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RESTATED DECLARATION FOR THE
SILVER BOW OWNERS' ASSOCIATION

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RESTATED DECLARATION FOR THE
SILVER BOW OWNERS' ASSOCIATION

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RESTATED DECLARATION FOR THE SILVER BOW OWNERS' ASSOCIATION

This restated Declaration, made on the date hereinafter set forth, pursuant to the written consent of seventy-five percent (75%) of the Total Vote of all the Owners of the Property, is made with reference to the following facts:

A. The Association and its Members are the Owners of certain Property situated in the Meadow Village, Big Sky, Gallatin County, State of Montana, more particularly described as Tract 1, Tract 10 and Tract 1-a, Big Sky of Montana, Inc., Meadow Village second filing, Gallatin County, Montana.

B. Covenants, conditions and restrictions have previously been imposed upon Tract 1 and Tract 1-a as recorded on January 10, 1972, in Film 12, page 1293, et seq., and amendments thereto recorded on September 21, 1979, at Film 52, Page 1312 et seq., in the Office of the Recorder of Gallatin County, State of Montana.

C. Covenants, Conditions and Restrictions have previously been imposed on Tract 10 and Tract 1-a as recorded on May 9, 1973, in Film 19, page 78 et seq., and amendments thereto recorded September 21, 1979, in Film 52, pages 1306 et seq. and March 4, 1998, in Film 182, pages 927 and 928, in the Office of the Recorder of Gallatin County, State of Montana.

D. The Association intends by this document to amend and restate those restrictions previously imposed upon the Property by the prior Declarations described. Said prior Declarations are hereby consolidated into this document, which retains and incorporates all the provisions of the prior Declarations that are not inconsistent with the provisions hereof.

NOW, THEREFORE, the Association hereby declares that the Property shall continue to be held, conveyed, mortgaged, encumbered, leased, used, occupied, sold, and improved subject to these covenants, conditions and restrictions, all of which are imposed as equitable servitudes pursuant to a general plan for the purpose of improving and protecting the value and attractiveness of the Property, and every part thereof. All of these covenants, conditions and restrictions including the prior Declarations to the extent consistent herewith, shall constitute covenants which shall run with the land and shall be binding upon and inure to the benefit of the Association and all parties having or acquiring any right, title or interest in or to any part of the Property.

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 that is to be paid by each Owner as determined by the Association in accordance with Section 4.6.

1.2 **Association** means the SILVER BOW OWNERS' ASSOCIATION, a Montana nonprofit corporation.

1.3 **Board or Board of Directors** means the governing body of the Association as more particularly defined in the Bylaws.

1.4 **Building** means the building or buildings containing the Units.

1.5 **Bylaws** mean the Bylaws promulgated by the Association under this Declaration and the Unit Ownership Act.

1.6 **Common Elements** 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 and guests of Owners of Silver Bow Condominiums. Specifically included are: the real property described in Section 1.17 (except for the portions designated as Limited Common Elements in subparagraph 1.6(b) below) including the grounds under and surrounding the Buildings; footings, foundations, framework, floors, columns, trusses, walls, supports, and other structural components of the Buildings; the roofs of the Buildings; equipment and all other improvements for sewage disposal, water supply, electrical, gas, television and telephone lines and wires and connections serving all of the Units; the master water meter; fences; parking lots and sidewalks; landscaping, plants and other materials and improvements separate from and outside of the Buildings containing the Units. This list is not exclusive and the Association of Unit Owners may add or delete elements pursuant to the method of amendment as hereinafter described. Tract 1-a and all of the lands and all of the improvements thereon are General Common Elements. Tract 1-a shall be for the use and enjoyment of all the Unit Owners.

(b) **Limited Common Elements** means those Common Elements which are reserved for the use of fewer than all of the Owners and guests of Owners of Silver Bow Condominiums. Specifically, as to any given Unit Owner or Owners, Limited Common Elements shall mean the following Common Elements which are located within or affixed to the Buildings containing his or her Unit in which the elements are located or situated on or associated with:

(1) The land upon which the Building is located.

(2) Flues, balconies, decks (including structural members of decks appurtenant to the Unit), patios, sidewalks, entrances and stairways, chimneys, ducts, cables, conduit, sewer, water, electrical, gas, television and telephone lines and pipes, (all such utility pipes and lines are Limited Common Elements where they service less than all Units; where they service all Units they shall be General Common Elements,) electric meter entrances, and fixtures or other portions of the Building serving only a particular Unit or less than all of the Units. Unless only one Unit uses a particular Limited Common Element (such as the deck areas where the interest of the Unit in that Limited Common Element is 100%) the percentage of a separate Unit's interest in the Limited Common Elements shall be computed by determining the number of Units that have use of the Limited Common Elements and taking the ratio of the square footage of the total floor area of such Unit to the combined square footage of the total floor area of all Units of which the Limited Common Elements are a part.

1.7 **Common Expenses** means expenses of administration, maintenance, repair or replacement of the Common Elements, all expenses incurred by the Association in the performance of its obligations hereunder, and expenses declared common by the Unit Ownership Act.

1.8 **Condominium** means the Silver Bow Condominiums consisting of the Property, and all improvements and structures thereon and all easements, rights and appurtenances belonging thereto, which are herewith submitted to the Unit Ownership Act.

1.9 **Declaration** means this document and all parts attached thereto or incorporated by reference.

1.10 **Governing Documents** means and includes this Declaration as it may be amended from time to time, and the Articles, Bylaws and rules, and other instruments for the ownership, management and control of the Condominium.

1.11 **Manager** shall mean the manager, the Board of Directors, management agent or any other person or group of persons retained or appointed by the Board, or by the Association for the purpose of conducting the day-to-day operations of the Association.

1.12 **Member** means a person or legal entity entitled to membership in the Association as provided herein.

1.13 **Mortgage** means a recorded Deed of Trust as well as a recorded Mortgage encumbering any Unit made in good faith and for value.

1.14 **Mortgagee** means a beneficiary or holder of a Deed of Trust as well as a Mortgage.

1.15 **Owner or Owners** means the record holder or holders of title, if more than one, of a Unit in the Property. 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.

1.16 **Plans** mean those sets of floor plans for the Condominium which depict the layout, location, unit designation and dimensions of the Units, Common Elements and Limited Common Elements. The Plans for Tract 1 were recorded on January 10, 1972, in Film 12, pages 1216 et seq. in the Office of the Recorder of Gallatin County, State of Montana. The Plans for Tract 10 were recorded on May 9, 1973, in Film 19, pages 100 et seq. in the Office of the Recorder of Gallatin County, State of Montana.

1.17 **Property** means all the real property and improvements thereon subject to this Declaration more particularly described at Tracts 1, 1-a and 10, Big Sky of Montana, Inc., Meadow Village Second Filing, Gallatin County, Montana.

1.18 **Renter** means a person who resides in a Unit who is not an Owner.

1.19 **Total Voting Power** means the total of all the votes allocated to all the Owners, which totals seventy (70) votes.

1.20 **Unit** means an estate in real property consisting of an undivided interest in the Common Elements, together with a separate interest in a Unit, including certain easements appurtenant to such Unit.

1.21 **Unit Ownership Act** means and refers to the Unit Ownership Act of the State of Montana, Mont. Code Ann. Sections 70-23-101, et seq.

