After recording, please return to:
JOHN B. DUDIS, JR.
Crowley, Haughey, Hanson, Toole & Dietrich P.L.L.P.
P.O. Box 759
Kalispell, MT 59901-0759

200700023866 Fees: $531.00 by: ME
DECLARATION OF UNIT OWNERSHIP by CROWLEY ETAI
Date 8/8/2007 Time 3:26 PM Page: 1 of 73
Paula Robinson, Flathead County Montana

APPROVED 8/8/07 @ 0924660

DECLARATION FOR THE TERRACES AT SOMERS BAY

This Declaration is hereby made and entered into this 12 day of April, 2007, by 5:00 O'Clock SOMEWHERE, LLC., hereinafter referred to as "Declarant", whereby lands and property hereinafter described are submitted and subject to the Montana Unit Ownership Act pursuant to Section 70-23-101, *et seq.*, Montana Code Annotated, as amended.

ARTICLE I. DEFINITIONS

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

1.1. Aggregate Votes. Shall mean the entire number of votes or persons present or available to vote in person or by proxy in a particular circumstance. Those paragraphs providing for the vote of Unit Owners shall mean that each Unit shall have one vote, notwithstanding the number of Owners of that Unit.

1.2. Assessment. Shall mean that portion of the Common Expenses that is to be paid by each Owner as determined by the Association in accordance with these Declarations and the By-Laws.

1.3. Association or Association of Unit Owners. Means all of the Unit Owners acting as a group and in accordance with duly adopted By-Laws and this Declaration. The Association shall be known as "The Terraces Condominium Association," and, after incorporation, shall be called "The Terraces Condominium Association, Inc."

1.4. Board or Board of Directors. Shall mean the governing body of the Association as more particularly defined in the By-Laws.

1.5. Building or Buildings. Means the building containing the Units and Common Elements.

1.6. By-Laws. Means the By-Laws, Covenants and Restrictions promulgated by the Association under this Declaration and the Unit Ownership Act.

1.7. Common Elements or Common Areas. Means both General Common Elements and Limited Common Elements.

(a) General Common Elements. Includes all those elements which are for the use of all Owners , guests and invitees of Owners of the Development. Specifically, included are all parts of the Property not located within the boundaries of a Unit, including but not limited to landscaping, natural areas, trees, shrubbery, planters, lawns, the land on which the Buildings are situated, roadways, walkways, footings, foundations, framework, columns, trusses, supports, roofs, exterior and interior structural walls, gutter and vertical roof drains, all or any centralized heating and air conditioning facilities, all or any hot water heaters supplying hot water to all facilities, electrical lines, gas lines, telephone lines, television cables, satellite dishes, DirectTV dishes, antennas for broadband communications and wireless direct satellite link ("DSL"), antennas for radio reception, wells, water lines, sewer lines, sewer lift station, and connections serving all of the Units, drainage systems, skylights, signs, outdoor lighting, structural components of the Buildings, other materials and improvements, the designated parking areas, hallways, foyers or galleries between buildings, stairs, carpeting on hallways and stairs, interior and exterior sidewalks, landings and steps between buildings, underground sprinklers, benches, curbs, sod, boat docks, slips and wharves, and other elements necessary for the safety, maintenance and existence of the Condominium.

(b) Limited Common Elements. Shall mean those Common Elements which are reserved for the use of fewer than all of the Owners, or invitees of the Development. Specifically, as to any given Unit Owner or Owners, Limited Common Elements shall mean the following Common Elements which are located within the Development: entrances, storage areas and or fixtures and/or portions of the building, window repair or replacement, heating and air conditioning boilers or furnaces, equipment and accessories, air conditioning, flues, chimneys, ducts, cables, conduits, public utilities lines, water, sewer, electrical, gas, and cable television lines, and hot and cold water pipes, and all such utilities pipes and lines servicing only a particular Unit or less than all the Units.

1.8. Common Expenses. Mean expenses of administration, maintenance, repair, or replacement of Common Elements, 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 Unit Ownership Act, and all other expenses agreed upon by all the Unit Owners. Individual heating and air conditioning units for each Unit shall be the sole responsibility of the Unit Owner and shall not be included in Common Expenses.

1.9. Declaration. Means this document and all parts attached hereto or incorporated by reference.

1.10. Developer or Declarant. Shall mean 5:00 SOMEWHERE, LLC.

1.11. Development of Condominium. Means the Property subject to this Declaration, including Common Elements and all individual Units, and all improvements and structures thereon and all easements, rights and appurtenances belonging thereto.

1.12. Governing Documents. Shall mean and include this Declaration as it may be amended from time to time, and the By-laws and rules and other instruments for the ownership, management and control of the Property.

1.13. Limited Common Expenses. Means the expenses attributable to the maintenance, repair and replacement of Limited Common Elements.

1.14. Manager. Means the manager, the Board of Directors, management corporation, or any other person or group of persons retained or appointed by the Board, the Association or Unit Owners for the purpose of conducting the day-to-day operation of the Development or the Association.

1.15. Member. Means a person entitled to membership in the Association as provided herein.

1.16. Owner or Owners. Shall mean the record holder or holders of title, if more than one, of a Unit in the Development. This shall include any person having a fee simple title to any Unit 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.

1.17. Plan. Means that set of floor plans for the Development attached hereto and incorporated by this reference as Exhibit "B", which depict the layout, location, unit designation and dimensions of the Units and Common Elements.

