

Return to:
NHB, LLC
PO Box 11530
Bozeman, MT 59719

**DECLARATION
FOR
ROSEDALE CONDOMINIUM**

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CERTIFICATE OF NAME

The undersigned, being the duly authorized agent of the Department of Revenue of the State of Montana within the County of Gallatin, executes the following certificate relating to Rosedale Condominium situated on lands legally described as follows:

Lot 3, Block 3, of Falcon Hollow Subdivision, First Filing, being Tract A & B, Certificate of Survey No. 2031, situated in the NE¼ of Section 17, Township 2 South, Range 5 East, P.M.M. Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the County Clerk and Recorder of Gallatin County, Montana. [Plat Reference: J-473]

1. That the name "Rosedale Condominium" 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 above-described property have been paid.

DATED: August 31, 2009.

 PRS

County Assessor

DECLARATION
FOR
ROSEDALE CONDOMINIUM

THIS DECLARATION is made August 31, 2009, by NHB, LLC, a Montana limited liability company, PO Box 11530, Bozeman, Montana 59719 ("Declarant").

RECITALS

- A. Declarant is the owner of a certain tract of land ("Land") in Gallatin County, Montana, described as follows:
- Lot 3, Block 3, of Falcon Hollow Subdivision, First Filing, being Tract A & B, Certificate of Survey No. 2031, situated in the NE¼ of Section 17, Township 2 South, Range 5 East, P.M.M. Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the County Clerk and Recorder of Gallatin County, Montana. [Plat Reference: J-473]
- B. Declarant desires to develop the Land and the two-story building ("Building") and other improvements located thereon (collectively the "Property") as a residential condominium consisting of units as separate interests under Title 70, Chapter 23 of the Montana Code Annotated, also known as the "Unit Ownership Act."
- C. Declarant further desires to make provision for expansion of the residential condominium to include additional unities on adjacent tracts of land.
- D. The Property subject to this Declaration shall be known as ROSEDALE CONDOMINIUM ("Condominium"). The address of the Condominium is 83 Talon Way, Bozeman, Montana 59718.

NOW, THEREFORE, Declarant hereby submits the Property to the provisions of the Unit Ownership Act and declares that the Property shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold, and improved subject to the following declarations, limitations, covenants, conditions, restrictions, and easements (collectively "Covenants"), all of which are imposed as equitable servitudes pursuant to a general plan for the development of the Property and the division of the Property into Condominium Units. The Covenants shall run with the Land and shall be binding upon and inure to the benefit of all persons having any right, title or interest in the Property (or any part thereof) and their heirs, successors, and assigns.

SECTION 1. DEFINITIONS

Unless the context expressly provides otherwise, the following definitions shall pertain throughout this Declaration and in the interpretation thereof:

- "Allocated Interest" shall have the meaning ascribed to it in Section 5.2.
- "Assessment" means an assessment described and authorized in Section 7 of this Declaration.
- "Association" means the Rosedale Condominium Owners Association, an association of all of the Unit Owners acting as a group and in accordance with this Declaration and duly adopted Bylaws.

- "Board of Directors" or "Board" means the board of directors of the Association as more particularly defined in the Bylaws.
- "Building" means the multiple-unit building more particularly described in Section 3.1 that comprises part of the Condominium Property.
- "Bylaws" mean the bylaws promulgated by the Association under this Declaration and the Unit Ownership Act.
- "Common Elements" mean both General Common Elements and Limited Common Elements. The terms "General Common Elements" and "Limited Common Elements" shall have the meanings ascribed to them in Section 3.5.
- "Declarant" means NHB, LLC, a Montana limited liability company, and its successors and assigns.
- "Declaration" means this document and all parts and exhibits attached thereto or incorporated by reference.
- "Document" or "Documents" means this Declaration, the Bylaws, the Association's articles of incorporation, and any rules and regulations of the Association, all as the same may be amended from time to time in the manner provided therein and by law. Any exhibit, schedule or certification accompanying or referred to in a Document is incorporated into and a part of that Document.
- "Eligible Mortgagee" means the bona-fide holder, insurer or guarantor of a first position or first priority Mortgage in a Unit which has notified the Association, in writing, of such Eligible Mortgagee's name and address, and that such Eligible Mortgagee holds a first position or first priority Mortgage in a Unit, with the identifying number or street address of such Unit. Such notice shall be deemed to include a request that such Eligible Mortgagee be given the notices, and conferred the other rights, as described in Sections 13 and 14 and other provisions of the Declaration.
- "General Assessments" means Assessments levied against all Units to fund General Expenses and the Reserve Fund.
- "General Expenses" mean the (i) expenses of administration, maintenance, repair or replacement of General Common Elements; (ii) expenses agreed upon as common by the Association; and (iii) expenses declared common by the Unit Ownership Act.
- "Law" means all laws, ordinances, requirements, orders, proclamations, directives, codes, rules, and regulations of any governmental authority that affect the Property, a Unit, this Declaration, or any Person's rights and remedies under this Declaration in any way. The term shall include Law in force at the date of this Declaration or passed, enacted or imposed at some later time, subject in all cases, however, to any applicable waiver, variance or exemption. "Governmental authority" as used in this paragraph shall include any agency, authority, bureau, department, quasi-governmental body or other entity or instrumentality having or claiming jurisdiction over the Property.
- "Legal Interest Rate" means the interest rate set in Section 31-1-104 of the Montana Code Annotated (or any successor statute). The Legal Interest Rate as of the date of this Declaration is 10% per annum.
- "Limited Expenses" mean the expenses attributable to the administration, maintenance, repair, and replacement of Limited Common Elements, and are expenses only of the Unit Owner(s) having or sharing an interest in such Limited Common Elements for which the expenses are accrued.

- "Manager" means the Board of Directors, manager, management agent or any other person or group of persons retained or appointed by the Association for the purpose of conducting the day-to-day operations of the Condominium.
- "Member" means a Person entitled to membership in the Association, as provided herein.
- "Member Votes" means the votes assigned to each Unit by this Declaration, as amended from time to time. *See* Sections 5.2 and 6.5.
- "Mortgage" means a mortgage, a deed of trust, trust indenture or other, similar form of consensual security interest or consensual lien intended as security for an obligation.
- "Mortgagee" means a beneficiary or holder of a Mortgage.
- "Person" means a natural person, corporation, limited liability company, partnership, association, trust, other entity or any combination thereof.
- "Planned Additions" shall have the meaning ascribed to it in Paragraph 2.1(b).
- "Planned Units" shall have the meaning ascribed to it in Paragraph 2.2(b).
- "Property" shall mean the Land, the Building, and other improvements thereon, and all easements, rights, and appurtenances belonging thereto, which are by this Declaration submitted to the provisions of the Unit Ownership Act.
- "Public Records" means the records on file and of record in the office of the Clerk and Recorder, Gallatin County, Montana.
- "Reserve Fund" means the separate bank or other account of the Association, established to provide reasonably adequate reserve funds for contingencies, including the amount of any deductible under any hazard insurance policy maintained by the Association, and for future repairs and replacements of improvements to the Common Elements, into which shall be deposited the portion of assessments of General Expenses allocated for reserves, as more fully set forth in Section 7 of this Declaration
- "Tenant" means the owner of a leasehold interest in any Unit or any part thereof.
- "Transfer of Control" means the date when control of the Association is required to be transferred by Declarant to the Owners, namely the date on which Declarant no longer has the right (or has voluntarily relinquished the right) to appoint and remove the members of the Board of Directors pursuant to Section 12.2.
- "Unit" or "Condominium Unit" means each separate condominium unit as described in Section 2.2, and is a parcel of real property including and containing one or more rooms occupying one or more floors or a part or parts thereof, intended for any type of independent use, and with a direct exit to a public street or highway or to a common area or areas leading to a public street or highway.
- "Unit Designation" means the combination of letters, numbers or words that identifies the designated Units.
- "Unit Owner" or "Owner" means the Person or Persons owning a fee simple absolute, or one who is 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 Condominium. If a Unit is sold under a contract of sale with a

recorded notice of purchaser's interest, and the contract specifically so provides, then the purchaser (rather than the holder of the legal interest) shall be deemed the Unit Owner.

- "Working Capital Fund" means the separate bank or other account of the Association, established to meet unforeseen expenditures or to purchase any additional equipment or services, into which the initial working capital deposits are made, as more fully set forth in Section 7 of this Declaration.

SECTION 2 REAL ESTATE; PLAN OF DEVELOPMENT

2.1 Real Property; Additions .

- (a) *Initial Land.* The Land that by this Declaration is submitted and subject to the Unit Ownership Act is described in Recital A ("Lot 3").
- (b) *Planned Additions.* As further described in this Section 2 and Section 13.3, Declarant intends to amend this Declaration prior to completion of the Rosedale Condominium project to submit and subject additional real estate to the Unit Ownership Act. The following lots (collectively the "Planned Additions") may be added to the Condominium Property in the order listed: (i) Lot 4, Block 3, of Falcon Hollow Subdivision, First Filing ("Lot 4") and (ii) Lot 5, Block 3, of Falcon Hollow Subdivision, First Filing ("Lot 5").

2.2 Condominium Units.

- (a) *Initial Units.* The Building is divided into 3 separate, two-story Condominium Units, and there are three Units in total. The Unit designations are as follows: 83A, 83B, and 83C. A garage is attached to and part of each Condominium Unit, and the designation and location of each Unit's garage is shown on Exhibits A and B. Each Unit, together with an appurtenant undivided interest in the Common Elements of the Condominium, shall together comprise one Condominium Unit, shall be inseparable, and may be conveyed, leased, rented, devised or encumbered as a Condominium Unit.
- (b) *Planned Units.* The Declarant plans to construct a building on Lot 4. The building on Lot 4 is planned to contain up to 2 additional units designated by sequential numbering starting with Unit D. Following construction of the building on Lot 4, the Declarant plans to construct another building on Lot 5. The building on Lot 5 is planned to contain up to 4 additional units designated by sequential numbering starting with Unit F. The buildings on Lots 4 and 5 shall be similar in materials, style, and quality to the Building on Lot 3, and the units shall be of comparable size. Upon amendment of this Declaration to include Lot 4 and Lot 5, or either of them, the units in the building(s) on the Planned Additions ("Planned Units") shall become part of the Condominium.

2.3 Development Plan Provisions. To facilitate construction of the Planned Units and their inclusion in the Condominium, Declarant makes the following provisions:

- (a) *Comprehensive Development.* The Rosedale Condominium project Lots 3, 4, and 5, Block 3, of Falcon Hollow Subdivision, First Filing, as planned, is a comprehensive development, and each of the Planned Units shall be treated, from and after the date of the applicable amendment adding such unit to the Condominium, as though it had been developed, held, occupied and used as part of a single, undivided project. Owners of Planned Units on the Planned Additions shall have the same rights under the amended Declaration as owners of units on Lot 3, including but not limited to rights in the common elements and voting rights in the Association.

- (b) *Amendment of Declaration.* Prior to conveyance or occupancy of any of the Planned Units, Declarant shall record one or more amendments to this Declaration in the office of the Gallatin County Clerk and Recorder. Declarant reserves the right to amend this Declaration as set forth in Section 13.3.
- (c) *Reallocation of Ownership Interests, Common Expense Liabilities, and Voting Rights.* The amended declaration that is recorded to include the Planned Units in the Condominium shall provide for the reallocation of each Unit Owner's: (i) ownership interests, including but not limited to each Owner's Allocated Interest in Common Elements; (ii) liabilities for General Expenses, Limited Expenses, and Assessments; and voting rights. Reallocation shall be based on the relative value of each Unit in the Condominium, as expanded, in the manner provided in Section 5.2 ("Allocated Interest in Common Elements").
- (d) *Planned Addition Expenses.* Neither the unit owners nor the Association shall have any obligation to pay as common expenses any expense related to the Planned Additions until an appropriate amendment to this Declaration has been filed.
- (e) *Reserved Easements.* Declarant reserves an easement over and upon the common elements and Property for the purpose of access to and facilitating the construction of the Planned Units and common area improvements. Declarant may grant or reserve such utility and other easements as may be reasonably necessary to the ongoing development of the Planned Units, without the necessity of obtaining approval of any unit owner. Declarant also reserves the right to use water and power provided to the Property for construction activities, provided, however, that Declarant shall reimburse the Association for its reasonable costs in providing such water and power.
- (f) *No Obligation to Construct Planned Units.* Notwithstanding any other provision of this Agreement, nothing contained in this Declaration shall be construed to bind or obligate Declarant to undertake or complete construction of any or all of the Planned Units on the Planned Additions. The decisions to submit Lot 4 and Lot 5, or either of them, to the Unit Ownership Act and to construct Planned Units shall rest in the Declarant's sole discretion.
- (g) *Expiration of Declarant's Expansion Rights.* The Declarant's right to expand the Condominium by adding the Planned Units shall expire five (5) years from the date of first recording of this Declaration in the Public Records.

SECTION 3 REAL ESTATE; CONDOMINIUM PROPERTY

- 3.1 **Description of Building.** The Property includes one residential building ("Building") having two stories above a crawlspace and an attic. Three Condominium Units are located in the Building. Each of the Condominium Units includes an attached garage. Reference is made to the site and floor plans attached hereto as Exhibits A and B for further details regarding the Building.
- 3.2 **Construction Materials.** The principal materials of construction of the Building are concrete for the foundations, footings, and slabs; wood for the framing, structural, and finish work; oriented strand board (OSB) sheathing and Tyvek® for the exterior walls; sheetrock, composite board, and plywood for the interior walls; carpet, hardwood, and tile for the floors; prefinished hardboard siding on exterior wall surfaces; metal soffits and fascia; wood exterior door in front; sliding glass door in rear; steel garage door; and asphalt shingles for each Building's roof.
- 3.3 **Unit Boundaries.** Each Unit shall include the part of the Building that lies within the boundaries of the Unit. The boundaries shall be determined in the following manner:

- (a) *Upper and Lower Boundaries.* The upper and lower boundaries of the Unit shall be the following boundaries extended to an intersection with the perimetrical boundaries:
 - (i) Upper Boundary—the plane of the lowest surfaces of the roof trusses for all Units;
 - (ii) Lower Boundary—the plane of the highest surface of the first floor joists, except that the lower boundary of that portion of the Unit consisting of a garage shall be the surface of the concrete slab.
- (b) *Perimetrical Boundaries.* The perimetrical (vertical) boundaries of the Unit shall be the following boundaries extended to an intersection with the upper and lower boundaries:
 - (i) Exterior Building Walls. The plane defined by the interior side of the framed, unfinished, and undecorated exterior building walls shall be a perimetrical boundary of that Unit.
 - (ii) Interior Perimeter Walls. The plane defined by the interior side of the framed, unfinished, and undecorated interior walls bounding a Unit, extended to an intersection with other perimetrical boundaries, shall be a perimetrical boundary of that Unit.
- (c) *Included within Unit.* Each Unit shall include, without limitation, the following:
 - (i) All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, ceiling tiles, and any other materials constituting any part of the finished or decorated surfaces of, and other finishing materials applied to, the unfinished and undecorated perimeter walls of such Unit;
 - (ii) All portions of interior, non-perimeter walls, and all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, and finished and decorated surfaces thereof or thereon, within the boundaries of the Unit defined above, except for structural, component parts of interior, structural walls;
 - (iii) All vent covers, grills, and similar objects affixed to interior and perimeter walls, floors, and ceilings of such Unit; and
 - (iv) All control knobs, switches, thermostats, plugs, outlets, and similar items that exclusively serve such Unit whether affixed to or projecting from the interior or perimeter walls, floors, and ceilings.
- (d) *Apertures.* Where there are openings in any boundary, including without limitation windows, doors, and skylights, the boundaries of the Unit shall extend to the most exterior extrusion of the coverings of such openings, and the frameworks thereof. Therefore, windows, doors, screens, and all framings, casings, and hardware therefor are included within the Unit.

