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Eric Semerad - Gallatin County, MT MISC



**DECLARATION FOR
UPPER PINES CONDOMINIUMS
(FORMERLY KNOWN AS
THE PINES CONDOMINIUM, PHASE II)**

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DECLARATION FOR THE UPPER PINES CONDOMINIUMS

RECITALS

The foregoing recitals are incorporated into this Declaration as if fully recited herein.

A. WHEREAS, governing documents were recorded for the condominium project known as The Pines Condominiums Phase II located on the real property as legally described in **Exhibit A-1** (hereinafter referred to as the "Condominium, Property or Project") and those lands and property were submitted and subject to the Montana Unit Ownership Act pursuant to Chapter 23, Title 70, MCA (2017), as amended;

B. WHEREAS, the owners of one-hundred percent (100%) of the Unit Owners voted to amend and restate the condominium declaration for The Pines Condominiums Phase II and rename the Project to the Upper Pines Condominiums. The Certificate of Name is attached hereto as **Exhibit B**.

C. NOW, THEREFORE, the Owners hereby declare that the Project and the property in each subsequent phase, as applicable, to the extent it becomes developed as described herein shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold, and improved subject to the declarations, limitations, covenants, conditions, restrictions, and easements contained in this Declaration, all of which are imposed as equitable servitudes pursuant to a general plan for the development of the Project for the purpose of enhancing and protecting the value and attractiveness of the Project, and every part of it. All of the limitations, covenants, conditions, restrictions and easements shall constitute covenants that run with the land and are 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 Project or the Property in the Project.

This Declaration shall replace and supersede the original governing documents listed below, shall apply to all the real property and improvements placed or constructed thereon, and shall be in existence in perpetuity unless amended or terminated by operation of law. In the event any provision of this Declaration is judged to be invalid or unenforceable, the remaining provisions shall remain in full force and effect.

The documents superseded by this Declaration include:

Title of Document	Recording Date and Recording Information	
Declaration for The Pines Condominium, Phase II Dated October 12, 2005	October 28, 2005	Document No. 2207377
Correction to Declaration for Pines II Condominium	November 8, 2005	Document No. 2208717
Amendment to Declaration for The Pines Condominium, Phase II	March 28, 2006	Document No. 2223014

Correction to Amendment to Declaration for The Pines Condominium, Phase II	May 22, 2006	Document No. 2228827
Second Amendment to Declaration for The Pines Condominium, Phase II	April 25, 2012	Document No. 2413790
Third Amendment to Declaration for The Pines Condominium, Phase II	August 23, 2017	Document No. 2590392
Fourth Amendment to Declaration for The Pines Condominium, Phase II	July 26, 2019	Document No. 2651477

Article 1 - DEFINITIONS

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

1.1 **Act:** Act means the Montana Nonprofit Corporation Act, §35-2-113 *et seq.*, MCA, as amended.

1.2 **Articles:** means the Articles of Incorporation of the Association, as the same may be amended, restated or replaced from time to time.

1.3 **Assessments:** collectively refers to all assessments as set forth in Article 7 below.

1.4 **Association:** means all of the Unit Owners acting as a group and in accordance with duly adopted Bylaws and this Declaration, also referred to as the Upper Pines Condominium Owners' Association, a Montana nonprofit corporation, and any successor thereto.

1.5 **Board:** means the Board of Directors of the Association as more particularly defined in the Bylaws.

1.6 **BSFD:** means the Big Sky Fire Department, which is the authority having jurisdiction to enforce the fire code as adopted by the Big Sky Fire District, currently the International Fire Code, 2012 edition, within the Property.

1.7 **Building:** means a structure containing Units.

1.8 **Bylaws:** means the Bylaws of the Association recorded 1-8, 20 20, as Document No. 2669748, records of Gallatin County, Montana, as such may be amended, restated or replaced from time to time.

1.9 **Common Elements:** means both General Common Elements and Limited Common Elements. For the avoidance of doubt, the Common Elements do not include the Units or any portion thereof.

(a) **General Common Elements:** means all those elements within the Project which are for the use of all Unit Owners and their guests and invitees (some may be designated as "GCE" on the floor plans or site plan). The Association may add or delete General Common Elements by amendments to this Declaration and/or by the method set forth in the Unit Ownership Act. The General Common Elements include, but are not limited to, the following to the extent not within a Unit and not otherwise designated as a Limited Common Element:

(i) the land on which the Buildings are located, except any portion thereof included in a Unit or made a Limited Common Element by this Declaration or amendment hereto;

(ii) the foundations, columns, girders, beams, supports, main walls, roofs and other structural components of the Buildings stairs, entrances and exits of Buildings, , and siding and other exterior surfaces of the Buildings;

(iii) the sidewalks, parking, right-of-way improvements, landscaping, paths and other improvements or fixtures on the Property;

(iv) installations of central services existing for common use of all Units within the Building such as power, light, gas, television, telephone, sewer, and other utilities and connections to the extent serving all Units.

(v) public utility lines, water, sewer, electrical, gas, telephone and television lines, and similar infrastructure and facilities to the extent serving all Units or all Units within a Building, except those utility lines that are required pursuant to separate agreement to be maintained by the public utility;

(vi) the tanks, pumps, motors, fans, compressors, ducts and in general all apparatus and installations existing for common use of all Units or of all Units within a Building;

(vii) any facilities and improvements constructed on the Property for operation and maintenance of the Project or use by all Unit Owners; and

(viii) landscaping, landscape and development lighting, security lighting, Project signage and signage lighting (if installed), other materials and improvements separate from and outside of the Units, and other elements necessary for or convenient to the safety, maintenance and existence of the Project.

(b) **Limited Common Elements:** means those Common Elements within the Project designated in this Declaration, site plan, or floor plans (some may be designated as "LCE" on the floor plans or site plan) or by agreement of the Unit Owners which are reserved for the use of a certain Unit or number of Units to the exclusion of the other Units. Specifically, as to any given Unit, Limited Common Elements shall include, but not be limited to, the following common elements which are outside the boundaries of the Unit and which are appurtenant to, affixed to or provide service or access to the Unit:

(i) Paths, entrances, walkways, stoops, decks, balconies, porches,

terraces and patios;

(ii) propane tanks; and

(iii) any other improvement, facility or item described in the definition of General Common Elements to the extent the Board, reasonably determines that such improvement, facility or item should equitably be treated a Limited Common Element for purposes of this Declaration.

1.10 **Common Expenses:** means expenses of administration, maintenance, repair or replacement of General Common Elements, expenses of administration, maintenance, repair or replacement of those Limited Common Elements that the Board votes to treat as General Common Elements, and all other expenses agreed upon by the Association of all Owners, and expenses declared common by the Unit Ownership Act. Such expenses shall include dues payable to the Association, and any reserve established by the Board to the extent relating to the General Common Elements, the Limited Common Elements for which the Association is responsible.

1.11 **Community Association:** means the Big Sky Owners Association, Inc., a Montana non-profit corporation, its successors and assigns.

1.12 **Community Association Governing Documents:** means collectively the Articles of Incorporation, Bylaws, and Rules and Regulations of the Big Sky Owners Association, Inc., as the same may be amended, restated or replaced from time to time.

1.13 **Construction Activity:** means any site preparation, landscaping, sign erection, construction, reconstruction, change, modification, alteration, enlargement or material maintenance of any improvements or real property, or any physical changes in the use of any Unit or other property or building or structure thereon, interior or exterior.

1.14 **Declaration:** has the meaning given in the first paragraph hereof.

1.15 **Design Guidelines:** means any Rules and Regulations adopted by the Board for the regulation and management of the Property or any portion thereof.

1.16 **Driveway:** means, with respect to each Building, those Limited Common Elements used for ingress and egress between a Roadway and the Building serving one or more Units.

1.17 **Eligible Holder:** has the meaning given in Article 10 - .

1.18 **Function:** means any activity, function or service listed in this Declaration which is required to be or may be undertaken or performed by the Association as well as any activity, function or service otherwise undertaken or performed by the Association.

1.19 **Good Standing:** means that a Member is current on the payment of such Member's Assessments, is not deemed by the Board to be in violation of the Governing Documents, and is current on any other payments deemed by the Board to be due and owing to the Association.

1.20 **Governing Documents:** means this Declaration, the Articles, the Bylaws, any

Rules and Regulations and any and all other documents necessary for the formation of the Project, including, but not limited to, any surveys, plats, or site plans as the same may be amended, restated or replaced from time to time.

1.21 **Insurance Trustee:** has the meaning given in Section 9.7.

1.22 **Limited Expenses:** means the expenses attributable to the construction, administration, operation, maintenance, repair and replacement of Limited Common Elements, including any expenses incurred by the Association, and are expenses only for owners of units within the respective building for which the expenses are accrued, unless otherwise determined by the Board.

1.23 **Manager:** means the Board, a manager, a management corporation 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 Project.

1.24 **MCA:** MCA means the Montana Code Annotated 2019 and any subsequent amendments.

1.25 **Percentage of Interest:** means each Unit Owner's undivided interest in the Common Elements and such Unit Owner's pro rata liability to the Association. The Percentage of Interest with respect to each Unit is specified on Exhibit F attached hereto.

1.26 **Permitted Household Pets:** has the meaning given in Section 8.8.

1.27 **Person:** means any natural person, corporation, partnership, limited liability company, association, trust, or any other legal entity.

1.28 **Plans:** has the meaning given in Section 2.9.

1.29 **Project:** means the Property and all buildings, improvements and structures thereon and all easements, rights and appurtenances belonging thereto, which are herewith submitted to the Unit Ownership Act.

1.30 **Property:** means the real property located in Gallatin County, Montana and described on Exhibit A-1 attached hereto, along with any property subsequently annexed or otherwise subjected to this Declaration.

1.31 **Public Record:** means the office of the Clerk and Recorder of Gallatin County where land records are recorded or filed.

1.32 **Reserve Assessments:** has the meaning given in Section 7.2(a)(ii).

1.33 **Roadway:** means a street or roadway (but excluding driveways) within the Property or a street or roadway providing primary or secondary access to the Property.

1.34 **Rules and Regulations:** means the specific rules, regulations and policies that may be adopted by the Board from time to time for governance and management of the Project or any

portion thereof, as the same may be amended from time to time.

1.35 **Site Plan:** has the meaning given in Section 2.6.

1.36 **Unit(s):** means the separate condominium units of the Project each of which is a parcel of property including and containing one or more rooms, intended for independent commercial and/or residential use, and with a direct exit leading to a public street or to Common Elements leading to a public street whether directly or indirectly by way of an easement or private street or way connecting to a public street. In this Declaration such Units refer to those Units which are designated on Exhibit F.

1.37 **Unit Designation:** means the combination of letters, numbers and words which identify the designated Units.

1.38 **Unit Owner or Owner:** means the person owning a Unit in fee simple absolute individually or as co-owner in any real estate tenancy relationship recognized under the laws of the State of Montana. Each Unit has only one owner for any voting purposes described herein.

1.39 **Unit Ownership Act:** means and refers to the Montana Unit Ownership Act, Section 70-23-101, *et seq.*, MCA (2019), as amended.

1.40 **Zoning Regulation:** means the regulations adopted for the Gallatin Canyon/Big Sky Zoning District on July 30, 1996 (Gallatin County Commission Resolution 1996-38) and as subsequently amended.

Article 2 - REAL ESTATE

2.1 **Purpose.** The purpose of this Declaration is to divide the Property into Units by submitting the Property and those improvements that exist and to be constructed on the Property to the condominium form of ownership and use in the manner provided by the Unit Ownership Act.

2.2 **Real Property and Certificate of Exemption.** The Property which is by this Declaration submitted and subject to the Unit Ownership Act is legally described in Exhibit A-1. The division of property is exempt from subdivision review as evidenced by the Certificate of Exemption from Subdivision Review attached as Exhibit A-2.

2.3 **Certificate of Subdivision Plat Approval.** This Project was received a Certificate of Subdivision Plat Approval for the real property for use of eighteen (18) condominium units in five (5) as recorded on May 2, 2008 at Document #2298984 and on May 2, 2008 at Document #2298983 in the office of the Clerk and Recorder, Gallatin County, Montana.

2.4 **Project.** The Project shall be known by the name The Upper Pines Condominiums. The Certificate of Name is attached hereto as Exhibit B. The Project is established in accordance with the Unit Ownership Act.

2.5 **Access to the Project.** Access to the Project from Lone Mountain Trail (aka Montana Highway 64) is via Andesite Road to Sunburst Drive through the condominium project

known as Big Sky Hidden Village Condominium to the Property, as adjudicated in Big Sky Hidden Village Owners Ass'n v. Hidden Village, 276 Mont. 268; 915 P.2d 845; 1996 Mont. LEXIS 74 (Mont. 1996). Collectively Sunburst Drive and the roadways through Big Sky Hidden Village are referred to as "Common Roads." Unit Owners, by purchasing and owning Units within the Project, agree that they will waive their right to protest the creation of a rural improvement district (RID) for the maintenance of the Common Roads.

2.6 **Site Plan.** The site plan of the Project showing the Buildings and Units, as well as, the dimensions and the designation of each Unit in relation to the Property ("Site Plan") is attached hereto as Exhibit C.

2.7 **Buildings.** The Units comprising the condominium will be contained in a total of five (5) buildings, as specified in Exhibit F.

2.8 **Construction Materials.** The principal materials of construction of the Buildings are described on Exhibit D attached hereto.

2.9 **Floor Plans.** The floor plans showing the layout of each Unit, the area of each, the dimensions and the designation of each Unit and the location of each Unit in the Building, the elevations of the Building and showing the common areas or limited common elements contained within or attached to the Building and the respective certificates of floor plans are attached hereto as Exhibits E-1 (Building I), E-2 (Building J), E-3 (Building K), and E-4 (Building L).

2.10 **Boundaries of Units.** Each Unit shall be bounded by the interior surfaces of its perimeter walls, floors, suspended ceilings, and trim. A Unit shall include all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, paint, finished flooring, unfinished flooring of a garage, and any other materials constituting any part of its finished surfaces, including unit access door(s), so described. All other portions of the walls, floors, or ceilings shall be a part of the Common Elements. In addition, each Unit shall include the following: (a) all spaces, interior partitions, windows, window frames, interior doors, door frames, and all other fixtures and improvements within the boundaries of the Unit, and (b) all outlets of utility service lines, including, but not limited to, power, light, gas, hot and cold water, heating, refrigeration, air conditioning, and waste disposal within the boundaries of the Unit, but shall not include any part of such lines or ducts themselves. In interpreting deeds, mortgages, deeds of trust, and other instruments for any purpose whatsoever or in connection with any matter, the existing physical boundaries of the Unit or of a Unit reconstructed in substantial accordance with the original plans hereof shall be conclusively presumed to be the boundaries regardless of settling, rising, or lateral movement of the Building and regardless of variances between boundaries as shown on the plat and those of the actual Building or Buildings.

