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**DECLARATION OF UNIT OWNERSHIP FOR
CATHERINA COURT COTTAGES**

MCCALL DEVELOPMENT, INC., a Montana corporation ("Declarant"), owner of the real property described below, does hereby make and submit for filing this Declaration for Unit Ownership for Catherina Court Cottages (this "Declaration") pursuant to the Montana Unit Ownership Act, as codified at MCA § Section 70-23-101, *et seq.* (the "Act").

ARTICLE I. DEFINITIONS

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

1.1. **Assessment.** Means that portion of the "Common Expenses" (defined below) that is to be paid by each "Owner" (defined below) as determined by the Association in accordance with this Declaration and the "By-Laws" (defined below).

1.2. **Association.** Means the group of persons or entities that are Owners within the meaning of this Declaration. The Association shall be known "CATHERINA COURT COTTAGES OWNERS ASSOCIATION".

1.3. **Board or Board of Directors.** Means the governing body of the Association as more particularly defined in the By-Laws.

1.4. **Buildings.** Means the thirty-eight (38) buildings containing the "Units" (defined below) and the "Common Elements" (defined below).

1.5. **By-Laws.** Means the By-Laws that the Association adopts, as amended from time to time.

1.6. **Common Elements or Common Areas.** Means both General Common Elements and Limited Common Elements.

- (A) **General Common Elements.** Includes the unfenced front yard area, the fences installed by Developer, if any, and any other elements that are for the use of all Owners, guests and invitees of Owners, including but not limited to electrical lines, gas lines, telephone lines, television cables, conduits, wells and pumps used for irrigation, the underground sprinkler system, the private lanes designated as Carriage Lanes on the "Plans" (defined below), Catherina Court, the Community Building denoted on the Plans (the "Community"),



Building”), uncovered parking spaces and all other elements which serve all Units.

- (B) **Limited Common Elements.** Means those Common Elements that are reserved for the use of fewer than all of the Owners, or invitees of the Association. Specifically, as to any given Owner, Limited Common Elements means the following Common Elements that are located within the Property: the yard areas denoted and labeled on the Plans as “LC” are reserved for the use of the single Unit whose number is referenced after the label “LC” on the Plans; and flues, ducts, cables, conduits, public utilities lines, electrical, gas, and cable television lines, and hot and cold water pipes, and all other utilities pipes and lines servicing more than one particular Unit and less than all the Units.

1.7. **Common Expenses.** Mean expenses described in Section 8.1. Individual heating and air-conditioning units for each Unit shall be the sole responsibility of the Owner of such Unit and shall not be included in Common Expenses.

1.8. **Developer.** Means MCCALL HOMES LLC, a Montana limited liability company, or any person or entity to whom MCCALL HOMES LLC, a Montana limited liability company, transfers or assigns its development rights hereunder. A grant of deed to a single completed Unit by Developer shall not be deemed a transfer of development rights. For each Unit owned by it, Developer shall have all of the rights and duties afforded to any Owner under this Declaration, the By-Laws and Montana law.

1.9. **Eligible Mortgage Holder.** Means the holder of a first mortgage or trust indenture on any Unit who has requested, in writing, that the Association notify it of any proposed action set forth in Section 10.3 below.

1.10. **Governing Documents.** Mean this Declaration as it may be amended from time to time, the Articles of Incorporation of the Association, By-Laws, the Declaration of Covenants, Conditions and Restrictions for Annafeld Subdivision, as amended from time to time (the “CCRs”) and the rules and other instruments for the ownership, management and control of the Property.

1.11. **Manager.** Means the manager, or group of managers, retained or appointed by the Association to conduct the day-to-day operation of the Association. In the absence of an appointed Manager, the Board shall have the responsibility of such duties.

1.12. **Owner.** Means the record holder of title of a Unit. This shall include any person having a fee simple title to any Unit, including the Association, if applicable, but shall exclude persons having any interest merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale, the purchaser, rather than the fee owner, shall be considered the Owner from and after the date the Association receives written notice of the recorded contract. Owner shall include Developer, until sale of all Units. A lessee of a Unit shall not be considered an Owner, unless designated by the owner of record, following the procedures set forth in §70-23-102.

1.13. **Plans.** Means the site plan for the “Development” (defined below) attached hereto as **Exhibit A-1** and the floor plans for the Units which the Developer presently intends to use attached hereto as **Exhibit A-2**, depicting the intended layout, location, unit designation and dimensions of the Units and Common Elements.



1.14. Property. Means all the land, buildings, improvements and structures thereon and all easements, rights and appurtenances belonging thereto, subject to this Declaration and more particularly described as follows:

Lot 4A, Block 1, of Amended Plat of Lot 4, Block 1 of Annafeld Subdivision, First Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat thereof on file and of record in the office of the Clerk and Recorder of said County, under Document No. 3862926.

1.15. Unit. Means an estate in real property intended for residential use and more particularly described in Section 4.3. In particular, Units 1 through 11, inclusive, 14 through 26, inclusive, and 29 through 34, inclusive (collectively, the "Stand Alone Units") shall each consist of a single one- or two-story townhome Building. Additionally, 17 Stand Alone Units, specifically Units 1 through 10, inclusive, 14, 20 through 25, inclusive (collectively, the "Garaged Stand Alone Units"), shall include a detached garage as denoted on the Plans (collectively, the "Garages"). Units 12, 13, 27 and 28 shall each consist of a Building with two (2) double bay garages on the first floor and two (2) apartments on the second floor (collectively, the "Tuck Under Units").

1.16. Unit Designation. Means any combination of letters, numbers, and words that identify the Unit. The unit numbers are shown on the attached Plans.

ARTICLE II. NAME

The Property subject to this Declaration shall be known as the **CATHERINA COURT COTTAGES**.

ARTICLE III. DECLARATION

Declarant declares that the Property shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold and improved subject to the Governing Documents, all of which are imposed as equitable servitudes pursuant to a general plan for the purpose of enhancing and protecting the value and attractiveness of the Property. All of the limitations, covenants, conditions, restrictions and easements shall constitute covenants that run with the land and are binding upon Declarant and its successors and assigns, the Association and all parties now having or later acquiring any right, title or interest in or to any part of the Property.