3.4 **Site and Floor Plans.** The following exhibits are attached to this Declaration and by this reference are incorporated into and made a part of this Declaration:

- (a) Exhibit A (Site Plan) showing the site plan of the Property, the location of the Building on the Property, and the location of the Condominium Units within the Building.

- (b) Exhibit B (First Floor Plan and Second Floor Plan) showing the floor plan of the Building and the designation, dimensions, and area for each of the Condominium Units located therein; and
- (c) Exhibit C (Engineer's Certificate).

3.5 **Common Elements.** The Common Elements of the Condominium consist of the Property, including the Land and all parts of the Building, and other improvements thereon other than the Units. The Common Elements within the Building include those spaces, areas, and all facilities therein for the common use of the Units and the Unit Owners or which are necessary or convenient for the existence, maintenance or safety of the Building. The Limited Common Elements of the Condominium ("Limited Common Elements") shall consist of those Common Elements which serve or benefit exclusively fewer than all of the Unit Owners of the Condominium and their guests and invitees, to the exclusion of other Unit Owners and their guests and invitees. A Common Element that is not a Limited Common Element is a "General Common Element." Without limiting the generality of the foregoing, items included in the General Common Elements and Limited Common Elements are described below.

(a) *General Common Elements.* The General Common Elements include, without limitation:

- The Land;
- Grounds surrounding the Building;
- Paths, sidewalks, and walkways;
- Common access drives;
- Landscaping, lawns, trees, plants, and other landscaping materials;
- Any irrigation system placed on the Land for landscape maintenance;
- Electrical, gas, telephone, cable, water, and sewer lines and connections serving all of the Units; and
- Other elements necessary for the safety, maintenance, and existence of the Condominium.

(b) *Limited Common Elements.* The Limited Common Elements include, without limitation:

- Any portions of the Buildings designated on the floor plans as common to less than all of the Units.
- Flues, chimneys, ducts, cables, conduits, public utility lines, water, sewer, electrical, gas, cable television lines, and hot and cold water pipes, in each case where they service only a particular Unit or less than all Units;
- Stoops, porches, decks, balconies, and patios servicing only a particular Unit or less than all of the Units;
- Privacy fences;
- Yard space in the rear of each unit, of a size established by Declarant and to be enclosed with a privacy fence, shall be a Limited Common Element of such Unit;
- Furnaces, air conditioning units, hot water tanks, and other equipment servicing only a particular Unit or less than all of the Units; and
- The Building's crawlspace below and attic space above each Unit shall be Limited Common Elements of such Unit.

3.6 **Outside Parking Spaces.** Two outside parking spaces shall be designated for each Condominium Unit and shall be an appurtenance to that Unit. One parking space for each Unit shall be in the driveway in front of each Unit's garage as designated in the Condominium's site plan (Exhibit A). The other parking space shall be located in the northeast corner of Lot 3, as designed in the site plan. There are no other outside parking spaces within the Property.

SECTION 4 CREATION OF PROPERTY RIGHTS; EASEMENTS

- 4.1 **Easement for Ingress and Egress.** Each Owner is hereby granted a perpetual, nonexclusive easement and right of way, in common with each other Owner, appurtenant to each Unit, for ingress and egress to and from the Owner’s Unit, through, over, and along the portion of the Property not occupied by the Building or Limited Common Elements, which easement and right of way shall be deemed to run with the title to the Owner’s Unit, subject to such reasonable rules, regulations, and restrictions as may be imposed by the Association.
- 4.2 **Reciprocal Easements for Support.** Every portion of a Unit that contributes to the structural support of the Building shall be burdened with a nonexclusive easement of structural support. Such easement of support shall be for the benefit of all other Units and the Common Elements within the Building. Each Unit shall have a nonexclusive easement of structural support in those portions of the Common Elements and other Units that contribute to the structural support of the Building.
- 4.3 **Common Elements – Ingress, Egress, and Use.** Each Unit shall have appurtenant to it nonexclusive easements for ingress and egress through, and for use of, the General Common Elements. Each Unit Owner, and such Unit Owner's Tenants, licensees, guests, and invitees, shall have the right to use the General Common Elements in accordance with the purposes for which they are intended without hindering the exercise of or encroaching upon the rights of any other Unit Owners. The undivided common interest in the General Common Elements appurtenant to each Unit is declared to be permanent in character and cannot be altered without the consent of all the Unit Owners affected. Each Limited Common Element is hereby allocated and made appurtenant to the Unit(s) to which it is assigned or is attached.
- 4.4 **Party Wall.** Each Unit, as dominant tenement, shall have appurtenant to it a nonexclusive easement over, across, and upon any adjacent Unit, as servient tenement, for construction, maintenance, and repair of any party wall constructed or installed separating or to separate the Units.
- 4.5 **Encroachments.** If any portion of the Common Elements encroaches upon a Unit or Units, a valid easement for the encroachment and for the maintenance of the same, so long as it stands, shall and does exist. If, as a result of construction, reconstruction, repair, shifting, settlement or movement, any portion of a Unit encroaches upon the Common Elements or upon an adjoining Unit or Units, a valid easement for the encroachment and for the maintenance of the same, so long as it stands, shall and does exist. Such encroachments and easements shall not be considered or determined to be encumbrances upon either the Common Elements or the Unit(s) for the purpose of marketability of title.
- 4.6 **Utility Easements—Reservation.** Declarant hereby reserves, for the benefit of Declarant, the Association, and the Unit Owners, easements on the Property (including the Units) for utility services, including heat, air conditioning, water, sewer, power, telephone, natural gas, internet access, fire suppression, and cable television, as may reasonably be required to serve the Condominium. The location of such easements shall be as shown on the plans and specifications for the Building, or as the Building is constructed, or as set forth in the recorded plat or other instruments of record. Declarant and the Association shall each have the right to grant additional utility easements or relocate any existing utility easements in or on any portion of the Property (including any of the Units) that it shall deem necessary or desirable for the proper operation and maintenance of the Condominium or any portion thereof, or for the general health or welfare of the Unit Owners, Tenants, and occupants of one or more of the Units; provided that such additional utilities or relocation of existing utilities in or on a Unit be approved in writing by the affected Unit Owner(s). Any utility company and its employees and agents may access any Unit or the Common Elements in furtherance of such easement, provided that such access shall be with

the permission of the Declarant or Association, with prior, reasonable notice to the affected Unit Owner(s), and during reasonable hours (except in cases of emergency).

- 4.7 **Easement for Inspection, Repair, etc.** Each Unit may have its air space penetrated by electrical wires and lines, gas lines, mechanical equipment including air handling ducts, hot and cold water lines, waste water lines, vents, and other utility and mechanical lines, pipes or equipment. A non-exclusive easement of ingress and egress shall exist through, over, and across each Unit for inspection, installation, alteration, maintenance, operation, repair, and replacement of such utility lines and mechanical equipment. Such easement shall benefit the Units and Common Elements being served by such utility lines and mechanical equipment. The easement may be exercised only with the approval and under the direction of the Board of Directors or Manager unless an emergency exists in which event any action may reasonably be taken which is justified under the circumstances to minimize damage that would otherwise occur as a consequence of such emergency.
- 4.8 **Right of Access.** The Association shall have the irrevocable right, to be exercised by the Board of Directors or Manager, to access each Unit from time to time as may be necessary for the maintenance, repair or replacement of any of the Common Elements therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the Common Elements or to any other Unit. Except in an emergency situation, entry shall only be during reasonable hours, after notice to the Owner, and shall be made with as little inconvenience to the Unit Owner as practical.

SECTION 5 OWNERSHIP OF UNITS AND COMMON ELEMENTS

- 5.1 **Ownership of Units.** Subject to the provisions of this Declaration and the Bylaws, each Unit Owner shall be entitled to the exclusive ownership, use, and possession of such Owner's Unit(s).
- 5.2 **Allocated Interest in Common Elements.** Each Unit shall be allocated an undivided interest in the General Common Elements ("Allocated Interest"), and such undivided interest shall be appurtenant to the Unit. The Allocated Interest shall be expressed as a percentage. The Allocated Interest represents the extent of each Unit Owner's interest in the General Common Elements, and it shall be used to calculate the Unit Owner's liability for General Expenses. As set forth in Section 6.5, the number of Member Votes held by each Unit Owner shall be based on the Allocated Interest. Declarant has determined, for the purposes of determining the Allocated Interest, that the Units are approximately equal in value as of completion of construction and filing of the Declaration. Accordingly, the Allocated Interest appurtenant to each of the Units shall be equal. The Allocated Interests appurtenant to the Units in the Condominium shall be according to the percentages set forth below:

Unit No.	Square Footage*	Allocated Interest	Member Votes
83A	1464 ft ²	33.333%	1
83B	1458 ft ²	33.333%	1
83C	1466 ft ²	33.333%	1
Totals	4388.0 ft²	100.00%**	3

* Includes space within attached garage
 **Rounded to nearest hundredth

Each Limited Common Element shall be allocated to a Unit benefited thereby based upon the percentage that such Unit's Allocated Interest bears to the total Allocated Interest of all Units benefited by such Limited Common Element. The resulting percentage shall be used to calculate the Unit Owner's liability for Limited Expenses. Declarant reserves the right to modify the

Allocated Interest for a Unit at any time before such Unit is conveyed to a purchaser other than Declarant. Any such modification shall be made by an amendment to this Declaration.

- 5.3 **Undivided Interests not Severable.** The undivided interest in the General Common Elements appurtenant to a Unit, as the same may be allocated or reallocated, may not be severed and transferred separately from such Unit. The Unit's Allocated Interest shall be deemed to transfer or convey with the Unit even if it is not expressly mentioned or properly described in the instrument of transfer or conveyance. If a Unit's Allocated Interest is modified as permitted by this Declaration, the Unit Owner shall describe the Allocated Interest as amended. If a Unit Owner mistakenly describes the extent of a Unit's Allocated Interest in an instrument of transfer or conveyance, such instrument shall be deemed amended to conform with this Declaration and any amendments thereto.

SECTION 6 THE ASSOCIATION

- 6.1 **Creation and Purpose.** The Association shall be formed for the purpose of administering, implementing, and enforcing this Declaration and operating the Association for the benefit of its Members. The Association may be incorporated and operate as a non-profit, mutual benefit, Montana corporation. Either the Declarant or an authorized representative of the Board of Directors may sign as incorporator and file the articles of organization.
- 6.2 **Membership.** An Owner of a Condominium Unit shall automatically become a Member of the Association upon acquiring such ownership. An Owner shall remain a Member of the Association until the Owner's Unit ownership ceases. The membership shall be limited to Unit Owners.
- 6.3 **Function.** In addition to the powers and duties provided for elsewhere in this Declaration and the Bylaws, the Association, acting through its Board of Directors for the mutual benefit of the Unit Owners, shall generally have the powers and duties necessary or incidental to the operation and management of the Association and the Common Elements including, but not limited to, the following powers and duties:
- (a) Adopt bylaws for the governance of the Association.
 - (b) Adopt and implement a policy and rules for the affairs of the Condominium.
 - (c) Take such action to enforce the terms and provisions of this Declaration by appropriate means, including, but not limited to:
 - (i) Expenditure of funds;
 - (ii) Employment of legal counsel, accounting services, and management services; and
 - (iii) Commencement and prosecution of legal or equitable causes of action.
 - (d) Maintain and otherwise manage the Common Elements;
 - (e) Obtain lawn and landscape maintenance services, snow removal services, and other services that in the opinion of the Association are necessary and proper for the benefit of the Common Elements;
 - (f) Provide for the maintenance, repair, and replacement of an irrigation system serving the Property.

- (g) Borrow funds to pay costs of operation secured by assignment or pledge of its rights against delinquent Owners;
- (h) Enter into contracts for legal, management, and accounting services
- (i) Maintain one or more accounts in banks or other financial institutions;
- (j) Enter into contracts for security services for all or portions of the Property.
- (k) Take action to protect or defend the Property from loss or damage by suit or otherwise;
- (l) Establish and maintain a working capital and contingency fund;
- (m) Make an annual report available to each Unit Owner and any Mortgagee within a reasonable time after receipt of a written request;
- (n) Delegate its powers and duties to committees, officers or employees; and
- (o) Employ a Manager or contract with independent contractors or managing agents who have professional experience to perform all or any part of the duties and responsibilities of the Association.

6.4 **Limitations on Authority.**

- (a) *Amount of Expenditures.* No single expenditure or debt in excess of \$5,000 may be made or incurred by the Association or Manager without prior approval evidenced by the affirmative vote of Unit Owners holding 75% of the Member Votes.
- (b) *Termination of Management Agreements, Leases, etc.* The following agreements made by the Association must allow for termination by either the Association or the other party, without cause and without payment of a termination fee or other penalty, on not more than 30 days' written notice: (i) any agreement or employment contract entered into by the Association for the professional management of the Condominium; (ii) any employment contract; (iii) any lease of Condominium facilities; or (iv) any contract or lease to which Declarant is a party. If the Association (or the Declarant on behalf of the Association) enters into any such agreement prior to Transfer of Control, then the agreement shall provide the Association with the right to terminate the agreement, without cause and without payment of a termination fee or other penalty, by the Association's written notice given at any time after Transfer of Control.

