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Security Title Company  
P.O. Box 6550  
Bozeman, MT 59771-6550

**Accomodation Recording Only**

**STC # G2008**

**DECLARATION & BYLAWS**

**for the**

**TALON CONDOMINIUM**



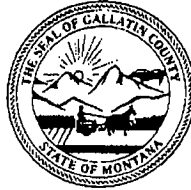
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## GALLATIN COUNTY

### CERTIFICATE OF EXEMPTION FROM SUBDIVISION REVIEW

I, Director of Planning for Gallatin County, Montana, do hereby certify that the Preliminary Declaration for the Talon Condominium signed August 13<sup>th</sup>, 2008, by Shawn Moran, member of Mojen, LLC and Gary Jensen, member of HJM Construction, LLC, pursuant to Title 70, Chapter 23, Montana Code Annotated, is exempt from review under the Montana Subdivision and Platting Act pursuant to Section 76-3-203(1), MCA (2007).

The Condominiums are to be located on the following described real property:

Lots 1 and 2, Block 1 of Falcon Hollow Subdivision, First Filing, being Tract A & B, Certificate of Survey No. 2031, situated in the NE ¼ of Section 17, T.2 S, R. 5 E, PMM, Gallatin County, Montana, according to the official plat thereof on file in the Gallatin County Clerk and Recorder's Office, Gallatin County, Montana (Plat J-473).

The Declaration is exempt because the condominiums are to be constructed on land that was subdivided in compliance with Parts 5 and 6 of the Subdivision and Platting Act. Furthermore, preliminary plat approval for the Falcon Hollow Phase 1 expressly contemplated the construction of a multi-family building consisting of four units on each of Lots 1 and 2 and all applicable parkland dedication requirements for both lots required by Section 76-3-621, MCA (2007) has been complied with as stated in the final plat approval for the Falcon Hollow Subdivision Phase 1.

Any future amendment to the Preliminary Declaration for Orion View Condominiums or to any final Declaration that adds units to the Condominium Declaration for the Talon Condominium for lots within the Falcon Hollow Subdivision requires, for each amendment, an additional declaration of condominium exemption from the Gallatin County Planning Department.

This Certificate of Exemption in no way obviates the declarants' responsibility to file a final declaration as required under the Montana Unit Ownership Act.

DATED this 15<sup>th</sup> Day of September, 2008.

Gregory S. Sullivan, Gallatin County Planning Director

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CERTIFICATE OF NAME

The understanding being the duly authorized agent of the Department of Revenue of the State of Montana within the County of Gallatin, herewith executes the following certificate relating to the TALON CONDOMINIUM, situated as follows:

Lots 1 and 2, Block 1 of Falcon Hollow Subdivision, First Filing, being Tract A & B, Certificate of Survey No. 2031, situated in the NE  $\frac{1}{4}$  of Section 17, T. 2 S., R. 5 E., P.M.M., Gallatin County, Montana, according to the official plat thereof on file in the Gallatin County Clerk and Recorder's Office, Gallatin County, Montana. (Plat J-473)

That the name TALON CONDOMINIUM, is not the same as, similar to or pronounced the same as the word in the name of any other property or subdivision within Gallatin County, except for the word "Condominium," and

1. All taxes and assessments due and payable for the said TALON CONDOMINIUM, have been paid to date.

Dated: Sept. 29, 2008

Henry W. McWann AS  
County Assessor



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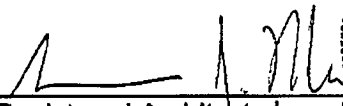
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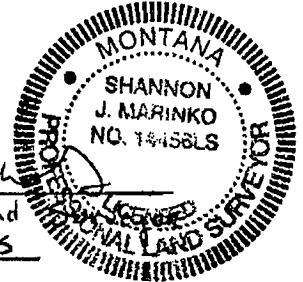
Land Surveyor  
**ARCHITECT'S CERTIFICATE**

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

That pursuant to the provisions of MCA § 70-23-306(2), the floor plans for **TALON CONDOMINIUM**, located on the real property described on Exhibit "A" attached hereto, as duly filed with the Declaration and Bylaws thereof, depict the layout of the units and floors of the building as of this date.

Dated: 9/26/08

  
Registered Architect Land  
Registration No. 4456LS  
Shannon J. Marinko





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## DECLARATION & BYLAWS FOR

### THE

### TALON CONDOMINIUM

THIS DECLARATION is hereby made and entered into this 13<sup>th</sup> day of August, 2008, by the undersigned, the vested owner of the real property described on Exhibit "A" attached hereto, hereinafter referred to as "Declarant," whereby lands and property hereinafter described are submitted to the provisions of Chapter 23, Title 70, MCA, also known as the "Unit Ownership Act" as a condominium.

The property subject to this Declaration shall be known as the TALON CONDOMINIUM (hereinafter referred to as TALON). The address of the two buildings of TALON is 36 Talon Way and 20 Talon Way, Bozeman, Montana 59718.

#### I.

#### DEFINITIONS

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

1. Aggregate Voting shall mean the entire number of votes or persons present or available to vote in person or by proxy in a particular circumstance.
2. Association or Association of Unit Owners shall mean all of the Unit Owners acting as a group and in accordance with duly adopted Bylaws and this Declaration.
3. Board or Board of Directors shall mean the Board of Directors of the Association as more particularly defined in the Bylaws.
4. Building shall mean a multiple unit building or buildings comprising a part of the property.
5. Bylaws shall mean the Bylaws promulgated by the Association under this Declaration and the Unit Ownership Act.



6. Common Elements shall mean both general common elements and limited common elements.

- (a) General Common Elements include all those elements which are for the use of all Unit Owners and guests of Unit Owners of TALON.

Specifically included are: grounds surrounding the building, the land on which the buildings are located, paths, sidewalks and walkways, any portion of the parking areas not specifically allocated to a particular unit, any irrigation system placed on the property or landscape maintenance, any portions of the buildings designated on the floor plans as common to all Units, electrical, gas, telephone, water and sewer lines and connections serving all of the units, landscaping, plants and other materials and improvements separate from and outside of the buildings containing the units, and other elements necessary for the safety, maintenance and existence of TALON in which each Unit Owner shall have his designated percentage of interest, as set forth in paragraph IV below.

- (b) Limited Common Elements as used in this Declaration shall mean those common elements which are reserved for the use of fewer than all of the owners and guests of Unit Owners of TALON to the exclusion of other such owners and guests. As to any given Unit Owner or Owners, limited common elements shall mean the common elements which are located within or affixed to the building containing his unit, and which are for the use of the Unit Owners and guests of that Unit in which the elements are located or situated on the real property. Specifically included are:

Flues, chimneys, ducts, cables, conduits, public utility lines, water, sewer, electrical, gas, cable television lines, hot and cold water pipes (all such utility pipes and lines are limited common elements where they service only one or two units; where they service all units, they shall be general common elements), stairways, balconies, entrances, stoops, furnaces, patios, decks, garages, driveways, boilers, hot water tanks, and fixtures, or other portions of the building servicing only a particular unit or less than all of the units. The percentage of the separate unit's interest in the limited common elements shall be computed by determining the number of units that have use of the limited common elements and dividing that number into the total value of those limited common elements.

7. Common Expenses shall mean expenses of administration, maintenance, repair or replacement of general common elements, expenses agreed upon as common by



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the Association of all Unit Owners, and expenses declared common by the Unit Ownership Act.

8. Declaration shall mean this document and all parts attached thereto or incorporated by reference.
9. Limited Expenses shall mean the expenses attributable to the maintenance, repair and replacement of limited common elements, and are expenses only for owners of units within the respective building for which the expenses are accrued.
10. Manager shall mean the manager, the Board of Directors, management corporation, or any other person or group of persons retained or appointed by the Association of Unit Owners for the purpose of conducting the day-to-day operation of TALON.
11. Property shall mean the land, buildings, improvements and structures thereon, and all easements, rights and appurtenances belonging thereto, which are herewith submitted to the provisions of the Unit Ownership Act.
12. Recording Officer shall mean the county officer charged with the duty of filing and recording deeds, mortgages and all other instruments or documents relating to this Declaration and the property which is its subject.
13. Unit shall be the separate condominium units of TALON 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.
14. Unit Designation shall mean the combination of letters, numbers, or words which identifies the designated units.
15. Unit Owner shall mean the person or persons owning a fee simple absolute, or acceptable leasehold estate as set forth herein.

## II.

### REAL ESTATE

#### Description

The property which is by this Declaration submitted and subject to the Montana Unit Ownership Act is described in Exhibit "A" attached hereto.



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The condominium consists of two (2) phases of one building with 4 units per building in each phase as set forth on the attached site plan. Phase 1 consists of one two-story building containing four (4) separate units, designated Units A, B, C & D. Phase 2 consists of one two-story building containing four (4) separate units, designated Units A, B, C & D. Both phases are complete. 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, personal representatives and assigns for as long as this Declaration and Bylaws for TALON CONDOMINIUM are in effect. Future improvements to the condo will be consistent with initial improvements in terms of quality of construction.

### Condominium Units

Each Unit, together with the appurtenant undivided interest in the common elements of TALON shall together comprise one condominium unit, shall be inseparable, and may be conveyed, leased, rented, devised or encumbered as a condominium unit, so long as at all times at least 51% of the Units are owner occupied, as set forth below. A Unit Owner may sell or transfer his unit free from any right of first refusal or similar restriction by the declarant, if any.

### Leasing

Condo units shall be used and occupied for single family dwellings purposes only.