1.18. Property. Means all the land, buildings, improvements and structures thereon and all easements, rights and appurtenances belonging thereto, subject to this Declaration and described in Exhibit "A".

1.19. Quorum. Means fifty percent (50%) of those Members entitled to cast votes.

1.20. Record Officer. Means the county officer charged with the duty of filing and recording the deeds, mortgages, and all other instruments and documents relating to this Declaration and the Property.

1.21. Unit. Means an estate in real property consisting of a separate condominium of the Development, including and containing one or more rooms intended for residential use, with private garage, and also including an undivided one-seventeenth ($1/17^{th}$) share of Common Elements and an undivided share of applicable Limited Common elements proportional to the number of Units sharing the particular Limited Common Elements, and one boat slip. Each Unit shall be limited to one vote.

1.22. Unit Designation. Means any combination of letters, numbers, and words that identify the Unit.

ARTICLE II. NAME

The Property subject to this Declaration shall be known as THE TERRACES AT SOMERS BAY, referred to herein as the Development. The address is 5675 Highway 93 South, Somers, Montana 59932.

ARTICLE III. REAL ESTATE

The real property which is by this Declaration submitted and subject to the Montana Unit Ownership Act is described as follows ("Property"):

See Exhibit "A" attached hereto and incorporated herein.

Declarant hereby declares that the Property shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold and improved subject to the declarations, limitations, covenants, conditions, restrictions and easements set forth in this Declaration, all of which are imposed as equitable servitudes pursuant to a general plan for the development of the Property and for the purpose of enhancing and protecting the value and attractiveness of the Property, and every part of it, in accordance with the plan for improvements of the Property and its division into a condominium. 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 having or 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 condominium development consisting of the underlying real property, the Common Elements and three buildings, as shown on the Plans. The buildings are comprised of seventeen (17) condominium units. Four of the Units are 2,000 sq. ft. with a 875 sq. ft. deck; 5 of the Units are 2,000 sq. ft. with a 1,200 sq. ft. deck; 4 of the Units are 2,140 sq. ft. with a 1,050 sq. ft. deck; 2 of the Units are 2,628 sq. ft. with a 2,000 sq. ft. deck; and 2 of the Units are 2,670 sq. ft. with a 1,800 sq. ft. deck.

4.2. 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 interior unfinished surfaces (exclusive of paint, paper, tile or other finishes) of the perimeter walls, interior beams and columns, floors, ceilings, bearing walls, windows and exterior doors of each Unit. The Owners of the respective Units own the undecorated and/or unfinished surfaces of the perimeter walls, floors and ceilings surrounding the Unit. The Owner shall not be deemed to own pipes, wires, conduits, or

Document Number: 200700023866
Page: 4

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 Unit Owners. The following are not part of the Unit: bearing walls, perimeter walls, columns, floors, roofs, foundations, skylight shafts, heating equipment and installations, except the outlets thereof when located within the Units. The designation of each Unit will be by number and distinct street address. Each Unit shall have, as appurtenant to that Unit, the use of a boat dock and two underground parking stalls. Each Unit will have a 1/17th interest in the General Common Elements. Each Unit shall be subject to the provisions of this Declaration, the By-Laws of the Association, and all or any covenants running with the land and appurtenant to the Property.. These restrictions, covenants and provisions shall be binding upon the Unit Owners, their heirs, successors, personal representatives and assigns, for so long as this Declaration of Condominium and related By-Laws are in effect.

(b) Common Elements. The remaining portion of the Property constitutes Common Elements and defined in 1.7. Each Unit Owner shall have, as appurtenant to his or her Unit, an equal, proportionate interest in and to the Common Elements. The ownership if 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 be altered and cannot be separated from the Unit. Any conveyance or transfer of the Unit shall include the undivided common interest, the Owner's membership interest in the Association, and any other benefits or burdens appurtenant to that Owner's Unit.

(c) Limited Common Elements. Limited Common Elements are portions of the Common Elements set aside and allocated for the exclusive use of a certain Unit as defined in Paragraph 1.7, and as designated in the Plan.

4.3. 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.

4.4. 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

Document Number: 200700023866
Page: 5

Documents, provided that the Owner has received notice and a hearing as required by the By-laws (except in case of emergency.)

(b) The access rights of the Association to maintain, repair or replace improvements or property located in the Common Elements.

(c) The encroachment rights set forth below.

4.5. Partition Prohibited. The Common Elements shall remain undivided. Except as provided in Montana Code Annotated, Section 70-23-805 or Article XII hereof, 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 Condominium. Judicial partition by sale of a single Unit owned by two or more persons and division of the sale proceeds is not prohibited hereby.

4.6. 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. 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.

4.7. 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 the building, or any other cause, the Owner of the encroachment 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 crated in favor of an Owner if said encroachment occurred due to the negligent or intentional conduct of said Owner.

4.8. Construction Materials. The principal materials of construction of the Building are concrete for the foundations, footings, slabs and basement; concrete and wood for the structure; sheetrock and wood trim for the interior, wood, tile or carpets for the floors; wood siding for the exterior wall surfaces and wood shakes on the roof of the Buildings.

4.9. Recreation Facilities. The Condominium includes the following recreational facilities: Boat Docks and Fitness Center.

ARTICLE V. EASEMENTS

5.1. Common Element Easements. Nonexclusive rights of ingress and egress and support through the General Common Elements are appurtenant to each Unit and all the General Common Elements are subject to such rights.