6.5 **Voting Interest.** The total number of votes in the Association ("Member Votes") shall be 3. Unless a Condominium Unit's vote is expressly excluded in a particular matter by this Declaration, each Unit Owner shall be entitled to cast the number of Member Votes allocated to such Owner's Unit in any matter that comes before the Association for a vote. The initial number of Member Votes allocated to each Unit is based on the Unit's Allocated Interest and is shown in Section 5.2. In any situation where a Member is entitled to exercise the Member Votes for a Unit and more than one Person holds the ownership interest in such Unit, such Member Votes shall be cast as those Persons determine among themselves, and they shall advise the Secretary in writing at or prior to any meeting as to who is authorized to cast such votes. In the absence of such advice, the Unit's vote shall be suspended if more than one individual seeks to exercise it. The Member Votes allocated to each Unit may not be split.

6.6 **Voting; Quorum.** Meetings of the Association shall only be conducted when a quorum is present, as defined in the Bylaws. Except as specifically provided otherwise in the Unit

Ownership Act, this Declaration or the Bylaws, when Members vote to take action on a matter, a majority of Member Votes shall carry.

- 6.7 **Failure to Comply.** Each Unit Owner shall comply strictly 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 attorney fees incurred in connection therewith, which action shall be maintainable by the Manager in the name of the Association, on behalf of the Unit Owner, or in the proper case by an aggrieved Unit Owner.

SECTION 7 ASSESSMENTS; LIENS

7.1 Assessments and Owners' Obligation to Pay.

- (a) *Generally.* Assessments may be made for any purpose contemplated by this Declaration and for any purpose set out in the Unit Ownership Act. A Unit Owner, regardless of how title is acquired, shall be personally obligated and liable for all Assessments, including interest, penalties, and late charges, coming due while such Person is a Unit Owner.
- (b) *Joint Liability of Grantor and Grantee.* If a Unit is conveyed, the grantee shall be jointly and severally liable with the grantor for all unpaid Assessments against the grantor for grantor's share of the General Expenses including attorney's fees and other costs of collection incurred by the Association up to the time of the conveyance, without prejudice to any right the grantee may have to recover from the grantor the amounts paid by the grantee. A prospective purchaser, however, 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 the unpaid Assessments against the grantor due the Association, and such grantee shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid Assessments made by the Association against the grantor in excess of the amount therein set forth.
- (c) *Partial Exception for Acquisition by Foreclosure.* Where the Unit Owner obtains title to the Unit as the result of foreclosure of a first mortgage, such Unit Owner, and that Owner's successors and assigns, shall not be liable for any of the General Expenses and Limited Expenses chargeable to such Unit that became due prior to the Unit Owner's acquisition of title. Such unpaid share of General Expenses and Limited Expenses shall be a General Expense of all the Unit Owners, including the Owner of the Unit against which the unpaid General Expenses and Limited Expenses were assessed and that Owner's successors and assigns.
- (d) *Types of Assessments.* There shall be three types of Assessments: (i) General Assessments to fund General Expenses for the benefit of all Unit Owners; (ii) Limited Assessments for Limited Expenses benefiting fewer than all Unit Owners, and (iii) Special Assessments. General Assessments shall be levied on all Units from time to time subject to this Declaration, as provided in Section 7.2 below. Limited Assessments shall be levied against all Units benefiting from the services supported thereby as provided in Section 7.3 below. Special Assessments shall be levied as provided in Section 7.4 below. The Board of Directors shall have the final authority to determine which type of assessment will be used to cover particular Association expenses.
- (e) *Manner of Payment.* Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors and, if the Board so elects, Assessments may be paid in two

or more installments. Unless the Board otherwise provides, the General Assessment and any Limited Assessment shall be due and payable in advance on the first day of each fiscal year. Assessments or any portion thereof not paid 30 days after the due date shall be deemed delinquent. If any Owner is delinquent in paying any Assessment or other charge levied on its Unit, the Board may require any unpaid installments of the annual Assessment and/or any other Assessments to be paid in full immediately.

- (f) *Certificate of Payment.* The Association shall, upon written demand at any time, furnish to any Owner liable for any type of Assessment, or any Mortgagee, a certificate in writing signed by an officer of the Association setting forth whether such Assessment has been paid as to any particular Unit. Such certificate shall be conclusive evidence of payment to the Association of any Assessments therein stated to have been paid. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.
- (g) *No Waiver or Setoff.* No Unit Owner may waive or otherwise exempt itself from liability for Assessments by non-use of the Common Elements, abandonment of a Unit or any other means. The obligation to pay Assessments is a separate and independent covenant on the part of each Unit Owner. No diminution or abatement of Assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements that are the responsibility of the Association, or from any action taken to comply with any applicable Law.

7.2 **Computation of General Assessment.**

- (a) *Preparation of Budget.* The Board shall, at least 30 days before the beginning of each fiscal year, prepare a budget covering the estimated General Expenses of the Association during the coming year. The budget shall include a capital contribution establishing Reserve and Working Capital Funds in accordance with a budget separately prepared, as provided in Section 7.5 hereof.
- (b) *Content of Budget.* The budget may include, but shall not be limited to, the following expenses:
 - (i) Cost of operation, maintenance, repair, renovation, and replacement of the General Common Elements, including landscaping, care of grounds, snow removal, and walkways;
 - (ii) Insurance premiums for public liability, fires, and other standard perils and casualties insurance, directors and officers insurance, and other insurance coverage deemed necessary or desirable by the Board of Directors;
 - (iii) Taxes and assessments made against Common Elements or Units owned by the Association and property owners' association assessments;
 - (iv) Management fees and expenses.
 - (v) Professional fees, including legal and accounting fees, and costs of collection;
 - (vi) Water, sewer, electricity, gas, and all other utility and service charges used to operate and maintain the Common Elements or Units owned by the Association;

- (vii) Property security;
 - (viii) Expenses and liabilities incurred by the Association under or by reason of this Declaration;
 - (ix) Payment of any deficit remaining from a previous assessment period; and
 - (x) Within the limitations prescribed by this Declaration, the creation of a Reserve Fund for maintenance, repair, and replacement of General Common Elements on a periodic basis, as needed.
- (c) *Computation of Individual Unit General Assessments.* The General Assessment to be levied for the coming year against each Unit subject to Assessment shall be computed by multiplying the budgeted General Expenses by each Unit's Allocated Interest.
- (d) *Approval of Budget.* The Board of Directors shall cause a copy of the General Expense budget and notice of the amount of the General Assessment to be levied against each Unit for the following year to be delivered to each Owner at least 10 days prior to the beginning of the fiscal year. Such budget and Assessment shall become effective unless disapproved at a meeting of the Members by Members representing at least a majority of the Member Votes in the Association. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Members for a special meeting made in accordance with the Bylaws. The petition must be presented to the Board within 10 days of delivery of the notice of Assessments. Notwithstanding the foregoing, however, if the proposed budget is disapproved or the Board fails for any reason so to determine the budget for any year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the immediately preceding year shall continue for the current year, and the General Assessment for the current year shall be based on the preceding year budget.

7.3 Computation of Limited Assessments.

- (a) *Separate Budget for Limited Expenses.* The Board shall, at least 30 days before the beginning of each fiscal year, prepare a separate budget covering the estimated Limited Expenses to be incurred by the Association during the coming year. Limited Expenses may be levied by the Association against particular Units where the Board has determined that certain Association expenditures benefit only such Units. Such budget may include a capital contribution establishing a reserve fund for repair and replacement of capital items, as appropriate.
- (b) *Computation of Individual Unit Special Assessments.* Limited Expenses shall be allocated among all Units benefited thereby proportionately based upon each Unit's relative Allocated Interest or in such other manner as the Board determines is more equitable. The Assessment for Limited Expenses shall be levied as a Limited Assessment.
- (c) *Approval of Limited Expenses Budget.* The Board shall cause a copy of such budget and notice of the amount of the Limited Assessment to be levied on each Unit for the coming year to be delivered to each Owner of a Unit subject to a Limited Assessment at least 10 days prior to the beginning of the fiscal year. Such budget and Assessment shall become effective unless disapproved at a meeting of the Members by Members representing at least two-thirds of the Member Votes allocated to the Unit(s) subject to the Assessment. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of Owners of at least one of the Units subject to the Limited Assessment. If the proposed budget for any Limited Expense is disapproved or the Board fails for any reason

so to determine the budget for any year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the immediately preceding year shall continue for the current year.

7.4 **Special Assessments.**

- (a) *Purpose.* The Association, acting through its Board of Directors, may levy Special Assessments against all or less than all of the Units for the following purposes: (i) to cure insufficiencies in the General Assessments due to extraordinary expenses not contemplated in the General Assessment budget for a fiscal year; (ii) for additional capital improvements or acquisitions of General Common Elements; (iii) for major repairs or renovations of existing Common Elements (other than those contemplated by the reserve budget created under Section 7.5); and/or (iv) to offset an extraordinary expense created by an Owner's particular use of one or more Units.
- (b) *Special Assessments Affecting the Entire Membership.* The Board may levy Special Assessments against all Units from time to time, provided that the total amount of the Special Assessment levied during any fiscal year shall not exceed the greater of (i) \$10,000 or (ii) 25% of the General Expense budget for such fiscal year. Any Special Assessment in excess of such limitation shall be effective only upon approval by a majority of the Member Votes. Special Assessments levied against the entire membership shall be allocated among the Units proportionately based upon each Unit's Allocated Interest.
- (c) *Special Assessments Affecting Less Than All Members.* The Association may levy a Special Assessment against any one or more (but less than all) Units (i) to offset an extraordinary expense created by a particular use of one or more Units; or (ii) to reimburse the Association for costs incurred in bringing a Unit or Unit Owner into compliance with the provisions of the Declaration, Bylaws or Association rules. A Special Assessment may be levied upon the vote of the Board of Directors after notice to the Unit Owner(s) and an opportunity for a hearing.

7.5 **Reserve and Working Capital Funds.**

- (a) *Reserve Fund.* The Board of Directors shall establish and continuously maintain the Reserve Fund. The Reserve Fund shall contain reasonably adequate reserve funds for contingencies, including the amount of any deductible under any hazard insurance policy maintained by the Association, and for future maintenance, repairs, and replacements of the Common Elements. The Reserve Fund shall be funded by General Assessments. The Board of Directors shall annually prepare a Reserve Fund budget to take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing by annual General Assessments over the period of the budget. The capital contribution required, if any, shall be fixed by the Board and included within and distributed with the applicable budget and notice of General Assessments, as provided in this Section 7. That portion of assessments for General Expenses attributable to reserves shall be transferred on a regular basis from the General Expense fund into the Reserve Fund. The Association shall hold the Reserve Fund in a segregated account.
- (b) *Working Capital Fund.* Declarant and the Board shall also establish the Working Capital Fund to meet unforeseen expenditures or to purchase any additional equipment or services. The Working Capital Fund shall be funded in an amount that is at least equal to 2 months of estimated General Expense assessments for each Unit. Each Unit's share of the Working

Capital Fund shall be collected and paid by the Declarant, on behalf of the Association, at the earlier of: (i) the closing of the initial sale of each Unit; or (ii) within 10 days after the date of Transfer of Control of the Association. Any amounts paid into the Working Capital Fund shall not be considered advance payments of general or special assessments. If not sooner transferred, upon Transfer of Control the Working Capital Fund shall be transferred to the Association for deposit into a segregated account. Declarant may not use the Working Capital Fund to defray any of Declarant's expenses, reserve contributions or construction costs or to make up any budget deficits of the Association prior to the Transfer of Control. If, upon Transfer of Control, there are unsold Units for which Declarant shall pay into the Working Capital Fund, then, when such Units are ultimately sold by Declarant, Declarant shall be entitled to a reimbursement for funds paid the Association for such unsold Unit's share of the Working Capital Fund by using funds collected at closing when the Unit is sold.

- 7.6 **Collection of Assessments.** The Association or Manager shall have the responsibility of taking prompt action to collect any unpaid Assessment that becomes delinquent. In the event of delinquency in the payment of the Assessment, the Unit Owner shall be obligated to pay interest at the Legal Interest Rate on the amount of the assessment from the due date thereof, together with all expenses, including attorney fees incurred, together with such penalties and late charges as are provided in the Bylaws of the Association.
- 7.7 **Lien of Assessments; Foreclosure.** All Assessments, together with interest at the Legal Interest Rate computed from the date a delinquency first occurs, late charges, costs, and reasonable attorney's fees, shall be a charge and a continuing lien upon the Unit against which each Assessment is made until paid. To evidence such lien, the Association shall prepare a written notice of lien assessment setting forth the amount of such unpaid indebtedness (after deducting all just credits and offsets), the amount of accrued interest and late charges thereon, the name of the Unit Owner, and a description of the Unit. Such notice shall be signed and verified by one of the officers of the Association or by the Manager, or his or her authorized agent, and shall be recorded in the Public Records. The lien shall attach from the date of recording such notice. The lien may be enforced by the foreclosure of the defaulting Owner's Unit by the Association as provided in the Unit Ownership Act in like manner as foreclosure of a Mortgage on real property. In any foreclosure, the Unit Owner shall be required to pay a reasonable rental for the Unit, if so provided in the Bylaws, and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same. Suit to recover a money judgment for unpaid Assessments shall be maintainable without foreclosure or waiving the lien securing the same. In any such proceeding the Unit Owner may be required to pay the costs, expenses, and reasonable attorney's fees incurred in filing a lien, and in the event of foreclosure proceedings, additional costs, expenses, and attorney's fees incurred. If a default for which a notice of lien was filed is cured, the Association shall file a release of such notice; provided, however, that the defaulting Owner shall be responsible for the costs (including reasonable attorney's fees) of preparing and filing such release.
- 7.8 **Subordination of the Lien to First Mortgages.** The lien of Assessments, including interest, late charges, and costs (including reasonable attorney's fees) provided for herein, shall be superior to all other liens and encumbrances, except for taxes, assessments, and special assessment liens imposed on the Property by a statutory authority, and the lien of a first Mortgage of record upon any Unit. The sale or transfer of any Unit shall not affect the Assessment lien, except that the sale or transfer of any Unit pursuant to judicial or non-judicial foreclosure of a first Mortgage shall extinguish the lien of such Assessments as to payments that became due prior to such sale or transfer. No sale or transfer shall relieve such Unit from lien rights for any Assessments thereafter becoming due. Where the Mortgagee holding a first Mortgage of record or other purchaser of a Unit obtains title pursuant to judicial or non-judicial foreclosure of the Mortgage, it shall not be liable for the portion of the Assessments by the Association chargeable to such Unit that became

due prior to such acquisition of title. Such unpaid portion of the Assessments shall be deemed to be General Expenses collectible from Owners of all the Units, including such acquirer and its successors and assigns.

- 7.9 **Bidding at Foreclosure Sale.** The Association shall have the power to bid on the Unit at a foreclosure or other legal sale, and to acquire and hold, lease, mortgage, vote the votes appurtenant to, convey or otherwise deal with the same. Any lienholder holding a lien on a Unit may pay, but shall not be required to pay, any unpaid Assessments payable with respect to any such Unit, and upon such payment such lienholder shall have a lien on the Unit for the amounts paid of the same priority as the lien of the lienholder's encumbrance without the necessity of having to file a notice or claim of such lien.