ARTICLE IV. DESCRIPTION OF PROPERTY, DIVISION OF PROPERTY, AND CREATION OF PROPERTY RIGHTS

4.1. Description of Property. The Property is a residential development (the "Development") as shown on the Plans. The Buildings shall be of wood frame construction with wood composite siding and some wood composite trim, stone, brick, rock, and wood trim may also be used. The Buildings shall have a concrete foundation, and asphalt shingle roof. Developer reserves the right to change the type of siding used. Interior walls are of sheetrock. There will be a total of thirty-four (34) Units. Other than the Garages, as applicable, the Stand Alone Units shall be one- or two-stories with a crawl space. The Tuck Under Units are two stories. The Garages are one-story and are located in four (4) Buildings, one (1) Building containing five (5) Garages and three (3) Buildings containing four (4) Garages each. The attached **Exhibit B** depicts the land area included in each Unit. Developer reserves the right to modify or change the Plans attached as **Exhibit A-1 and Exhibit A-2** or the amount of land area included in each Unit set forth in **Exhibit B**, without consent of any Owner or lender, in its sole discretion, either directly or pursuant to the "Certificate" (defined below) executed by a registered architect or registered professional engineer, as Developer's agent, in accordance with Section 4.2.



4.2. Construction of the Development. Developer may proceed with construction subject to the following conditions:

- (A) Upon 30 days of completion of construction of a Unit, Developer shall have a Certificate of Completion for the Unit executed and recorded by a registered architect or registered professional engineer, as Developer's agent, which shall constitute an amendment to this Declaration (the "Certificate"), certifying that the floor plans previously filed with this Declaration or being filed with the Certificate accurately depict the layout and floors of the Unit and stating the date construction of the Unit was completed. The Certificate shall include the floor plans for the newly constructed Unit, if different from the version attached hereto, and a revised site plan showing the location of said Unit, if different from the version attached hereto.
- (B) From and after the recording date of the Certificate, the following consequences shall ensue:
 - (1) The Owners of each newly constructed Unit shall have nonexclusive rights to use General Common Elements to the same extent as the Owners of all other completed Units.
 - (2) The Owners of each newly completed Unit shall be assessed in accordance with their ownership interest in the Common Elements upon completion of construction of all Units. However, no new Unit shall be assessed for, nor shall it have any obligation for debts or deficits of the Association in existence at the effective date of the Unit's first occupancy.
 - (3) Each Unit shall be treated as a part of the Development as a whole from the beginning except to the extent otherwise provided herein. From and after the date of the amendment pursuant to the recordation of the Certificate, the new Units shall be treated as though they had been developed, held, occupied and used by the Owners as part of a single undivided Development.
- (C) Newly constructed Units shall be similar in materials, style and quality of construction to the existing Units. However, it is Developer's intent that each Unit will be unique with different exterior color combinations and styles.
- (D) To facilitate the Development, Developer hereby reserves on behalf of itself:
 - (1) an easement over and upon Common Elements and the Property for the purpose of access for constructing Units and Common Elements.
 - (2) the power pursuant to 70-15-301, MCA, to grant utility easements across the Property reasonably necessary to the ongoing development or termination of the Development, without approval of any Owner.
 - (3) the right to use water and electricity provided to the Property or any Unit for construction purposes, provided that Developer shall reimburse the Association for the reasonable cost of such water and electricity.



- (4) the right to fence off adjoining Common Area prior to and during construction, for safety reasons and to facilitate construction.
- (5) the power, pursuant to 70-15-301, MCA, to amend this Declaration, without approval of any Owner or any lender, to create additional Common Elements, to change the number of Buildings, to provide that the Development has been terminated and no further Units will be constructed, to change the location of a Building, to add a more complete description of newly constructed Units, to record additional Plans to supplement or modify those included herein, and to amend the percentage of interest in Common Elements of the Units. Each Owner, and each holder of a mortgage or trust indenture on a Unit, or by recordation of a mortgage or trust indenture on the Unit, shall be deemed to consent to amendment of this Declaration by Developer in accordance with this plan of construction.
- (E) Any liens arising as a result of Developer's ownership of and construction of Units shall not attach to the interests of existing Owners or those of Eligible Mortgage Holders of existing Units.
- (F) Until all Units are built and sold, Developer shall pay the proportionate share of real property taxes and assessments attributable to any Units not yet built or built, but yet to be sold by it. Developer shall insure, to the extent it deems necessary, all Units under construction, and pay the cost of such insurance. For each complete Unit owned by it, Developer shall have all the rights and duties afforded to any Owner under the terms of this Declaration, the By-Laws of the Association, and Montana law.

4.3. Division of Property. The Property is divided as follows:

- (A) **Units.** Each of the Units are separately shown, numbered and designated in the Plan, and shall be a separate feehold estate consisting of the space bounded by and contained within the exterior surfaces of the walls of the townhome and Garage, in case of a Garaged Stand Alone Unit, the soil under the concrete floor and around the concrete footings of the townhome and Garage, in case of a Garaged Stand Alone Unit, the exterior of the roof of the townhome and Garage, in case of a Garaged Stand Alone Unit, and the common wall between two (2) townhomes or two (2) Garages, in case of a Garaged Stand Alone Unit, to the center of the common wall. The land underneath each Unit, including the Garage, in case of a Garaged Stand Alone Unit, shall be part of the Unit. The front porch, patio, sidewalk, steps, and walkways serving only one (1) Unit as well as the land underneath each shall be part of that one (1) Unit served. The air conditioning compressor and its pad, if any, are also part of the Unit. The Owner shall not be deemed to own pipes, wires, conduits, or other public utility lines running through said respective Units which are utilized for, or serve more than one (1) Unit, except as tenants in common with the other Owners. Utility lines and pipes, wires, conduits which serve only one (1) Unit shall be a part of the Unit from the interior of the Unit to the point where they are metered or join lines or pipes serving other Units. Each Unit shall be subject to the provisions of the Governing Documents, and all or any covenants running with the land and appurtenant to the Property. These restrictions, covenants and provisions shall be binding upon the Owners, their heirs, successors, personal



representatives and assigns, for so long as this Declaration and By-Laws are in effect.

- (B) **Common Elements.** The remaining portion of the Property constitutes Common Elements as defined above. Each Owner shall have, as appurtenant to that Owner's Unit, an undivided interest in and to the Common Elements and the ownership of each Unit shall include a Unit and such undivided interest in the Common Elements. The common interest appurtenant to each Unit is permanent in character and cannot neither be altered nor separated from the Unit. Any conveyance or transfer of the Unit shall include the undivided common interest, the Owner's interest in the Association, and any other benefits or burdens appurtenant to that Owner's Unit. Each Unit shall have an undivided one thirty-fourth (1/34th) undivided interest in the Common Elements.

