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Charlotte Mills-Gallatin Co MTMISC 377.00

DECLARATION FOR WATER WAY CONDOMINIUMS

BY THIS DECLARATION, made this 17 day of October, 2007, by **Libster Building, LLC**, of 11 W. Main Street, Suite 223, Belgrade, Montana 59714, (hereinafter referred to as "Declarant"), wherein the real property and improvements described herein are submitted and subject to the Unit Ownership Act of the State of Montana, Title 70, Chapter 23, Montana Code Annotated.

WHEREAS, the property subject to this Declaration is known as "Water Way Condominiums" (hereinafter referred to as "Condominiums").

NOW, THEREFORE, Declarant hereby declares that the Condominiums shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold and improved subject to the provisions contained in this Declaration. All of the provisions contained in this Declaration and the Bylaws shall be construed as covenants running with the real property, including the land, building, improvements, easements, appurtenances and units, and shall be binding upon the Association, the Unit Owners, mortgagees, lien holders, and all heirs, successors, personal representatives and assigns, and parties acquiring any right, title or interest in or to the Condominiums as long as this Declaration and Bylaws are in effect.

I. DEFINITIONS

The terms used in this Declaration have the meanings given them in the Unit Ownership Act, or other Montana law, unless a more particularized definition is set forth in this Declaration or the context requires a modification. Unless the context expressly provides otherwise, the following definitions shall pertain throughout this Declaration and the Bylaws and in the interpretation thereof:

1. Aggregate Voting:
The term "aggregate voting" shall mean the entire percentage of votes present or available to vote in person or by proxy in a particular circumstance. The total percentage of votes is 100%.
2. Allocated Interest:
The term "allocated interest" means the percentage interests allocated to each Unit, that is, the undivided percentage interest in the common elements, the common expense incurred or assessed by the Association and the votes in the Association.
3. Articles:
The term "Articles" shall mean the Articles of Incorporation for the Water Way Condominiums Unit Owners' Association, Inc.



4. Association of Unit Owners:

The terms "Association", "Association of Unit Owners" and "Water Way Condominiums Unit Owners' Association", shall mean all of the Unit Owners acting as a group or as members of a nonprofit mutual benefit corporation and in accordance with duly adopted Articles of Incorporation, Bylaws and this Declaration. The Association shall be incorporated under the laws of the State of Montana.

5. Board or Board of Directors:

The terms "Board" or "Board of Directors" shall mean the Board of Directors of the Association as more particularly defined in the Bylaws.

6. Building:

The term "building" means the building located within the boundaries of the real property upon which the Condominiums are located and shown on the site plan containing the Units which are shown and located on the floor plans.

7. Bylaws:

The term "Bylaws" means the Bylaws promulgated by the Association under this Declaration and the Unit Ownership Act.

8. Common Elements/Common Areas:

The term "common elements" means the general common elements and the limited common elements which are described as follows:

a. General Common Elements:

"General common elements" means all those elements which are for the use of all the Unit Owners and their guests, invitees and tenants. The Declarant or the Association may add or delete common elements by amendments to this Declaration and/or by the method set forth in the Unit Ownership Act. The general common elements include, but are not limited to the following:

- 1) foundation, structural support system, walls, roof system and common utilities, pipes, lines, beams, improvements and common areas in the building outside the Unit boundaries, including passage ways, foyers, land within the real property, common easements, common lighting, entryways, hallways, stairways, elevators, fire escapes, common trash areas, outside exterior walls and siding, common signage, common storage and janitorial areas, common heating, vents, and mechanical systems, plumbing, gas, water, electrical, sewage lines, common communication systems, and cable, appurtenances and other common systems and elements which are available for the use or convenience of all the Unit Owners.

b. Limited Common Elements:

"Limited common elements" shall mean those common elements outside the boundaries of a Unit designated by the Association, set forth in this Declaration,



shown on the site plan or floor plans, or by agreement of the Unit Owners which are primarily used by or reserved for the use of a certain Unit or number of Units to the exclusion of or limited use by less than all of the other Units, including, but not limited to, storage rooms for cleaning supplies, the roof and the maintenance room. The percentage interest of the Units in the limited common elements shall be computed by determining the number of Units that have use of the limited common elements and taking the square footage of each such Unit and dividing it by the total square footage of all the Unit(s) making use of the particular limited common element (Examples of elements which may be limited common elements are: storage areas, extensions of the heating, mechanical, electrical, plumbing, cable, lighting, communication systems and other elements inside the boundaries of a Unit or Units or reserved, used or available for use by less than all of the Unit owners,)

c. Common Areas:

“Common areas” are common elements which are inside the outer dimensions of the Building that are not a part of the net square footage of the interior of each Unit, such as entryways, hallways, flooring, stairways, common mechanical areas and the like as well as sidewalks and parking areas located on the property.

9. Common Expenses:

The terms “common expenses” or “general common expenses” mean expenses, other than limited common expenses, of administration, cleaning, maintenance, repair, replacement of common elements, common areas and common services provided to the Association, reserves, and expenses agreed upon as common by the Unit Owners, including, but not limited to sewer and water expenses for each Unit, and other expenses declared common by the Montana Unit Ownership Act, the Association, this Declaration or the Bylaws, including assessments. Garbage removal is not a common expense and shall not be administered by the Association. Each Unit Owner shall contract for and pay for the garbage removal for Owner’s Unit.

10. Condominium(s):

The term “Condominium” or “Condominiums” means the Condominiums and the concept of ownership of single condominium Units with appurtenant common elements located on the property submitted to the provisions of the Unit Ownership Act and the rights and obligations associated with the ownership of the Units, including the right to sell the individual Units as a real estate Unit. The term “Condominiums” is also used herein to refer to the Condominium project.

11. Declarant:

The term “Declarant” means the initial Owner of the property and the person or entity that subjected the property to the Unit Ownership Act and Declarant’s successors and assigns.

12. Declaration:



The term "Declaration" means this document, and all parts attached hereto and incorporated by reference herein, and all amendments thereto, and is the instrument by which the property is submitted to the provisions of the Unit Ownership Act. The acquisition of an ownership interest or lien holder's interest in a Unit signifies that the Owner or lienholder accepts, ratifies and agrees to comply with the terms and conditions of this Declaration and the Unit Ownership Act.

13. Limited Common Expenses:

The term "limited common expenses" means the expenses attributable to the maintenance, repair and replacement of, and services furnished for limited common elements which are expenses only for those Owners of Units which use or have access to the limited common elements for which such expenses are incurred.

14. Majority or Majority of the Unit Owners:

The terms "majority" or "majority of the Unit Owners", unless otherwise provided in the Declaration, means the Owners of more than fifty percent (50%) in the aggregate of the undivided ownership percentage interests in the general common elements designated herein as the allocated interest or percentage of interest in such common elements appertaining to each Unit as is expressed in this Declaration. Whenever a percentage of all of the Unit Owners is specified, percentage means such percentage in the aggregate of such allocated interest.

15. Manager:

The term "Manager" means the Manager, the Board of Directors, management company or any other person or group of persons retained or appointed by the Board for the purpose of the administration of or managing the property and acting on behalf of the Association in the administration of this Declaration.

16. Mortgagee:

The term "mortgagee" shall mean lienholder or any beneficiary under a mortgage, deed of trust or Montana Trust Indenture or a Seller under a Contract for Deed.

17. Project:

The term "project" means a real estate condominium project, a plan whereby a condominium of one or more Units located on property is submitted to the provisions of the Unit Ownership Act to be owned, transferred, mortgaged and held as a separate Unit.

18. Property:

The term "property" or "condominium property" means all of the land, buildings, improvements, common elements, facilities and structures on the land and all easements, rights and appurtenances belonging thereto, which are submitted to the Unit Ownership Act.

19. Recording Officer:

The term "recording officer" means the county officer charged with the duty of filing and



recording the deeds, mortgages and all other instruments and documents affecting the title to real property. In this case, the recording officer is the Clerk and Recorder for Gallatin County, Montana.

20. Residential Units:

The term "residential units" means the Units designated on the floor plans or in this Declaration (or in an amendment thereto) as Units reserved or restricted for residential use by the Owner.

21. Shall.

The term "shall" is mandatory.

22. Unit:

The term "Unit" shall be the separate Units of the Condominiums and the appurtenant undivided interest in the common elements of the Condominiums and is a part of the property including one building, rooms occupying one or more floors, intended for any type of independent use, and with a direct exit to a hallway, pathway, sidewalk, street or roadway, or to a common area or areas leading to a public street or highway.

23. Unit Designation:

The term "Unit designation" means the number, letter, or combination thereof designating a Unit in the Declaration.

24. Unit Owner, Owner, or Owners:

The terms "Unit Owner", "Owner" or "Owners" mean the person, persons, or entity owning a Unit in fee simple absolute or an ownership interest represented by a buyer's interest in a contract for deed as shown by an abstract or notice of purchaser's interest recorded with the Clerk and Recorder of the county in which the Condominiums are located, individually or as a co-owner in any real estate tenancy relationship that is recognized under the laws of the State of Montana in one or more Units of the Condominiums. A mortgagee shall not be considered a Unit Owner. A Unit Owner may delegate his, her, its rights as a Unit Owner including the right to vote, to a lessee of the Owner's Unit by filing a copy of the lease and such delegation in writing to the presiding officer or manager of the Association.

25. Unit Ownership Act:

The term "Unit Ownership Act" means and refers to the Unit Ownership Act of the State of Montana, Title 70, Chapter 23, Section 70-23-101 et seq., Montana Code Annotated, and any amendments thereto.

II.
REAL PROPERTY

1. Description.

The real property, initially submitted to the Unit Ownership Act and included in the



Condominiums, is the land and building shown on the Site Plan, with a physical address of 216 Hemlock Street, Manhattan, Montana 59741 and which is more particularly described as follows:

Lot 1 in Block 1 in Hemlock Addition to the City of Manhattan, Gallatin County, Montana, according to the official plat on file and of record in the office of the County Clerk and Recorder, Gallatin County, Montana. (Plat: H-39).

TOGETHER WITH all improvements, tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, including easements for ingress and egress.

Subject to existing easements, rights of way, covenants, rights, terms, conditions, obligations, disclosures, reservations, restrictions, dedications, conditions shown and delineated in the documents, plats, and site plans filed or recorded with the Clerk and Recorder of Gallatin County, Montana, or State of Montana, applicable to said real property and subject to zoning ordinances and land use restrictions, if any, laws and regulations of the City and County where the Condominiums are located, State of Montana and United States of America, subject to taxes, assessments, and charges levied against the real property by governmental authority, including general real estate taxes and special improvement district assessments.

2. Condominium Unit and Undivided Interest in Common Elements as a Separate and Individual Interest in Real Estate.

Each Unit, together with the appurtenant undivided interest in the limited and general common elements of the Condominiums, shall together comprise a Unit which may individually be conveyed, leased, rented, devised or encumbered and may be the subject of ownership, possession or sale and of all types of inter vivos or mortis causa, as if it were sole and entirely independent of all other Units in the building of which the Units form a part, and the corresponding individual titles and interests shall be recordable. The undivided interest in the common elements shall not be separated from the Unit to which it appertains and shall be conveyed with or encumber the Unit even though such interest is not expressly mentioned or described in the conveyance or other instrument.

3. Encroachments and Easement for Maintenance and Repair.

If any portion of the general or limited common elements encroaches upon a Unit or Units, a valid easement for the encroachment and for the maintenance, repair and replacement of the same, so long as it stands, shall and does exist in the Association and the Declarant. If any portion of a Unit encroaches upon the general common elements or limited common elements, or upon an adjoining Unit or Units, a valid easement for the encroachment and for the maintenance, repair and replacement of the same, so long as it stands, shall and does exist in the Association and the Declarant. Such encroachments and easements shall not be considered or determined to be encumbrances either on the general common elements, the limited common elements, or on the Units for purposes for marketability of title.



In the event any Unit, common element, or common system is reconfigured, in need of repairs, reconstructed, partially or totally destroyed and then rebuilt, the Owners of the Unit or Units agree that encroaching on parts of the building, Units and general or limited common areas necessary or reasonable for the repairs, or construction shall be permitted and that an easement for said encroachment and the maintenance and construction thereof shall exist, in the Unit Owner, Declarant and the Association. Reasonable notice shall be given to the Association and Unit Owners affected by such repairs, reconfiguration, and reconstruction, prior to commencing the same. The notice shall include the work plan and a time frame for completion. Prior to commencing work the plan shall be approved by the Board of Directors of the Association, except no approval by the Association is necessary for work done by Declarant pursuant to other rights set forth in this Declaration.

The person or entity doing the work will accomplish the work in a workman like manner, free from any construction liens, and will repair any damage caused by the work to any Unit or to the common elements, and will remove any construction material and debris. Construction shall take place during normal working hours. All contractors must have liability insurance with coverage of at least \$1,000,000 per occurrence and \$1,000,000 in the aggregate. All contractors must produce evidence of worker's compensation insurance prior to commencement of work to be placed in the files of the Association and shall indemnify and hold harmless the other affected parties from any liens or damages caused by such construction.

4. Building.

The Condominiums shall consist of one building on the property. The Units comprising the Condominiums will be contained in the building within the single level, consisting of a lower floor and an upper floor.

There will be Two (2) Residential Units on the lower floor, Units 101 and 102, and Two (2) Residential Units on the upper floor, Units 201 and 202. A portion of either level may be designated by the Declarant as general common elements or limited common elements for certain Units or may be made part of other Units, in the discretion of Declarant rights hereafter set forth.

The building contains approximately 4,810 square feet, consisting of the lower level and the upper level.