SECTION 8 USE OF CONDOMINIUM PROPERTY

- 8.1 **Laws and Ordinances.** No Unit Owner shall permit anything within the Unit Owner's control to be done or kept on the Property or in a Unit that would violate any Laws or that will result in the cancellation of, or increase the premiums for, any insurance carried by the Association, or that would be in violation of any rule or regulation promulgated by the Association. The Owner shall obtain any and all governmental permits, approvals, and authorizations prior to beginning any construction in a Unit. If there are differences between restrictions imposed by this Declaration or by applicable Law, the more restrictive shall apply.
- 8.2 **Uses Permitted – Residential.** Subject to the restrictions set forth elsewhere in this Section 8, the Condominium Units shall be used for residential purposes only, except that an Owner or occupant, as an incident to such Owner's or occupants residential use, may use a portion of a Unit for a home office or studio. Home office or studio uses shall not (i) interfere with the quiet enjoyment of any other Owner or occupant, (ii) involve customers or clients coming into the Condominium, (iii) require the storage of equipment, products or materials in the Unit, and (iv) violate the provisions of any applicable Law affecting the Property. Notwithstanding the foregoing, nothing shall prohibit a Unit Owner from leasing or renting such Owner's Unit to third persons or holding it out for lease or rental, or entering into an agreement or contract with others for the lease or rental of the Unit for residential use. However, no Unit may be leased for transient or hotel purposes, which shall be defined as rental for any period less than thirty (30) days, or any rental if the Unit's occupants are provided customary hotel services, such as room service for food and beverage, maid service, laundry and linen service or the like.
- 8.3 **Use of Common Elements.** Unit Owners may use the Common Elements in accordance with the purposes for which they are intended and as they may otherwise agree between themselves, so long as they do not hinder or encroach upon the lawful rights, use, and enjoyment of other Unit Owners. Nothing shall be altered or constructed in or removed from the Common Elements, except upon the prior written consent of the Association. No waste will be permitted on the Common Elements.
- 8.4 **General Use Restrictions and Restrictions.**
- (a) *Storage, Obstruction.* There shall be no obstruction of the Common Elements nor shall anything be stored in or on the Common Elements without the prior written consent of the Association. Subject to the foregoing requirement of consent, items may be stored on the Common Elements only if such storage does not constitute a hazard to any Unit, does not block any access beneath a Unit or obstruct any easement for utility service, does not violate any applicable law, regulation or fire code, and does not result in cancellation or rate increase of Association insurance. Notwithstanding the foregoing, Owners with Units that have usable storage space in the crawlspace beneath the living area of their Units or in

attic above their Units may use this space for storage without the Association's prior written consent, provided that such storage otherwise complies with the provisions of this Section.

- (b) *Uniformity and Appearance of Building.* Unit Owners shall not cause or permit anything to be hung, affixed or displayed on the outside of windows or placed on the outside walls of the Building, and no sign, awning or canopy shall be affixed to or placed upon the exterior walls or roof of any part thereof, without the prior written consent of the Board of Directors. Further, Unit Owners shall not cause or permit anything to be hung, affixed or displayed on the inside of windows, doors or other apertures that detracts from the exterior uniformity or appearance of the Building. Items and materials that may not be placed in or on windows, doors or other apertures include, without limitation, aluminum foil, newspaper, sheets, cardboard, tinted or reflective paint, signs, and neon displays. Materials and equipment used to repair or replace windows or other apertures shall conform to the style, specifications, and quality of the original construction. Seasonal decorations that are promptly removed after the season and reasonable nameplates or identification signs for individual Units may be allowed. No basketball hoops or other permanent attachments may be made to the exterior of any Unit. No other fixtures or attachments shall be permitted on the Common Elements.
- (c) *Antennas, Satellite Dishes.* No exterior antennas, towers, satellite dishes or other apparatus for sending or receiving of radio, television, electromagnetic or microwave signals shall be placed upon the Building or Property without the prior written approval of the Board of Directors. The Board of Directors, in its sole discretion, may give or deny approval subject to applicable Law. The Board of Directors may impose size limitations on such equipment and screening, location, and placement requirements as conditions of approval. Notwithstanding the foregoing, Television satellite dishes may be installed, provided that they are no greater than 18" in overall diameter and size and installed in locations that are pre-approved by the Board of Directors.
- (d) *Nuisance.* No nuisances shall be permitted to exist or operate on the Property so as to be offensive or detrimental to another Unit Owner, Tenant or occupant. Nuisances include, but are not limited to, the following conditions insofar as they may disturb the peace, quiet, safety, and comfort of the Unit Owner, Tenant or occupant of other Units: foul or obnoxious odors, noise, vibration, electromechanical or electromagnetic disturbance and radiation, air or water pollution, and dust. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of the Property. No immoral, improper, offensive or unlawful use shall be made of the Property or any part thereof.
- (e) *Vehicles, Equipment, etc.* No Unit, garage or driveway shall be used for the storage of any inoperable vehicle, machinery or equipment, or other personal property of any quantity in excess of the immediate needs and personal use of the Owner or occupants of a Unit. All equipment and vehicles kept on the Property, including recreational vehicles, campers, trailers, motor homes, boats, and all other recreational equipment, shall be enclosed in the appurtenant garage. No one shall reside in such recreational vehicles, motor homes, campers, trailers or other recreational equipment stored on the Property.
- (f) *Uses Not to Impair Structural Integrity.* Nothing shall be done in any Unit or in, on or to the Common Elements which will impair the structural integrity of the Building or which would structurally change the Building, except as is otherwise provided in this Declaration.
- (g) *Animals and Pets.* No animals of any kind shall be raised, bred or kept in any Unit or on the Property, except that dogs, cats, and other ordinary, household pets may be kept subject to

rules and regulations from time to time adopted by the Association. All pets shall be subject to all applicable Law, including but not limited to animal control laws, ordinances, and leash laws. Pet owners shall immediately clean up after their pet on Condominium Property. No kennels, tethers, exercise lines, or the like shall be permitted in any Unit or elsewhere on the Condominium Property.

- (h) *Alteration of Common Elements Prohibited.* Nothing shall be altered or constructed in or removed from the Common Elements, except upon the prior written consent of the Association.
- (i) *Trash.* No junk, garbage, trash, equipment, parts, metals, lumber, debris or other waste shall be allowed on the walkways, entrances, patios, porches, stoops, stairwells or driveway for any Unit, or in any of the Common Elements. Arranging for curbside trash pickup shall be the responsibility of each Unit Owner.

8.5 **Compliance with Subdivision Covenants.** Unit Owners and occupants shall comply in all respects with the requirements of covenants, conditions, and restrictions affecting the Property, as the same may be amended from time to time, that appear in the Public Records and affect the Property.

8.6 **Rules and Regulations** The Board of Directors may adopt and amend from time to time reasonable rules and regulations for the safety, care, order, and cleanliness of the Condominium. Such rules and regulations may affect the Common Elements or one or more Units. Copies of all rules, regulations, and amendments shall be furnished to all Unit Owners. Such rules and regulations shall be consistent with the Unit Ownership Act, this Declaration, and the Bylaws, and they shall not unreasonably interfere with a Unit Owner's, Lessee's or other occupant's use and enjoyment of a Unit as a residence.

8.7 **Inspection by Association.** Authorized representatives of the Association may from time to time, during reasonable hours and with reasonable notice, enter upon and inspect any Unit to ascertain whether or not the Declaration has been or is being complied with. Such person or persons shall not be deemed guilty of trespass by reason of such entry.

SECTION 9 ALTERATIONS, MAINTENANCE, AND REPAIRS

9.1 **Alterations.** A Unit Owner may change the interior plan of a Unit. The boundaries between Units may be changed only by the Unit Owners of the Units affected. No Units may be subdivided (except in accordance with Section 15). No change in the boundaries of Units shall encroach upon the boundaries of the Common Elements. Boundary walls must be equal in quality of design and construction to existing, finished boundary walls. A change in the boundaries between Units shall be set forth in an amendment to this Declaration. In addition to compliance with the provisions of Section 13, such amendment shall further set forth and contain plans for the affected Units showing the Units after the change in boundaries. The plans shall be drawn by an architect licensed to practice in Montana and attached to the amendment as exhibits, together with the certificate of architect or engineer as required by the Unit Ownership Act. Such an amendment shall be signed and acknowledged by the Owners of the affected Units, as well as those Owners with an interest in any Common Element affected. The amendment shall also be approved by the Board of Directors of the Association, and signed and acknowledged by all lienors and Mortgagees of the affected Units.

9.2 **Exterior Alterations.** No Unit Owner may change, alter or remodel the exterior of the Unit without the prior written approval of the Association.

9.3 **Interior Remodeling.**

- (a) *Right to Remodel.* Subject to the requirements of this Declaration, each Unit Owner shall have the exclusive right to paint, repaint, tile, paper, panel, carpet, brick or otherwise maintain, refinish, and decorate the inner surfaces of the walls, ceilings, floors, windows, and doors bounding such Owner's Unit, and the interior thereof.
- (b) *Maintenance of Structural Integrity.* Nothing shall be done in any Unit or in, on or to the Common Elements which will impair the soundness, structural integrity or safety of the Building or which would structurally change the Building, except as is otherwise provided in this Declaration.
- (c) *No Impairment of Easements.* No alterations, remodeling or repair of any Unit shall impair any easement unless the written consent of all the other affected Unit Owners is first obtained.

9.4 **Liens for Alterations.** Labor performed and materials furnished and incorporated into a Unit with the consent of or at the request of the Unit Owner, or the Owner's agent, contractor or subcontractor, shall be the basis for the filing of a construction lien against the Unit of the Unit Owner consenting to or requesting the same. Each Unit Owner shall indemnify and hold harmless each of the other Owners and the Association from and against all liability (including court costs and attorney fees) arising from the claim of any lien against the Unit or any other Owner or against the Common Elements for construction performed or for labor, materials, services or other products incorporated in the Owner's Unit.

9.5 **Maintenance by Association.** The Association shall perform the maintenance, repair, and replacement of all General Common Elements and Association property, and the cost is a General Expense. The Association shall perform the maintenance, repair, and replacement of all Limited Common Elements, and the cost is a Limited Expense.

9.6 **Damages arising from Maintenance.** Damage to the interior or any part of a Unit resulting from maintenance, repair, emergency repair or replacement of any of the Common Elements, or as a result of an emergency repair within another Unit at the instance of the Association, shall be designated either General Expenses or Limited Expenses by the Association and assessed in accordance with such designation.

9.7 **Maintenance by Unit Owners.** Each Unit Owner, at such Owner's own expense, shall maintain and keep in good order and repair the Owner's Unit. All fixtures, utility lines, lighting, and equipment installed in and for the use of the Unit shall be maintained and kept in repair by the Unit Owner. An Owner shall do no act or any work that will impair the structural soundness or integrity of the Building, reduce the value of the Property or impair any easement. The right of the each Owner to repair, alter, and remodel is coupled with the obligation to replace any finishing or other materials removed with similar type or kinds of materials. All glass replacement shall be with similar quality, shade, and design. No act or alteration, repairing or remodeling by any Unit Owner shall impair in any way the integrity of the adjoining Units or the integrity of the Common Elements. Each Owner shall also keep any balcony, entrance, porch, deck area, or yard appurtenant to or used in conjunction with the Owner's Unit in a clean and sanitary condition.

SECTION 10 INSURANCE

10.1 Authority and Requirement to Purchase Insurance – General Provisions.

- (a) *Authority.* The Association, acting by and through the Board of Directors, shall obtain, purchase, and maintain, all of the insurance policies specified and required in this Section 10. Neither the Association, Board of Directors, nor the Declarant, however, shall be liable for failure to obtain any coverages required by this Section 10, or for any loss or damage resulting from such failure, if such failure is due to the unavailability of such coverages, or if such coverages are so available only at a demonstrably unreasonable cost.
- (b) *Companies.* The Association shall obtain and purchase insurance policies only from reputable insurance companies authorized to do business in Montana.
- (c) *Premiums.* The Association shall pay premiums for insurance policies as a General Expense, except that the amount of increase in the premium occasioned by use, misuse, occupancy or abandonment of a Unit or its appurtenances or of the Common Elements by a Unit Owner may be assessed against the Owner.
- (d) *Policy Requirements – Generally.* Each required policy must provide that:
 - (i) Named Insured. The named insured is the Association for itself and as agent for the Unit Owners without naming them. Each Owner is an insured Person under the policy with respect to liability arising out of such Owner's interest in the Common Elements or membership in the Association;
 - (ii) Recognition of Insurance Trustee. Each policy shall provide for the recognition of any insurance trust agreement made by the Board. If the Board designates an Insurance Trustee, all payments under policies subject to the insurance trust agreement shall be paid to the Insurance Trustee, and all policies and endorsements thereon shall be deposited with the Insurance Trustee;
 - (iii) Waiver of Subrogation. The insurer waives any right to claim by way of subrogation against the Declarant, the Association, the Board of Directors, or the Owners, and their respective agents, employees, guests, and, in the case of the Owners, the members of their households;
 - (iv) Right to Cure. Such policy shall not be substantially modified or suspended due to the act or omission of any Owner (including his invitees, agents, and employees) or of any member (acting within the scope of his authority for the Association), officer or employee of the Board of Directors, without a prior demand in writing that the Board of Directors cure the defect and neither shall have so cured such defect within 60 days after such demand;
 - (v) Notice of Cancellation. Such policy may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least 30 days' prior written notice to the Board of Directors, and the holder of any Mortgage on Units registered with the insurer; and
 - (vi) Primary Insurance. If, at the time of a loss under the policy, there is other insurance in the name of the Unit Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

- (e) *Deductible and Other Insurance Features.* Except as otherwise provided by this Declaration, the Board of Directors shall establish the amount of the deductible and other features under the insurance policies as it deems desirable and financially expedient in the exercise of its business judgment.
- (f) *Declarant's Interests.* The Declarant, so long as Declarant shall own any Unit, shall be protected by all such policies as an Owner.
- (g) *Copies and Certificates to Mortgagees.* The Association shall furnish one copy of each insurance policy and of all endorsements thereon to each Mortgagee of a Unit Owner upon written request. Certificates of insurance shall be issued to each Unit Owner and Eligible Mortgagee upon written request.