4.4. **Owners' Easements of Enjoyment.** Every Owner shall have a right and easement of enjoyment in and to the Common Elements, which shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

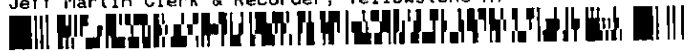
- (A) The right of the Association to establish uniform rules pertaining to the use of the Common Elements; and
- (B) The right of the Association to dedicate or transfer all or any part of the Common Elements to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective without the written consent of a majority of the votes of the Association.

4.5. **Rights of Entry and Use.** The Units and Common Elements shall be subject to the following rights of entry and use:

- (A) The right of the Association's agents or employees to enter any Unit or Limited Common Elements to inspect for or cure any violation of the Governing Documents, provided that the Owner has received notice as required by the Governing Documents except in case of emergency, in which case no notice need be given the Owner.
- (B) The access rights of the "Certified Operator" (defined below) and Association's agents or employees to monitor, maintain, repair or replace the water and sewage system servicing the Property, improvements or other property located in the Common Elements.
- (C) The encroachment rights set forth below.

4.6. **Partition Prohibited.** The Common Elements shall remain undivided. Except as provided in Montana Code Annotated, Section 70-23-805 or herein, no Owner shall bring any action for partition, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Property. This Section 4.6 does not prohibit, however, the judicial partition by sale of a single Unit owned by two (2) or more persons and division of the sale proceeds.

4.7. **Delegation of Use.** Any Owner may delegate his or her rights of use and enjoyment in the Common Elements to the members of his or her family or guests and invitees that are staying in the Owner's Unit or visiting such Owner. However, if an Owner has sold his



or her Unit to a contract purchaser or rents it, the Owner, members of his or her family, guests or invitees shall not be entitled to use and enjoy the Common Elements while the Owner's Unit is occupied by such contract purchaser or tenant.

4.8. Encroachment Rights. If any portion of the Common Elements encroaches on any Unit or any part thereof or any portion of a Unit encroaches on any Common Element or Unit due to engineering errors, errors or adjustments in original construction, reconstruction, repair, settlement, shifting or movement of a Building, or any other cause, the Owner of any such encroachment (each, an "Encroachment", and collectively, the "Encroachments") shall have the right to maintain, repair or replace the Encroachment, so long as it exists, and the rights and obligations of Owners shall not be altered in any way by said Encroachment, settlement or shifting; provided, however, that no right shall be created in favor of an Owner if said Encroachment occurred due to the negligent or intentional conduct of said Owner.

ARTICLE V. EASEMENTS

5.1. Common Element Easements. Nonexclusive rights of ingress and egress through the General Common Elements for all persons making use of such in accordance with this Declaration are appurtenant to each Unit and all the General Common Elements are subject to such rights.

5.2. Easement for Structural Support. Every portion of a Unit and Common Element which contributes to the structural support of the Buildings and Common Element shall be burdened with a non-exclusive easement of structural support.

5.3. Easement for Utilities. A non-exclusive easement through the Units and Common Elements for all facilities necessary to furnish utility services to the Units or any Common Element, which facilities shall include but not be limited to conduits, ducts, plumbing and wiring; provided that the easements for such facilities through a Unit or the Buildings shall be only substantially in accordance with the Plan.

5.4. Grant of Easements by Association. The Association shall be empowered to grant such easements, licenses, rights-of-entry and rights-of-way over, under and across the Property for utility purposes, access purposes or other lawful purposes as may be necessary for the benefit of the Association.

5.5. Easements for Inspection, Installation, Maintenance, Repair, and Replacement. The Association, the Developer, and all public or private utilities shall have such easements over, under, across and through the Property, including all Units and Common Elements, as may be necessary to fulfill any responsibilities of inspection, installation, maintenance, repair, or replacements which they or any of them are required or permitted to perform under the Governing Documents or by law to water mains, sanitary sewer mains, storm water, electric, gas, telephone and/or cable systems, fire pumps, drainage or any other facilities or systems of the Development. These easements include, without any implication of limitation, the right of the Association to obtain access at all times to meters, controls, valves, pipes, conduits, and other Common Elements located within or to which access may be gained through any Unit or its appurtenant Limited Common Elements.

5.6. Easement for Services. Declarant hereby grants an easement over and across the Common Elements and driveways and sidewalks for mail service, solid waste services, fire service, police protection, other emergency vehicles and other publicly-owned vehicles being use for official federal, state or local government purposes.



5.7. **Easement for Encroachments.** There shall exist easements for Encroachments, and the maintenance, repair or replacement thereof so long as they stand by the Owner and/or the Association, as applicable.

All Encroachments and easements set forth herein shall not be considered or determined to be encumbrances either on the Common Elements or the Units for purposes of marketability of title.

ARTICLE VI. ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

6.1. **Membership.** Each Owner of a Unit shall automatically, upon becoming an Owner, be a Member of the Association, and shall remain a Member thereof until such time as the ownership ceases for any reason. When more than one person owns any Unit, all of such persons shall be Members; however, each Unit shall have only one (1) vote, regardless of the number of Owners of a particular Unit. Owners shall also be bound by the CCRs for Annafeld Subdivision.

6.2. **Transfer of Membership.** Membership in the Association of each Owner shall be appurtenant to the ownership of a Unit and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except upon the transfer of fee simple title to said Unit or pursuant to a contract for deed sale of the Unit. Any attempt to make a prohibited transfer shall be void. Any transfer of fee simple title of a Unit shall operate automatically to transfer the membership in the Association appurtenant thereto to the transferee.

6.3. **Association to Manage the Property.** The management of the Common Elements shall be vested in the Association in accordance with the Governing Documents. The affairs of the Association shall also be administered in accordance with the provisions of the Governing Documents.

6.4. **Limitation on Liability.** Neither the Manager(s) nor the Association shall be liable for any failure of water supply or other service to be obtained and paid for by the Association hereunder, or for injury or damage to person or property caused by the elements, or by another Owner or person in the Property, or resulting from water or dirt that may leak or flow from outside or from any parts of the Common Elements, or from any of its pipes, drains, conduits, appliances or equipment, or from any other place unless the Association is insured for the loss. No diminution or abatement of Assessments shall be claimed or allowed for inconvenience or discomfort arising from the making or repairs or improvements to the Common Elements or from any action taken in compliance with any law, ordinance or orders of a governmental authority.

