

**MASTER DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS  
FOR  
HILLVIEW**

**Missoula, Montana**

**NOTE: PURSUANT TO SECTION 7.1(A) HEREOF, THE RESTRICTIVE COVENANT  
RECORDED WITH THE MISSOULA COUNTY CLERK AND RECORDER ON  
FEBRUARY 9, 2023, AT BOOK 1085, PAGE 1325 IS TERMINATED AND RELEASED  
OF RECORD.**

**AFTER RECORDING RETURN TO:**

Hillview Road LLC  
205 Detroit Street, Suite 200  
Denver, Colorado 80206

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## MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HILLVIEW

This Master Declaration of Covenants, Conditions and Restrictions for Hillview (“**Master Declaration**”) is made on the date hereinafter set forth by Hillview Road LLC, a Colorado limited liability company (“**Declarant**”).

### PREAMBLE

WHEREAS, Declarant is the owner of certain real property located in Missoula, Montana, more particularly described on the attached **Exhibit A** (“**Declarant Property**”); and

WHEREAS, Hillview MF Project Owner LLC, a Delaware limited liability company (“**MF Owner**”) is the owner of certain real property located in Missoula, Montana, more particularly described on the attached **Exhibit B** (“**MF Property**” and together with the Declarant Property, the “**Property**”); and

WHEREAS, Declarant intends to establish a common scheme and plan for possession, use, enjoyment, repair, maintenance, restoration and improvement of the Property; and

WHEREAS, the community may include one or more smaller communities, condominium communities or cooperative communities, each of which may be governed by a Sub-Association (defined below); and

WHEREAS, Declarant intends to provide for the operation, administration, use and maintenance of certain Common Areas (defined below) and other areas within the community; and

WHEREAS, Declarant will convey the Property subject to the protective covenants, conditions and restrictions as hereinafter set forth.

NOW THEREFORE, Declarant hereby declares that all Property shall be held and conveyed subject to the following covenants, conditions and restrictions, all of which are declared and agreed to be for the protection of the value of the Property and for the benefit of any Person having any right, title or interest in the Property. Said covenants, conditions and restrictions shall be deemed to run with the land and shall be a burden and a benefit to any Person acquiring such interest, their grantees, heirs, legal representatives, successors and assigns, and acceptance of such interest by any such Person shall constitute such Person’s agreement to be bound by the same.

### ARTICLE ONE DEFINITIONS

As used in this Master Declaration, unless the context otherwise requires, the terms hereinafter set forth shall have the following meanings:

1.1 “**Agency**” means any agency or corporation such as the U.S. Department of Housing and Urban Development (“**HUD**”), U.S. Veterans’ Administration (“**VA**”), Federal National Mortgage Association (“**FNMA**”) or the Federal Home Loan Mortgage Corporation (“**FHLMC**”) that purchases or insures residential mortgages.

1.2 “**Allocated Interests**” means the Common Expense Liability and the votes in the Master Association that are allocated to each of the Units in the Project. The formulas used to establish the Allocated Interests are as follows:

(a) *Common Expense Liability.* Except as set forth in Section 5.4(a)(i) below which provides that to the extent that any Common Expenses or a portion thereof benefit fewer than all Owners, such expenses may be assessed exclusively against the Units as determined by the Board, all Common Expenses shall be levied against each Unit based on the fraction obtained by dividing the developable square footage of the Unit by the developable square footage of all Units. The developable square footage of the MF Property (which is a single Apartment Unit) is set forth on the attached **Exhibit C**. The estimated developable square footage of all other Units is also described on the attached **Exhibit C**; provided, however, upon Declarant or any other owner of the non-MF Property platting or otherwise creating additional Units within the Project, Declarant shall amend **Exhibit C** to set forth the actual developable square footage of such Unit(s), which will be subject to change in the event that developable square footage of the Unit(s) subsequently changes.

Notwithstanding the foregoing or any other provision of this Declaration to the contrary, the Allocated Interests of the MF Property in the Common Expense Liability shall not increase over the percentage shown on the attached **Exhibit C** as of the date hereof without the prior written approval of the owner of the MF Property.

(b) *Votes.* Each Unit shall have the number of votes in the Master Association equal to its Allocated Interests in the Common Expense Liability. To determine the number of votes for each Unit in the Master Association, such Unit’s Allocated Interests in the Common Expense Liability shall be multiplied by 100.

Notwithstanding the foregoing or any other provision of this Declaration to the contrary, the number of votes for the MF Property based upon the Allocated Interests in the Common Expense Liability shown on the attached **Exhibit C** as of the date hereof, shall not be decreased without the prior written approval of the Owner of the MF Property.

1.3 “**Apartment Unit**” means any Unit used for apartments or other multi-family rental use. The MF Property is currently the only Apartment Unit in the Project. See restrictions in Section 7.1 below as to multi-family rental use within the Project.

1.4 “**Applicant**” has the meaning in Section 7.2(e) below.

1.5 “**Articles**” means the Articles of Incorporation of the Master Association.

1.6 “**Assessment(s)**” means the (a) Common Expense Assessments, (b) Special Assessments, (c) Individual Assessments, (d) Fines, and (e) Costs of Enforcement, all as defined below.

1.7 “**Assessment Lien**” means the lien on a Unit for any Assessments levied against that Unit.

1.8 “**Board**” means the Board of Directors of the Master Association duly elected pursuant to the Bylaws of the Master Association or appointed by Declarant as described in Section 4.7 below.

The Board is the governing body of the Master Association and shall act on behalf of the Master Association.

1.9 “**Budget**” means the annual budget of the Master Association prepared and adopted in accordance with Section 4.8 below.

1.10 “**Bylaws**” means the Bylaws which are adopted by the Board for the regulation and management of the Master Association.

1.11 “**City**” means the City of Missoula, Montana.

1.12 “**Clerk and Recorder**” means the office of the Clerk and Recorder in the County.

1.13 “**Common Areas**” means any real property interest (including all Common Area Improvements located thereon), other than the Units, which is held or maintained for the common use, enjoyment and/or obligation of the Owners except as otherwise provided herein (e.g., Limited Common Areas defined below). Said Common Areas may be owned and/or maintained by the Master Association.

Notwithstanding the foregoing, certain of the Common Areas may be “**Limited Common Areas**” which are either limited to or reserved in this Master Declaration, in a recorded amendment to this Master Declaration executed by Declarant pursuant to Article Thirteen below, by authorized action of the Master Association, or as otherwise permitted in Article Thirteen, for the exclusive use of an Owner, or are limited to and reserved for the common use of more than one but fewer than all Owners.

The initial Common Areas are described on the attached **Exhibit C**.

1.14 “**Common Area Improvements**” means those Improvements located on the Common Areas which are owned and/or maintained by the Master Association for the common use and enjoyment of the Owners and their Guests.

1.15 “**Common Expense Assessments**” means the funds required to be paid by each Owner in payment of such Owner’s Common Expense Liability as more fully defined in Section 5.4(a) below.

1.16 “**Common Expense Liability**” means the liability for the Common Expense Assessments allocated to each Unit and determined in accordance with that Unit’s Allocated Interests as set forth in Section 1.2 above.

1.17 “**Common Expenses**” means expenditures made by or liabilities incurred by or on behalf of the Master Association, together with allocations to reserve funds.

1.18 “**Committee**” is defined in Section 7.2(c) below.

1.19 “**Costs of Enforcement**” means all fees, late charges, interest and expenses, including receiver’s fees, reasonable attorneys’ fees and costs incurred by the Master Association in connection with the collection of Assessments, and the enforcement of the terms, conditions and

obligations of the Master Association Governing Documents. Costs of Enforcement are collectible and enforceable as Assessments.

1.20 “**County**” means the County of Missoula, Colorado.

1.21 “**Declarant**” means Hillview Road LLC, a Colorado limited liability company, and its successors and assigns. A Person shall be deemed a “successor and assign” of Declarant only if specifically designated in a duly recorded instrument as a successor or assign of Declarant under this Master Declaration, and shall be deemed a successor and assign of Declarant only as to the particular rights or interests of the Declarant under this Master Declaration which are specifically designated in the recorded instrument.

1.22 “**Declarant Rights**” means all rights granted to or reserved by Declarant as set forth in this Master Declaration or the other Master Association Governing Documents.

1.23 “**Design Review Guidelines**” means rules and regulations adopted by the Committee from time to time to interpret and implement the provisions of Section 7.2 below. Design Review Guidelines may contain, among other things, guidelines which will clarify the types of designs and materials that will be considered in design approval.

1.24 “**Dwelling Unit**” means any Unit that is, or is intended to be, used primarily for residential occupancy, other than an Apartment Unit.

1.25 “**Eligible Mortgagee**” means a holder, insurer or guarantor of a First Mortgage who has delivered a written request to the Master Association containing its name, address, the legal description and the address of the Unit encumbered by its First Mortgage, requesting that the Master Association notify them on any proposed action requiring the consent of the specified percentage of Eligible Mortgagees.

1.26 “**Fines**” means those fines described in Section 5.4(c) below.

1.27 “**First Mortgage**” means any Mortgage the priority of which is not subject to any monetary lien or encumbrance except liens for taxes or other liens that are given priority by statute.

1.28 “**Guest**” means (a) any person who resides with an Owner within the Project, (b) a guest or invitee of an Owner, (c) an occupant or tenant of an Owner within the Project, and any members of his or her household, invitee or cohabitant of any such person, or (d) a contract purchaser.

1.29 “**Improvements**” means:

(a) all exterior improvements, structures and any appurtenances thereto or components thereof of every type or kind; and

(b) the grading, excavation, filling or similar disturbance to the surface of the land including, without limitation, change of grade, change of ground level, and change of drainage pattern; and



(c) all landscaping and hardscaping features, including, but not limited to, buildings, outbuildings, patios, patio covers, awnings, painting or other finish materials on any visible structure, additions, walkways, sprinkler systems, garages, private drives, driveways, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, trees, shrubs, flowers, vegetables, sod, gravel, bark, exterior light fixtures, poles, signs, cooling, heating and water softening equipment; and

(d) any change, alteration, modification, expansion, or addition to any previously approved Improvement, including any change of exterior appearance, finish material, color or texture.

1.30 **“Letter of Noncompliance”** is defined in Section 7.2(n) below.

1.31 **“Managing Agent”** means any one or more persons employed by the Master Association who is engaged to perform any of the duties, powers or functions of the Master Association.

1.32 **“Master Association”** means the Hillview Master Association, Inc., a Colorado non-profit corporation, its successors and assigns. The Articles and Bylaws of the Master Association, along with this Master Declaration, shall govern the administration of the Project, the Members of which shall be all of the Owners of the Units within the Project.

1.33 **“Master Association Governing Documents”** means this Master Declaration, the Plat, the Articles, the Bylaws, the Design Review Guidelines and any other documents promulgated by the Board, as they may be amended or supplemented from time to time.

1.34 **“Master Declaration”** means this Master Declaration of Covenants, Conditions and Restrictions for Hillview, the Plat, and any supplements and amendments thereto, recorded with the Clerk and Recorder.

1.35 **“Member”** means each Owner.

1.36 **“Mortgage”** means any mortgage, deed of trust or other document conveying any Unit or interest therein to a Mortgagee, but only as security for payment of a debt or obligation and not intended to initially convey fee simple title thereof.

1.37 **“Mortgagee”** means any Person named as a mortgagee or beneficiary in any Mortgage, or any successor to the interest of any such Person under such Mortgage.

1.38 **“Nonprofit Act”** means the Montana Nonprofit Corporation Act.

1.39 **“Notice and Hearing”** means a written notice and an opportunity for a hearing before the Board in the manner provided in the Bylaws.

1.40 **“Ordinances”** means land uses permitted by the City’s/County’s zoning ordinances, as well as any other governmental rules, regulations, or policies in effect now or in the future.

1.41 **“Owner”** means the record owner of the fee simple title to any Unit which is subject to this Master Declaration.

1.42 “**Owner’s Agent**” means any agent, contractor, employee, family member, licensee or Guest of an Owner.

1.43 “**Party Wall**” means one or more common walls that in conjunction with the footings underlying and those portions of the roof thereover, form a structural part of and may physically join Dwelling Units.

1.44 “**Person**” means a natural person, a corporation, a partnership, an association, a trustee, a limited liability company, a joint venture, or any other entity recognized as being capable of owning real property under Montana law.

1.45 “**Plat**” means collectively the \_\_\_\_\_ recorded \_\_\_\_\_, 202\_\_ at Book \_\_\_\_\_, Page \_\_\_\_\_ with the Clerk and Recorder against title to the Property, as it may be amended and supplemented from time to time, and any other plat that subdivides a portion of the Property in accordance with the terms hereof.

1.46 “**Project**” means the community created by this Master Declaration and as shown on the Plat consisting of the Property, and such additional property that may be annexed into the common interest community pursuant to Article Twelve below.

1.47 “**Restrictive Covenant**” means the Restrictive Covenant recorded with the Clerk and Recorder on February 9, 2023, at Book 1085, Page 1325.

1.48 “**Rules**” means the rules and regulations adopted by the Board for the regulation and management of the Project, if any, as amended from time to time.

1.49 “**Service Charges**” are defined in Section 5.4(a)(ii) below.

1.50 “**Special Assessments**” means those Assessments defined in Section 5.4(d) below.

1.51 “**Sub-Association**” means any owner association established pursuant to a Sub-Association Declaration.

1.52 “**Sub-Association Assessments**” means assessments levied pursuant to a Sub-Association Declaration.

1.53 “**Sub-Association Declaration**” means a declaration of covenants, conditions and restrictions which may be recorded as provided under this Master Declaration and may establish a sub-community upon a portion of the Project. Prior written approval of Declarant shall be required prior to any Person recording a Sub-Association Declaration with the Clerk and Recorder.

1.54 “**Sub-Association Documents**” mean the organizational and operational documents which may be prepared and recorded, as appropriate, to create and govern a Sub-Association, including a map or plat, the Sub-Association Declaration, the articles of incorporation and bylaws of the Sub-Association, and any procedures, rules, regulations or policies adopted under any such documents.