10.2 Physical Damage Insurance.

- (a) *"All Risk" Policy.* The Board of Directors shall obtain and maintain a blanket, "all-risk" form policy of fire insurance with extended coverage, vandalism, malicious mischief, windstorm, sprinkler leakage, debris removal, cost of demolition, water damage, inflation guard, and building ordinance or law endorsements, insuring the entire improvements on the Land, including the Buildings, Garages, and all other improvements constituting part of the Common Elements, and all of the Units (but excluding fixtures, equipment, betterments, wall coverings, furniture, and other personal property supplied or installed by an Owner in a Unit), together with service equipment contained therein, and common personal property and supplies, and covering the interests of the Association, the Board of Directors, all Owners, and Persons holding Mortgages on such Units, as their interests may appear, in an amount equal to 100% of the then-current, insurable replacement cost of such improvements (exclusive of the Land, excavations, and other items normally excluded from such coverage), without deduction for depreciation (e.g., with either a guaranteed replacement cost endorsement or a replacement cost endorsement).
- (b) *Coverage of HVAC, Service Equipment, etc.* The physical damage insurance policies obtained and maintained by the Association shall state whether certain fixtures and equipment located within the boundaries of the Units, including heating, ventilation, air conditioning, other service equipment, interior fixtures, and carpets, are included within the coverage of such policies in order that Unit Owners may insure the fixtures and equipment themselves if such items are not insured by the Association.
- (c) *Primary Coverage.* Such policy shall also provide that the physical damage policy purchased by the Association acting by and through the Board of Directors shall be deemed primary coverage and any Unit Owners' policies shall be deemed excess coverage, and in no event shall the insurance coverage obtained and maintained by the Board of Directors hereunder provide for or be brought into contribution with insurance purchased by individual Owners or their Eligible Mortgagees unless otherwise required by law.
- (d) *Loss Payee; Insurance Trustee.* Such policy shall reflect the Association as the named insured (for itself and as agent for the Unit Owners), and the "loss payable" clause shall reflect the Association, as trustee for each Unit Owner and the holders of Mortgages on Units, as loss payee. Such policy shall also include a standard mortgage clause and shall name as mortgagee the various holders of Mortgages on Units of which the insurer is notified. The Board shall have the option, in its sole discretion, of naming as loss payee on behalf of the Association, an insurance trustee ("Insurance Trustee") with whom the Association has entered into an insurance trust agreement. The duty of the Insurance Trustee shall be to receive, hold or otherwise properly dispose of proceeds of insurance

designated in the insurance trust agreement in trust for the Association and Owners, and their Mortgagees, as their interests may appear.

- 10.3 **Liability Insurance.** The Board of Directors shall obtain and maintain comprehensive commercial general liability and property damage insurance, insuring the Association, each member of the Board of Directors, each Owner, and the Declarant (as their interests may appear) against any liability to the public or to the Owners (and their invitees, agents, and employees) arising out of or incident to the ownership, operation, maintenance, and/or use of the Common Elements. Such insurance shall be issued on a comprehensive liability basis and shall contain: (i) a cross liability endorsement under which the rights of a named insured under the policy shall not be prejudiced with respect to his action against another named insured; (ii) a "severability of interest" endorsement which shall preclude the insurer from denying liability to an Owner because of negligent acts of the Association or of another Owner; and (iii) such other coverages and endorsements as the Board of Directors may deem appropriate. The Board of Directors shall review and adjust policy limits once each year, but in no event shall such insurance be less than \$1,000,000 covering all claims for bodily injury, including deaths of persons, and/or property damage arising out of one occurrence. The Board of Directors shall have authority to compromise and settle all claims against the Association or upon insurance policies held by the Association. The Unit Owners shall have no personal liability upon such claims, except as may be otherwise provided by law, and nothing herein contained shall in any way be construed as imposing upon the Association a duty to assess Unit Owners for the purpose of raising sufficient funds to discharge any liability in excess of insurance coverage.
- 10.4 **Other Association Insurance.** The Board of Directors shall obtain and maintain such worker's compensation coverage as may be required by Law. The Association may obtain and maintain such other insurance as the Board of Directors may from time to time deem to be necessary or as may be required by Law, including but not limited to errors and omissions insurance for officers, directors, and managers, flood insurance, and insurance for the benefit of Association employees.
- 10.5 **Unit Owners' Separate Insurance.** Each Unit Owner is responsible for obtaining policies of insurance covering physical damage to (i) personal property located within the Owner's Unit; (ii) improvements made by the Owner to Owner's Unit; and (iii) ceiling, floor, and wall coverings, electrical fixtures, appliances, air conditioning and heating equipment, water heaters, built-in cabinets, and other improvements to the extent these items are located within the Unit boundaries and are not covered by the Association's insurance policies. The Unit Owner is also responsible for obtaining policies of insurance covering the Owner's personal liability. All policies acquired and maintained by a Unit Owner shall be at such Owner's expense. No Owner shall be entitled to exercise the Owner's right to acquire or maintain such insurance coverage under this paragraph so as to decrease the amount which the Association, acting by and through the Board of Directors on behalf of all Owners, may realize under any insurance policy maintained by the Association or to cause any insurance coverage maintained by the Association to be brought into contribution with insurance coverage obtained by an Owner.
- 10.6 **Association as Agent.** The Association is hereby irrevocably appointed the agent and attorney-in-fact for each Unit Owner, other named insureds and their beneficiaries, and any other holder of a lien or other interest in the Property, to adjust and settle all claims arising under insurance policies purchased by the Association, to execute and deliver releases upon the payment of claims and otherwise deal with the Property upon its repair, destruction or obsolescence as is provided in this Declaration, including without limitation the authority, right, and power to make, execute, and deliver any contract, deed or other instrument with respect to the interest of an Owner which are necessary and appropriate to exercise the powers herein granted. Title to any Unit is hereby declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed from the Declarant or from any Owner shall constitute the irrevocable appointment of the Association as agent and attorney-in-fact as herein provided.

SECTION 11 DAMAGE AND DESTRUCTION; CONDEMNATION.

11.1 Damage or Destruction

- (a) *Notice to Mortgagees.* In the event of substantial damage to or destruction of any Unit or Common Elements, the Association shall give timely written notice thereof to all Eligible Mortgagees affected thereby.
- (b) *Repair or Replacement.* In the event of damage or destruction to any portion or all of the Property, insurance proceeds and the funds in the Reserve Fund shall be applied by the Association, as attorney-in-fact, to the prompt repair or replacement of such damage or destruction, unless: (i) unit ownership of the Property is terminated pursuant to the Unit Ownership Act and this Declaration; (ii) such repair or replacement would be illegal under any Law, including state or local health or safety statutes or ordinances; or (iii) 90% of the Member Votes, including 100% of the Member Votes allocated to a Unit or assigned Limited Common Element which will not be repaired or replaced, vote not to repair or replace all or a portion of such damage or destruction. The Association shall have full authority, right, and power, as attorney-in-fact, to cause such repair or replacement of such damage or destruction. The Board of Directors of the Association shall hold any insurance proceeds in trust for the Association, Owners, Mortgagees, and other lien holders as their interests may appear. Subject to the provisions of this Section 11, the proceeds shall be disbursed first for the repair or restoration of the damaged Property. If there is a surplus of proceeds after the damaged Property has been completed repaired or restored, such surplus shall be distributed to the Association for the use and benefit of the Unit Owners. If the aggregate of the insurance proceeds and the funds in the Reserve Fund is insufficient to repair or replace such damage or destruction, such damage or destruction shall be promptly repaired or replaced by the Association, as attorney-in-fact, using insurance proceeds, the Reserve Fund, and the proceeds of a special assessment to be made against all of the Owners and their Units. The special assessment for the deficiency shall be a General Expense and made pro rata according to each Owner's Allocated Interest in the General Common Elements and shall be due and payable upon the terms set forth by the Association after 30 days prior written notice thereof.
- (c) *Partial Repair or Replacement.* If the entire Property is not repaired or replaced, the insurance proceeds attributable to the damaged or destroyed Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Property, and the insurance proceeds attributable to Units and Limited Common Elements which are not restored shall be distributed to the Owners of those Units and the Owners of the Units to which those Limited Common Elements were allocated, or to Eligible Mortgagees, as their interests may appear, and the remainder of the insurance proceeds, if any, shall be distributed to the Association for the use and benefit of the Unit Owners.
- (d) *Plans and Specifications.* Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original improvements, or if not, then according to plans and specifications approved by the Board of Directors, by the affirmative vote of the Unit Owners holding at least 75% of the Member Votes attributable to all Condominium Units, and by 100% of the Member Votes attributable to Units directly affected by the changed plans and specifications. Any reconstruction not in accordance with the original plans and specifications must be set forth in an amendment to the Declaration, which amendment shall be prepared and recorded in the Public Records as provided in Section 13.

- 11.2 Failure to Reconstruct.** Notwithstanding the provisions of Section 11.1, the Association, upon the affirmative vote of 90% of the Member Votes, may elect not to reconstruct or restore the

Property after its destruction. Pursuant to the provisions of Section 70-23-803, Montana Code Annotated, if the Association does not decide to repair, rebuild or reconstruct the destroyed Property within 60 days after the date of destruction, the Property shall be deemed removed from the provisions of the Unit Ownership Act. Insurance proceeds shall be distributed to the beneficial owners, remittances to Unit Owners and their Mortgagees being payable jointly to them. Thereupon, the Owners shall hold the Property as tenants in common, with each holding an undivided interest proportionate with their Allocated Interests.

11.3 **No Abatement of Expenses.** During any period of insurance adjustments, restoration or repair, condemnation proceedings or the like, assessments against the Owners and their respective Units for General Expenses and Limited Expenses shall not be abated.

11.4 **Condemnation.**

- (a) *Consequences of Condemnation.* If at any time or times during the continuance of condominium ownership pursuant to this Declaration, all or any part of the Property shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance of condemnation, the provisions of this Section 11.4 shall apply.
- (b) *Negotiation; Association as Agent.* The Association, acting through its Board of Directors, shall represent the Unit Owners in condemnation proceedings or in negotiations, settlements, and agreements with the condemning authority for acquisition of all or a portion of the Common Elements. The Association is hereby irrevocably appointed the agent and attorney-in-fact for each Owner, and for any other holder of a lien or other interest in the Property, for such purposes, and the Association shall have full authority to enter into settlements and agreements with the condemning authority, including without limitation the authority, right, and power to make, execute, and deliver any contract, deed or other instrument with respect to the interest of an Owner which are necessary and appropriate to exercise the powers herein granted. Title to any Unit is hereby declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed from the Declarant or from any Owner shall constitute the irrevocable appointment of the Association as agent and attorney-in-fact as herein provided.
- (c) *Payment of Proceeds.* All compensation, damages, or other proceeds therefrom, the sum of which is hereinafter called the "Condemnation Award", shall be payable to the Association.
- (d) *Complete Taking.* In the event that the entire Property is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, unit ownership pursuant to this Declaration shall terminate. The Condemnation Award shall be apportioned among the Owners and Eligible Mortgagees, as their interests may appear, in proportion to their respective Allocated Interests in the General Common Elements, provided that if a standard different from the value of the Property as a whole is employed to measure the Condemnation Award in the negotiation, judicial decree, or otherwise, then in determining such share the same standard shall be employed to the extent it is relevant and applicable.
- (e) *Partial Taking.* In the event that less than the entire Property is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership hereunder shall not terminate. Each Owner shall be entitled to a share of the Condemnation Award to be determined in the following manner. As soon as practicable the Association shall, reasonably and in good faith, allocate the Condemnation Award among compensation, damages, and other proceeds, and shall apportion the amounts so allocated among the Owners as follows:

- (i) The total amount allocated to taking of, or injury to, the General Common Elements shall be apportioned among the Owners, in proportion to their respective Allocated Interests in the General Common Elements;
- (ii) The total amount allocated to taking of, or injury to, the Limited Common Elements shall be apportioned among the Owners of the Unit(s) to which such Limited Common Elements were appurtenant in the proportion to their respective Allocated Interests in the General Common Elements;
- (iii) The total amount allocated to severance damages shall be apportioned to those Owners of Units, which were not taken or condemned;
- (iv) The respective amounts allocated to the taking of, or injury to, a particular Unit and/or improvements an Owner had made within his or her own Unit shall be apportioned to the particular Unit involved; and
- (v) The amount allocated to consequential damages and other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances.

If an allocation of the Condemnation Award is already established in negotiation, judicial decree or otherwise, then in allocating the Condemnation Award the Association shall employ such allocation to the extent it is relevant and applicable.

- (f) *Distribution.* The Association shall as soon as is practicable determine the share of the Condemnation Award to which each Owner is entitled. Such shares shall be paid into separate accounts and disbursed as soon as is practicable. Any distribution of the Condemnation Award made pursuant to this Paragraph shall be made by checks payable jointly to the Owners and holders of Mortgages, as their interests may appear.

11.5 **Certificates by Title Insurance Companies.** If payment of any insurance or condemnation proceeds are to be made to Owners or lien holders, the Board of Directors shall obtain and may rely on a title insurance company's certificate of title search or a title insurance policy based on a search of the Public Records from the date of the recording of the original Declaration stating the names of the Owners and the lien holders with respect to each Unit.

SECTION 12 DECLARANT'S RIGHT TO CHANGE

12.1 **Alteration of Design and Boundaries.** The Declarant reserves the right to change the interior design and arrangement of all Units that Declarant owns. Declarant also reserves the right to alter the boundary between Units, increase the number of Units, and alter the boundary of the General Common Elements so long as Declarant owns the Units so altered, such changes do not cause a material, adverse effect on Units owned by others, and an appropriate amendment of this Declaration is executed and recorded in the Public Records. By accepting title to a Unit, other Owners are deemed to have consented to actions taken by Declarant and amendment of the Declaration pursuant to the foregoing sentence. Until 75% of the Units have been built and sold, Declarant reserves the right to establish easements, reservations, exceptions, and exclusions consistent with the Condominium project.

12.2 **Declarant's Rights During Development.** Notwithstanding any other provisions expressly or impliedly to the contrary contained in this Declaration or the Bylaws of the Association, Declarant reserves the right (but shall not have the obligation) to appoint all of the members of the Board of Directors of the Association until the earlier of (i) 120 days after the date that 75% of the Condominium Units have been conveyed to a Unit purchaser, or (ii) the date that is 3 years following the first conveyance of a Unit to a Unit purchaser; provided, however, that the

foregoing shall not be construed to affect the Declarant's rights, as a Unit Owner, to exercise the Member Votes allocated to the Units that Declarant owns. During the period of development and sale of the remaining condominium Units, the monthly assessment for General Expenses and Limited Expenses shall be based upon the estimate of the actual cost thereof, excluding therefrom any estimated amount for contingencies, reserves or sinking funds. Declarant may, in its sole discretion, temporarily or permanently relinquish the rights reserved to it under this Section.