5.2. Easement for Utilities: Each Unit may have its air space penetrated by electrical wires and lines, gas lines, mechanical equipment including air handling ducts, hot and cold water lines, waste water lines and vents and other utility and mechanical lines, pipes or equipment. These lines, where they serve only one Unit shall be Limited Common Elements appurtenant to such Unit, but where they serve more than one Unit shall be part of the Common Elements. Such items shall be installed and maintained so that they shall not unreasonably interfere with the use of the Unit air space by the Owners of the same and shall wherever possible be located in any space available between the actual ceiling and a dropped ceiling or within a wall. A non-exclusive easement shall exist through, over and across each Unit for structural support of the Unit and for the use, inspection, installation, maintenance, replacement and repair of such utility lines and mechanical equipment for the use of all of the Owners or the Owners being serviced by the air space being penetrated by such lines and/or equipment. Easements for ingress and egress for the purpose of such inspection, installation, maintenance, replacement or repair shall only be exercised under the direction and approval and with the authority of the Association and /or the Manager unless an emergency exists, in which event any action may reasonably be taken which is justified under the circumstances to minimize damage which would otherwise occur as a consequence of such emergency. There shall be easements to, through and over those portions of the land, structures the Building, improvements and walls (including interior Unit walls) contained therein for the continuing maintenance and repair of all utilities in the Condominium. There shall exist easements of support with respect to any Unit interior wall that supports a Common Element. The foregoing easements are all permanently reserved to the Association and the Owners.

5.3. Easements for Public Utilities. The Developer reserves the right at any time during the development and sales period to grant easements for utilities over, under and across the Condominium to appropriate governmental agencies or public utility companies and to transfer title of utilities to governmental agencies or to utility companies. Any such easement or transfer of title may be conveyed by the Developer without the consent of any Owner, mortgagee or other person and shall be evidenced by an appropriate amendment to this Declaration and recorded in the Flathead County Records. All of the Owners and mortgagees of Units and other persons interested or to become interested in the Condominium from time to time shall be deemed to have irrevocable and unanimously consented to such amendment of this Declaration as may be required to effectuate the foregoing grant of easement.

5.4. Grant of Easements by Association. The Association, acting through its lawfully constituted Board of Directors shall be empowered to grant such easements, licenses, rights-of-entry and rights-of-way over, under and across the Condominium for utility purposes, access purposes or other lawful purposes as may be necessary for the benefit of the Association, subject, however, to the written approval of a majority of the Aggregate Votes of the Association.

5.5. Easements for Maintenance, Repair, and Replacement. The Developer, the Association and all public or private utilities shall have such easements over, under, across and through the Condominium, including all Units and Common Elements, as may be necessary to fulfill any responsibilities of maintenance, repair, or replacements which they or any of them are required or permitted to perform under the Governing Documents or by law. 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.

ARTICLE VI. USE RESTRICTIONS

All of the Units and Common Elements shall be held, used and enjoyed subject to the following limitations and restrictions, which restrictions shall be appurtenant to and run with the land and shall continue unless amended as set forth in the Governing Documents:

6.1. No Subdivision. No property within the Development shall be subdivided in any manner, and no Unit shall be broken up by a sale of a portion or portions of the Unit.

6.2. Residential Use. Property shall be used for residential purposes only. No property shall be used for any commercial, manufacturing, vending, agricultural or other nonresidential purpose. Property shall not be used for any licensed day care facility, preschool or any other self-contained business or enterprise which normally produces additional traffic above and beyond normal, residential use. This shall not prohibit a licensed professional from working out of his or her home, provided traffic and parking does not exceed the space allocated to a Unit and the primary use of the Unit is as a residence. No advertising or sign may be used in any manner in connection with the office use, and no employees, customers, suppliers, clients or patients shall enter the Unit on a regular basis. The Board shall have the authority to adopt additional rules regarding the use of offices within the Condominium in order to maintain the residential characteristics of the Property. No tent, trailer, mobile home, or structure of a temporary character shall be used at any time as a residence on the Property, either temporarily or permanently.

6.3. Leasing. Property or homes may be leased or rented for a time period of not less than thirty (30) consecutive days. "Vacation rentals," *i.e.*, rentals for less that 30 consecutive days, are prohibited. "For sale signs" are not prohibited, but must conform to the standards, style and sizes set by the Board of Directors.

6.4. Rules and Regulations. As set forth herein and in the By-laws, the Association shall have the authority to draft and impose rules and regulations for lake use and maintenance of the Common Elements and Limited Common Areas, as well as additional rules relating to the use or occupancy of Units and the implementation of this Declaration.

6.5. Activities. No unlawful or offensive activity shall be carried on in any Unit or upon the Common Elements, nor shall anything be done which may be or become an annoyance or a nuisance to the Owners of the Condominium. No unreasonably noisy activity shall occur in or on the Common Elements or in any Unit at any time. Quiet hours shall be enforced from 11 p.m. to 8 a.m. Disputes among the Owners arising as a result of this provision, that cannot be amicably resolved, shall be mediated by the Board. No Owner shall do or permit anything to be done or keep or permit to be kept in his or her Unit or on the Common Elements anything that will increase the rate of insurance on the Condominium without the written approval of the Association. Each Owner shall pay to the Association the increased cost of insurance premiums resulting from any such activity or the maintenance of any such condition, even if approved.

Document Number: 200700023866
Page: 8

6.6. Inoperable Vehicles. No automobile shall be kept in the Development which is not in operating condition for a period in excess of twenty-four (24) hours.