No Condo unit may be leased until the Association has received, in advance of the signing of any Lease, a request from the Condo Unit Owner to lease that Condo Unit and, in addition, has granted approval to that Condo Unit Owner, in writing, to lease the Condo Unit. No more than forty-nine percent (49%) of the Condo units can be leased at any time. Failure of a Condo Unit Owner to obtain prior, written approval from the Association to lease a Condo Unit shall render the Lease null and void and the Association shall have the right to exclude or, evict any tenant who is attempting to occupy or occupying a Condo Unit pursuant to an unauthorized lease. All costs and expenses of the Association associated with enforcement of this provision shall be chargeable to, and payable by, the Owner of the Condo Unit affected. The Association shall develop rules and procedures by which Condo Unit Owners may make application to the Association for approval to lease a Condo Unit, rules and procedures by which Condo Unit Owners may be placed upon a waiting list for the grant of such approval when the forty-nine percent (49%) Condo Unit rental maximum has been reached, and other rules and procedures necessary and proper for the implementation of this provision. Once approved by the Association, a Condo Unit may be rented or leased by the owner provided the entire Condo Unit is rented, and the lease is in writing and a copy of the lease is filed with the Association prior to possession. No lease shall relieve the Owner as against the Association and other owners from any responsibility or liability imposed by the condominium documents.

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The term "lease" shall include any form of occupancy, whether technically a lease or tenancy and whether for consideration or not. An Owner shall be liable to the Association and other owners as the case may be, for damage to common elements or property of other owners. Unit Owners are prohibited from leasing their units for an initial term of less than thirty (30) days.

#### Encroachments

If any portion of the general common elements or limited 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 any portion of Unit encroaches upon the general common elements, or limited common elements, or upon an adjoining Unit or Units, a valid easement for the encroachment and for the maintenance 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 either on the general common elements, the limited common elements, or on the Units for the purpose of marketability of title.

#### Parking Areas

The limited common elements include parking areas on the driveway in front of each garage for automobiles of the respective Unit Owners. No parking of RV's, boats, trailers, and/or job trailers for more than 24 hours is allowed in these spaces. These areas will be initially laid out by the Declarant, and shall be assigned to each unit. The right to use the parking spaces on the driveway in front of the garage for each unit shall be an appurtenance to that unit. Subsequent use and assignment of additional parking spaces shall be pursuant to regulation of the Association; provided that no change in designation of parking spaces shall be made for the benefit of the Unit Owner which discriminates against another Unit Owner without the latter's consent.

#### Unit Boundaries

Each unit shall include the part of the building containing the Unit that lies within the boundaries of the Unit, which boundaries are as follows:

- (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:
  - 1. Upper Boundary: the plane of the lowest surfaces of the upper floor or ceiling joists for all units.
  - 2. Lower Boundary: the plane of the highest surface of the floor joists.

- (b) Perimetrical Boundaries: the perimetrical boundaries of the Unit shall be the following boundaries extended to an intersection with the upper and lower boundaries;
1. Exterior Building Walls: the plane formed by the center line of the exterior walls of the buildings except that such boundary shall be extended so as to include within it all windows in the Unit.
  2. Interior Building Walls: the vertical planes of the centerline of the walls bounding a Unit extended to an intersection with other perimetrical boundaries. Where walls between units are of varying thicknesses, the plane of the centerline of the boundary wall shall be the median line drawn between the two outermost boundaries of such wall.

### III.

#### EASEMENT, COMMON ELEMENT – INTERIOR REMODELING

##### Common Element Easements

A nonexclusive perpetual right of ingress, egress and support through the limited common elements within the buildings is appurtenant to each unit, and all of the general common elements are subject to such rights.

##### Easement for Utilities

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 and vents and other utility and mechanical lines, pipes or equipment. A nonexclusive easement shall exist through, over and across each unit for inspection, installation, maintenance, replacement and repair of such utility lines and mechanical equipment for the use of all of the Unit Owners or the Unit Owners being serviced by the air space being penetrated by such lines and/or equipment to a minimum, ingress and egress for the purpose of such inspection, installation, maintenance, replacement or repair of such easement rights shall only be done under the direction and approval and with the authority of the Owners Association and/or the Manager unless an emergency exists in which event any action may reasonably be taken which is justified under the circumstances to minimize damage which would otherwise occur as a consequence of such emergency.

##### Other Easements

The declarant reserves for itself and its successors and assigns non-exclusive easements and rights of way for ingress, egress, and utilities and right to construct, use, and convey present and

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future condominiums, Buildings, and Condo Units located on the Property; along with the right, during and for any purpose concerning the construction of any Building and the finishing of any Condo Unit or proposed Condo Unit therein, to use, access, and to upon the general common elements for access, deliveries, and the placement or temporary parking of vehicles, materials, and equipment.

The real property submitted to the Unit Ownership Act is subject to existing easements, covenants, Articles of Incorporation, Bylaws, terms, conditions, obligations, disclosures, reservations, restrictions, dedications, conditions shown and delineated in the Condominium Documents, plats, site plans, and other documents filed or recorded with the Clerk and Recorder of Gallatin County, Montana, or the State of Montana, and subject to applicable zoning ordinances and land use restrictions, if any, laws and regulations of the state of Montana and the United States of America, and also subject to taxes, assessments, and charges levied by Gallatin County, improvement districts, sewer and water districts, fire districts, and any other district or taxing authority, if any.

The Property submitted to the Unit Ownership Act pursuant to this Declaration is also subject to and are in addition to the basic zoning district regulations and provisions which are administered by Gallatin County, and the Property is further subject to the requirements, restrictions and conditions set forth in these Condominium Documents.

#### Encroachment Easement

If any portion of the common elements encroaches upon any Condo Unit or any other portion of the common elements, or if any Condo Unit encroaches upon any other Condo Unit or upon any portion of the common elements upon completion of construction, or if any such encroachments shall occur thereafter as a result of shifting or settling of a Building or from alteration, repair or improvement to the common elements and/or as a result of repair or restoration of the common elements or a Condo Unit after damage by fire or other casualty, or as a result of condemnation or eminent domain proceedings, then in each of such events a valid easement shall exist for such encroachment and for the maintenance thereof so long as the Buildings, common elements and Condo Units exist.

Possession and Use of Condo Unit, Including Air Space. In addition to the fee simple ownership of a Condo Unit, there shall be as an appurtenance an exclusive easement for the possession and use of the air or room space within the Condo Unit and to the limited common elements of that Condo Unit as the same exists from time to time or as altered or reconstructed from time to time subject to necessary and authorized easements for maintenance, repair and the like; which appurtenance shall be terminated automatically in the event of termination of the Condominium.

#### Interior Remodeling

Each Unit Owner shall have the exclusive right to paint, repaint, tile, wax, paper, panel, carpet, brick or otherwise maintain, refinish and decorate the inner surfaces of the walls, ceilings,

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floors, windows and doors bounding his own Unit, and the interior thereof, so long as such owner does not affect the structural integrity of the building in which his Unit is located.

IV.

OWNERSHIP AND VOTING - EXHIBITS - USE

Percentage of Interest

Each Unit Owner shall be entitled to the exclusive ownership, use and possession of his Unit. Additionally, each Unit Owner shall have a percentage of undivided interest in the general common elements of TALON. Such percentage represents his ownership interest in the general common elements, and his liability for common expenses. The percentage of interest in the general common elements for the respective owners shall be computed by taking the square footage of each Unit at the date of filing this Declaration and/or at the date of filing any subsequent amendments hereto and dividing it by the then combined square footage of all the units having an interest in the general common elements of TALON. Such percentage of interest owned by each of the Units in TALON shall be according to the percentages set forth below:

PHASE 1

BUILDING 1

INITIAL PERCENTAGE OF INTEREST IN

GENERAL COMMON

UNIT NO.

SQUARE FOOTAGE

ELEMENTS

36 Talon Way

A	1520	12.5%
B	1520	12.5%
C	1520	12.5%
D	1520	12.5%

PHASE 2

BUILDING 2

UNIT NO.

20 Talon Way

A	1520	12.5%
B	1520	12.5%
C	1520	12.5%
D	1520	12.5%

TOTAL

12160

100%



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Total consists of two (2) buildings, as shown on the site plan attached hereto.

### Floor Plans and Exhibits

For identification and descriptive purposes the following Exhibits are attached and by reference hereto incorporated into and made a part of this Declaration:

Exhibit A: Legal Description.

Exhibit B: showing the floor plans and elevations for each of the Units in Building 1, Phase 1, and Building 2, Phase 2 of TALON, the area of each, and the dimensions and the designation for each Unit.

Exhibit C: Site Plan.

### Construction Materials

The principal materials of construction of the Units are concrete for the foundations, footings, and slabs, wood for the framing, structural and finish work, sheetrock, composite board, and plywood for the interior, carpet, wood or tile for the floors, lap siding for exterior wall surfaces, and EPDM for the roof of the buildings.

### Use

The use of all of the units in TALON shall be for residential purposes only and there shall be no commercial use whatsoever, except that nothing shall prohibit a Unit Owner from leasing or renting his 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, or entering into an Agreement or contract with others for the lease or rental of his unit for residential use so long as 51% of the Units in TALON are owner-occupied at all times. The use of the general common areas shall be for the recreation and enjoyment of the Unit Owners, their guests, tenants, lessees and invitees. The units and common elements shall be limited as follows:

- (a) There shall be no obstruction of the common elements, nor shall anything be stored in or on the general common elements without the prior written consent of the Association. Owners with units which have usable space in the limited common area beneath the living area of their unit may not use this space for storage. Each Owner shall be obligated to maintain and keep in good order and repair the interior of his own unit.
- (b) Decks and porches shall be kept in neat and orderly appearance with appropriate patio furniture, BBQ, plants or other home décor. No recycling or garbage bins, nor storage of boxes or bikes allowed in these areas.