SECTION 13 AMENDMENT

- 13.1 **Amendment by Unit Owners.** Unit Owners holding 25% of the total number of Member Votes, the Board of Directors or Manager may propose an amendment to this Declaration at any regular or special meeting of the Association. Upon adoption of a resolution to amend by a majority of Member Votes present at a meeting or by proxy, the proposed amendment shall be made a subject for consideration at the next succeeding meeting of the Association with notice thereof, together with a copy of the proposed amendment, to be furnished to each Owner no later than thirty (30) days in advance of such meeting. At such meeting, the proposed amendment shall be approved upon receiving the favorable vote (in person, by proxy or by mail ballot) of 75% of the total number of Member Votes. If a proposed amendment is favored by a majority of the votes cast at such meeting, but the vote is less than the requisite 75% of total number of Member Votes, Members who were not present in person or by proxy may give their assent to the proposed amendment in writing, provided that the same is received by the secretary of the Association not later than 30 days from the date of such meeting wherein the action was voted upon. If the amendment is approved, it shall be the responsibility of the Association, through its officers, to record the amendment in the Public Records. The president and secretary of the Association shall have the authority to certify that the amendment was properly adopted, and they shall have the authority to execute the amendment and record it in the Public Records. No amendment may remove, revoke or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege.
- 13.2 **Amendment by Declarant.** Notwithstanding the procedure set forth in Section 13.1, the Declarant may amend this Declaration, or any other Condominium document, prior to any sale of a Unit or interest thereof.
- 13.3 **Amendment by Declarant to Add Planned Units.** Notwithstanding the procedure set forth in Section 13.1, and in addition to Declarant's right to amend under Section 13.2, the Declarant may amend this Declaration and any other Condominium document to facilitate the inclusion of the Planned Units in the Condominium pursuant to the development plan described in Section 2. Declarant shall meet the following conditions prior to filing an amendment under this Section 13.3:
- (a) Declarant shall obtain the prior written consent of each of HUD, VA, and FNMA that holds, insures or guarantees any Mortgage in the Condominium at the time an amendment to add the Planned Units on a Planned Addition is recorded;
 - (b) All of the improvements on a Planned Addition shall be substantially completed before such property is added to the Condominium;
 - (c) Liens arising in connection with Declarant's ownership of, and construction of improvements upon, a Planned Addition shall not adversely affect the rights of existing Owners or the priority of first position Mortgages on Units in the existing Condominium;
 - (d) Declarant shall pay or otherwise satisfactorily provide for payment of all real property taxes and assessments relating to a Planned Addition, covering any period prior to such properties addition to the Condominium;

- (e) If FNMA holds any Mortgage in the existing Condominium at the time a Planned Addition is to be added, Declarant shall furnish FNMA with title evidence, in a form satisfactory to FNMA, that discloses any lien, easement or other encumbrance affecting a Planned Addition or that will affect the existing Condominium property after such addition.

13.4 Consent of Eligible Mortgagees.

- (a) *Consent Requirement.* Notwithstanding the provisions of Section 13.1 or any other provision of this Declaration or the Bylaws, no material amendment of this Declaration or the Bylaws may be made by the Association or the Unit Owners without the additional, written consent of Eligible Mortgagees holding Mortgages on Units that represent at least 51% total number of Member Votes (based upon Allocated Interests) that are subject to Mortgages held by Eligible Mortgagees. An amendment to this Declaration or the Bylaws shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only. Any amendment or change to any provision of this Declaration or the Bylaws that establishes, governs or regulates any of the following shall be considered material:
 - (i) Voting rights;
 - (ii) Increases in Assessments that raise the previously assessed amount by more than 25%, assessment liens or the priority of assessment liens;
 - (iii) Reductions in the requirements for reserves for maintenance, repair, and replacement of Common Elements;
 - (iv) Responsibility for maintenance and repairs;
 - (v) Reallocation of interests in the Common Elements or Limited Common Elements, or rights to their use, except that, when Limited Common Elements are reallocated by agreement between Unit Owners, only those Unit Owners and only Eligible Mortgagees holding Mortgages in such Units must approve such action;
 - (vi) Redefinition of any Unit boundaries, except that when boundaries of only adjoining Units are involved, then only those Unit Owners and the Eligible Mortgagees holding Mortgages in such Unit or Units must approve such action;
 - (vii) Convertibility of Units into Common Elements or of Common Elements into Units;
 - (viii) Expansion or contraction of the Condominium, or the addition, annexation or withdrawal of property to or from the Condominium; provided, however, that the consent of Eligible Mortgagees shall not be required to expand the Condominium to include the Planned Units on a Planned Addition, as contemplated in the plan of development described in Section 2 of this Declaration;
 - (ix) Hazard or fidelity insurance requirements;
 - (x) Imposition of any restrictions on the leasing of Units;
 - (xi) Imposition of any restriction on the right of a Unit Owner to sell, transfer or otherwise convey such Owner's Unit;

- (xii) Restoration or repair of the Condominium (after damage or partial condemnation) in a manner other than that specified in the Unit Ownership Act, this Declaration, the Bylaws, and any other Condominium documents;
 - (xiii) Any action withdrawing, abandoning, or terminating the submission of the Property to the Unit Ownership Act after substantial destruction or condemnation of the Units or Common Elements;
 - (xiv) Abandonment, partition, subdivision, encumbrance, sale or other transfer of the Common Elements by act or omission; and
 - (xv) Any provision of this Declaration or the Bylaws that is for the express benefit of Eligible Mortgagees.
- (b) *Additional Consent Requirement for Terminating Condominium Regime.* Notwithstanding Paragraph 13.4(a) to the contrary, any action withdrawing, abandoning or terminating the submission of the Property to the Unit Ownership Act for any reason other than substantial destruction or condemnation of the Units or Common Elements must be consented to in writing by Eligible Mortgagees holding Mortgages on Units that represent at least 67% of the votes of Units (based upon Allocated Interests) that are subject to Mortgages held by Eligible Mortgagees. If the Unit Ownership Act requires the consent of a percentage of Eligible Mortgagees greater than that set forth in this Paragraph, the Unit Ownership Act's requirement shall apply.
- (c) *Implied Consent of Eligible Mortgagees.* Notwithstanding the contrary requirements of obtaining the written consent of Eligible Mortgagees in Paragraph 13.4(a), a proposed amendment shall be deemed approved by a Mortgagee if the Mortgagee fails to object or consent to a written proposal for an amendment within sixty (60) days after receipt of notice of the written proposal by such Eligible Mortgagee, provided such notice was delivered by certified or registered mail, with a "return receipt" requested.

SECTION 14 ADDITIONAL MORTGAGEE PROTECTIONS

- 14.1 **Notice of Actions.** The Association shall give prompt written notice to each Eligible Mortgagee of:
- (a) Any condemnation or any casualty loss which affects either a material portion of the Condominium, or the Unit in which there is a Mortgage held by such Eligible Mortgagee;
 - (b) Any delinquency in the payment of assessments or other charges owed by a Unit Owner whose Unit is subject to a Mortgage held by such Eligible Mortgagee, which delinquency remains uncured for a period of 60 days;
 - (c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
 - (d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as set forth in this Declaration or the Bylaws; and
 - (e) Any judgment rendered against the Association.

- 14.2 **Maintenance and Inspection of Documents and Books.** The Association continuously shall maintain current copies of the Documents, as well as the Association's books, records

and financial statements, and shall make the same available, at reasonable times during normal business hours, for inspection by any Unit Owner, Eligible Mortgagee, or the holder, insurer, or guarantor of any other first Mortgage secured by a Unit in the Condominium.

- 14.3 **Priority – Lien Rights.** Except as specifically provided in this Declaration, no provision of this Declaration shall be construed to grant to any Unit Owner or to any other Person any priority over any lien rights of an Eligible Mortgagee pursuant to its Mortgage in the case of distributions of insurance proceeds or condemnation awards.

SECTION 15 REMOVAL OR PARTITION; SUBDIVISION

- 15.1 **Procedure for Removal or Partition.** The Condominium may be removed from condominium ownership, and may be partitioned or sold, only upon compliance with each of the conditions hereof:

- (a) The Board of Directors of the Association must approve the plans of removal, partition or sale, including the details of how any partition or sale, and the distribution of property or funds, shall be accomplished.
- (b) The plan of removal, partition or sale must be approved as provided in the Montana Unit Ownership Act. If the Unit Ownership Act does not require approval for removal, partition or sale, then approval shall be evidenced by the affirmative vote of at least 75% of the Member Votes. Upon obtaining such approval, the Board of Directors shall be empowered to implement and carry out the plan of removal, partition or sale.

The Common Elements of the Condominium shall not be abandoned, partitioned, subdivided, encumbered, sold or transferred by removal or partition without compliance with all of the above requirements.

- 15.2 **Subdivision Prohibited.** No Unit may be divided or subdivided into a smaller Unit, nor may any portion thereof sold or otherwise transferred, except as provided in Section 12.1 and as otherwise expressly provided in this Declaration.
- 15.3 **Application of Section.** This Section 15 shall not apply to the sale of individual Units and shall not be considered as a right of first refusal.

SECTION 16 MISCELLANEOUS

- 16.1 **Covenants to Run with Land.** The provisions of this Declaration and the Bylaws shall be construed to be covenants running with the Land, and shall include every Unit and shall be binding upon the Unit Owners, their heirs, successors, nominees, personal representatives and assigns for as long as this Declaration and the Bylaws are in effect.

- 16.2 **Service of Process.** The name and address of the person to receive service of process for the Condominium until another designation is filed of record shall be:

Benjamin E. Nistler
NHB, LLC
PO Box 11530
Bozeman, Montana 59719

- 16.3 **Disclaimer.** Except as expressly provided in this Declaration, the Bylaws, or in agreements or instruments pertaining to conveyance of the Units, Declarant does not intend by this Declaration

to make, and hereby expressly negates and disclaims, any warranties and representations regarding the value, nature, quality, physical condition, suitability, compliance with laws or any other aspect of the Condominium Property or the Units. Estimates of General Expenses and Limited Expenses made by Declarant are reasonably believed to be accurate at the time they are made, but Declarant makes no warranty or representation that such estimates are either correct or may be relied upon by any person.

- 16.4 **No Dedication.** Nothing contained in this Declaration shall be construed or deemed to constitute a dedication, express or implied, of any part of the Property to or for any public use or purpose whatsoever.
- 16.5 **Remedies.** The remedies provided in this Declaration and the Bylaws shall not be exclusive of any other remedies that may now or in the future be available to the parties as provided for by law.
- 16.6 **Severability.** The provisions of this Declaration shall be deemed independent and severable, and the invalidity, partial invalidity or unenforceability of any one or more provisions shall not affect the validity or enforceability of any other provision.
- 16.7 **Binding Effect.** Except as otherwise provided, 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, nominees, successors, and assigns of each.
- 16.8 **Captions.** The captions, titles and section headings throughout this Declaration are for convenience and reference only and shall not be deemed or held to explain, modify, amplify or aid in the interpretation, construction or meaning or the provisions of this Declaration, nor to define, limit or describe the scope or intent of a particular section.
- 16.9 **Interpretation.** The provisions of the Declaration and of the Bylaws to be promulgated and recorded herewith shall be liberally construed to effectuate the intent and purpose of the Declaration and the Bylaws.
- 16.10 **Nondiscrimination.** There shall be no limitation upon sale, lease or occupancy of any unit based upon race, creed, color, sex, religion, national origin, handicap or familial status. The Association may make reasonable accommodations, including reasonable waiver of the covenants and restrictions of this Declaration, when necessary to afford handicapped individuals the opportunity to enjoy the Condominium property.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be made and executed according to the provisions of the Unit Ownership Act, Title 70, Section 23, Montana Code Annotated.

NHB, LLC, a Montana limited liability company.

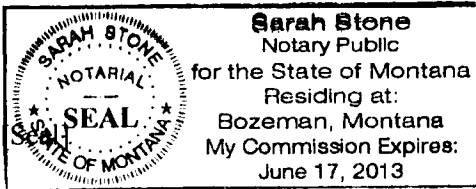
by: 
Benjamin E. Nistler, Manager

[acknowledgment on next page]

ACKNOWLEDGMENT

STATE OF MONTANA)
 : ss.
County of Gallatin)

This instrument was acknowledged before me on August 31st, 2009, by Benjamin E. Nistler as manager of NHB, LLC, a Montana limited liability company.



SA SA
Printed Name: Sarah Stone
NOTARY PUBLIC for the State of Montana
RESIDING AT Bozeman, Montana
My Commission Expires June 17, 2013

Return to:
NHB, LLC
PO Box 11530
Bozeman, MT 59719

BYLAWS
of
ROSEDALE CONDOMINIUM OWNERS ASSOCIATION

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SECTION 1. INTRODUCTION

- 1.1 **Application.** These Bylaws, upon being recorded with the Clerk and Recorder of Gallatin County, Montana, apply to and govern the ROSEDALE CONDOMINIUM OWNERS ASSOCIATION ("Association"). Pursuant to Section 6.1 of the Declaration, the Association may be incorporated and operate as a non-profit, mutual benefit corporation under the Montana Nonprofit Corporation Act, Title 35, Chapter 2, of the Montana Code Annotated ("Act"). The Association is authorized and created by the Declaration for Rosedale Condominium ("Declaration"). All Unit Owners shall have the rights and responsibilities described in these Bylaws and shall be subject to the provisions thereof. Unless the context requires otherwise, capitalized terms in these Bylaws shall have the meanings given them in the Declaration.
- 1.2 **Association Powers.** The Association shall have all the powers set forth in the Declaration and these Bylaws. If incorporated, the Association shall additionally have all of the powers enumerated and set forth in the Act, except as expressly limited by its articles of incorporation, the Declaration, and these Bylaws.
- 1.3 **Relation to other Documents; Conflicts.** If the Association is incorporated, these Bylaws shall be subject to and governed by the articles of incorporation of the Association. These Bylaws are further subject to the Declaration, as such may be from time to time amended. If there is any conflict between these Bylaws and the Declaration, the Declaration shall control. No acts by the Association or its Board of Directors shall be contrary to the Declaration.

SECTION 2. OFFICES

- 2.1 **Registered Office.** The Association's registered office shall be located within Montana at the address of the Association's registered agent. If the Association is incorporated, the Board of Directors or Members holding a majority of Member Votes may change the registered agent and the

address of the registered office from time to time, upon filing the appropriate statement with the Secretary of State. If the Association is not incorporated, the Board of Directors or Members holding a majority of Member Votes may change the registered agent by amending the Declaration as provided in Section 70-23-902 of the Montana Code Annotated.

- 2.2 **Principal Office.** The Association's principal office shall be within Gallatin County, Montana, at such location as may be designated by the Board of Directors upon notice to the Members. The principal office need not be identical with that of the registered office.