2.11 **Condominium Unit.** Each Unit, together with the appurtenant undivided interest in the Common Elements of the Project shall together comprise one Unit, shall be inseparable, and may be conveyed, leased, rented devised or encumbered as a fee simple interest in a parcel of real property. Included in all Units, as a part of each Unit, are the garages appurtenant to such Unit.

2.12 **Ownership of Units.** Each Owner shall be entitled to the exclusive ownership,

use and possessions of his Unit and the percentage of the undivided interest of each Owner in the Common Elements as set forth in **Exhibit F**. Such percentage represents the Owner's ownership interest in the general common elements, and Owner's liability for common expenses, and the voting interest of the Owner or Owners in all matters concerning the Association of Owners.

Article 3 - EASEMENTS

3.1 Easements for Encroachments. Easements for Encroachments. If any portion of the General Common Elements or Limited Common Elements encroaches upon a Unit or Units, a valid easement for the encroachment and for the maintenance of the same, so long as it stands, shall and does exist. If any portion of 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 of the same, so long as it stands, shall and does exist. Such encroachments and easements shall not be considered or determined to be encumbrances either on the General Common Elements, the Limited Common Elements, or on the Units for the purpose of marketability of title. In the event a Building or any portion thereof is destroyed and then rebuilt, the Owners agree that minor encroachments of parts of the General Common Elements or Limited Common Elements because of such construction shall be permitted and that an easement for such encroachment and the maintenance and repair of the same shall and does exist.

3.2 Common Element Easements. A perpetual, nonexclusive easement and right of ingress and egress and support through the General Common Elements is appurtenant to each Unit for the benefit of each Owner and all the General Common Elements are subject to such rights. Every Owner shall have the right to use and enjoy the Limited Common Elements appurtenant to such Owner's Unit. The foregoing easements and rights are subject to the limitations and restrictions set forth in this Declaration and the other Governing Documents.

3.3 Easement for Utilities Within Units. Each Unit may have its air space penetrated by electrical wires and lines, gas lines, waste water lines and other utility and mechanical lines, pipes or equipment. These lines, where they serve only one Unit shall be appurtenant to such Unit, but where they serve more than one Unit shall be part of the Common Elements – either limited or general depending on how many Units are being served thereby. Such items shall be so installed and maintained so that they shall not unreasonably interfere with the use of the Unit by the Owners of the same. A non-exclusive easement shall exist through, over and across each Unit for the use, inspection, installation, maintenance, replacement and repair of such utility lines 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. After completion of construction of build out of a Unit an easement for ingress and egress for the purpose of such inspection, installation, maintenance, replacement or repair of such easement rights 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 could otherwise occur as a consequence of such emergency. There shall be easements to, through and over those portions of the land, structures, buildings, improvements and walls (including interior building walls) contained therein for the continuing maintenance and repair of all utilities in the Building. The foregoing easements are all permanently reserved to the Declarant, the Association and the Owners. In the event the Board or the Manager must enter or cause to have an agent enter a Unit for such reasons as listed above, other than emergency, The Board or Manager must provide

at least one week notice to the Owner or the Owner's agent or lessee. Notice can be provided either in writing, facsimile, electronic mail, or posting. Upon entering the Unit, the Board member or Manager shall provide documentation of their entry through written notification left at the premises of the time, date and work done in the Unit.

3.4 Easements for Public Utilities. There are hereby reserved unto the Association, and its designees access and maintenance easements upon, across, over, and under all the General Common Elements (provided that such access may not be across, over or under any Building) to the extent reasonably necessary for the purpose of installing, replacing, repairing, and maintaining security and similar systems, roads, walkways, bicycle pathways, drainage systems, street lights, signage, wells, drainfields, and all utilities, including, but not limited to, water, sewer, meter boxes, telephone, gas, and electricity, and for the purpose of installing any of the foregoing within easements designated for such purposes on recorded plats of the Property. The Board specifically reserves unto itself the right to convey to the local water and sewer district, electric company, natural gas supplier, or communications systems supplier easements across the General Common Elements (provided that such easements may not be across, over or under any Building or other structures or buildings) for ingress, egress, installation, reading, replacing, repairing, and maintaining utility meters and boxes. The exercise of this easement shall not extend to permitting entry into any Unit, nor shall any utilities or improvements be installed or relocated on the Property, except as approved by the Board.

Should any entity furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Board shall have the right to grant such easement over any portion of the Property without conflicting with the terms hereof.

3.5 Grant of Easements by Association. The Board shall be empowered and obligated to grant such easements, licenses, rights-of-entry and rights-of-way over, under and across the Property for utility purposes, access purposes or other lawful purposes as may be necessary for the benefit of the Condominium. The Board shall also have the power to grant such easements through the General Common Elements for utilities that may serve less than all Units.

3.6 Easements for Maintenance, Repair, and Replacement. The Board, and all public or private utilities shall have such easements over, under, across and through the Property, including all Units and Common Elements, as may be necessary to fulfill any responsibilities of maintenance, repair, or replacements which they or any of them are required or permitted to perform under this Declaration or Bylaws of the Association 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 to its appurtenant Limited Common Elements. In the event the Board and/or the Manager must enter or cause to have an agent enter a Unit for such reasons as listed above it shall be done in accordance with Section 3.10 below.

3.7 Site Plan or Service Easements.

(a) The Project shall be subject to all easements as shown on the Site Plan and to any other easements of record or of use. In addition, the Project is subject to all easements created by this Declaration. Each Owner by accepting a deed to a Unit, agrees for themselves and

their invitees and successors and assigns, to be subject to such easements and the Rules and Regulations from time to time in effect governing the use of such easement areas.

(b) The Owners hereby grant a non-exclusive perpetual easement across and over the Project for ingress and egress to all police, sheriff, fire protection, ambulance and similar emergency agencies or persons, now or hereafter serving the Project, to enter the Project in the performance of their duties, subject, however, to limitations generally imposed by local, state and federal law.

3.8 Structural Easements and Interior Remodeling. Every portion of a Unit which contributes to the structural support of the Building, other Units or the Common Elements shall be burdened with an easement of structural support for the benefit of the Building, Common Elements and other Units. Each Owner shall have the exclusive right to paint, repair, tile wallpaper, panel, carpet, brick or otherwise maintain, refinish and decorate the inner surfaces of the walls, ceilings, floors, windows and doors bounding his own Unit, and the interior thereof, so long as such work does not affect the structural integrity of the building.

3.9 Specific Written Easements. The Association may, in its sole discretion without the necessity of consent by any interested party, prepare and record a subsequent instrument to specifically define by legal description the easements created by or in accordance with this Article. Nothing in this paragraph shall be construed to give Declarant the right to create easements not otherwise created by or in accordance with this Article. The easements provided for in this Article shall in no way adversely affect any other recorded easement on the Property.

3.10 Right of Access to the Interior of Units. The Association shall have the irrevocable right, to be exercised by the Board or the Manager, of access to each Unit from time to time during reasonable working 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 of any of the Limited Common Elements therein necessary to prevent damage to the General or Limited Common Elements or to any Unit. It shall be the responsibility of each Owner to provide the Association or its Manager with means of access to their Unit.

(a) Damage to the interior or any part of the Unit resulting from maintenance, repair emergency repair or replacement of any of the General or Limited Common Elements or as a result of an emergency repair within another Unit at the instance of the Association shall be designated a Common Expense by the Association and assessed in accordance with such designation.

(b) In the event the Board or the Manager must enter or cause to have an agent enter a Unit for such reasons as listed above other than emergency must provide at least one week notice to the Owner or the Owner's agent or lessee. Notice can be provided either in writing, facsimile, electronic mail, or posting. Upon entering the Unit, the Board member or Manager shall provide documentation of their entry through written notification left at the premises of the time, date and work done in the Unit.

(c) The Board shall adopt a policy for emergency access which shall address

the means of emergency access which may include the requirement that the Manager have a key or access code to each Unit, that each Unit have a "Knox" box installed on the exterior of the Unit which shall provide emergency access by the Big Sky Fire Department, that each Unit have a key that is compatible with a Big Sky Fire Department "master key" which will be kept in a Knox Box, and/or as otherwise required by the Big Sky Fire Department.

Article 4 - RELATIONSHIP TO COMMUNITY ASSOCIATION

4.1 Membership in Community Association. The Property is located within the jurisdiction of the Big Sky Owners Association, Inc. However, for clarity the Property is not subject to architectural review by the Community Association or the Big Sky Architectural Review Committee, nor is any Construction Activity subject to the design guidelines established by the Community Association, unless the Association determines to utilize such design guidelines for their own use for Construction Activity. All Unit Owners are automatically members of the Community Association by virtue of their undivided interest in the Property, in addition to being members of the Association.

4.2 Services Provided by Community Association. The Community Association may provide various services to the Unit Owners. Such services may currently include, but are not limited to, roadway maintenance and snowplowing. Charges for these services are a component of the Community Association assessments assessed to each Unit Owner pursuant to the Bylaws of the Big Sky Owners Association, Inc.

Article 5 - THE ASSOCIATION

5.1 Association. The Project is governed by the Upper Pines Condominium Owners' Association, a non-profit corporation formed with the Montana Secretary of State, hereinafter referred to as the Association.

5.2 Board of Directors.

(a) **Number and Qualifications.** The business and affairs of the Association shall be managed by a Board of not less than three (3) and not more than five (5) directors. Directors are required to be Members of the Association.

(b) **Tenure.** There is no limit as to the number of consecutive terms that a director may be elected or appointed.

(c) **Election of Directors.** Directors shall be elected as set forth in the Bylaws.

5.3 Rights of Association. The Association, by and through its duly elected Board of Directors, shall have and may exercise any right or privilege given to it expressly by the Governing Documents or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents or by law, all rights and powers of the Association may be exercised by the Board without a vote of the Members. The powers and rights of the Association include, but are not limited to, the right to:

(a) adopt Bylaws for the governance of the Association;

(b) make provisions for the general management, repairs and maintenance of the General Common Elements, Limited Common Elements, and any other provisions for the benefit of the Association. The Association in conformance with this Declaration, has the right to treat Limited Common Elements as General Common Elements for the purpose of funding repairs and maintenance and the right to repair and maintain limited common elements;

(c) enter into agreements with adjacent owners' associations and expend Association funds for the maintenance of Common Roads, snow removal, and the storage and removal of garbage;

(d) express authority to review, accept, condition, modify or deny all plans for all Construction Activity on the Property;

(e) adopt Design Guidelines and/or reasonable Rules and Regulations for the administration and procedures for carrying out its duties including but not limited to the authority to require reasonable fees and deposits to be paid to the Association;

(f) make capital expenditures, incur liabilities, enter into contracts and agreements, and provide services and functions as are necessary to effect the business of the Association, including, but not limited to, hiring and discharging managing agents and other employees, agents, and independent contractors;

(g) perform any function as set forth in this Declaration, including, without limitation, by, through or under contractual agreements, licenses, or other arrangements with any governmental, quasi-governmental, private entity or any non-profit organization, as may be necessary or desirable;

(h) enter any Unit in accordance with this Declaration;

(i) adopt and amend budgets for revenues, expenditures and reserves and levy and collect Assessments from Members;

(j) pay the expenses of the Association, and provide for the use and disposition of any insurance proceeds in the event of loss or damage;

(k) purchase insurance policies to protect the real and personal property of the Association, including the General Common Elements, against casualty or loss and to protect the Association, officers, directors, and Staff (when acting in their official capacity) from liability (the extent and specific nature of coverage shall be determined by the Board in accordance with this Declaration);

(l) provide for the indemnification of the Association's officers and directors;

(m) borrow funds in order to pay for any expenditure or outlay authorized by the Governing Documents, including, but not limited to, funds borrowed from Declarant or an affiliate thereof, and to execute all such instruments evidencing such indebtedness as may be necessary or advisable; and assign its right to future income, including, without limitation, the right to receive Assessments, as security for any borrowed funds; *provided, however*, that the

Association shall not use in excess of seventy-five percent (75%) of the Association's total reserve funds or pledge assets with a value in excess of seventy-five percent (75%) of the total value of all Association assets as collateral for any borrowed funds without the affirmative vote of a majority of the Members;

(n) pay or cause to be paid all ad valorem real estate taxes, special improvement and other assessments (ordinary and extraordinary), ad valorem personal property taxes, and all other taxes, duties, charges, fees and payments, if any, required to be made to any governmental or quasi- governmental entity which shall be imposed, assessed or levied upon, or arise in connection with, the real or personal property owned by the Association;

(o) obtain and pay for legal, accounting and other professional and expert services;

(p) deal with agencies, officers, boards, commissions, departments, and other governmental bodies on a local, state and federal basis to carry out the powers, duties and responsibilities herein;

(q) institute, defend or intervene in litigation, arbitration, mediation, or an administrative proceeding in its own name on behalf of itself on matters affecting the Property or take such action as it deems necessary to enforce the Governing Documents;

(r) in its discretion, appoint Persons to generally supervise and control the business of the Association and delegate certain powers, duties and responsibilities to such Persons;

(s) has the power to adopt, amend, enforce and repeal Rules and Regulations applicable that apply to the Project, Unit Owners and their guests and invitees. Such Rules and Regulations may govern use of the Common Elements and Units, the personal conduct of Unit Owners and their family members, guests and invitees, and may govern construction and design criteria and aesthetic standards so as to further the use, enjoyment and aesthetics of the Project for the Owners, including, but not limited to, Rules and Regulations: to (i) prevent or reduce fire hazard; (ii) prevent disorder and disturbances of the peace, including regulation of Construction Activity; (iii) regulate pedestrian and vehicular traffic; (iv) regulate household animals, the environment and environmental practices; (v) regulate signs; (vi) regulate any use of the General Common Elements to assure fullest enjoyment of use by the Persons entitled to enjoy and use the same; (vii) promote the general health, safety and welfare of persons within the Property; and (viii) protect and preserve property and property rights. Such Rules and Regulations may also establish enforcement mechanisms, including penalties and monetary fines for violation thereof. Following adoption, amendment or repeal of any Rules and Regulations the Board shall provide Unit Owners with notice thereof. Copies of all such Rules and Regulations and amendments thereto in effect from time to time shall be furnished to Unit Owners upon request; and

(t) exercise all the powers that may be exercised by the Association under the Act and/or the Unit Ownership Act.

5.4 **Association Responsibilities.** The Association, by and through its duly elected Board of Directors shall have the following responsibilities:

(a) **Records.** The Association shall maintain its records in accordance with applicable law and the Bylaws.

(b) **Maintenance of General Common Elements.** The Association shall maintain and keep in repair the General Common Elements of the Condominium.

(c) **Maintenance of Limited Common Elements.** All fixtures, utility lines 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. The Association shall do no act or any work that will impair the structural soundness or integrity of the Building or impair any easement. Except as the Association may determine pursuant to Sections (i and ii) below, the Owners that benefit from the Limited Common Elements shall maintain and keep in repair the Limited Common Elements of the Condominium.