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- (c) Nothing shall be done or kept in any Unit or in the common elements which will increase the rate of insurance on the building or contents thereof, without the prior written consent of the Association. No owner shall permit anything to be done or kept in his Unit or in the common elements which will result in the cancellation of insurance on the building, or contents thereof, or which would be in violation of any law. No waste will be permitted on the common elements.
- (d) Unit Owners shall not cause or permit anything to be hung or displayed on the outside of windows or placed on the outside walls of a building, and no sign, awning, canopy, radio or television antenna shall be affixed to or place upon the exterior walls or roof of any part thereof, without the prior written consent of the Association. Said satellite dish locations must be preapproved by the Association. Seasonal decorations that are promptly removed after the season and reasonable name plates or identification signs for individual units may be allowed.
- (e) No nuisances shall be allowed upon the property nor shall any use or practice be allowed which is a source of annoyance to Unit Owners or which interferes with the peaceful possession and proper use of the property by its residents. No offensive or unlawful use shall be made of the property nor any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed.
- (f) 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 herein.
- (g) No animals of any kind shall be raised, bred, or kept in any Unit, except that a combined total of two dogs, cats, and/or other household pets may be kept subject to rules and regulations from time to time adopted or amended by the Association. All dogs must be kept on a leash while on the condominium property in accordance with the laws of the County of Gallatin. Additionally, Unit Owners, their tenants, and any guests, shall be responsible for the immediate clean-up of any pet waste and the repair of any damage caused by pets to any of the general or limited common areas.
- (h) Nothing shall be altered or constructed in or removed from the common elements, and no easements, liens or encumbrances placed on the common elements, except upon the written consent of two-thirds of the aggregate interest of the Unit Owners affected by such action.
- (i) All garbage shall be kept in appropriate containers, and stored inside the garage



for each Unit unless put out for collection. After collection, all garbage containers shall be placed back in the garage for each Unit. However, all garages are to be used primarily for storage of Owner's vehicles.

- (j) Campers, trailers, boats and other recreational vehicles may only be brought onto the condominium properties for loading and unloading for immediate use and cannot be parked for longer than 24 hours at a time. No inoperable vehicles, and no campers, boats, recreational vehicles, or trailers, shall be left parked in the condominium parking areas, driveways, or garage parking pads. Repeated parking of such vehicles or trailers is also prohibited.

#### Exclusive Ownership

Each Owner or Owners shall be entitled to exclusive ownership and possession of their Unit. Such Owners may use the general and limited 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 of other Unit Owners.

#### V.

#### THE ASSOCIATION BYLAWS

##### Membership

Any Owner of a Unit in TALON shall automatically, upon becoming the Owner of said Unit, be a member of the Owners Association, hereinafter referred to as the Association, and shall remain a member of said Association until such time as his membership in said Association shall automatically cease. The membership shall be limited to Unit Owners as defined in this Declaration.

##### Function

It shall be the function of the Association to:

- (a) Adopt Bylaws for the governance of the Association.
- (b) Make provisions for the general management and/or repairs and maintenance of TALON.
- (c) Levy assessments as provided for in the Declaration, Bylaws and Unit Ownership Act.
- (d) Adopt and implement a policy for the affairs of the condominium.



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- (e) Enter into contracts or hire personnel for the management of the affairs of the Association and the maintenance and repair of the common areas.
- (f) Be responsible for the perpetual maintenance of the landscaping, common open space, parking lots, and driving lanes.

### Meetings

There shall be an annual meeting of the membership. The date, hour and place of such meeting shall be contained in the notice of meetings as hereinafter described. The annual meeting shall be the time for the conduct of any and all legitimate business of the Association, including election of directors and presentation of reports. Voting at all meetings shall be in the manner prescribed in these Bylaws.

Special meetings may be called at any time upon the initiative of the Board of Directors. A special meeting must be called when a Petition signed by fifty percent (50%) of the membership interest outstanding and eligible to vote at the time has been presented to any member of the Board of Directors. Such special meeting shall be called as soon as practicable after receipt of said Petition. Notice of any such special meeting shall state the hour, date and place of the meeting and shall further precisely state the reasons of such meeting, and said special meeting held shall be strictly confined to the matters set forth in the notice unless eighty percent (80%) of said membership interest present agree otherwise.

All meetings both annual and special, shall be presided over by the Chairman of the Board of Directors or his appointed representative.

Any meeting may be adjourned by the Board of Directors at their discretion, but any meeting adjourned before all its business is disposed of shall be reconvened within thirty (30) days of such adjournment upon due notice given.

Resolutions as hereinafter described may be introduced by any member at any annual meeting provided such resolution in written form is presented to the Secretary of the Board no later than ten (10) days prior to the date of such meeting.

Written notice of all meetings, annual and special, shall be mailed to every member of record no later than ten (10) days and not more than fifty (50) days before the date of the meeting. It shall be the duty of each member to advise the Association of his current address. In the absence of such notice, the member's address shall be the address of record with the Gallatin County Assessor's Office.

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### Resolutions

All matters that are the business and concern of the Association shall be presented to the Association and meetings of the Association in the form of resolutions directed to the Board of Directors. Such resolutions as are passed by over fifty percent (50%) of the said membership interest of record and eligible to vote shall be binding on the Board of Directors. Such binding resolution shall have the effect of compelling the Board of Directors to take positive action in response to the general inclination of the resolution. However, the scope, extent, and specific character of all such action shall be within the final discretion of the Board of Directors.

Vacancies on the Board shall be filled by agreement of the two remaining members, should the vacancy not, however, be filled by the Board, it may be filled by an election at an annual or special meeting wherein each membership interest shall have one (1) vote.

### Quorum

Meetings of the Association shall be convened at the time and place contained in the notice of such meeting only if a quorum of the membership interest is present either in person or by proxy. A quorum shall consist of thirty percent (30%) of the total membership interest of the Association qualified and eligible to vote at the time. Any membership interest may be represented by the owner thereof or by his agent who has written authority to do so.

### Secretary

The Secretary of the Board of Directors shall maintain a record of all membership interests in the Association. Notice of assessments and liability for assessments shall be in the name of the registered owner on the membership list at the time assessments are declared by the Board.

### Board Members

The number of Board of Directors shall be three (3). At such time as the Board in its discretion believes it to be in the best interests of the Association, it may increase the Board upon resolution. Two (2) of the three (3) Directors shall be residents of Montana.

Until seventy-five percent (75%) of all phases of the condominiums have been sold or Declarant turns over the Board of Directors and Association to the Owners, whichever occurs first, the Declarant reserves the right to appoint and remove all members of the Board and to exercise the powers and responsibilities otherwise assigned by the Declaration of the Association. By express written declaration, Declarant shall have the option to at any time turn over to the Association the total responsibility for electing and removing members of the Board.

Members of the Board and their officers, assistant officers, agents and employees acting in good faith on behalf of the Association:



- (1) shall not be liable to the Owners as a result of their activities as such for any mistake of judgment, negligence or otherwise, except for their willful misconduct or bad faith;
- (2) shall have no personal liability in contract to an Owner or any other person or entity under any agreement, instrument or transaction entered into by them on behalf of the Association in their capacity as such;
- (3) shall have no personal liability in tort to any Owner or any person or entity, except for their own willful misconduct or bad faith;
- (4) shall have no personal liability arising out of the use, misuse or condition of the Property which might in any way be assessed against or imputed to them as a result of or by virtue of their capacity as such.

#### Terms and Placement

The terms of office for members of the Board shall be three (3) years. Positions on the Board of Directors shall be filled in the manner hereinafter described. At the first annual meeting of the Association after the Board of Directors has been turned over to the Owners by Declarant, the members shall elect by majority vote the members of the initial Board. Immediately following each tri-annual meeting of the Board of Directors, the members by majority vote shall elect a new Board of Directors, as provided above, cumulative voting being allowed.

Any vacancy created by resignation shall be filled immediately by appointment by the remaining Board members. Such appointment must be approved by a majority of the members of the Association at the next meeting of the Association, whether general or special. If the appointment is not approved, then the members shall fill the vacancy by a majority vote. At any time and for any reason that a vacancy occurs on the Board and an agreement cannot be reached on a successor, then such vacancy shall be filled by the membership interest at large at a special meeting held for that purpose. At such election any membership interest may nominate candidates from the floor and voting shall be by ballot and each membership interest shall have one (1) vote. The person receiving the highest number of votes shall be deemed to be elected to the vacant position on the Board of Directors.

At any meeting, whether general or special, any one or all of the members of the Board may be removed and replacements elected upon a majority vote of the total membership interests outstanding and eligible to vote at that time.

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Officers

The Board of Directors shall appoint a secretary for the Association. The Board of Directors may, at its discretion, appoint additional officers to generally supervise and control the business of this corporation and delegate certain powers, duties and responsibilities to such officers. The manner of selection, the qualifications, salaries, the term of office, the method of removal, the scope of duties and responsibilities, and the number of such officers shall be determined by the Board of Directors.

Voting

On all matters, unless excluded by this Declaration, to be decided by the Association, each Unit Owner shall have one vote. An owner of a condominium unit, upon becoming an Owner, shall be a member of the Association and remain a member for the period of his Unit Ownership. Except as otherwise provided in the Unit Ownership Act, this Declaration or the Bylaws, a majority of the aggregate interest present at any meeting or by proxy shall be sufficient to act on matters brought before the Association. Meetings of the Association shall only be conducted when a quorum is present, as defined in the Association Bylaws.

Failure to Comply

Each 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 result in fines as set forth below and 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 owner, or in the proper case, by an aggrieved owner.

Fines may be issued to Unit Owners by the Association or Manager for failure to comply with the provisions of this Declaration. Fines shall initially be as follows:

1 <sup>st</sup> Violation	\$ 25.00
2 <sup>nd</sup> Violation for same or similar violation	\$ 50.00
3 <sup>rd</sup> Violation for same or similar violation	\$100.00

Fines shall be paid in full within fifteen (15) days. Failure to pay fines may result in the filing of a lien against the Unit Owner's Unit.

### Payment of Assessments



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All assessments shall be due fifteen (15) days from the date of mailing such assessment following the meeting at which time assessments are levied by the Association, and may be payable in one annual payment or other installments, at the option of the Unit Owner. The amount of the common expenses assessed against each Unit, and the amount of limited common expenses assessed against each Unit shall be the personal and individual debt of the owner thereof. No owner may exempt himself from liability for this contribution toward the common expenses and the limited expenses by waiver of the use of enjoyment of any of the general common elements or limited common elements or by abandonment of his Unit. All assessments which are not paid within thirty (30) days from the date they are due and payable become delinquent and are subject to interest and penalty/late charges, in the amount of \$25.00 per late payment.