5. Unit Boundaries.

The boundaries of each Unit are the perimeters measured from the inside of the framing on the walls of each Unit, the center line of common walls between Units, the center line of the common walls adjacent to an inside common area, and measured from top of the floor joists and bottom of the ceiling joists of each Unit.

Each Unit shall include all telephone lines, cable lines, utilities, water, sewer, heating,



plumbing, electrical, windows, doors and all other fixtures, improvements and systems within the boundaries of such Unit, unless part of the common elements used by other Units. The windows and doors, both inside and outside, shall be a part of a Unit.

An easement for repair, maintenance, additions and replacement of a Unit is reserved to each Unit Owner for any portion of a Unit's appurtenant utility lines, mechanical systems, sewer and water systems, fixtures or support systems which extends into a common element or another Unit boundaries and to connect, attach, improve, install, reinstall, maintain, repair and add or remove the utility lines, telephone lines, computer lines, cable television lines, and other systems, fixtures, and support systems in, around, and to the Unit walls, floors and ceilings, common elements, and foundations adjacent or connected to such Unit, provided the common elements are not adversely affected or the lawful rights of the other Unit Owners are not hindered or encroached upon, and provided the Unit Owner shall first submit plans therefore and obtain approval of the Board before commencing work outside of the Unit boundaries or on a common element, or on a Unit owned by other Unit Owners. Approval may be conditioned upon a professional commencing and completing the work.

No exterior of the building or outside Unit boundary surface, wall or door, or window mounted signs, advertisements, decorations, equipment, displays, antennas (including dishes), shall be allowed except as shall be approved of by the Board.

6. Construction Materials.

The principal materials of which the building is constructed are as follows:

The structural is wood beams and truss.

The exterior is comprised of frame walls and brick veneer, and glass. Wood material is additionally present in framing of windows and doors. Cement sidewalks and paved parking area.

The roof covering is a vinyl product.

The interior beams are wood framing, walls are sheet rock, ceilings are sheet rock, vinyl flooring and carpeting for the floors of the Units. A vinyl is in the Common Areas.

The foundation is concrete.

Heating and other mechanicals are located in the maintenance room in building and shall be part of the general common elements.

Each Unit shall be connected to a heating unit which is separately metered to the Unit, with the exception that Units 101 and 102 additional have a small hot water heating unit wired to those units for the common area. Because the hot water heating unit cannot be separately metered and service the common area Units 101 and 102, the Owners of Units 101 and 102 will



each have \$10.00 per month deducted from each Owner's common expenses assessment.

Electrical for the common areas is separately metered and the cost shall be a common expense.

III.
EASEMENT, COMMON ELEMENT -
INTERIOR AND EXTERIOR MAINTENANCE, REPAIR & REMODELING

1. Common Element Easements.

A non-exclusive right and easement for ingress and egress to, in and through common elements for utilities including, but not limited to, power, gas, telephone, service and television cables, communication facilities, computer lines and support for the common elements, as well as for the installation, maintenance, replacement and repair, is reserved to Declarant and the Association, and is appurtenant to each Unit. All common elements and Units are subject to such rights.

Declarant and the Association reserve the right and easement to improve, repair, redefine, reconfigure and/or expand the common elements, and systems and areas thereto, or to construct and/or replace the common elements, and systems thereto, and grant utility, cable, communication, and other easements as may be necessary for the utilization, repair, reconfiguration or expansion of the common elements, and/or systems. However, the Declarant and the Association shall not substantially impair the Unit Owners' original rights in the common elements and the party doing the work shall complete the work in a workman like manner and shall clean up the construction area and repair any damage to Units or common elements caused by the work and pay all of the cost thereof. The Association shall have the right to assess the Unit Owners' benefiting from the Association's repairs, reconfiguration, or expansion of the common elements and systems.

Should any local, state or federal agency require that additional improvements be installed or made to the building or the Units, the Unit Owners, not the Declarant, shall be responsible for installing or making such improvements and the costs thereof. Furthermore, the Association and Unit Owners shall indemnify and hold harmless the Declarant from installing or making such improvements, or paying for the cost thereof. If, however, the Declarant is the owner of a Unit, the Declarant would pay its' proportionate share for such improvements.

The Association, at the expense of the Unit Owners, shall have the responsibility for maintenance of any such common elements now or hereinafter installed by the Declarant, and/or its successors and assigns in said easement.

2. Interior and Exterior Remodeling, Construction, Maintenance and Repair.

Interior: Each Unit Owner shall have the exclusive right to improve, construct, remodel, repair, maintain, paint, repaint, tile, paper, panel, carpet or otherwise maintain, refinish



and decorate the interior surfaces of the walls, ceilings, floors, fixtures, windows and doors within the boundaries said Unit Owner's own Unit and its appurtenant exclusive limited common element, provided, however, that the common elements, visual appearance, structural support and systems of another Unit and the building are not affected, and the Unit Owner complies with all applicable laws, ordinances and regulations, including, but not limited to, obtaining the necessary building permits. No remodeling, construction, maintenance or repair may be done by a Unit Owner outside the interior boundaries of the Owner's Unit in or on the general or limited common elements, without the written approval of the Association. No personal property, belongs, trash or garbage shall be stored, placed or left in the common areas.

Exterior: The Association shall have the authority and duty to maintain, repair, replace, and keep in good condition the exterior of the Units, building and general and limited common elements as shall be reasonable and necessary, provided, the Association may, at its option, charge the Unit Owners having an interest in the limited common elements for the cost thereof, or allow the Owners of a limited common element, to do the work after presentation and approval of the plans and the completion of the work. In addition, the Association shall have the authority to control the visual appearance and impact of a Unit Owners interior and window decor and signs which can be seen from the sidewalk, street or from the entryways, hallways, and other common areas, to the extent necessary to prevent obnoxious, insulting, unpleasing, or other decor that negatively detracts from the normal decor of the building and the Units. The Association may enforce its authority by first giving the Unit Owner written notice of a violation and a reasonable time to correct or remove the violation, and if the notice is not complied with, the Association may enforce its authority by seeking an injunction, damages, or other legal recourse as allowed by Montana law.

IV.

OWNERSHIP AND VOTING - EXHIBITS - USE

SERVICE OF PROCESS - EXCLUSIVE OWNERSHIP - DECLARANT'S RIGHT

1. Allocated Interest.

Each Unit Owner shall be entitled to the exclusive ownership, use and possession of the Owner's Unit. Each Unit Owner shall own an undivided percentage of interest (allocated interest) in the general common elements in the percentage expressed herein, set by Declarant and based upon the approximate relation that the value of the Unit, on the date of this Declaration, bears to the then combined value of all Units having an interest in the general common elements.

Such allocated interest represents the Owner's undivided ownership interest in the general common elements and each Unit Owner's responsibility and liability for common expenses.

The allocated interest or undivided percentage interest of each of the Units of the Condominium in the general common elements are, or shall be, set forth in Exhibit "A" attached hereto.



The undivided allocated interest in the common elements, as the same may be allocated, will not be separated from the Unit to which it appertains and shall be appurtenant to and conveyed or encumbered with the Unit, even though such interest is not expressed, mentioned or properly described in the conveyance or other instrument.

2. Site Plans, Floor Plans, Elevations and Exhibits.

For identification and descriptive purposes, the following Exhibits are attached hereto and by this reference incorporated into and made a part of this Declaration showing the site plan, and the floor plans of the building and each of the Units contained therein. The Unit Owners, successors, assigns and tenants acknowledge that the following Exhibits are estimates, rather than actual representations, of Unit square footages and areas, and that it is the Unit Owners' responsibility, as part of said Owners' due diligence, to ascertain the actual square footage of the Unit. The Unit Owners further indemnify and hold harmless the Declarant, its successors, and assigns from any damages resulting to said Unit Owners for failure to ascertain Unit square footages or for reliance on the following Exhibits:

Exhibit "A"

This exhibit depicts the approximate square footages of each unit and each unit's appurtenant percentage interest in the common areas. All square footages are an approximation and the Unit Owners indemnify and hold harmless the Declarant, its successors, and assigns from any damages resulting to said Unit Owners for failure to ascertain Unit square footages or for reliance on this exhibit.

Exhibit "B"

A certificate from an authorized agent of the Department of Revenue of the State of Montana within Gallatin County that the name "Water Way Condominiums" is not the same as, similar to, or pronounced the same as, a word in the name of any other property or subdivision within Gallatin County and that the taxes and assessments for the Condominiums' real property have been paid to date.

Exhibit "C"

A verified statement by a registered architect, registered professional engineer or professional land surveyor who has reviewed the site plan and floor plans, certifying that the plans are an accurate copy of the plans filed with and approved by the city and county officers having jurisdiction to issue building permits, if any; that the site plan and floor plans fully and accurately depict the layout and location of the building and Units and floors of the building, Unit designation, approximate square feet, dimensions, and floor plans of the building and each of the Units when built, and if the remodeling of the entire building or Units are complete when this Declaration is filed with the recording office, the date construction of the portion of the building was completed and the Units were completed.



If the building, or all of the levels or all of the Units, are not entirely completed on the date this Declaration is recorded, within thirty (30) days from the date of completion of the portion of the building, or a level of the building or Unit(s), (or as soon as possible thereafter) or if the site plan and floor plans are changed, an amendment to the Declaration shall be recorded, executed by the Declarant, or the Chairman of the Board, to which shall be attached the verified statement of a registered architect, registered professional engineer, or registered professional land surveyor, certifying that the floor plans and site plan previously filed or being filed simultaneously with the amendment fully and accurately depict the layout, location, Unit designation, square feet, and dimensions of the building, Units and floors of each building as shown on the site plan and floor plans as built or changed and the date construction of the building and Units or changes were completed.

Exhibit "D"

Showing the floor plans, layout and Unit designation for each of the Units in the building, the floor level(s) of each Unit, the location of the Units in the building, and the approximate square footage area of each Unit (not including the percentage of square feet of the common areas allocated and appurtenant to each Unit), and the dimensions of the Units.

Exhibit "E"

Showing a site plan of the Condominiums on the real property.

3. Use.

The Units and common elements shall be occupied and used as follows:

- (a) The Units shall be used for residential purposes only.

Rentals, leases and subleases of a Unit are allowed subject to the provisions of this Declaration and the Bylaws.

- (b) Except as provided elsewhere in this Declaration, there shall be no obstruction of the general common elements, including entryways hallways, stairways or the sidewalks, nor shall anything be constructed or stored in or on the general common elements, without the prior written approval of the Board. Each Unit Owner shall be obligated to maintain and keep in good order and repair Owner's own Unit and exclusive limited common elements, if any. If the Unit Owner fails to maintain and keep in good order and repair Owner's own Unit or exclusive limited common elements, upon thirty (30) days written notice or shorter notice, in the event of an emergency, by the Association to the Unit Owner of such failure, the Association may require the Unit Owner to make such repairs or



maintenance as contained in the notice, and, if not completed by the Unit Owner within the time period provided in the notice, the Association may make such repairs and maintenance and charge the Owner all costs incurred by the Association.

- (c) All valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed.
- (d) The Association shall have access to a Unit for emergency purposes and for repairs, maintenance, and replacement of common elements or other work for which the Association is responsible. The Manhattan Fire Department shall have emergency access to each Unit. If access to a Unit is not an emergency, the Unit Owner shall be given at least twenty-four (24) hours notification by the Association of the date, time and purpose of the access. In case the Association requires immediate entry to a Unit for emergency purposes, the Fire Department shall be contacted to gain emergency access and reasonable efforts shall be made to contact the Unit Owner to notify of the emergency and need for immediate access to a Unit.
- (e) Nothing shall be done or kept in a Unit or the common elements or areas which will substantially increase the rate of insurance on the building or contents located in the common areas, if any, without the prior written consent of the Association. No Unit Owner shall permit anything to be done or kept in the Owner's Unit or in the common elements or areas which will result in the cancellation of insurance on the building or the contents located in the common areas, if any. No waste shall be permitted in the common elements or areas.
- (f) No nuisance or load noises shall be allowed on the property or in the building or the Units, nor shall any use or practice be allowed which is the source of abnormal annoyance to the Owners of other Units or which interferes with the peaceful possession, quiet enjoyment and proper use of the property, building and/or Units by the Declarant, the Association or the Unit Owners.
- (g) A total of two (2) domestic pets are allowed, i.e. dog, cat or bird, no more than one (1) pet can be a dog and that dog can not exceed 35 pounds in weight. Said Owner shall immediately clean up after the Owner's pet and shall not allow the accumulation of pet feces on or about the property. In addition, the Owner shall not allow excessive barking or pet noise, or chain, kennel or leave such pet out side of the building. The Owner shall be responsible for any damage caused to the common areas or the property as a result of that Owner's pet, and may be assessed by the Association for such damages. If there are complaints from other Owners with respect to a pet, that pet may be deemed a nuisance by the Board and will no longer be able to reside in the Condominiums or on property.
- (h) The Association may further implement or amend any rules and regulations



pertaining to the use, maintenance, operation and habitation of the property, building and the Units as it deems necessary.

4. Service of Process.

The name and address of the person designated to receive service of process for the Condominium until another designation is filed of record shall be Libster Building, LLC, 11 W. Main Street, Suite 223, Belgrade, MT 59714.

5. Exclusive Ownership.

Each Owner or Owners shall be entitled to exclusive ownership and possession of their Unit, improvements thereon, and their own personal property. Such Owner or Owners may use the general and limited common elements in accordance with the purposes for which they are intended or as prescribed by the Association, so long as they do not hinder or encroach upon the lawful rights of other Unit Owners.