ARTICLE II **REAL ESTATE**

2.1 **Description of Property:** The Property is a Condominium development consisting of the underlying real property, the Common Elements and seventy (70) Units as shown on the Plans. The Property subject to this Declaration shall be known as the SILVER BOW CONDOMINIUMS. The Condominium is located in the Meadow Village of Big Sky, Gallatin County, Montana. The Condominium is established in accordance with the Unit Ownership Act. The Condominium contains individual Units for residential occupancy and other purposes, as set forth herein and in the Bylaws. Each Unit is capable of individual utilization on account of having its own entrance from and exit to a Common Element of the Condominium. Each Owner of a Unit in the Condominium shall have an exclusive right to his or her Unit and shall have undivided and inseparable rights to share with other Unit Owners the Common Elements of the Condominium.

2.2 **Division of Property:** The Property is divided as follows:

(a) **Units:** Each of the Units as separately shown, numbered, and designated in the Plans, shall be a separate freehold estate the boundaries of which are as follows:

(1) **Upper and Lower boundaries:** The upper and lower boundaries of the Unit shall be the following boundaries extended to an intersection with the parametrical boundaries:

(i) **Upper boundary:** The plane of the lowest surfaces of the ceiling concrete slab for all ground Units and the plane of the lowest surface of the ceiling for all other Units, not including beams.

(ii) **Lower boundary:** the plane of the lowest surface of the floor concrete slab.

(2) **Parametrical boundaries:** The parametrical boundaries of the Unit shall be the following boundaries extended to an intersection with the upper and lower boundaries:

(i) **Exterior building walls:** the intersecting vertical planes adjacent to and which include the exterior of the outside walls bounding a Unit and fixtures thereon, and where there is attached to the building a fixture or other portion of the Building serving only the Unit being bounded, such boundaries shall be the intersecting vertical planes adjacent to and which include all of such structures and fixtures thereon.

(ii) **Interior building walls for bounding Units:** the vertical planes of the centerline of walls bounding a Unit extended to intersections with other parametrical boundaries. Where walls between Units are of varying thickness (not including fireplaces which are a part of each individual Unit), the plane of the centerline of a bounding walls shall be median line drawn between the two outermost boundaries of such wall.

(b) **Common Elements:** The remaining portion of the Property constitutes Common Elements as defined in Section 1.6. Each Owner shall own, as appurtenant to his or her Unit, an undivided percentage interest in the Common Elements as set forth on Exhibit "A" attached hereto and incorporated herein by reference. 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 be altered without the consent of all the Owners affected as expressed in an amended Declaration. The undivided common interest cannot be separated from the Unit, and any conveyance or transfer of the Unit shall include the undivided common interest, the Owner's membership in the Association, and any other benefits or burdens appurtenant to that Owner's Unit.

2.3 **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 exclude or limit the number of guests of Owners;

(b) The right of the Association to establish uniform rules pertaining to the use of the Common Elements;

(c) The right of the Association to dedicate or transfer all or any part of the General Common Elements to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Owners. No such dedication or transfer shall be effective without the affirmative vote of a majority of the Total Voting Power.

(d) The rights of Unit Owners to the exclusive use of appurtenant Limited Common Elements as set forth in Section 2.10.

2.4 **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 Common Elements to inspect for or cure any violation of the Governing Documents, provided that the Owner has received notice and a hearing as required by the Bylaws (except in the case of an emergency).

(b) The access rights of the Association to maintain, repair or replace improvements or property located in the Common Elements as described in Sections 2.13, 4.4(a) and 4.5(c).

(c) The encroachment rights described in Section 2.7.

2.5 **Partition Prohibited:** The Common Elements shall remain undivided, except as provided in Articles IX and X. 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.

2.6 **Delegation of Use:** Any Owner may delegate his or her rights of use and enjoyment of the Common Elements to the members of his or her family, guests, Renters and invitees. However, if an Owner has sold his or her Unit to a contract purchaser or rented 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 Renter.

2.7 **Encroachment Rights:** If any portion of the General Common Elements or Limited Common Elements encroaches upon a Unit or Units, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. If any portion of a Unit encroaches upon the General Common Elements or Limited Common Elements, or upon an adjoining Unit or Units, a valid easement for the encroachment and for the maintenance for same, so long as it stands, shall and does exist. Such encroachments and easements shall not be considered and determined to be encumbrances either on the General Common Elements, the Limited Common Elements, or on the Units for purpose of marketability of title.

2.8 **Parking:** The Common Elements include parking areas for automobiles of Unit Owners. The right to use one parking space shall be appurtenant to each Unit.

2.9 **Tract 1 Easements for Water Heaters:** In Tract 1, on each of the Units D-1 through D-10 (Ranch Houses) a specific easement shall and hereby does exist for the location of the individual water heaters which service the respective Units E-1 through E-10 (Prairie Houses) located beneath each Ranch House. The location of such water heater in each such Ranch House and the designation of the easement area is more particularly set forth on the Plans for Units D-1 through D-10 and such easements shall be exclusively for the locations, access and servicing of the water heaters for the Prairie House Unit Owner immediately below each such Ranch House Unit and for no other purpose. Each such Prairie House Unit Owner shall be solely responsible for the upkeep, maintenance, replacement and repair of his or her specific water heater and the respective Ranch House Unit Owner assumes no responsibility for the same. The water heater itself and the lines, controls and fixtures appurtenant thereto shall be the property of the individual Prairie House Unit Owner. The floor area utilized for the location of the said water heater shall be the property of the Ranch House Unit Owner subject to the within easement.

2.10 **Exclusive Easements:** Portions of the Common Elements are set aside and allocated for the exclusive use of some but less than all of the Units, as defined in Section 1.6(b) and as designated in the Plans. Any balcony, patio or deck which is accessible from, associated with or joins a Unit or Units shall, without further reference thereto, be used in connection with such Unit or Units to the exclusion of the use thereof by the other Owners, except by invitation.

2.11 **Common Element Easements:** Nonexclusive rights of ingress and egress through the General Common Elements are appurtenant to each Unit and all the General Common Elements are subject to such rights. Easements for support over the Common Elements are appurtenant to each Unit.

2.12 **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 Common Elements for utility purposes, access purposes or other lawful purposes as may be necessary for the benefit of the Association, subject, however, to the affirmative vote of a majority of the Total Voting Power.

2.13 **Easements for Maintenance, Repair, and Replacement:** 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.

2.14 **Utility Easements:** Easements are reserved through the Common Elements as may be required for utility services, including sewer, water, electrical, gas, television and telephone, in order to serve the Condominium adequately; provided, however, such easements through a Unit shall be only according to the Plans and specifications for the Unit Building, or as the Building was constructed, unless approved in writing by the Unit Owner.

ARTICLE III **OWNERSHIP**

3.1 **Percentile Interest:** Each Unit Owner shall be entitled to the exclusive ownership, use and possession of his or her Unit. Additionally, each Unit Owner shall have a percentile undivided interest in the Common Elements as set forth on Exhibit "A".

3.2 **Floor Plans and Exhibits:** Silver Bow Condominium I (Tract 1) consists of the real property described above and seventeen (17) separate Buildings, each of which contains living Units. There are no basements in any of the Condominium Units and the separate Buildings are from one and a half to three stories in height. There are seven (7) basic floor plans for the fifty (50) Units of the Condominium, as shown on the Plans.

Silver Bow Condominium II (Tract 10), consists of the real property described above and six (6) separate Buildings, each of which contains living Units. There are no basements in any of the Condominium Units and the separate Buildings are from one and a half to two stories in height. There are three (3) basic floor plans for the twenty (20) Units of the Condominium, as shown on the Plans.