The Association or Manager shall have the responsibility of taking prompt action to collect any unpaid assessment which becomes delinquent. In the event of delinquency in the payment of the assessment, the Unit Owner shall be obligated to pay interest at the then current legal rate of interest per annum on the amount of the assessment from the due date thereof, together with all expenses, including attorney fees incurred, together with such interest and late charges as are provided in the Bylaws of the Association. Suit to recover a money judgment for unpaid common expenses and limited expenses may be maintainable without foreclosing or waiving the lien securing the same. Unpaid assessments, together with attorney fees, interest and costs shall also be a personal obligation of the Unit Owner at the time the assessment become due. The personal obligation for delinquent assessments shall not pass to successors in title or interest unless assumed by then, or required by Montana law or other applicable law.

### Priority of Lien

To the extent permitted by Montana law or other applicable law, any lien of the Association for common expense charges and assessments becoming payable on or after the date of recordation of the first mortgage, shall be subordinate to the first mortgage on the Unit. To the extent permitted by Montana law or other applicable laws, such a lien for common expense charges and assessments shall not be affected by any sale or transfer of a Unit, except that a sale or transfer of a Unit pursuant to a foreclosure of a first mortgage shall extinguish a subordinate lien for common expense charges and assessments which became payable prior to such sale or transfer. To the extent permitted by Montana law or other applicable law, any such sale or transfer pursuant to a foreclosure shall not relieve the purchaser or transferee of a unit from liability for, nor the Unit sold or transferred from the lien of, any common expense charges thereafter become due.

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Levying Assessments - When Made - Purposes

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

- (a) Assessments shall be made as a part of the regular business of the Association at any regular or special meeting thereof as provided in the Bylaws of the Association. Notice of the assessment, amount thereof, and the purpose for which it is made whether regular or special, including an annual budget for expenditures and operation, shall be served on all Unit Owners affected by delivering a copy of the same to the Owner personally or by mailing a copy of the notice to the Owners at their addresses of record at least ten (10) days prior to the date of such meeting.
- (b) Assessments shall be made for the repair, replacement, general maintenance, management and administration of common elements, fees, costs and expenses of the manager, taxes for common areas if any, and for the Unit Owner's percentage share of any Special Improvement District Assessments. Assessments shall be based upon and computed by using the percentage of interest that each Unit Owner has in the general common elements.
- (c) Assessments may also be made for the payment of limited common element expenses such that the Unit Owners are chargeable only for the expenses relating to their respective units or building. Unit Owners shall share in the payment for limited expenses for the repair, maintenance and replacement of limited common elements of their respective Units in accordance with the percentage the Unit or Units have in the limited common elements for which the assessment is being made. If only one Unit is associated with the limited common elements involved, then the entire cost of such repair, maintenance or replacement shall be borne by that Unit.
- (d) Assessments may also be made for any purpose contemplated by this Declaration and for any purpose set out in the Montana Unit Ownership Act.
- (e) Common expenses and profits, if any, of the condominiums shall be distributed among and charged to, the Unit Owners according to the percentage of undivided interest of each in the common elements.
- (f) In a voluntary conveyance of a Unit, the Grantee of the Unit shall be jointly and severally liable with the Grantor for all unpaid assessments by the Association against the latter for his share of the common expenses up to the time of the grant or conveyance, without prejudice to the Grantee's right to recover from the Grantor the amounts paid by the Grantee therefore. However, any such Grantee

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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 said 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 assessment made by the Association against the Grantor in excess of the amount therein set forth.

- (g) An initial assessment equal to two month's estimate common area charge for each Unit, will be collected at the closing of each Unit purchased from the Declaration. At the time the Association holds its first meeting, or at any duly noticed meeting thereafter, a reserve account will be set up to which initial assessments shall then be deposited. Said total amount shall then be divided equally among all Unit Owners. If the Declarant still holds title to one or more Units, Declarant shall not pay the amount assessed against each unit so owned. The reserve fund shall be for the maintenance, repair, replacement and administration of common elements.
- (h) Unless otherwise directed by the Association pursuant to a vote taken, and notwithstanding anything else in this Declaration and Bylaws to the contrary, real property taxes and assessments, including special improvement districts or rural improvement districts shall be billed and assessed to individual Unit Owners directly, and not to the Association, to be passed on to the Unit Owners. In this regard, it shall be incumbent upon each Unit Owner to timely pay and keep current and not delinquent all taxes and assessments levied against the Condominium. In the event any Unit Owner allows the taxes or assessments on any unit to become delinquent, the Association may pay the same to avoid foreclosure and the Association shall be entitled to all lien remedies set forth herein for non-payment of an assessment, as well as all rights and remedies afforded by State law for the payment of the delinquent taxes of another. Further, in the event the Association pays delinquent taxes pursuant to this provision, the Association shall be entitled to charge interest on any amount paid at the highest legal rate according to the laws of the State of Montana. Nothing herein shall obligate the Association to pay the delinquent taxes on any unit.

#### Transfer of Control

The Declarant shall relinquish all special rights, expressed or implied, through which the Declarant may directly or indirectly control, direct, modify, or veto any action of the Owners Association, its executive board, or a majority of Unit Owners, and control of the Owners Association shall pass to the owners of units within the project, not later than 120 days after the date by which 75 percent (75%) of the units have been conveyed to unit purchasers.



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The foregoing requirement shall not affect the Declarant's rights, as a Unit Owner, to exercise the votes allocated to units which it owns.

Declarant shall foster participation of Unit Owners in the management of the project prior to the transfer of the Association.

#### Availability

The Owners Association shall make available to Unit Owners, lenders and the holders and insurers of the first mortgage on any unit, current copies of the declaration, by-laws and other rules governing the condominium, and other books, records and financial statements of the Owners Association. The Owners Association also shall be required to make available to prospective purchasers current copies of the declaration, by-laws, other rules governing the condominium, and the most recent annual audited financial statement if such is prepared.

#### Owners Association's Rights and Restrictions

The Association is granted a right of entry upon unit premises and any limited common elements to affect emergency repairs, and a reasonable right of entry thereupon to effect other repairs, and a reasonable right of entry thereupon to effect other repairs, improvements, replacement or maintenance deemed necessary.

The Association is granted the right to grant utility easements under, through or over the common elements, which are reasonable necessary to the ongoing development and operation of the project.

### VI.

#### DECLARANT'S RIGHT TO CHANGE

The Declarant reserves the right to change the interior design and arrangement of all Units, and alter the boundaries between Units, so long as the Declarant owns the Units so altered. No such change shall increase the number of Units or alter the boundary of the general common elements without an amendment of this Declaration.

Until seventy-five percent (75%) of each phase of units have been built and sold, Declarant reserves the right to establish easements, reservations, exceptions and exclusions consistent with the condominium ownership project. This provision shall apply to each phase of the condominium as set out in the expansion provisions.

Notwithstanding any other provision expressly or impliedly to the contrary contained in this Declaration, the Articles of Incorporation or Bylaws of the Association, Declarant reserves the right to exercise the rights, duties and functions of the Board of Directors of the Association



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until seventy-five percent (75%) of the condominium units in all phases have been sold after which time the control of the Association shall pass to the home owners . Such transition shall occur within 120 days of seventy-five percent (75%) of the condos being sold. During the period of development and sale of the remaining condominium units, the monthly assessment for common expenses shall be based upon the estimate of the actual cost thereof, excluding therefrom any estimated amount for contingencies, reserves or sinking funds, and Declarant shall pay its pro rata share thereof only for those condominium units which have been completed. During the period when fewer than all of the Units have been erected, the common expenses shall be allocated among the Owners of such existing Units, and during such period, Declarant shall pay the real estate taxes and assessments on that part of the land described in Exhibit "A" which remains undeveloped but on which condominium units will be subsequently constructed.

As discussed, described and noted above in this Declaration and Bylaws, the Declarant has reserved the right to construct ten (10) additional buildings as generally depicted on the future site plan attached hereto and that with the creation of such buildings the percentage ownership and voting percentages of Unit Owners shall be diluted. Such construction of ten (10) additional buildings described throughout this Declaration and Bylaws may be done by Declarant or Declarant's successors or assigns without vote of the Unit Owners or Association as acceptance of a condominium Unit constitutes consent and acceptance for the construction of the additional buildings as described throughout this document.

Declarant reserves the right to decide not to construct planned units, phases and/or improvements to the common elements within seven (7) years from the date of this Declaration.

The Declarant shall not bind the Owners Association either directly or indirectly to any agreement unless the Owners Association shall have a right of termination thereof which is exercisable without penalty at any time after transfer of control, upon not more than 90 days notice to the other party thereof.

## VII.

### AMENDMENT

Amendment of this Declaration shall be made in the following manner:

At any regular or special meeting of the Association of Unit Owners, such amendment may be proposed as a resolution by any Unit Owner, the Board or Manager. Upon adoption of the resolution by a majority vote of those present, the 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 amendment, to be furnished to each owner and Mortgagees, no later than thirty (30) days in advance of such meeting. At such meeting, the amendment shall be approved upon receiving the favorable vote of at least seventy-five percent (75%) of the total votes in the Association and the approval of fifty-one percent (51%) of the "eligible" holders of first

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mortgages on Units subject to a mortgage. For first mortgagees to be "eligible" to vote herein, they must have requested notice as provided herein under "Notice of Action". If so approved, it shall be the responsibility of the Association to file the amendment with the Clerk and Recorder's Office of Gallatin County, Montana.

The following provisions do not apply to amendments to the constituent documents or termination of the condominium regime made as a result of destruction, damage or condemnation or to a reallocation of interests in the common elements which might occur pursuant to any plan of expansion or phased development.

The consent of Owners of Units to which at least 75 percent of the votes in the Owners Association are allocated and the approval of eligible holders of first mortgages on Units to which at least 51 percent of the votes of Units subject to a mortgage appertain, shall be required to materially amend provisions of the Declaration, By-laws or equivalent documents of the condominium, or to add any material provisions thereto, which establish, provide for, govern or regulate any of the following:

- (1) Voting
- (2) Assessments, assessment liens or subordination of such liens;
- (3) Reserves for maintenance, repair and replacement of the common elements;
- (4) Insurance or Fidelity Bonds;
- (5) Rights to use of the common elements;
- (6) Responsibility for maintenance and repair of the several portions of the condominium;
- (7) Expansion or contraction of the condominium regime or the addition, annexation or withdrawal of property to or from the regime;
- (8) Boundaries of any unit;
- (9) The interests in the general or limited common elements;
- (10) Convertibility of units into common elements or of common elements into units;
- (11) Leasing of Units;
- (12) Imposition of any right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer, or otherwise convey his or her Unit in the condominium;
- (13) Establishment of self-management by the condominium Association where professional management has been required by any of the agencies or corporations.