1.55 “**Unit**” means an Apartment Unit or a Dwelling Unit as described on the attached **Exhibit C**.

1.56 “**Units That May Be Created**” means \_\_\_\_ Units. In no event is the foregoing a representation from Declarant as to the number of Units that may be located within the Project.

1.57 “**Unit Utility Charges**” is defined in Section 5.4(a)(iii) below.

1.58 “**Working Capital Fund**” is defined in Section 5.9 below.

In the event that additional real property is made subject to this Master Declaration in the manner provided for in Article Twelve below, certain terms defined above shall be expanded to encompass said property from the date such additional real property is made subject to this Master Declaration.

## **ARTICLE TWO**

### **SCOPE OF THE MASTER DECLARATION**

2.1 **Property Subject to this Master Declaration.** Declarant, as the owner of fee simple title to the Project, by recording this Master Declaration does hereby subject the Project to the provisions of this Master Declaration.

2.2 **Conveyances Subject to this Master Declaration.** All covenants, conditions and restrictions which are granted or created by this Master Declaration shall be deemed to be covenants appurtenant to and running with the land and shall at all times inure to the benefit of and be binding on any Person having any interest in the Project, their respective heirs, successors, personal representatives or assigns, except as otherwise provided herein.

Any instrument recorded subsequent to this Master Declaration and purporting to establish and affect any interest in the Project shall be subject to the provisions of this Master Declaration despite any failure to make reference thereto.

2.3 **Owner’s Rights Subject to this Master Declaration.** Each Owner shall own their Unit subject to the provisions of the Master Association Governing Documents.

2.4 **Number of Units.** The initial number of Units within the Project is 2; and initially there are \_\_\_\_ Common Areas within the Project. Declarant reserves the right but not the obligation to create additional Units and Common Areas as described herein.

2.5 **Identification and Boundaries of Units.** The identification number and boundaries of each Unit is as shown on the Plat.

2.6 **Sub-Associations.** Subject to Declarant’s prior written approval, an Owner of a Unit may further subject its Unit to a common interest community pursuant to a Sub-Association Declaration whereby the Unit is further divided into individual units and common areas.

### **ARTICLE THREE COMMON AREAS**

3.1 Transfer of Title to the Common Areas. Upon the creation of Common Areas within the Project, Declarant will convey to the Master Association title to such Common Areas.

Any property conveyed by Declarant to the Master Association shall be conveyed free and clear of all monetary liens and monetary encumbrances (other than the lien of real estate taxes not then due and payable), but otherwise subject to all covenants, conditions, easements and restrictions of record.

3.2 Owner's Rights in the Common Areas. Subject to use restrictions contained herein or promulgated by the Master Association, every Owner and their Guests shall have the right and easement of use and enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with title to the Unit to such Owner; *provided, however*, that the right to use and enjoyment of any Limited Common Areas are limited to the Owners of the Units to which such Limited Common Areas are allocated pursuant to this Master Declaration, as amended. Each Owner's right to own and use their Unit and the Common Areas shall also be subject to the Declarant Rights reserved herein and the following rights of the Board:

(a) To borrow money to improve said Common Areas and to mortgage said Common Areas as security for any such loan.

(b) To convey or dedicate all or any part of the said Common Areas for such purposes and subject to such conditions as may be agreed to by (i) the Owners to which at least sixty-seven percent (67%) of the votes in the Master Association are allocated, and (ii) all Owners of any Limited Common Area conveyed or dedicated. The granting of permits, licenses and easements shall not be deemed a conveyance or encumbrance within the meaning of this Section 3.2(b).

(c) To promulgate and adopt rules with which each Owner and their Guests shall strictly comply.

(d) To suspend the voting rights of an Owner for any period during which any Assessment remains unpaid or for any violation of a Master Association Governing Document.

(e) To take such steps as are reasonably necessary to protect the Common Areas against foreclosure.

(f) To enter into, make, grant, perform or enforce any contracts, leases, agreements, licenses, easements and rights-of-way for the use of Common Areas by Owners, Guests and any other Persons for any purpose the Board may deem to be useful, beneficial or otherwise appropriate.

(g) To close or limit the use of the said Common Areas temporarily while maintaining, repairing or replacing Common Areas.

(h) To make such use of the Common Areas as may be necessary or appropriate for the performance of the duties and functions which it is obligated or permitted to perform under this Master Declaration.

3.3 Delegation of Use. Any Owner may delegate their right of enjoyment of the Common Areas and Common Area Improvements to their Guests subject to limitations created by the Board.

## **ARTICLE FOUR MASTER ASSOCIATION**

4.1 Name. The name of the Master Association is the Hillview Master Association, Inc., and it is a Montana nonprofit corporation.

4.2 Purposes and Powers. The Master Association, through its Board, shall manage, operate, care for, insure, maintain, repair and reconstruct all of the Common Areas and Common Area Improvements and keep the same in an attractive and desirable condition for the use and enjoyment of all Owners and their Guests. Any purchaser of a Unit shall be deemed to have assented to, ratified and approved such designations and management rights. The Board shall have all of the powers, authority and duties permitted pursuant to the Nonprofit Act necessary and proper to manage the business and affairs of the Master Association, including, but not limited to, the following:

(a) *Attorney-in-Fact.* The Board is hereby irrevocably appointed attorney-in-fact for each Owner in order (i) to manage, control and deal with the interest of each Owner in the Common Areas, so as to permit the Master Association to fulfill all of its duties and obligations hereunder and to exercise all of its rights hereunder, and (ii) to deal with the Project upon its destruction, condemnation or obsolescence as hereinafter provided.

Acceptance of any interest in any Unit shall constitute an appointment of the Board as attorney-in-fact as provided above and hereinafter. The Board shall be granted all of the powers necessary to govern, manage, maintain, repair, administer and regulate the Project and to perform all of the duties required of it.

(b) *Contracts, Easements, and Other Agreements.* Subject to Section 3.2 above, the Board shall have the right to enter into, grant, perform, enforce, cancel and vacate any contracts, leases, agreements, licenses, easements and rights-of-way for the use of Common Areas by Owners, Guests or any other Persons, including, without limitation, the general public.

Any of such contracts, licenses, leases, agreements, easements and/or rights-of-way, shall be upon such terms and conditions as may be agreed to from time to time by the Board, without the necessity of the consent thereto, or joinder therein, of the Owners or any other Person.

(c) *Other Master Association Functions.* The Board may undertake any activity, function or service for the benefit of or to further the interests of all, some or any Owners on a self-supporting, Common Expense Assessment or Special Assessment basis.

(d) *Implied Rights.* Subject to Declarant Rights, the Board shall have and may exercise any right or privilege given to it expressly by this Master Declaration, or reasonably to be implied

from the provisions of this Master Declaration, or given or implied by law, including, without limitation, the Nonprofit Act, or which may be necessary or desirable to fulfill its duties, obligations, rights or privileges.

4.3 Board/Managing Agent. The affairs of the Master Association shall be managed by the Board. By resolution, the Board may delegate authority to a Managing Agent for the Master Association as more fully provided for in the Bylaws.

4.4 Articles and Bylaws. The purposes and powers of the Master Association and the rights and obligations with respect to the Owner set forth in this Master Declaration may and shall be amplified by provisions of the Articles and Bylaws.

4.5 Membership. Members of the Master Association shall be every record Owner of a Unit subject to this Master Declaration. Membership shall be appurtenant to and may not be separated from ownership of any Unit. Where more than one Person holds an ownership interest in any Unit, all such Persons shall be Members. Membership in the Association is mandatory for each Owner of a Unit.

The membership of the Master Association shall at all times consist exclusively of all Owners or, following termination of the Project, of all former Owners, or their heirs, personal representatives, successors or assigns.

4.6 Voting Rights. The Master Association shall have one class of voting membership. Owners shall be entitled to the number of votes allocated to their Unit pursuant to Section 1.2 above.

4.7 Board Composition. The initial Board shall be composed of as many as 3 members. The Bylaws shall determine the number of directors. Declarant shall determine the number of initial directors and shall appoint the initial Board members, who need not be Owners. The initial Board members and any successors appointed by the Declarant shall serve until the first election of directors by Members. When the Declarant has closed the sale of 75% or more of the Units That May Be Created, which must include 75% of all Units located in all Sub-Associations (if any), the Declarant shall arrange and conduct the first election of directors by the Owners. So long as the Declarant owns any Unit within the Project, Declarant may appoint its representative to fill one of the authorized positions on the Board, in the event the Declarant's votes are insufficient to elect one of its candidates.

In all events, the Owner of the MF Property shall have the right to appoint one director to the Board, all as described in the Bylaws.

4.8 Budget.

(a) *Annual Budget.* Within sixty days after the addition of Common Areas for the Project, the Board shall cause to be prepared a “**Budget**” for the calendar year, and then for each calendar year thereafter. Within ninety (90) days after the adoption of any Budget by the Board, the Board shall mail, by ordinary first-class mail, or otherwise deliver, a summary of the Budget to each Owner and shall set a date for a meeting of the Owners to consider ratification of the Budget within a reasonable time after delivery of the summary.

Unless at that meeting Owners to which 67% of the votes in the Master Association are allocated reject the Budget, the Budget shall be deemed ratified whether or not a quorum is present. In the event the Budget is rejected, the Budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget adopted by the Board of Directors.

(b) *Amended Budget.* If the Board deems it necessary or advisable to amend a Budget that has been ratified by Owners pursuant to Section 4.8(a) above, the Board may adopt a proposed amendment to the Budget, deliver a summary of the proposed amendment to all Owners and set a date for a meeting of the Owners to consider ratification of the proposed amendment. The date of such meeting shall be a reasonable time after the delivery of the summary of the proposed amendment.

Unless at that meeting Owners to which at least 67% of the votes in the Master Association are allocated reject the amended Budget, the amended Budget shall be deemed ratified whether or not a quorum is present.

4.9 Indemnification. Each officer of the Master Association, each director of the Board and each member of the Committee shall be indemnified by the Master Association against all expenses and liabilities including attorneys' fees, reasonably incurred by or imposed upon him or her in any proceeding to which he or she may be a party, or in which he or she may become involved, by reason of his or her being or having been an officer or director of the Master Association or a member of the Committee, or any settlements thereof, whether or not they are an officer of the Master Association, director of the Board or member of the Committee at the time such expenses are incurred, to the full extent permitted by Montana law.

## **ARTICLE FIVE ASSESSMENTS**

5.1 Obligation. Once a Budget is adopted, each Owner, shall be personally obligated to pay to the Master Association (a) Common Expense Assessments, (b) Special Assessments, (c) Individual Assessments, (d) Fines, and (e) Costs of Enforcement, which shall be a continuing lien upon the Unit against which each such Assessment is levied.

The obligation for such payments by each Owner to the Master Association is an independent personal covenant with all amounts due, from time to time, payable in full when due without notice or demand and without setoff or deduction. All Owners of each Unit shall be jointly, severally and personally liable to the Master Association for the payment of all Assessments attributable to their Unit.

Each Assessment against a Unit is the personal obligation of the Person(s) who owned the Unit at the time the Assessment became due and shall also pass to successors in title. *By acceptance of a deed for a Unit, each Unit purchaser thereby consents to assume the foregoing joint obligation for all Assessments due against the Unit pursuant to this Section 5.1.*

The omission or failure of the Board to levy Assessments for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay Assessments.

No Owner may waive or otherwise escape liability for the payment of Assessments by the non-use of the Common Areas or the abandonment of such Owner's Unit.

5.2 Purpose of the Common Expense Assessments. The Common Expense Assessments levied by the Master Association shall be used for the purpose of promoting the welfare and interests of the Owners including, but not limited to (a) providing for the administration and management of the Project, (b) providing for the upkeep, operation, improvement, repair, maintenance and reconstruction of the Common Areas and the Common Area Improvements, including, but not limited to, the maintenance required in Article Eleven below, (c) subject to Section 18.9 below, that portion of real property taxes, if any, attributable to the Common Areas and the Common Area Improvements, (d) providing the insurance required by Article Nine below, (e) creating a reasonable and adequate contingency or other reserve or surplus funds for insurance deductibles and general, routine maintenance, repairs and replacement of the Common Areas and Common Area Improvements on a periodic basis, as needed, and (f) satisfying any other purpose reasonable, necessary or incidental to such purposes.

5.3 Date of Commencement of the Assessments; Declarant's Right of Offset. The Common Expense Assessment shall commence as to the Units no later than sixty (60) days after the adoption of a Budget pursuant to Section 4.8(a) above. Declarant may at any time advance operating funds to the Master Association. Declarant shall be entitled to offset such amounts so paid or advanced as a credit against future Common Expense Assessments payable by Declarant.

5.4 Levy of Assessments.

(a) *Common Expense Assessments.* Common Expense Assessments shall be levied based upon the Budget's cash requirements. The Common Expense Liability shall be allocated among all Units in accordance with each Unit's Common Expense Liability as set forth in Section 1.2 above, subject to Section 5.4(e) below.

(i) To the extent that any Common Expenses or a portion thereof benefit fewer than all Owners, such expenses may be assessed exclusively against the Units benefited as determined by the Board.

(ii) Charges for water, sewer, gas, electric, storm drainage and other utility services provided to the Common Areas may be billed to the Master Association ("**Service Charges**"). If any Service Charges are billed to the Master Association, the Master Association shall pay the same on or before the date they become due. In addition to the Common Expense Assessments, the Master Association may, as and when determined by the Board in its discretion, apportion to and collect an Individual Assessment from each Owner in an amount which, together with all other Service Charges for such period, is sufficient to pay or reimburse the Master Association for all Service Charges for such period; *provided, however*, that the Master Association may elect to assess any or all of the Service Charges as part of the Common Expense Assessments. The manner in which Service Charges are apportioned among Owners shall be determined by the Board in its discretion from time to time. By way of example and not as a limitation, the Service Charges may be assessed based on Allocated Interests or based on actual usage by one or more Units. Non-payment of any Service Charges shall be subject to enforcement and collection by the Master Association in the same manner as Common Expense Assessments.