3.3 **Construction Materials:** The principal materials of construction of the Units are concrete for the foundations; wood for the framing, structural and finish work; sheetrock and wood paneling for the interiors; stone and cement exteriors with metal fireboxes for the fireplaces; stucco or stone for a portion of the exterior facing for some of the Units; and an exterior facing finish similar to rough sawn cedar. Asphalt shingles or metal are used on the roofs of all Buildings. It is anticipated that over time other materials may be used but only when approved by the Board.

3.4 **Tract 1-a:** The Owners of Tract 1 own an undivided seventy-five percent (75%) interest in Tract 1-a, and the Owners of Tract 10 own an undivided twenty-five percent (25%) interest in Tract 1-a.

ARTICLE IV
THE ASSOCIATION

4.1 **Association to Manage 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 be administered in accordance with the provisions of the Governing Documents.

4.2 **Membership:** Each and every Owner of a Unit shall automatically, upon becoming the Owner of same, be a Member of the Association, and shall remain a Member thereof until such time as the ownership ceases for any reason, at which time the membership in the Association shall automatically cease. Membership shall be held in accordance with the Governing Documents. When more than one person possesses a recorded ownership interest in any Unit, all of such persons shall be Members, subject to the Governing Documents. Membership in the Association shall not be transferred, encumbered, pledged or alienated in any way, except upon the sale or other transfer of title of the Unit to which it is appurtenant, and then only to the purchaser or transferee. On any transfer of title to a Unit, membership passes automatically with title to the transferee. A Mortgagee does not have membership rights until it obtains title to the Unit by foreclosure or deed in lieu thereof. Any attempt to make a prohibited transfer is void. No Member may resign his or her membership. On notice of a transfer, the Association shall record the transfer on its books.

4.3 **Vote:** On all matters to be decided by the Association, unless excluded by this Declaration, each Unit Owner shall have one vote, regardless of the percentage of interest that such owner may have in the Common Elements; except that when a Unit is owned by more than one person, the vote associated with that Unit may not be split between the various owners. It shall be the responsibility of the Owners of each Unit to appoint one person who shall be entitled to cast the vote for that Unit. In the event an agreed upon vote is not cast or one person is not designated to vote at the time a vote is required, the Unit and its Owners shall be deemed to have abstained from voting for that particular issue. Except as otherwise provided in the Unit Ownership Act, this Declaration or the Bylaws, a majority of the Total Voting Power present at any meeting or by proxy shall be sufficient to act on matters brought before the Association. Meetings of the Association shall only be conducted when a quorum is present, as defined in the Association Bylaws.

4.4 **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:** Except for those Limited Common Elements maintained by the Owners as set forth in Section 7.4, 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, Renter, 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 Bylaws.

(b) **Insurance:** The Association shall maintain such policies of insurance as are required by Article VIII of this Declaration.

(c) **Discharge of Liens:** The Association shall discharge by payment, if necessary, any lien against the Common Elements, and charge the cost thereof to the Owner responsible for the existence of the lien after notice and a hearing, as provided in the Bylaws.

(d) **Assessments:** The Association shall fix, levy, collect, and enforce assessments as set forth in Section 4.6 hereof.

(e) **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 Association.

(f) **Utility Service:** The Association will pay for utilities in the Common Elements.

4.5 **Powers:** In addition to the powers enumerated in its Articles and Bylaws or elsewhere provided for herein, 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 Renters 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. 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) **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, which are duties of the Board.

(c) **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 and its appurtenant Limited Common Elements from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Elements therein or accessible therefrom or for making repairs therein necessary or for the maintenance, repair or replacement necessary to prevent damage to the 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 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.

(d) **Enforcement:** The Association 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, suspension of the right to use the recreational facilities in Tract 1-a, or other appropriate discipline, provided the Owner is given notice and a hearing, as provided in the Bylaws, except for the failure to pay Assessments.

(e) **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 affirmative vote of a majority of the Total Voting Power.

(f) **Loans:** The Association shall have the power to borrow money, but, only with the affirmative vote of a majority of the Total Voting Power, 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.

(g) **Contracts:** The Association shall have the power to contract for goods and/or services for the Common Elements, and for the Association, subject to limitations of the Bylaws, or elsewhere set forth in the Declaration.

(h) **Appointment of Manager:** The Association has the power to appoint or designate a Manager to enforce Assessment liens by sale as provided in Mont. Code Ann. Section 70-23-608.

(i) **Other Powers:** In addition to the powers contained herein, the Association may exercise the powers granted to a nonprofit corporation under Mont. Code Ann. Section 35-2-118.

4.6 **Assessments:**

(a) **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.

(b) **Special Assessments:** The Board at any time may levy a special Assessment in order to raise funds for unexpected operating or other costs, insufficient operating or reserve funds, or such other purposes as the Board in its discretion considers appropriate.

(c) **Reimbursement Assessments:** The Board may levy a reimbursement Assessment against any Owner and his or her Unit who has caused damage to the Common Area, or whose failure to comply with the Governing Documents has necessitated an expenditure of monies by the Association to bring such Owner or Unit into compliance with said documents or in otherwise performing its functions or as elsewhere provided herein. Such Assessment shall be for the purpose of reimbursing the Association, shall be limited to the amount so expended including but not limited to attorney's fees and shall be levied only after notice and a hearing, as provided in the Bylaws. Fines may not be enforced by reimbursement Assessment.

(d) **Restrictions on Annual or Special Assessments:** The Board may not impose an annual Assessment which is more than twenty percent (20%) greater than the annual Assessment for the preceding fiscal year, or levy special Assessments which exceed ten percent (10%) of the budgeted gross expenses of the Association for that fiscal year, without the affirmative vote of a majority of the Total Voting Power.

(e) **Notice:** The Association shall provide notice by first-class mail to the Owners of any increase in the annual or special Assessments, not less than twenty-one (21) days prior to the increased Assessment becoming due.

(f) **Division of Assessments:** Annual and special Assessments shall be distributed among, and charged to the Owners according to the percentages as set forth in Exhibit "B". A reimbursement Assessment may be levied on any individual Unit.

(g) **Reserve Accounts:** A separate reserve account shall be maintained for the repair or replacement of major Common Element components. The signatures of two (2) directors shall be required to withdraw funds from the reserve account.

(h) **Non-Payment of Assessments:** Annual Assessments may be payable in installments, monthly or quarterly, at the option of the Board. The amount of the Common Expenses assessed against each Owner shall be a lien on the Unit and shall be the personal and individual debt of the Owner thereof. No Owner may exempt himself from liability for this contribution toward the Common Expenses by waiver of the use of enjoyment of any of the Common Elements or by abandonment of his or her Unit. 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, late charges and costs of collection, including attorney's fees. The Association or Manager shall have the responsibility of taking prompt action to collect any unpaid Assessment that becomes delinquent. In the event of delinquency in the payment of the Assessment, the Unit Owner shall be obligated to pay interest at the rate to be determined by the Board on the amount of the Assessment from the due date thereof, together with late charges in the amount of ten percent (10%) of the delinquent assessment. The right to vote of an Owner who is delinquent in the payment of Assessments shall be suspended without notice and hearing.

(i) **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 or her 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 personally liable for any unpaid Assessments made by the Association against the Grantor in excess of the amount therein set forth. In any event, the Unit shall be subject to lien and foreclosure for all past due Assessments.