The consent of Owners of Units to which at least 75 percent of the votes in the Owners Association are allocated and the approval of eligible holders of first mortgages on Units to which at least 51 percent of the votes of Units subject to a mortgage appertain, shall be required to amend any provisions included in the Declaration, By-laws or equivalent documents of the condominium which are for the express benefit of holders or insurers of first mortgages on Units in the condominium.

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For first mortgagees to be eligible holders as set forth in the Notice section herein they must request notice in accordance with the provisions of the Notice section.

Approval will be implied when an "eligible" mortgagee fails to submit a response to any written proposal for an amendment within sixty (60) days after it received proper notice by Certified Mail, return receipt requested.

Notwithstanding the procedure set forth above, the Declarant may amend this Declaration, or any other project document, prior to any sale of any Unit or interest thereof.

Notwithstanding the foregoing and as discussed, described and noted in Section VI immediately above, Declarant or its successor, assign or designee, may file Amendments to this Declaration and Bylaws without vote of the Unit Owners or Association as each building is constructed in order to restate the percentage ownership and voting percentages of Unit Owners which are thereby diluted.

## VIII.

### CHANGES, REPAIRS AND LIENS

#### Alterations by Unit Owners Association

The interior plan of a Unit may be changed by the Owner. The boundaries between Units may be changed only by the Owners of the Units affected. No Units may be subdivided. 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 the existing 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 Paragraph VII above, such amendment must further set forth and contain plans for the Units concerned showing the Units after the change in boundaries, which 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 required by the Unit Ownership Act. Such an amendment shall be signed and acknowledged by the owners of the Units concerned, 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 Units concerned.

### Maintenance by Unit Owners



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Each owner shall maintain and keep in repair the interior of his own Unit, including the fixtures thereof. All fixtures and equipment installed in the Unit, commencing at a point where the utilities enter the Unit, shall be maintained and kept in repair by the owner thereof. An owner shall do no act nor any work that will impair the structural soundness or integrity of the building or impair any easement.

Each owner shall also keep any balcony, entrance or deck area appurtenant to this Unit in a clean and sanitary condition. The right of each owner to repair, alter, and remodel is coupled with the obligation to replace any finishing or other materials removed with similar 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 limited common elements or general common elements.

### Exterior Alterations

No Owner may change, alter or remodel the exterior of his Unit without the prior written approval of the Association.

### 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, his agent, his contractor or subcontractor shall be the basis for the filing of a 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 from and against all liability arising from the claim of any lien against the Unit or any other Owner or against the general or limited common elements for construction performed or for labor, materials, services or other products incorporated in the Owner's Unit at such Owner's request.

### Mortgagees and Unpaid Dues

Any first mortgagee who obtains title to a condominium unit pursuant to the remedies in the mortgage or through foreclosure will not be liable for more than six months of the unit's unpaid regularly budgeted dues or charges accrued before acquisition of the title to the unit by the Mortgagee. If the condominium association's lien priority includes costs of collecting unpaid dues, the lender will be liable for any fees or costs related to the collection of the unpaid dues.

### Liens and Foreclosure

All sums assessed but unpaid for the share of general common expenses and limited common expenses chargeable to any Unit shall constitute a lien on such Unit superior to all other liens and encumbrances, except only for tax and special assessment liens on the Unit in favor of

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any assessing authority, and all sums unpaid on a first mortgage, a first trust indenture, or contract for deed of record. To evidence such lien, the Association shall prepare a written notice of lien assessment setting forth the amount of such unpaid indebtedness, 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 authorized agent, and shall be recorded in the office of the Clerk and Recorder of Gallatin County, Montana. Such lien shall attach from the date of recording such notice. Such 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 common expenses shall be maintainable without foreclosure or waiving the lien securing the same. In any such proceeding the Owner may be required to pay the costs, expenses and attorney's fees incurred in filing a lien, and in the event of foreclosure proceedings, additional costs, expenses and attorney's fees incurred.

#### Bidding at Foreclosure

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 and 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 general common expenses, or limited common expenses payable with respect to any such Unit, and upon such payment such lienholder shall have a lien on said Unit for the amounts paid of the same priority as the lien of his encumbrance without the necessity of having to file a notice or claim of such lien.

### IX.

#### INSURANCE

##### Insurance Generally

The Owners Association must maintain adequate blanket property insurance, liability insurance, flood insurance (if in a flood zone), fidelity bond coverage and workmen's compensation insurance.

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

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type policy of property insurance, are intended to denote single entity condominium insurance coverage. In addition, any fixtures, equipment or other property within the units which are to be financed by a mortgage to be purchased by FNMA or FHLMC (regardless of whether or not such property is a part of the common elements) must be covered in such "blanket" or "master" policy. It shall be the responsibility of FNMA or FHLMC to notify the Association of such property. The Declaration or other appropriate constituent document of the condominium must contain a clear delineation of all property which is to be covered by such policy.

#### Purchase

All insurance policies upon the property of the TALON CONDOMINIUM, including the general and limited common elements, shall be purchased by the Association and shall be issued by an insurance Company authorized to do business in Montana, and meet the requirements of an insurance carrier as set forth by Federal National Mortgage Association ("Fannie Mae") and FHLMC ("Federal Home Loan Mortgage Company - "Freddie Mac").

- (i) Named Insured: The named insured shall be the Association individually and as agent for the Unit Owners without naming them. Such policies shall provide that payments for losses thereunder by the insurer shall be paid to the insurance Trustee, as a trustee for each Unit Owner hereinafter designated, and all policies and endorsements thereon shall be deposited with the insurance Trustee. Unit Owners may obtain insurance coverage, at their own expense, upon their own personal property and for their personal liability.
- (ii) Copies to Mortgagees: One copy of each insurance policy and of all endorsements thereon shall be furnished by the Association to each mortgagee of a Unit Owner on request.

#### Coverage

- (a) Casualty: Such policy must be consistent with state and local insurance laws and at least equal to such coverage as is commonly required by institutional mortgage investors in the area in which the condominium is located. Such policies shall contain the standard mortgage clause, or equivalent endorsement (without contribution), which is commonly accepted by private institutional mortgage investors in the area in which the property is located and which appropriately names FNMA and FHLMC if such corporations are holders of first mortgages on units within the condominium. Such policies must also provide that they may not be cancelled or substantially modified, without at least 10 days' prior written notice to the Owners Association and to each holder of a first mortgage listed as scheduled holder of a first mortgage in the policies. All buildings and improvements upon the land shall be insured in an amount equal to the full insurable replacement value, and all personal property included in the common

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elements shall be fully insured, with all such insurance to be based on current replacement value, as determined annually by the Board of Directors, but subject to such deductible clauses as are required in order to obtain coverage at reasonable costs. Such coverage shall afford protection against:

- (1) Loss or damage by fire and other hazards covered by a standard extended coverage endorsement; and
  - (2) Such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location and use as the building on the land, including, but not limited to, vandalism and malicious mischief.
  - (3) Errors or Omissions Insurance for the Directors, Officers and Managers, if the Association so desires, in amounts to be determined by the Board.
- (b) Public and General Liability: In such amounts and with such coverage as shall be required by the Board of Directors of the Association, including, but not limited to, hired automobile and non-owned automobile coverage, if applicable, and with cross-liability endorsement to cover liabilities of the Unit Owners as a group to a Unit Owner. The Owners Association is required to maintain comprehensive general liability insurance coverage covering all of the common elements, commercial space owned and leased by the Owners Association, and public ways of the condominium project. Coverage limits shall be in amounts generally required by private institutional mortgage investors for projects similar in construction, location, and use. However, such coverage shall be for at least \$1,000,000.00 for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Coverage under this policy shall include, without limitation, legal liability of the insured's for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the common elements, and legal liability arising out of lawsuits related to employment contracts of the Owners Association. Such policies must provide that they may not be cancelled or substantially modified, by any party, without at least 10 days' prior written notice to the Owners Association and to each holder of a first mortgage on any Unit in the condominium which is listed as a scheduled holder of a first mortgage in the insurance policy.
- (c) Other Insurance: The Board shall obtain Worker's Compensation policies to meet the requirements of law and such other insurance as the Board of Directors of the Association shall determine from time to time to be desirable and as may be required by the Federal and State laws.

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- (d) Other Requirements: The policies must also provide recognition of any Insurance Trust Agreement; a waiver of the right of subrogation against Unit Owners individually; that the insurance is not prejudiced by any act or neglect of individual Unit Owners which is not in the control of such owners collectively; and that the policy is primary in the event the Unit Owner has other insurance covering the same loss. The requirements sated in this paragraph are generally provided by the insurer in the form of a "Special Condominium Endorsement" or its equivalent. The insurance policy shall afford, as a minimum, protection against the following:
- (1) In the event the condominium contains a steam boiler, loss or damage resulting from steam boiler equipment accidents in an amount not less than \$50,000.00 per accident, per location (or such greater amount as deemed prudent based on the nature of the property);
  - (2) all other perils which are customarily covered with respect to condominiums similar in construction, location and use, including all perils normally covered by the standards "all-risk" endorsement where such is available.
- (e) Fidelity Bond: - Blanket fidelity bonds shall be required to be maintained by the Owners Association for all officers, directors, and employees of the Owners Association and all other persons handling, or responsible for, funds of or administered by the Owners Association. Where the management agent has the responsibility for handling or administering funds of the Owners Association, the management agent shall be required to maintain fidelity bond coverage for its officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Owners Association. Such fidelity bonds shall name the Owners Association as an obligee and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Owners Association or the management agent, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than a sum equal to 3 months aggregate assessments on all units plus reserve funds. The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions. The premiums on all bonds required herein, except those maintained by the management agent, shall be paid by the Owners Association as a common expense. The bonds shall provide that they may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least 10 days' prior written notice to the Owners Association or Insurance Trustee.