6. Declarant's Rights.

a. Until Declarant has sold or transferred 90% of the Units to third parties, the Declarant reserves the right to appoint or remove a majority of the Board of Directors of the Association.

b. The rights of Declarant set forth in this Declaration shall not be amended without the written approval of Declarant, or its successors or assigns.

V.
THE ASSOCIATION

1. Membership.

An Owner of a Unit in the Condominiums shall automatically, upon becoming the Owner of said Unit, become a member of the Water Way Condominiums Unit Owners' Association, herein referred to as the "Association", and shall remain a member of said Association until such time as said Owner's ownership ceases for any reason, at which time said Owner's membership in the Association shall automatically cease. The membership shall be limited to Unit Owners as defined in this Declaration. However, a member may by proxy or power of attorney appoint another person or entity to vote for the member.

2. Function.

It shall be the function of the Association to:

(a) Adopt Bylaws for the governance of the Association, a copy of which is attached hereto and incorporated herein by this reference.



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- (b) Make provisions for the general management of the Condominiums.
- (c) Prepare budgets and levy and collect assessments as provided for in this Declaration, the Bylaws and the Unit Ownership Act.
- (d) Adopt and implement a policy for the affairs of the Condominiums.
- (e) Enter into contracts to hire or engage personnel or entities for the management of the affairs of the Association, and the maintenance and repair of the common areas and services to the Association, or other entity for administration and management of the sewer and water systems.
- (f) The Association, through its Board, shall also have the power to adopt and implement such reasonable rules and regulations as to the use by the Unit Owners of the common areas.
- (g) Maintain and repair common elements of the Condominiums.
- (h) The Association shall be incorporated as a Montana nonprofit, mutual benefit corporation and operate as a Montana corporation. Either the Declarant or a majority of the Board of Directors of the Association shall be authorized to sign as incorporators and file the Articles of Incorporation.
- (i) The Association shall have the power and authority to act as shall be reasonably necessary to implement this Declaration and Bylaws.
- (j) Represent the Unit Owners in all affairs of the Condominiums, and to collect assessments as provided herein.
- (k) Take such other actions as are deemed necessary, reasonable and proper to carry out the Association's functions and as are allowed by Montana law.

3. Vote.

On all matters to be decided by the members or the Association, unless otherwise provided in this Declaration, each Unit Owner shall have one vote per unit owned regardless of allocated interest in the general common elements or square footage of Unit owned. An Owner of a Unit, upon becoming an Owner, shall become a member of the Association and shall remain a member for the period of said Owner's Unit ownership. Except as otherwise provided in Montana law, this Declaration or the Bylaws, 75% of the Unit Owners voting at any meeting in person, by proxy, by authorized agent, or voting on a matter by written ballot shall be sufficient to act on, approve, conditionally approve or disapprove matters brought before the Unit Owners or the Association. In the event of a tie vote, so long as the Declarant retains ownership of a Unit, the Declarant shall break the tie vote and resolve the matter. However, should there be a tie vote and the Declarant no longer retains ownership of a Unit, the Unit Owners shall submit



such vote to mediation, the cost of which shall be a common expense.

4. Failure to Comply.

Each Owner shall strictly comply with the provisions of this Declaration, the Bylaws of the Association, and the rules, regulations, decisions and resolutions of the Association adopted pursuant thereto as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due for damages or injunctive relief or both, and for reimbursement of all costs, including reasonable attorney's fees incurred in connection therewith, which action shall be maintainable by the Manager or by the Board of Directors in the name of the Association, on behalf of the Owners or by an aggrieved Owner where there has been a failure of the Association to bring such action within a reasonable time, or by Declarant, its successors or assigns. The Association, after giving an Owner proper notice and a right to a hearing pursuant to the standards for due process, may revoke an Owner's right to use all or a portion of the common elements in the event an Owner fails to comply or pay assessments, until the Owner is in compliance and pays all assessments.

5. Payment of Assessments when Due.

All assessments for common expenses or other assessments allowed herein shall be due within seven (7) days from the due date set forth in the mailing of such assessments following the meeting at which time assessments are levied by the Association. Assessments may be made payable in monthly, quarterly or annual installments at the option of the Board. The amount of the common expenses assessed against each Condominium Unit and the amount of limited common expenses, if any, assessed against each Condominium Unit shall be the personal and individual debt of the Owner thereof. No Owner may exempt himself, herself, or itself from liability for this contribution toward the common expenses and the limited common expenses by waiver of the use or enjoyment of any of the general common elements or limited common elements or by abandonment of his, her or its Unit. All assessments which are not paid within seven (7) days from the date they are due and payable become delinquent and if not timely paid will bear interest at the rate of 10% per annum from the date due. The Association, through its Board, shall have the authority and responsibility of taking prompt action to collect any unpaid assessment which becomes delinquent.

In the event of delinquency in the payment of the assessment, the Unit Owner shall be obligated to reimburse the Association, in addition to paying the assessment and interest at the rate of ten percent (10%) per annum on the amount of the assessment from the date delinquent, attorney's fees and costs, if an attorney is engaged to collect the delinquent assessment and interest or if an attorney is engaged to foreclose the lien for the unpaid assessment. The Board of Directors may also set and assess the Owner a fee for late payment of assessments in an amount sufficient to cover the Association's time and costs of sending additional notices and collection letters. The fee shall initially be set at \$250.00 for each thirty (30) days that the assessment is past due. In the event a check from a Unit Owner is returned for insufficient funds (NSF), the Unit Owner shall pay the Association and NSF fee of \$35.00 per NSF check.



- (a) Common expenses and common profits, if any, and limited common expenses of the Condominiums shall be distributed among, and charged to, the Unit Owners according to the percentage interest of each in the general and limited common elements.
- (b) Except as otherwise limited in this Declaration, each Unit Owner shall have the right to use the common elements for all purposes incidental to the use, and occupancy, of the respective Unit, as a Residential Unit, and such other incidental uses permitted by this Declaration and the Association, which rights shall be appurtenant to and run with the Unit.

6. Declarant Assessments.

Until Declarant has sold or transferred 90% of the Units to third parties, Declarant shall pay only the actual current general or special assessments proportional to its' ownership interest and shall be exempted from paying any assessments designated for the reserve fund.

7. Unpaid Assessments.

All delinquent assessments for the common expenses and limited common expenses are chargeable to any Unit and shall constitute a lien on such Unit and the Owners of a Unit shall be personally liable, jointly and severally, for payment of the assessments on a Unit.

8. Unpaid Assessments Mortgagee.

Where the mortgagee of a first mortgage of record, or other purchaser of a Unit, obtains title to the Unit as a result of foreclosure of the first mortgage, which is prior in recording time to the recording of the Association lien for assessments, such acquirer of title and his, her or its successors and assigns, shall not be liable for the share of common expenses and assessments by the Association, chargeable to such Unit, which become due prior to the acquisition of title to such Unit by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the Units, including such acquirer and his, her or its successors and assigns. However, the Owner of the Unit when the assessment is made shall remain personally liable for the assessment.

9. Levying Assessments - When Made - Purposes.

The Association of Unit Owners shall levy assessments upon the Unit Owners in the following manner and for the following reasons:

- (a) At least annually, general assessments shall be made for the expenses of the Association and the common expenses of the Condominiums and common elements. Assessments may be made for special purposes at any regular, annual or special meeting of the Association thereof or approved by written ballot delivered to the Unit Owners and returned to the Association. The Declarant shall prepare



the initial Budget and the Board shall assess the Unit Owners in accordance therewith until a new budget is proposed by the Directors and adopted by the Unit Owners at the first annual meeting of the Association and at subsequent annual meetings or at a meeting called for this purpose. The method of the preparation and submission to the Unit Owners for adoption and approval of the budget shall be set forth in the Bylaws. The annual assessments for each Unit shall be fixed by a majority vote of the Board of Directors and shall be based upon the annual budget approved by the Unit Owners and upon the allocated interest of each Unit.

- (b) General assessments may be made for the repair, replacement, general maintenance of the common elements, snow removal, purchase of personal property and fixtures for the use of the Condominiums, maintenance, management and administration of the Condominiums, public liability, fire and other standard perils and casualties insurance on the building and common elements, Association Directors' and Officers' liability insurance, and other types of protective insurance deemed reasonable and desirable by the Board of Directors; janitorial fee; sewer and water expenses for each Unit, costs and expenses of a Manager, repairs, maintenance and taxes or assessments for common elements or Units owned by the Association, if any, and fees and costs of any services or provisions for utilities, water, sewer, power, propane, telephone, cable, television, special improvement districts, and for any other services provided to the Association and Condominiums, including professional fees, accounting fees and costs of collection of assessments and attorney's fees and costs of enforcement of this Declaration, the Bylaws or the rules and regulations, the legal fees and costs of defense of the Association, its agents, officers and Board of Directors in a law suit filed against the Association and for such other costs, expenses, reserves or damages incurred for the betterment, or protection, of the Condominium Association. Garbage removal is not a common expense and shall not be administered by the Association. Each Unit Owner shall contract for and pay for the garbage removal for Owner's Unit.

Assessments shall be based upon, computed and billed by using the allocated interest that each Unit Owner has in relation to interests in the common elements. Except in unusual circumstances, such as where the Association owns a Unit or common element, which is separately taxed, the Unit Owners will be separately assessed by the taxing authorities for real estate taxes and assessments including special improvement districts, sewer and water for their respective Units and percentage interest in the common elements and will be billed individually by the County or City. The individual Unit Owners, and not the Association, shall pay the taxes and assessments on each Owner's Unit.

- (c) General assessments may also be made for the payment of limited common element expenses, if any; provided that, except as herein set forth, the Unit Owners are chargeable only for the limited common element expenses relating to their respective Units. Unit Owners shall share in the payment for such limited



common expenses for the repair, maintenance and replacement of limited common elements of their respective Units in accordance with each Unit's proportionate share, use or ownership in the limited common element for which the assessment is being made. If only one Unit is involved for which the assessment is associated with the limited common elements, then the entire cost of such repair, maintenance or replacement shall be borne by that Unit. General principles of liability apply to damages caused by the negligence or intentional acts of a Unit Owner provided that, if damages caused by a Unit's Owners negligence is covered by the Unit Owners' insurance or the Association's insurance, claims for negligence are waived to the extent that insurance covers the damages, and to the extent the applicable insurance policies allows such waiver of subrogation.

- (d) General assessments may also be made for any purpose contemplated by this Declaration and for any purpose set out in the Montana Unit Ownership Act.
- (e) Special assessments for capital improvements, amenities, or other special projects elected or allowed to be accomplished by the Association by this Declaration may be made if approved by seventy-five percent (75%) of the aggregate percentage interests of the Unit Owners affected by such special assessments. A special assessment may also be approved with or without a meeting by 75% of the percentage interests of the Unit Owners voting in favor of the special assessment by written ballot either mailed or personally delivered to the Unit Owners and returned to the Association. Special assessments are defined as assessments which are for a special project expense and not part of the annual budget and general assessments. However, the repair, maintenance, and replacement, management and continuing costs of a special project may be included in the annual budget for limited common or general common expenses after a special project is approved by the Unit Owners. Written notice of any special assessments, the amount thereof, and the purpose for which it is made, shall be delivered to all Unit Owners affected by the special assessment by mailing or delivering a copy of the notice to the Unit Owners at their address of record at least thirty (30) days prior to the date of such meeting. The Association may elect to have certain services provided to the Unit Owners, such as garbage removal, utilities, and other specific services billed directly to the Unit Owners by the provider.
- (f) In a voluntary conveyance of a Unit, the grantee of the Unit shall be jointly and severally liable with the grantor for all unpaid assessments by the Association against the latter for his or her share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee therefor. However, any such grantor or grantee shall be entitled to a statement from the Manager or Board of Directors of the Association, as the case may be, setting forth the amount of any unpaid assessments made by the Association against the grantor in excess of the amount therein set forth.



- (g) An Association bank account shall be set up in a bank or other financial institution in which all assessments shall be deposited and withdrawn to pay Association expenses. The annual assessments should include an assessment for a reserve fund for contingencies and future expected or known expenses of the Association. The assessments may be billed to the Owners on a monthly, quarterly, annual or other convenient basis as determined by the Board of Directors.

VI.
AMENDMENT

An amendment of this Declaration may be made in the following manner:

- (a) At any regular, annual or special meeting of the Association of Unit Owners, an amendment may be proposed by the Declarant, a majority of the Board of Directors, or by at least 50% of the voting interest of the Unit Owners. The proposed amendment shall be made a subject for consideration at such meeting or by a vote by mail ballot or at the next succeeding special or annual meeting of the Unit Owners of the Association.

Before voting on any amendment, a copy of the proposed amendment shall be mailed or personally delivered to each Unit Owner at the Owner's last known address not less than ten (10) days nor more than fifty (50) days in advance of the meeting at which the amendment shall be voted upon or, in the event of a mail ballot, not less than fifteen (15) days nor more than fifty (50) days before the mail ballot is required to be returned in order to be counted. At such meeting or ballot, the proposed amendment will be deemed approved and adopted upon receiving the favorable vote of at least seventy-five percent (75%) of the total Unit Owners' votes. No amendment shall detrimentally affect the Declarant's rights without Declarant's written consent. Furthermore, Declarant, in addition to other similar provisions herein, reserves the right to amend this Declaration prior to the sale of a Unit.