ARTICLE VII. DUTIES AND POWERS OF THE ASSOCIATION

7.1. **Duties.** In addition to the duties enumerated in its Governing Documents, and without limiting the generality thereof, the Association shall perform the following duties:

- (A) **Maintenance.** The Association shall perform all maintenance obligations for which it is responsible hereunder. However, each Owner shall be responsible for maintenance or repairs arising out of or caused by the willful or negligent act or omission of such Owner, or his or her guests, tenants, invitees or pets, the cost of which is not covered by insurance carried by the Association. The Association shall make the repairs and assess the cost thereof to the responsible Owner, as provided in the By-laws.
- (B) **Right of Access.** The Association shall have the irrevocable right, to be exercised by the Manager(s), to have access to each Unit from time to time



during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Limited Common Elements therein or accessible therefrom or for making emergency repairs therein necessary for the maintenance, repair or replacement necessary to prevent damage to the General or Limited Common Elements or to any Unit. Damage to any part of the Unit resulting from maintenance, repair, emergency repair or replacement of any of the General or Limited Common Elements or as a result of an emergency repair within the Unit at the instance of the Association shall be designated Common Expenses by the Association and assessed in accordance with such designation.

- (C) **Insurance.** The Association shall maintain such policies of insurance as are required by the By-Laws.
- (D) **Discharge of Liens.** The Association shall discharge by payment, if necessary, any lien against the Common Elements, and charge the cost thereof to the Member responsible for the existence of the lien as provided in the By-laws.
- (E) **Assessments.** The Association shall fix, levy, collect, and enforce Assessments as set forth in Article VIII hereof.
- (F) **Payment of Expenses.** The Association shall pay all expenses and obligations incurred by the Association in the conduct of its business including, without limitation, all licenses, taxes or governmental charges levied or imposed against the Property or the Association.

7.2. **Powers.** In addition to the powers enumerated in the Governing Documents and without limiting the generality thereof, the Association shall have the following powers:

- (A) **Adoption of Rules.** The Association may adopt reasonable rules not inconsistent with this Declaration relating to (i) the use of the Common Elements and all facilities thereon, and (ii) the conduct of Owners and their tenants and guests with respect to the Property and other Owners. Written copies of the rules and any schedule of fines shall be furnished to the Owners.
- (B) **Easements.** The Association shall have the authority, by the vote or written consent of a majority of the Owners, to grant easements over, under and through the Common Elements in addition to those shown on the Plan, where necessary for utilities, cable television, sewer facilities, or other purposes, to serve the Owners or the Units in common.
- (C) **Manager.** The Association shall have the authority to employ a Manager or other persons and to contract with independent contractors to perform any assigned duties as directed by the Board, except for the responsibility to levy fines, impose discipline, hold hearings, or make capital expenditures.
- (D) **Certified Operator.** The Association shall have both the authority and obligation to retain a certified operator for the Development's water supply system in accordance with ARM 17.38.249 (the "Certified Operator") to perform all required monitoring and reporting under federal and state law.
- (E) **Access.** The Association's agents or employees shall have the right, after reasonable notice (not less than forty-eight (48) hours except in emergencies) to the Owner thereof, to enter any Unit or to enter any portion of the Common



Elements at reasonable hours for the purpose of performing inspection, construction, maintenance, or repair for the benefit of the Common Elements or the Owners in common, or correcting violations of the Governing Documents. Such entry shall be made with as little inconvenience to the Owner as practicable, and any damage caused thereby shall be repaired at the expense of the Association unless the need for entry was caused by the Owner.

- (F) **Enforcement.** The Board shall have the power to enforce the provisions of the Governing Documents in any manner provided by law or in equity, including but not limited to self-help. The Association may impose fines or take disciplinary action against any Owner for failure to pay Assessments or for violation of any provision of the Governing Documents. Penalties may include, but are not limited to, fines, recording a notice of noncompliance against a Unit, suspension of voting rights, or other appropriate discipline as provided in the Governing Documents. No hearing is necessary for action taken by the Association for the failure to pay Assessments.
- (G) **Contracts.** The Association shall have the power to contract for goods and/or services for the Common Elements, and the Association, subject to limitations of the By-laws, or elsewhere set forth in the Governing Documents. This includes the right to obtain legal and accounting services necessary or proper for the operation of the Buildings and the Association and the power to employ a Manager or contract with independent contractors to perform all or part of the duties and responsibilities of the Association.
- (H) **Appointment of Trustee.** The Association has the power to appoint or designate a trustee to enforce Assessment liens by sale as provided in Montana Code Annotated, Section 70-23-608.
- (I) **Contingency Reserve Fund.** The Association may establish and maintain a working capital and contingency reserve fund in an amount to be determined by the Board (a "Reserve Fund"). A Reserve Fund shall be used as the Board shall deem fit to fund major maintenance, repair or replacement of Common Elements or toward other major expenses which are the responsibility of the Association hereunder, and shall be added to and made a part of annual Assessments provided for herein. Monies from a Reserve Fund may only be used for the purposes for which they have been established and shall be kept separate from other funds of the Association.
- (J) **Purchase Insurance.** The Association shall purchase insurance for the Common Elements and all or any part of the Units for such risks, with such companies, and in such amounts as the Board shall deem to be equitable, in accordance with the By-Laws.
- (K) **General Assembly Assessments.** The Association shall collect from each Owner an amount equal to that Owner's assessments due to the General Assembly pursuant to the CCRs and shall pay such sums to the General Assembly on behalf of such Owner.
- (L) **Other Powers.** In addition to the powers contained herein, the Association may exercise the powers granted to nonprofit corporations under Montana Code Annotated, Section 35-2-118.



7.3. Commencement of Association's Duties and Powers. The Association shall assume all duties and powers, and the Declarant and Developer shall be relieved of any further responsibility for performing those duties or exercising those powers, as of the date that this Declaration is recorded in the office of the clerk and recorder for Yellowstone County, Montana.

7.4. Amendment.

- (A) Prior to the sale of all of the Units by Developer, Developer reserves the right to amend this Declaration, without consent of any Owner or lender, (1) as authorized herein, or (2) to comply with any FHA, VA, Freddy Mac, or FNMA requirements for guaranteeing or purchasing loans on the Units. All Owners and all mortgagees of a Unit, by acceptance of a deed, mortgage or trust indenture to any Unit, shall be deemed to consent to any such amendment by Developer and to grant unto Developer an irrevocable limited power of attorney, to execute, acknowledge and record such amendments. Recordation of amendments modifying the percentage of interest in Common Elements attached to each Unit shall be deemed a conveyance, transferring title in the Common Elements in accordance with the amendment.
- (B) Except as otherwise provided in this Declaration, the provisions of this Declaration shall be amended only by affirmative vote of the Owners of 75% of the Units. If a Unit has more than one (1) Owner, only one (1) Owner of that Unit need consent. No such amendment shall be effective prior to completion and sale of all the Units by Developer, unless also approved by Developer. Amendments of a material adverse nature to Eligible Mortgage Holders must be approved by Eligible Mortgage Holders that represent at least 51% of the votes of Units that are subject to mortgages. Approval shall be assumed when an Eligible Mortgage Holder fails to submit a response to any written proposal for an amendment within sixty days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested. No other Amendment need be approved by Eligible Mortgage Holders and no amendment shall require the approval of any holder of a mortgage or trust indenture other than Eligible Mortgage Holders.
- (C) All amendments to this Declaration shall be recorded in the office of the Yellowstone County Clerk and Recorder, Billings, Montana, and no amendment will be effective until it is recorded.