### Unacceptable Coverage



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Policies are unacceptable where under the terms of the insurance carrier's charter, by-laws, or policy, contributions or assessments may be made against borrowers, FNMA, FHLMC, or the designee of FNMA or FHLMC; or by the terms of the carrier's charter, by-laws or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders, or members, or the policy includes any limiting clauses (other than insurance conditions) which could prevent FNMA, FHLMC, or the borrowers from collecting insurance proceeds.

### Premiums

Premiums for insurance policies purchased by the Association shall be paid by the Association as a common 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 shall be assessed against the Owner. Not less than ten (10) days prior to the date when a premium is due, evidence of such payment shall be furnished by the Association to each mortgagee listed in the roster of mortgagees.

### Insurance Trustee

All insurance policies purchased by the Association shall be for the benefit of the Association and the Unit Owners and their mortgagees as their interests may appear, and shall provide that all proceeds covering property losses shall be paid to such bank in Montana with trust powers as may be designated as insurance trustee by the Board of Directors of the Association, which trustee is herein referred to as the insurance trustee. The insurance trustee shall not be liable for payment of premiums, nor for the renewal or the sufficiency of policies, nor for the failure to collect any insurance proceeds. The duty of the insurance trustee shall be to receive such proceeds as are paid and hold the same in trust for the purposes elsewhere stated in this instrument and for the benefit of the Unit Owners, and their mortgagees in the following shares, but which shares need not be set forth on the records of the insurance trustee:

- (a) Unit Owners - An undivided share for each Unit Owner, such share being the same as the undivided share in the common elements appurtenant to his Unit.
- (b) Mortgagees - In the event a mortgagee endorsement has been issued as to a Unit, the share of the Unit Owner shall be held in trust for the mortgagee and the Unit Owner as their interests may appear; provided, however, that no mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds except distributions thereof made to the Unit Owner and mortgagee pursuant to the provision of this Declaration.



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- (c) The Trustee shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance and to perform such other functions as are necessary to accomplish this purpose.

#### Distribution of Proceeds

Proceeds of insurance policies received by the insurance trustee shall be distributed to or for the benefit of the beneficial owners in the following manner:

- (a) Miscellaneous: Expenses of administration, the insurance trustee, and construction or remodeling supervision shall be considered as part of the cost of construction, replacement or repair.
- (b) Reconstruction or Repair - If the damage for which the proceeds are paid is to be repaired or reconstructed by the Association, the remaining proceeds shall be paid to defray the costs thereof as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners, remittances to Unit Owners and their mortgagees being payable jointly to them.
- (c) Failure to Reconstruct or Repair - If it is determined in the manner elsewhere provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial owners, remittances to Unit Owners and their mortgagees being payable jointly to them.
- (d) Certificate - In making distribution to Unit Owners and their mortgagees, the insurance trustee may rely upon a certificate from the Association made by its representative or Manager as to the names of the Unit Owners and their respective shares of distribution.

#### Association as Agent

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

#### Benefit to Mortgagees

Certain provisions in this paragraph entitled "Insurance" are for the benefit of mortgagees or trust indenture beneficiaries of condominium parcels, and all such provisions are covenants

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for the benefit of any mortgagee of a Unit and may be enforced by such mortgagee or beneficiary.

### Reconstruction

#### (e) Repair After Casualty

If any part of the condominium property shall be damaged by casualty, whether or not it shall be reconstructed or repaired shall be determined in the following manner:

- (1) Lesser Damage - If a Unit or Units are found by the Board of Directors of the Association to be tenantable after the casualty, the damaged property shall be repaired.
- (2) Greater Damage - If a Unit or Units are found by the Board of Directors to be not tenantable after the casualty, the damaged property shall be reconstructed or rebuilt.
- (3) Certificate - The insurance trustee may rely upon a certificate of the Association made by its president and secretary to determine whether or not the damaged property is to be reconstructed or repaired.

#### (b) Plans and Specifications

Any reconstruction or repair must be substantially in accordance with the plans for specifications and the original improvements, or if not, then according to plans and specifications approved by the Board of Directors and by more than seventy-five percent (75%) of the Unit Owners, including the Owners of all Units the plans for which are to be altered. Any such 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 filed of record in accordance with the provisions of such amended filing, more particularly set forth in Paragraph VII and Paragraph VIII, subparagraph 1, hereinabove.

#### (c) Responsibility

The responsibility for reconstruction or repair after casualty shall be the same as for maintenance and repair of the condominium property, and the Association shall work with the insurance trustee to carry out the provisions of this Article.

#### (d) Assessments

If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction or repair for which the Association is responsible, or if at any time during such



reconstruction or repair, or upon completion of such reconstruction or repair, the funds for the payment of the costs thereof are insufficient, assessments shall be made against all Unit Owners in sufficient amounts to provide funds to the payment of such costs. Such assessments shall be in proportion to the Owner's percentage of interest in the general common elements.

(e) Construction Funds

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

(f) Surplus

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

(g) Condemnation

The Owners Association shall represent the Unit Owners in the condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the common elements, or part thereof, by the condemning authority.

X.

REMOVAL OR PARTITION - SUBDIVISION

TALON may only be removed from condominium ownership, and may only be partitioned or sold, 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. The consent of Owners of Units to which at least 75 percent (75%) of the votes in the Owners Association are allocated and the approval of the "eligible" holders of first mortgages on Units to which at least 51 percent (51%) of the votes of units subject to a mortgage appertain, shall be required to terminate the condominium regime. For a Mortgagee to be "eligible"

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hereunder, they must have requested notice as set forth herein under "Notice of Action". Upon obtaining such approval, the Board shall be empowered to implement and carry out the plan of removal, partition, or sale.

- (c) No Unit may be divided or subdivided into a smaller Unit, nor any portion thereof sold or otherwise transferred, except as provided above.
- (d) This section shall not apply to the sale of individual Units and shall not be considered as a right of first refusal.
- (e) The common elements of TALON shall not be abandoned, partitioned, subdivided, encumbered, sold or transferred by removal or partition without compliance with all of the above requirements.

## XI.

### ARBITRATION AND REMEDIES

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

**Rights of Action:** The Association, and any aggrieved Condo Unit Owner, has a right of action against Condo Unit Owners who fail to comply with the provisions of this Declaration, the Association Bylaws, rules, regulations, or any other provisions of documents relating to the Condominium or the decisions made by the association.

By accepting a conveyance of a Unit, or by agreeing to purchase a Unit pursuant to a contract for deed, each Owner agrees with the Declarant to arbitrate certain disputes the Owner might have with the Declarant, as described in this Section XI, in the manner and subject to these provisions.

- A. Matters Subject to Arbitration: Each Owner and the Declarant agree that any and all claims or disputes arising out of or involving the construction, design, or condition of any Unit, any Building containing a Unit, or any Common Element shall be resolved exclusively by means of arbitration pursuant to the Montana Uniform Arbitration Act No. 27-5-111, et sec., M.C.A. (the "Act"), and the provisions of this Section XI, and pursuant to the Commercial Arbitration Rules of the American Arbitration Association. All other claims or causes of action arising under or provided by this Declaration may be tried and litigated in any court of competent jurisdiction.

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- B. Selection of Arbitrator: One arbitrator shall be selected or designated to arbitrate disputes as provided in this Section XI. Within ten (10) days after a party notifies the other party, in writing, of a demand to arbitrate a dispute pursuant to this Section XI, the parties shall, if they cannot otherwise agree on a person to arbitrate the matter, exchange a list of ten (10) names of Montana residents who would be suitable arbitrators of the dispute. If there is a match of a name between the two lists, the first such match shall serve as arbitrator. In the event there are no matching names, or if any party fails to provide a list of names, the party demanding the arbitration shall move the District Court of the Eighteenth Montana Judicial District to appoint an arbitrator, in accordance with the Act.
- C. Expenses Associated With Arbitration: Each party shall bear his, her, or its own costs and expenses incurred in connection with an arbitration held pursuant to this Section XI, including attorney's fees. The parties shall split equally all fees and other costs charged or incurred by the arbitrator.

## XII.

### SEVERABILITY

The provisions hereof 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 hereof.

## XIII.

### INTERPRETATION

The provisions of the Declaration and of the Bylaws to be promulgated and recorded herewith, shall be liberally construed to effectuate the purpose of the Declaration and Bylaws and to create a building or buildings subject to and under the provisions of the Unit Ownership Act.

## XIV.

### MISCELLANEOUS

#### Utility Easements

In addition to the easement provided for herein, easements are reserved through the condominium property as may be required for utility services, including heat, air conditioning, water, sewer, power, telephone, natural gas and cable television, in order to serve TALON

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adequately. However, such easements through the property or Units shall be only according to the plans and specification for the Unit building, as set forth in the recorded plat, or as the building is constructed, unless approved in writing by the Unit Owner.

#### Right of Access

The Association shall have the irrevocable right, to be exercised by the Manager or Board of Directors, to have access to each Unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the limited common elements therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the general or limited common elements or to any other Unit.

Damage to the interior or any part of the Unit resulting from maintenance, repair, emergency repair or replacement of any of the general or limited common elements, or as a result of an emergency repair within another Unit at the instance of the Association, shall be designated either limited or general common expenses by the Association and assessed in accordance with such designation.

#### Expenditures

No single expenditure or debt in excess of \$5,000.00 may be made or incurred by the Association or Manager without the prior approval of seventy-five percent (75%) of the Unit Owners.

#### Benefit

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

#### Service of Process

The name and address of the person to receive service of process for the Homeowners Association until another designation is filed of record shall be:

Holly N. March  
Attorney and Counselor at Law  
225 East Mendenhall  
Bozeman, MT 59715

Notice of Action



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A holder, insurer or guarantor of a first mortgage, upon written request to the Association, (such request to state the name and address of such holder, insurer or guarantor and the Unit number), will be entitled to timely written notice of:

(1) Any proposed amendment of the condominium instruments effecting a change in (i) the boundaries of any Unit or the exclusive easement rights appertaining thereto, (ii) the interests in the general or limited common elements appertaining to any Unit or the liability for common expenses appertaining thereto, (iii) the number of votes in the Owners Association appertaining to any Unit or (iv) the purposes to which any unit or the common elements are restricted:

(2) Any proposed termination of the condominium regime;

(3) Any condemnation loss or any casualty loss which affects a material portion of the condominium or which affects any unit on which there is a first mortgage held, insured or guaranteed by such eligible holder;

(4) Any delinquency in the payment of assessments or charges owed by an Owner of a unit subject to the Mortgage of such eligible holder, insurer or guarantor, where such delinquency has continued for a period of 60 days;

(5) Any lapse, cancellation or material modification of any insurance policy maintained by the Owners Association.