(i) **Ability of the Board to Treat Limited Common Elements as General Common Elements.** The Board may determine that it is in the best interests of the Association to treat any or all of the Limited Common Elements as a General Common Element. If the Board votes by a majority to treat any or all Limited Common Elements as General Common Elements, then the Board will maintain and keep in repair those Limited Common Elements chosen to be treated as General Common Elements and the cost will be pass onto the Owners as a whole pursuant to the Percentage of Interest.

(ii) **Ability of the Board to Repair and/or Maintain Limited Common Elements.** Each Owner shall also keep all Limited Common Elements appurtenant to his Unit in a clean and sanitary condition and in good repair. If the Owner(s) fail to maintain or repair the Limited Common Elements, then the Association has the right to maintain and/or repair the Limited Common Element. All costs of repairing Limited Common Elements on behalf of the Owners who benefit from the Limited Common Elements, including costs of notice and attorney's fees will be a Special Assessment against the Owner(s)' Unit(s).

(d) The right of the Association to repair, alter, and remodel is coupled with the obligation to replace any finishing or other materials removed with similar type or kinds of materials.

Article 6 - MEMBERSHIP

6.1 Regular Membership; Appurtenant Rights.

(a) **Owners.** Each Owner shall automatically, upon becoming the Owner of a Unit, be a member of the Association and shall remain a member for the period of the Owner's ownership of the Unit. There shall be only one Membership attributable to fee simple ownership of a Unit.

(b) **Memberships Appurtenant.** Membership in the Association shall be limited to Owners. A Person may hold more than one Membership in the Association.

(i) Each Membership and the benefits and burdens relating to that Membership shall be appurtenant to the fee simple title to the Unit held by an Owner. The Owner

shall hold the Membership appurtenant to that Unit as set forth herein and title to and ownership of the Membership shall pass automatically with fee simple title of a Unit, no matter how such title or interest is acquired. Membership may not be transferred separately from the fee simple title of a Unit.

(ii) No such Person who is an Owner shall be entitled to opt out, resign, or withdraw from being a Member, regardless of whether any Person uses or does not use the Common Elements or is the beneficiary of any function of the Association. The obligations of each Owner under this Declaration are mandatory, including, but not limited to, the payment of ongoing Assessments, and all obligations of each Owner set forth herein, regardless of when specific obligations arise or become payable during the term of any Owner's ownership of a Unit are deemed to be an obligation incurred and a commitment made as of the date of such Person becoming an Owner.

(c) **Evidence of Membership and Registration of Mailing Address.** Any Person, upon becoming a Member, shall furnish to the Association a copy of the instrument vesting that Person with the interest required to make such Person a Member. Each such Member at the same time shall give a single name and address to which notices to such Member may be sent, as well as an e-mail address and telephone number by which that Person can be contacted. In the event of any change in the facts reported in the original written notice, including, without limitation, any change of ownership, the Member shall give a new written notice to the Association containing all the information required to be contained in the original notice. As against any Member, and any Person claiming by, through, or under such Member, the Association may, but shall not be obligated to, for any and all purposes, rely on the information reflected in the most recent written notice furnished with respect to such Member. In no event will the Association have any obligation to investigate the address or contact information of any Member.

(d) **Joint Ownership; Joint and Several Liability.** If a Unit Owner's or other person's ownership interest in a Unit is held by more than one person or entity (in tenancy in common, as joint tenants, or otherwise), the membership in the Association appurtenant to such Unit shall be shared by all such persons or entities in the same proportionate interest and by the same type of ownership as the Unit is held, subject to reasonable Board regulation and restrictions on voting, notices, and assessment obligations as set forth in the Bylaws or otherwise. All such persons and entities shall be jointly and severally obligated to perform the responsibilities of the specific Unit Owner under the Governing Documents, including, without limitation, payment of assessments and other amounts owed pursuant to the Governing Documents. The membership rights of a Unit Owner that is not a natural person may be exercised by any officer, director, partner, trustee, member, manager, or other individual designated from time to time in a written instrument describing and certifying the authority of such person provided to the Secretary of the Association. In a multiple interest owner situation, if more than one person seeks to exercise the vote, the voting privilege shall be suspended. Neither the Association nor Declarant shall have any obligation to confirm, as among such multiple interest owners, which of the persons has the right to exercise a vote. In the case where a Unit Owner is not a natural person, or where there are multiple owners of a Unit, written notice shall be provided to the Secretary of the Association stating which person has authority to act on behalf of the Unit Owner and include that person's name, mailing and physical address, telephone number and e-mail address. The Association may

rely on such notice until such notice is updated by a Unit Owner.

(e) **Right to Examine Books.** Every Owner and Eligible Holder shall have the right to examine the books and records of the Association and of any Manager for the Project 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 not be more than fifteen (15) days following the receipt of the notice requesting the examination.

(f) **Voting Rights of Members.** On all matters to be decided by the Association, unless excluded by this Declaration, each Owner shall have a voting interest equal to his percentage of interest in the general common elements as set forth in this Declaration. When more than one person owns any Unit, all such persons shall be Members. The vote for such Unit shall be exercised as the Owners among themselves determine, but in no event shall more than the allocated percentage interest vote be cast with respect to any Unit.

(g) **Meetings.** Meetings of the Membership shall be conducted in accordance with the Bylaws.

(h) **Member Responsibilities.**

(i) **Maintenance of Unit by Owners.** An Owner shall maintain and keep in repair the interior of his own Unit. All fixtures, utility lines 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. An Owner shall do no act, nor any work that will impair the structural soundness or integrity of a Building or impair any easement. An Owner shall also keep all areas and Limited Common Elements appurtenant to his Unit in a neat, clean and sanitary condition. No acts of alteration, repairing or remodeling by the Owner shall impair in any way the structural integrity of Limited Common Elements or General Common Elements.

(ii) **Rules and Regulations.** Each Member and their licensee and/or invitee is hereby deemed to have notice of all Rules and Regulations adopted by the Association, whether or not the same have been recorded, and shall be obligated to and shall comply with and abide by such Rules and Regulations, and pay such Default Assessments which shall be enforceable in accordance with this Declaration. Any current or potential Member, investor, lender or purchaser in relation to the Property may request that the Association provide a copy of the Rules and Regulations to such Member, potential Member, investor, lender or purchaser. Upon the new adoption or material amendment of Rules and Regulations, the Association shall provide all current Members affected by such Rules and Regulations with copies of such documents or notification of the adoption of such documents and notice as to where copies may be obtained. Copies of such documents may be made available at offices of the Association or its agents or on an electronic or otherwise generally accessible medium. Each Member is obligated to inform all licensees and invitees of the obligations and restrictions set forth in the Governing Documents and to cause such licensees and invitees to comply with such obligations and restrictions; *provided, however*, that failure to so inform any licensees or invitees shall not impair the enforceability of any Governing Document.

(iii) **Notice of Sale of Unit.** Upon entering a contract for sale of a Unit, the Member owning such Unit shall, within a reasonable time thereafter, notify the Board in writing of the sale. Such notice shall include the name and phone number or email address of the purchaser and the proposed closing date.

Article 7 - FINANCES

7.1 **Budget.** The Association shall establish a budget in the following manner:

(a) **Preparation.** At least sixty (60) days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses during the coming year, including, without limitation, a capital contribution to establish a reserve fund in accordance with a budget separately prepared. The Board shall annually prepare the reserve budget which takes into account the number and nature of depreciable assets owned by the Association, the expected life of each asset, and their expected repair or replacement cost.

(b) **Notices.** The Board shall send a copy of the preliminary annual budget and notice of the amount of the assessments for the upcoming year to be delivered to each Owner at least thirty (30) days prior to the beginning of the fiscal year for which it is to be effective.

(c) **Approval.** The preliminary annual budget and assessment shall automatically become effective at the adjournment of the annual meeting unless disapproved at the annual meeting by at least fifty-one percent (51%) of the Owners in the Association.

(d) **Failure to Approve Budget.** If the preliminary budget and assessment is disapproved or the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the next year.

7.2 **Assessments.** The Association shall levy assessments upon the Owners in the following manner and for the following purposes:

(a) **Types of Assessments.**

(i) **Annual Assessments.** The Board shall establish and levy "Annual Assessments" in the amount that the Board estimates will be sufficient to raise the funds needed to perform the duties of the Association during each fiscal year.

(ii) **Reserve Assessments.** The Board shall establish and levy annually "Reserve Assessments" in the amount that the Board estimates will be sufficient to raise the funds needed to build reserves to maintain and replace the Common Elements. The Board may levy Reserve Assessments against the Units that are specific to meet the needs of the respective unit types. By way of example but not limitation, the Board may levy Reserve Assessments and maintain a specific line item in the budget to reserve for the roofing needs of the Apartments. Reserve Assessments may be collected for use by the Association for the repair and replacement of capital expenditures, including but not limited to: insurance deductible, roof, equipment, infrastructure and other amenities related within the Project.

(iii) **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.

(iv) **Specific Assessments.** The Board shall have the power to specifically assess those Units that receive benefits, items, or services that are specifically related to those Units that are not provided to all Units within the Project that are incurred for the benefit of those Owners for specific items or services relating to their specific Limited Common Elements, as determined by the Board in good faith. All such assessments shall be “**Specific Assessments.**”

(v) **Default Assessments.** Notwithstanding anything to the contrary contained herein, if any cost or expense of the Association is caused by (a) the negligence or misconduct of an Owner or an Owner’s family member, employee, agent, licensee or invitee, or a violation of any covenant or condition of a Governing Document by an Owner or an Owner’s family member, employee, agent, licensee or invitee, the Association may, if the Board deems necessary or advisable, levy a default assessment against such Owner. The Association may also, in the discretion of the Board, levy a default assessment against any Unit to reimburse the Association for costs incurred in bringing the Unit into compliance with the provisions of the Governing Documents, provided the Association gives prior notice to the Owner and an opportunity to respond to the Board. Any such assessment levied by the Association pursuant to this section, and each fine, penalty, fee, or other charge imposed upon an Owner for the Owner or an Owner’s family member, employee, agent, licensee or invitee violation of any covenant or condition of any Governing Document, are each referred to herein as a “**Default Assessment.**”

(b) **Purpose.**

(i) Assessments shall be made for the maintenance, repair, replacement, insurance, management, and administration of General Common Elements if any, utilities, reserves for contingent liabilities and other related items and assessments for the Owner’s percentage share of any assessment from the Community Association. Assessments for General Common Element Expenses shall be based upon and computed by using the percentage of interest that each Owner has in relation to the common elements.

(ii) Assessments shall also be made for the maintenance, repair, and replacement of Limited Common Elements if any, such that the Owners are chargeable only for the expenses relating to Limited Common Elements serving their respective Units in accordance with the percentage of the Unit or Units have in the Limited Common Element which serves the Units and for which the assessment is being made. If only one Unit is associated with the Limited Common Element, then the entire cost of such repair maintenance or replacement shall be borne by that Unit. The Board may choose to treat a Limited Common Element as a General Common Element for the purpose of this section if the Board determines it is in the best interests of the Owners to do so.

(iii) Assessments may also be made for any purpose contemplated by this Declaration and for any purpose set out in the Unit Ownership Act.

(iv) The Reserve Assessment shall be assessed as the Board considers appropriate to adequately meet the costs of the future repair, replacement or additions to Common Element improvements and fixtures that the Association is obligated to maintain and repair. Reserves for General Common Elements shall be assessed according to the Unit's percentage interest. Reserves for Limited Common Elements shall be assessed to the Unit(s) to which they are appurtenant. The Board may choose to treat a Limited Common Element as a General Common Element if it is in the best interests of the Owners to do so.

(v) Damage to any part of a Unit resulting from maintenance, repair, emergency repair or replacement of any of the General Common Elements or Limited Common Elements or as a result of an emergency repair within another Unit at the instance of the Association (other than damage caused by a Unit Owner or a family member, guest or invitee thereof) shall be designated Common Expenses by the Association and assessed in accordance with such designation.

(c) **Payment of Assessments.** All Assessments shall be due ten days (10) from the date of mailing notice of such Assessments to the Owners. Any Assessment may be payable in installments, monthly or quarterly, at the option of the Board. The amount of the General Common Expenses assessed against each Unit and the amount of Limited Expenses assessed against each Unit shall be the personal and individual debt of the Owner thereof. If the Owner is a corporation, limited liability company, limited partnership, trust or similar entity then the underlying shareholders, unitholders, beneficiaries, limited partners, etc. agreed that by purchasing a Unit that waive all protections given by their entity and agree that they are personally liable for any debt owed to the Association. (For example, if the entity is a corporation, the Association may automatically pierce the corporate veil to hold the shareholders personally liable for the debt.) No Owner may exempt himself from liability for these contributions toward the Common Expenses by waiver of the use of enjoyment of any of the common elements or by abandonment or lease of his Unit.

(i) Common Expenses of the Association shall be levied against the Units on a pro rata basis based upon Percentage of Interest.

(ii) Limited Expenses shall be levied against Units as a Specific Assessment, against the Unit Owner(s) that benefit from the use of the Limited Common Element except in cases where the Board has determined the Limited Common Element should be treated as a Common Element.

(iii) All monies owed the Association by an Owner, including but not limited to judgment awards and judgment interest and costs of collection are also Default Assessments against the Unit Owner(s)' Unit that run with the land and attach upon notice from the Association that the monies are due/or upon award by the Court.

(d) **Owner Liability.** In a voluntary conveyance of a Unit, the grantee is jointly and severally liable with the grantor for all unpaid charges against the latter for grantee's proportionate 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.

(e) **Waiver of Homestead.** By purchasing a Unit a Unit Owner agrees that any filed Homestead Exemption does **NOT** apply to any amounts owed under the Governing Documents, including but not limited to Assessments and all court costs, monies, attorney's fees and judgment interest owed to the Association as a result of any case involving the Association where the Association is awarded such case, including the costs of collection.

(f) **Verification of Assessments Due.** Upon written request, the Association or its Manager will furnish to a Member or such Member's title or mortgage company written verification of the amount of such Assessments owing and whether the Member has paid such Assessment. The Association or its agent may charge a reasonable fee for the verification of assessments due.

(g) **Restrictions on Assessments and Expenditures.** The Board may not impose an Annual Assessment on any Unit which is more than twenty percent (20%) greater than the Annual Assessment for the immediate preceding fiscal year, or levy Special Assessments which in the aggregate exceed ten percent (10%) of the total budget of the Association for that fiscal year, without the vote and/or written consent of a majority of the aggregate voting interests of the Association. In addition, with the exception of expenditures required for emergency situations or expenditures that were included in the Association's budget for the fiscal year, no single expenditure or debt in excess of Ten Thousand Dollars (\$10,000.00) may be made or incurred by the Association in a fiscal year without the prior approval of the Board. The limitation on single expenditures may be modified by the Board without amendment to this Declaration.

(h) **Unpaid Assessment.** 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 charges to be determined by the Board and penalty charges equal to ten percent (10%) of the delinquent Assessment. The Board or Manager shall have the responsibility of taking prompt action to collect any unpaid Assessments that become delinquent, such action shall be any remedy available at law to the Association including but not limited to the rights set forth in this Declaration. However, as the obligation to pay Assessments is a covenant that runs with the land, the Association is not required to lien the Unit in order to recover past due amount(s), regardless of any sale of the Unit. Suit to recover a money judgment for unpaid Common Expenses and Limited Expenses may be maintainable without foreclosing or waiving any lien securing the same.