(j) **Liens and Foreclosure:** All sums assessed but unpaid for Assessments chargeable to any Unit shall constitute a lien on such Unit superior to all other liens and encumbrances, except only for tax and special assessment liens on the Unit in favor of any assessing authority, and all sums unpaid on a first Mortgage of record, including all unpaid obligatory sums as may be provided by such encumbrance. To evidence such lien, the Manager shall prepare a written notice of Assessment lien setting forth the amount of such unpaid indebtedness, including interest, late charges and costs of collection, the name of the Owner of the Unit and a description of the Unit. Such lien shall be signed and verified by one of the officers of the Association or by the Manager, or his or her authorized agent, and shall be recorded in the office of the Clerk and Recorder of Gallatin County, Montana. Such lien shall attach from the date of recording. 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 for the foreclosure of a Mortgage on real property. 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's fees incurred in filing a lien, and in the event of foreclosure proceedings, additional costs, expenses and attorney's fees incurred.

(k) **Bidding at Foreclosure:** The Association shall have the power to bid on the Unit at a foreclosure or other legal sale and to acquire and hold, lease or Mortgage the same. Any lien holder 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.

(l) **Unpaid Assessments – Mortgagee:** Where a lien holder or other purchaser of a Unit obtains title to the Unit as a result of foreclosure of the first Mortgage, such acquirer of title, his or her 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 or her successors and assigns.

4.7 **Failure to Comply:** Each Owner shall comply strictly with the provisions of this Declaration, the Bylaws and rules of the Association, and the decisions and resolutions of the Board adopted pursuant thereto as the same may lawfully be amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief or both, and for reimbursement of all attorneys' fees incurred in connection therewith, which action shall be maintainable by the Manager in the name of the Association, on behalf of the Owner, or in a proper case, by an aggrieved Owner.

ARTICLE V
BIG SKY OWNERS ASSOCIATION, INC.

5.1 **Recording Data:** All the Property which is by this Declaration submitted to the provisions of the Unit Ownership Act is subject to Protective Covenants which were recorded on October 3, 2008, at Document Number 2311975 in the Office of the Gallatin County Clerk and Recorder and by reference such recorded Covenants are made a part of this Declaration, as well as any subsequent amendments thereto.

Owners and the Property are similarly subject to the provisions of the Bylaws of the Big Sky Owners Association, Inc. recorded on January 25, 2008, at Document Number 2290050 in the Office of the Gallatin County Clerk and Recorder, as well as any subsequent amendments thereto.

ARTICLE VI
USE RESTRICTIONS

In addition to all of the covenants contained herein, the use of the Property and each Unit therein is subject to the following:

6.1 **Residential Use:** Each Unit shall be used for residential purposes only and no part of the Property shall be used for any business, commercial, manufacturing, mercantile, storing, vending or other nonresidential purpose. Notwithstanding the foregoing, Owners or occupants of a Unit may use a room or rooms in the Unit as an office provided that the use is judged by the Board to be unobtrusive to other residents; that the primary use of the Unit is as a residence; no retail sales, advertising or sign is used in any manner in connection with the office use; no employees, customers, suppliers, clients, or patients enter the Unit, and that no delivery vehicles are dispatched from the Property. The Board shall have the authority to adopt additional rules regarding the use of offices within the Property in order to maintain the residential characteristics of the Property. Residency shall be limited to no more than two (2) persons per bedroom, plus one person, in any Unit. No tent, trailer, mobile home, basement, garage, outbuilding or structure of a temporary character shall be used at any time as a residence either temporarily or permanently.

6.2 **Storage of Waste Materials:** All garbage, trash and accumulated waste material shall be placed in appropriate covered trash containers. No exterior individual trash containers or receptacles shall be permitted.

6.3 **Insurance:** No Owner shall permit anything to be done or kept in any Unit or in the Common Elements that will increase the rate of insurance or that will result in the cancellation of insurance on any Unit, or any part of the Common Elements.

6.4 **Signs:** No sign or flag of any kind shall be displayed to the public view in the Common Elements, except the flag of the United States of America, without the prior written consent of the Board. No signs or flags shall be displayed to the public view from any Units, except the flag of the United States of America; such signs as are approved by the Board; and one (1) "For Sale" or "For Rent" or "For Exchange" sign not more than four (4) square feet in size, provided the design and locations are reasonable.

6.5 **Pets:** Owners and their guests shall be permitted to have no more than two (2) animals as pets in their Units provided they do not constitute a nuisance to other Owners, guests, or Renters. Renters shall not be permitted to have pets. Any Owners or guests who have pets shall be required to be in compliance with any county or local ordinances, Big Sky Owners Association regulations, and any rules established by the Board. The Board may impose a fine schedule for violation of the rules.

6.6 **Nuisance:** No unlawful, noxious or offensive activity shall be carried on in any Unit or in the Common Elements nor shall anything be done therein which may be or become an annoyance or nuisance to the other Owners, their guests or Renters, including without limitation, any offensive playing of any musical instrument, radio, television or other amplified sound or the operation of appliances or machinery inside of any Unit. There shall be no harassment of any Owner, Renter, Manager, contractor or vendor by any Owner or Renter. No Owner, their guests or Renters, shall store any dangerous, explosive or inflammable materials, except firewood, in his or her Unit or in the Common Elements. No violation of law shall be committed in the Property, nor shall anything be done to impair the structural or acoustical integrity of any Unit or the Common Elements. No part of the Common Elements shall be obstructed so as to interfere with its use for the purposes herein permitted. Each Owner, their guests or Renters, shall comply with all of the requirements of all governmental authorities, federal, state or local, and all laws, ordinances, rules and regulations applicable to his or her Unit.

6.7 **Common Elements:** There shall be no use of the Common Elements except by Owners and their guests and Renters. All persons residing within the Condominium may enjoy the use of all facilities in the General Common Elements as long as they abide by the terms of the Governing Documents. There shall be no obstruction of any part of the General Common Elements. Nothing shall be stored or kept in the General Common Elements without the prior written consent of the Board. No waste shall be committed in the Common Elements. Access to roofs shall be restricted to persons authorized by the Board.

6.8 **Rules:** There shall be no violation of rules for the use of the Common Elements that may be adopted by the Board from time to time and that shall be furnished in writing to the Owners by the Board.

6.9 **Automobile Parking:** All parking areas shall be used solely for the parking of motor vehicles used for personal transportation; each Unit is entitled to usage of one parking space.

(a) The provisions of this Article are in addition to and shall not limit the effect of zoning, building codes or other land use and other ordinances, regulations and rules of applicable jurisdictions with respect to parking. The Association may cause the removal of any vehicle wrongfully parked on the Property, including a vehicle owned by any Owner, their guests, invitees, or Renters, in any manner allowed by law. The Association shall not be liable for any damages incurred by the vehicle owner, or any Owner, because of the removal in compliance with this section, or for any damage to the vehicle caused by the removal. The Association may cause the removal, without notice, of any vehicle parked in a marked fire lane, within fifteen feet of a fire hydrant, near and/or adjacent to a trash or wood bin, in a parking space designated for handicapped without proper authority or in a manner which interferes with any entrance to, or exit from, a Unit or the Property. All costs related to such removal shall be the responsibility of the vehicle owner.

(b) Assignment of parking spaces will be pursuant to the rules and regulations of the Association provided that no change in the designation of parking spaces shall be made for the benefit of a Unit Owner which discriminates against another Unit Owner without the latter's consent.

(c) No boat, trailer, camper, golf cart, commercial vehicle, mobile home, snowmobile, or dilapidated, unlicensed, or inoperable vehicle(s) shall be parked or stored in any parking area, without prior written approval from the Board. Auto/truck size limitations will be subject to rules and regulations adopted by the Board.