6.7. Animals. No livestock or any other similar animals shall be kept or maintained in the Development. Dogs, cats or birds, however, may be kept within a Unit as house pets, provided such pets are not kept, bred or maintained for sale or commercial purposes, and provided they are not a nuisance to other Owners. No animal may be kept on the Property if it is dangerous, unmanageable or uncontrolled. Kennels external to a residence are prohibited. All household pets shall be restrained by direct control by leash, tether or other restraint.

If a pet engages in any annoying activity, such as excessive barking, biting, harassing persons on the Property, eating or disturbing garbage, destroying vegetation or any other obnoxious activity, any Owner or the Board may give the owner of such animal ten (10) days written notice to restrain the animal from the activity. In such case, the owner shall be required to restrain his or her animal by tether or leash, keep the animal inside the Unit or otherwise cease the disallowed activity. If the owner then fails to comply, any Owner or the Board may resort to any legal means to remedy the nuisance activities caused by the animal, including, but not limited to, having the animal picked up by law enforcement authorities.

6.8. Satellite Dishes. No Owner shall install or maintain any individual satellite dish, Direct TV dish, antenna for broadband communications, antenna for wireless DSL, antenna for amateur radio operation, or other transmitting or receiving device for any communications equipment.

6.9. Alterations and Modifications. No Owner shall make any alteration or structural modification to any Common Element. Only the Association shall undertake such alterations and modifications. No Owner shall undertake any action or modification of a Unit which would affect the structural integrity of any of the Buildings.

6.10. Storage. There shall be no obstruction of the Common Elements, nor shall the Common Elements be used for storage of personal property or refuse of any kind, except as provide in duly adopted rules and regulations of the Association.

6.11 Boat Docks and Slips. To ensure availability for all Owner's guests, boat slips or docks designated by the Board for daily guest use shall not be used by an Owner's guest for more than twenty-four (24) hours without prior Board approval.

6.12 Boats. No one shall be permitted to live onboard a boat in the marina. Notwithstanding the foregoing, an Owner or guest shall be allowed to occasionally sleep onboard a boat. All boats must be kept neat and clean. No rubbish, towels, laundry or similar items may be put or hung on the exterior of a boat or the boat dock. All boats on the Property must be operable.

6.13 Fitness Center. An adult guardian must accompany all children under the age of 16 using the Fitness Center.

6.14 Upkeep of Property. The Property shall be kept in a clean and neat condition. No flags, banners or similar items may be visible from Common Areas, patios, boat docks or other areas viewed by the public. No towels, laundry or the like shall be placed outside a Unit at any time.

ARTICLE VII. ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

7.1. 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 vote, regardless of the number of Owners of a particular Unit.

7.2. 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.

7.3. Limitation on Liability. Neither the directors 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 which 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.

7.4. Declarant as Majority Owner. Declarant shall be deemed to be the majority holder of Units until such time as (1) two-thirds of the Units have sold and, (2) the Declarant has held an organizational meeting of the Association and officers have been elected. Thereafter, Declarant shall continue to hold a seat on the board of directors until Declarant has sold its last Unit, or until Declarant resigns from the Board, if sooner. Declarant may appoint any individual to act in its place as a Board member.

ARTICLE VIII. DUTIES AND POWERS OF THE ASSOCIATION

8.1. 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 keep and maintain the Common Elements in good condition and repair, and shall cause any and all other acts to be done which may be necessary to assure the maintenance of the Common Elements in first-class condition and repair as the Board in its discretion determines to be necessary. 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, after notice and a hearing as provided in the By-laws.

(b) Right of Access. The Association shall have the irrevocable right, to be exercised by the Board or the Manager, 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 of 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 accordance with such designation.

(c) Insurance. The Association shall maintain such policies of insurance as are required by Article XII of this Declaration.

(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 after notice and a hearing, as provided in the By-laws.

(e) Assessments. The Association shall fix, levy, collect, and enforce assessments as set forth in Article IX 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.

(g) Utility Service. The Association shall pay for all public utilities, except for utilities metered separately to the Units by the utility provider. The Association shall have the authority to obtain for the benefit of all the Owners, all utility services, including but not limited to, water, gas, sewer, electricity and refuse collection; and to the extent not separately charged or metered, for the individual Units upon the Owner's request and promise to pay therefore.

8.2. 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 the use of the Common Elements and all facilities thereon, and the conduct of Owners and their tenants and guests with respect

Document Number: 200700023866
Page: 11

to the Property and other Owners. Written copies of the rules and any schedule of fines shall be furnished to the Owners. The Association may establish move-in fees, title transfer fees, and such other fees as may reasonably be necessary for the operation of the Association.

(b) Easements. The Association shall have the authority, by the vote or written consent of a majority of the Aggregate Votes, 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) 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.

(e) 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, provided the Owner is given notice and a hearing as provided in the By-laws. Notwithstanding the foregoing, no hearing is necessary for action taken by the Association for the failure to pay assessments.

(f) Acquisition and Disposition of Property. The Association shall have the power to acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, or otherwise dispose of real or personal property in connection with the affairs of the Association. Any transfer of real property, except the sale of a Unit acquired through foreclosure of assessment lien, shall be approved by the vote or written consent of a majority of the Aggregate Votes of the Association.

(g) Loans. The Association shall have the power to borrow money, but, only with the vote or written consent of a majority of the Aggregate Votes of the

Association, to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

(h) 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 Declaration. This includes the right to obtain legal and accounting services necessary or proper for the operation of the Condominium 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.

(i) 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.