First Mortgagees Rights

No provision of this Declaration shall give a condominium Unit Owner or any other party priority over any rights of the first mortgagee of the condominium unit pursuant to its mortgage in the case of payment to the Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of condominium units and/or common elements.

To the extent possible under Montana and other applicable law, the following protections for the benefit of first mortgage holders are as follows:

- (1) Any restoration or repair of the condominium after a partial condemnation or damage due to an insurable hazard shall be substantially in accordance with the Declaration and the original plans and specifications unless the approval of the eligible holders of first mortgages on Units to which at least 51% of the votes of Units subject to mortgages held by such eligible holders are allocated, is obtained.
- (2) Any election to terminate the condominium regime after substantial destruction or a substantial taking in condemnation of the condominium property must require the approval of the eligible holders of first mortgages on Units to which at least





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51% of the votes of Units subject to mortgages held by such eligible holders are allocated.

- (3) Unless the formula for reallocation of interests in the common elements after a partial condemnation or partial destruction of the condominium project is fixed in advance by the Declaration or by applicable law, no reallocation of interests in the common elements resulting from a partial condemnation or partial destruction of the condominium project may be effected without the approval of the eligible holders of first mortgages on Units to which at least 51% of the votes of Units subject to mortgages held by such eligible holders are allocated.

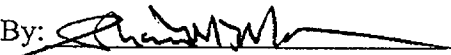
NOTE: As used in this section, the term "eligible holder, insurer or guarantor" shall mean a holder, insurer or guarantor of a first mortgage on a Unit in a condominium.

### Warranties

The Declarant expressly makes no warranties or representations concerning the property, the Units, the Declaration, Bylaws, or deeds of conveyance except as specifically set forth therein, and no one may rely upon such warranty or representation not so specifically expressed therein. Estimates of common expenses are deemed accurate, but no warranty or guarantee is made or is intended, nor may one be relied upon.

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


MOJEN, LLC

By: 

Its: Member

Its: Member

HJM CONSTRUCTION, LLC

By: 

Its: Member

STATE OF MONTANA )

:SS.

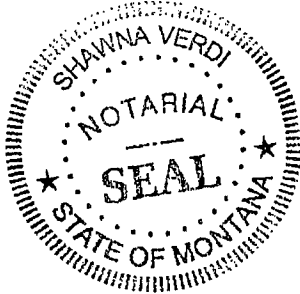
County of Gallatin )



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On this 13 day of August, 2008, before me, a Notary Public for the State of Montana, personally appeared Shawn M Moran, known to me to be the person whose name is subscribed above and acknowledged to me that he executed the same in his capacity as a member of MOJEN, LLC.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal as of the day and year first above written.



Shawna Verdi  
Shawna Verdi  
Notary Public for the State of Montana  
Residing at: Belgrade  
My Commission expires: 10/20/2008

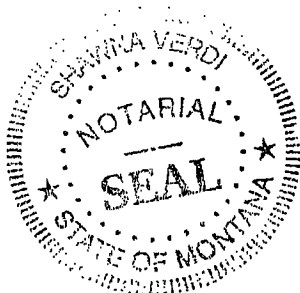
STATE OF MONTANA )

:SS.

County of Gallatin )

On this 13 day of August, 2008, before me, a Notary Public for the State of Montana, personally appeared Gary Jensen, known to me to be the person whose name is subscribed above and acknowledged to me that he executed the same in his capacity as a member of HJM CONSTRUCTION, LLC.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal as of the day and year first above written.



Shawna Verdi  
Shawna Verdi  
Notary Public for the State of Montana  
Residing at: Belgrade  
My Commission expires: 10/20/2008



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## TALON CONDOMINIUM

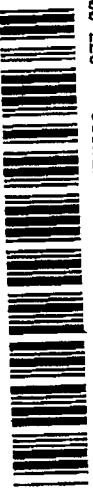
Exhibit "A"

### Legal Description

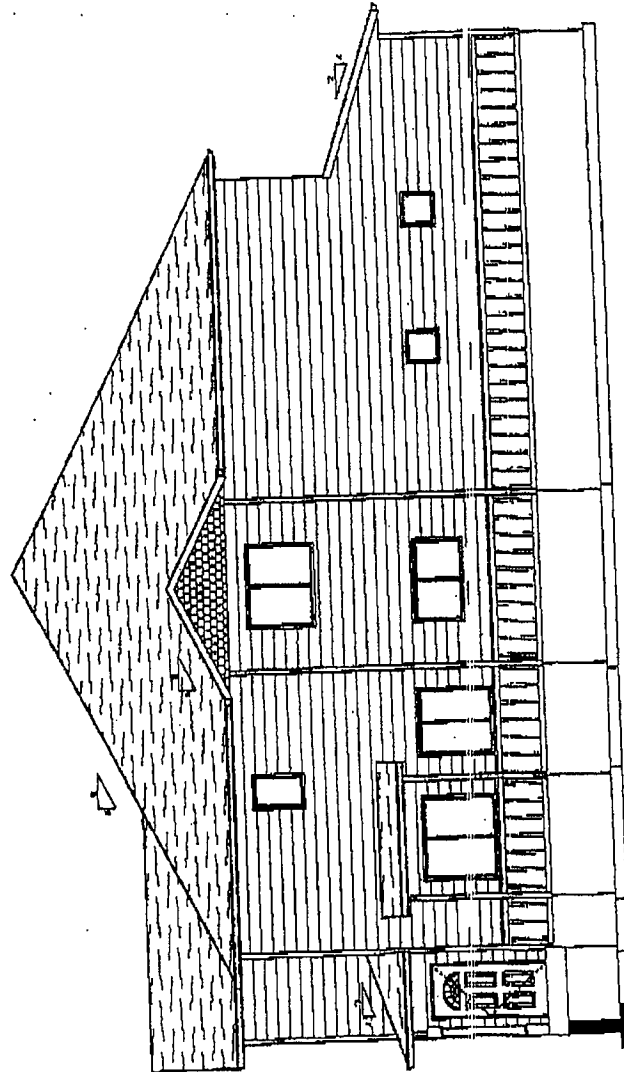
Lots 1 and 2, Block 1 of Falcon Hollow Subdivision, First Filing, being Tract A & B, Certificate of Survey No. 2031, situated in the NE  $\frac{1}{4}$  of Section 17, T. 2 S., R. 5 E., P.M.M., Gallatin County, Montana, according to the official plat thereof on file in the Gallatin County Clerk and Recorder's Office, Gallatin County, Montana. (Plat J-473)

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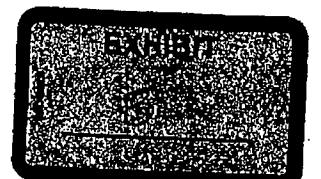


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RIGHT ELEVATION

1'-0" 8'-11 1/2" 1'-0" 8'-11 1/2" 1'-0" 8'-11 1/2"





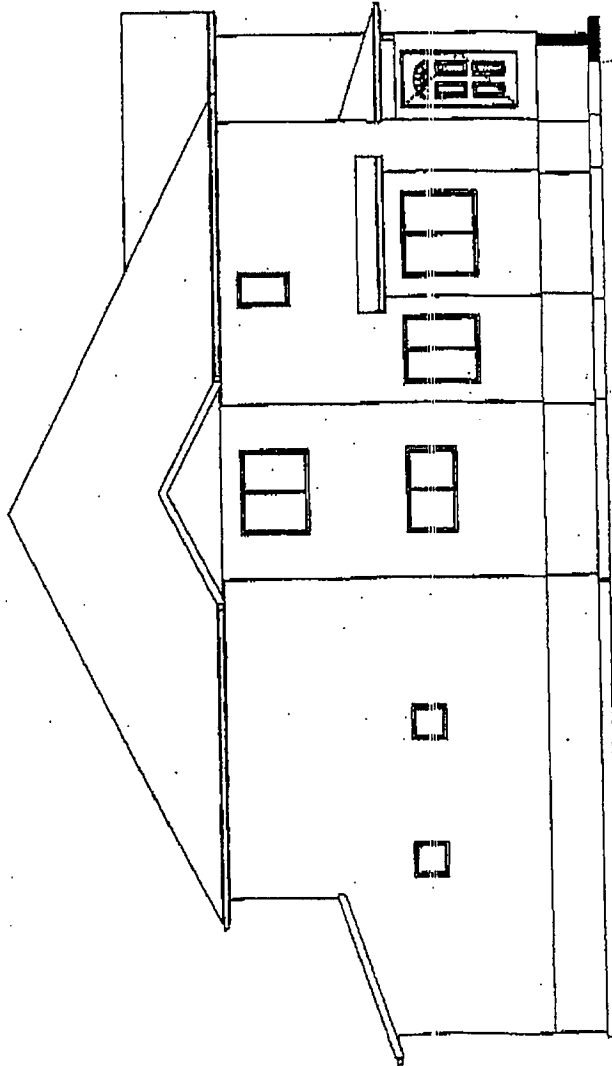
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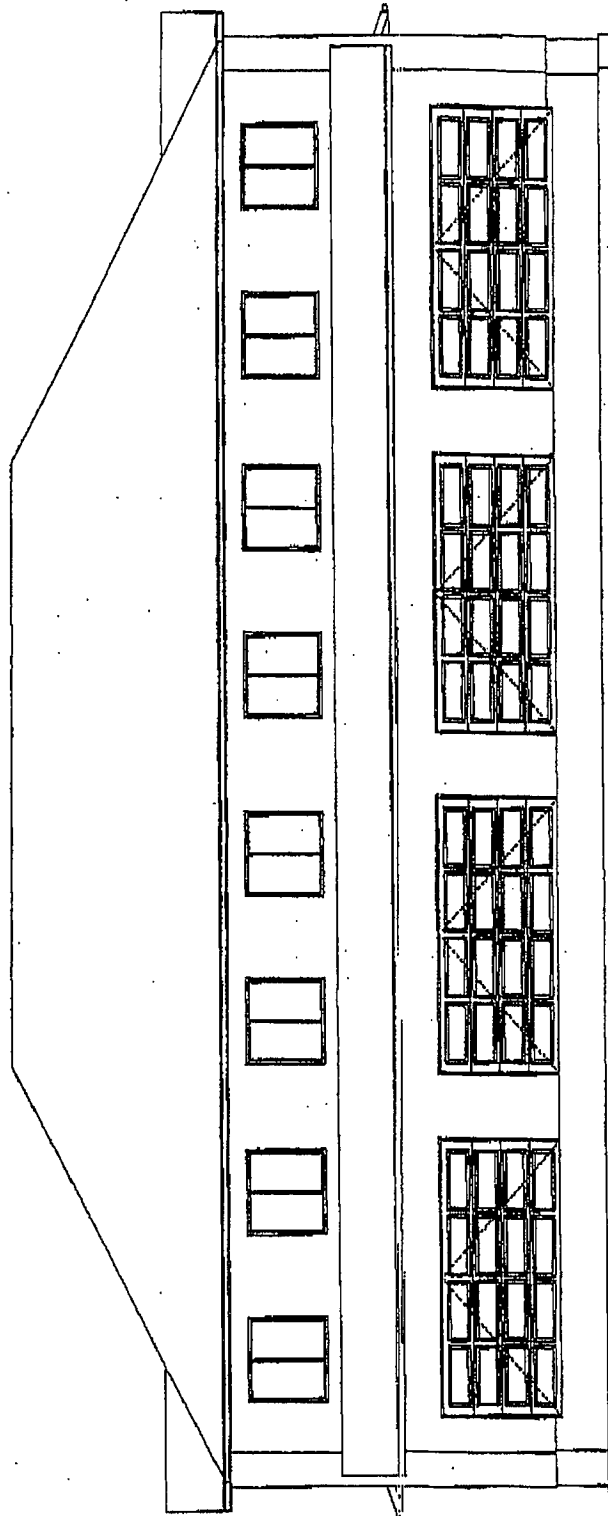
Dimensions: 4'-0" x 2'-0" x 1'-0" x 8'-11 1/2"