(i) **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 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 assessments shall be deemed to be Common Expenses collectable from all of the Units including such acquirer and such acquirer's successors and assigns.

(j) **Enforcement For Failure to Pay Assessments.**

(i) **Liens.** All sums assessed but unpaid for the share of General Common Expenses and Limited Common Expenses chargeable to any Unit shall constitute an

automatic 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. Since the obligation to pay Assessments is a covenant that runs with the land, the Association is not required to lien the Unit in order to recover past due amount(s), regardless of any sale of the Unit. Should the Association desire, the Manager or Board's agent may prepare a written notice of lien assessment setting forth the amount of such unpaid indebtedness, the amount of accrued interest and penalties thereon, the name of the Owner of the Unit and the legal description of the Unit. Such notice may be signed and verified by one of the officers of the Association or by the Manager, or his authorized agent, and it may be recorded in the office of the Clerk and Recorder of Gallatin County, Montana. Regardless of the filing date, the assessment lien attaches from the date the Assessment is first levied.

(ii) **Foreclosure and Bidding at Foreclosure.** Such lien may be enforced by the foreclosure of the defaulting Owner's Unit by the Association in the manner provided in the Act and as provide by the foreclosure of a mortgage on real property upon the recording of a notice of a 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 actions shall be entitled to the appointment of a receiver to collect the same. Suit to recover a money judgment for unpaid Common Expenses shall be maintainable without foreclosure or waiving the lien securing the same. In any such proceeding the Owner may be required to pay the costs, expenses and attorney's fees incurred in filing a lien, and in the event of foreclosure proceedings, additional costs, expenses and attorney's fees incurred. 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 and convey or otherwise deal with the same. Any lienholder holding a lien on a Unit may pay, but shall not be required to pay, any unpaid general Common Expenses, or Limited Common Expenses payable with respect to any such Unit, and upon such payment, such lienholder shall have a lien on said Unit for the amounts paid of the same rank as the lien of his encumbrance without the necessity of having to file notice or claim of such lien.

Article 8 - USE RESTRICTIONS

All of the Units and the Common Elements shall be held, used and enjoyed subject to the Governing Documents, Zoning Regulations and the following limitations and restrictions:

8.1 Common Elements. Each Owner may use the General Common Elements and Limited Common Elements in accordance with this Declaration and the other Governing Documents for the purposes for which they are intended, so long as they do not hinder or encroach upon the lawful rights of other Unit Owners.

(a) Except as otherwise set forth in this Declaration, there shall be no obstruction of the Common Elements nor shall anything be stored in or on the Common Elements without the prior consent of the Association.

(b) Nothing shall be done in in, on or to the Common Elements which will impair the structural integrity of a Building or any Common Element or which would structurally change a Building or Common Element, except as is otherwise provided herein and in accordance

with the Governing Documents.

(c) Except as otherwise set forth in this Declaration or as approved by the Board or Declarant, nothing shall be altered or constructed in or removed from the Common Elements.

8.2 **Use.** The Units shall be used only for residential occupancy by Unit Owners, their families, and their guests and invitees, consistent with the restrictions contained herein and in the other Governing Documents and may not be used for any other purposes whatsoever.

8.3 **Alterations.**

(a) **Exterior Alterations.** No Owner may change, alter or remodel the exterior of his Unit without the prior written approval of the Board.

(b) **Interior Alterations and Modifications by Owner.** The interior plan of the Unit may be changed by its Owner, with the exception of the bearing walls which may not be moved, although no Units may be subdivided. Prior to such alterations, however, the Owner(s) of the unit to be altered shall give at least thirty (30) days notice to the Association of the intent to alter the Unit, together with all necessary information to conclusively establish that such alteration shall not impair the structural integrity or any of the Common Elements of the Building. No change in the boundaries of the Units shall encroach upon the boundaries of the Common Elements, except by amendment to this Declaration. Altered boundary walls must be equal to the 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 comply with the provisions of **Article 13** below, such an amendment must further set forth and contain plans for the Units concerned, showing the Units after the change in boundaries, which 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 Elements by such change. The amendment shall also be approved by the Board and signed and acknowledged by all lienholders and mortgagees of the Units concerned.

(c) **Change in Unit Boundaries.** No change in the boundaries of existing Units shall encroach upon the boundaries of the Common Elements or other Units except by amendment to this Declaration. Any such change will be set forth in an amendment showing the revised plans of the Unit(s) which amendment shall be approved, signed and acknowledged by the Association, the Owner(s) of the applicable Unit(s) and all lien holders and mortgagees of the Units concerned, to the extent required by the Unit Ownership Act. Boundary walls must be equal in quality of design and construction to the existing boundary walls.

(d) **Load Bearing Walls.** Notwithstanding any rights to remodel the Units, load bearing walls may not be moved or structurally altered.

(e) **Liens for Alterations or Modifications.** Labor performed and materials furnished and incorporated into a Unit with the consent of or at the request of the Unit Owner, or such Unit Owner's agent, contractor or subcontractor, may be the basis for the filing of a lien against the Unit or the Unit Owner consenting to or requesting the same. Each Unit Owner and any other person having an ownership interest in a Unit shall indemnify and hold harmless each

of the other Owners against any lien against the Unit or against the General Common Elements or Limited Common Elements for construction performed or for labor, materials, services or other products incorporated in the applicable Unit at such Owner's or such other person's request.

8.4 Leasing. Owners may rent or lease their residential Units to others for residential purposes. Any such lease must have a term of at least seven (7) consecutive days. If the lease term is thirty (30) days or more, the Owner shall have a written lease with their lessee that complies with the governing laws of Montana, including remitting applicable taxes to the State of Montana and the local Big Sky Resort Area District and shall reference compliance by the lessee with this Declaration, Bylaws, and Rules and Regulations as adopted and subsequently amended. Such written lease shall include a copy of the Rules and Regulations. Owners shall be responsible for any violation by their lessees of the Governing Documents.

8.5 Restriction on Number of Occupants per Unit. All Units may be used only for residential dwelling purposes and typical residential activities. No portion of the Property or Unit shall be used for living or sleeping purposes other than rooms designed for living or sleeping in a Unit. Occupancy of each Unit shall be limited to two persons per designated bedrooms in the Unit (as those bedrooms are labeled and depicted on the floor plans attached as **Exhibits E-1 to E-5**), except that this restriction shall not be applied to preclude occupancy of a Unit by a family consisting of two persons and one or more children under the age of 18 for whom either or both of such persons are the parent, legal guardian or designee authorized in writing by the child's parent or legal custodian to care for the child. For purposes of this Section, "occupancy" means staying overnight in a Unit. Vehicles parked in excess of the limit set in the Rules and Regulations or in areas not permitted under the Rules and Regulations shall be towed at their owners' expense.

8.6 Home Occupation. Notwithstanding anything to the contrary contained in this Section, a gainful home occupation, profession, trade or other non-residential use will be a permissible use of a residential Unit, so long as: (i) such use is conducted in compliance with the applicable Zoning Regulations and is not prohibited by law, (ii) such use is not restricted by this Declaration, (iii) such use is carried on entirely within a residential Unit and is secondary and incidental to its use as a residence, (iv) there is no generation of pedestrian or vehicular traffic beyond that customary or incidental to residential use of the Unit, (v) there is no use of commercial vehicles for deliveries to or from the premises, (vi) there is no on-premises sales of products, (vii) there is no external evidence of any such activity being conducted, including, but not limited to, no signs or structures advertising the occupation and no excessive or unsightly storage of materials or supplies, and (viii) the home occupation does not employ any non-resident of the Unit, nor does it attract any non-resident customers. For guidance, the following uses are examples of potentially permissible home occupations: the making of clothing; the giving of music lessons; a sole practitioner professional practice; service or product providers who maintain a telephone and office within the residence but the services and products are not provided or sold from the Unit; the pursuit of artistic endeavors, provided that the products are not marketed and sold from the Unit, and no kilns or foundries are used in the Unit.

8.7 Activities.

(a) Nothing shall be done or kept in any Unit or in the Common Elements which will increase the rate of insurance on the Buildings or contents thereof, without the prior written

consent of the Association. No Owner shall permit anything to be done or kept in his Unit or in the Common Elements which will result in the cancellation of insurance on the Buildings, or contents thereof, or which would be in violation of any law, this Declaration, or the Association Bylaws. No waste will be permitted in the common elements.

(b) No nuisances shall be allowed upon the Property, nor shall any use or practice be allowed which is a source of annoyance to the Owners, or which interferes with the peaceful possession and proper use of the property by its Owners. No immoral, improper, offensive or unlawful use shall be made of the property, nor any part thereof, and all valid laws, zoning ordinances and regulations or all governmental bodies having jurisdiction thereof shall be observed.

(c) Nothing shall be done in any Unit or in, on or to the Common Elements which will impair the structural integrity of the Building or which would structurally change the Building, except as is otherwise provided herein.

(d) Nothing shall be altered or constructed in or removed from the Common Elements, except upon the written consent of the Association.

(e) Use by the Owners of the Units in the Project shall at all times be in compliance with all of the laws of the State of Montana. Such compliance shall also include and extend to any repair, remodeling or refurbishing of the units.

8.8 Animals. No animals shall be kept, raised, or bred in any Unit. Notwithstanding the foregoing, a reasonable number of birds, dogs, cats, tortoises or other customary household pets may be brought onto the Property or kept in a Unit ("Permitted Household Pets") as determined by the Board and defined in the Rules and Regulations. Permitted Household Pets shall not be kept, bred or maintained for any commercial purpose, nor in unreasonable quantities nor in violation of any other provision of this Declaration. Chickens are not deemed Permitted Household Pets. No Permitted Household Pet shall be permitted to harass any wildlife. Permitted Household Pets are not to be kept outside of the Unit or chained up. Any Permitted Household Pet that is on the Property shall be accompanied by the Unit Owner, or their guest or invitee, and kept under control at all times. Unit Owners are responsible for damage and waste caused by any Permitted Household Pet associated with a Unit. The Board may establish such other reasonable Rules and Regulations (including but not limited to the number of Permitted Household Pets and the requirement to charge pet deposits) concerning Permitted Household Pets and other animals as it deems necessary. Any Unit Owner who causes any animal to be brought or kept on the Property shall indemnify and hold harmless the Association from any loss, damage or liability that the Association may sustain as the result of the presence of such animal on the Property. Nothing in this Section shall be construed to limit or prohibit therapy or service animals. However, such therapy or service animals shall be registered with the Board, and the Member owning such animal shall provide the Board with the written recommendation of a medical professional verifying the need for the animal, as well as the animal's training certificate or other qualification(s).

8.9 Aesthetics. The Common Elements (including Limited Common Elements appurtenant to the Units) shall not be used for storage of supplies, recreational equipment, materials, personal property or trash or refuse of any kind, except as provided in duly adopted

Rules and Regulations. No unsightly conditions shall be maintained on the patio, porch, terrace or deck of any Unit or in any other area that is visible from the exterior of the Unit and only furniture and equipment consistent with the normal and reasonable use of such areas shall be permitted to remain there. During seasons when not reasonably in use, such furniture and equipment may be neatly covered and stored on the patio, porch, terrace, or deck of a Unit. The Board may adopt Rules and Regulations from time to time addressing the exterior appearance of Units and Buildings and the use of porches, decks, balconies, terraces and patios. In general, no activity shall be carried on nor condition maintained by a Unit Owner, either in a Unit or upon the Common Elements, which is detrimental to the appearance of the Project.

8.10 Trash. No trash, waste, garbage, litter, junk, refuse, or unused items of any kind shall be kept, stored, thrown, dumped, allowed to accumulate, left or burned on any portion of the Property. No incinerator or other device for burning of trash or garbage shall be installed or used. Each Member shall store household trash within his, her, or its Unit and/or the appurtenant garage, and shall dispose of their trash at the location(s) designated by the Association. At no time should trash be stored outdoors.

8.11 Advertising and Signage. No signs or other advertising devices of any kind shall be displayed which are visible from the exterior of a Unit or on the Common Elements, including, but not limited to, any real estate sign, "for rent" sign, without written permission from the Board.

8.12 Hot Tubs. Each Unit is permitted to have one exterior hot tub located on the lowest level cement patio (or another material as determined by the Board) with the prior written approval from the Board in accordance with the Rules and Regulations. Hot tubs may not be drained directly onto the site, but rather shall be drained into the sewer system.

8.13 Parking. No person may park in any Driveway or in front of any garage except that an Owner, or the Owner's family member, guest or invitee, may park in the Driveway or in front of the garage appurtenant to the Unit owned by such Owner, subject to the other provisions of this Declaration and any Rules and Regulations. All vehicles shall be parked in garages appurtenant to the Units, in Driveways appurtenant to the Units or in other designated parking spaces. No vehicles may be stored anywhere on the Property except in garages, Driveways and other parking areas designated by the Governing Documents or by the Board. Members, licensees, invitees and members of the general public shall not park vehicles on or along any Roadway. The Association shall have the right to remove any vehicle that is parked on or along any Roadway not in compliance with this section, at the vehicle owner's expense.

8.14 Lights. Except as otherwise regulated in the Zoning Regulations or Governing Documents, the Board may adopt Rules and Regulations regulating exterior lighting or seasonal or holiday lighting.

8.15 Marijuana. No part of the Property may be used for the growing of, storage of, sale, dispensing, or other transfer of marijuana (medical or recreational) for any purpose, including, but not limited to, marijuana which is grown, harvested, and distributed pursuant to any law that authorizes or licenses any of the foregoing activities.

8.16 Satellite Dishes/Antennas. No external antennas are allowed. Satellite dishes up

to eighteen inches (18") are allowed. An Owner shall use his best efforts to shield satellite dishes from ground level view and shall integrate such dish into the overall roof design (if roof mounted) or external siding. Owners shall receive approval from the Board prior to the placement of any satellite dish. Association approval will not be unreasonably withheld, but is required to make sure the placement of the satellite dish complies with its Rules and Regulations and to make sure that placement does not violate the health, safety, and welfare of any other Owner.

8.17 Handicapped Rights. Subject to the review rights of the Association and applicable law, each Owner shall have the right to modify his Unit and the route to his Unit (as applicable and necessary) leading to the entrance of his Unit, at his sole cost and expense, in order to facilitate access by Persons who are blind, visually handicapped, deaf or physically disabled, or to alter conditions which could be hazardous to such Persons.

8.18 Water & Sewer System. All Units shall be served by the Big Sky County Water and Sewer District No. 363, or their successors and assigns. All Owners and other persons having an ownership interest in a Unit shall be obligated to pay the required water and wastewater fees for those services. Failure to pay the fees for services may result in services being shut off to the Unit.

Article 9 - INSURANCE

9.1 Association Policies. All insurance policies upon the Common Elements and the Units shall be purchased by the Association and shall be insured by an insurance company authorized to do business in Montana.