(d) No part of the Common Elements shall be used for repair, construction, or reconstruction of any vehicle, boat, or any other item or thing except in an emergency.

(e) Electrical plugs located adjacent to designated parking spaces shall be used for the sole purpose of augmenting winter vehicle operation and Owners shall remove extension cords when not in use.

6.10 **Interiors:** Each Owner shall have the exclusive right and obligation to paint, repaint, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floors, windows and doors bounding his or her Unit, and to landscape and maintain the ground area of the patio space adjacent to his or her own Unit. Owners must ensure that improvements or renovations do not impair the structural or acoustical integrity and mechanical systems nor lessen the support of any portion of the Building. Any changes to the interior that may affect structural or

acoustical integrity, including any changes in heating, air conditioning and/or fireplaces require the prior written permission of the Board.

6.11 **Liability of Owners for Damage to Common Elements:** An Owner shall be liable to the Association for all damage to the Common Elements or improvements thereon caused by such Owner or his or her invitee, Renter, guest, vendor, or pet, except for that portion of said damage, if any, reimbursed to the Association by insurance. Liability of an Owner shall be established only after notice to the Owner and a hearing before the Board.

6.12 **Right to Lease:** As used in this Article "lease" shall mean any and all agreements, including, but not limited to leases, subleases, or rental agreements, for the use or occupancy of any Unit. Any Owner who wishes to lease his or her Unit must comply with each of the following restrictions, and the lease will be subject to these restrictions whether they are included within the lease or not.

(a) All leases must be in writing and the lease must state that the tenancy is subject to the Governing Documents. The Owner must give a copy of the Governing Documents to the Renter prior to the inception of the lease. The lease must be for the entire Unit and not merely parts thereof, unless the Owner remains in residence. All Owners who lease their Units long term (29 days or more) shall promptly notify the Manager of the Association in writing of the names of all Renters occupying such Unit, and the address and telephone number where such Owner can be reached.

(b) Each Owner shall be responsible for compliance with the provisions of the Governing Documents by his or her Renters and shall pay the Assessments or penalties imposed pursuant to the Governing Documents for a violation thereof by his or her Renter. The Owner shall be liable for any and all damages or costs incurred by the Association due to the Renters or their guests. By becoming a Renter, each Renter agrees to be bound by the Governing Documents, and recognizes and accepts the rights and powers of the Association to evict a Renter for any violation of the Governing Documents by the Renter. Any failure of the Renter to comply with the Governing Documents shall be a default under the lease, regardless of whether the lease so provides. In the event of any such default, the Owner shall immediately take all actions to cure the default including, if necessary, eviction of the Renter. The Association must give the Owner notice and a hearing as provided in the Bylaws before the Association may file for eviction.

(c) If any Owner, acting as a landlord, or Renter is in violation of the provisions of the Governing Documents, the Association may bring an action in its own name and/or in the name of the Owner to have the Renter evicted and/or to recover damages. In the event of such violation, the Owner hereby appoints the Association as his or her attorney-in-fact with the ability to take all the actions necessary to effectuate the eviction of the Renters. If the court finds that the Renter has violated any of the provisions of the Governing Documents, the court may find the Renter guilty of unlawful detainer notwithstanding the fact that the Owner is not a plaintiff in the action and/or the Renter is not otherwise in violation of the Renter's lease with the Owner/landlord. For purposes of granting a forcible detainer against the Renter, the Owners and their Renters agree that the lease was made for the express benefit of the Association. The remedy provided by this

subsection is not exclusive and is in addition to any other remedies that the Association may have. The Association shall recover all its costs and reasonable attorneys' fees.

6.13 **Antennas:** No outside television antenna, aerial or radio tower shall be erected, constructed or placed on any Common Element, except for those installed by a licensed public or quasi-public utility or cable franchise with the approval of the Board, or as allowed by law. Cable and phone lines must follow trim lines and must be painted, covered or otherwise concealed so as not be unreasonably visible.

6.14 **Invitees:** Each Owner shall be responsible for compliance with the provisions of the Governing Documents by his or her Renters, guests, invitees and agents. An Owner shall promptly pay any fine or penalty imposed against such Owner for violations committed by his or her Renters, guests, invitees or agents or be subject to enforcement of such violations or collections as set forth herein.

6.15 **Window Coverings:** All drapes, window shades or other window coverings installed in the windows of Units that are visible from the exterior of the Unit shall be neutral or light in color. The use of sheets, blankets, aluminum foil or other non-traditional materials are prohibited.

ARTICLE VII **ALTERATIONS AND MAINTENANCE**

7.1 **Alterations by Unit Owners:** The interior plan of the Unit may be changed by its Owner, with the exception of the bearing walls, which may not be moved or altered without the prior written approval of the Board. In the event an Owner proposes any change to a bearing wall, the Owner must first obtain a certification by a registered architect or engineer that the proposed action will not affect the structural integrity of the building as well as receive approval by the Board. No Units may be subdivided, nor may any change in the boundaries of the Units encroach upon the boundaries of the Common Elements, except by amendment to this Declaration. Boundary walls must be equal to quality of design and construction of the existing boundary walls. A change in the boundaries between Units shall be set forth in an amendment to this Declaration. In addition to compliance with the provisions of this paragraph, such an amendment must further set forth and contain plans to the Units concerned, showing the Units after the change in boundaries, and such plans shall be attached to the amendment as exhibits. Such an amendment shall be signed and acknowledged by the Owners of the Units concerned, as well as those Owners with an interest in any Common Elements affected, together with words of conveyance in the amendment conveying interests acquired in the Units or common element by such change. The amendment shall also be approved by the Board of Directors of the Association and signed and acknowledged by all Directors of the Association and signed and acknowledged by all lien holders and mortgagees of the Units concerned. It shall be the responsibility of the Owners causing the change to record the amendment and to pay all expenses associated with such amendment.

7.2 **Liens for Alterations:** Labor performed and materials furnished and incorporated unto a Unit with the consent of or at the request of the Owner, his or her agent, contractor or subcontractor shall be the basis for the filing of a lien against the Unit or the Owner consenting to or requesting the same. Each Owner shall indemnify and hold harmless the Association and each of the other Owners against liens on the Unit or against the Common Elements for construction performed or for labor, materials, services or other products incorporated in the Owner's Unit at such Owner's request.

7.3 **Exterior Alterations:** No Owner may change, alter or remodel the exterior of his or her Unit without the prior written consent of the Board.

7.4 **Maintenance by Unit Owner:** An Owner shall maintain and keep in repair the interior of his or her own Unit, including the fixtures therein. All fixtures and equipment installed in the Unit commencing at a point where the utilities enter the Unit shall be maintained and kept in repair by the Owner thereof, except as provided in paragraph 2.9 hereof. An Owner shall do no act nor any work that will impair the structural soundness or integrity of the Building or impair any easement. An Owner shall also keep the balcony, entrance, patio or deck area appurtenant to his Unit in a clean, uncluttered and sanitary condition. The right of each Owner to repair, alter, and remodel is coupled with the obligation to maintain, repair, and/or replace exterior doors, screen doors, windows, window screens, window glass, door locks, and all of the Limited Common Elements as described in Section 1.6 (b). No act of alteration, repairing or remodeling by any Unit Owner shall impair in any way the integrity of the Units of adjoining Owners or the integrity of Limited Common Elements or General Common Elements.