(j) Contingency Fund. The Association may establish and maintain a working capital and contingency fund in an amount to be determined by the Board. Said fund shall be used as the Board shall deem fit to carry out objectives and purposes of the Association, and shall be added to and made a part of regular assessments provided for herein.

(k) 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 Article XII hereof.

(l) Maintain Roads, Docks, etc. Pursuant to the Declaration of Road Maintenance for the Property, the Association shall perform all road maintenance, repair, construction, re-construction and plowing in order that roads, sidewalks and all rights of way are maintained in useable and passable condition on a year round basis. The Association shall perform all boat dock, slip and wharf maintenance, repair, re-construction and plowing in order that boat docks, slips and wharves are maintained in useable and passable condition on a seasonable basis.

(m) Other Powers. In addition to the powers contained herein, the Association may exercise the powers granted to a nonprofit corporation under Montana Code Annotated, Section 35-2-118.

8.3. Commencement of Association's Duties and Powers. Until incorporation of the Association, all duties and powers of the Association as described in this Declaration, including all rights of consent and approval, shall be and remain the duties and powers of the Declarant. After the date of incorporation of the Association, the Association shall assume all duties and powers, and the Declarant shall be relieved of any further responsibility for performing those duties or exercising those powers.

8.4. The Association may revise or amend these Declarations at any time as follows:

Document Number: 200700023866
Page: 13

(a) The Board or an Owner may propose any amendment, addition or deletion of these Declarations at any time. For any proposed change, the Board will give written notice of a proposed amendment to each member of the Association at least thirty (30) days prior to the Association's regular annual meeting. The proposed amendment may be summarized.

(b) At the annual meeting, the precise, proposed amendment will be distributed to each Member in attendance.

(c) The Association will discuss the merits of each amendment.

(d) The Association will provide each Member in attendance with a written ballot for each amendment. In order for there to be a vote, however, a quorum of those eligible to vote must be present. A quorum shall equal 50% of the Aggregate Votes.

(e) The Members will vote by secret, written ballot, with each Unit having only one vote. The ballots will be counted by the Association's secretary and by at least one other individual appointed to assist the secretary.

(f) The results of the vote will be announced at the meeting, with the number of Members voting in favor of the amendment and the number of Members voting against it.

(g) If two-thirds of those present and eligible to vote cast a ballot in favor of an amendment, then the amendment shall pass and the Declarations will be amended to reflect the change.

(h) The president and secretary shall give written certification, under oath, that these steps have been followed and that an amendment has been approved and the secretary shall record the amended declaration.

8.5. Other Duties and Powers. The Association and its Board of Directors acting in its behalf shall obtain, provide and pay for any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, or pay any taxes or assessments which the Board is required to secure or pay for pursuant to the terms of these Covenants or by law or which in its opinion shall be necessary or proper for the operation of the project or for the enforcement of these Declarations or other declarations pertaining to the Development, provided that if any such materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments are specially provided for particular Units, the cost thereof shall be specially assessed to the Owners of such Units. The Association may likewise pay any amount necessary to discharge any lien or encumbrance levied against the entire properties or any part thereof which may, in the opinion of the Board constitute a lien against the Common Areas, rather than merely against the interests therein of a particular Owner, provided that where one or more Owners are responsible for the existence of such lien, they shall be

jointly and severally liable for the cost of discharging it, and any costs incurred by the Board by reason of said lien or liens, shall be specially assessed to said owners.

ARTICLE IX. ASSESSMENTS

9.1. Annual Assessment. The Board shall establish and levy annual Assessments in an amount that the Board estimates will be sufficient to raise the funds needed to perform the duties of the Association during each fiscal year. The annual Assessment shall also include a portion for reserves, as the Board considers appropriate to adequately meet the costs of the future repair, replacement or additions to the major Common Element improvements and fixtures that the Association is obligated to maintain and repair. Notwithstanding the foregoing, until January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment shall be $1,000.00 per Unit. From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the annual assessment shall be as determined by the Board.

9.2. 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 area, such as landscaping and road maintenance, provided that any such assessment shall have the affirmative vote of two-thirds (2/3) of the Aggregate Votes. Written notice of any meeting called for the purpose of authorizing a special assessment shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. A Quorum must be present at the meeting to authorize the special assessment.

9.3. Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Units and may be collected on a monthly basis. All Units shall share all expenses attributable to maintenance and repair of General Common Elements. All Units benefiting from a Limited Common Element shall equally share all expenses attributable to maintenance and repair of said Limited Common Element. This provision shall not preclude the Association from making a separate or additional charge to an Owner for and on account of special services or benefits rendered, conferred, or obtained by said Owner.

9.4. Creation of the Lien and Personal Obligation of Assessments. 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: (1) Annual assessments or charges; (2) special assessments for capital improvements, as provided in Paragraph 9.2 above; (3) an amount sufficient to indemnify and hold the Association harmless from all obligations undertaken or incurred by the Association at or on account of an individual Owner's special request and agreement to repay the Association for all expenditures on account thereof; and (4) an amount sufficient to reimburse the Association for the cost of performing an obligation of an Owner hereunder which he or she has failed to timely pay or perform. All Assessments shall be due thirty (30) days from the date of mailing notice of such Assessments. All Assessments that are not paid within thirty (30) 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

Document Number: 200700023866
Page: 15

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, taxable court costs, reasonable attorney 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, costs and reasonable attorney 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.