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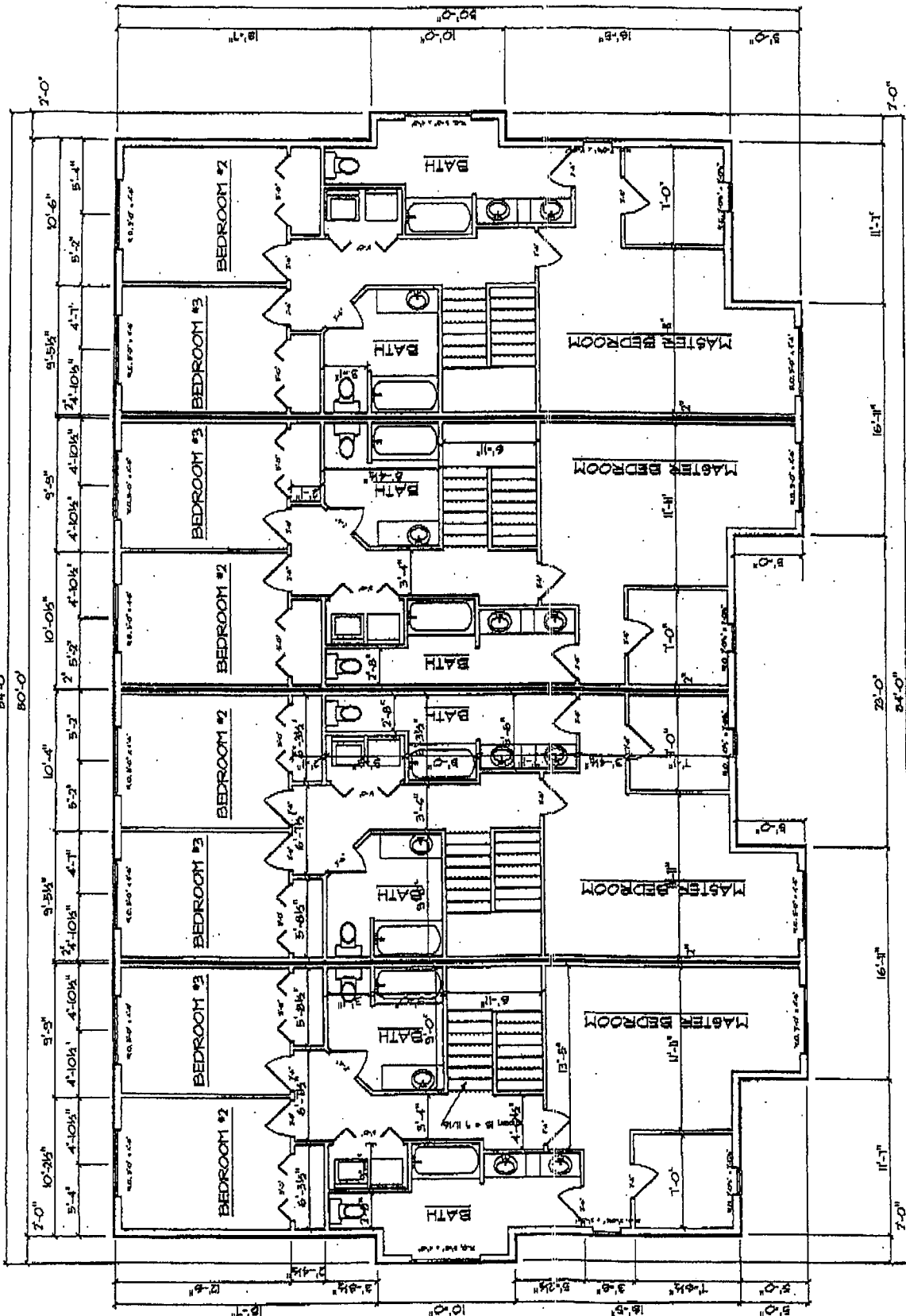


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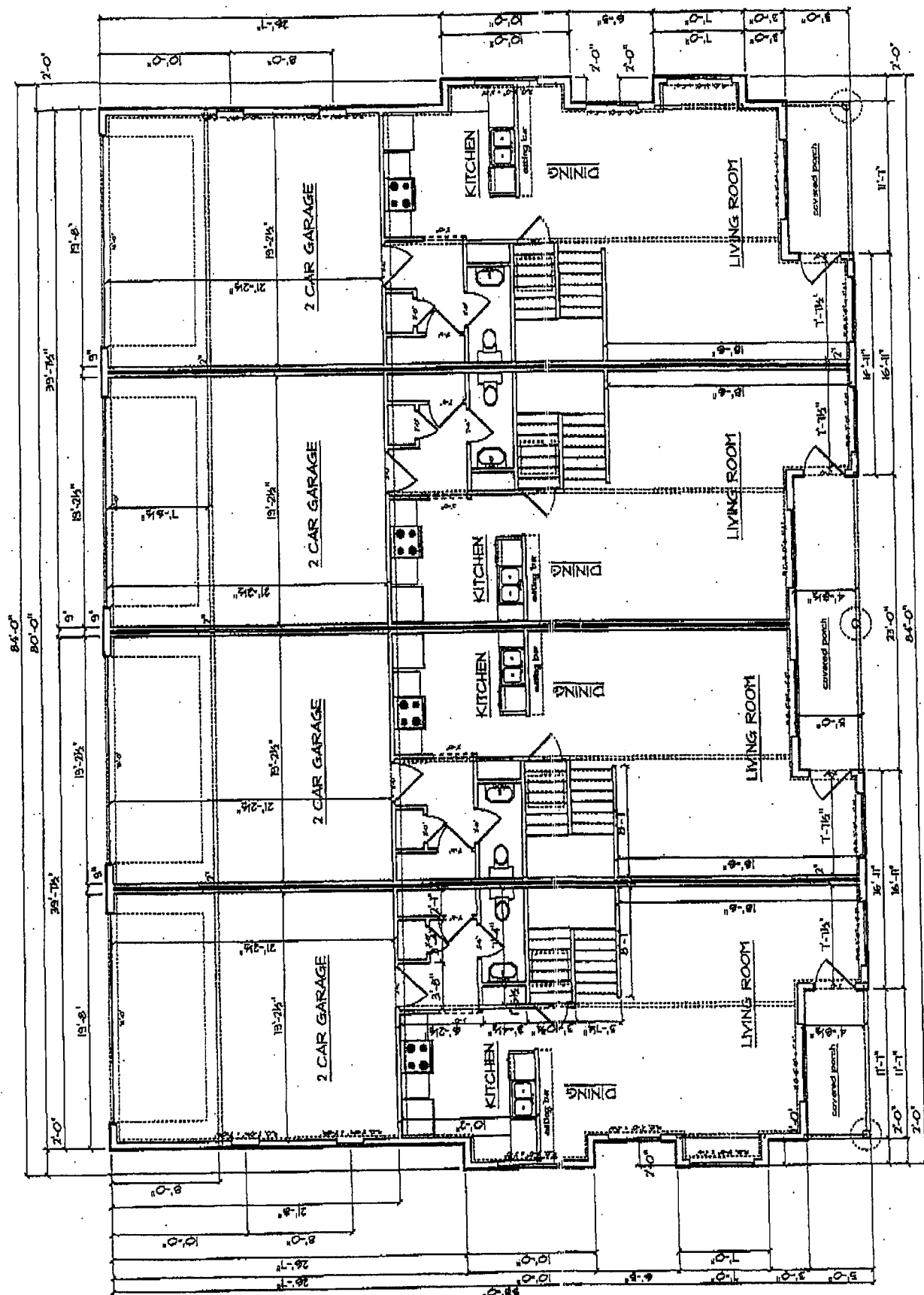
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