- (b) The Association may, by resolution, provide that the amendment shall be deemed adopted by a combination of mail ballots and Owners present at a meeting or voting by proxy who vote in favor of the amendment by seventy-five percent (75%) or more of the total votes of the Unit Owners. In lieu of a meeting of the Unit Owners, the proposed amendment shall be deemed adopted if approved by a written ballot by the vote of at least seventy-five percent (75%) of the total votes of the Unit Owners. A written ballot for the amendment may be mailed to each Unit Owner, or delivered personally, and shall set forth the amendment, the time when the written ballot must be returned to be counted as a vote and allow the Unit Owner to vote for or against the amendment by checking or otherwise indicating his or her choice and return the ballot to the Association. Each Unit



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Owners' vote shall be based upon such Owners' allocated interest. If the amendment is approved and adopted, it shall be the responsibility of the Association, through its President or Chairman or its Secretary, to execute, have notarized and record the amendment with the Clerk and Recorder's Office of the county in which the Condominiums are located.

- (c) The amendment shall state that the amendment was adopted by the Association in accordance with this Section VI and shall state that, upon recording of such amendment, this Declaration shall be so amended. The Chairman and Secretary of the Board of Directors shall have the authority to certify that the amendment was properly adopted and shall have the authority to execute, have their signatures acknowledged and record the amendment.

Declarant and its successors and assigns shall have the right and duty from time to time, without the approval or vote of the Unit Owners or Association, to amend this Declaration for the purpose of amending the floor plans for the building, Units and common elements as the same are changed or modified in accordance with Declarant's rights herein contained, pursuant to the terms of this Declaration and for the purpose of recording the verified statement of a registered architect, professional engineer or professional land surveyor certifying the completed buildings and Units are built as shown on the original or amended floor plans and site plan in accordance with the provisions of this Declaration.

- (d) Notwithstanding anything herein to the contrary, either the Association, through a majority of its Board of Directors, or the Declarant has the power and authority to amend this Declaration, without a vote of the Unit Owners, to make corrections in spelling, correct typographical errors or to amend sentences which are inconsistent with the language of other sentences or the general concept contained herein or to otherwise make an amendment to clarify or restate sentences or paragraphs in this Declaration which are ambiguous or unclear or to amend the interior floor plans of a Unit owned by the Declarant or the Association.

The Association and Declarant shall not be required to give prior notice to, or to obtain the approval or vote of, the Unit Owners, lien holders, or Association for the amendments which the Declarant or the Association has the right to make under this Declaration without a vote of the Unit Owners as each Owner, by the acceptance of a deed or other conveyance of a Unit, consents and agrees to such rights and amendments. The Association or the Declarant shall execute and have notarized any such amendment setting forth the items amended and stating compliance with the terms of this Declaration which shall be recorded with the Clerk and Recorder of Gallatin County, Montana.

- (e) Within thirty (30) days after recording of any amendment to this Declaration, a recorded copy shall be placed on file with the Association. The Association shall then mail or deliver a copy to each Unit Owner. The Association shall keep a



record of such mailing or delivery.

VII.
CHANGES, REPAIRS AND LIENS

1. Alterations By Unit Owners.

The interior floor plan of a Unit may be modified by the Unit Owner unless such modification affects the structural, exterior or visual integrity of the building or a portion thereof, or affects the common elements or another Unit's systems, with the exception of the bearing beams and walls which may not be moved. No windows may be added or be obstructed where already existing. In addition to compliance with the provisions contained herein and compliance with applicable laws, ordinances and regulations, before modifying the interior of floor plan of a Unit, an amendment showing the modification of the floor plans shall be proposed by the Unit Owner and reviewed by the Board of Directors of the Association for compliance with this Declaration. If the amendment is approved by the Board of Directors, the amendment setting forth and containing an amended floor plan to the Unit(s) concerned showing layout of the Unit after the change and with the proper exhibits attached, including an architects certificate that the Unit has been modified in accordance with the floor plan, shall be executed and recorded by the Association. Such amendments must be in conformance with this Declaration and the Unit Ownership Act as amended. The Association agrees to approve and execute the amendment if the same complies with the terms of this Declaration. The Unit Owner shall pay the costs and a reasonable fee to the Association for the amendment.

2. Maintenance by Unit Owner and Signs.

An Owner shall maintain and keep in good repair the Unit and appurtenant limited common areas, if any. All fixtures, utility lines, lighting and equipment installed for use of the Unit or appurtenant limited common areas shall be maintained and kept in repair by the Owner thereof. An Owner shall neither commit an act nor initiate any work that will impair the structural soundness or functional integrity of the building, common elements, improvements and fixtures or impair any easement. The right of each Owner to repair, alter and remodel is coupled with the obligation to replace any finishing or other materials removed with similar types or kinds of material. No acts of alteration, repairing or remodeling by any Unit Owner shall impair in any way the structural or functional integrity of the Units adjoining or the structural integrity of limited common elements or general common elements.

Signs, decorations, advertisement on windows, doors and outside walls are prohibited, unless otherwise approved by the Board.

3. Exterior Alterations.

A Unit Owner may not change, alter or remodel the exterior of the Unit, the building or the common elements. Repair and maintenance of the exterior of the Unit, building, and general common elements shall be the right, responsibility and duty of the Association, provided the



provisions of this Declaration shall be complied with.

4. Liens For Alterations.

Labor performed and materials furnished and incorporated into a Unit or its appurtenant common elements with the consent of or at the request of the Unit Owner, his or her agent, contractor or subcontractor, may be the basis for the filing of a lien against only the Unit and the Unit Owner consenting to or requesting the same and no other Unit or Unit Owner. Each Unit Owner shall indemnify and hold harmless each of the other Owners from and against all liability arising from the claim of any lien against the Unit or against the general common elements or limited common elements for construction performed or for labor, materials, services or other products incorporated in the Owner's Unit at such Owner's request.

5. Claim for Assessments and Expenses - Priority of Lien - Contents - Recording - Foreclosure of Lien - Collection of Assessments.

Whenever the Association furnishes or causes to be furnished to a Unit Owner and/or a Unit any services, labor or material chargeable as common expenses, chargeable as individual expenses against a Unit Owner or Unit or chargeable as general or special assessments against a Unit Owner, or a Unit Owner is delinquent in payment of annual or special assessments billed to the Unit Owner, the Association shall have a lien upon the individual Unit, and the undivided interest in the common elements appertaining to such Unit for such expenses or assessments, and the lien shall be prior to all other liens or encumbrances upon the Unit except:

- (a) tax and assessment liens; and
- (b) a first mortgage or trust indenture of record.

The Association claiming the benefits of the lien may record in the county in which the Unit or some part thereof is located, a claim containing:

- (a) a statement of the account due for such common expenses and assessments or individual expenses after deducting all just credits and offsets and a general description of what the expenses or assessments were charged for;
- (b) the name of the Owner of the Unit or reputed Owner, if known;
- (c) a description of the property where the common expenses, if any, were furnished and the designation of the Unit, sufficient for identification; and
- (d) a statement that the Association claims or has a lien on the Unit for such expenses or assessments.

The claim shall be verified by the oath of an officer or Director having knowledge of the facts and shall be filed with and recorded with the recording officer in the county in which the

Condominium is located.



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The lien may be enforced by the Manager acting on behalf of the Association of Unit Owners or by the Board of Directors.

The proceedings to foreclose the liens created pursuant hereto and pursuant to the Unit Ownership Act may be conducted pursuant to the proceedings to foreclose construction liens created by Title 71, Chapter 3, Part 5, Montana Code Annotated, or pursuant to any other legal proceeding allowable under the laws of the State of Montana to foreclose real property liens.

An action to recover a money judgment for unpaid expenses and assessments may be maintained by the Manager or Board of Directors without foreclosing or waiving the lien securing the claim for expenses or assessments. It shall not be necessary to file a claim of lien to bring a suit against a Unit Owner to collect assessments, interest, penalties, or attorney's fees and costs.

6. Foreclosure on Unit Payment of Rent. Purchase of Unit by Manager or Board of Directors.

In any foreclosure suit for the lien against a Unit, upon entry of the decree or order of foreclosure, the Unit Owner shall be required to pay a reasonable rental for the Unit if the Unit Owner fails to give up possession unto the Association or purchaser, and the plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect the rent and an order for the removal of the Unit Owner and his or her personal possessions.

The Manager or Board of Directors acting on behalf of the Association shall have power to bid on the Unit at the foreclosure sale and to acquire and hold, lease, mortgage, sell and convey the same.

7. Purchaser at Foreclosure Sale Not Totally Liable for Prior Common Expenses.

Where the purchaser of a Unit obtains title to the Unit as a result of foreclosure of the first Mortgage, Trust Indenture or other lien, such purchaser, his or her successors and assigns shall not be liable for any of the expenses or assessments chargeable to such Unit which became due prior to the acquisition of title to such Unit by such purchaser. However, the Association shall have the right of a lien holder in any such foreclosure action to assert the priority of its lien or its right to excess proceeds. Such unpaid share of expenses or assessments shall be an expense of all the Unit Owners, including such purchaser, his successors and assigns and the personal obligation of the Unit Owner at the time of the assessment or expenses are chargeable against a Unit.

8. Joint Liability of Grantor and Grantee for Unpaid Common Expenses.

In a voluntary conveyance of a Unit, the grantee is jointly and severally liable with the grantor for all unpaid charges against the latter for his proportionate share of the common



expenses, charges and assessments up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore. However, upon request of a prospective purchaser or a closing agent, the Board of Directors or Manager shall make and deliver a statement of the unpaid charges and assessments against the prospective grantor and Unit.

9. Insurance.

a. Association Fire and Peril Insurance: The Association shall insure the building, Units, common elements and Associations' personal property against loss or damage by fire and such other usual perils and hazards in such amounts as shall be determined reasonable.

b. The Association shall also purchase and maintain standard liability insurance for personal injury and property damage in the sum of at least \$1,000,000 per occurrence, \$2,000,000 in the aggregate, insuring the Association, Declarant (as long as Declarant owns an interest in the Condominium) and the Association's Directors, Officers, manager, members, and agents, for negligent acts and omissions, in connection with the Condominium business and operations.

The Association shall not insure the personal property in a Unit nor maintain separate liability insurance for an individual Unit Owner's acts and omissions.

c. Unit Owner Insurance: The Unit Owner, assignee or Lessee shall insure its personal property and contents of their Units, for fire and usual perils and hazards, including mandatory flood and water damage insurance for replacement value of their own personal property including inventory, and liability insurance for personal injury and property damages in the minimum coverage amount of \$1,000,000 aggregate for damages to another Unit Owner's Unit and personal property caused by the negligence of a Unit Owner. Each Unit Owner, assignee or Lessee shall furnish the Association evidence of such insurance at least annually, which shall show the Association as an additional insured.

d. The Association is authorized to purchase and maintain such other insurance coverage for the building, Units and common elements and for the Association as the Board of Directors shall determine shall be reasonable, including but not limited to, public liability insurance, casualty insurance, theft insurance, earthquake insurance and Directors' and officers' liability insurance.

All insurance policies purchased by the Association shall be issued by an insurance company authorized to do business in the State of Montana. If the insurance is purchased by the Association, the following shall apply:

- (1) Named Insured on Building Improvements and Units - Personal Property:



The named insured for the Association insurance shall include the Association, members and its Directors and Officers. The Board of Directors or Manager shall be designated as the insurance trustee and the agent for the Unit Owners without naming them. Payments for losses thereunder by the insurer shall be paid to the insurance trustee herein designated and all policies and endorsements thereon shall be deposited with the insurance trustee.

Unit Owners may obtain insurance coverage at their own expense upon their own Units, limited common areas and personal property and for their personal liability.

(2) Insurance Trustee.

The Insurance Trustee is irrevocably appointed agent for the Association, each Unit Owner and for each Owner of a mortgagee or other lien holder upon a Unit and for each Owner of any other interest in the Condominiums' property to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

(3) Benefit To Mortgagees.

Certain provisions in this paragraph entitled "Insurance" are also for the benefit of mortgagees of Condominium Units and common elements, and all such provisions are covenants for the benefit of any mortgagee of a Unit and may be enforced by such mortgagee.

10. Reconstruction.

(a) Repair after Casualty.

If any part of a Unit, building, or the Condominiums' property shall be damaged by an Association insured casualty, whether or not it shall be reconstructed or repaired, shall be determined in the following manner:

(1) Lesser Damage.

If a Unit or Units, building or other improvements are found by the Board of Directors of the Association to be tenantable after the casualty, the damaged property shall be repaired by the Owner(s).

(2) Not Tenantable And Election Not To Rebuild.

If a Unit or Units, building or other improvements are found by the Board



of Directors not to be tenantable after the casualty, the damaged property may be reconstructed or rebuilt by the Owners; or if the Owners elect not to reconstruct or rebuild, then the property shall be subject to the applicable provisions of the Unit Ownership Act and this Declaration.

(3) Election Not To Rebuild.

In the event the Owner elects not to rebuild as herein provided and set forth in §70-23-803, Montana Code Annotated, the insurance proceeds shall be used to satisfy any outstanding liens or encumbrances on the property and the balance paid to the Owners in accordance with the Unit Ownership act.

(4) Certificate.

The insurance trustee may rely upon a certificate of the Association made by its Chairman, or three members of the Board of Directors to determine whether or not the damaged property is to be reconstructed.

(b) Plans and Specifications.

Any reconstruction or repair must be substantially in accordance with the floor plans and site plans for the original improvements, or if not, then according to plans approved in writing by not less than seventy-five percent (75%) of votes of the percentage interests of the Units voting on the matter, including one hundred percent (100%) of the votes of the Owners of all Units which are to be altered. Any such reconstruction not in accordance with the floor plans must be set forth in an amendment to the Declaration, which amendment shall be prepared and filed of record in accordance with the provisions of this Declaration.

(c) Responsibility.

The responsibility for maintenance and repair after casualty shall be the same as for maintenance and repair of the Condominiums' property and Units provided herein.

(d) Assessments.