9.5. Voluntary Conveyance. In a voluntary conveyance of a Unit, the grantee of the Unit shall be jointly and severally liable with the grantor for all unpaid Assessments by the Association against the latter for his share of the Common Expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore. However, any such grantee shall be entitled to a statement from the Manager or Board setting forth the amount of said unpaid Assessments against the grantor due the Association and such grantee shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid Assessments made by the Association against the grantor in excess of the amount therein set forth.

9.6. Date of Commencement of Annual Assessments; Dues. The annual assessments provided for herein shall commence as to all Units on the first day of the month following the purchase of the Unit. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Unit at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment and of any special charges shall be sent to every Owner subject thereto. 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.

9.7. Liens and Foreclosure. 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 one of the officers of the Association or by the Manager, or his authorized agent, and shall be recorded in the office of the Clerk and Recorder of Flathead 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 Unit Ownership 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 attorneys fees incurred.

9.8. Bidding at Foreclosure. The Board 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 his encumbrance without the necessity of having to file a notice or claim of such lien.

9.9. Unpaid Assessments – Mortgagee. Where a lienholder or other purchaser of a Unit obtains title to the Unit as a result of foreclosure of the first mortgage or trust indenture, such acquirer of title, his successors and assigns, shall not be liable for the share of Common Expenses or Assessments by the Association chargeable to such Unit which became due prior to the acquisition of title to such Unit by such acquirer. Such unpaid share of Common Expenses or Assessments shall be deemed to be Common Expenses collectable from all of the Units including such acquirer, his successors and assigns.

ARTICLE X. INTERPRETATION

The provisions of the 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 condominium subject to and under the provisions of the Unit Ownership Act.

ARTICLE XI. MAINTENANCE AND ALTERATIONS

11.1. By Association. In addition to maintenance upon the Common Areas or Common Elements, the Association shall provide exterior maintenance upon each Unit which is subject to assessment hereunder, as follows: paint, repair, replace and care for exterior walls, roofs, gutters, downspouts, exterior building surfaces and other such exterior improvements. Such exterior maintenance shall not include improvements built or placed by an Owner on or within a deck or repairs or replacements caused by any of the perils covered by a standard from fire insurance policy with extended coverage endorsement thereon, including, but not limited to glass surfaces, parking areas, or landscaping, or caused by flood, earthquake or other Acts of God.

11.2. Necessitated By Owner. In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, or guests, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the Assessment to which such Unit is subject.

11.3. By Owner. Except as provided in Paragraph 11.1, all maintenance items shall be the responsibility of each Unit Owner; provided however, that if a Unit Owner shall fail to maintain or make the repairs or replacements which are the responsibility of such Owner, and which are unsightly or a hazard or necessary for the good of the Condominium, then, upon vote of a majority of the board of Directors, and after not less than thirty (30) days written notice to the Unit Owner, the Association shall have the right (but not the obligation) to enter upon or into

Document Number: 200700023866
Page: 17

the Unit and provide such maintenance or make such repairs or replacements, and the cost thereof shall be added to the Assessments chargeable to such Owner and shall be enforceable as a the lien as set forth above. Unit Owners are responsible to insure and maintain Limited Common Elements appurtenant to the Owner's Unit. No Owner may change, alter or remodel the exterior of his or her Unit without prior written approval of the Board. Further, an Owner shall not do any act or work that will impair the structural soundness or the integrity of the Building or impair any easement.

11.4. 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 Unit Owner, to enter upon a lot or Unit or upon any portion of the Common Elements, at reasonable hours. Such notice is not required in the event of an emergency.

ARTICLE XII. INSURANCE

12.1. Association Insurance. All insurance policies upon the Condominium shall be purchased by the Association and shall be insured by an insurance company authorized to do business in Montana. The cost of all insurance shall be a Common Expense. However, an Owner shall pay any deductible or increased premium costs incurred by the Association due to the negligent or intentional act or omission of an Owner, his or her family, guests, tenants or pets, after notice and hearing as provided in the By-laws. The named insured shall be the Association individually as agent for the Owners and their mortgagees, the Declarant, and agents, employees, officers and directors, if applicable, without naming them. Such policies shall provide that payments for losses thereunder by the insurer shall be paid to the Association, or to an insurance trustee appointed by the Board. The Association shall furnish one (1) copy of each insurance policy and of all endorsements thereon to each Owner or mortgagee of an Owner on request.

12.2. Liability Insurance. Public liability and common area property damage insurance shall be purchased by the Board, or acquired by assignment from Declarant, as promptly as possible following its election, and shall be maintained in force at all times, the premium thereon to be paid out of the Association's funds. The minimum amounts of coverage shall be $500,000.00 for personal injury to any one person; $1,000,000.00 for personal injury to any number of persons sustained in any one accident or mishap, and $100,000.00 property damage, or such higher amounts as the Board may determine. This policy shall insure against, but may not be limited to, injury or damage occurring in the Common Area or Common Elements.

(a) Fire Insurance – Major Policy for Common Area. A master or blanket fire insurance policy shall also be purchased or acquired by the Board as promptly as possible following its election, and shall thereafter be maintained in force at all times, the premium thereon to be paid out of the Association's funds as set forth above. Said insurance shall insure against loss from fire and other hazards therein covered, for the full insurable value of all of the permanent improvements upon the Common Area and Common Elements and the Units themselves, if desired by the Board. Said policy may contain extended coverage and replacement costs endorsements, if available, as well as

Document Number: 200700023866
Page: 18

vandalism and malicious mischief coverage, special form endorsement, stipulate amount clause, and a determinable cash adjustment clause, or a similar clause or clauses to permit cash settlement covering full value of the improvements in the event of partial destruction. The policy shall be in such amounts as shall be determined from time to time by the Board. The policy shall name as additional insureds all owners and mortgagees of the subject property, or any part of it, as insureds, as their respective interests may appear.