(iii) In the event that a utility provider will only provide a single bill for utility charges provided to more than one Unit, that bill may be addressed to the Master Association, who shall pay the same on or before the date they become due ("**Unit Utility Charges**"). In addition to the annual Common Expense Assessments, the Master Association may, as and when determined by the Board in its discretion, apportion to and collect an Individual Assessment from each Owner in an amount which, together with all other Unit Utility Charges for such period, is sufficient to pay or reimburse the Master Association for all Unit Utility Charges for such period; *provided, however*, that the Master Association may elect to assess any or all of the Unit Utility Charges as part of the Common Expense Assessments. The manner in which Unit Utility Charges are apportioned among Owners shall be determined by the Board in its discretion from time to time. By way of example and not as a limitation, the Unit Utility Charges may be assessed based on Allocated Interests of each Unit affected as compared to the Allocated Interests of all Unit's affected or based on actual usage by one or more Units. Non-payment of any Unit Utility Charges shall be subject to enforcement and collection by the Master Association in the same manner as Common Expense Assessments.

(b) *Individual Assessments.* The Board shall have the right to individually levy upon any Owner(s) amounts as expressly provided for by this Declaration. Individual Assessments may be levied at any time as required and are exempt from any voting requirements by the Owners required by other Assessments called for under this Declaration. Individual Assessments are not Fines.

(c) *Fines.* The Board shall have the right to levy a Fine against an Owner(s) for violations of the Master Association Governing Documents. No such Fine shall be levied until the Owner(s) to be charged has been given a Notice and Hearing. Fines may be levied in a reasonable amount as determined from time to time by the Board in its discretion and uniformly applied. Fines may be levied at any time as required and are exempt from any voting requirements of the Owners required by other Assessments called for under this Master Declaration.

(d) *Special Assessments.* In addition to the other Assessments authorized herein, the Board by at least a two-thirds (2/3) vote, subject to the requirements set forth below, may levy a Special Assessment for the purpose of defraying, in whole or in part, any unexpected expense, including, but not limited to, the cost of any construction, reconstruction, improvement, repair or replacement of the Common Areas and the Common Area Improvements, including fixtures and personal property relating thereto, or for the funding of any operating deficit incurred by the Master Association provided that, except as otherwise set forth herein (e.g., Section 10.2 below), any such Assessment shall have the approval of Owners to whom at least a majority of the votes in the Master Association are allocated. Any such Special Assessment shall be levied against each Unit in accordance with that Unit's Common Expense Liability determined in accordance with Section 1.2 above.

(e) *MF Property.* In no event shall amounts be due from the Owner of the MF Property until a certificate of occupancy is issued for the MF Property. If, solely as a result of foregoing, Assessments collected from all Owners would not be sufficient to meet the requirements of the Budget, then the shortfall shall be paid by all other Owners (and not the Owner of the MF Property) in accordance with their Units' Allocated Interests.

5.5 Due Date. Special Assessments, Individual Assessments, Costs of Enforcement and Fines shall be due and payable as established by the Board. Common Expense Assessments shall be due and payable in monthly installments, in advance, or in such frequency as the Board determines in its discretion from time to time. Written notice of all Assessments shall be sent to each Owner subject thereto specifying the type of Assessment, the amount and the date such Assessment is due.

5.6 Remedies for Nonpayment of Assessments. If any Assessment is not fully paid within 5 days after the same becomes due and payable, then interest shall accrue at the default rate set by the Board on any amount of the Assessment in default accruing from the due date until date of payment, and the Board may also assess a late fee in an amount as determined in the Board's discretion. In addition the Board may in its sole discretion:

(a) Accelerate and declare immediately due and payable all unpaid installments of any Assessment payable for the balance of the fiscal year during which such default occurred;

(b) Bring an action at law against any Owner personally obligated to pay the Assessment and obtain a judgment for the amounts due; and/or

(c) Proceed to foreclose its Assessment Lien against the Unit in accordance with the then prevailing Montana law relating to the foreclosure of trust indentures (including the right to recover any deficiency) including by judicial action or by advertisement or any other means permitted by law, and the Unit may be redeemed after foreclosure sale if provided by law.

An action at law or in equity by the Master Association against an Owner to recover a judgment for unpaid Assessments may be commenced and pursued by the Master Association without foreclosing or in any way waiving the Master Association's Assessment Lien.

5.7 Assessment Lien. The Master Association is hereby granted a lien ("Assessment Lien") against each Unit for any Assessment levied by the Board. The Master Association may require reimbursement for Costs of Enforcement without the necessity of commencing a legal proceeding. If an Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment thereof becomes due.

The Assessment Lien shall be subordinate to any First Mortgage and shall also be subject and subordinate to liens for taxes and other public charges which by applicable law are expressly made superior. Except as expressly provided above, the Assessment Lien shall be superior to any and all charges, liens or encumbrances which hereafter in any manner may arise or be imposed upon each Unit. Sale or transfer of any Unit shall not affect the Assessment Lien; *provided, however,* that if the sale or transfer is pursuant to foreclosure of a First Mortgage to which the Assessment Lien is subordinate, or pursuant to any sale or proceeding in lieu thereof, the purchaser at the Mortgage foreclosure or deed of trust of sale, or any grantee taking by deed in lieu of foreclosure, shall take the Unit free of the Assessment Lien for all Assessments that have accrued up to the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure; *provided, however,* that such First Mortgage foreclosure sale purchaser or grantee shall take subject to all applicable Assessments and the Assessment Lien therefor accruing subsequent to the date of issuance of a sheriff's or trustee's deed or deed given in lieu of foreclosure.

Recording of this Master Declaration constitutes record notice and perfection of the lien and no further recordation of any claim of lien for Assessments is required. However, the Board may prepare, and record with the Clerk and Recorder, a written notice setting forth the amount of the unpaid indebtedness, the name of the Owner of the Unit, and a description of the Unit. If a claim of lien is filed, the cost thereof shall be considered a Cost of Enforcement.

To the extent permitted by law, the Assessment Lien shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Montana or any exemption now or hereafter provided by the laws of the United States. The acceptance of a deed to a Unit subject to this Master Declaration shall constitute a waiver of the homestead and any other exemption as against said Assessment Lien, to the extent permitted by law.

5.8 Surplus Funds. Any surplus funds of the Master Association remaining at the close of the Master Association's fiscal year after payment of the Master Association's expenses and funding reserves may be retained by the Master Association as unallocated reserves and need not be credited to the Owners to reduce their future Assessment liability.

5.9 Working Capital Fund. To provide the Master Association with sufficient working capital to cover the cost of initial expenses, unforeseen expenditures or to purchase any additional equipment or services, an initial "**Working Capital Fund**" will be established by the Master Association. After Assessments commence hereunder, then upon the initial sale of a Unit from Declarant to an Owner, such Owner shall pay to the Working Capital Fund an amount equal to 2 months of Common Expense Assessments; *provided, however*, all Units that have previously been conveyed by Declarant to an Owner and then-existing within the Project at the time Assessments first commence shall pay all amounts due under this Section 5.9 with their first payment of Common Expense Assessments. Amounts contributed to the Working Capital Fund do not constitute advance payments of Common Expense Assessments and do not relieve an Owner from making regular payments of Common Expense Assessments as they become due. If Declarant makes payment to the Working Capital Fund on behalf of any Owner, such amount shall be reimbursable to Declarant by such Owner upon the conveyance of title to the Unit to such Owner by Declarant.

5.10 Certificate of Assessment Status. The Master Association shall furnish to an Owner or such Owner's Mortgagee upon written request delivered personally or by certified mail, first class postage prepaid, return receipt requested, to the Managing Agent, a written statement setting forth the amount of unpaid Assessments currently levied against such Owner's Unit. The statement shall be furnished within 14 calendar days after receipt of the request and is binding upon the Master Association, the Board and every Owner. If no statement is furnished to the Owner or Mortgagee, delivered personally or by certified mail, first class postage prepaid, return receipt requested to the inquiring party, then the Master Association shall have no right to assert an Assessment Lien upon the Unit for unpaid Assessments which were due as of the date of the request.

## **ARTICLE SIX PARTY WALLS**

6.1 Party Walls. There may lay along and over the common boundaries of certain Dwelling Units (e.g., townhomes) Party Walls.

6.2 Ownership of Party Walls. Each Dwelling Unit sharing a Party Wall shall be deemed to include that portion of the Party Wall extending from the interior surface of the Party Wall to the approximate center of the Party Wall unless otherwise designated on the Plat, together with the necessary easements for perpetual lateral and subjacent support, maintenance, repair and inspection of the Party Wall, and with equal rights of joint use. In the event of a conflict between the Dwelling Unit boundary described in this Section 6.2 and any depiction and description of the respective Dwelling Unit(s) on the Plat, the depiction and description of the Dwelling Unit(s) on the Plat shall control.

6.3 Protection of Party Walls. No Owner shall have the right to destroy, remove or make any structural changes to a Party Wall that would jeopardize the structural integrity of any Dwelling Unit without the prior written consent of the affected Owner(s). No Owner shall subject a Party Wall to the insertion or placement of timbers, beams or other materials in such a way as to adversely affect the Party Wall's structural integrity. No Owner shall subject a Party Wall to any use that in any manner whatsoever may interfere with the equal use and enjoyment of the Party Wall by the other Owner(s) that owns a portion of the Party Wall.

6.4 Damage by Intentional or Negligent Act of Owner. Should a Party Wall be structurally damaged or destroyed by the intentional act or negligence of an Owner or Owner's Agent, such Owner shall promptly rebuild and/or repair the Party Wall at their own expense and shall compensate the other Owner(s) for any damages sustained to person or property as a result of such intentional or negligent act.

6.5 Damage from Other Causes. Should a Party Wall be structurally damaged or destroyed by causes other than the intentional act or negligence of an Owner or such Owner's Agents, the damaged or destroyed Party Wall shall be repaired or rebuilt at the joint expense of all Owners owning any portion of the Party Wall, each such Owner to pay an equal share of the cost thereof.

6.6 Montana Law Applicable. To the extent not inconsistent with the terms and conditions of this Master Declaration, the general rules of law of the State of Montana concerning party walls shall be applicable hereto.

## **ARTICLE SEVEN USE RESTRICTIONS/ALTERATION GUIDELINES**

7.1 Use Restrictions.

(a) *General Restrictions.* The Property (and each Unit located therein) shall be used in conformance with applicable zoning requirements and all applicable laws, ordinances and regulations. The Master Association, acting through the Board, shall have the standing and power to enforce all restrictions set forth herein or in any rules and regulations adopted by the Board.

Notwithstanding the foregoing:

(i) Subject to Declarant Rights reserved herein and in addition to the limitations set forth in this Master Declaration, the Board may establish and enforce reasonable rules and regulations concerning the use of the Common Areas so long as such rules and regulations do not have the effect of excluding an Owner from the general use of the Common Areas or limiting a use otherwise authorized by applicable zoning; and

(ii) The strict application of any restrictions in any specific case may be modified or waived in whole or in part by the Board if such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver by the Board must be in writing.

(iii) No portion of the Property other than the MF Property shall be developed or used for multifamily uses. The foregoing restriction does not prohibit any other use of the Property, including any other multifamily use such as for-sale condominiums, nor does the foregoing prohibit the lease or sale of single-family homes and townhomes.

The Restrictive Covenant is hereby terminated and fully released of record against the Property.

(b) *Water Requirements.* Properties that will experience pressure greater than 80 psi shall have a pressure regulating valve installed.

(c) *Living with Wildlife Covenants.*

(i) *Feeding Wildlife.* To reduce human-wildlife conflicts that result from animals becoming habituated to finding food in neighborhoods, feeding of wildlife is prohibited within City limits.

Allowed:

- o Bird feeders that can be accessed only by birds and squirrels
- o Ornamental plants
- o Vegetable gardens

Prohibited

- o Bird feeders that can be accessed by bears, deer, raccoons, skunks, and other wildlife
- o Salt licks
- o Grain, hay, and any other food items that may attract wildlife

(ii) *Bear Buffer Zone.* Wildroot Subdivision is within a special area on the edge of Missoula that has special requirements for garbage disposal because bears are present in or near the neighborhood. All garbage must be stored in a bear-resistant container or enclosure. If your garbage containers are not bear-resistant, you must keep them inside a bear-resistant enclosure

(garage or other). These containers may only be outside the enclosure between 5:00 a.m. and 9:00 p.m. on the day of waste pickup.

## 7.2 Design Review.

(a) *Generally.* Other than Improvements originally constructed by Declarant or MF Owner (on the MF Property), each Improvement must be constructed, and may thereafter be removed, altered or modified, in accordance with the Design Review Guidelines, if available, and approved in accordance with this Section 7.2. The strict application of the following limitations and restrictions in any specific case may be modified or waived in whole or in part by the Committee if such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing.

(b) *Committee Approval of Improvements Required.* Other than Improvements originally constructed by Declarant or MF Owner (on the MF Property), approval by the Committee shall be required prior to the commencement of the construction, alteration, modification, expansion, addition, removal, demolition or destruction of any Improvements on any portion of the Project, including any change of exterior appearance, finish material, color or texture.

The purchase of any Unit within the Project does not grant any implied guarantee of approval of any Improvement to be located thereon by the Committee.

(c) *Membership of the Committee.* A “**Committee**” shall be formed to review and approve or disapprove plans for Improvements. The Committee shall consist of up to 3 members, the initial number and the members of which shall be determined by Declarant in its sole discretion. Declarant shall have the continuing right to appoint and reappoint the members of the Committee, which right shall terminate at the option of Declarant, but in any event shall terminate without further act or deed upon the later of (i) Declarant no longer owning any portion of the Property, or (ii) Declarant no longer owning any portion of the Property and its right to annex property into the Project pursuant to Article Twelve below has expired, the provisions of Section 13.3 below notwithstanding. Thereafter, the Committee shall consist of 3 members, and the Board shall have the right to appoint the members of the Committee. Members of the Committee appointed by the Board must be Members of the Master Association.

