the establishment or continuation of any special improvement district for any reason, including any by MDOT (as such term is defined by the City of Polson, Montana).

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**Exhibit A
To
Declaration**

LEGAL DESCRIPTION

The Property referred to in the Declaration is described as follows:

[to be inserted]

**Exhibit B
to
Declaration**

TABLE OF ALLOCATED INTERESTS

| <u>Unit No.</u> | <u>Percentage share of Common Elements</u> | <u>Percentage share of Common Expense Liability</u> |
|-----------------|--|---|
| 101 | 8.8% | 8.8% |
| 102 | 8.1% | 8.1% |
| 103 | 8.1% | 8.1% |
| 104 | 8.1% | 8.1% |
| 105 | 8.1% | 8.1% |
| 106 | 8.8% | 8.8% |
| 201 | 8.8% | 8.8% |
| 202 | 8.1% | 8.1% |
| 203 | 8.1% | 8.1% |
| 204 | 8.1% | 8.1% |
| 205 | 8.1% | 8.1% |
| 206 | 8.8% | 8.8% |
| | 100% | 100% |

**Exhibit C
to
Declaration**

CERTIFICATE OF NAME AND TAXES PAID

**Exhibit D
To
Declaration**

LIST OF CONSTRUCTION MATERIALS

WOODFRAME
SLAB-ON-GRADE CONCRETE FOUNDATIONS
ASPHALT SHINGLES
CONCRETE ELEVATOR TOWER
ELECTRIC HOTWATER
PROPANE FORCED AIR FURNACE

**Exhibit E
To
Declaration**

ISSUES FOR SUB-CLASS VOTING

FRACTIONAL CLASS ISSUES:

The issues specified below are deemed to relate solely to the Plan, the Fractional Units or the Limited Common Elements appurtenant only to the Fractional Units and actions or determinations on such issues shall be decided by the Owners of Fractional Interests, voting as a Class to the extent Fractional Owners are otherwise allowed to vote on such issues pursuant to the Act or the Condominium Documents.

- (a) all issues relating to ARTICLE 21 of this Declaration;
- (b) any issue expressly relating only to the Plan or the Fractional Units;
- (c) any issue expressly relating only to the administration and management of the Plan;
- (d) any Rules and Regulations applicable only to the Fractional Units or Owners of Fractional Interests;
- (e) any Assessments or items shown on the Budget that are payable only by Owners of Fractional Interests; and

any issue relating to the Reservation Procedures or the level or types of services provided to the Fractional Owners.

**Exhibit F
To
Declaration**

MAP AND ARCHITECT'S CERTIFICATE

**Exhibit G
To
Declaration**

UNITS INITIALLY SUBMITTED TO PLAN