(b) Other Insurance. The Board may purchase additional insurance as the Board may determine to be advisable including, but not limited to, workers' compensation insurance, demolition insurance to remove improvements that are not rebuilt, fidelity bonds, and insurance on Association-owned personal property. All premiums therefore shall be paid out of the Association's funds as set forth above.

(c) Owner's Additional Insurance. An Owner may carry such personal liability and property damage insurance respecting his individual Unit as he may desire; however, any such policy shall include a waiver of subrogation clause against the Association and all other Owners. Notwithstanding the foregoing, any diminution in insurance proceeds otherwise payable under the Association's policies that results from the existence of such Owner's policy will be chargeable to the Owner who acquired the other insurance.

(d) Mortgagee's Rights. With respect to insurance coverage under Paragraph "a" hereof, any mortgagee of record shall have the option to apply insurance proceeds payable to it in reduction of the obligations secured by its mortgage.

12.3. Damage and Destruction; Reconstruction. If any permanent improvement comprising a part of the Property, whether owned by an individual Owner or by the Association, shall be damaged by fire or other casualty covered by insurance, the proceeds of all such insurance policies shall be paid to the Association to be applied as hereinafter provided. If the damage or destruction shall be to one or more Units, the Board of Directors of the Association shall enter into a contract for the repair or reconstruction of the damaged improvements, upon such terms as the Board feels is in the best interest of the individual Owners as well as the Association. In the event that the proceeds from the insurance policies payable as a result of the loss to an individual Unit shall be insufficient for the repair or reconstruction of such Unit, the deficiency shall be promptly paid by the Owner of such Unit, failing which, such amount shall become a special charge and assessment against such Unit pursuant to the provisions of Article IX hereof. In the event of damage or destruction of any Common Elements or improvements upon the Common Area, the Board of Directors shall contract for repair or reconstruction of such improvements and if the proceeds of any insurance policies payable as a result of such loss are insufficient for such repair or reconstruction, the deficiency shall be the subject of a special assessment which shall be approved by a vote of the owners as provided in Article IX hereof. The insurance proceeds shall be paid to the contractor or contractors designated by the Board at such time and upon such obligations as may be designated by the Board. All repair or reconstruction shall be made in accordance with original plans and specifications therefor, or

according to such revised plans and specifications as may be approved by the Board of Directors of the Association, subject to architectural review required under existing recorded documents.

In the event that improvements in and upon the Common Areas or Common Elements, shall not be rebuilt because the cost of rebuilding shall exceed the available insurance proceeds, and the members shall fail to approve a special assessment to cover the deficiency, the Board of Directors shall then cause any remaining portion of such improvements to be removed and the area cleared and landscaped in the most efficient and aesthetically pleasing manner possible. In the event that more than one individual Unit shall be substantially destroyed by fire or other casualty, and in the further event that at least sixty-six and two-thirds percent (66-2/3%) of the Aggregate Votes shall approve of the action, the damage and destroyed improvements shall not be rebuilt but rather the remaining portions thereof shall be removed, the land cleared and the lots occupied by such removed improvements shall, with the consent of the Owners thereof, be removed from the properties subject to this Declaration. Such destruction or rebuilding of a Condominium Unit or Units shall be governed by the Unit Ownership Act.

If the Board of Directors of the Association shall fail to proceed in good faith with the repair or reconstruction of any damaged or destroyed improvements, whether upon an individually owned lot or upon the Common Area or Condominium, and in any event, if reconstruction of an individual Unit or Condominium is not commenced within sixty (60) days after the casualty occurs and the insurance proceeds are received, the owners of such damaged improvement may proceed to negotiate and execute a contract for such repair or reconstruction and the Association which shall receive any insurance proceeds attributable to such loss shall pay such proceeds, to the extent required, to the contractor or contractors selected by such individual owner(s). In the event that the Board of Directors shall fail to proceed in good faith to repair or rebuild damaged or destroyed improvements upon the Common Areas, any individual owner may call a meeting of the Association upon thirty (30) days notice in writing to all Owners and such Association may act, through its membership to proceed upon a simple majority vote of the members present and voting to enter into contracts for the repair and reconstruction of any damaged improvements. The excess of any proceeds not required to repair or restore an improvement, shall be paid by the Association to the Owner or the institution who shall pay the premium for such insurance coverage.

12.4. Procedures Without Repair: If damage extends to one-third (1/3) or more of the Units, and ninety percent (90%) of the Aggregate Votes vote against repair and reconstruction, the Property shall not be repaired. Such vote must be conducted within sixty (60) days of the damage or destruction. In that event, the Property shall be considered owned as tenants in common by all Owners. Each Owner shall own a 1/17th interest. Liens affecting any Unit shall be liens in accordance with then existing priorities, against the undivided interest of the Owner in the Property owned in common. The Property shall be subject to an action for partition at the suit of any Owner. The net proceeds of sale, together with the net proceeds of the insurance on the Property, if any, shall be considered as one fund and shall be divided among the Owners in proportion to their respective undivided interests after first paying out of the respective shares of the Owners, to the extent sufficient for the purpose, all costs and liens on the undivided interest in the Property owned by each Owner.