Members of the Committee appointed by Declarant may be removed at any time by Declarant and shall serve until resignation or removal by Declarant. Members of the Committee appointed by the Board may be removed at any time by the Board and shall serve for such term as may be designated by the Board or until resignation or removal by the Board.

(d) *Address of the Committee.* The address of the Committee shall be that of the principal office of the Master Association.

(e) *Submission of Plans/Design Review Fee.* Prior to the commencement of work to accomplish any proposed Improvement, the Person proposing to make such Improvement (“**Applicant**”) shall submit to the Committee, at its offices, or at such other place as the Committee may designate, such descriptions, surveys, plot plans, drainage plans, elevation drawings,

construction plans, specifications and samples of materials and colors as the Committee shall reasonably request, showing the nature, kind, shape, height, width, color, materials, and location of the proposed Improvement.

The Committee may, in its guidelines or rules, provide for the payment of a reasonable fee to accompany each request for approval of any proposed Improvement. The Committee may provide that the amount of such fee shall be uniform for similar types of any proposed Improvements or that the fee shall be determined in any other manner, such as the estimated cost of the proposed Improvement. Said fee may be used to compensate any consultant as the Committee deems necessary to assist the Committee in the performance of its duties. Members of the Committee may be reimbursed for services rendered and for directly related out-of-pocket expenses.

The Committee may require submission of additional plans, specifications or other information prior to approving or disapproving any proposed Improvement. Until all required materials in connection with the proposed Improvement are received by the Committee, the Committee may postpone review of any materials submitted for approval by a particular Applicant.

Except as otherwise prohibited by law and except for Improvements constructed by Declarant and the MF Owner (on the MF Property), no Improvement of any kind shall be erected, altered, placed, or maintained within the Project unless and until the final plans, elevations, and specifications therefor have received written approval from the Committee as herein provided.

(f) *Delegation/Waiver.* The Committee may, at its discretion, delegate to the Board any of the powers granted to it by this Section 7.2 by written notice to the Board, indicating what powers and authority are granted to the Board. Such delegation shall be effective from the date such notice is given.

The approval or consent of the Committee, any representative thereof, or the Board, to any application for architectural approval shall not be deemed to constitute a waiver of any right to withhold or deny approval or consent by the Committee, any representative thereof, or the Board, as to any application or other matters whatsoever as to which approval or consent may subsequently or additionally be required.

(g) *Criteria for Approval.* The question of reasonableness and good faith is the standard applicable in reviewing plans for approval by the Committee. The Committee shall have the right to disapprove any proposed Improvements which are not in accordance with the Design Review Guidelines or are not suitable or desirable in the Committee's opinion for aesthetic or other reasons.

In passing upon an Improvement, the Committee shall have the right to take into consideration the suitability of the proposed Improvement and the materials of which it is to be built, the color scheme, the site upon which it is proposed to be erected, the harmony thereof with the surroundings, the topography of the land and the effect of the Improvement as planned on the outlook from the adjacent or neighboring Units, and if it is in accordance with all of the provisions of the Master Association Governing Documents.

The Committee may disapprove the proposed Improvement if the plans and specifications submitted are incomplete, or in the event the Committee deems the materials submitted to be contrary to the spirit or intent of this Master Declaration. The Committee may condition its approval of any proposed Improvement upon the making of such changes thereon as the Committee may deem appropriate.

(h) *Decision of the Committee.* The decision of the Committee shall be made within 30 days after receipt by the Committee of all materials required by the Committee unless such time period is extended by mutual agreement of the Committee and the Applicant. The Committee's decision shall be in writing and, if the decision is not to approve a proposed Improvement, the reasons therefor shall be stated. The decision of the Committee shall be promptly transmitted to the Applicant at the address furnished by the Applicant to the Committee.

A majority vote of the Committee shall constitute the action of the Committee.

The Committee shall report in writing to the Board all final actions of the Committee if requested by the Board.

The Committee shall not be required to keep the materials submitted beyond one year from date of approval or 2 years from the date of the completion of the Improvement to be constructed, whichever shall be the last to occur.

(i) *Appeal to the Board.* If the Committee disapproves or imposes conditions on the approval of a proposed Improvement, the Applicant may appeal to the Board by giving written notice of such appeal to the Board and the Committee within 10 days after notice of such disapproval or conditional approval is given to the Applicant.

The Board shall hear the appeal with reasonable promptness after reasonable notice of such hearing to the Applicant and the Committee and shall decide, with reasonable promptness, whether or not the proposed Improvement or the conditions imposed by the Committee shall be approved, disapproved or modified.

If the Committee approves a proposed Improvement, any Owner impacted by the Committee's decision may appeal the approval to the Board by giving written notice of such appeal to the Board, the Committee and the Applicant within 10 days after such approval.

The Board shall hear the appeal with reasonable promptness after reasonable notice of such hearing to the Applicant, the impacted Owner and the Committee. The Board shall decide with reasonable promptness, whether or not the proposed Improvement's approval shall be upheld. The decision of the Board shall be final and binding on the parties concerned.

THE APPEAL RIGHTS SET FORTH IN THIS SECTION 7.2(I) SHALL ONLY BE AVAILABLE AFTER THE PERIOD IN WHICH DECLARANT HAS THE RIGHT TO APPOINT THE COMMITTEE HAS TERMINATED.

(j) *Failure of Committee to Act on Plans.* Any request for approval of a proposed Improvement shall be deemed approved, unless disapproval or a request for additional information



or materials is transmitted to the Applicant in writing by the Committee within 30 days after the date of receipt by the Committee of all necessary materials, as determined by the Committee.

(k) *Prosecution of Work after Approval.* After approval of any proposed Improvement, the proposed Improvement shall be accomplished as promptly and as diligently as possible and in complete conformity with the approval given by the Committee, including the description of the proposed Improvement, any materials submitted to the Committee in connection with the proposed Improvement and any conditions imposed by the Committee. Failure to complete any proposed Improvement within the timeframe set forth in the approval, if any, shall constitute a violation of this Section 7.2 unless extended by the Committee.

(l) *Notice of Completion.* Upon completion of the Improvement, the Applicant shall deliver a written “Notice of Completion” to the Committee. Until the date of receipt of a Notice of Completion, the Committee shall not be deemed to have notice of completion of any Improvement.

(m) *Inspection of Work.* The Committee, or its duly authorized representative, shall have the right to inspect any Improvement prior to, and/or after completion; *provided, however*, the right of inspection shall terminate 30 days after the Committee receives a Notice of Completion from the Applicant.

(n) *Letter of Noncompliance.* If, as a result of inspections or otherwise, the Committee or Board finds that any Improvement has been done without obtaining the approval of the Committee or Board, or was not done in substantial compliance with the approval of the Committee, including the description and materials furnished to, and any conditions imposed by, the Committee or Board, or was not completed within the timeframe set forth in the approval, if any, the Committee or Board shall notify the Applicant in writing of the noncompliance (“**Letter of Noncompliance**”); which notice shall be given, in any event, within 30 days after the Committee or Board has inspected the Improvement, but in no event no later than 30 days after the Committee’s or Board’s receipt of such Applicant’s Notice of Completion. The Letter of Noncompliance shall specify the particulars of the noncompliance and shall require the Applicant to take such action as may be necessary to remedy the noncompliance.

(o) *Failure of Committee to Act after Completion.* If, for any reason other than the Applicant’s act or neglect, the Committee fails to notify the Applicant of any noncompliance within 30 days after receipt by the Committee of a written Notice of Completion from the Applicant, the Improvement shall be deemed to be in compliance if the Improvement was, in fact, completed as of the date of the Notice of Completion.

(p) *Appeal to the Board of a Finding of Noncompliance.* If the Committee gives any Letter of Noncompliance, the Applicant may appeal to the Board by giving written notice of such appeal to the Board and the Committee within 10 days after receipt by the Applicant of the Letter of Noncompliance.

If, after a Letter of Noncompliance, the Applicant fails to commence diligently to remedy such noncompliance, the Committee may request a finding of noncompliance by the Board by giving written notice of such request to the Board and the Applicant within 30 days after

delivery to the Applicant of a Letter of Noncompliance. In either event, the Board after Notice and Hearing shall decide, with reasonable promptness, whether or not there has been such noncompliance and, if so, the nature thereof.

THE APPEAL RIGHTS SET FORTH IN THIS SECTION 7.2(P) SHALL ONLY BE AVAILABLE AFTER THE PERIOD IN WHICH DECLARANT HAS THE RIGHT TO APPOINT THE COMMITTEE HAS TERMINATED.

(q) *Correction of Noncompliance.* If the Committee or the Board determines that a noncompliance exists, the Applicant shall remedy or remove the noncompliance within a period of not more than 30 days from the date of receipt by the Applicant of a Letter of Noncompliance or a decision of the Board (if a Letter of Noncompliance is appealed pursuant to Section 7.2(p) above). If the Applicant does not comply with the Letter of Noncompliance or the Board's ruling within such time period, the Committee or Board may, at its option, record a "Notice of Noncompliance" against the Unit on which the noncompliance exists, or may remove the non-complying Improvement or may otherwise remedy the noncompliance.

The Board may levy an Individual Assessment in accordance with Section 5.4(b) above against the Owner of such Unit for such costs and expenses incurred in enforcing this Section 7.2(q). The right of Declarant (during the period in which Declarant has the right to appoint the Committee) or the Board to remedy or remove any noncompliance shall be in addition to all other rights and remedies that Declarant or the Board may have at law, in equity, or under this Master Declaration.

(r) *Meetings of the Committee.* The Committee shall meet from time to time as necessary to perform its duties hereunder.

(s) *No Implied Waiver or Estoppel.* No action or failure to act by the Committee or by the Board shall constitute a waiver or estoppel with respect to future action by the Committee or the Board. Specifically, the approval by the Committee of any Improvement shall not be deemed a waiver of any right or an estoppel to withhold approval or consent for any similar Improvement or similar proposals, plans, specifications or other materials submitted with respect to any other Improvement.

(t) *Estoppel Certificates.* The Board shall, upon the reasonable request of any interested Person and after confirming any necessary facts with the Committee, furnish a certificate with respect to the approval or disapproval of any Improvement or with respect to whether any Improvement was made in compliance herewith. Any Person, without actual notice to the contrary, shall be entitled to rely on said certificate with respect to all matters set forth therein. Notwithstanding the foregoing, during the period that Declarant appoints the members of the Committee, such certificate must come from Declarant and not the Board.

(u) *Design Review Guidelines.* The Committee may adopt, review and revise the Design Review Guidelines from time to time in its sole discretion so long as said guidelines are not discriminatory and are uniformly applied.

(v) *No Liability for Committee Action.* There shall be no liability imposed on the Committee, any member of said Committee, any authorized representative of said Committee, the

Master Association, any member of the Board or Declarant for any loss, damage or injury arising out of or in any way connected with the performance of the duties of the Committee, if such party acted in good faith and without malice.

In reviewing any matter, the Committee shall not be responsible for passing on safety, whether structural or otherwise, or conformance with building codes or other governmental laws or regulations, nor shall its approval of an Improvement be deemed approval of such matters and the Committee shall have no responsibility or liability with respect to such matters.

(w) *Exemptions for Declarant.* Declarant shall be exempt from the provisions of this Section 7.2.

## **ARTICLE EIGHT EASEMENTS**

8.1 Generally. The Project shall be subject to all easements as shown or created on the Plat, those of record and those set forth in this Article Eight and in other provisions of this Master Declaration. The Master Association is hereby granted the right to establish from time to time utility and other easements, permits or licenses over the Common Areas for the best interest of the Master Association as a whole.

8.2 Utility Easements. There is hereby created and granted to Declarant, Owners, the Master Association and utility providers, a blanket easement on, over, in, under and through the Project (except for any buildings constructed thereon) for the installation, replacement, repair, operation and maintenance of utilities, including, but not limited to, water, sewer, gas, telephone, electricity and satellite and cable systems. Said blanket easement includes future utility services not presently available to the Project that may be reasonably required in the future.

Should any utility company furnishing a service covered by the easement herein created request a specific easement by separate recordable document, Declarant shall have, and hereby reserves, the right and authority to grant such easement upon, across, over or under any part or all of the Project (except for any buildings constructed thereon) without conflicting with the terms hereof; *provided, however*, that such power shall cease upon termination of the Declarant Rights, at which time such reserved right shall vest in the Master Association.

The easements granted in this Section 8.2 shall in no way affect, void, extinguish or modify any other recorded easement(s) within the Project.

8.3 Easements for Master Association. The Board (its agents, employees, and contractors) is hereby granted an easement on, over, in, under and through each Unit (excluding any buildings situated thereon) to perform its obligations pursuant to this Master Declaration, including, but not limited to, maintenance, repair and replacement of any utilities for which the Master Association has such responsibilities.

8.4 Emergency Easements. A nonexclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons, now or hereafter servicing the Project, to enter upon any part of the Project in the performance of their duties.

8.5 Easements Deemed Appurtenant. The easements and rights herein created for an Owner shall be deemed appurtenant to the Unit owned by such Owner. All conveyances and instruments affecting title to a Unit shall be deemed to grant and reserve the easements and rights of way as provided herein, as though set forth in said document in full, even though no specific reference to such easements or rights of way appear.

## **ARTICLE NINE INSURANCE**

### 9.1 Master Association Insurance.

(a) Required Coverage. The Master Association, acting through the Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance if reasonably available or, if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(i) Blanket “all risk” property insurance covering any insurable Improvements owned by the Master Association. The Master Association shall have the authority to insure any property for which it has maintenance or repair responsibility, regardless of ownership. All property insurance policies obtained by the Master Association shall have policy limits sufficient to cover the full replacement cost of the insured Improvements.

(ii) Commercial general liability insurance, insuring the Master Association and the Owners against damage or injury caused by the negligence of the Master Association or any of its Members, employees, agents or contractors while acting on its behalf. All Owners must be named as additional insureds for claims and liabilities arising in connection with the ownership, use or management of the Common Areas. If generally available at reasonable cost, the commercial general liability coverage (including primary and any umbrella coverage) shall have a limit of at least \$2,000,000.00 per occurrence with respect to bodily injury, personal injury and property damage.