If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction or repair of the common areas or elements for which the Association is responsible, or if at any time during such reconstruction or repair, the funds for the payment of the costs thereof are insufficient, assessment shall be made against all Unit Owners in sufficient amounts to provide funds for the payment of such costs. Such assessment shall be in proportion to the Owner's percentage of interest in the general common elements.



(e) Construction Funds.

The funds for payment of costs of reconstruction or repair after casualty, which shall consist of proceeds of insurance held by the insurance trustee and funds collected by the Association from assessments against Unit Owners, shall be disbursed in the sound discretion of the trustee and according to the contract of reconstruction or repair, which contract must have the approval of the Board of Directors.

(f) Surplus.

It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from the insurance proceeds. If there is a balance in a construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be paid to the Association for the use and benefit of the Unit Owners and/or to defray expenses of the Association.

VIII.
INTERPRETATION

The provisions of this Declaration and of the Bylaws to be promulgated and recorded herewith shall be liberally construed to effectuate the purposes of this Declaration and Bylaws and to create a building or buildings and Units and common areas subject to and under the provisions of the Montana Unit Ownership Act. In the event of any conflict between the Declaration and the Bylaws, the Declaration shall prevail.

IX.
REMEDIES

All remedies provided for in this Declaration and Bylaws shall not be exclusive of any other remedies which may not be, or are hereafter, available to the parties hereto as provided for by law.

X.
SEVERABILITY

The provisions hereof shall be deemed independent and severable and the invalidity or partial invalidity or unenforceability of any other provisions shall not affect the validity or enforceability of any other provision hereof.

XI.
MISCELLANEOUS



1. Utility and Structural Easements.

Easements are reserved unto the Declarant and the Association through the Condominiums' property and common elements as may be required for access roads, and utility easements and other common services, including water, sewer, power, telephone, natural gas and such other easements as shall be necessary to serve the Condominiums and Units adequately.

Every portion of a Unit which contributes to the structural support of the building shall be burdened with an easement of structural support for the benefit of the common elements.

2. Right of Access.

The Association shall have the irrevocable right, to be exercised by the Manager or Board of Directors, to have access to each Unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the general or limited common elements therein or accessible therefrom or for making emergency repairs therein necessary for the maintenance, repair or replacement of any of the limited common elements therein necessary to prevent damage to the general or limited common elements or to any Unit. Damage to the interior or any part of the Unit resulting from maintenance, repair, emergency repair or replacement of any of the general or limited common elements or as a result of any emergency repair within another Unit at the instance of the Association shall be designated either limited or general common expenses by the Association and assessed in accordance with such designation.

3. Expenditures.

No single expenditure or debt in excess of FIVE THOUSAND AND NO/100 DOLLARS (\$5,000.00) for general common expenses, except for annual premiums for required insurance, and other pre-approved general or special assessment items, may be made or incurred by the Association or its manager for any project or service without the prior approval of a majority of the Board of Directors of the Association.

4. Benefit.

Except as otherwise provided herein, this Declaration shall be binding upon and shall inure to the benefit of the Declarant, the Association and each Unit Owner, and the heirs, personal representatives, successors and assigns of each.

5. Warranties.

The Declarant expressly makes no warranties or representations concerning the property, Units, Declaration, Bylaws or deeds of conveyance except as specifically set forth therein; and no one may rely upon such warranty or representation not so specifically expressed therein. The Declarant makes no warranty or representation as to sight protection, the view shed, or the type of development of adjacent or nearby properties. In addition, the Delcarant makes no warranty



or representation as to square footages of each Unit, such square footages are an approximation and the Unit Owners indemnify and hold harmless the Declarant, its successors, and assigns from any damages resulting to said Unit Owners for failure to ascertain Unit square footages.

6. Notification Of First Mortgagee.

A first mortgagee, upon written request to the Association, will be entitled to written notification from the Owners' Association of any default in the performance by an individual Unit Owner of any obligation under the Condominium documents which is not cured within thirty (30) days.

7. First Mortgagees' Right.

First mortgagees of record shall have the right to examine the books and records of the Association upon written request and at a reasonable time and place.

8. Unit Ownership Act.

The Unit Ownership Act Condominium, Chapter 23, Title 70, of Montana Code Annotated, and any amendments thereto are incorporated herein and by this reference made a part hereof as though fully set forth. Any inconsistent provisions of this Declaration shall supersede the provisions of the Act when permitted by the Act or law. However, in the event of any irreconcilable conflict between said Act and any provisions contained herein, the Act shall control.

9. Fees and Costs in Action to Enforce.

In the event of any action to enforce the obligations and covenants contained herein, the prevailing party shall be entitled to its, his or her costs, including reasonable attorney's fees.

10. Notices.

All writings required or permitted to be given or delivered under this Declaration shall be deemed to have been given or delivered when deposited in the U.S. Mail to the following addresses or personally delivered to an Officer of the Association or Declarant, or directly to a Unit Owner:

Declarant: Libster Building, LLC
11 W. Main Street, Suite 223
Belgrade, MT 59714

Association: Water Way Condominiums Unit Owners' Association, Inc.
11 W. Main Street, Suite 223
Belgrade, MT 59714



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Unit Owner: Address provided in the records of the Association

The Association or Declarant may change its address for the purpose of this provision by providing written notice of said change to the Unit Owners within a reasonable period of time prior to the effective date of the change.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be made and executed according to the provisions of the Unit Ownership Act of the State of Montana §70-23-101, et seq., Montana Code Annotated.

Declarant:

LIBSTER BUILDING, LLC,
a Montana Limited Liability Company

BY: *Michael Libster*
Michael Libster, Managing Member

STATE OF MONTANA)
 :SS
County of Gallatin)

This instrument was acknowledged before me on the 17th day of OCTOBER, 2007 by Michael Libster as Managing Member of Libster Building, LLC.



Rebecca H. Pape
NOTARY PUBLIC for the State of Montana
Printed Name: REBECCA H. PAPE
Residing at: BOZEMAN, MONTANA
My Commission expires: NOVEMBER 13, 2007



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EXHIBIT A

FLOOR LOCATION AND UNIT NUMBERS	APPROXIMATE NET SQ. FT. OF UNIT WITHOUT APPURTENANT COMMON AREAS	PERCENTAGE OF INTEREST IN ALL COMMON AREAS IN ENTIRE BUILDING	APPROXIMATE SQ. FT OF APPURTENANT COMMON AREAS	APPROXIMATE SQ. FT. OF UNIT WITH APPURTENANT COMMON AREAS
--	---	--	---	--

Lower

101	<u>1049</u> sq.ft.	<u>24.858</u> %	<u>146.66</u> sq.ft.	<u>1195.66</u> sq.ft.
102	<u>1025</u> sq.ft.	<u>24.289</u> %	<u>143.30</u> sq.ft.	<u>1168.30</u> sq.ft.

Upper

201	<u>1073</u> sq.ft.	<u>25.427</u> %	<u>150.02</u> sq.ft.	<u>1223.02</u> sq.ft.
202	<u>1073</u> sq.ft.	<u>25.427</u> %	<u>150.02</u> sq.ft.	<u>1223.02</u> sq.ft.

APPROXIMATE TOTAL NET SQ. FT. OF BUILDING 4220 sq. ft.

APPROXIMATE TOTAL SQ. FT. COMMON AREAS 590 sq.ft.

APPROXIMATE TOTAL GROSS SQ. FT. OF BUILDING 4810 sq.ft.

TOTAL PERCENTAGE OF ALLOCATED INTEREST OF ALL UNITS IN ALL COMMON AREAS 100%

ALL SQUARE FOOTAGES ARE AN APPROXIMATION AND THE UNIT OWNERS INDEMNIFY AND HOLD HARMLESS THE DECLARANT, ITS SUCCESSORS, AND ASSIGNS FROM ANY DAMAGES RESULTING TO SAID UNIT OWNERS FOR FAILURE TO ASCERTAIN UNIT SQUARE FOOTAGES OR FOR RELIANCE ON THIS EXHIBITS.



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EXHIBIT B

ASSESSOR'S CERTIFICATE

The undersigned, being a duly authorized agent of the Department of Revenue of the State of Montana within the County of Gallatin, herewith executes the following certificate relating to the WATER WAY CONDOMINIUMS situated on the property described as follows:

Lot 1 in Block 1 in Hemlock Addition to the City of Manhattan, Gallatin County, Montana, according to the official plat on file and of record in the office of the County Clerk and Recorder, Gallatin County, Montana. (Plat: H-39).

- 1) That the name WATER WAY CONDOMINIUMS is not the same as, similar to or pronounced the same as a word in the name of any other property or subdivision within Gallatin County, except for the word "Condominium", and
- 2) All taxes and assessments due and payable for the said WATER WAY CONDOMINIUMS have been paid to date.

Dated: 10/17/07

By: *Isabel Oberon*

Title: PV S



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EXHIBIT C

ARCHITECT'S CERTIFICATE

The undersigned, being a duly registered professional architect in the State of Montana herewith certifies the following:

That the floor plans for the WATER WAY CONDOMINIUMS, Exhibit D attached hereto, situated according to the official plat thereof on file and of record in the office of the County Clerk and Recorder of Gallatin County, Montana, as duly filed with the Declaration and Bylaws thereof, fully and accurately depict the layout, location, Unit designation and dimensions of the WATER WAY CONDOMINIUMS and that such floor plans are an accurate copy of the plans filed and approved by the officials and officers of the State of Montana having jurisdiction to issue building permits.

Dated: 10/16/07


Registered Professional Architect

Name: Thomas N. Milleon, AIA

Number: 1866



BYLAWS
OF AND FOR
WATER WAY CONDOMINIUMS
UNIT OWNERS' ASSOCIATION

1. Purpose and Application:

These sections and paragraphs are and shall be the Bylaws of and for the Water Way Condominiums Unit Owners' Association (hereinafter referred to as the "Association"). These Bylaws and the Declaration for Water Way Condominiums (hereinafter referred to as "Declaration") shall, upon being recorded with the Clerk and Recorder of Gallatin County, Montana, govern and control the administration of the Water Way Condominiums. These Bylaws supplement the Declaration, which Declaration is made a part hereof by reference. All unit owners, their guests and any renters or sublessees, present and future, shall have the rights and responsibilities described in these Bylaws and shall be subject to the provisions thereof. These Bylaws shall be deemed to be covenants imposed upon the land and units and the use thereof

The acquisition of an ownership interest in a unit in the Water Way Condominiums (hereinafter referred to as "Condominiums" or "Condominium") signifies that the owner accepts, ratifies and agrees to comply with these Bylaws.

The Association is authorized to incorporate as a nonprofit mutual benefit corporation under the laws of the State of Montana.

2. Membership:

Persons or entities owning a unit in the Condominiums, including owning a unit in any real estate tenancy relationship recognized by the State of Montana, and on file and of record in the Clerk and Recorder's Office of Gallatin County, Montana shall be a member of the Association. Membership begins concurrently with the acquisition of an ownership interest and terminates at the time such ownership interest is transferred to another party. Such transfer shall not relieve any owner of liability for obligations incurred while a member of the Association; and further membership in the Association does not in any way negate or impair any owner's legal remedies, right to bring legal action, or defenses to any and all actions involving the Association, other unit owners, or the management which may arise from or be incidents of unit ownership.

3. Obligations:

Each unit owner shall be obligated to comply with these Bylaws, the Declaration, and the laws, ordinances and regulations of the County of Gallatin, and State of Montana. Such obligations shall include, but not be limited to, the paying of assessments to the Association. Failure of any owner to abide by these Bylaws, and all rules made pursuant thereto, the



Declaration, and the laws, ordinances and regulations of the County of Gallatin, and State of Montana, shall be grounds for appropriate legal action by the Association or by an aggrieved unit owner against such noncomplying unit owner.

4. Meeting and Voting:

A. Annual Meetings:

There shall be an annual meeting of the Association during each year at such date, time, and place as shall be set forth in the notice of the meeting, commencing in 2008, or on such other date, time, or place set by the Board of Directors by notice as herein provided in Paragraph D. The first meeting of the Association shall take place not more than one year following the date of recording these Bylaws, if not sooner held. Any first mortgagee on a unit shall have the right to have a representative attend any annual meeting. Upon written request delivered to the Association, a first mortgagee of a unit shall be given notice of the annual meetings as provided in Paragraph D.

B. Special Meeting:

Pursuant to these Bylaws, the Association may at any time hold special meetings, notice of which shall be sent to all unit owners. Any first lien holder or mortgagee shall have the right to have a representative attend any special meeting. Upon written request delivered to the Association, a first mortgagee of a unit shall be given notice of special meetings in accordance with Paragraph D. Such special meetings may be called on the initiative of the Chairman of the Board of Directors or by fifty percent (50%) or more of the Board of Directors of the Association or by a petition signed by fifty percent (75%) of the aggregate percentage interest of the unit owners.

C. Matters to be Raised at Special Meeting:

Only matters set forth in the notice for a special meeting may be voted upon at such special meeting.

D. Notices:

Notice of all meetings, annual or special, shall be mailed by the Association to every unit owner of record at his or her last known address at least ten (10) days but not more than fifty (50) days prior to the time for holding such meeting. Such notices shall specify the date, time, place and purpose of the meeting. The purpose of a meeting may be stated in general terms. A unit owner may authorize another person or the Board of Directors to vote his or her percentage interest by signing and delivering a written proxy to the Secretary of the Association or to a member of the Board of Directors. The date of mailing of a notice in the manner provided in this Paragraph or the date of personal



delivery of such notice by the Association shall be considered as notice delivered. Each owner is responsible for keeping the Association advised of his or her current address and telephone number.