(a) **Named Insured – Association Insurance.** The named insured under all policies purchased by the Association shall be the Association individually as agent for the Unit Owners. However, the property insurance maintained by the Association shall include, where so required, each Unit Owner and their lenders or mortgagees as additional insureds as their interests may appear, with standard mortgagee clause in favor of each listed mortgagee, subject however, to loss payment and other provisions as are set forth by these documents. Such property insurance policies shall provide that payments for losses thereunder by the insurer shall be paid to the Insurance Trustee hereinafter designated, and all policies and endorsements thereon shall be deposited with the Insurance Trustee.

(b) **Copies to Owners.** Upon written request by a Unit Owner, the Association shall furnish one copy of each insurance policy and of all endorsements to such Unit Owner. The Association shall also provide, upon written request, certificates of insurance evidencing property and liability insurance to each Unit Owner and/or their lender/mortgagee where required.

9.2 Coverage. The Association shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available (as determined by the Board):

(a) **Property Insurance.** All Units and Buildings, including the Common Elements and such portions of the Units as are for insurance purposes normally deemed to constitute part of the Common Elements and such other improvements to land as may be included in the Common Elements and where such improvements are reasonably insurable under a property

policy, shall be fully insured to an amount equal to the full replacement cost thereof with all such insurance to be based on current replacement cost value, as determined annually by the Board, but subject to such deductible clauses as are required in order to obtain and maintain coverage at reasonable costs, and which coverage shall be increased by the Board as may be necessary to provide that the insurance proceeds will be sufficient to cover replacement, repairs or reconstruction. Such coverage for the Units shall be pursuant to so called "all in" property insurance policies (except as itemized below). Such coverage shall afford protection against the following:

(i) loss or damage by fire and other hazards typically covered by a standard special cause of loss property policy form or its equivalent; and

(ii) specifically such other perils, including flood and earthquake, as from time to time may be customarily covered with respect to buildings similar in construction, location and use as the Buildings, if the Association so desires, in amounts to be determined by the Board; and

(iii) the policies shall cover the Units as initially installed in accordance with Declarant's original plans and specifications or a replacement of like kind and quality, such property to include, but not be limited to, the building/structure, air-handling equipment for space cooling and heating, service equipment such as dishwasher, disposal, laundry, fireplaces, refrigerator, stove, oven, interior fixtures such as electrical and plumbing fixtures, installed floor coverings, inside paint and other wall finishing, each of which become part of the building, regardless of whether such items are included within the definition of Common Elements. Alterations, betterments or improvements added by or at the request of Owners after initial construction and installation of the Unit which are greater than \$10,000 in value shall not be automatically covered by the Association master property insurance policies unless such alterations, betterments and improvements are true replacements of like kind and quality to that of the initial installation and any alterations, betterments and improvements beyond that must be specifically presented to and accepted in writing by the Association (as determined by the Board) in order to be added to the Association policy. Prior to any such acceptance by the Association, the Owner shall be fully responsible for such alterations, betterments and improvements and all related insurance. In addition, the Association's property policy shall not include insurance coverage for any Unit Owner's personal property, furnishings and/or contents and none of the Association, the Board, the Manager or Declarant shall have any responsibility or liability with respect to such items.

(iv) During any period when any repair or reconstruction of a Building or Unit is taking place, and to the extent such coverage is not included in the above required property insurance policy, a Builders Risk policy shall be maintained for the completed value of the Building or Unit with coverages equivalent to those included in the paragraph above.

(v) All property insurance policies carried by the Association shall provide for waivers of subrogation of claims against the Unit Owners and occupants of any Unit.

(b) **Workers Compensation.** Workers compensation as required by law and employer's liability insurance with respect to officers and employees of the Association, if

applicable.

(c) **Director's and Officer's Liability.** Unless otherwise determined by the Board, a directors and officers liability insurance policy with a limit of not less than \$1,000,000 (or such higher limit as may be determined by the Board) to insure against liability for actions taken by individuals in their capacity as officers or directors of the Association.

(d) **General Liability.** Commercial general liability insurance on an occurrence form covering bodily injury, including death, and property damage with a limit of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate and including coverage for personal injury, products and completed operations and contractual liability. Such insurance shall cover and indemnify the Association, the Board, the Manager, if any, and each director, officer and employee of the foregoing against liability for all tort claims arising out of or relating to the Association's ownership, operation, use and maintenance of the Project; and such policy may include, where available, the Unit Owners as additional insureds; provided, however, that such insurance is not intended to contribute to or be in lieu of any individual Unit Owner's liability policies required to be carried by each Unit Owner as stipulated below and under which each Unit Owner's liability insurance shall be primary for each respective Unit Owner.

(e) **Fidelity Bond.** Fidelity and crime insurance with a limit of \$1,000,000 or such other limit as may be determined by the Board, covering officers and employees of the Association who handle or are responsible for its funds, if applicable.

(f) **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.

(g) **Insurance Changes.** If the Board determines that it is not in the best interest of the Association for the Association to maintain property insurance on the Units, due to cost or otherwise, the Board may amend this Declaration to reduce or eliminate the Association's obligation to maintain such insurance and to require each Unit Owner to maintain property insurance on such Unit Owner's Unit for full replacement value. Such amendment may include such additional requirements and limitations relating to such insurance as the Board deems reasonable and may include provisions addressing use of insurance proceeds and repair or reconstruction in the event damage to or destruction of a Unit. The Board may cause such amendment to be prepared and recorded without the consent of the Unit Owners; *provided, however,* notice shall be provided to each Unit Owner a reasonable time, not to be less than forty-five (45) days, in advance of such change in order to allow each Unit Owner time to obtain such newly required property insurance.

9.3 **Claims Against the Association's Insurance Policies.** Unless otherwise provided in this Declaration or the Bylaws, the Board may adopt a resolution that:

(a) Prescribes a procedure for processing insurance claims. The procedure may require that all claims against the Association's insurance policy be processed through and coordinated by the Board or the Manager, if authorized by the Board.

(b) Assigns the responsibility for payment of charges for handling claims, including any charges by a Manager.

9.4 Premiums and Deductibles. Premiums upon insurance policies obtained by the Association shall be paid by the Association as a Common Expense, except that the amount of increase in the premium that is incurred or occasioned by the negligence, willful misconduct, occupancy, or abandonment of a Unit or its appurtenances or of the Common Elements by a Unit Owner (or a Unit Owner's invitees or guests) shall be assessed against that Owner or any other person having an ownership interest in the Unit. Any unpaid amounts shall be treated as an unpaid assessment in accordance with this Declaration. 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 lienholder listed in the roster of lienholders if requested in writing by such lienholder. In the event of an insured loss, the amount of any deductible paid in connection therewith shall, in the discretion of the Board, either (a) be treated in the same manner as the premiums for the applicable coverage, (b) be assessed to one or more Unit Owners or other persons having an ownership interest in the applicable Unit(s) as such loss circumstances may equitably warrant, or (c) be assessed to a specific Unit Owner or other person having an ownership interest in the applicable Unit(s) if the loss resulted from the negligence or willful misconduct of a Unit Owner or such other person (or a Unit Owner's or such other person's family, invitees or guests). The Board is authorized to collect as part of the Common Expense an amount to fund a reserve equal to the deductible for each insurance policy maintained by the Association. The intent is to therefore, reduce the annual premium for said policies by allowing for a higher deductible.

9.5 Policy Requirements. From time to time, the Association shall arrange for a review of the sufficiency of its insurance coverage by one or more qualified persons, at least one of whom must be familiar with insurable replacement costs in Big Sky, Gallatin County, Montana. The policies may contain a reasonable deductible. All insurance coverage obtained by the Board shall (if reasonably available):

- (a) Be written with a company authorized to do business in Montana;
- (b) Be written in the name of the Association as trustee for the benefitted parties. Policies on the Condominium shall be for the benefit of the Association and its Owners;
- (c) Not be brought into contribution with insurance purchased by Owners, occupants or their mortgagees individually;
- (d) Contain an inflation guard endorsement;
- (e) Include an agreed amount endorsement, if the policy contains a co-insurance clause;
- (f) Provide that each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest as a member of the Association in the Condominium (provided, this provision shall not be construed as giving an Owner any interest in the Condominium other than that of an Owner);
- (g) Include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any act or omission of one or more Owners, or on account of any curable defect or violation of any Owner without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure; and

(h) Include an endorsement precluding cancellation, invalidation, or condition to recovery under the policy on account of any act or omission of any one or more individual Owners, unless such Owner is acting with the scope of its authority on behalf of the Association.

9.6 **Waiver of Subrogation and Endorsements.** In addition, the Board shall use reasonable efforts to secure insurance policies which name the Owners, collectively, as additional insureds for claims arising in connection with the ownership, existence, use or management of the Condominium and provide:

(a) A waiver of subrogation as to any claims against the Association's Board, staff, officers, and any manager, the Owners and their invitees;

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

(c) An endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(d) An endorsement requiring at least thirty (30) days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;

(e) A cross-liability endorsement that provides cross-liability coverage; and

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

9.7 **Insurance Trustee.** The Board shall have the exclusive authority to make a claim and adjust a loss under policies purchased by the Association. Upon such election being made by the Board, the Board 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, 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 Declaration and for the benefit of the Unit Owners and their mortgagees in the following shares, but which shares need not be set forth in the records of the Insurance Trustee.

(a) **Unit Owners.** Where all Units are destroyed, an undivided share for each Unit Owner, such share being the same as the Percentage of Interest appurtenant to each Unit. In the event less than all Units are damaged or destroyed, then such proceeds shall be held only for the Owner(s) of the damaged or destroyed Unit(s) to the extent of the repair costs of the damage or in the event of destruction, to the extent of the fair market value of the Unit before the destruction. In the event Common Elements are damaged or destroyed, then the proceeds with respect to such Common Elements shall be held for the Owners in accordance with their interests in such Common Elements.

(b) **Mortgagees.** In the event a mortgagee endorsement has been issued as to a

Unit, the share of the Unit Owner shall be held in trust for the mortgagee and the Unit Owner as their interests may appear; *provided, however*, that no mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds except distributions thereof made to a Unit Owner and mortgagee pursuant to the provisions of this Declaration.

9.8 Unit Owners' Insurance. Each Unit Owner shall procure and maintain, and shall provide the Board upon request with a certificate of insurance showing that the Unit Owner has in full force and effect (provided that the Board shall have no obligation to request such certificates or to monitor Unit Owner insurance, and none of the Association, the Board or Declarant shall have any liability with respect thereto), the insurance itemized below, which shall be maintained on a primary basis, and the cost of which shall be the sole and exclusive responsibility of the Unit Owner:

(a) Property insurance for the Unit that provides coverage for what is not covered by the policy maintained by the Association as referenced above.

(b) Liability insurance on an occurrence form against claims for bodily injury, death or property damage occurring on, in or about the Unit and insuring the Unit Owner's liability with a limit of not less than \$1,000,000.

Each Unit Owner shall have the right to carry other insurance for such Unit Owner's own benefit. All policies carried by the Unit Owners (a) shall contain waivers of subrogation of claims against the Association, its officers and directors; and (b) shall not adversely affect or diminish any liability under any insurance obtained by the Association. Each Unit Owner may seek to add Deductible Assessment coverage to their personal insurance policy form, where available and at the sole cost of such Unit Owner, to cover those potential Association deductibles which may be assessed to any one or more Unit Owner.

9.9 Distribution of Proceeds. Proceeds of insurance policies received by the Insurance Trustee shall be distributed to or for the benefit of the beneficial Owners in the following manner:

(a) **Miscellaneous.** Expenses of administration, Insurance Trustee and construction or remodeling supervision shall be considered as part of the cost of construction, replacement or repair.

(b) **Reconstruction or Repair.** Any balance remaining shall be used for reconstruction and repair as hereafter provided.

(c) **Partial Reconstruction.** If the Unit or Units or Common Elements are destroyed and partially rebuilt, distribution shall be made to Unit Owners or the Insurance Trustee as their interests appear based on the reconstruction of the Units and Common Elements.

(d) **No Reconstruction or Repair.** If there is no reconstruction or repair, the first proceeds for distribution after paying the Insurance Trustee shall be made to the first lienholders for such Units before distribution to the Unit Owners.

(e) **Remaining Proceeds.** After distribution of the insurance proceeds as set forth above, any remaining proceeds shall be distributed to the Units Owner(s) as such Owner(s) interest shall appear. In the event less than all Units are damaged or destroyed, then such proceeds shall be held only for the Owner(s) of the damaged or destroyed Unit(s) to the extent of the repair costs of the damage or in the event of destruction, to the extent of the fair market value of the Unit before the destruction. To the extent Common Elements are damaged or destroyed then remaining proceeds shall be held for the Owners in accordance with their interests in such Common Elements.

(f) **Certificate.** In making distribution to Unit Owners and their lienholders, the Insurance Trustee may rely upon a certificate of the Association made by the Board or Manager as to the names of the Unit Owners and their respective shares of the distribution.

9.10 **Board as Agent.** The Board 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 Project to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

9.11 **Benefit to Mortgagees.** Certain provisions in this Article are for the benefit of mortgagees or trust indenture beneficiaries, and all such provisions are covenants for the benefit of any mortgagee or trust indenture beneficiary of a Unit and may be enforced by such mortgagee or beneficiary.

9.12 **Notice to Lienholder.** The Unit Owners, and not the Board nor the Association, shall notify the holder of any first lien on any of the Units of the occurrence of any loss in excess of \$10,000.00 within thirty (30) days of such loss.

9.13 **Reconstruction.**

(a) **Repair after Casualty.** If any part of the Project shall be damaged by casualty, whether or not it shall be reconstructed or repaired shall be determined in the following manner:

(i) **Lesser Damage.** If a Unit or Units (or other damaged property within the Project) is found by the Board to be tenantable after the casualty, the damaged property shall be repaired.

(ii) **Greater Damage.** If a Unit or Units (or other damaged property within the Project) is found by the Board to be not tenantable after the casualty, the damaged property may be reconstructed or rebuilt as provided in the applicable provisions of the Act. If the decision is made not to rebuild then the property shall be subject to the applicable provisions of the Act.

(iii) **Election not to Rebuild.** If a Unit or Units (or other damaged property within the Project) is found by the Board to be not tenantable after the casualty and the Association elects not to rebuild as herein provided and set forth in 70-23-803, MCA, and less than all of the Units have been damaged or destroyed, following any payments required by 70-23-805, MCA, the Insurance Trustee shall be instructed to disburse the proceeds in accordance with paragraph 9.9(d) and 9.9(e).

(iv) **Certificate.** The Insurance Trustee may rely upon a certificate of the Association made by the Board or Manager to determine whether or not the damaged property is to be reconstructed or rebuilt.

(b) **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 not less than seventy-five percent (75%) of the Unit Owners, including the Owners of all Units the plans for which are to be altered, and in accordance with the review and approval requirements set forth in the Design Guidelines. Any such reconstruction not in accordance with the original plans and specifications must be set forth in an amendment to the Declaration. Provided that any consents required by the Governing Documents in connection with reconstruction not in accordance with the original plans and specifications have been obtained, the Board may cause to such amendment to be prepared and recorded without the consent of the Unit Owners.