(iii) Workers’ compensation insurance and employer’s liability insurance to the extent required by law.

(iv) Directors’ and officers’ liability coverage in an amount determined by the Board, covering directors, officers and Committee members and having no exclusion for full coverage of Declarant appointed members.

(v) Fidelity insurance covering all Persons responsible for handling Master Association funds in an amount determined in the Board’s business judgment but not less than 2 months’ Assessments plus all reserves on hand, and containing a waiver of all defenses based upon the exclusion of Persons serving without compensation.

(vi) Such additional insurance as the Board determines advisable, which may include, without limitation, automobile insurance, flood insurance, boiler and machinery insurance and building ordinance coverage.

(b) Policy Requirements. All Master Association policies shall provide for a certificate of insurance to be furnished to the Master Association and upon request, to any Owner or Mortgagee. Premiums for all insurance maintained by the Master Association shall be Common Expenses and shall be included in the Common Expense Assessment. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines after providing Notice and Hearing, that the loss is the result of the recklessness or willful misconduct of one or more Owners or Owner's Agents, then the Master Association may specifically assess the full amount of such deductible against such Owner(s) and their Unit(s) as an Individual Assessment pursuant to Section 5.4(b) above. All insurance coverage obtained by the Master Association shall:

(i) Be written with companies authorized to do business in the State of Montana;

(ii) Be written in the name of the Master Association as trustee for the Master Association and the Members;

(iii) Be written as a primary policy, not contributing with and not supplemental to the coverage that any Owners, occupants or their Mortgagees may carry individually;

(iv) Include an inflation guard endorsement, as applicable;

(v) Include an agreed amount endorsement, if the policy contains a co-insurance clause;

(vi) Include an endorsement precluding cancellation, invalidation, suspension or non-renewal by the insurer on account of any curable defect or violation or any act or omission of any Owner, without prior written demand to the Master Association to cure the defect, violation, act or omission and allowance of a reasonable time to effect such cure;

(vii) Include an endorsement precluding cancellation, invalidation or condition to recovery under the policy on account of any act or omission of any Owner, unless such Owner is acting within the scope of its authority on behalf of the Master Association; and

(viii) Include an endorsement requiring at least 30 days prior written notice to the Master Association of any cancellation, substantial modification or non-renewal.

(c) Other Policy Provisions. In addition, the Master Association may use reasonable efforts to secure insurance policies that provide:

(i) A waiver of subrogation as to any claims against the Board, the officers or employees of the Master Association;

(ii) A waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(iii) An endorsement excluding Owners' individual policies from consideration

under any “other insurance” clause;

(iv) A cross liability provision; and

(v) A provision vesting in the Master Association exclusive authority to adjust losses; *provided, however*, no Mortgagee having an interest in such losses may be prohibited from participating in settlement negotiations, if any, related to such losses.

9.2 Separate Insurance. No Owner shall be entitled to exercise his or her right to acquire or maintain such insurance coverage so as to decrease the amount which the Board, on behalf of all Owners, may realize under any insurance policy maintained by the Board or to cause any insurance coverage maintained by the Board to be brought into contribution with insurance coverage obtained by an Owner. All such policies shall contain waivers of subrogation.

9.3 Owner Insurance. Each Owner, at their sole cost and expense, shall (a) carry property insurance on all portions of their Unit in an amount not less than 100% of the full replacement cost thereof, and (b) carry general liability insurance providing coverage for bodily injury and property damage for the benefit of the Owner in amounts and with coverage as are from time to time customarily maintained by prudent owners of similar property. Upon taking title to a Unit, upon Board request, an Owner shall provide the Board with certificates of the foregoing insurance. In addition, at the request of the Board or any other Owner of a Unit that shares a Party Wall, the Board shall have the right to confirm that an Owner(s) is carrying the insurance required by this Section 9.3.

## **ARTICLE TEN**

### **RESTORATION UPON DAMAGE OR DESTRUCTION/CONDEMNATION**

10.1 Duty to Restore Common Areas. In the event of damage or destruction to any portion of the Common Areas and/or the Common Area Improvements which is covered by insurance carried by the Master Association, the insurance proceeds shall be applied by the Board to reconstruction and repair. The Common Areas and the Common Area Improvements must be repaired and restored in accordance with either the original plans and specifications, or other plans and specifications which have been approved by the Board.

10.2 Use of Insurance Proceeds. If the insurance proceeds with respect to such damage or destruction are insufficient to repair and reconstruct the damage to the Common Areas or Common Area Improvements, the Board shall levy a Special Assessment (without a vote of the Owners) in the aggregate amount of such insufficiency pursuant to Section 5.4(b) above and shall proceed to make such repairs or reconstruction. The amount of each Owner’s Special Assessment shall be determined in accordance with such Owner’s Common Expense Liability pursuant to Section 1.2 above. If all of the damage to the Common Areas or Common Area Improvements covered by the Master Association’s insurance is not repaired or reconstructed, the insurance proceeds attributable to the damage shall be used to restore the damaged portion of the Common Areas or Common Area Improvements to a condition compatible with the remainder of the Project and the remainder of the proceeds shall be distributed to the Master Association.

10.3 Condemnation. If a part of the Common Areas are acquired by condemnation, that portion of any award attributable to the Common Areas taken must be paid to the Master Association as

attorney-in-fact to be held in trust for the use and benefit of the Master Association, the Owners and their Mortgagees, as their interests may appear. No Owner or any other party shall be entitled to priority over Mortgagees with respect to any distribution of a condemnation award.

10.4 Duty to Restore Units. All damaged or destroyed Units must be repaired and restored and done so in accordance with either the original plans and specifications, or other plans and specifications which have been approved pursuant to the provisions of Section 7.2 above unless the holder of a First Mortgage requires a different application of the funds. If the insurance proceeds with respect to such damage or destruction are insufficient to repair and reconstruct the damaged or destroyed Unit, the Owner of the damaged or destroyed Unit shall be responsible for the payment of any amounts above the insurance proceeds necessary to repair and reconstruct the Unit.

## **ARTICLE ELEVEN MAINTENANCE**

11.1 Maintenance of the Common Areas and Common Area Improvements. The Master Association shall provide for a regular maintenance program of the Common Areas and Common Area Improvements and shall keep and maintain the Common Areas and Common Area Improvements in an attractive, clean and functional condition and in good repair and may make necessary or desirable alterations or improvements thereon. Determination of whether the foregoing repair or maintenance is the obligation of the Master Association, or if the repair and maintenance is necessary, shall rest solely with the Board, which will also have the sole responsibility for determining the kind and type of materials used in such repair and maintenance. All Master Association maintenance, repair and replacement shall be undertaken in accordance with the maintenance manual(s) provided to the Master Association, if any.

11.2 Maintenance of Units. Except for the maintenance of certain portions of the Units described in the Rules which shall be the responsibility of the Master Association, and except for the maintenance of certain portions of a Unit that may be the responsibility of a Sub-Association pursuant to a Sub-Association Declaration, all Lot and Home maintenance (including snow and ice removal and landscape maintenance), repair and replacement shall be the obligation of the Owner of the Unit. All Owner maintenance, repair and replacement shall be undertaken in accordance with the maintenance manuals provided to each original Owner of a Unit, if any.

11.3 Maintenance of Sub-Association Property by Master Association. The Master Association may provide maintenance to Units and/or common areas/common elements described in a Sub-Association Declaration in accordance with a maintenance or service agreement reached with the applicable Sub-Association.

11.4 Maintenance of the Drainage Pattern. There shall be no interference with the established drainage pattern initially established over any portion of the Project, except as approved in writing by the Committee. Approval shall not be granted unless provision is made for adequate alternate drainage. The established drainage pattern may include the drainage pattern from the Common Areas over any Units within the Project and from any Unit within the Project over the Common Areas, or from any Unit over another Unit.

11.5 Owner-Caused Damages. If, due to the act or neglect of an Owner or such Owner's Agents, loss or damage shall be caused to any person or property within the Common Areas, another Unit of the owner's own Unit, such Owner shall be liable and responsible for the payment of same. The amount of such loss or damage, together with costs of collection and reasonable attorneys' fees, if necessary, may be collected by the Board, from such Owner as an Individual Assessment against such Owner in accordance with Section 5.4(b) above. Determination with respect to whether or not a particular activity or occurrence shall constitute a violation of this Section 11.5 shall be made by the Board and shall be final.

11.6 Owner's Failure to Maintain and Repair. In the event that a Unit is not properly maintained and repaired by an Owner or a Sub-Association, and if the maintenance or repair responsibility for the unmaintained or unrepaired portion of the Unit lies with the Owner of the Unit or a Sub-Association, then the Board, after Notice and Hearing to the Owner and the applicable Sub-Association, if any (and after a determination by the Board that the condition of such Unit negatively impacts other Owners or the value of other Units within the Project) shall have the right to enter upon the Unit to perform such work as is reasonably required to restore the Unit to a condition of good order and repair and charge the cost thereof to such Owner as an Individual Assessment. In addition to the foregoing, except for any disagreements involving Declarant, if neighboring Owners disagree as to maintenance, repair and/or replacement of components shared by said Owners, then any such Owner may bring the dispute to the Board whose decision as to said dispute shall be final and binding on the affected Owners.

## **ARTICLE TWELVE EXPANSION**

12.1 Reservation of Right to Expand. Declarant reserves the right (without in any way being bound) to enlarge the Project without the necessity of the consent or joinder thereto, by the Owners, the Master Association, any Mortgagee or any other Person, by submitting to the Project real estate from such locations as Declarant may elect in its sole discretion, so long as the total additional real estate so annexed to the Project pursuant to this sentence, and not described on Exhibit A and Exhibit B, does not exceed ten percent (10%) of the total area described in Exhibit A and Exhibit B.

12.2 Supplemental Master Declarations. Such expansion must be accomplished by the recording by Declarant with the Clerk and Recorder, a supplement or supplements to this Master Declaration containing the legal description of the new real property to be included in such expansion. The expansion may be accomplished in stages by successive supplements or in one supplemental expansion.

12.3 Expansion of Definitions. In the event of such expansion, the definitions used in this Master Declaration shall be expanded. For example, "Unit", "Common Areas", "Property" and "Project" shall mean the Units, Common Areas, Property and the Project described herein plus any additional Units and Common Areas added by any supplement, and reference to this Master Declaration shall mean this Master Declaration as supplemented. The new Units and Common Areas shall be subject to all the terms, covenants, conditions and restrictions of this Master Declaration, as amended and supplemented.



12.4 Interests on Enlargement. An Owner at the time of their purchase of a Unit which has been annexed into the Project by a supplement to this Master Declaration shall be a Member of the Master Association. Such Owner shall be entitled to the same non-exclusive use of the Common Areas and the same voting privileges as the Owners of the initial property brought into the Project through the original Master Declaration and shall be subject to the same Assessments, except as otherwise provided herein or in any supplement/amendment to this Master Declaration.

Whenever any additional Units are brought into the Project, the Common Expense Liability of each Owner after such addition will change and shall be reallocated in accordance with Section 1.2 above.

12.5 Termination of the Right of Expansion. Declarant's right to expand the Project pursuant to the provisions of this Article Twelve shall terminate at the option of Declarant as set forth in a recorded instrument executed by Declarant, but in any event shall terminate without further act or deed in accordance with the limitations set forth in Section 13.3 below.

### **ARTICLE THIRTEEN DECLARANT RIGHTS**

13.1 Reservation. Notwithstanding any provision herein to the contrary, Declarant reserves the following Declarant Rights which may be exercised, where applicable, anywhere within the Project:

- (a) To complete any improvements shown on the Plat;
- (b) To exercise any Declarant Rights reserved or described herein;
- (c) To maintain business/sales offices, sales trailers, parking spaces, management offices, storage areas, construction yards, signage, advertisements and model homes upon the Common Areas or any Unit owned by Declarant;
- (d) To have and use, and to permit others to have and use, easements through the Common Areas as may be reasonably necessary for construction within the Project and for the purpose of discharging Declarant's obligations under this Master Declaration;
- (e) To amend the Master Declaration and/or the Plat in connection with the exercise of any Declarant Rights;
- (f) To expand, without in any way being bound, the Project in phases from time to time, by adding to the Project any unspecified property, which may consist of additional Common Areas and/or Units, in accordance with Article Twelve above and to designate any such Units as Apartment Units or Dwelling Units;
- (g) To merge or consolidate the Project with a community of the same form of ownership;
- (h) To appoint or remove any officer of the Master Association or a member of the Board in accordance with Section 4.7 above;

(i) To designate certain Common Areas as Limited Common Areas by amendment to this Master Declaration;

(j) TO CONVERT ANY AND ALL PARKING SPACES IN THE PROJECT THAT ARE COMMON AREAS TO LIMITED COMMON AREAS AND TO ALLOCATE EACH SO CONVERTED PARKING SPACE TO A PARTICULAR UNIT(S) FOR CONSIDERATION PAYABLE TO DECLARANT BY DECLARANT RECORDING AN AMENDMENT/SUPPLEMENT TO THIS MASTER DECLARATION OR THE PLAT ALLOCATING THE CONVERTED PARKING SPACE TO A PARTICULAR UNIT(S);

(k) To reallocate parking spaces that have been allocated as Limited Common Areas (by recording a supplement to this Master Declaration or the Plat) in its discretion and with the consent of the Owner(s) allocated the affected parking space(s), without the consent of other Owners, the Master Association or Mortgagees;

(l) To convert any parking space that has not been allocated as a Limited Common Area, to a parking space that is a Unit (and no longer a Common Area), that shall be owned in fee by Declarant until transferred by deed for consideration payable to Declarant. The amendment/supplement to this Master Declaration and/or the Plat that creates such a Unit shall set forth such Unit's Allocated Interests;

(m) To modify, amend or revise plans for construction, location and design of any Common Area Improvements;

(n) To approve any Sub-Association Declaration pursuant to Section 2.6 above, and to record Sub-Association Declarations, create Sub-Associations and subject Units owned by Declarant to additional covenants, conditions and restrictions as deemed necessary or desirable by Declarant;

(o) To appoint the members of the Committee pursuant to Section 7.2 above;

(p) To create other types of Units other than Apartment Units and Dwelling Units and allocate Allocated Interests for such Units;

(q) To redesignate Units with the approval of the Owner of such Unit and to amend Exhibit C in accordance with Section 1.2(a) above;

(r) To grant easements pursuant to Section 8.2 above;

(s) To enter into ground leases or other similar instruments for property it owns within the Project;

(t) To withdraw from the Project any Unit that has not been conveyed to a consumer by Declarant;

(u) The rights described in Article Seventeen below; and

(v) To exercise any other Declarant Right created or implied by any other provisions of this Master Declaration.