ARTICLE VIII. ASSESSMENTS

8.1. Common Expenses. All of the following expenses shall be considered Common Expenses and charged to the Owners according to each Owner's fractional interest of undivided ownership interest in the Common Elements, unless a special allocation is deemed appropriate in accordance with Section 8.5:

- (A) Administrative expenses of the Association, including management, accounting and legal fees incurred by the Association;
- (B) Costs incurred by the Association in enforcing the Governing Documents and rules and regulations of the Association to the extent such costs are not paid by the violating Member;

- (C) The cost of maintenance, repair, or replacement obligations for which the Association is responsible, including the costs of maintenance, repair and replacement of the Common Elements, maintenance and repair of the exterior of the Units, maintenance and repair of the wells, pumps and underground sprinkler systems, the cost of maintenance and repair of the fences installed by Developer, the cost of snow removal from the driveways and sidewalks and walkways, the cost of mowing, fertilizing and otherwise maintaining all lawns and landscaping, the cost of maintenance and repair of the water and sanitary sewer lines and other utility lines and pipes serving more than one (1) Unit;
- (D) The cost of maintenance, repair or replacement of the storm water inlets, manholes and piping, and any other costs for keeping the storm water detention area in good repair and condition;
- (E) The cost of maintenance, repair or replacement of the sanitary sewer mains, manholes and piping and water mains, manholes and piping, including valves and curbstops and any other costs for keeping the water and sewer systems in good repair and condition;
- (F) The cost of water and sewer provided to each Unit and to the Common Areas and all utility bills for Common Areas;
- (G) The cost of retaining the Certified Operator;
- (H) The costs of insurance premiums and deductibles for which the Association is responsible, except for the insurance covering the Garages which shall be specially allocated to the Garaged Stand Alone Units;
- (I) Capital improvements, if such capital improvements are made with the consent of 70% of the Owners entitled to vote or in the case of capital improvements relating to the Community Building, if such capital improvements are made with the consent of 50% of the Owners entitled to vote, and, until completion of construction of all Units, with the consent of Developer;
- (J) Income taxes payable by the Association, if any, and corporation fees payable to the Montana Secretary of State;
- (K) The amount of assessments levied against the Owners pursuant to the CCRs which are due and payable to the General Assembly; and
- (L) All expenses agreed upon by the Association in the performance of its obligations hereunder, expenses set out herein and in the By-Laws, expenses declared common by the Act, and all other expenses unanimously agreed by the Owners.

8.2. Assessments, Generally. Assessments shall be made by the Association for all Common Expenses. The initial annual Assessment for a Unit shall begin at the time of the completion of a Unit, and an Owner's obligation to pay such Assessment shall begin upon Developer's sale of a Unit. The first annual Assessment shall be adjusted according to the number of months remaining in the calendar year. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth when the Assessments and charges on a specified Unit have been paid.



8.3. Annual Assessment. The Association may establish and levy annual Assessments in an amount that the Association estimates will be sufficient to raise the funds needed to perform the duties of the Association during each fiscal year. The annual Assessments may include additional amounts for the creation of a Reserve Fund. The Board may, whenever deemed necessary or appropriate, levy Assessments in an amount sufficient to meet the projected contingency reserve needs of the Association.

8.4. Special Assessments. In addition to the annual Assessments authorized above, the Association may levy, in any Assessment year, a special Assessment applicable to that year only for the purpose of defraying in whole or in part, the cost of any construction, re-construction, repair or replacement of a capital improvement upon the Common Elements, provided that any such Assessment shall have the consent of at least 70% of the Owners entitled to vote or, in the case where the capital improvement relates to the Community Building, at least 50% of the Owners entitled to vote. No special Assessment shall be made until all of the Units have been constructed and sold by Developer. Notwithstanding the foregoing, the Board may impose special Assessments for unanticipated emergency expenses without a vote of the Members.

8.5. Allocation among Units. Except for as otherwise set forth herein and for Assessments which may be levied against particular Units as set forth below, all other Assessment shall be assessed to Units on the basis of their respective undivided percentage interest in the Common Elements. If the Board determines that a Common Expense is incurred by the Association as a result of the action or inaction of any one (1) or more Owners or benefits only one (1) or more Owners, but not all of the Owners, the Assessment levied to pay such expense may be allocated only to the Units owned by such Owners who are determined by the Board to be responsible or benefitted and not to Units owned by Owners who are determined not to be responsible or benefitted.

8.6. Creation of the Lien and Personal Obligation of Assessments and Other Charges. The Declarant hereby covenants, and each Owner, by acceptance of a deed therefore (whether or not it shall be so expressed in such deed), is deemed to covenant and agrees to pay to the Association all Assessments and to waive any right said Owner may have, under the laws of the United States or the State of Montana, to claim a homestead exemption for said Assessments. Assessments shall not include costs attributable to Units under construction or to Units on which construction has not yet begun. A mortgagee or beneficiary of a first trust indenture, or other purchaser who obtains title to a Unit by purchasing at a foreclosure sale of a first mortgage or first trust indenture shall be liable for unpaid annual Assessments chargeable against the Unit which became due prior to the foreclosure sale to the extent expressly assumed by them. All Assessments that are not paid within ten (10) days from the date they are due and payable become delinquent and are subject to interest from the due date at the rate of ten percent (10%) per annum and penalty charges. No Owner may exempt himself from liability for Assessments by waiver of the use of enjoyment of any of the Common Elements or by abandonment of his or her Unit. The aforesaid obligations together with interest, late payment fees, court or arbitration costs, reasonable attorney and paralegal fees and all other collection expenses, shall be a charge and a continuing lien upon the Unit against which each such Assessment is made, or with reference to which each such charge is incurred. Each Assessment or charge together with interest, collection costs, court or arbitration costs and reasonable attorney and paralegal fees shall also be the personal obligation of the person who was the Owner of such Unit at the time when the Assessment fell due or charge was incurred. If more than one person or entity owns a Unit, all such Owners shall be jointly and severally liable for the obligation.