7.5 **Maintenance by Association:** The Association shall take all necessary steps, as determined by the Board, to maintain, repair and/or replace the General Common Elements, including but not limited to the structural elements of the Buildings, the exterior surfaces, trim, plumbing, and utility lines and connections, heating systems and the repair, upkeep and replacement of all broken or worn improvements to ensure that the Building does not unnecessarily deteriorate. In the event an Owner does not maintain, repair, and/or replace his or her Limited Common Elements, as described in Section 1.6(b), the Association may paint, repair and/or replace the Limited Common Elements appurtenant to the Unit. Owners will be assessed for such repairs and replacement, after notice and a hearing by the Board of Directors.

ARTICLE VIII **INSURANCE**

8.1 **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.

(a) The named insured shall be the Association individually and as agent for the Owners and their Mortgagees 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. Unit Owners may obtain insurance coverage at their own expense upon their own personal property and living expense. Each Owner shall maintain liability insurance with limits of at least \$100,000.

(b) The Association shall furnish one copy of each insurance policy and of all endorsements thereon to each Owner, or Mortgagee of an Owner on request.

8.2 **Policies and Coverage:** The Association shall purchase and keep in force the following insurance policies.

(a) **Casualty:** All Buildings and improvements upon the land shall be insured in an amount equal to the maximum insurable replacement value, and all personal property included in the General Common Elements shall be insured for its full replacement value, but subject to such deductible clauses as are required in order to obtain coverage at reasonable costs. Such coverage shall afford protection against:

(1) Loss or damage by fire and other hazards covered by a standard extended coverage endorsement; and

(2) Such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location and use as the Buildings on the land, including, but not limited to vandalism and malicious mischief.

The policies shall state whether the following items are included within the coverage in order that the Owners may insure themselves if the items are not insured by the Association: air handling equipment for space cooling and heating, service equipment such as dishwasher, laundry, fireplaces, refrigerator, oven, whether or not such items are built-in equipment, interior fixtures such as electrical and plumbing fixtures, floor coverings, inside paint and other inside wall finishing.

(b) **Public Liability:** In such amounts and with such coverage as shall be required by the Board, including, but not limited to, hired automobile and non owned automobile coverage, and with cross-liability endorsement to cover liabilities of the Owners as a group to an Owner.

(c) **Directors and Officers:** Errors or Omissions Insurance for the Directors and Officers and in amounts to be determined by the Board.

(d) **Other Insurance:** Such other insurance as the Board shall determine from time to time to be desirable and as may be required by the Federal and State laws.

(e) The Board of Directors shall review insurance coverage annually.

8.3 **Premiums:** Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense, except that the amount of increase in the premium caused by an Owner shall be assessed against the Owner. Not less than

ten (10) days prior to the date when a premium is due, evidence of such payment shall be furnished by the Association to each Mortgagee who has requested such evidence in writing

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

(a) Unit Owners – an undivided share for each Unit Owner, such share being the same as the undivided share in the Common Elements appurtenant to his or her Unit.

(b) Mortgagees – In the event a Mortgagee endorsement has been issued as to a Unit, the share of the Unit Owner shall be held in trust for the Mortgagee and the Unit Owner as their interests may appear; provided, however, that no Mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no Mortgagees shall have any right to apply or have applied to the reduction of a Mortgage debt any insurance proceeds except distributions thereof made to the Unit Owner and Mortgagee pursuant to the provisions of this Declaration.

8.5 **Subrogation:** Any insurance maintained by the Association shall contain a "waiver of subrogation" as to the Association and its officers, directors, Manager, the Owners and occupants of the Units and Mortgagees, and, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. However, an Owner shall pay any deductible incurred by the Association due to the negligent or intentional act or omission of the Owner, his family, guests, Renters, or pets, after notice and a hearing as provided in the Bylaws.

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

(a) Expense of the Trust – All expenses of the insurance trustee shall be first paid or provision made therefor.

(b) Reconstruction or Repair – If the damage for which the proceeds are paid is to be repaired or reconstructed by the Association, the remaining proceeds shall be paid to defray the cost thereof as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the Unit Owners according to the percentages as set forth in Exhibit "B".

(c) **Failure to Reconstruct or Repair** – If it is determined in the manner elsewhere provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial Owners, remittance to Unit Owners and their Mortgagees being payable jointly to them.

(d) **Certificate** – In making distribution to Unit Owners and their Mortgagees, the insurance trustee may rely upon a certificate of the Association made by its representative or Manager as to the names of the Unit Owners and their respective shares of the distribution.

8.7 **Association as Agent:** The Association is irrevocably appointed agent for each Unit Owner and for each owner of a Mortgage or other lien upon a Unit and for each Owner of any other interest in the Condominium to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

8.8 **Benefit of Mortgagees:** Certain provisions in this paragraph entitled “Insurance” are for the benefit of Mortgagees of Condominium parcels, and all of such provisions are covenants for the benefit of any Mortgagees of a Unit and may be enforced by such Mortgagee.

ARTICLE IX **RECONSTRUCTION**

9.1 **Repair after Casualty:** If any part of the Condominium shall be damaged by casualty, whether or not it shall be reconstructed or repaired shall be determined in the following manner:

(a) **Lesser Damage** – If a Unit or Units are found by the Board to be tenantable after the casualty, the damaged property shall be repaired.

(b) **Greater Damage** - If a Unit or Units are found by the Board to be not tenantable after the casualty, the damaged property will be reconstructed or rebuilt, unless more than sixty-six and two-thirds percent (66 2/3%) of the Units are not tenantable, and sixty-six and two-thirds percent (66 2/3%) of the Total Voting Power and sixty-six and two-thirds percent (66 2/3%) of the Mortgagees holding first Mortgages on the Units vote against reconstruction.

(c) **Certificate** – The insurance trustee may rely upon a certificate of the Association made by its president or secretary to determine whether or not the damaged property is to be reconstructed or repaired.

9.2 **Plans and Specifications:** Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original improvements, or if not, then according to plans and specifications approved by the Board and by not less than sixty-six and two-thirds percent (66 2/3%) of the Total Voting Power, including the Owners of all Units the plans for which are to be altered. Any such reconstruction not in accordance with the original Plans and specifications must be set forth in an amendment to this Declaration, which amendment shall

be prepared and filed of record in accordance with the provisions of such amended filing, more particularly set forth in paragraph 7.1 and paragraph 11.4.

9.3 **Responsibility:** The responsibility for reconstruction or repair after casualty shall be the same as for maintenance and repair of the Condominium.

9.4 **Assessments:** If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction or repair for which the Association is responsible, or if at any time during such reconstruction or repair, or upon completion of such reconstruction or repair, the funds for the payment of the costs thereof are insufficient, assessments shall be made against all Unit Owners in sufficient amounts to provide funds for the payment of such costs. Such assessments shall be levied as set forth in Exhibit "B".

9.5 **Construction Funds:** The funds for payment of costs of reconstruction or repair after casualty, which shall consist of proceeds of insurance held by the insurance trustee and funds collected by the Association from assessments against the Unit Owner, shall be disbursed in the sound discretion of the trustee and according to the contract of reconstruction or repair, which contract must have the approval of the Board and the Unit Owners involved. It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be paid to the Association for the use and benefit of the Unit Owners.