13.2 Rights Transferable. Declarant Rights created or reserved under this Article Thirteen for the benefit of Declarant may be transferred to any Person by Declarant by an instrument recorded with the Clerk and Recorder describing the Declarant Rights transferred. Such instrument shall be executed by the transferor Declarant and the transferee.

13.3 Limitations. Except as otherwise set forth in this Declaration (such as Article Seventeen below), Declarant Rights shall terminate at the option of Declarant as set forth in a recorded instrument executed by Declarant, but in any event such Declarant Rights shall terminate without further act or deed 25 years after the date of the recording of this Master Declaration with the Clerk and Recorder.

In the event that the process of entitlement for Declarant to obtain building permits is placed on “hold” (e.g., moratorium, anti-growth legislation, etc.) for reasons beyond the control of Declarant, the time limitations set forth herein shall be extended for a period of time equivalent to the period of time such impediment to entitlement was in effect.

13.4 Interference with Declarant Rights. Neither the Master Association, the Board nor any Owner may take any action or adopt any rule or regulation that will interfere with or diminish Declarant Rights without the prior written consent of Declarant.

13.5 Declarant’s Easements. Declarant reserves the right to perform warranty work, and repairs and construction work on Units, Common Areas, and Common Area Improvements to store materials in secure areas upon the Common Areas and/or Units owned by Declarant, and to control and have the right of access to work and repair until completion. All such work performed by Declarant shall not require the consent or approval of the Board, Owners, Mortgagees or any other Person.

Declarant has an easement through the Common Areas as may be reasonably necessary for the purpose of discharging Declarant’s obligations or exercising its Declarant Rights, whether reserved in this Article Thirteen or reserved in other provisions of this Master Declaration.

Notwithstanding any other provision of this Master Declaration (including, but not limited to Section 13.3 above), the easements reserved herein shall remain in effect for the benefit of the Declarant until the termination of all applicable warranty periods with respect to any particular Unit, Common Areas or Common Area Improvements.

13.6 Exercise of Declarant Rights. The exercise of any or all of the Declarant Rights shall be at the sole option and discretion of Declarant. No assurances are made with respect to the boundaries of the Project or the parcels of real property that may be subject to Declarant Rights nor the order in which Declarant Rights may be exercised. Subject to Section 13.3 above, the Declarant Rights may be exercised at any time and from time to time, and, if Declarant exercises any Declarant Rights, such rights may, but need not, be exercised as to all or any other portion of the Project.

Notwithstanding anything in this Master Declaration to the contrary, no consent or agreement of, or notice to, the Master Association, any Sub-Association, any Owners, any

Mortgagee or any other Person shall be required in order to allow Declarant to exercise any of its Declarant Rights, provided such exercise otherwise complies with the applicable provisions of this Master Declaration.

## **ARTICLE FOURTEEN MORTGAGEE PROVISIONS**

14.1 Notice to Eligible Mortgagees. Eligible Mortgagees will be entitled to timely written notice of:

- (a) any material condemnation loss or any casualty loss which affects a material portion of the Common Areas or the Unit on which the Eligible Mortgagee holds a Mortgage;
- (b) any 60-day delinquency in the payment of Assessments or charges owed by the Owner of the Unit upon which the Eligible Mortgagee holds a Mortgage;
- (c) any lapse, cancellation, or material modification of any mandatory insurance policy or fidelity bond maintained by the Master Association; and
- (d) any termination of the common interest community in accordance with Section 16.4 below.

14.2 Action by Mortgagee. If this Master Declaration or any other Master Association Governing Document requires the approval of any Eligible Mortgagees then, the Master Association shall send a dated, written notice and a copy of any proposed amendment by certified or registered mail "return receipt" requested to such Eligible Mortgagee at its most recent address as shown on the recorded deed of trust or recorded assignment thereof, or as otherwise delivered by such Eligible Mortgagee to the Master Association. An Eligible Mortgagee that does not deliver to the Master Association a negative response within 60 days after the date it receives proper notice shall be deemed to have approved the proposed amendment.

## **ARTICLE FIFTEEN OWNER'S ACKNOWLEDGMENTS AND WAIVERS**

15.1 Inspection by Others; Waivers of Post Inspection Liability. It is hereby expressly understood and agreed by all Owners upon acquiring a Unit that Declarant relies upon governmental inspectors and other qualified subcontractors and tradesmen to inspect the construction of the Units and the Common Areas undertaken by Declarant to verify compliance with construction plans and with all building code requirements applicable thereto. Declarant and each Owner further expressly understand and agree that, with respect to the Units and the Common Areas constructed by Declarant, upon compliance with the inspections required by the local building department and the issuance of a certificate of occupancy by the responsible governmental agency, Declarant will be deemed to have used its best efforts to construct such Units and Common Areas in substantial compliance with the construction plans and all applicable building code requirements. EXCEPT AS OTHERWISE MAY BE PROVIDED IN A PURCHASE AND SALE CONTRACT OR OTHER WRITTEN AGREEMENT BETWEEN DECLARANT AND AN OWNER, EACH OWNER, BY ACQUIRING A UNIT, HEREBY KNOWINGLY AND WILLINGLY WAIVES AS AGAINST DECLARANT AND ITS OWNERS, AGENTS AND

CONTRACTORS ANY AND ALL DEMANDS, CLAIMS, ACTIONS AND CAUSES OF ACTION AND ALL LIABILITY, LOSSES, DAMAGE, COSTS OR EXPENSES THAT HAVE BEEN OR MAY BE INCURRED IN ASSOCIATION THEREWITH, INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES AND EXEMPLARY DAMAGES, WHICH ARISE FROM OR ARE RELATED TO ANY NONCOMPLIANCE OF THE UNITS OR THE COMMON AREAS WITH CONSTRUCTION PLANS OR BUILDING CODE REQUIREMENTS, WHICH NONCOMPLIANCE IS NEITHER SUBSTANTIAL NOR MATERIAL IN NATURE AND WHICH NONCOMPLIANCE IS DISCOVERED AFTER THE ISSUANCE OF A CERTIFICATE OF OCCUPANCY FOR, RESPECTIVELY, SUCH UNITS OR COMMON AREAS; AND ANY SUCH NONCOMPLIANCE WILL BE DEEMED UNINTENTIONAL WITH RESPECT TO DECLARANT AND ITS OWNERS, AGENTS AND CONTRACTORS. TO THE EXTENT THAT ANY NONCOMPLIANCE WITH CODES OR WITH THE CONSTRUCTION PLANS IS DISCOVERED WITH REGARD TO ANY UNIT OR THE COMMON AREAS CONSTRUCTED BY DECLARANT, THE PROVISIONS OF ARTICLE SEVENTEEN BELOW WILL GOVERN SUCH MATTER.

15.2 No View Easement. Notwithstanding anything contained in this Master Declaration to the contrary, each Owner, by acquiring a Unit, acknowledges and agrees that there is no easement or other right, express or implied, for the benefit of any Owner or Unit for light, view or air included in or created by this Master Declaration or as a result of ownership of the Unit. Likewise, each Owner, by acquiring a Unit, acknowledges and agrees that any view, sight lines, or openings for light or air available from the Unit, or anywhere else on the Project, may be blocked or altered in whole or in part in the future by virtue of natural or unnatural causes, including, but not limited to, future construction or expansion of commercial or residential buildings or facilities. EACH OWNER, BY ACQUIRING A UNIT, HEREBY DISCLAIMS ANY AND ALL REPRESENTATIONS, WARRANTIES, OBLIGATIONS OR LIABILITIES CONCERNING EASEMENTS OR OTHER RIGHTS, WHETHER EXPRESS OR IMPLIED, FOR LIGHT, AIR, OR VIEW IN SUCH OWNER'S UNIT AND/OR THE PROJECT. EACH OWNER, BY ACQUIRING A UNIT, HEREBY ACCEPTS SUCH DISCLAIMER, AND AGREES THAT DECLARANT AND ITS AFFILIATES WILL NOT HAVE ANY OBLIGATION OR LIABILITY FOR, AND WAIVES ANY CLAIM AGAINST DECLARANT OR ITS AFFILIATES, AND THEIR CONTRACTORS OR AGENTS, RELATED TO ANY LOSS OF LIGHT, AIR, OR VIEW THAT MAY AFFECT THE UNIT OR THE PROJECT.

15.3 Security. NEITHER THE MASTER ASSOCIATION NOR DECLARANT OR ITS AFFILIATES WILL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROJECT, AND NEITHER THE MASTER ASSOCIATION, NOR DECLARANT OR ITS AFFILIATES, WILL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY, INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN, OR ACTS OF THIRD PARTIES. ALL OWNERS, CUSTOMERS, TENANTS, GUESTS, AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT THE MASTER ASSOCIATION, ITS BOARD, DECLARANT, ITS AFFILIATES AND COMMITTEES ESTABLISHED BY ANY OF THE FOREGOING ENTITIES, ARE NOT INSURERS OF SECURITY AT THE PROJECT AND THAT EACH OWNER, CUSTOMER, TENANT, GUEST, AND INVITEE ASSUMES ALL RISK OR LOSS OR DAMAGE TO PERSONS, TO UNITS, AND TO THE CONTENTS OF UNITS, AND FURTHER ACKNOWLEDGE THAT THE MASTER ASSOCIATION, ITS

BOARD, DECLARANT, ITS AFFILIATES AND COMMITTEES ESTABLISHED BY ANY OF THE FOREGOING ENTITIES, HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, CUSTOMER, TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PURPOSE, RELATIVE TO ANY SECURITY MEASURES RECOMMENDED OR UNDERTAKEN.

15.4 Other Properties. Each Owner, by acquiring a Unit, acknowledges that other properties are located adjacent to and in the general vicinity of the Project and that such other properties, may be developed pursuant to the land uses permitted by the Ordinances. Neither Declarant, nor Declarant's employees, agents, officers, directors and affiliates, make any representations concerning the planned uses of other properties. Each Owner, by acquiring a Unit, further acknowledges that the zoning for the Project and other properties is established and governed by the Ordinances. Any amendment to those Ordinances requires approval by the City/County. By acquiring a Unit, each Owner acknowledges that they have not relied upon any statements or representations regarding the Project or other properties, including, without limitation, any representations made by Declarant or any agents or employees of Declarant or any real estate agency or any agent.

15.5 Drainage and Soils Condition.

(a) Acknowledgment. THE SOILS WITHIN MONTANA MAY CONSIST OF BOTH EXPANSIVE SOILS AND LOW-DENSITY SOILS WHICH MAY ADVERSELY AFFECT THE INTEGRITY OF A UNIT OR A COMMON AREA IF SUCH UNIT OR COMMON AREA IS NOT PROPERLY MAINTAINED. EXPANSIVE SOILS CONTAIN CLAY MINERALS WHICH HAVE THE CHARACTERISTIC OF CHANGING VOLUME WITH THE ADDITION OR SUBTRACTION OF MOISTURE, THEREBY RESULTING IN SWELLING AND/OR SHRINKING SOILS. THE ADDITION OF MOISTURE TO LOW-DENSITY SOILS CAUSES A REALIGNMENT OF SOIL GRAINS, THEREBY RESULTING IN CONSOLIDATION AND/OR COLLAPSE OF THE SOILS.

(b) Waiver of Liability of Declarant. BY TAKING TITLE TO A UNIT, EACH OWNER ACKNOWLEDGES AND AGREES THAT SUCH OWNER AND THE MASTER ASSOCIATION HAS WAIVED AND WILL BE DEEMED TO HAVE WAIVED THE RIGHT TO ANY AWARD OF DAMAGES AGAINST DECLARANT, ITS MANAGERS, MEMBERS, EMPLOYEES OR AGENTS FOR ANY LOSS OR DAMAGE TO ANY PORTION OF THE UNIT OR THE COMMON AREAS CAUSED BY, RESULTING FROM OR IN ANY WAY CONNECTED WITH, SOIL CONDITIONS ON OR UNDER ANY UNIT AND/OR COMMON AREAS, INCLUDING SPECIFICALLY THE PRESENCE OF EXPANSIVE SOILS AND RADON GAS.

**ARTICLE SIXTEEN  
DURATION, AMENDMENT, AND TERMINATION OF  
THE MASTER DECLARATION**

16.1 Duration. The covenants, restrictions and obligations of this Master Declaration shall run with and bind the Property in perpetuity until this Master Declaration is terminated in accordance with Section 16.4 below.

16.2 Amendments by Owners. Except for amendments that may be undertaken by the Declarant hereunder or otherwise herein, this Declaration may be amended by the written agreement of Owners of Units to which at least 67% of the votes in the Master Association are allocated (and to the extent that an amendment affects any of the items identified in Section 18.10(a) below, the permission of the City Council shall also be required). Any amendment during the initial 50-year term of this Master Declaration and any amendment to Article Seventeen below shall also require the written consent of Declarant for a period of 50 years from the date this Master Declaration is recorded with the Clerk and Recorder. Any amendment of a material adverse nature to Mortgagees shall require the consent of Eligible Mortgagees representing 51% of the votes of Units subject to such Mortgages.

Any such amendment shall be effective upon the recording of the amendment with the Clerk and Recorder together with a certificate certifying that the requisite number of Owners and Eligible Mortgagees (if applicable) have given their written consent (or deemed consent) to the amendment.