(c) **Responsibility.** The responsibility for reconstruction or repair after casualty shall be that of the Association which shall work with the Insurance Trustee to carry out the provisions of this Article.

(d) **Assessments.** If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction or repair for which the Association is responsible, or if at any time during such reconstruction or repair, or upon completion of such reconstruction or repair, the funds for the payment of the costs thereof are insufficient, assessments shall be made against all Unit Owners in sufficient amounts to provide funds to cover the payment of such costs. Such assessments shall be in proportion to the Owner's Percentage of Interest, unless such reconstruction or repair resulted from the negligence or willful misconduct of an Owner or the family member, guest or invitee of an Owner, in which case such amounts may, in the discretion of the Board, be assessed against such Owner or other person having and ownership interest in the applicable Unit.

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

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

9.14 **Condemnation.**

(a) In the event the Common Elements, or any portion thereof, shall be taken for any public or quasi-public use, under any statute, by right of eminent domain or by purchase in lieu thereof, each Owner will be entitled to notice thereof, but the Association (acting through

the Board) will act as attorney-in-fact for all Owners in the proceedings incident to such taking unless otherwise prohibited by law. The award for such taking will be payable to the Association as trustee for all of the Owners to be used as follows:

(i) If the taking involves a portion of the Common Elements on which improvements (not including a Unit) have been constructed, then, unless (a) restoration or replacement of such improvements would be illegal under any applicable law, rule, regulation or ordinance or (b) within sixty (60) days after such taking, the Board elects not to restore or replace such improvements, the Association shall restore or replace such improvements so taken on the Common Elements to the extent lands are available therefore, in accordance with plans approved by the Board and, to the extent required by applicable law, any governmental or quasi-governmental entity having jurisdiction over the Property. If such improvements are to be restored or replaced, and the award for the taking is insufficient to restore or replace such improvements, the Board shall levy a special assessment, payable by the Unit Owners in accordance with their Percentage of Interest, in the aggregate amount of such deficiency and shall proceed to restore or replace such improvements.

(ii) If the taking does not involve any Common Elements including improvements, or if there is a decision made not to restore or replace as set forth above, or if there are net funds remaining after any such restoration or replacement of improvements is completed, then the Association shall retain such excess proceeds and place them in the Association's reserve account.

(b) In the event any Unit or any portion thereof shall be taken, the condemnation award for such taking shall be paid solely to the Unit Owner(s) of such Unit(s). If an entire Unit shall be condemned, the Unit Owner thereof shall automatically cease to be an Owner or a member of the Association with respect to such Unit, but obligations arising prior to such taking shall remain the obligation of such person or entity regardless of the termination of membership.

Article 10 - MORTGAGEE PROVISIONS

10.1 Notice of Action. Any institutional holder, insurer, or guarantor of a first mortgage that provides a written request to the Association in accordance with this Article shall thereby become an "Eligible Holder" for so long as such Person remains an institutional holder, insurer or guarantor of a first mortgage and will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss of which the Association has notice which affects a material portion of the Common Elements; or

(b) Any foreclosure by the Association of a lien resulting from a delinquency in the payment of any Assessment, charge, fine, penalty or other amount payable by an Owner with respect to a Unit subject to the mortgage of such Eligible Holder. Such notice shall be given at least thirty (30) days prior to the foreclosure.

(c) The written request as required under this Article shall clearly state the legal description and address of the Unit as well as the name, mailing address, telephone number and e-mail address of the person who should receive the notices for the above listed actions. It is the sole

obligation of the Eligible Holder to keep this information up to date with the Association and deliver notice as provided herein to the Association when this information changes. The Association will not be in default for failure to provide the above-listed notices if the Eligible Holder does not provide the Association with accurate information.

(d) Any written notice required under this Article to be provided by the Association to an Eligible Holder shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by certified mail, first-class, postage pre-paid, return receipt requested to the address provided by the Eligible Holder or by an acknowledged email.

Article 11 - REMOVAL, PARTITION, AND SUBDIVISION

The Project may only be removed from condominium ownership, and may only be partitioned or sold upon compliance with each of the conditions hereof:

11.1 Board Approval. The Board must approve the plans of removal, partition or sale, except for the rights reserved to Declarant contained in this Declaration. Such approval shall include the details of how any partition or sale, and the distribution of property or funds, shall be accomplished.

11.2 Member Approval. The plan of removal, partition, subdivision, abandonment, termination or sale must be approved as provided in the Act. If approval for any of the forgoing is not required by the Act, then approval shall be required from Owners representing one hundred percent (100%) of the Percentage of Interest and any related first lienholder in the Project. Upon obtaining such approval, the Board shall be empowered to implement and carry out the plan of removal, partition, subdivision, abandonment, termination or sale. This provision is subject to the rights reserved to Declarant contained in this Declaration.

11.3 Division of Units. No Unit may be divided or subdivided into a smaller Unit, nor any portion thereof sold or otherwise transferred, except as provided above.

11.4 Common Elements. The Common Elements shall not be abandoned, partitioned, subdivided, encumbered, or sold or transferred (except to the Association) without compliance with all of the above requirements. This provision does not apply to fixtures attached to the General Common Elements that may be disposed of pursuant to the Board's discretion. By way of example but not limitation, the Board may decide to dispose of a park bench that has become unsafe or exceeded its useful life.

Article 12 - ENFORCEMENT AND REMEDIES

12.1 Procedure. The Association shall have the right (but not the obligation) to enforce the provisions of any of the Governing Documents, through procedures adopted by resolution of the Board, abatement of the violation by the Association, or by proceedings either at law or in equity against any Person(s) violating or attempting to violate any of the Governing Documents.

12.2 Discretion. The decision to have the Association pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing

sentence, the Board may determine that, under the circumstances of a particular case:

(a) the Association's position is not strong enough to justify taking any or further action; or the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; or although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or it is not in the Association's best interest, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action. Such a decision shall not be deemed a waiver of the right of the Association to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule, nor shall it preclude any Owner from taking action at law or in equity to enforce these Protective Covenants.

12.3 Costs of Enforcement. Costs incurred for enforcing the provisions of the Governing Documents (inclusive of giving notice of the violation), costs of correcting the defect or undoing the violation, if undertaken by the Association, or any fines levied against the Owner after the Owner or his/her tenants, guests and/or invitees is determined by the Board to be in violation of the Governing Documents shall be paid by the Owner. Any costs incurred for enforcing the provisions of Governing Documents, for correcting the defect or undoing the violation, or fine assessed against the Owner that is not paid within sixty (60) days as provided herein shall result in a lien being recorded against the Unit and/or the Owner's interest therein, such lien to be enforceable by sale under the laws of the State of Montana. Such lien will be recorded in the office of the Clerk and Recorder, Gallatin County, Montana. Should any lawsuit, arbitration or other legal proceeding be instituted by the Association against an Owner alleged to have violated one or more of the provision of the Governing Documents and should the Association be wholly or partially successful in such proceeding, the offending Owner shall be obligated to pay the costs of such proceeding, including reasonable attorney's fees, costs, and cost of collecting the judgment.

12.4 Delegation. The Board may delegate any of its rights or obligations with respect to enforcement as set forth above to its appointed agent, or any committee of the Board, including, but not limited to, the Manager; except that any decision to pursue or not pursue any legal proceeding may not be delegated, and shall be determined by the Board.

12.5 Remedies Cumulative. All remedies provided for in this Declaration and the other Condominium Documents 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.

12.6 Joint and Several Liability. In the case of joint ownership of a Unit, in any form, the liability of each Owner thereof in connection with the liabilities and obligations of Owners as set forth in or imposed by the Governing Documents shall be joint and several.

Article 13 - AMENDMENT

13.1 Amendment By Board. The Board may unilaterally amend this Declaration if such amendment is (i) necessary to bring any provision in compliance with any applicable governmental statutes, necessary governmental registrations, rule, regulation, or judicial determination; (ii)

necessary to enable any reputable title insurance company to issue title insurance coverage on the Units; (iii) required by an institutional or governmental lender or purchaser of mortgage loans, to enable such lender or purchaser to make or purchase mortgage loans on the Units; (iv) necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Units or to insure the Project or any portion thereof, including any individual Unit; (v) necessary to allow the Association to obtain insurance contemplated by this Declaration, including, without limitation, property or liability insurance, at a reasonable price and on reasonable terms; or (vi) otherwise necessary to satisfy the requirements of any governmental or quasi-governmental agency.

13.2 **Amendment By Owners.**

(a) This Declaration may be amended by the affirmative vote or written consent, or any combination thereof, of at least sixty percent (60%) of the Unit Owners.

(b) **Application.** Owners are on notice that by virtue of taking title to a Unit subject to the Governing Documents that they are subject to and agree to the amendment provisions contained in this Article. Owners waive their rights to any statutory remedies provided for under Title 70, Chapter 23 of the Montana Code Annotated with regard to duly adopted amendments pursuant to this Article.

13.3 **Recording of Amendment.** Any amendment adopted pursuant to this Article must be recorded with the office of the Clerk and Recorder of Gallatin County, Montana in order to be effective. If an Owner consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Article 14 - INTERPRETATION

14.1 **Liberal Construction.** The provisions of this Declaration and of the Bylaws shall be liberally construed to effectuate the purposes of this Declaration and Bylaws and to create Buildings subject to and under the provisions of the Unit Ownership Act.

14.2 **Interpretation of Governing Documents.** The Association, by and through its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration and the other Governing Documents. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Board's construction or interpretation shall be final, conclusive and binding as to all persons and property benefitted or bound by the covenants and the provisions hereof.

Article 15 - SEVERABILITY

The provisions hereof shall be deemed independent and severable and the invalidity or partial invalidity or unenforceability of any one or more provision or any portion thereof shall not affect the validity or enforceability of the remainder of such provision or of any other provision hereof.

Article 16 - MISCELLANEOUS

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

16.2 **Binding Effect.** The provisions of this Declaration and the Bylaws shall be construed to be covenants running with the land and shall include every Unit and shall be binding upon the Unit Owners (and any other person having an ownership interest in a Unit), their heirs, personal representatives, successors and assigns for as long as this Declaration and the Bylaws are in effect.

16.3 **Service of Process.** The name and address of the person to receive service of process for the Association until another designation is filed of record shall be the registered agent for the Association on file with the Montana Secretary of State.

16.4 **Notices.** All writings required or permitted to be given or delivered under this Declaration shall be deemed to have been given or delivered when deposited in the United States mail, postage prepaid, or by delivering it personally to an officer of the Association or Declarant or directly to a Unit Owner.

16.5 **Sale Disclosures.** At any time that a Person owns a majority of the Units, the Person shall provide to any purchaser the disclosure required by Montana Code Annotated § 70- 23-613.

16.6 **Gender.** Whenever any reference herein is made to one gender, the same shall include a reference to any and all genders where the same would be appropriate; similarly, whenever a reference is made herein to the singular, a reference shall also be included to the plural where the same would be appropriate and vice versa.

16.7 **Conflicts.** In the event that there is any conflict or inconsistency between or among the provisions of Montana law, this Declaration, the Articles, the Bylaws and the Rules and Regulations, the provisions of Montana law, this Declaration, the Articles, the Bylaws and the Rules and Regulations (in that order) shall prevail.

IN WITNESS WHEREOF, we certify that this Declaration for Upper Pines Condominiums, formerly known as The Pines Condominium, Phase II, was adopted by a vote of one-hundred percent (100%) of the Unit Owners, approved by the Board of Directors of the Upper Pines Condominium Owners Association, formerly known as The Pines Condominium, Phase II Owners Association, and the current developer for Building M: Little Coyote, LLC.

ATTEST:

Walter J. Kobi

Walter J. Kobi, Chairman/President of the Upper Pines Condominium Owners Association, formerly known as The Pines Condominium, Phase II Owners Association

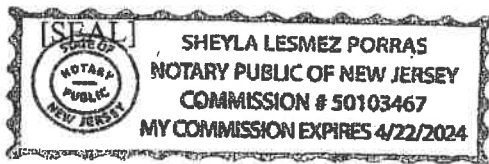
STATE of NEW JERSEY

: ss.

County of MORRIS

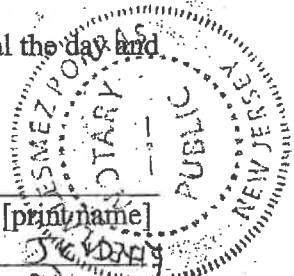
On this 21 day of Dec, 2019, before me, a Notary Public in and for said State, personally appeared **Walter J. Kobi as the Chairman/President of the Upper Pines Condominium Owners Association, formerly known as The Pines Condominium, Phase II Owners Association**, and acknowledged to me that s/he executed the same on behalf of the corporation pursuant to the power and authority vested in her/him.

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



Sheyla Lesmez

Sheyla Lesmez [print name]
Notary Public for the State of New Jersey
Residing at: 831-38 2nd Ave W E07
My commission expires: 04/22/2024



ATTEST:

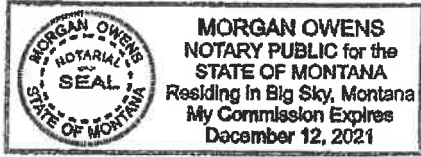
Judy Bohnenblust
Judy Bohnenblust, Secretary/Treasurer of the
Upper Pines Condominium Owners
Association, formerly known as The Pines
Condominium, Phase II Owners Association

STATE of Montana)
 : ss.
County of Gallatin)

On this 20th day of December, 2019, before me, a Notary Public in and for said State,
personally appeared **Judy Bohnenblust as the Secretary/Treasurer of the Upper Pines
Condominium Owners Association, formerly known as The Pines Condominium, Phase II
Owners Association**, and acknowledged to me that s/he executed the same on behalf of the
corporation pursuant to the power and authority vested in her/him.

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

[SEAL]



Morgan Owens
[print name]
Notary Public for the State of _____
Residing at: _____
My commission expires: _____

EXHIBIT A-1 – LEGAL DESCRIPTION OF PROPERTY

The following described real property located in Gallatin County, Montana:

A tract of land located in the south half of Section 35, Township 6 South, Range 3 East, P.M.M., Gallatin County, Montana being more particularly described as follows:

Commencing at the southwest corner of Section 35.

Thence South 89°45'15"

East a distance of 1176.35 feet to the True Point of Beginning:

Thence North 20°30'14" West for a distance of 164.17 feet;

Thence South 52°49'43" East for a distance of 93.13 feet;

Thence North 65°04'26" East for a distance of 150.14 feet;

Thence North 74°56'28" East for a distance of 149.77 feet;

Thence North 04°58'44" West for a distance of 168.53 feet;

Thence North 67°09'12" East for a distance of 113.54 feet;

Thence South 87°03'24" East for a distance of 195.61 feet;

Thence South 03°51'43" East for a distance of 405.15 feet;

Thence North 89°45'15" West for a distance of 610.13 feet; to the True Point of Beginning.