8.7. Remedies for Non-payment. All sums assessed but unpaid shall constitute a lien on such Unit superior to all other liens and encumbrances, except only for tax and special assessment liens on the Unit in favor of any assessing authority, and all sums unpaid on a first mortgage or a first trust indenture of record, including all unpaid obligatory sums as may be



provided by such encumbrance. To evidence such lien, the Manager or Board shall prepare a written notice of lien setting forth the amount of such unpaid indebtedness, the amount of accrued interest and late charges thereon, the name of the Owner of the Unit and a description of the Unit. Such notice shall be signed and verified by a Manager, or the Board's authorized agent, and shall be recorded in the office of the Clerk and Recorder of Yellowstone County, Montana. Such lien shall attach from the date of recording such notice. Such lien may be enforced by the foreclosure of the defaulting Owner's Unit by the Association in the manner provided in the Act and as provided by the foreclosure of a mortgage on real property upon the recording of a notice of claim thereof. In any such foreclosure, the Owner shall be required to pay a reasonable rental for the Unit and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same. Suit to recover a money judgment for unpaid Assessments shall be maintainable without foreclosure or waiving the lien securing the same. In any such proceeding the Owner may be required to pay the costs, expenses and attorney fees incurred in filing a lien, and in the event of foreclosure proceedings, additional costs, expenses and attorney and paralegal fees incurred. In addition to the foregoing, the Association may also shut off the water to the Unit of any Owner who fails to pay an assessment within 15 days after the due date and may continue to withhold water to the Unit until such time as all assessments, together with accrued interest and the cost of shutting off and turning on the water, if any, are paid by the Owner. However, the Association shall not shut off the water to any Unit unless at least ten (10) days' prior written notice is delivered to such Owner by certified mail addressed to the most recent address provided by the Owner to the Association.

8.8. Bidding at Foreclosure. The Association on behalf of the other Owners shall have the power to bid on the Unit at a foreclosure or other legal sale and to acquire and hold, lease, mortgage with the same. Any lienholder holding a lien on a Unit may pay, but shall not be required to pay, any unpaid Assessments payable with respect to any such Unit, and upon such payment, such lienholder shall have a lien on said Unit for the amounts paid of the same rank as the lien of the encumbrance without the necessity of having to file a notice or claim of such lien.

8.9. Waiver. The Developer, for each completed Unit owned by it, and each Owner, by acceptance of a deed, whether or not it shall be expressed in said deed, are deemed to covenant and agree to pay to the Association all regular and special Assessments made by the Association and to waive any right said Owner may have, under the laws of the United States or the State of Montana, to claim a homestead exemption for said Assessments.

8.10. Proration; Fees.

- (A) The Developer, as agent of the Association, may collect from the initial buyer of each Unit, at the time of closing, a payment equal to the buyer's pro-rata share of (i) the insurance paid by the Association for the year and (ii) the Assessment for the current Assessment period. The Developer shall be entitled to retain the buyer's pro-rata share of insurance for the current premium period if Developer paid the premium for the Unit sold for that period; otherwise, the premium shall be paid to the Association's insurer.
- (B) The Association, may also collection from the initial buyer of each Unit and each subsequent purchaser of a Unit, at the time of closing, an initial set-up fee in an amount equal to two (2) months' Assessments for the Unit. These funds are not refundable and shall not be considered to be a prepayment of regular monthly Assessments.

8.11. Voluntary Conveyance. In a voluntary conveyance of a Unit, the purchaser of the Unit (the "Purchaser") shall be jointly and severally liable with the selling Owner for all unpaid Assessments by the Association against the latter for that Unit's share of the Common Expenses up to the time of the grant or conveyance, without prejudice to the Purchaser's right to recover from the



selling Owner the amounts paid by the Purchaser therefore. However, any such the Purchaser shall be entitled to a statement from the Manager or Association setting forth the amount of said unpaid Assessments against the selling Owner due the Association and such Purchaser shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid Assessments made by the Association against the selling Owner in excess of the amount therein set forth.

ARTICLE IX. EMINENT DOMAIN

9.1. Eminent Domain.

- (A) If a portion of the Common Elements only is acquired by eminent domain and if a separate award is not made to each Owner, the award shall be allocated to each Owner in proportion to each Owner's percentage of undivided interest in the Common Elements.
- (B) If part of the Development which includes one (1) or more individual Units is acquired by eminent domain, the award shall be allocated to Owners as follows:
 - (i) The Owner of each individual Unit taken shall receive the fair market value of their Unit, including interest in the Common Elements, whether or not any Common Elements are actually taken. Thereafter, the Owner shall be divested of his entire property interest in the Development attributable to the Unit taken and shall have no further property interest in the Property, including the Common Elements. Said Common Elements shall be reallocated to the remaining Owners in proportion to each remaining Owner's percentage of undivided interest in the Common Elements. In addition, the Owner of each Unit taken, following compensation, shall have no further voting rights as a Member.
 - (ii) The remainder of the award, if any, shall be divided among the remaining Owners in proportion to each Owner's percentage of undivided interest in the Common Elements.
- (C) If all of the Development is acquired by eminent domain and a separate award is not made to each Owner, each Owner and any holders of mortgages or liens on the Unit shall receive the fair market value of the Unit excluding its appurtenant interest in the Common Elements; the balance of the award, less any costs incurred by the Association in determining the fair market value of each Unit, shall be divided equally among the Owners.
- (D) The Directors of the Association shall represent the Owners in any eminent domain negotiations, legal proceedings, settlement or agreements; each Owner, by acceptance of a deed, irrevocably appoints the Association as that Owner's attorney-in-fact for this purpose.
- (E) Payment of any award shall be made jointly to the Owners of a Unit and the lender(s) having a mortgage on the Unit, if any.



ARTICLE X. MORTGAGEE PROVISIONS

10.1. Eligible Mortgagee Protection. Except as specifically provided in this Declaration or in the Act, no provision of this Declaration shall be construed to grant to any Owner or to any other person, any priority over any lien rights of an Eligible Mortgage Holder pursuant to its security interest in the case of distributions of insurance proceeds or condemnation awards.

10.2. Subordination. Notwithstanding any contrary provision of this Declaration, the lien of any Assessment for Common Expenses upon any Unit (and any penalties, interest on Assessments, late charges or the like) shall be subordinate to, and shall in no way affect the rights of an Eligible Mortgage Holder; provided, however, that such subordination shall apply only to Assessments on a Unit which have become due and payable prior to a sale or transfer of such Unit pursuant to a decree of foreclosure, or to any deed or other proceeding in lieu of foreclosure, and any such sale or transfer in foreclosure or in lieu of foreclosure shall not relieve the purchaser of the Unit from liability for any Assessment thereafter becoming due, nor from the lien of any such subsequent Assessment.