9.6 **Procedures Without Repair:**

If the improvements are not repaired or reconstructed in accordance with the foregoing, the Property shall be sold in its entirety under such terms and conditions as the Board deems appropriate. For the purpose of affecting a sale under this section, each Owner grants to the Association an irrevocable power of attorney to sell the entire Property for the benefit of the Owners, to terminate the Declaration and to dissolve the Association. In the event the Association fails to take the necessary steps to sell the entire Property as required hereunder within sixty (60) days following the date of a determination by the Owners not to rebuild, or if within one hundred eighty (180) days following the date of damage or destruction the Owners have failed to make a determination to rebuild, any Owner may file a partition action as to the entire Property and the court shall order partition by sale of the entire Property and distribution of the sale proceeds as provided herein.

If the Property is sold, all available insurance and sales proceeds shall be disbursed among all Owners and their respective Mortgagees in proportion to the respective fair market values of their Units as of the date immediately preceding the date of damage or destruction as determined by a qualified independent appraiser selected by the Board, after first applying the proceeds to the cost of mitigating hazardous conditions on the Property, making provision for the continuance of public liability insurance to protect the interests of the Owners until the Property can be sold, and complying with all other applicable requirements of governmental agencies. In the

event of a failure to agree on an appraiser, the appraiser shall be appointed by the then President of the Gallatin County Bar Association.

ARTICLE X CONDEMNATION

10.1 **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 and the Plans 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 and the Plans shall be amended to reflect such taking and to readjust proportionately the percentages of undivided interest of the remaining Owners in the Common Elements. In the event of a taking by eminent domain of any part of the Common Elements, the Association shall participate in the negotiations. Where the condemned Units are not valued separately by the condemning authority or by the court, proceeds of condemnation shall be distributed among Owners affected by the condemnation and their respective Mortgagees according to the method provided in Section 9.6.

If there is a substantial taking of the Property (more than sixty-six and two thirds percent (66 2/3%) of all Common Element improvements), the Owners may sell the remaining Property with the affirmative vote of sixty-six and two-thirds percent (66 2/3%) of the Total Voting Power and sixty-six and two-thirds (66 2/3%) of the Mortgagees holding Mortgages on the Units. For the purpose of affecting a sale under this section, each Owner grants to the Association an irrevocable power of attorney to sell the entire Property, terminate the Declaration and 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 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 sale shall be distributed to the Owners and their respective mortgagees as determined under the method described in Section 9.6.

ARTICLE XI
MISCELLANEOUS

11.1 **Interpretation:** The provisions of the Declaration and of the Bylaws shall be liberally construed to effectuate the purposes of the said Declaration and Bylaws and to create a Building or Buildings subject to and under the provisions of the Unit Ownership Act.

11.2 **Remedies:** All remedies provided for in this said Declaration and Bylaws shall not be exclusive of any other remedies which may now be, or are hereafter, available to the parties hereto as provided for by law. Each remedy provided by these restrictions is cumulative and not exclusive. In the case of joint ownership of a Unit in any form, the liability of each of the Owners thereof in connection with the liabilities and obligations of Owners as set forth in or imposed by this Declaration shall be joint and several.

11.3 **Severability:** The provisions hereof shall be deemed independent and severable and the invalidity or partial invalidity or unenforceability of any one or more provisions shall not affect the validity or enforceability of any other provision hereof.

11.4 **Amendment:** This Declaration may be amended by the affirmative vote of a majority of the Total Voting Power. Any amendment shall be recorded with the Clerk and Recorder's Office of Gallatin County, Montana.

11.5 **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 the President of the Board of Directors, Silver Bow Owners' Association, P.O. Box 160323, Big Sky, Montana, 59716.

11.6 **Right to Examine Books:** Every Owner and first Mortgagee shall have the right to examine the books and records of the Association by giving a written notice requesting such examination. Upon receipt of such notice the party receiving the notice shall schedule a mutually agreeable date and time during normal business hours for the examination, which date shall be not more than fifteen (15) days following the receipt of the notice requesting the examination.

IN WITNESS WHEREOF, this Restated Declaration is executed by the President of the Association.

I, the undersigned, the duly elected and acting President of the Silver Bow Owners' Association, a Montana nonprofit corporation, do hereby certify and declare under penalty of perjury, that the foregoing Restated Declaration has been approved by the percentage of Owners required by the Declaration.

Executed at Big Sky, Montana, on the 16th day of May, 2011.

SILVER BOW OWNERS' ASSOCIATION

By: Kirk Dige
KIRK DIGE, PRESIDENT

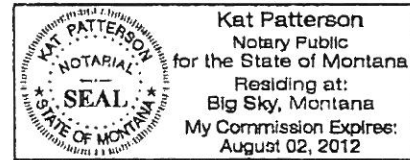
STATE OF MONTANA)
)ss
County of Gallatin)

On this 16th day of May, 2011, before me, a Notary Public in and for the State of Montana, personally appeared Kirk Dige, known to me to be the President of the corporation* that executed the within instrument, and acknowledged to me that such corporation executed the same.

* Silver Bow Owners' Association

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

[Signature]
Notary Public for the State of MT
Residing at: Big Sky, MT
My commission expires: August 2nd, 2012



Silverbow.ccr.clean.FINAL
05/10/11

EXHIBIT A
SILVER BOW I

| Unit Designation | Appurtenant Undivided Interest (%) (Percentile Interest) |
|-------------------------|---|
| Unit 1 C-1 | 1.2757 |
| Unit 2 E-1 | 2.4216 |
| Unit 3 D-1 | 1.8811 |
| Unit 4 F-1 | 2.5081 |
| Unit 5 A-1 | 2.8757 |
| Unit 6 B-1 | 1.4270 |
| Unit 7 G-1 | 1.1676 |
| Unit 8 G-2 | 1.1676 |
| Unit 9 F-2 | 2.5081 |
| Unit 10 D-2 | 1.8811 |
| Unit 11 E-2 | 2.4216 |
| Unit 12 C-2 | 1.2757 |
| Unit 13 E-3 | 2.4432 |
| Unit 14 D-3 | 1.9027 |
| Unit 15 F-3 | 2.5297 |
| Unit 16 A-2 | 2.8757 |
| Unit 17 B-2 | 1.4270 |
| Unit 18 F-4 | 2.5514 |
| Unit 19 D-4 | 1.9243 |
| Unit 20 E-4 | 2.4649 |
| Unit 21 E-5 | 2.3784 |
| Unit 22 D-5 | 1.8378 |
| Unit 23 F-5 | 2.4649 |
| Unit 24 C-3 | 1.2757 |
| Unit 25 E-6 | 2.3784 |
| Unit 26 D-6 | 1.8378 |
| Unit 27 F-6 | 2.4649 |
| Unit 28 G-3 | 1.1676 |
| Unit 29 G-4 | 1.1676 |
| Unit 30 A-3 | 2.8757 |
| Unit 31 B-3 | 1.3838 |
| Unit 32 F-7 | 2.4649 |
| Unit 33 D-7 | 1.8378 |
| Unit 34 E-7 | 2.3784 |
| Unit 35 C-4 | 1.3189 |
| Unit 36 F-9 | 2.4649 |
| Unit 37 D-9 | 1.8378 |

| Unit Designation | Appurtenant Undivided Interest (%) (Percentile Interest) |
|-------------------------|---|
| Unit 38 E-9 | 2.3784 |
| Unit 39 C-6 | 1.2540 |
| Unit 40 E-10 | 2.4000 |
| Unit 41 D-10 | 1.8595 |
| Unit 42 F-10 | 2.4864 |
| Unit 43 G-5 | 1.2324 |
| Unit 44 G-6 | 1.2324 |
| Unit 45 C-5 | 1.3189 |
| Unit 46 E-8 | 2.4649 |
| Unit 47 D-8 | 1.9243 |
| Unit 48 F-8 | 2.5514 |
| Unit 49 B-4 | 1.4702 |
| Unit 50 A-4 | 2.9621 |
| Silver Bow I | 100% |