E. Quorum:

No meeting, annual or special, shall be convened to conduct business unless a quorum is present, in person or by proxy. A quorum shall consist of at least seventy-five percent (75%) of the total aggregate voting interest of the unit owners present in person or by proxy or voting by mail ballot. At any time, during any meeting that a quorum is not present, such meeting shall be adjourned forthwith or continued to another date, time and place. If a matter is submitted to a vote by written ballot the ballots returned to the Association shall be counted towards the quorum for the matter voted upon.

F. Voting by Written Ballot:

Any matter that may be voted upon by the unit owners may be submitted to the unit owners by written ballot. A vote by written ballot must be authorized by a majority of the Board of Directors.

A written ballot must:

- a) set forth each proposed action; and
- b) provide an opportunity to vote for or against each proposed action.

Approval by written ballot pursuant to this section is valid when:

- a) the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action; and
- b) the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.
- c) the number of votes equal or exceed the number of votes which are required to approve a matter without a meeting.

All solicitations for votes by written ballot must:

- a) indicate the number of responses needed to meet the quorum requirements;
- b) state the percentage of approvals necessary to approve each matter other than election of directors; and
- c) specify the time by which a ballot must be received by the Association in order to be counted.

A written ballot may not be revoked.

5. Voting Interest:



On all matters to be decided by the members or the Association, each Unit Owner shall have one (1) vote per unit owned regardless of allocated interest in the general common elements or square footage of Unit owned. Multiple owners of a single Condominium unit will collectively have only one (1) vote. If more than one Condominium unit is owned by the same owner or owners, the owner or owners thereof would have one vote for each separate unit. Voting of such interest shall be in the manner provided by the Board of Directors and these Bylaws. Voting may be in person or by proxy. In the event of a tie vote, so long as the Declarant retains ownership of a Unit, the Declarant shall break the tie vote and resolve the matter. However, should there be a tie vote and the Declarant no longer retains ownership of a Unit, the Unit Owners shall submit such vote to mediation, the cost of which shall be a common expense.

Voting upon matters affecting limited common elements, if any, and assessments for limited expenses shall only be by owners having a unit or interest in a unit located in the unit affected.

Whenever a quorum is present at a meeting of the Association or the Board of Directors, a majority of those present may do any and all acts they are empowered to do unless specific provisions of these Bylaws, the Declaration or the laws of the State of Montana direct otherwise.

6. Board of Directors:

The business and affairs of the Condominiums shall be governed by a Board of Directors elected from among the unit owners. The initial Board of Directors shall consist of the Declarant, Libster Building, LLC. The initial number of the Board of Directors shall be one (1), and shall increase to three (3) Directors at the first annual meeting. The Declarant shall remain a Board of Director and appoint one member of the Board of Directors until such time as he has sold 75% of the units. The unit owners shall nominate and elect the Directors, unless otherwise appointed by the Declarant. Such Board shall have all of the powers and responsibilities attendant to the general administration and control of the Condominiums. Additionally, the Board shall have the authority necessary to carry into effect the powers and duties specified by these Bylaws and the Declaration. The manner of election of the Board of Directors shall be as follows:

(1) Nominations for vacancies on the Board will be accepted from any of the unit owners present at the meeting of the Association. A Board member, other than an initial Board Member appointed by the Declarant must be a unit owner, a person who has an ownership interest in a unit or who is an officer, partner, member or authorized agent in an entity owning an interest in a unit. Voting will be non-cumulative with each Association member having one (1) vote per unit owned by said member regardless of allocated interest in the general common elements or square footage of Unit owned. Multiple owners of a single Condominium unit will collectively have only one (1) vote. If more than one Condominium unit is owned by the same owner or owners, the owner or owners thereof would have one vote for each separate unit. The persons nominated for the vacant Director positions shall be voted upon by the unit owners present at the meeting in person, by proxy, or by written ballot each casting their vote for one nominee for each vacant



position. The nominees receiving the most votes shall be the elected Directors. Elected Board Directors shall serve for three years or for such term or staggered terms as shall be set by a majority of the voting interests of the unit owners, or until their successors are elected. The terms of the Directors may be staggered so that approximately one third of the Directors' terms shall terminate each year after the first annual meeting. The Directors shall be elected by those present, in person or by proxy or by written ballot. The initial Board shall consist of one or more persons appointed by the Declarant, which Board shall serve until the first meeting of the Association, at which time a new Board of three members shall be elected.

7. Officers of the Board of Directors:

The Board shall elect from its membership a Chairman, Secretary, and Treasurer. The Secretary and Treasurer position may be combined. The Chairman must be a Director. The Secretary and Treasurer need not be Directors. The Board may also elect such other officers as it deems advisable including a vice-chairman and assistant secretary.

8. Powers and Duties of the Board of Directors:

The Board of Directors shall have the following powers and duties:

- A. To call annual and special meetings of the Association and give due notice thereof
- B. To conduct elections of the Board of Directors.
- C. To enforce the provisions of the Declaration and Bylaws by appropriate action.
- D. To promulgate and adopt rules and regulations for the conduct, behavior and use of the common elements and common areas and for the occupancy of the units so as to prevent interference with the peace and quiet of all the residents and to promote fairness, cooperation and harmony among the owners and residents. Such rules must be ratified by a majority of the unit owners present in person or by proxy, at regular or special meetings of the Association, or approved by a majority of the unit owners allocated percentages voting by written ballot.
- E. To provide for the management of the Condominiums or hiring or contracting with suitable and capable management and personnel for the day-to-day operation, maintenance, upkeep and repair of the general common and limited common elements. The Board of Directors may be designated as sole management.
- F. To levy assessments as allowed by the Declaration, these Bylaws and the State of Montana, and to provide for the collection, expenditure and accounting of said assessments.



- G. To pay for the expenses of the maintenance, repair and upkeep of the general common elements and the limited common elements and to approve payment vouchers, either at regular or special meetings.
- H. To delegate authority to the manager for the conduct of the Condominiums' business and to carry out the duties and powers of the Board. However, such authority shall be precisely defined with ultimate authority at all times residing in the Board of Directors.
- I. To provide a means of hearing grievances of unit owners and responding appropriately thereto.
- J. To meet at regularly scheduled times and hold such meetings open to all unit owners or their agents and to formulate and introduce resolutions at the meetings of the Association.
- K. To prepare an annual budget for the Condominiums in order to determine the amount of the assessments payable by the unit owners, to meet the general common and limited common expenses and allocate and assess such charges among the unit owners according to their respective interests in the general common and limited elements, and to submit such budget to the unit owners on or before the date of the annual meeting.
- L. To levy and collect special assessments whenever, in the opinion of the Board, it is necessary to do so in order to meet increased operating or maintenance expenses, costs or additional capital expenses, or because of emergencies.
- M. To take appropriate legal action to collect any delinquent assessments, payments or amounts due from unit owners or from any person or persons owing money to the Condominiums, and to levy a penalty and to charge interest on unpaid amounts due and owing.
- N. To defend in the name of the Association any and all lawsuits wherein the Association or all the unit owners are party defendants.
- O. To enter into contracts with third parties to carry out the duties herein set forth, for and on behalf of the Board and the Association, including the authority to hire, or authorize the manager to hire, accountants to keep the books and records.
- P. To establish accounts for operating and/or capital improvement funds, and any necessary reserve funds, as set out in the Declaration for the Condominiums and to keep therein all of the funds of the Association. Withdrawal of monies from such accounts shall only be by checks signed by such persons as are authorized by



the Board of Directors.

- Q. In general, to act for and carry on the administration and affairs of the Association as authorized and prescribed by the Declaration and to do all those things which are necessary and reasonable in order to carry out the governance and operation of the Condominiums.
- R. The Board may delegate and establish parking areas or spaces for the exclusive use of the unit owners and their guests and residents.
- S. To make repairs, alterations and improvements to the general common and limited common elements consistent with properly managing the Condominiums and in the best interest of the unit owners, and all mortgagees.
- T. To arrange, keep, maintain and renew the insurance for the Association as set forth in the Declaration, and to arrange, keep, maintain and renew Errors and Omissions Insurance for the Directors or officers, and to provide for the use and disposition of the insurance proceeds in the event of loss or damage.
- U. To carry out the duties and responsibilities of the Board in all other matters as may be authorized, needed or required by the Declaration.
- V. To exercise ultimate decisional power in and on all matters affecting the Association.
- X. To maintain the list of members.
- Y. To keep records in a good and businesslike manner of all assessments levied, all expenditures made, and the status of each member's payment of assessments, and to make such records accessible at reasonable times to all members.
- Z. To promote, conserve, and preserve the Condominiums.
- AA. To do any and all things necessary to carry into effect these Bylaws, to implement the purpose as stated in the Articles of Incorporation, and to do any and all things necessary to require compliance with and enforce the Declaration which, by Article 1, is incorporated by reference herein and made a part of these Bylaws.
- BB. To deal with agencies, officers, boards, commissions, departments, and bureaus or other governmental bodies in a federal, state, county and local basis to carry out the above powers, duties, and responsibilities.
- CC. To select a chairman of the Board of Directors.



9. Vacancies and Removal:

Should a vacancy occur on the Board of Directors, the Board, subject to the exception described below, shall appoint a member of the Association to serve for the unexpired term. Such vacancy shall be filled no later than the next Board meeting after which it occurs. Should such vacancy not be filled by the Board, at the next regular meeting of the Association, the Association shall fill such vacancy.

At any annual or special meeting of the Association, or by written ballot or by a combination thereof, any member of the Board may be removed prior to the end of his other term by 75% of the total aggregate voting interest in the Condominiums voting in person, by proxy, or by written ballot or a combination thereof. Such vacancy shall be filled by the unit owners. If the vacancy is not filled by the unit owners the Board shall appoint a member to fill the vacancy. Such removal matter must be announced in the notice of an annual or special meeting or in the written ballot.

10. Compensation:

No member of the Board of Directors shall receive any compensation for acting as such. Nothing herein, however, shall be construed to preclude compensation to a Director being paid as a manager, or as an employee, contractor, or professional who is hired or contracted by the Board of Directors. A member of the Board of Directors may be a manager. A member of the Board of Directors may be reimbursed his or her actual expenses if the expense is authorized by a majority of the Board of Directors.

11. Manager:

The Declarant has engaged Prestige Property Management to manage the Condominiums. The Board shall determine the terms, conditions and compensation of the manager. If required by the Board, the manager shall be bonded. The Board shall have the manager maintain records of the financial affairs of the Condominiums. Such records shall detail all assessments made by the Association and the status of payments of said assessments by all unit owners. All records shall be available for examination during normal business hours by any unit owner or his or her designated representative or his or her mortgagee. All functions and duties herein provided for the manager may be performed by the Board or the Chairman, or other Director, if the Board should decide not to have a separate manager. Nothing, however, precludes the Board from hiring a Director as the manager of the Condominiums.

A. Accounts:

The receipts and expenditures of the Association shall be under the control and direction of the Board of Directors and shall be classified as appropriate into general common expenses and limited common expenses and may include a



provision for:

(1) **Current Expenses:**

Shall include all receipts and expenditures to be made within the year for which the budget is made, including a reasonable allowance for contingencies and working funds, except expenditures chargeable to reserve or to betterments. Any balance in this fund at the end of the year shall be applied to reduce the assessments for current expenses for the succeeding year,

(2) **Reserve for Maintenance Repair or Replacement:**

Shall include funds for maintenance repair or replacement of common elements required because of damage, depreciation or obsolescence,

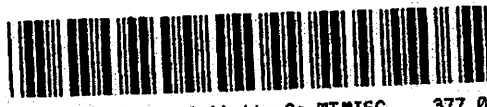
(3) **Capital Expenditures:**

Which shall include the funds to be used for capital expenditures for additional improvements or additional personal property which shall be a part of the common elements.

B. Budget:

Each calendar year the Board shall cause to be prepared and submitted to the unit owners a budget, which must be approved and adopted by a majority of the Board. The budget shall include the past calendar year receipts and expenditures, the expected receipts and expenditures for the coming year, including estimated funds required to defray the general common and limited common expenses, reserves and betterments, and to provide and maintain funds for the operation of the Association and enforcement of the Declaration and Bylaws, according to good accounting practices.

A copy of the proposed budget shall be transmitted to each member with the notice of the meeting of the Association at which the annual budget shall be considered and voted upon. The budget shall be reviewed by the membership and adopted by a majority of the votes of the members present or represented by proxy or voting by written ballot. The budget may be amended by a majority of the votes present at the meeting or represented by proxy or by written ballot. A copy of the final adopted budget shall be furnished to each member. A budget shall be adopted by the unit owners at the annual meeting or at such other meeting as may be called for this purpose.



C. Financial Report:

A financial report of the receipts and disbursements and balance of accounts of the Association shall be made annually by the Board of Directors and a copy of the report shall be furnished to each member before or at the annual meeting.

D. Board as Manager:

If the Board chooses not to appoint a manager, all of the above functions may be performed by one or all of the Directors to whom the job is delegated by a majority of the Board of Directors. If the Board, or a member thereof, is appointed manager, the Board may pay the Director(s) a reasonable salary for his or her services.

E. Manager's Authority:

A manager may generally operate and manage the Condominiums for and on behalf of the unit owners and shall have such powers and authority as the Board may delegate.