10.3. Notice of Actions. The Association shall give prompt written notice to each Eligible Mortgage Holder of:

- (A) Any condemnation loss or any casualty loss which affects a material portion of any Unit in which there is a security interest held by such Eligible Mortgage Holder;
- (B) Any delinquency in the payment of Assessments owed by an Owner whose Unit is subject to a first security interest held by such Eligible Mortgage Holder, which remains uncured for a period of 60 days;
- (C) Any default in the performance by an individual Owner whose Unit is subject to a first security interest held by such Eligible Mortgage Holder of any obligation under the Governing Documents that is not cured within sixty (60) days;
- (D) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;
- (E) Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders; and
- (F) Any judgment rendered against the Association.

10.4. Inspection of Books. The Association shall permit any Eligible Mortgage Holder to inspect the books and records of the Association during normal business hours.

10.5. Financial Statements. The Association shall provide any Eligible Mortgage Holder, which submits a written request, with a copy of an annual financial statement within 90 days following the end of each fiscal year of the Association. Such financial statement may be audited by an independent certified public accountant if any Eligible Mortgage Holder requests it, in which case the Eligible Mortgage Holder shall bear the cost of the audit.



10.6. **Enforcement.** The provisions of this article are for the benefit of Eligible Mortgage Holder and their successors, and may be enforced by any of them by any available means, at law, or in equity.

10.7. **Attendance at Meetings.** Any representative of an Eligible Mortgage Holder may attend and address any meeting which an Owner may attend.

ARTICLE XI. MAINTENANCE

11.1. Maintenance.

(A) **Owners.** Every Owner shall be responsible for (i) all maintenance of and repairs to the interior of that Owner's Unit, including, but not limited to, the replacement of broken glass in the Unit, for repairs to the glass and doors, and for routine maintenance of the front porch or deck which serves the Unit, (ii) all damages to the other Units or to the Common Elements resulting from his or her failure to perform such maintenance and repair, (iii) obtaining special perils and public liability and property insurance as required under the By-laws, (iv) paying all taxes and assessments on that Owner's Unit, (v) paying before delinquency all utilities provided to his or her Unit, except water and sewer which are the responsibility of the Association and are Common Expense charged to Owner through Assessments, (vi) maintaining and repairing all fixtures affixed to the Unit, and (vii) maintaining, repairing and replacing all equipment and utility lines and pipes serving only his or her Unit. Each Owner shall use a reasonably high standard of care in performing the maintenance and repair obligations set forth above, so that the entire Property will reflect a high pride of ownership. The Board of Directors shall be the final authority to determine whether an Owner is providing adequate maintenance and repair. All maintenance and repairs for which an Owner is responsible shall be paid for by the Owner. If an Owner fails or refuses to satisfy that Owner's maintenance and repair obligations, the Association may, but is not obligated to, enter onto the Owner's Unit, make the necessary repairs or perform the necessary maintenance, and charge the actual costs of such repairs or maintenance to the Owner upon ten (10) days advance written notice. Any such costs shall be a lien on the Unit on which repairs were made or maintenance was done, and if unpaid, may be foreclosed in the same manner as a lien for Common Expenses.

(B) **Association.** Unless designated as a responsibility of an Owner above, the Association shall be responsible for any maintenance, repair, and replacement of the Common Elements, including the Community Building, as well as the water, sewer and storm water systems. The Association shall also be responsible for maintenance and repair of the exterior of the Units, except as otherwise provided herein. The Association shall pay for the maintenance and repair of the wells, pumps and underground sprinkler systems maintenance and repair of the fences installed by Developer, the cost of snow removal from the driveways and sidewalks and walkways, and the mowing, fertilizing, and other maintenance of all lawns and landscaping. The Association shall be responsible for watering the landscaping in the public rights of way adjoining the Property. The Association may employ personnel necessary for the maintenance, upkeep, and repair to which it is responsible. The Association shall use a reasonably high standard of care in providing such maintenance, management and repair, so that the Property will reflect a high pride of ownership.



- (C) **Expenses.** Expenses for maintenance or repairs to the Property due to the misuse or neglect of an Owner shall be charged to such Owner. The Owner of a Unit that suffers casualty damage shall pay the cost of repair to the extent the damage is not covered by insurance.
- (D) **Maintenance of Storm Water Facilities.** The storm water detention system for the Property includes underground pipes with storm inlets and a sump beneath each inlet and manholes at various locations. The Association shall be responsible for keeping the inlets free of debris, for periodically cleaning debris and silt out of the sumps beneath the inlets. The finish grade of the land in the project must not be changed after completion without prior review and approval of a civil engineer and, if required, by the Montana Department of Environmental Quality.
- (E) **Maintenance of Water and Sewer Systems.** The water and sewer systems for the Property includes underground pipes, curbstop valves for each Unit, and manholes at various locations per the Operation and Maintenance manual for these systems.

11.2. Access At Reasonable Hours. For the purpose of performing the maintenance authorized by this Article, the Association's agents or employees shall have the right after reasonably notice to the Owner, to enter upon a Unit or upon any portion of the Common Elements, at reasonable hours. Such notice is not required in the event of an emergency.

11.3. Maintenance of Catherina Court. Per the Declaration of Road Easement, recorded with the Clerk and Recorder of Yellowstone County, Montana on May 11, 2018 under Document No. 3848860 and re-recorded on May 25, 2018, under Document No. 3849966 (the "Easement Declaration"), some unit owners in Walter Creek Townhomes (the "WC Owners") are responsible for one-half (1/2) of the total cost of maintenance, repair and upkeep of Catherina Court ("Road Maintenance"). The Association shall present an invoice to the Walter Creek Townhomes Owners Association (the "WC Association") for amounts owed by the WC Owners for Road Maintenance. The WC Association is required pay the Association such amounts due within 30 calendar days of receipt of such invoice. Each WC Owner and that WC Owner's unit shall be subject to a lien for the Road Maintenance expenses for which it is responsible. The Association is authorized under the Easement Declaration to take such legal steps as necessary to collect Road Maintenance expenses from the WC Owners and to file and enforce the liens securing their payment in accordance with Montana law relating to foreclosure of liens.