16.3 Amendments by Declarant. Declarant reserves the right to amend, without the consent of any Owner, the Master Association, any Sub-Association, any Mortgagee or any other Person, the Master Association Governing Documents at any time within the limitations set forth in Section 13.3 above, as follows:

- (a) To make nonmaterial changes, such as the correction of a technical, clerical, grammatical or typographical error or clarification of a statement;
- (b) To comply with any requirements, standards or guidelines of any Agency; and
- (c) To comply with any requirements of governmental agencies, including, but not limited to, any City requirements for the Project.

16.4 Termination. This Master Declaration shall continue in full force and effect for a term of 50 years from its recording with the Clerk and Recorder. From and after said date, this Master Declaration shall be automatically extended for successive periods of 10 years each, unless there is an affirmative vote to terminate this Master Declaration by the then Owners casting 80% of the total votes cast at an election held for such purpose or otherwise approved in writing within 6 months prior to the expiration of the initial effective period hereof or any 10-year extension. This Master Declaration may also be terminated at any time if 80% of the votes cast shall be cast in favor of termination at an election held for such purpose. Any termination of this Master Declaration during the initial 50-year term of this Master Declaration shall require the consent of Declarant and the Owner of the MF Property.

Notwithstanding anything herein to the contrary (a) any termination of this Master Declaration shall require the consent of Eligible Mortgagees representing 51% of the votes of Units subject to such Mortgages, (b) no termination shall affect the provisions of Article Seventeen below which shall survive any termination for a period of 50 years from the date this Declaration is recorded with the Clerk and Recorder, and (c) no termination of the Master Declaration or the Master Association may occur without the permission of the City Council.

## **ARTICLE SEVENTEEN GENERAL PROVISIONS**

17.1 Definitions Applicable to this Article Seventeen. For purposes of this Article Seventeen only, the following terms have the following meanings:

- (a) **“AAA”** means the American Arbitration Association.
- (b) **“Claimant”** means any Party having a Claim.
- (c) **“Claim”** means, except as excluded or exempted by the terms of this Article Seventeen (including Section 17.3 below), any claim, counterclaim, cross-claim, third-party claim, grievance or dispute between one Party and another, regardless of how it may have arisen or on what it might be based (including, but not limited to, damages, indemnity, subrogation or contribution), including, without limitation, disputes arising out of or related to, regardless of the theory of liability: (i) the interpretation, application or enforcement of any Master Association Governing Document or Limited Warranty; (ii) the location, size, planning, sale, marketing, development, design, construction, maintenance, repair and/or condition of the Units, Common Areas and Project, including, without limitation, the soils of the Project; (iii) any statements, representations, promises, warranties, or other communications allegedly made by or on behalf of any Party relating to the foregoing; (iv) the Montana Unfair Trade Practices and Consumer Protection Act; and (v) damages or loss to, or the loss of, real or personal property or personal injury caused by a defect in the design or construction of the Units, Common Areas and/or Project.
- (d) **“Inspecting Party”** means a Party causing an inspection of the Subject Property to be made.
- (e) **“Limited Warranty”** means a written limited warranty given to a Party related to a Lot.
- (f) **“Party”** means each of the following: (i) architects, engineers, contractors, subcontractors, developers, Declarant and affiliates of Declarant, builders, builder vendors, engineers and inspectors performing or furnishing the design, supervision, inspection, construction or observation of construction of any improvement to real property that is a part of the Project or any other party responsible for any part of the design, construction, repair or maintenance of any portion of the Project, and any of such parties’ affiliates, and the officers, directors, partners, shareholders, members, managers, employees and servants of any of them (each a **“Development Party”** and collectively, the **“Development Parties”**); (ii) all Owners, Owner’s Agents, the Master Association (including its directors and committee members) and all other Persons subject to this Master Declaration, their officers, owners, employees and agents; and (iii) any Person not otherwise subject to this Master Declaration who agrees to submit to this Article Seventeen.



(g) **“Respondent”** means any Party against whom a Claimant asserts a Claim.

(h) **“Subject Property”** means the property and all improvements thereon regarding which a Party contends that a Claim pertains, and/or property and all improvements thereon being inspected and/or repaired under the inspection and correction right in Section 17.4 below.

(i) **“Termination of Mediation”** means a period of time expiring 20 days after a mediator has been agreed upon by the Parties or chosen by AAA if the Parties cannot agree, or within such other time as agreed to by the Claimant and Respondent in writing, and upon the expiration of which the Claimant and Respondent have not settled the Claim.

#### 17.2 Intent of Parties; Applicability of Article; and Applicability of Statutes of Limitations.

(a) Each Party agrees to work towards amicably resolving disputes, without the emotional and financial costs of litigation. Accordingly, each Party agrees to resolve all Claims only by using the procedures in this Article Seventeen (in the order set forth in Sections 17.4 and 17.5 below), and not litigation. Further, each Party agrees that the procedures in this Article Seventeen shall be the sole and exclusive remedial process that each Party shall have for any Claim. Should any Party commence litigation or any other action against any other Party in violation of this Article Seventeen, such action shall be dismissed and such Party shall reimburse all costs and expenses, including attorneys’ fees and court costs, incurred by the other Party in such litigation or action within 10 days after written demand.

(b) By accepting a deed for a Unit, each Owner agrees to be bound by and to comply with this Article Seventeen. The Master Association agrees to be bound by and to comply with this Article Seventeen.

(c) The Parties agree that no Claim may be commenced after the date set forth in an applicable Limited Warranty, and if the Claim is not covered by such Limited Warranty, then when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitation and/or statute of repose or as otherwise limited by this Article Seventeen.

17.3 Exclusions from “Claim.” Unless specifically exempted by this Article Seventeen, all Claims between any of the Parties shall be subject to the provisions of this Article Seventeen. Unless all Parties thereto otherwise agree in writing, “Claim” does not include the following and shall not be subject to the provisions of this Article Seventeen:

(a) Any action by the Master Association to enforce the provisions of the Master Association Governing Documents (other than this Article Seventeen) against an Owner or Owner’s Agent;

(b) Any action by the Master Association to collect Assessments;

(c) Any claim, grievance or dispute under a Limited Warranty that itself contains binding alternative dispute resolution procedures that preclude litigation and that the Parties agree to utilize and be bound by as a final resolution of the Claim;

(d) Any action, suit or proceeding to compel arbitration of a Claim or to enforce any award or decision of an arbitration conducted in accordance with this Article Seventeen or to enforce the terms of any written settlement agreement of a Claim; and

(e) Any action pursuant to the provisions of this Master Declaration concerning mechanics liens; and

(f) Any action brought by MF Owner against Declarant pursuant to a separate agreement between MF Owner and Declarant (or an affiliate thereof).

17.4 Notice; Right to Inspect and Correct; Mediation. Before initiating arbitration under Section 17.5 below ("**Commencing a Formal Claim**"), the Claimant shall first comply with the procedures set forth in this Section 17.4 in the order noted below.

(a) *Notice.* First, the Claimant shall provide notice to everyone Claimant contends contributed to the alleged problem. The notice shall state plainly and concisely:

The nature of the Claim, including all Persons involved and each Respondent's role in the Claim;

The legal or contractual basis of the Claim (i.e., the specific authority out of which the Claim arises); and

The specific relief and/or proposed remedy sought.

(b) *Right to Inspect and Correct.* Second, if the Claim involves an alleged defect or damage to or duty to repair or replace any improvement or real property, then Claimant shall also provide Respondent, for a period of 60 days after delivery of the foregoing notice ("**Inspection/Correction Period**"), the right to access, inspect, correct the condition of, or redesign any portion of any improvement or real property allegedly containing a defect or damage or otherwise correct the alleged defect or damage. In exercising these inspection and correction rights, the Inspecting Party and Respondent shall:

(i) Act carefully to avoid unreasonable intrusion on, or harm, damage or costs to the other Party including using its best efforts to avoid causing any damage to, or interference with, any improvements on the Subject Property at issue;

(ii) Attempt to minimize disruption or inconvenience to any Person who occupies the Subject Property;

(iii) Remove daily all debris caused by the inspection and remaining on the Subject Property; and

(iv) In a reasonable and timely manner, at the sole cost and expense of the Inspecting Party, promptly remove all equipment and materials from the Subject Property, repair and replace all damage, and restore the Subject Property to its pre-inspection condition unless the Subject Property is to be immediately repaired.

The Inspecting Party and Respondent shall not permit any lien arising from the inspection to attach to the Subject Property.

(c) *Discussion of Claim.* Third, in the event that (i) by the end of the Inspection/Correction Period described above, Respondent has elected not to access, inspect, correct the condition of, or redesign any portion of any improvement or real property allegedly containing a defect or damage or otherwise correct the alleged defect or damage, (ii) by the end of the Inspection/Correction Period, Claimant is unsatisfied with actions undertaken by Respondent under Section 17.4(b) above, or (iii) the Claim does not involve an alleged defect or damage to any improvement or real property, then before Commencing a Formal Claim against any Respondent, the Parties shall first make every reasonable effort to meet in person and confer to resolve the Claim by good faith negotiation. The Parties shall seek to understand clearly the Claim and resolve as many aspects or issues as possible. Any Party may be represented by attorneys and independent consultants to assist such Party, including by attending all negotiations.

(d) *Mediation.* Fourth, if the Parties cannot resolve the Claim through negotiations under Section 17.4(c) above after attempting to do so for 15 days, Claimant shall have an additional 10 days to submit the Claim to mediation under the auspices of AAA under the AAA's Commercial or Construction Industry Mediation Rules, as appropriate.

(i) If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have fully and finally waived the Claim for all purposes, such that Respondent shall be deemed released and discharged from all liability to Claimant for such Claim.

(ii) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If mediation ends without a settlement, the mediator shall issue a notice of Termination of Mediation. This notice shall state that the Parties are at an impasse and the date that mediation was terminated.

(iii) Each Party shall pay its own costs of the mediation, including its own attorneys' fees. Each Party shall share equally all of the mediator's charges. The mediation proceedings shall be conducted at a mutually agreeable location in the City.

(iv) If the Parties resolve any Claim through negotiation or mediation under Section 17.4(c) above or this Section 17.4(d), and any Party later fails to comply with a written settlement agreement, then any other Party may file suit or initiate arbitration proceedings to enforce such written agreement without the need to again comply with such procedures. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including, without limitation, attorneys' fees and costs.

#### 17.5 Commencing a Formal Claim.

(a) Only after receiving a notice of Termination of Mediation may a Claimant Commence a Formal Claim.

(b) Before the Master Association may Commence a Formal Claim, the Board must first also comply with the following:

(i) Provide written notice to all Owners and Respondent(s) calling a meeting

to discuss the potential Claim (“**Homeowner Notice**”). The Homeowner Notice must be made in accordance with applicable State and local laws, and also included in such notice shall be the following if not already required by such laws:

- (1) The Approval Deadline (defined below);
  - (2) If the Master Association were to prevail, what the Board expects that the Master Association may recover from the Respondent(s);
  - (3) Whether the Board intends to enter into a contingency fee arrangement with the attorneys’ representing the Master Association, and how much of the amount the Master Association recovers from the Respondent(s) will be paid to the attorney(s). What the Board estimates that, in addition to attorney fees, the Master Association will incur for consultants, expert witnesses, depositions, filing fees, and other expenses of pursuing the Claim;
  - (4) If the Master Association makes a Claim and does not prevail, what the Board expects the Master Association will incur in witness and attorneys’ fees and other costs;
  - (5) If the Master Association does not recover from the Respondent(s), what it may have to pay to repair or replace any claimed defective work;
  - (6) A statement that until any claimed defective work is repaired or replaced, or until the Claim is concluded, the market value of the affected Units could be adversely affected;
  - (7) A statement that until any claimed defective work is repaired or replaced, or until the Claim is concluded, Owners of affected Units may have difficulty refinancing and prospective buyers of the affected Units may have difficulty obtaining financing. In addition, a statement that certain federal underwriting standards or regulations prevent refinancing or obtaining a new loan in projects where a construction defect is claimed. In addition, a statement that certain lenders as a matter of policy will not refinance or provide a new loan in projects where a construction defect is claimed;
  - (8) An estimate of the length of time it will take to reach a final resolution of the Claim (including appeals);
  - (9) How the Master Association intends to finance the pursuit of the Claim (e.g., Special Assessments);
  - (10) An affirmation from each Board member voting in favor of pursuing the Claim that the foregoing are true and correct; and
  - (11) Any statement desired to be included in the notice by any Board member voting against pursuing the Claim.
- (ii) Require that repair estimates be given by contractors other than those recommended by the Master Association’s attorneys.

(iii) The Master Association meeting must be held no earlier than 10 days and no later than 15 days after the date of the Homeowner Notice. At the meeting the Respondent(s) must have an opportunity to address the Owners and the Board. Following the meeting and prior to the Master Association Commencing a Formal Claim, the Master Association must obtain the written approval to pursue the Claim from Owners of Units to which 67% of the total votes in the Project (excluding votes allocated to Units owned by Declarant if Declarant is a Respondent) are allocated. The Master Association must obtain such written Owner approval within 90 days after delivery of the Homeowner Notice or the Claim is deemed fully and finally released and may not be brought in any manner by the Master Association or the Owners (“**Approval Deadline**”). The votes of the Owners must be certified by a Master Association officer or agent, and written evidence of the certification shall be provided to the Respondent(s).

(c) Commencing a Formal Claim may only be accomplished by the arbitration procedures set forth below, and not by way of litigation. Final, binding arbitration of the Claim shall be conducted under the auspices of AAA and its Commercial or Construction Industry Arbitration Rules, as appropriate, in which event Claimant shall provide to Respondent a “Notice of Intent to Arbitrate,” within 20 days after receiving the notice of Termination of Mediation. If Claimant does not timely initiate final, binding arbitration of the Claim and timely provide a Notice of Intent to Arbitrate to Respondent(s), then Claimant shall be deemed to have fully and finally waived the Claim, and Respondent(s) shall be deemed fully and finally released and discharged from all liability to Claimant for such Claim.

(d) The following arbitration procedures shall govern each arbitrated Claim:

(i) The arbitrator must be a person qualified to consider and resolve the Claim with the appropriate industry and/or legal experience.