12. Amendment of Bylaws:

Except as otherwise provided herein or in the Declaration, these Bylaws may be amended at any regular or special meeting of the Association provided that a copy of the proposed amendment is included in the notice of such meeting. Upon a vote of seventy-five percent (75%) of the aggregate voting interest in the Condominiums, voting on the matter, the amendment shall be declared adopted. The Bylaws may also be amended by a seventy-five percent (75%) favorable vote of the aggregate voting interest of the unit owners voting thereon by written ballot mailed or personally delivered to the unit owners and returned to the Association. The Secretary shall, as soon as practicable after adoption of an amendment, prepare a copy of the amendment to the Bylaws for certification by the Chairman and Secretary of the Association. Such amendment shall then be certified by the Chairman or Vice Chairman of the Board or by Secretary as duly adopted in accordance with the Bylaws and be recorded in the office of the Clerk and Recorder of the county in which the Condominium is located. Bylaws as amended shall become effective at the time of such recording after recording.

Within thirty (30) days after recording of an amendment a copy shall be furnished to each unit owner.

13. Assessments:



Each unit owner shall be assessed for general common expenses and for limited common expenses in accordance with each unit owner's percentage of interest in the general common elements and limited common element as set forth in the Declaration which shall be set, levied, collected and paid according to the terms and under the procedures more particularly set forth in the Declaration. The amount of assessments described above and any other assessments allowed by these Bylaws, the Declaration and by the State of Montana shall be fixed by the Board of Directors provided, however, the total amount of assessments shall not exceed the total budget approved by the members, except as set forth in the Declaration or these Bylaws. A late fee as provided in the Declaration may be assessed by the Directors against any unit owner who fails to pay the assessments within seven (7) business days after the date due.

Notice of each unit owner's assessments shall be mailed to said owner at his, her or its address of record.

14. Notice of Default to Mortgagee:

A first mortgage, upon written request delivered to the Association, will be entitled to written notification from the Association of any default in the performance by the individual unit borrower of any assessment or obligation under the Condominiums' Bylaws or Declaration which is not cured within thirty (30) days.

15. Notices - Damages:

The Association shall notify, in writing, the first mortgagee of a unit of any casualty loss to a unit if such loss or taking exceeds the sum of \$10,000.00. .

16. Due Process by Association:

In the event action is taken by the Association against any unit owner to enforce an assessment, any part of the Bylaws or Declaration, or any rule or regulation properly adopted by the Association, said unit owner shall be afforded the protection of due process which includes, but is not limited to, the following:

- A. Written notice of the default, describing in adequate detail the substance of the default and providing, at least, fourteen (14) days to cure the default.
- B. If the unit owner contests the allegations of default, such unit owner shall have the following options:
 - (1) An opportunity to defend himself, herself or itself against any allegations of default before the Board of Directors.



- (2) An opportunity to present witnesses and cross-examine opposing witnesses.
 - (3) An opportunity to receive a formal hearing before an impartial hearing officer or arbitrator.
 - (4) To findings of fact by the hearing officer or arbitrator in accordance with the evidence presented.
- C. To a penalty proportionate to the offense, such as suspension of voting rights, suspension of the right to be elected as a Director or officer or to continue as a Director or officer, or a reasonable fine or late fee imposed by the Board of Directors, or in the event of an action for unpaid assessments, the costs of collection, interest and reasonable attorney's fees.

17. The Declaration:

The Declarant has filed along with these Bylaws a Declaration whereby the property described in the Declaration and known as "Water Way Condominiums" are submitted under the Unit Ownership Act, Montana Code Annotated, Title 70, Chapter 23. Montana law, the Declaration and any amendments thereto and these Bylaws shall govern the acts, powers, duties and responsibilities of the Association; and in the event these Bylaws and the said Declaration are in conflict, the Declaration shall prevail.

The definitions of terms set forth in the Declaration shall be applicable throughout these Bylaws and the interpretation thereof

By virtue of these Bylaws and the Declaration, each unit owner is a member in the Association and may be elected to the Board of Directors of the Condominiums.

IN WITNESS WHEREOF, the undersigned as the Declarant and owner of record of all of the condominium units, condominiums and property and one hundred percent (100%) of the voting interests of the said condominium as of the date hereof, hereby appoints the following person to serve on the Board of Directors and to serve as the officers named until other Directors are appointed by a majority of the voting percentage interest or until the first annual meeting of the Association, to-wit:

<u>Name</u>	<u>Office</u>	<u>Address</u>
Michael Libster	Director/Chairman	11 W. Main Street, Ste. 223 Belgrade, MT 59714



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Kara Olsen

Non-Director

11 W. Main Street, Ste. 223

Secretary/Treasurer

Belgrade, MT 59714

The undersigned, Owner of all the units and the Association, hereby declare and affirm the adoption of the foregoing Bylaws on this 17 day of October 2007.

Declarant: LIBSTER BUILDING, LLC

BY: [Signature]
Michael Libster, Managing Member
of Libster Building, LLC

STATE OF MONTANA)
 :SS
County of Gallatin)

On this 17 day of October, 2007, before me, the undersigned, a notary public for the State of Montana, personally appeared Michael Libster known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he is the Declarant and the managing member of Libster Building, LLC and executed the same on behalf of the Company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notary seal the day and year first above written.



[Signature]
Notary Public for the State of Montana
Printed Name: REBECCA H. PATE
Residing at 3076 MAIN, GALLATIAN
My commission expires: NOVEMBER 13, 2007



2281976

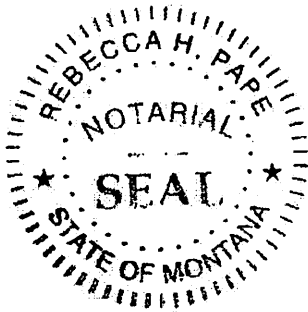
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Charlotte Mills-Gallatin Co MTMISC 377.00

The undersigned Chairman of the Water Way Condominiums Unit Owners' Association, after first being sworn certify that the foregoing are an accurate and correct copy of the Bylaws adopted by the unit owners of Water Way Condominiums.

BY: *Michael Libster*
Michael Libster, Chairman

SUBSCRIBED AND SWORN to before me this 17th day of October, 2007.



Rebecca H. Pape
Notary Public for the State of Montana
Printed Name: REBECCA H. PAPE
Residing at: 2070 MOUNTAIN VIEW DR
My commission expires: NOVEMBER 15, 2007

PLATED

FIRST AMENDMENT TO DECLARATION FOR
WATERWAY CONDOMINIUM

COMES NOW, **Libster Building, LLC**, of 11 West Main, Belgrade, Montana, 59714, (Declarant), and amends the Declaration for Waterway Condominium which is described as follows:

Lot 1 in Block 1 of Hemlock Addition to the City of Manhattan, Gallatin County, Montana, according to the official plat on file and of record in the office of the County Clerk and Recorder, Gallatin County, Montana. (Plat H-39).

and which Declaration is dated October 17, 2007 and was recorded on October 18, 2007, as Document No. 2281976, and amends the Declaration for Waterway Condominium, as follows:

Exhibit "C-1" Registered Architect's Certificate is amended (but not replaced) by adding and attaching a Certificate of Registered Architect or Registered Professional Engineer regarding Floor Plans as Exhibits C-1 and D-1.

IN WITNESS WHEREOF, the Declarant has caused this Amendment to Declaration to be and executed according to the provisions of the Montana Unit Ownership Act, MCA 70-23-101, et seq., Montana Code Annotated).

DATED this 23RD day of June, 2010

Declarant

LIBSTER BUILDING, LLC
A Montana Limited Liability Company

BY: [Signature]
Michael Libster, Managing Member

State of Montana }
County of Gallatin }

This instrument was acknowledged before me on the 23 day of June, 2010, by Michael Libster, Managing Member of Libster Building LLC, a Montana Limited Liability Company.

NOTARY SEAL
PEGGY A. RUSSELL
NOTARIAL SEAL
STATE OF MONTANA
Peggy A. Russell
Notary Public
for the State of Montana
Residing at:
Bozeman, Montana
My Commission Expires:
March 16, 2014

[Signature]
Notary Public for the State of _____
Residing at: _____
Commission expires: _____

EXHIBIT C-1

ARCHITECT'S CERTIFICATE

The undersigned, being a duly registered professional architect in the State of Montana herewith certifies the following:

That the floor plans for the WATER WAY CONDOMINIUMS, Exhibit D-1 attached hereto, situated according to the official plat thereof on file and of record in the office of the County Clerk and Recorder of Gallatin County, Montana, as duly filed with the Declaration and Bylaws thereof, fully and accurately depict the layout, location, Unit designation and dimensions of the WATER WAY CONDOMINIUMS as built.

Dated: 5/21/10

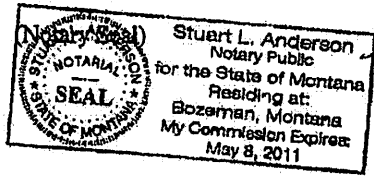
Thomas N. Milleson
Registered Professional Architect

Name: Thomas N. Milleson

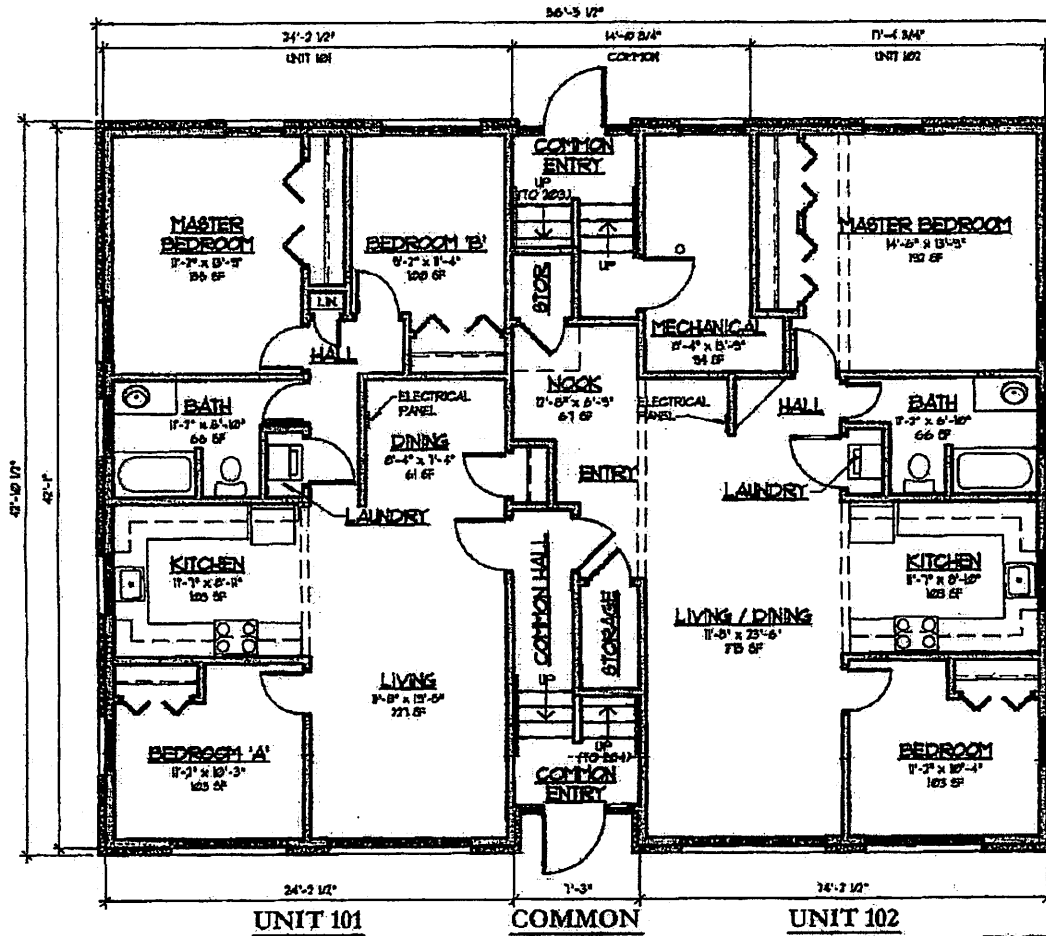
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STATE OF Montana
COUNTY OF Gallatin :SS

On this 21 day of May, 20 10, before me, a Notary Public in and for said state, personally appeared Thomas N. Milleson known to me to be the person(s) whose Name(s) is (are) subscribed to the within instrument, and acknowledged to me that he (she or they) executed the same.