ARTICLE XII. UTILITIES

12.1. Rights and Duties of Owners. The rights and duties of the Owners with respect to sanitary sewer, water, electricity, gas and telephone lines and facilities shall be governed by the following:

- (A) **Resolution of Disputes.** In the event of a dispute between Owners with respect to the repair or rebuilding of common sanitary sewer or water connections, lines or pipes, or with respect to the sharing of the cost thereof, then upon written requests of one of such Owners, addressed to the Association, the matter shall be submitted to the Manager(s) who shall decide the dispute, whose decision shall be conclusive.
- (B) **Multiple Unit Utility Meters.** In the event that the Units shall be served by water, gas, electricity or other utilities by meters that are not separated by each Unit, the



Association may establish a fee for such utility service to be paid by each Owner in lieu of a separate metered charge for such utility service. Such fee, on a pro-rata basis, shall represent a reasonable estimate of the utility cost of providing service through such meter but such fee may provide for a Reserve Fund for unusual demand or other contingency. The amount of any fee for utility service shall be assessed and the full amount thereof shall be secured by a lien as provided in this Declaration.

12.2. Association's Duty. There is 1 meter(s) for domestic water use. The Association is billed and pays for domestic water use and sanitary sewer provided to each Unit, which expense is a Common Expense.

ARTICLE XIII. MISCELLANEOUS

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

13.2. Enforcement. Each Owner, tenant or occupant of a Unit shall comply with the provisions of the Governing Documents and resolutions of the Association, all as lawfully amended from time to time, and failure to comply with such shall be grounds for an action to recover sums due, for damages, or for injunctive relief. Each Owner shall be responsible to the Association for compliance with the foregoing by the Owner's guests and lessees. The Association, or any Owner, shall have the right (but not the obligation) to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of the Governing Documents, and in such action shall be entitled to recover attorney fees and costs. Only the Association can enforce the Owners' obligation to pay Assessments.

13.3. Arbitration. The Association and any aggrieved Owner shall have the right to binding arbitration and the right to maintain an action for specific performance to compel arbitration or enforce a decision of an arbitrator against any Owner or the Association for failure to comply with the provisions of this Declaration, the By-Laws, or any rules and regulations adopted by the Association, except for claims of non-payment of Assessments, fines or other monies owed to the Association by any Owner and foreclosure of the lien for unpaid Assessments, fines, or other monies owed to the Association, which claims shall be enforced by a court action. The prevailing party in any such action and in binding arbitration shall be entitled to recover its costs and attorney fees actually incurred from the losing party. In addition, the Association shall be entitled to recover from any Owner violating the provisions of this Declaration, the By-Laws or the rules and regulations duly adopted by the Association, including failure to pay Assessments or other monies owed the Association, when due, all costs and attorney fees incurred in compelling compliance or collection, without filing for arbitration or bringing a court action. Owners shall be responsible for non-compliance by their tenants, unless the tenant has been designated as the Owner pursuant to 70-23-102(17), MCA, and for non-compliance by members of the Owner's family.

13.4. Nonwaiver. Failure by the Association or by any Owner to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

13.5. Violation and Nuisance. Every action or omission whereby a covenant, condition or restriction of the Governing Documents is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by the Association, or any Owner.

13.6. Violation of Law. Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any portion of the Buildings is hereby



declared to be a violation of these restrictions and subject to any or all of the enforcement procedures herein set forth.

13.7. Remedies Cumulative. Each remedy herein provided is cumulative and not exclusive.

13.8. Service of Process. The name and address of the person to receive service of process for the Association until another designation is filed of record shall be the President of the Association. The interim President of the Association is **BRADLEY R. MCCALL**, 1536 Mullowney Lane, Suite 100, Billings, Montana 59101. The provision may be amended in the manner provided in § 70-23-902, MCA.

13.9. Warranties. Neither the Declarant nor the Developer expressly makes any warranties or representations concerning the Property, the Units, this Declaration, the By-Laws or deeds of conveyance except as specifically set forth therein and no one may rely upon such warranty or representation not so specifically expressed therein. Estimates of Common Expenses are deemed accurate, but no warranty or guarantee is made or is intended, nor may one be relied upon.

13.10. Notices. Any writing to be given hereunder shall be delivered either personally or by private carrier, mail, electronic mail, or facsimile, to the Owner, if the writing is directed to the Owner, or an officer of the Association, if the writing is directed to the Association. Notice shall be deemed to be effective at the earliest of the following: (i) when received, (ii) when deposited in the United States mail, addressed to the recipient at the recipient's address shown in the Association's current record, with postage thereon prepaid, (iii) when faxed to the intended recipient's facsimile number on file in the Association's records, or (iv) when sent by electronic mail to the intended recipient's electronic mail address on file in the Association's records. Rejection or other refusal to accept notice, or the inability to deliver notice because of changed address of which no notice was given, shall be deemed to be receipt of the notice..

13.11. Conflict. In the event any conflict exists between this Declaration and the provision of the By-Laws, the provision of this Declaration shall govern and apply.

ARTICLE XIV. SEVERABILITY

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

ARTICLE XV. INTERPRETATION

The provisions of this Declaration and of the By-Laws to be promulgated and recorded herewith shall be liberally construed to effectuate the purposes of this Declaration and By-Laws and to create a townhome subject to and under the provisions of the Act.

ARTICLE XVI. NO WARRANTY

Developer will give the initial purchaser of each Unit a limited written warranty on the Unit.

DEVELOPER SPECIFICALLY DISCLAIMS ANY LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGE TO ANY PERSON, THE UNITS AND COMMON ELEMENTS, OTHER COMPONENTS, OR ANY OTHER REAL OR PERSONAL PROPERTY RESULTING FROM A DEFECT. ALL IMPLIED WARRANTIES, INCLUDING



WARRANTIES OF WORKMANSHIP, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND HABITABILITY, ARE EXPRESSLY DISCLAIMED AND DO NOT APPLY.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be made and executed according to the provisions of the Montana Unit Ownership Act, Section 70-23-101, MCA.

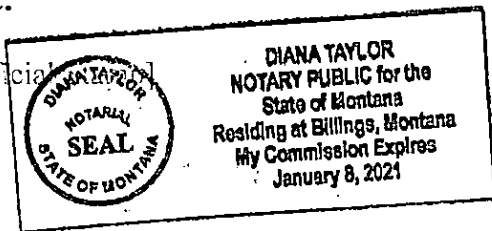
MCCALL DEVELOPMENT, INC.

By: *Bradley McCall*
Its: Treasurer

STATE OF MONTANA)
 :SS
County of Yellowstone)

This record was acknowledged before me on January 23, 2019 by
Bradley McCall as Treasurer of or for MCCALL DEVELOPMENT,
INC.

[Official



Diana Taylor
(Signature of notarial officer)

Title of officer (if not shown in stamp)