(ii) No Person shall serve as the arbitrator where that Person has any financial or personal interest in the arbitration or any family, social or significant professional acquaintance with any Party to the arbitration. Any Person designated as an arbitrator shall immediately disclose in writing to all Parties any circumstance likely to affect the appearance of impartiality, including any bias or financial or personal interest in the arbitration (“**Arbitrator Disclosure**”). If any Party objects to the service of any arbitrator within 14 days after receipt of the Arbitrator’s Disclosure, such arbitrator shall be replaced in the same manner as the initial arbitrator was selected.

(iii) The arbitrator shall hold at least one hearing in which the Parties, their attorneys and expert consultants may participate. The arbitrator shall fix the date, time and place for the hearing. The arbitration proceedings shall be conducted at a mutually agreeable location in the City.

(iv) The arbitration shall be presided over by a single arbitrator.

(v) Other than the deposition of experts and Claimant, no formal discovery shall be conducted without an order of the arbitrator or express written agreement of all Parties.

(vi) Unless directed by the arbitrator, there shall be no post hearing briefs.

(vii) The arbitration award shall address each specific Claim to be resolved in

the arbitration, provide a summary of the reasons therefore and the relief granted, and be rendered no later than 14 days after the close of the hearing, unless otherwise agreed by the Parties. The arbitration award shall be in writing and shall be signed by the arbitrator.

(viii) The arbitrator determines all issues about whether a Claim is covered by this Article Seventeen. Notwithstanding anything herein to the contrary (including, but not limited to, Section 17.5(d)(ix) and Section 17.5(d)(x) below), if a Party contests the validity or scope of arbitration in court, the arbitrator or the court shall award reasonable attorneys' fees and expenses incurred in defending such contests, including those incurred in trial or on appeal, to the non-contesting Party.

(ix) The arbitrator shall apply the substantive law of Montana with regard to any remedy granted. The arbitrator may award injunctive relief or any other remedy available in Montana but shall not have the power to award punitive damages, attorneys' fees and/or costs to the prevailing Party. Except as set forth in Section 17.5(d)(viii) above, each Party is responsible for any fees and costs incurred by that Party. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court of competent jurisdiction. Notwithstanding the foregoing, if the remedy awarded by the arbitrator is substantially affected by the arbitrator's failure to follow the substantive law of Montana, a court may vacate or refuse to confirm the arbitrator's award on that basis.

(x) The Parties shall pay their pro rata share of all arbitration fees and costs, including, without limitation, the costs for the arbitrator and their consultants.

(xi) The arbitrator shall have authority to establish reasonable terms regarding inspections, destructive testing and retention of independent consultants.

(xii) Except as may be required by law or for confirmation of an arbitration award, and except as otherwise provided in this Article Sixteen, neither a Party nor an arbitrator may disclose the existence or contents of any arbitration without the prior written consent of all Parties to the arbitration.

**17.6 Notice of Certain Claims.** If a Claim includes a construction and/or design defect allegation, the Owner shall disclose the Claim and its details to his/her prospective purchasers and prospective Mortgagees.

**17.7 Amendment.** THE PROVISIONS OF THIS ARTICLE SEVENTEEN INURE TO THE BENEFIT OF DECLARANT AND THE DEVELOPMENT PARTIES AND ALL OTHER PARTIES DESCRIBED IN THIS ARTICLE SEVENTEEN, AND, NOTWITHSTANDING ANY OTHER PROVISION OF THIS DECLARATION, INCLUDING WITHOUT LIMITATION THE PROVISIONS OF ARTICLE SIXTEEN ABOVE, SHALL NOT BE AMENDED OR TERMINATED FOR A PERIOD OF 50 YEARS FROM THE DATE THIS DECLARATION IS RECORDED WITH THE CLERK AND RECORDER WITHOUT THE WRITTEN AND RECORDED CONSENT OF DECLARANT, WITHOUT REGARD TO WHETHER DECLARANT OWNS ANY UNIT AT THE TIME OF SUCH AMENDMENT/TERMINATION. BY TAKING TITLE TO A UNIT, EACH OWNER ACKNOWLEDGES AND AGREES THAT THE TERMS OF THIS ARTICLE SEVENTEEN ARE A SIGNIFICANT INDUCEMENT TO

DECLARANT'S AND THE DEVELOPMENT PARTIES' WILLINGNESS TO DEVELOP AND SELL THE UNITS AND THAT IN THE ABSENCE OF THE PROVISIONS CONTAINED IN THIS ARTICLE SEVENTEEN, DECLARANT AND THE DEVELOPMENT PARTIES WOULD HAVE BEEN UNABLE AND UNWILLING TO DEVELOP AND SELL THE UNITS FOR THE PRICES PAID BY THE ORIGINAL BUYERS.

IN ANY EVENT, ANY AMENDMENT TO OR DELETION OF ALL OR ANY PORTION OF THIS ARTICLE SEVENTEEN SHALL NOT APPLY TO CLAIMS BASED ON ALLEGED ACTS OR OMISSIONS THAT PREDATE SUCH AMENDMENT OR DELETION.

THE TERMS OF THIS SECTION 17.7 SHALL NOT BE LIMITED BY THE PROVISIONS OF SECTION 13.3 ABOVE OR ANY OTHER PROVISION OF THIS DECLARATION.

17.8 Waiver of Jury Trial. IN THE EVENT THAT A COURT FINDS THAT THE DISPUTE RESOLUTION PROCEDURES SET FORTH IN THIS ARTICLE SEVENTEEN ARE UNENFORCEABLE AND AS A RESULT A PARTY IS ALLOWED TO BRING A CLAIM IN COURT, ALL PARTIES AGREE THAT ANY LAWSUIT, WHETHER CLAIM OR COUNTERCLAIM, BROUGHT IN COURT SHALL BE TRIED ONLY BY A JUDGE AND NOT BY A JURY; AND EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY, AND INTELLIGENTLY WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT.

17.9 Conflict with Laws. IN THE EVENT THAT THE PROVISIONS OF THIS ARTICLE SEVENTEEN CONFLICT WITH ANY OTHER MANDATORY PROVISIONS OF APPLICABLE LAW, THE PROVISIONS OF THIS ARTICLE SEVENTEEN SHALL BE REVISED TO THE MINIMUM EXTENT NECESSARY TO COMPLY WITH THE MANDATORY PROVISIONS OF SUCH LAWS.

## **ARTICLE EIGHTEEN GENERAL PROVISIONS**

18.1 Right of Action. Subject to Article Seventeen above, the Master Association and any aggrieved Owner shall have a right of action against an Owner for such Owner's failure to comply with this Master Declaration, any other Master Association Governing Documents or with decisions of the Board which are made pursuant thereto. Owners shall have a similar right of action against the Master Association.

18.2 Successors and Assigns. This Master Declaration shall be binding upon and shall inure to the benefit of Declarant, the Master Association and each Owner and their heirs, personal representatives, successors and assigns.

18.3 Severability. If any part of any provision of this Master Declaration shall be invalid or unenforceable under applicable law, said part shall be ineffective to the extent such invalidity or unenforceability only, without in any way affecting the remaining parts of said provision or the remaining provisions of this Master Declaration.

18.4 No Waiver. No provision contained in this Master Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

18.5 Registration by Owner of Mailing Address; Notices. Each Owner shall register their mailing address with the Master Association. Except for monthly statements and other routine notices, which shall be personally delivered or sent by regular mail or as otherwise set forth in the Bylaws, all notices intended to be served upon an Owner pursuant to this Master Declaration, shall be delivered personally or sent by either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address or at the address of such Owner's Unit if there is no registered mailing address for such Owner on file at the Master Association.

All notices, demands or other notices intended to be served upon the Board or the Master Association shall be sent by certified mail, postage prepaid, to the Managing Agent, if any, and if there is no Managing Agent, then to the registered agent for the Master Association on file in the Office of the Secretary of State, State of Montana.

18.6 Conflicting Provisions. The Master Association Governing Documents are intended to comply with the requirements of the Nonprofit Act and other applicable Montana laws (collectively, the "**Governing Acts**"). If there is any conflict between any provision of the Master Association Governing Documents and any mandatory provision of either of the Governing Acts, the mandatory provision of the applicable Governing Act shall control and neither Declarant nor the Master Association shall have any liability for actions taken in conformity with such Governing Act. If there is any conflict between any provision of the Master Association Governing Documents and any permissive or non-mandatory provision of either of the Governing Acts, the provision of the Master Association Governing Documents shall control. In the event of any conflict between this Master Declaration and any other Master Association Governing Documents, this Master Declaration shall control, except as otherwise provided herein. In the event the Articles conflict with the Bylaws, the Articles shall control.

18.7 Captions. The captions and headings in this Master Declaration are for convenience only and shall not be considered in construing any provision of this Master Declaration.

18.8 Numbers and Genders. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, plural the singular, and the use of any gender shall include all genders.

18.9 Tax Collection by County Authorized. Pursuant to this Declaration, the Master Association will own the Common Areas and will be obligated to pay property taxes on said Common Areas to the City/County. It is recognized that each Owner will be required to pay to the Master Association its pro rata share of such taxes. Notwithstanding anything to the contrary contained in this Declaration or otherwise, the City/County shall be and is authorized to collect such pro rata share (in accordance with Section 1.2 above) of taxes directly from each Owner by inclusion of said share with the tax levied on each Unit. To the extent allowable, the City/County is hereby directed so to do.



#### 18.10 City Requirements.

(a) The Master Association will operate to comply with Section 5-020.14.K of the City Subdivision Regulations, to wit:

- (i) The Master Association will be formed before any property is sold.
- (ii) Membership is mandatory for each property buyer and any subsequent buyer (see also Section 4.5 above).
- (iii) The open-space restrictions must be perpetual.
- (iv) The Master Association is responsible for liability insurance, local taxes, and the maintenance of recreational and other facilities (see also Section 5.2 above, Section 9.1(a)(ii) above and Section 11.1 above).
- (v) Property owners must pay their pro rata share of Master Association costs and the assessments charged by the Master Association can become a lien on the property (see also Section 1.2 above, Section 5.1 above, Section 5.4 above and Section 5.7 above).
- (vi) The Master Association may adjust the assessments to meet changed needs (see also Section 4.8 above and Section 5.3 above).
- (vii) Prior to final plat approval, the Master Association's articles of incorporation, bylaws, covenants, and restrictions must be prepared or reviewed by an attorney licensed to practice law in the State of Montana in order that applicable Master Association requirements are met.
- (viii) The Master Association Governing Documents contain means of enforcement and means of receiving and processing complaints (see also Section 1.39 above, Section 5.4(c) above, Article Seventeen above and Section 18.1 above).
- (ix) The permission of the City Council is required before the Master Association can be dissolved or the restrictions in this Section 18.10(a) modified (see also Section 16.2 above and Section 16.4(c) above).
- (x) The Master Association Governing Documents include a regular maintenance program for Common Area private roads, parks, buildings, drainage facilities, and other mutually controlled facilities (see also Section 11.1 above).

(b) If it is determined that the Project is located within areas identified by the City as WUI (Wildland/Urban Interface), then Declarant shall have the unilateral right to amend this Master Declaration to incorporate City required standards for such areas.



## MF OWNER CONSENT

The undersigned hereby consents to the MF Property being subjected to this Declaration and to the termination of the Restrictive Covenant as described in Section 7.1(a) hereof.

Hillview MF Project Owner LLC, a Delaware limited liability company

By: Hillview MF Partners LLC, a Delaware limited liability company, its Sole Member

By: RG Hillview Member LLC, a Delaware limited liability company, its Managing Member

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me on \_\_\_\_\_, 202\_\_ by \_\_\_\_\_ as \_\_\_\_\_ of RG Hillview Member LLC, a Delaware limited liability company, Managing Member of Hillview MF Partners LLC, a Delaware limited liability company, Sole Member of Hillview MF Project Owner LLC, a Delaware limited liability company.

\_\_\_\_\_  
(Signature of notarial officer)

\_\_\_\_\_  
Printed name and title of officer  
(if not shown in stamp)

(Official stamp)

**MORTGAGEE CONSENT**

Consent is hereby given to this Master Declaration by the undersigned mortgagee under the Deed of Trust recorded on \_\_\_\_\_, 2023 at Book \_\_\_\_\_, Page \_\_\_\_\_ with the Clerk and Recorder.

Stockman Bank of Montana

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF MONTANA     )  
  ) SS  
COUNTY OF MISSOULA   )

This instrument was acknowledged before me on \_\_\_\_\_, 202\_\_\_\_ by \_\_\_\_\_ as \_\_\_\_\_ of Stockman Bank of Montana.

\_\_\_\_\_  
(Signature of notarial officer)

\_\_\_\_\_  
Printed name and title of officer  
(if not shown in stamp)

(Official stamp)

**EXHIBIT A**  
**TO**  
**MASTER DECLARATION OF COVENANTS,**  
**CONDITIONS AND RESTRICTIONS**  
**FOR HILLVIEW**

(Declarant Property)

DRAFT

**EXHIBIT B**  
**TO**  
**MASTER DECLARATION OF COVENANTS,**  
**CONDITIONS AND RESTRICTIONS**  
**FOR HILLVIEW**

(MF Owner Property)

DRAFT

**EXHIBIT C**  
**TO**  
**MASTER DECLARATION OF COVENANTS,**  
**CONDITIONS AND RESTRICTIONS**  
**FOR HILLVIEW**

(Developable Square Footage/Units/Common Areas)

<u>Unit</u>	<u>Type of Unit</u>	<u>Developable Square Footage</u>
MF Property	Apartment Unit	

[LIST INDIVIDUAL LEGAL DESCRIPTIONS FOR ALL OTHER UNITS ALONG WITH ESTIMATED DEVELOPABLE SQUARE FOOTAGE FOR EACH]

Allocated Interests of the MF Property in the Common Expense Liability - \_\_\_\_%. See Section 1.2 for provisions related to the amendment of this **Exhibit C** and limitations related thereto as it applies to the MF Property.

Common Areas