Said tract contains 3.92 acres, more or less, and is subject to all easements of record or apparent on the ground.

EXHIBIT A-2 – GALLATIN COUNTY EXEMPTION CERTIFICATE



GALLATIN COUNTY

CERTIFICATE OF EXEMPTION FROM SUBDIVISION REVIEW

I, Manager of Subdivision and Zoning for Gallatin County, Montana, do hereby certify that the Second Amendment to the Declaration for The Pines Condominium, Phase II made March 19, 2012, by John M. Radick, Partner in The Pines, LLP, pursuant to Title 70, Chapter 23, Montana Code Annotated, is exempt from review under the Montana Subdivision and Platting Act pursuant to Section 76-3-203(1), MCA (2007).

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


A tract of land located in the South Half of Section 35, Township 6 South, Range 3 East, PMM, Gallatin County, Montana.

The Declaration is exempt because the condominiums are in conformance with the requirements of the Gallatin Canyon/Big Sky Zoning Regulations.

Any future amendment to the Preliminary Declaration for The Pines Condominiums or to any final Declaration that adds units to the Condominium Declaration for The Pines Condominiums requires, for each amendment, an additional declaration of condominium exemption from the Gallatin County Planning Department.

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

DATED this 30th Day of March, 2012


W. Randall Johnson, AICP;
Manager Subdivision and Zoning

PLANNING/CONDOS/2012 Cert of Exemptions/pines-pii-condo.doc

Department of Planning & Community Development • 311 West Main, #108 • Bozeman, MT 59715
Phone (406) 582-3130 • FAX (406) 582-3135



GALLATIN COUNTY

CERTIFICATE OF EXEMPTION FROM SUBDIVISION REVIEW

I, Manager of Subdivision and Zoning for Gallatin County, Montana, do hereby certify that the Fourth Amendment to Declaration for the Pines Condominium, Phase II made this 13th day of June 2019, by declarant Little Coyote LLC., pursuant to Title 70, Chapter 23, Montana Code Annotated, is exempt from review under the Montana Subdivision and Platting Act pursuant to Section 76-3-203(2), MCA.

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


A tract of land located in the South Half of Section 35, Township 6 South, Range 3 East, PMM, Gallatin County, Montana.

The Declaration is exempt because the condominiums are to be constructed on land that was divided in compliance with Parts 5 and 6 of the Subdivision and Platting Act. The units subject to this Declaration are also exempt as the subject condominiums are in conformance with the requirements of the Gallatin Canyon/Big Sky Zoning Regulations.

Any future amendment to the Preliminary Declaration for the Pines Condominium Phase II or to any final Declaration that adds units to the Condominium Declaration for the Pines Condominium Phase II requires, for each amendment, an additional declaration of condominium exemption from the Gallatin County Planning Department.

This Certificate of Exemption in no way excludes the Condominium Declaration from any requirements under the Montana Sanitation in Subdivisions Act pursuant to Section 76-4-111, MCA or ARM Title 17, chapter 36, nor does this Certificate of Exemption obviate the declarants' responsibility to file a final declaration as required under the Montana Unit Ownership Act.

DATED this 15th Day of July, 2019


W. Randall Johnson, AICP;
Manager, Subdivision and Zoning

Department of Planning & Community Development • 311 West Main, #108 • Bozeman, MT 59715
Phone (406) 582-3130 • FAX (406) 582-3135

EXHIBIT B – CERTIFICATE OF NAME

The undersigned being the duly authorized agent of the Department of Revenue of the State of Montana within the County of Gallatin, herewith executes the following certificate relating to **Upper Pines Condominiums** situated as follows:

The following described real property located in Gallatin County, Montana:

A tract of land located in the south half of Section 35, Township 6 South, Range 3 East, P.M.M., Gallatin County, Montana being more particularly described as follows:

Commencing at the southwest corner of Section 35.
Thence South 89°45'15"
East a distance of 1176.35 feet to the True Point of Beginning:
Thence North 20°30'14" West for a distance of 164.17 feet;
Thence South 52°49'43" East for a distance of 93.13 feet;
Thence North 65°04'26" East for a distance of 150.14 feet;
Thence North 74°56'28" East for a distance of 149.77 feet;
Thence North 04°58'44" West for a distance of 168.53 feet;
Thence North 67°09'12" East for a distance of 113.54 feet;
Thence South 87°03'24" East for a distance of 195.61 feet;
Thence South 03°51'43" East for a distance of 405.15 feet;
Thence North 89°45'15" West for a distance of 610.13 feet; to the True Point of Beginning.
Said tract contains 3.92 acres, more or less, and is subject to all easements of record or apparent on the ground.

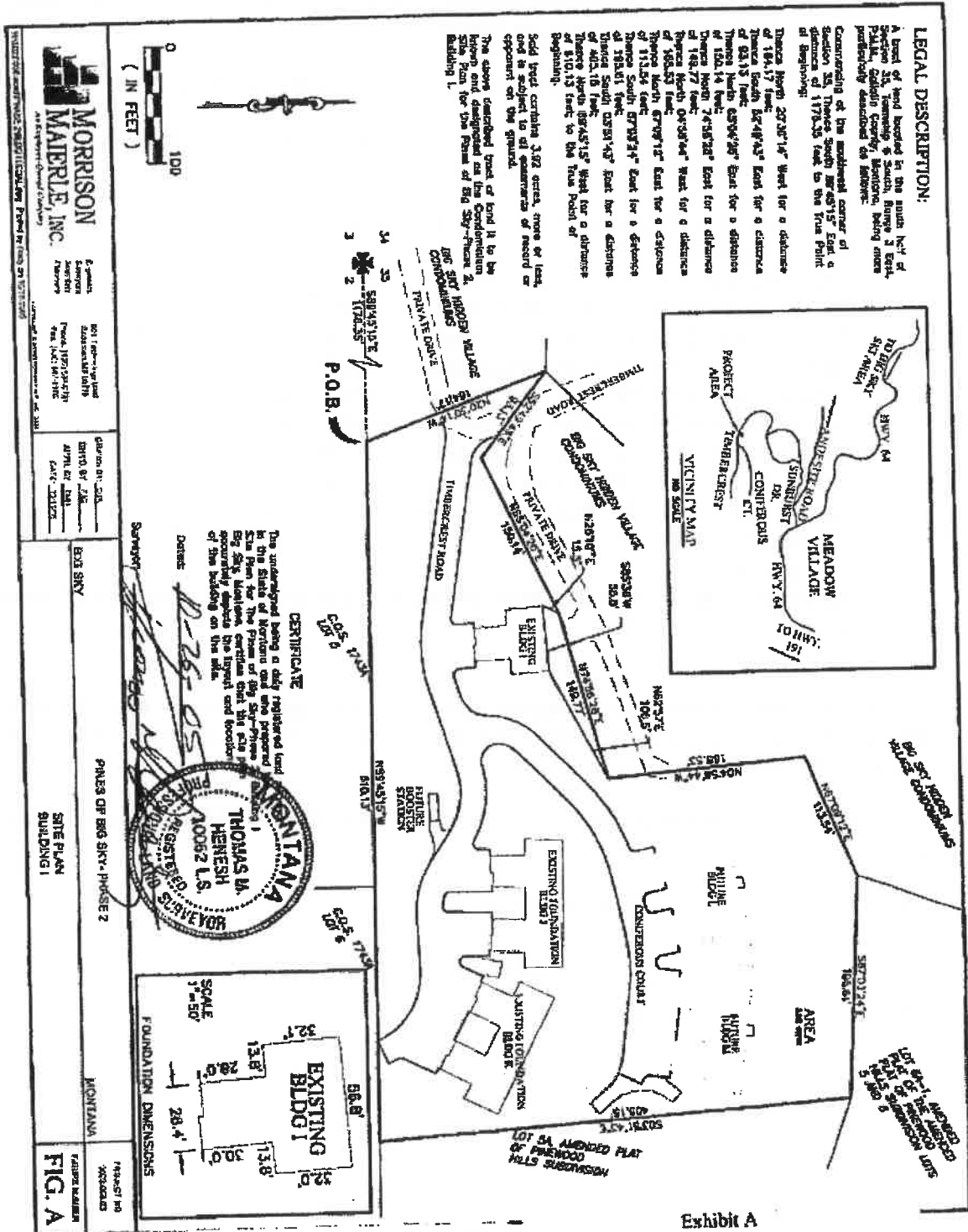
1) That the name **Upper Pines Condominiums** is not the same as, similar to or pronounced the same as a word in the name of any other property or subdivision within Gallatin County, except for the word "Condominium", and

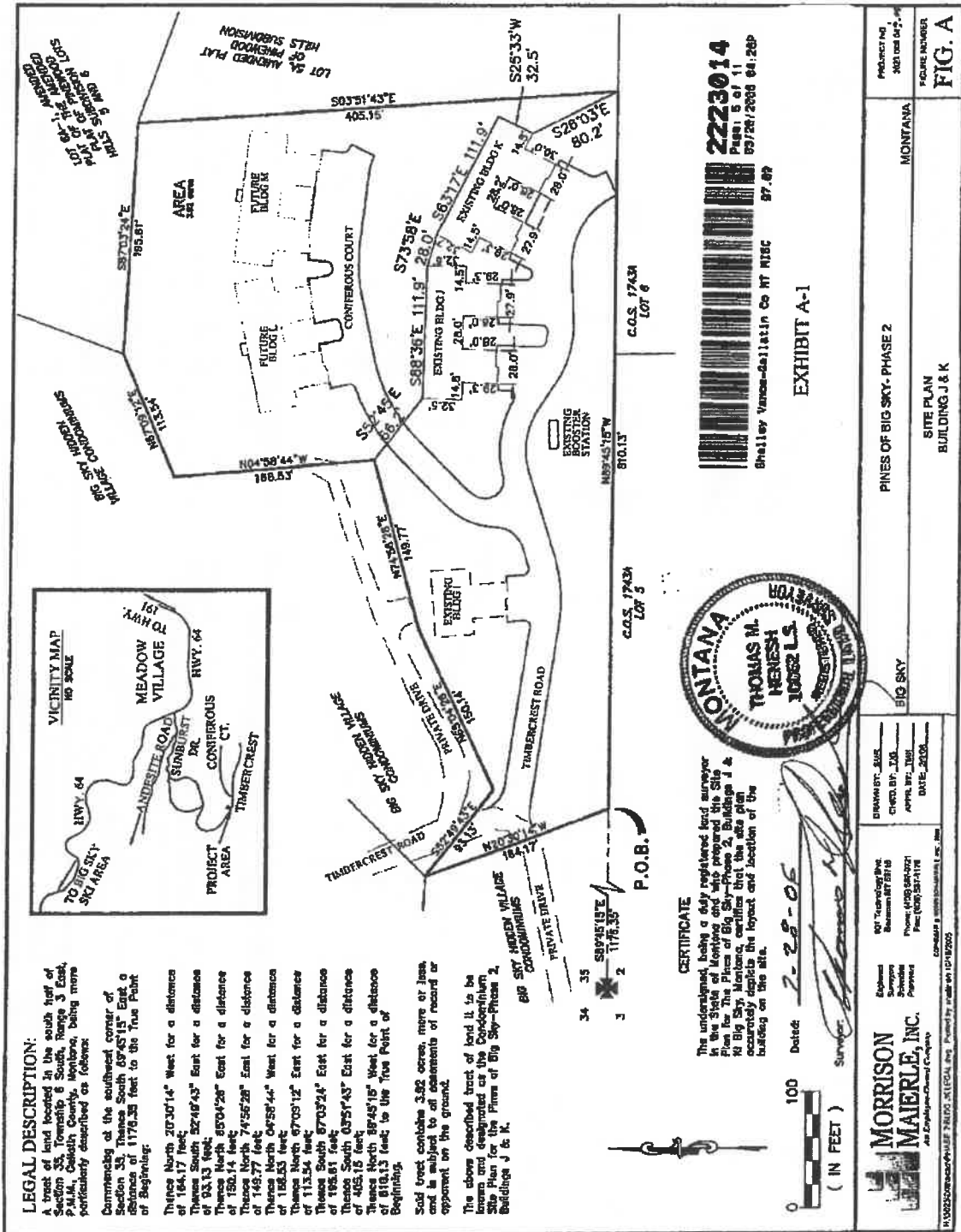
2) All taxes and assessments due for the said **Upper Pines Condominiums** have been paid to date.

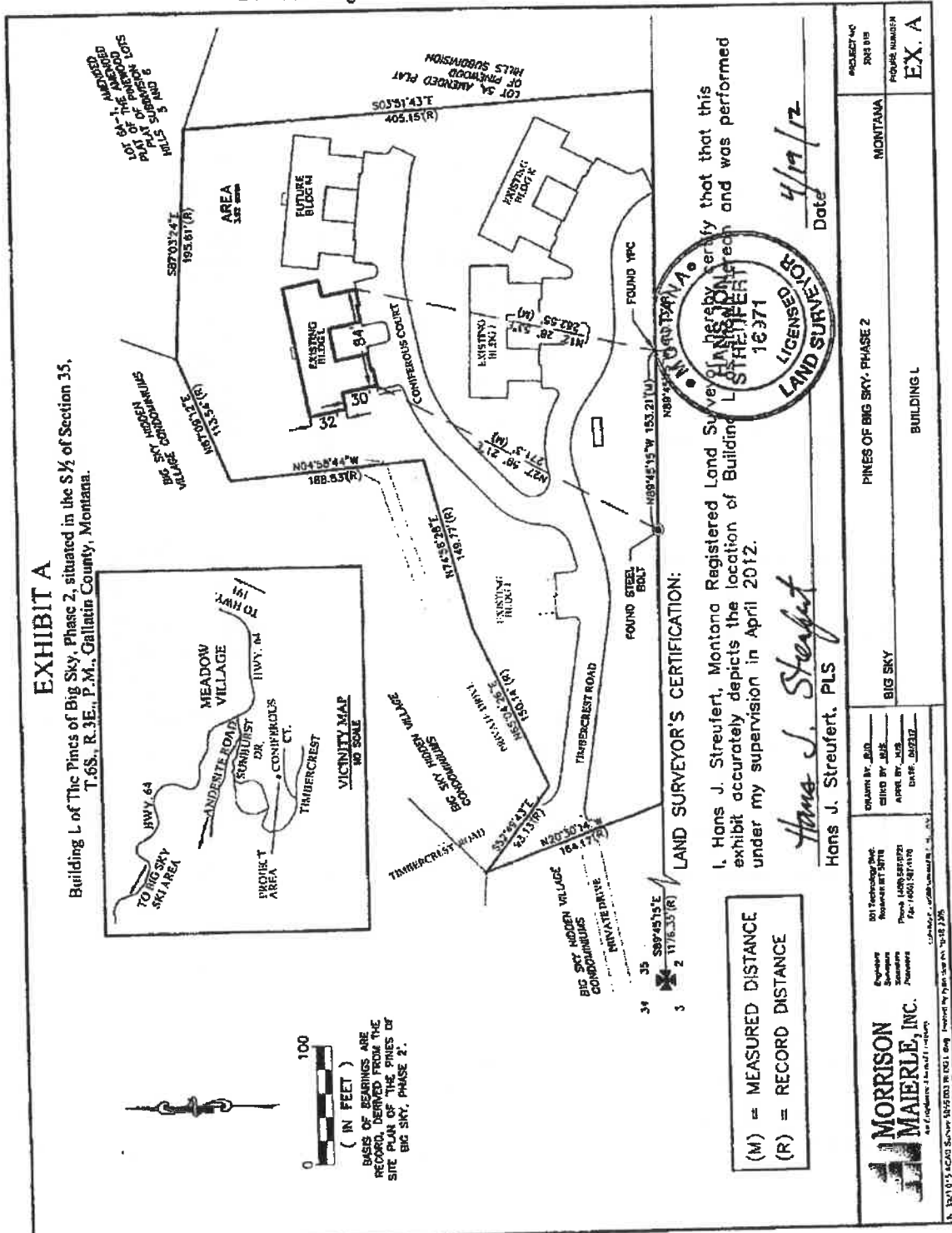
Dated: 8 Jan 2020
By: Jayle Brown
Title: PYS III

Tax ID: _____

EXHIBIT C - SITE PLAN







LAND SURVEYOR'S CERTIFICATION:
 I, Hans J. Streufert, Montana Registered Land Surveyor, hereby certify that this exhibit accurately depicts the location of Building L of The Pines of Big Sky, Phase 2, under my supervision in April 2012.