12.5. Condemnation. The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Elements, or part thereof. In the event of a taking or acquisition of part or all of the Common Elements by a condemning authority, the award or proceeds of settlement shall be payable to the Association for the use and benefit of the Owners and their mortgagees as their interests may appear. The remaining portion of the Property shall be resurveyed, if necessary, and the Declaration shall be amended to reflect such taking and to readjust proportionately the percentages of undivided interest of the remaining Owners in the Property. In the event of an award for the taking of any Unit by eminent domain, the Owner of such Unit shall be entitled to receive the award for such taking, and after acceptance thereof he or she and his or her mortgagee shall be divested of all interest in the Condominium, if such Owner shall vacate his or her Unit as a result of such taking. The remaining Owners shall decide by majority vote whether to rebuild or repair the Condominium, or take other action. The remaining portion of the Condominium shall be resurveyed, if necessary, and the Declaration shall be amended to reflect such taking and to readjust proportionately the percentages of undivided interest of the remaining Owners in the Property. In the event of a taking by eminent domain of any part of the Common Elements, the Association shall participate in the negotiations.

If there is a substantial taking of the Property [more than seventy-five percent (75%) of all Property improvements], the Owners may sell the remaining Property with the vote or written consent of ninety percent (90%) of the Aggregate Votes of the Association. For the purpose of effecting a sale under this section, each Owner grants to the Association an irrevocable power of attorney to sell the entire Property and to dissolve the Association.

In the event the Association fails to take the necessary steps to repair and resurvey, or to sell the entire Property as permitted hereunder within sixty (60) days following the date of condemnation, any Owner may file a partition action as to the entire Property under Montana Code Annotated, Section 70-23-803, or any successor statute, and the court shall order partition by sale of the entire Property and distribution of the sale proceeds as provided herein. The proceeds from the partition sale shall be distributed to the Owners and their respective mortgagees as determined under the method described in paragraph 4 above.

12.6. Failure to Insure. The Association and its directors and officers shall have no liability to any Owner or lien holder if, after a good faith effort, it is unable to obtain the insurance required hereunder because the insurance is no longer available or, if available, can be obtained only at a cost that the Board determines is unreasonable under the circumstances, or the Owners fail to approve any Assessment increase needed to fund the insurance premiums. In such event, the Board shall immediately notify each Owner and lien holder that the insurance will not be obtained or renewed.

ARITCLE XIII. UTILITIES

13.1. Rights and Duties of Unit Owners. The rights and duties of the Unit 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 Board of Directors who shall decide the dispute, and the decision of the Board shall be final and conclusive on the parties.

(b) Multiple Unit Utility Meters. In the event that duplex Units shall be served by water, gas, electricity or other utilities through a single meter, the Board of Directors 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. In addition to the foregoing, the Units shall be subject to an assessment for any Special Improvement District improvements, and each member shall pay to the Association, monthly, an appropriate amount in order to permit the Association to pay each installment of the assessment levied for Special Improvement District improvements.

ARTICLE XIV. MISCELLANEOUS

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

14.2. Enforcement. Each Owner, tenant or occupant of a Unit shall comply with the provisions of the Governing Documents and resolutions of the Board, 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 his 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 as ordered by the court. Only the Association can enforce the Owners' obligation to pay Assessments.

14.3. 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.

14.4. 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.



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

14.6. Remedies Cumulative. Each remedy provided by these Restrictions is cumulative and not exclusive.

14.7. Service of Process. The name and address of the person to receive service of process for the Condominium until another designation is filed of record shall be CRAIG DENMAN, 5:00 SOMEWHERE, LLC, 159 Old Hwy 93 South, Somers, Montana 59932.

14.8. Notice to lienholder. A first lienholder, upon request, will be entitled to written notification from the Association of any default in the performance by an individual Owner of any obligation under the Governing Documents which is not cured within sixty (60) days.

14.9 Warranties. The Declarant expressly makes no warranties or representations concerning the property, the Units, the 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.

14.10. Notices. All writings required or permitted to be given or delivered under this Declaration shall be deemed given or delivered, if the writing is directed to the Association, by delivering it personally to an officer of the Association, or if such writing is directed to the Unit Owner, by delivering it personally to such Owner, or if mailed, in a sealed wrapper by United States registered or certified mail, return receipt requested, postage prepaid, properly addressed, if to the Association, P.O. Box 153, Somers, Montana 59923, and if to such Owner, at the Owner's address shown on the records of the Association. Each such mailed writing shall be deemed to have been given or delivered when deposited in the United States mail as above provided. Each such personally delivered writing shall be deemed given or delivered upon delivery thereof to the Owner or the Owners duly authorized representative in the manner above provided. The Association may change its address for the purposes of delivery of such writings by delivering written notice of such change to the Owner in the manner above provided at least ten (10) days prior to the effective date of such change.

ARTICLE XV. 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.

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.

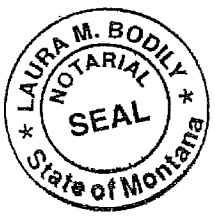
5:00 O'Clock Somewhere, LLC.

By _____
Craig Denman, Member

STATE OF MONTANA)
: ss.
County of Flathead)

This instrument was acknowledged before me on 12 April, 2007, by CRAIG DENMAN, Manager, 5:00 O'Clock Somewhere, LLC.

(Seal)



_____
Print Name Laura M. Bodily
Notary Public for the State of Montana
Residing at Columbia Falls, MT
My commission expires 6/18, ~~200~~ 2010