[Signature]
Notary Public for the State of _____
Residing at _____
Commission expires: _____
Printed Name: _____



**WATER WAY CONDOMINIMUMS
LOWER LEVEL FLOOR PLAN**

SCALE: 1/8" = 1'-0"

UNIT 101 - 1,025 SF
UNIT 102 - 1,042 SF
COMMON - 331 SF
TOTAL - 2,405 SF



Milleson Architects, P.C.
115 W. Kegg Blvd. Suite G • Deerfield, IL 60015-4601
312.936.0166 • 312.936.0160 fax
www.millesonarchitects.com

16 OCTOBER 2007

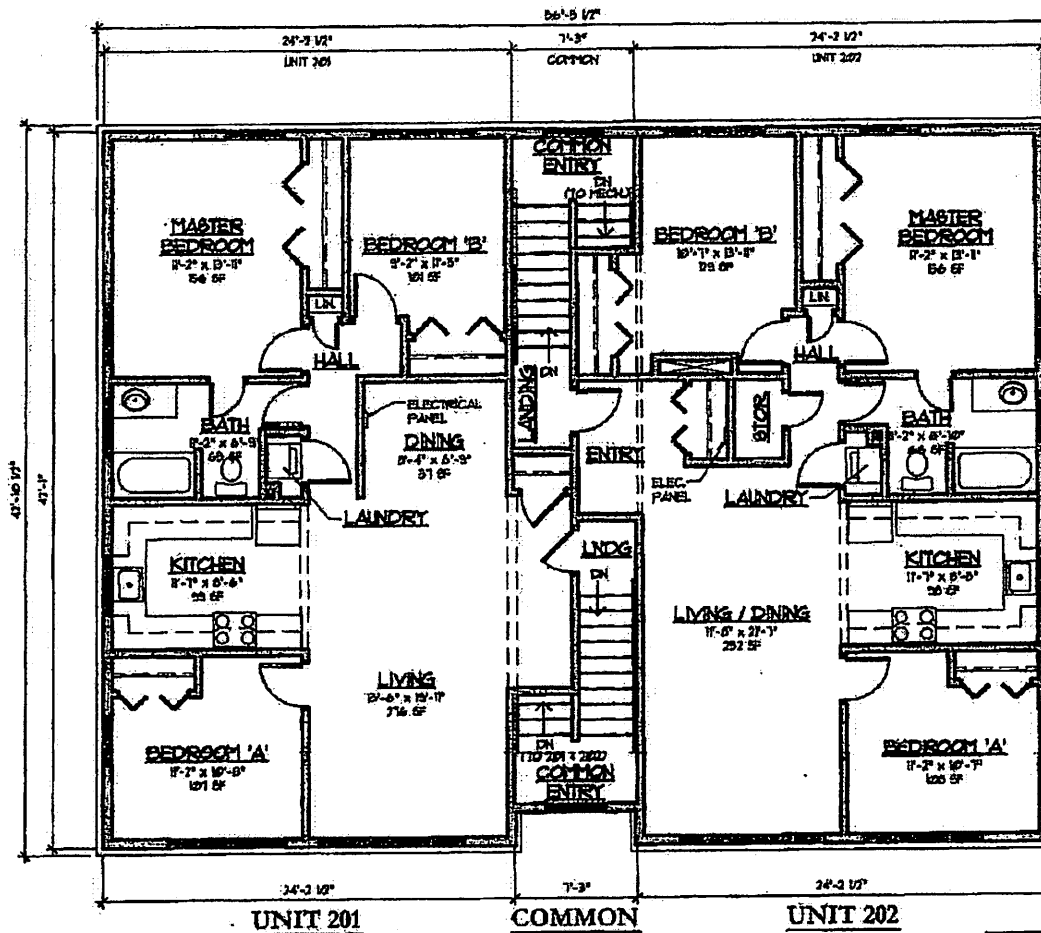


EXHIBIT D-1

**WATER WAY CONDOMINIUMS
UPPER LEVEL FLOOR PLAN**

SCALE: 1/8" = 1'-0"

UNIT 201 - 1,073 SF
 UNIT 202 - 1,073 SF
 COMMON - 259 SF
 TOTAL - 2,405 SF



**MILLESON
ARCHITECTS**

Milleson Architects, P.C.
 115 W. Kaye Blvd., Suite G - Rossmore MT 30713-6201
 406-536-0168 • 406-536-0165 (fax)
 www.millesonarchitects.com

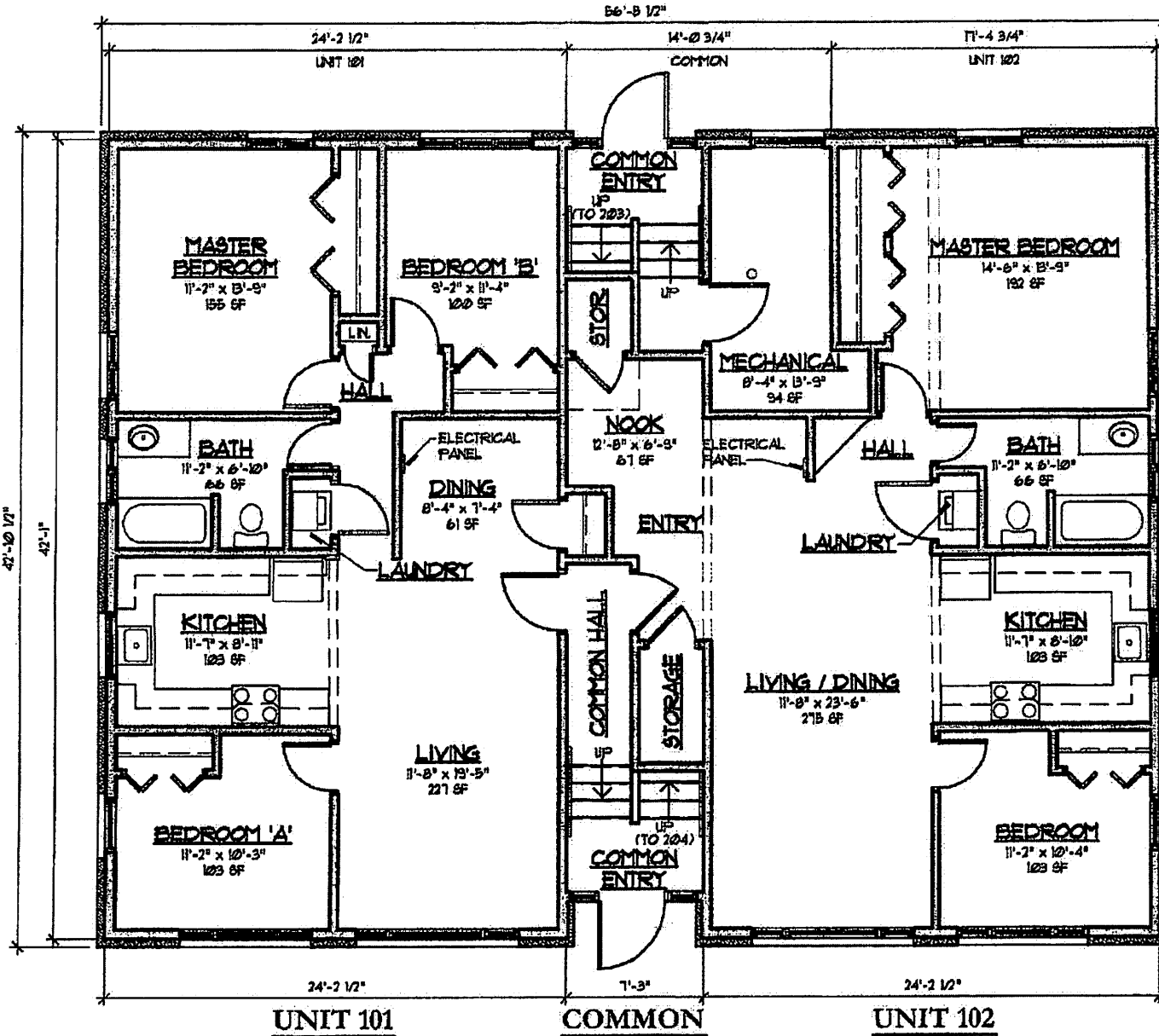
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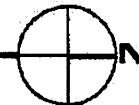
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**WATER WAY CONDOMINIUMS
LOWER LEVEL FLOOR PLAN**

SCALE: 1/8" = 1'-0"

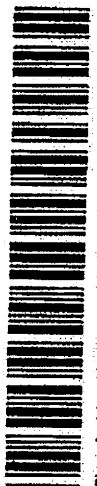
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TOTAL - 2,405 SF



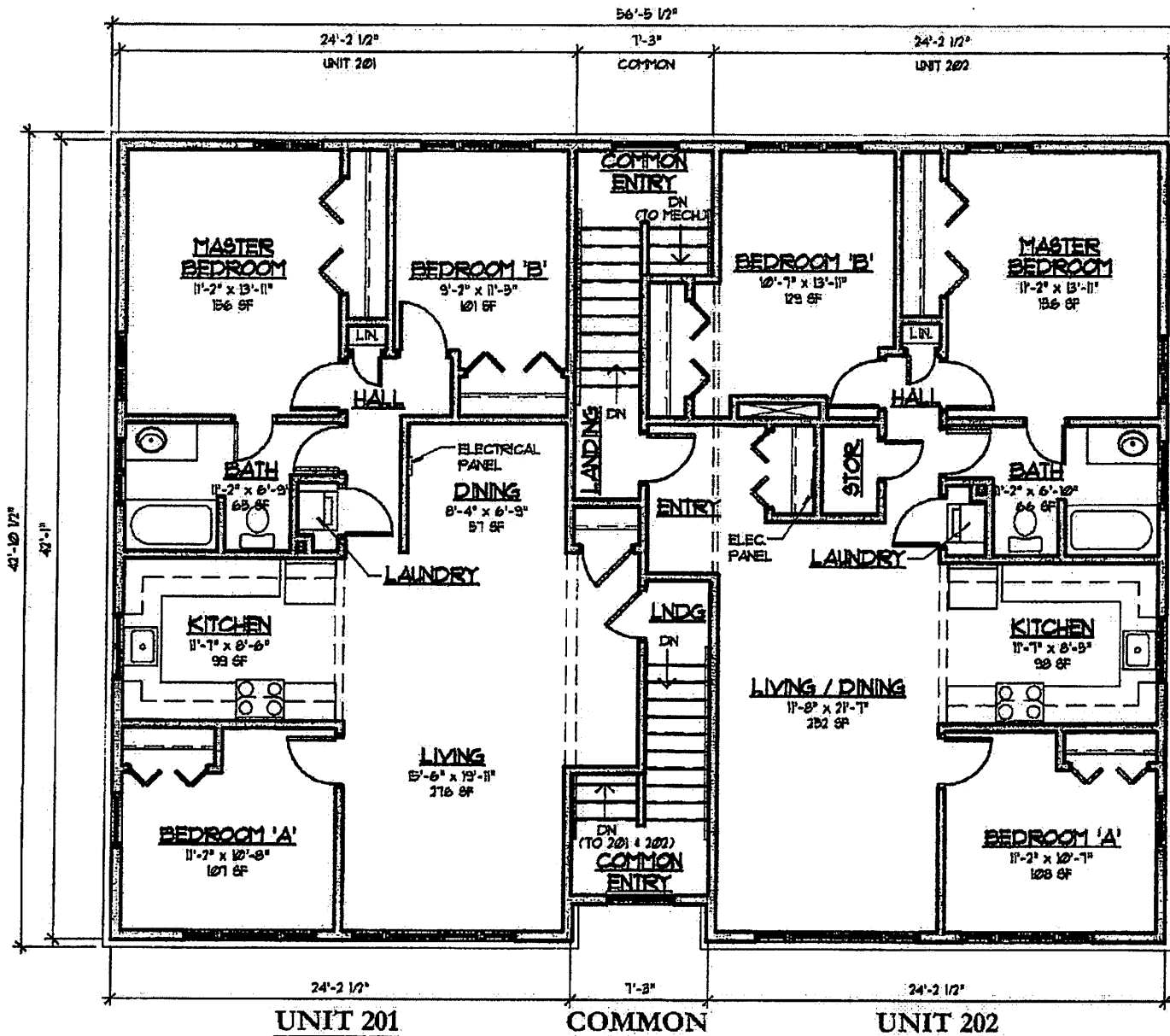
Milleson Architects, P.C.
115 W. Kagy Blvd, Suite G • Bozeman MT 59715-6031
406-556-0166 • 406-556-0165 (fax)
www.millesonarchitects.com

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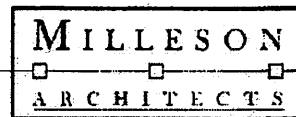
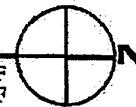
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UNIT 201 - 1,073 SF
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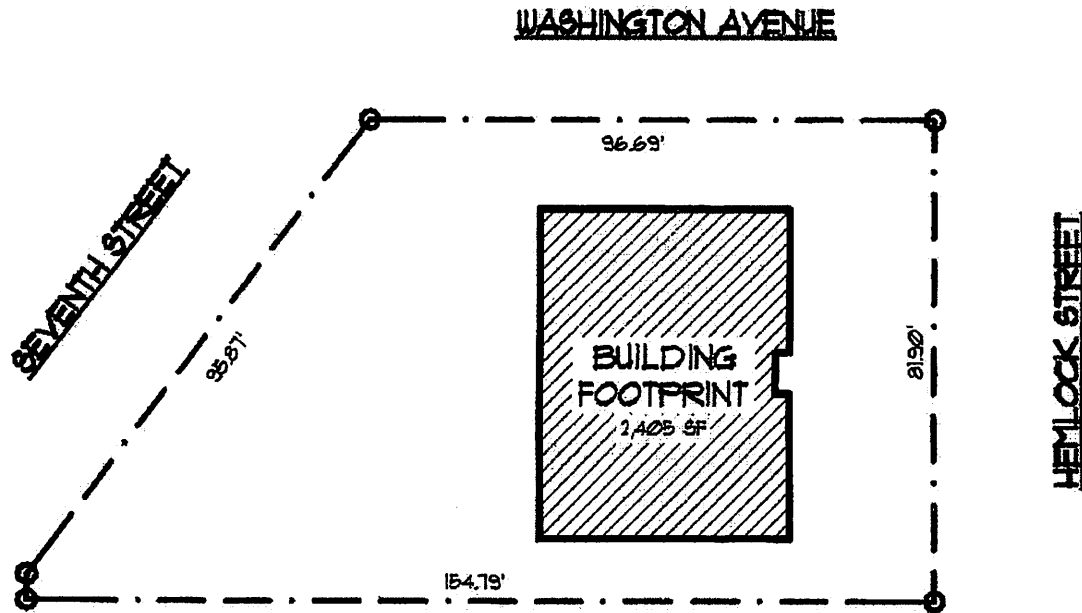
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216 HEMLOCK STREET
LOT 1, BLOCK 1, HEMLOCK ADDITION
MANHATTAN, GALLATIN COUNTY, MONTANA

WATER WAY CONDOMINIUMS SITE PLAN

SCALE: 1" = 30'-0"



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