SECTION 3. MEMBERSHIP

- 3.1 **Mandatory Membership.** Every Person who is an Owner of a Condominium Unit shall be a Member of the Association. Persons holding a Mortgage in a Unit or any other interest in a portion of the Property merely as security for the performance of an obligation shall not be entitled to membership.
- 3.2 **Membership Interest.** Ownership of each Condominium Unit shall entitle the Owner thereof to a specified number of Member Votes based on such Unit's Allocated Interest. The Member Votes allocated to each Unit shall be as provided in the Declaration and any amendments thereto. Multiple Owners of a single Unit shall have, collectively, the Member Votes allocated to such Unit. If an Owner owns more than one Unit, such Owner shall have the Member Votes allocated to all of its Units.
- 3.3 **Transfer of Membership.** A membership interest shall run with the land. A membership interest is an incident to ownership that is created when ownership of a Unit is acquired and terminated when ownership is divested. Except as otherwise provided in the Declaration, a membership may not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except upon transfer of the corresponding ownership interest in a Unit, and then only to the transferee of that ownership interest. Any attempt to transfer membership in the Association other than by a transfer of the corresponding ownership interest shall be null and void.
- 3.4 **Annual Membership Meeting.** The Association shall hold an annual meeting of the membership at such date, place, and time as shall be set by the Board of Directors. At the annual meeting, the Members elect directors and transact any other business as may come before the meeting.
- 3.5 **Special Membership Meetings.** The president (or vice-president in absence of the president) may call a special membership meeting for any purpose or purposes described in the meeting notice. Members having the requisite Member Votes specified in the Declaration may call a special membership meeting to review Assessments. Members holding 25% of the total Member Votes may call a special membership meeting for other purposes described in the meeting notice. If Members request a special membership meeting, they must do so in writing, and sign, date, and deliver the demand to any corporate officer at least 10 days before the Association must give notice of the meeting. The president shall then call the special meeting on these Members' behalf. For purposes of determining whether Members hold the requisite number of Member Votes to call a special meeting, the record date is the close of business on the 30th day before delivery of the demand or demands for such meeting to any corporate officer.
- 3.6 **Place of Meeting.** The Board of Directors may designate any place within Gallatin County, Montana, as the meeting place for any annual or special meeting of the Members. If the Board of Directors does not designate a meeting place, the Members shall meet at the principal office of the Association.

3.7 Notice of Membership Meetings.

- (a) *Notice Required.* The secretary of the Association shall deliver notice of all annual or special membership meetings to each record Unit Owner.
- (b) *Manner of Notice.* Notice of annual and special membership meetings shall be given by separate written notice. Unless otherwise provided in the Declaration, notice shall be given not less than 10 or more than 30 days before the date of the meeting. Notice shall be deemed effective at upon personal delivery of the notice to a Member or upon the date when the notice was deposited postpaid in the United States mail. Notice by United States mail shall be addressed to each Member at the address listed in the records of the Gallatin County Assessor's office unless the Member has provided the Association in writing another mailing address.
- (c) *Contents of Notice.* The notice shall state the place, day and hour of any annual or special membership meeting. Unless otherwise required by the Declaration or the Act, the notice of an annual membership meeting need not include a description of the meeting's purpose or purposes. The notice of each special membership meeting, however, shall include a description of the meeting's purpose or purposes.
- (d) *Adjourned Meeting.* If the Members adjourn any membership meeting to a different date, time, or place, the secretary need not give notice of the new date, time and place, if the new date, time, and place is announced at the meeting before adjournment.
- (e) *Waiver of Notice.* A Member entitled to a notice of a meeting, or to any other notice required by the Act, the Declaration, or these Bylaws, may waive such notice by a writing signed by the Member. The Member must send the notice of waiver to the Association (either before or after the date and time stated in the notice) for inclusion in the minutes or filing with the Association's records. A Member's attendance at a meeting: (i) waives the Member's right to object to lack of notice or defective notice of the meeting, unless the Member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; and (ii) waives the Member's right to object to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the Member objects to considering the matter when it is presented.

3.8 Conduct of Membership Meetings.

- (a) *Conduct of Meeting.* The president, or in the president's absence, the vice president, or in their absence, any person chosen by the Members present shall call the membership meeting to order and shall act as the chairperson of the meeting. The chairperson (or a person designated by the chairperson) shall establish rules of the meeting that will freely facilitate debate and decision-making. The chairperson will indicate who may speak when and when a vote will be taken. The secretary of the Association shall act as the secretary of all meetings of the Members, but in the secretary's absence, the presiding officer may appoint any other person to act as the secretary of the meeting.
- (b) *Order of Business.* The order of business at a membership meeting shall be as follows
 - (i) Call to order;
 - (ii) Reading of prior minutes;
 - (iii) Election of directors, if that is the purpose of the meeting;
 - (iv) Business specified by the notice;
 - (v) Unfinished business;

- (vi) New business;
- (vii) Adjournment.

At the annual meeting, the president and treasurer shall report on the activities and financial condition of the Association.

3.9 Membership Quorum Requirements

- (a) *Annual Meeting Quorum.* There is no quorum requirement for an annual meeting. Unless the Declaration, Bylaws or Montana Nonprofit Corporation Act require a greater than majority vote for a particular matter, actions may be taken on matters coming before the annual meeting by Members holding a majority of Member Votes present at the meeting in person or by proxy.
- (b) *Meeting Quorum.* Unless otherwise provided by the Declaration, fifty percent (50%) of the total Member Votes of the Association, either present or by proxy, shall constitute a quorum at any meeting of the membership other than an annual meeting. If the required quorum is not present, another meeting may be called subject to the notice requirements of Section 3.7 of these Bylaws, and the required quorum at such subsequent meeting shall be one-half of the required quorum at the preceding meeting; provided, however, that no such subsequent meeting may be held more than 60 days following the preceding meeting.

3.10 **Proxies** A Member may vote in person or by proxy at all membership meetings. The Member may appoint a proxy to vote by signing an appointment form, either personally or by attorney-in-fact. The Association shall consider a proxy appointment valid if made in writing and filed with the secretary of the Association before or at the time of the meeting. No proxy shall be valid after 11 months from the date it was made, unless otherwise provided in the proxy. The Association, and its director, officer or agent who accepts or rejects a proxy appointment in good faith, is not liable in damages to a Member for the consequences of such acceptance or rejection.

3.11 **Voting of Membership** Each Member is entitled to exercise the number of Member Votes attributable to such Member's Unit on each matter voted on by the Members. If a membership stands of record in the names of two or more Persons, then the vote of one representative shall bind all names on that one membership. Except as specifically provided otherwise in the Declaration or these Bylaws, when Members vote to take action on a matter, a majority of Member Votes shall carry.

3.12 **Action by Written Consent** The Members may act on any matter generally required or permitted at a membership meeting, without actually meeting, if: all the Members take the action, each one signs a written consent describing the action taken, and the Members file all the consents with the records of the corporation. Action taken by consents is effective when the last Member signs the consent, unless the consent specifies a different effective date. A signed consent has the effect of a meeting vote and may be referred to as a meeting vote in any document. The record date for determining Members entitled to take action without a meeting is the earliest date that a Member signs a consent.

SECTION 4. DIRECTORS

4.1 Number, Tenure and Qualifications of Directors.

- (a) *Election of Directors.* The Members may set the number of directors, provided that such number shall be no less than 3 and no more than 5. A director shall be elected by the Members for a term set by the membership, provided that such term shall be not less than 1

year nor greater than 3 years. Directors' terms shall be staggered so that the terms of at least one-third of the directors on the Board expire annually. If a director's term expires, the director shall continue to serve until the Members have elected and qualified a successor or until there is a decrease in the number of directors. If a vacancy occurs on the Board of Directors prior to a membership meeting, the remaining directors may fill the vacancy. When the directors elect a director to fill a vacancy, the director's term expires at the next membership meeting at which Members elect directors. Directors shall be either individual Members of the Association or authorized representatives of entity Members of the Association.

- (b) *Nomination and Voting.* The Board may nominate qualified persons for vacant director positions. Members may also make such nominations from the floor at a meeting where directors are to be elected. Each Member (or if more than one Person holds a membership interest, their representative) shall be entitled to cast the number of Member Votes allocated to such Member's Unit as set forth in the Declaration with respect to each vacancy to be filled at any election of directors. The candidates receiving the greatest number of votes shall be elected.
- 4.2 **Removal of Directors.** One or more directors elected by the Members may be removed, with or without cause, if a majority of the Member Votes present at a duly constituted meeting affirmatively votes for such removal. Notice must be sent to all Members and directors that a purpose of the meeting is removal.
- 4.3 **Regular Meetings of the Board of Directors.** The Board of Directors shall hold a regular meeting immediately after, and at the same place as, the annual membership meeting. No notice of the meeting other than this Bylaw is required. The Board of Directors may provide, by resolution, the date, time, and place (which shall be within Gallatin County, Montana) of additional regular meetings. Regular Board meetings may be held by conference telephone, if convened in accordance with Section 4.5.
- 4.4 **Special Meetings of the Board of Directors.** The president, or one-third of the directors then in office may call and give notice of special meetings of the Board of Directors. Those authorized to call special Board meetings may fix any place within Gallatin County, Montana, as the special meeting place. Special Board meetings may be held by conference telephone, if convened in accordance with Section 4.5.
- 4.5 **Board of Director Meetings by Conference Telephone.** If authorized by the Board of Directors, the Board or any designated committee of the Association may participate in a Board or committee meeting by means of conference telephone or similar communications equipment, provided all persons entitled to participate in the meeting receive proper notice of the telephone meeting (see Section 3.9), and provided all persons participating in the meeting can hear each other at the same time. A director participating in a conference telephone meeting is deemed present in person at the meeting. The chairperson of the meeting may establish reasonable rules governing conduct of the meeting by phone.
- 4.6 **Notice of Special Director Meetings; Waiver.** The Association's secretary shall give either oral or written notice of any special Board meeting at least 2 days before the meeting. The notice shall include the meeting place, day and hour. If the meeting is to be held by conference telephone, the secretary must provide instructions for participating in the telephone meeting. Any director may waive notice of any meeting. The waiver must be in writing, signed by the director entitled to the notice, and filed with the minutes or corporate records. A director's attendance at a meeting waives the director's right to object to lack of notice or defective notice of the meeting; this shall be true unless the director, at the beginning of the meeting (or promptly upon arrival), objects to holding

the meeting or transacting business at the meeting, and does not vote for or assent to action taken at the meeting. Neither the secretary nor director needs to specify in the notice or waiver of notice the business to be transacted at, or the purpose of, any special Board meeting.

4.7 Directors, Manner of Acting.

- (a) *Required Number to Constitute Act.* The act of a majority of the directors of the Association shall be the act of the Board of Directors.
- (b) *Director Approval.* The Association shall deem a director to have approved of an action taken if the director is present at a meeting of the Board unless:
 - (i) The director objects at the beginning of the meeting (or promptly upon arrival) to holding it or transacting business at the meeting; or
 - (ii) The director's dissent or abstention from the action taken is entered in the minutes of the meeting; or
 - (iii) The director delivers written notice of dissent or abstention to the presiding officer of the meeting before its adjournment or to the Association immediately after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken.

4.8 Conduct of Board of Directors Meetings. The president, or in the president's absence, the vice-president, or in their absence, any person chosen by the directors present shall call the meeting of the directors to order and shall act as the chairperson of the meeting. The chairperson, or the chairperson's designee, shall establish rules of the meeting that will freely facilitate debate and decision-making. The chairperson will indicate who may speak when and when a vote will be taken. The secretary of the Association shall act as the secretary of all meetings of the directors, but in the secretary's absence, the presiding officer may appoint any other person to act as the secretary of the meeting.

4.9 Director Action Without a Meeting. The directors may act on any matter generally required or permitted at a Board meeting, without actually meeting, if all the directors take the action, each one signs a written consent describing the action taken, and the directors file all the consents with the records of the Association. Action taken by consents is effective when the last director signs the consent, unless the consent specifies a different effective date. A signed consent has the effect of a meeting vote and may be referred to as a meeting vote in any document.

4.10 Director Compensation. Directors shall not receive compensation for services rendered to the Association. Directors shall, however, be entitled to reimbursement for actual expenses incurred in the performance of their duties.

4.11 General Powers. Except as otherwise provided by the Declaration and articles of incorporation, all Association powers shall be exercised by or under the authority of the Board of Directors, and the Board shall manage and direct the business and affairs of the Association. Without limiting the generality of the foregoing, the Board of Directors is empowered to do the following things:

- (a) Exercise ultimate decisional power in and on all matters affecting the Association, except for those matters reserved to the Members or the Declarant.
- (b) Enter into contracts and agreements as are necessary to conduct the business of the Association.

- (c) Promote, conserve, and preserve the Common Elements.
- (d) Designate, hire and dismiss the personnel necessary for the Association's operation and for the maintenance, operation, repair, and replacement of the Common Elements. The Board may, where appropriate, provide for the compensation of such personnel and for the purchase of equipment, supplies and materials to be used by such personnel in the performance of their duties.
- (e) Make and establish rules and regulations for the governance of the Condominium as provided in the Declaration.
- (f) Prepare budgets and levy Assessments as described in these Bylaws and the Declaration.
- (g) Establish accounts in banks or other financial institutions for operating and reserve funds as set out in the Declaration.
- (h) Pay the expenses of the Association, including all property taxes and assessments.
- (i) Obtain and carry insurance against casualties and liabilities, as provided in the Declaration, and pay the premium cost thereof, and provide for the use and disposition of insurance proceeds in the event of loss or damage to Association property.
- (j) To provide a means of hearing grievances of unit owners and to respond appropriately thereto.
- (k) 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 Association, to levy a penalty, to charge interest on unpaid amounts due and owing, and, in a foreclosure proceeding, to charge a reasonable rental for the Unit. However, other than for the collection of delinquent assessments or accounts, the Board of Directors shall not initiate any litigation or lawsuit without prior approval of a majority of the Member Votes.
- (l) To defend in the name of the Association any and all lawsuits wherein the Association is a party defendant.
- (m) Call meetings of the Association, both annual and special, preside over such meetings. and give appropriate notice of such meetings as required by these Bylaws.
- (n) Formulate and introduce resolutions at the meetings of the Association.
- (o) To act on behalf of the Association in matters concerning the Association's membership, if any, in any subdivision owner's association.
- (p) 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 Condominium.

4.12 **Committees.** Pursuant to the Montana Nonprofit Corporation Act, Montana Code Annotated §35-2-433, and subject to the limitations therein, the Board of Directors may create one or more committees and appoint members of the Board to serve on them. Each committee must have two or more members. Committees shall serve at the pleasure of the Board of Directors.