SILVER BOW II

| Unit Designation | Appurtenant Undivided Interest (%) (Percentile Interest) |
|-------------------------|---|
| Unit 51 H-4 | 3.7609 |
| Unit 52 I-11 | 5.9772 |
| Unit 53 I-10 | 5.9772 |
| Unit 54 I-9 | 6.0443 |
| Unit 55 J-5 | 3.8952 |
| Unit 56 J-4 | 3.9624 |
| Unit 57 I-8 | 6.0443 |
| Unit 58 I-7 | 5.6414 |
| Unit 59 I-6 | 5.7085 |
| Unit 60 H-3 | 3.3580 |
| Unit 61 J-2 | 4.1639 |
| Unit 62 J-3 | 4.1639 |
| Unit 63 H-1 | 3.8281 |
| Unit 64 I-3 | 6.0443 |
| Unit 65 I-2 | 5.9772 |
| Unit 66 I-1 | 6.1786 |
| Unit 67 H-2 | 3.6938 |
| Unit 68 I-4 | 5.8428 |
| Unit 69 I-5 | 5.8428 |
| Unit 70 J-1 | 3.8952 |
| Silver Bow II | 100% |

Exhibit B-Assessment Percentages

| <u>Unit #</u> | <u>Unit Designation</u> | <u>Original Sq Footage</u> | <u>Addition Sq Footage</u> | <u>Total Sq Footage</u> | <u>% Interest</u> |
|----------------------|--------------------------------|-----------------------------------|-----------------------------------|--------------------------------|--------------------------|
| 1 | C-1 | 720 | 38 | 758 | 1.0308 |
| 2 | E-1 | 1,300 | | 1,300 | 1.7690 |
| 3 | D-1 | 1,016 | | 1,016 | 1.3826 |
| 4 | F-1 | 1,327 | | 1,327 | 1.8058 |
| 5 | A-1 | 1,600 | | 1,600 | 2.1773 |
| 6 | B-1 | 800 | | 800 | 1.0886 |
| 7 | G-1 | 664 | 276 | 940 | 1.2792 |
| 8 | G-2 | 664 | 276 | 940 | 1.2792 |
| 9 | F-2 | 1,327 | | 1,327 | 1.8058 |
| 10 | D-2 | 1,016 | | 1,016 | 1.3826 |
| 11 | E-2 | 1,300 | | 1,300 | 1.7690 |
| 12 | C-2 | 720 | | 720 | 0.9798 |
| 13 | E-3 | 1,300 | | 1,300 | 1.7690 |
| 14 | D-3 | 1,016 | | 1,016 | 1.3826 |
| 15 | F-3 | 1,327 | | 1,327 | 1.8058 |
| 16 | A-2 | 1,600 | | 1,600 | 2.1773 |
| 17 | B-2 | 800 | | 800 | 1.0886 |
| 18 | F-4 | 1,327 | | 1,327 | 1.8058 |
| 19 | D-4 | 1,016 | | 1,016 | 1.3826 |
| 20 | E-4 | 1,300 | | 1,300 | 1.7690 |
| 21 | E-5 | 1,300 | | 1,300 | 1.7690 |
| 22 | D-5 | 1,016 | | 1,016 | 1.3826 |
| 23 | F-5 | 1,327 | | 1,327 | 1.8058 |
| 24 | C-3 | 720 | | 720 | 0.9798 |
| 25 | E-6 | 1,300 | | 1,300 | 1.7690 |
| 26 | D-6 | 1,016 | | 1,016 | 1.3826 |
| 27 | F-6 | 1,327 | | 1,327 | 1.8058 |
| 28 | G-3 | 664 | 290 | 954 | 1.2982 |
| 29 | G-4 | 664 | | 664 | 0.9036 |
| 30 | A-3 | 1,600 | | 1,600 | 2.1773 |
| 31 | B-3 | 800 | | 800 | 1.0886 |
| 32 | F-7 | 1,327 | | 1,327 | 1.8058 |
| 33 | D-7 | 1,016 | | 1,016 | 1.3826 |
| 34 | E-7 | 1,300 | | 1,300 | 1.7690 |
| 35 | C-4 | 720 | | 720 | 0.9798 |
| 36 | F-9 | 1,327 | | 1,327 | 1.8058 |
| 37 | D-9 | 1,016 | | 1,016 | 1.3826 |
| 38 | E-9 | 1,300 | | 1,300 | 1.7690 |

1 3 6

| <u>Unit #</u> | <u>Unit Designation</u> | <u>Original Sq Footage</u> | <u>Addition Sq Footage</u> | <u>Total Sq Footage</u> | <u>% Interest</u> |
|---------------|-------------------------|----------------------------|----------------------------|-------------------------|-------------------|
| 39 | C-6 | 720 | | 720 | 0.9798 |
| 40 | E-10 | 1,300 | | 1,300 | 1.7690 |
| 41 | D-10 | 1,016 | | 1,016 | 1.3826 |
| 42 | F-10 | 1,327 | | 1,327 | 1.8058 |
| 43 | G-5 | 664 | | 664 | 0.9036 |
| 44 | G-6 | 664 | | 664 | 0.9036 |
| 45 | C-5 | 720 | | 720 | 0.9798 |
| 46 | E-8 | 1,300 | | 1,300 | 1.7690 |
| 47 | D-8 | 1,016 | | 1,016 | 1.3826 |
| 48 | F-8 | 1,327 | | 1,327 | 1.8058 |
| 49 | B-4 | 800 | | 800 | 1.0886 |
| 50 | A-4 | 1,600 | 17 | 1,617 | 2.2007 |
| 51 | H-4 | 780 | | 780 | 1.0614 |
| 52 | I-11 | 1,055 | | 1,055 | 1.4357 |
| 53 | I-3 | 1,055 | | 1,055 | 1.4357 |
| 54 | I-9 | 1,055 | | 1,055 | 1.4357 |
| 55 | J-5 | 706 | | 706 | 0.9607 |
| 56 | J-4 | 706 | | 706 | 0.9607 |
| 57 | I-8 | 1,055 | | 1,055 | 1.4357 |
| 58 | I-7 | 1,055 | | 1,055 | 1.4357 |
| 59 | I-6 | 1,055 | | 1,055 | 1.4357 |
| 60 | H-3 | 780 | | 780 | 1.0614 |
| 61 | J-2 | 706 | | 706 | 0.9607 |
| 62 | J-3 | 706 | | 706 | 0.9607 |
| 63 | H-1 | 780 | | 780 | 1.0614 |
| 64 | I-10 | 1,055 | | 1,055 | 1.4357 |
| 65 | I-2 | 1,055 | | 1,055 | 1.4357 |
| 66 | I-1 | 1,055 | | 1,055 | 1.4357 |
| 67 | H-2 | 780 | | 780 | 1.0614 |
| 68 | I-4 | 1,055 | | 1,055 | 1.4357 |
| 69 | I-5 | 1,055 | | 1,055 | 1.4357 |
| 70 | J-1 | 706 | | 706 | 0.9607 |
| Totals | | 72,589 | 897 | 73,486 | 100.0000 |

Owners who receive approval to increase the square footage of their unit and proceed with construction will be subject to an increase in assessments based on the square footage added to their units.