- 4.13 **Managing Agent.** The Board of Directors may employ for the Association a professional management agent at a compensation established by the Board to perform such day-to-day operations of the Association as the Board shall authorize. The Declarant, or an affiliate of the Declarant, may be employed as managing agent or manager. No management contract may have a term in excess of one year and must permit termination by either party without cause and without termination fee on 30 days' or less written notice.
- 4.14 **Borrowing.** The Board of Directors shall have the power to borrow money for the purpose of maintenance, repair or restoration of the Common Elements without the approval of the Members of the Association. The Board shall also have the power to borrow money for other purposes; provided, the Board shall obtain Member approval in the same manner provided in Section 6.4(b) of the Declaration for Special Assessments if the proposed borrowing is for the purpose of modifying, improving or adding amenities and the total amount of such borrowing exceeds or would exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.
- 4.15 **Enforcement.** The Board shall have the power to impose reasonable fines for violation of any duty imposed under the Declaration, these Bylaws or any rules and regulations duly adopted hereunder; provided, however, nothing herein shall authorize the Association or the Board of Directors to limit ingress and egress to or from a Unit or to suspend an Owner's right to vote due to nonpayment of assessments. In the event that any occupant of a Unit violates the Declaration, Bylaws or a rule or regulation and a fine is imposed, the fine shall first be assessed against the occupant; provided, however, that if the fine is not paid by the occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Association. The failure of the Board to enforce any provision of the Declaration, Bylaws or any rule or regulation shall not be deemed a waiver of the right of the Board to do so thereafter.
- (a) *Notice.* Prior to imposition of any sanction, the Board or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than 10 days within which the alleged violator may present a written request to the Board of Directors for a hearing; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within 10 days of the notice. If a timely challenge is not made, the sanction stated in the notice shall be imposed.
- (b) *Hearing.* If a hearing is requested in a timely manner, the Board shall conduct a hearing affording the alleged violator a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, Director or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed. The Board of Directors may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the 10-day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any person.
- (c) *Additional Enforcement Rights.* Notwithstanding anything to the contrary herein contained, the Association, acting through the Board of Directors, may elect to enforce any provision of the Declaration, these Bylaws or the rules and regulations of the Association by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedure set

forth above. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of which abatement is sought shall pay all costs actually incurred, including reasonable attorney's fees.

SECTION 5. OFFICERS

- 5.1 **Number of Officers; Qualification.** The officers of the Association shall be a president, a secretary, and a treasurer. The same person may hold the offices of secretary and treasurer. The Board may appoint a vice-president if it deems such office necessary. All officers must be individual Members of the Association or authorized representatives of entity Members of the Association. The president and vice-president shall be appointed from among the directors. The secretary and treasurer need not be directors.
- 5.2 **Appointment and Term of Office.** The Board of Directors shall appoint officers of the Association for a term that the Board determines. If the Board does not specify a term, the officers shall hold office until the next annual meeting of the Board.
- 5.3 **President.** The president shall be the principal executive officer of the Association. The president shall be subject to the control of the Board of Directors and shall in general supervise and control, in good faith, all of the business and affairs of the Association. The president shall, when present, preside at all meetings of the Members and of the Board of Directors.
- 5.4 **Vice President.** The vice president, if one is appointed, shall perform, in good faith, the president's duties if the president is absent, dies, is unable or refuses to act. If the vice president acts in the absence of the president, the vice president shall have all presidential powers and be subject to all the restrictions upon the president. The vice president shall perform any other duties that the president or Board of Directors may assign to the vice president.
- 5.5 **Secretary.** The secretary shall in good faith: (a) create and maintain one or more books for the minutes of the proceedings of the Members and of the Board of Directors; (b) provide that all notices are served in accordance with these Bylaws, the Declaration, or as required by law; (c) be custodian of the Association's records; (d) when requested or required, authenticate any records of the Association; (e) keep a current list of the mailing addresses of the Members; (f) sign, on behalf of the Association, all records, documents and instruments when such are authorized to be signed by the Association; and (g) in general perform all duties incident to the office of secretary and any other duties that the president or the Board of Directors may assign to the secretary.
- 5.6 **Treasurer.** The treasurer shall: (a) have charge and custody of the accounts of the Association; (b) receive and give receipts for moneys due and payable to the Association from any source, and deposit all moneys in the Association's name in banks or other depositories that the Board shall select; (c) prepare and provide such periodic accounting as shall be required by the Association; and (d) in general perform all of the duties incident to the office of treasurer and any other duties that the president or Board of Directors may assign to the treasurer.
- 5.7 **Officer Compensation.** Officers shall not receive compensation for services rendered to the Association. Officers shall, however, be entitled to reimbursement for actual expenses incurred in the performance of their duties.

SECTION 6. INDEMNIFICATION OF DIRECTORS, OFFICERS AND AGENTS

6.1 Indemnification of Directors

- (a) *General.* An individual made a party to a proceeding because the individual is or was a director of the Association may be indemnified against liability incurred in the proceeding, but only if the indemnification is both:
 - (i) Determined permissible; and
 - (ii) Authorized, as defined in subsection (b) of this Section 6.1. The indemnification is further subject to the limitation specified in subsection (d) of this Section 6.1.
- (b) *Determination, and Authorization.* The Association shall not indemnify a director under Section 6.1 unless:
 - (1) Determination. Determination has been made in accordance with procedures set forth in the Montana Nonprofit Corporation Act that the director met the standard of conduct set forth in subsection (c) below; and
 - (2) Authorization. Payment has been authorized in accordance with procedures listed in the Montana Nonprofit Corporation Act based on a conclusion that the expenses are reasonable, the Association has the financial ability to make the payment, and the financial resources of the Association should be devoted to this use rather than some other use by the Association.
- (c) *Standard of Conduct.* The individual shall demonstrate that:
 - (i) The individual acted in good faith; and
 - (ii) The individual reasonably believed:
 - (A) In acting in an official capacity with the Association, that the individual's conduct was in the Association's best interests;
 - (B) In all other cases, that the individual's conduct was at least not opposed to the Association's best interests; and
 - (C) In the case of any criminal proceeding, that the individual had no reasonable cause to believe that the conduct was unlawful.

The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, is not, of itself, a determination that the director did not meet the standard of conduct described in this section.

- (d) *No Indemnification Permitted in Certain Circumstances.* The Association shall not indemnify a director under Section 6.1 if
 - (i) The director was adjudged liable to the Association in a proceeding by or in the right of the Association; or

- (ii) The director was adjudged liable in any other proceeding charging that the director improperly received personal benefit, whether or not the individual acted in an official capacity.
- (e) *Indemnification Limited.* Indemnification permitted under Section 6.1 in connection with a proceeding by the Association or in the right of the Association is limited to the reasonable expenses incurred in connection with the proceeding.

6.2 **Advance Expenses for Directors** The Association may pay for or reimburse, in advance of final disposition of the proceeding, the reasonable expenses incurred by a director who is a party to a proceeding if:

- (a) By following the procedures of the Montana Nonprofit Corporation Act the Board of Directors determined that the director met requirements (c)–(e) listed below;
- (b) The Board of Directors authorized an advance payment to a director;
- (c) The director has furnished the Association with a written affirmation of the director's good faith belief that the director has met the standard of conduct described in Section 6.1;
- (d) The director has provided the Association with a written undertaking, executed personally or on the director's behalf, to repay the advance if it is ultimately determined that the director did not meet the standard of conduct; the director's undertaking must be an unlimited general obligation, but need not be secured, and the Association may accept the undertaking without reference to financial ability to make repayment; and
- (e) The Board of Directors determines that the facts then known to it would not preclude indemnification under Section 6.1 of these Bylaws or the Montana Nonprofit Corporation Act.

6.3 **Indemnification of Officers, Agents and Employees** The Board of Directors may choose to indemnify and advance expenses to any officer, employee, or agent of the Association applying those standards described in Sections 6.1 and 6.2 of these Bylaws.

6.4 **Mandatory Indemnification** Notwithstanding any other provisions of these Bylaws, the Association shall indemnify a director or officer who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director or officer was a party because he or she is or was a director or officer of the Association, against expenses incurred by the director or officer in connection with the proceeding.

SECTION 7. BOOKS AND RECORDS; INSPECTION

7.1 **Corporate Records.**

- (a) *Minutes and Financial Records.* The Association shall keep a record of the minutes of all meetings of its Members and Board of Directors, a record of all actions taken by the Members or Board of Directors without a meeting, and a record of all actions taken by a committee of the Board of Directors acting in place of the Board and on behalf of the Association. The Association shall maintain appropriate financial records.
- (b) *Membership List.* The Association shall maintain a record of the Members' names and addresses. The membership list shall indicate each Member is entitled to one vote.

- (c) *Form.* The Association shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.
- (d) *Other Records.* The Association shall keep a copy of the following records at its principal office or at a location from which the records may be recovered within 2 business days:
 - (i) Its articles or restated articles of incorporation and all amendments to them currently in effect;
 - (ii) Its most recent annual report delivered to the Secretary of State;
 - (iii) Its Bylaws or restated Bylaws and all amendments to them currently in effect;
 - (iv) A copy of the Declaration;
 - (v) Rules and regulations adopted by the Board of Directors pursuant to authority granted in the Declaration.
 - (vi) Resolutions adopted by its Board of Directors;
 - (vii) The financial statements, if any, furnished for the past 3 years to the Members;
 - (viii) The minutes of all membership meetings, and records of all actions taken by Members without a meeting, for the past 3 years; and
 - (ix) A list of the names and business addresses of its current directors and officers.

7.2 **Member's Rights to Inspect Corporate Records**

- (a) *Absolute Inspection Rights of Records by Members.* A Member (or a Member's agent or attorney) is entitled to inspect and copy, at a reasonable time and location specified by the Association, any of the records of the Association described in Section 7.1(d). The Member must give the Association written notice or a written demand to inspect at least 5 days before the date on which the Member wishes to inspect and copy.
- (b) *Conditional Inspection Right.* The Member (or the Member's agent or attorney) may inspect and copy, at a reasonable time and reasonable location specified by the Association, additional records listed in Section 7.2(c) if the Member meets the following criteria:
 - (i) The Member must give the Association a written demand to inspect made in good faith and for a proper purpose at least 5 business days before the date on which the Member wishes to inspect and copy; and
 - (ii) The Member must describe with reasonable particularity:
 - (A) The Member's purpose and
 - (B) The records that the Member desires to inspect; and
 - (iii) The Association must approve that the records are directly connected with the Member's purpose.

- (c) *Additional Records.* If the Member meets the requirements of Section 7.2(b), the Member may inspect and copy:
 - (i) Excerpts from minutes of any meeting of the Board of Directors, records of any action of a committee of the Board of Directors acting on behalf of the Association, minutes of any meeting of the Members, and records of action taken by the Members without a meeting, to the extent not subject to inspection under subsection (a) of Section 7.1;
 - (ii) Financial records of the Association; and
 - (iii) The membership list.
- (d) *Availability of Records to Lenders and Eligible Mortgagees.* Lenders of Unit Owners and Eligible Mortgagees may inspect and copy at the Associations, during normal business hours or at other reasonable times, and at a location specified by the Association, any of the records of the Association described in items (i) – (vii) of Section 7.1(d). A lender or Eligible Mortgagee must give the Association written notice or a written demand to inspect at least 5 days before the date on which the lender or Eligible Mortgagee wishes to inspect and copy.
- (e) *Financial Statement to FHA, FHLMC, FNMA, VA, etc.* Upon the written request of the FHA, FHLMC, FNMA, VA, or other, similar agencies or corporations having an interest in the Condominium or a Unit, the Association shall prepare and furnish within a reasonable time an audited financial statement of the Association for the preceding fiscal year.
- (f) *Copy Costs.* The right to copy includes the right to photocopy. The Association may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to a Member, lender, Eligible Mortgagee, prospective purchaser, agency or corporation having inspection rights. The charge may not exceed the estimated cost of production or reproduction of the records.

SECTION 8. MISCELLANEOUS

- 8.1 **Contracts.** The Board of Directors may authorize any officer(s) or agent(s) to enter into any contract or to execute or deliver any instrument in the name of and on behalf of the Association. The authorization may be general or specific. In the absence of another designation, the president and the secretary shall make all corporate deeds, mortgages and instruments of assignment or pledge.
- 8.2 **Checks, Drafts, etc.** The Board of Directors shall authorize by resolution which officer(s) or agent(s) may sign and issue all Association checks, drafts or other orders for payment of money, and notes or other evidence of indebtedness. The Board of Directors shall also determine by resolution the manner in which these documents will be signed and issued.
- 8.3 **Deposits.** The treasurer of the Association shall deposit in banks and other depositories all Association funds that are not being used. The Board of Directors shall authorize by Board resolution the exact location of the banks and depositories.
- 8.4 **Insurance.** The Board of Directors may purchase insurance policies to protect the property of the Association against casualty loss and to protect the Association, and its Board of Directors, officers and agents, when acting in their official capacity from liability.
- 8.5 **Fiscal Year.** The fiscal year of the Association shall be the calendar year or as otherwise set by resolution of the Board of Directors.

SECTION 9. AMENDMENTS

9.1 **Amendments.** Prior to the conveyance of the first Unit, Declarant may unilaterally amend these Bylaws. Thereafter, these Bylaws may amended by the Association upon approval of 75% of the Member Votes at a meeting duly noticed and called for such purpose. If a proposed amendment is favored by a majority of the votes cast at a meeting, but such vote is less than the requisite 75% of the votes of the membership interests, Members who were not present in person or by proxy may give their assent to any amendment in writing, provided that the same is received by the Secretary of the Association not later than thirty (30) days from the date of such meeting wherein the action was voted upon. No amendment shall be effective until a copy of the Bylaws, as amended, certified by the president and secretary of the Association is recorded in the Public Records. No amendment may remove, revoke or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege.

IN WITNESS WHEREOF, the Declarant hereby approves and adopts the foregoing Bylaws on August 31, 2009.

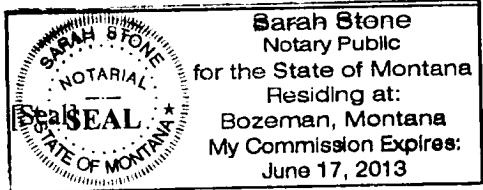
NHB, LLC, a Montana limited liability company.

by: [Signature]
Benjamin E. Nistler, Manager

STATE OF MONTANA)
 : ss.
County of Gallatin)

This instrument was acknowledged before me on August 31st, 2009, by Benjamin E. Nistler as manager of NHB, LLC, a Montana limited liability company.

[Signature]



Printed Name: Sarah Stone
NOTARY PUBLIC for the State of Montana
RESIDING AT Bozeman, Montana
My Commission Expires June 17, 2013