Hans J. Streufert
 Hans J. Streufert, PLS
 Date: 4/19/12

MONTANA
 LICENSED LAND SURVEYOR
 16371

PROJECT NO. P03 818	MONTANA	PROJECT NUMBER EX. A
PROJECT NAME PINES OF BIG SKY, PHASE 2	BIG SKY	BUILDING L
DRAWN BY: JLD	CHECKED BY: JLD	DATE: 04/23/12
PROJECT LOCATION Pines of Big Sky, Phase 2	PROJECT NUMBER P03 818	DATE: 04/23/12

EXHIBIT D – CONSTRUCTION MATERIALS

The principal materials of each Building as constructed are as follows:

- Wood for the framing, structural, finish work, exterior wall surfaces;
- Log and stone accents on the exterior wall surfaces;
- Sheetrock for the interior walls and ceilings;
- Carpet, wood or vinyl for floors;
- Concrete for foundations, slabs (including garage floor);
- Asphalt shingles on the roof; and
- Concrete patios.

EXHIBIT E-1 – FLOOR PLANS & CERTIFICATE OF FLOOR PLANS (BUILDING I)

ARCHITECT'S CERTIFICATE

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

That pursuant to the provisions of MCA 70-23-306(2), the floor plans for Units 1B and 2B of The Pines Condominium, Phase II, located on:

A tract of land located in the south half of Section 35, Township 6 South, Range 3 East, P.M.M., Gallatin County, Montana, being more particularly described as follows:

Commencing at the southwest corner of Section 35, Thence South 89°45'15" East a distance of 1176.35 feet to the True Point of Beginning;
Thence North 20°30'14" West for a distance of 164.17 feet;
Thence South 52°49'43" East for a distance of 93.13 feet;
Thence North 65°04'26" East for a distance of 150.14 feet;
Thence North 74°56'28" East for a distance of 149.77 feet;
Thence North 04°58'44" West for a distance of 168.53 feet;
Thence North 67°09'12" East for a distance of 113.54 feet;
Thence South 87°03'24" East for a distance of 195.61 feet;
Thence South 03°51'43" East for a distance of 405.15 feet;
Thence North 89°45'15" West for a distance of 610.13 feet;
to the True Point of Beginning.

The tract contains 3.92 acres, more or less, and is subject to all easements of record or apparent on the ground.

The above described tract of land is to be known and designated as the Condominium Site Plan for The Pines of Big Sky Phase II.

as duly filed with the Declaration and Bylaws thereof, fully and accurately depict the layout of the Units and floors of the building and the building is essentially complete as of this date.

Dated 27 OCT 2005


Registered Architect
Registration No. 16030

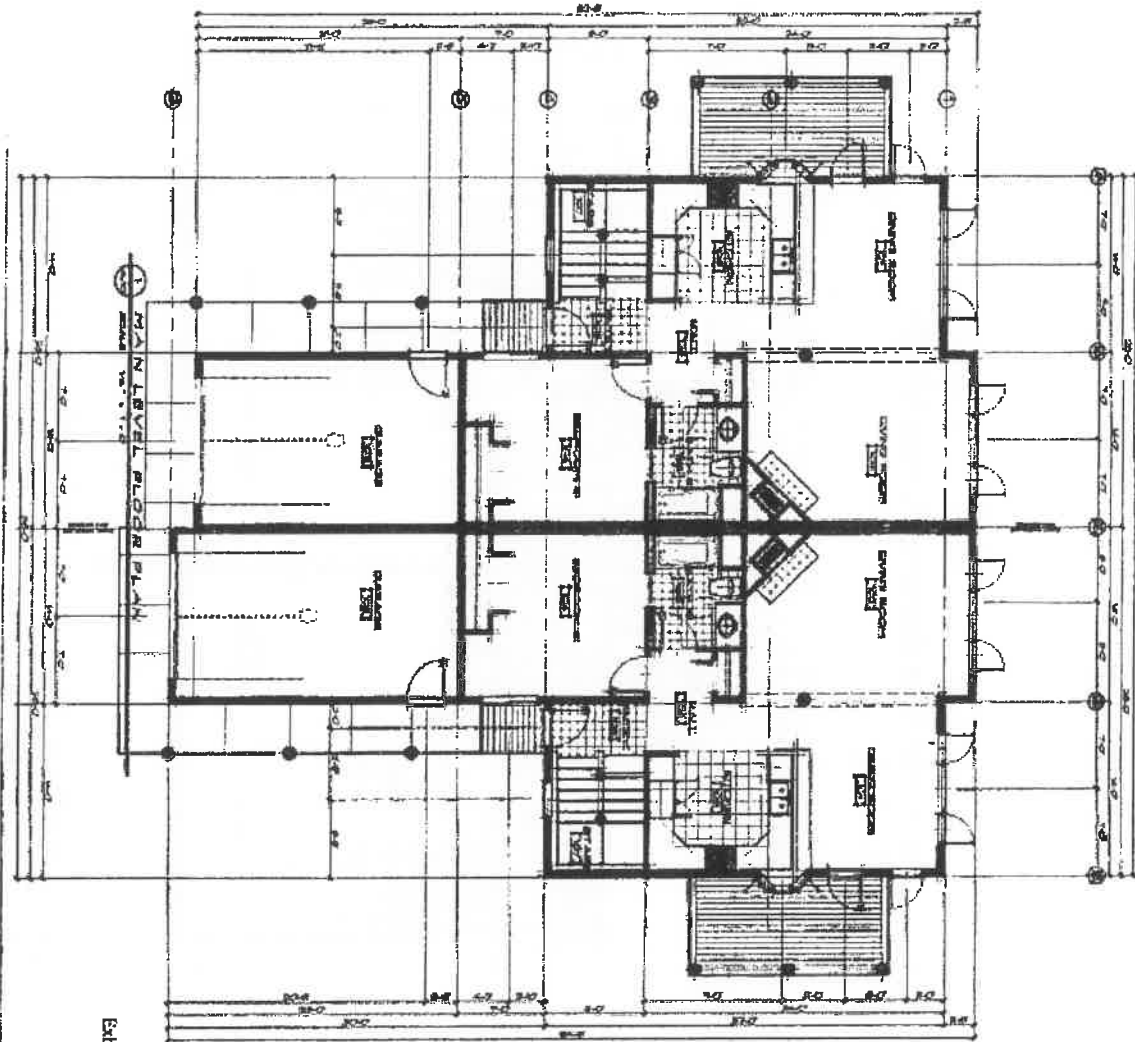


Exhibit B, Page 1

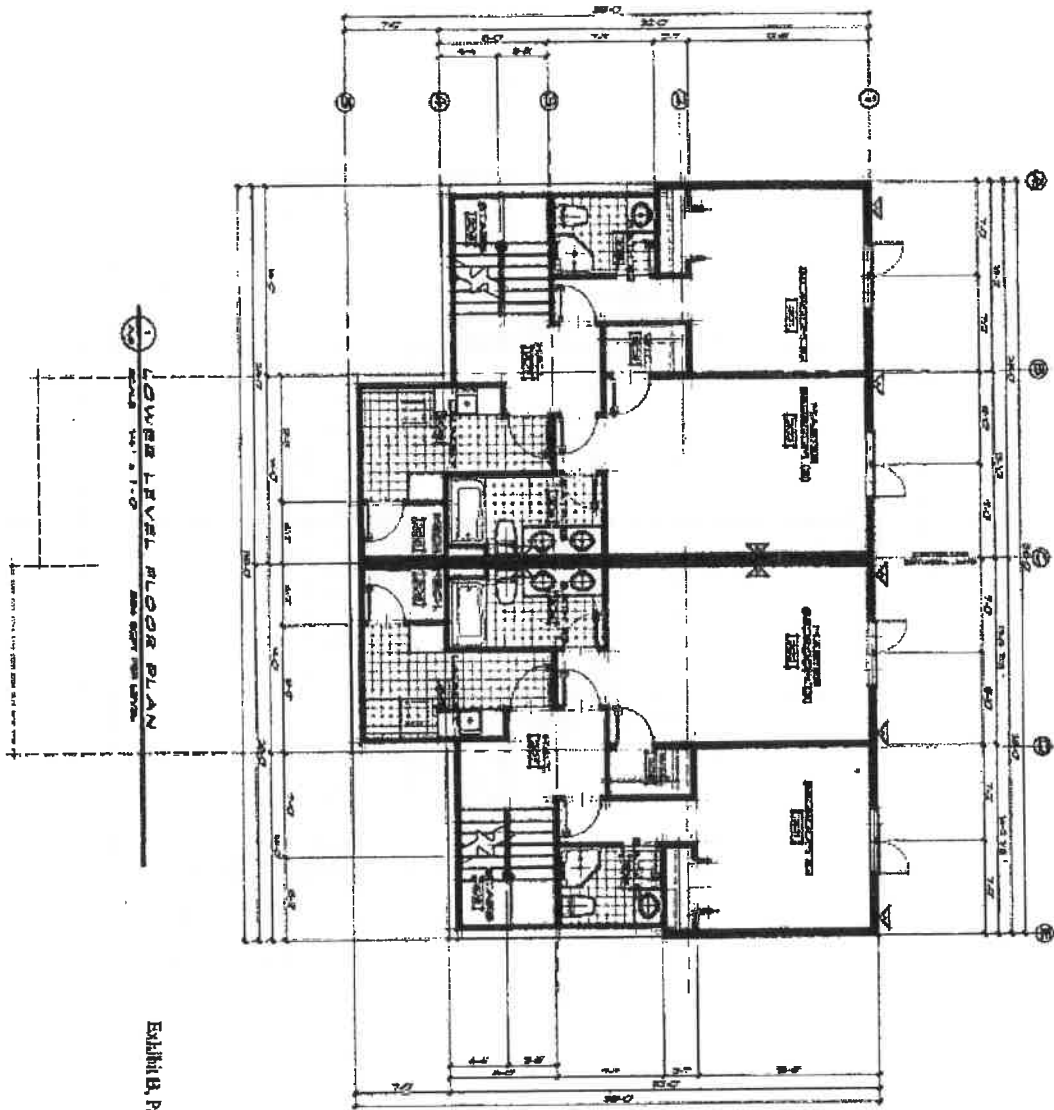
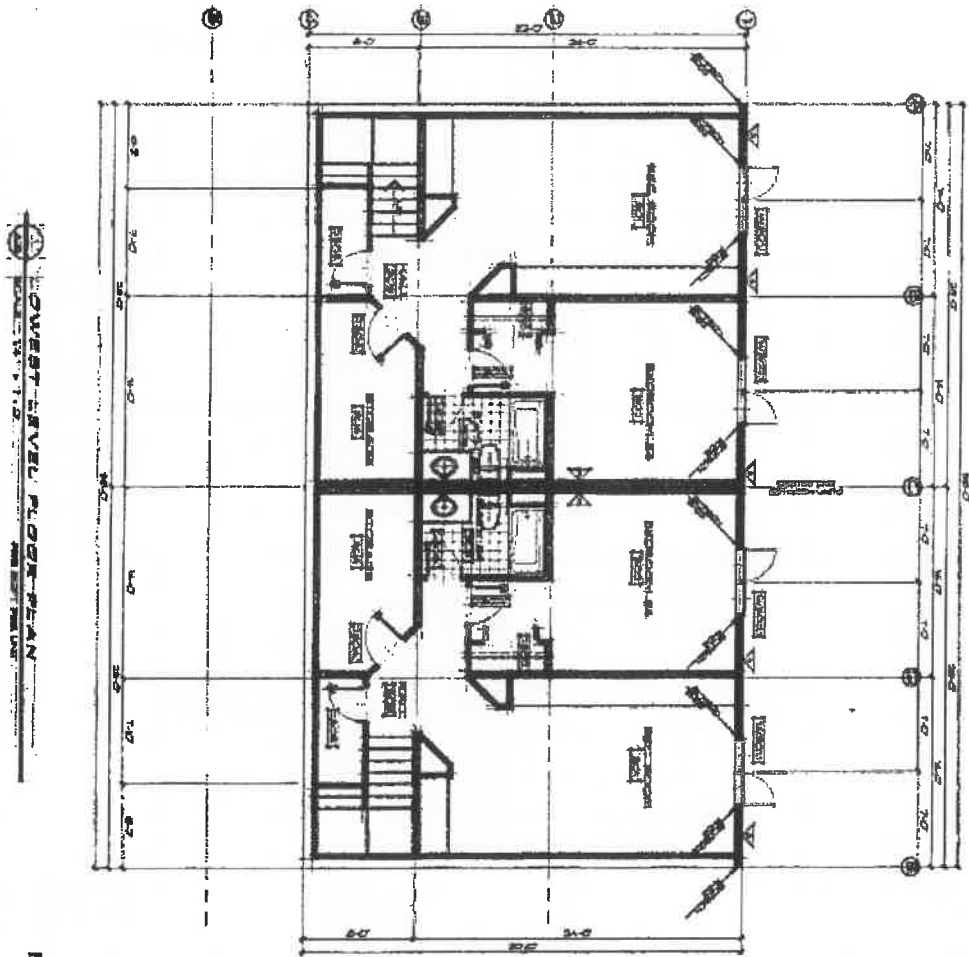


Exhibit B, Page 2



WEST LEVEL FLOOR PLAN

Exhibit B, Page 3

EXHIBIT E-2 – FLOOR PLANS & CERTIFICATE OF FLOOR PLANS (BUILDING J)

Shelley Vero-Garrison Co. P.C. 07.00

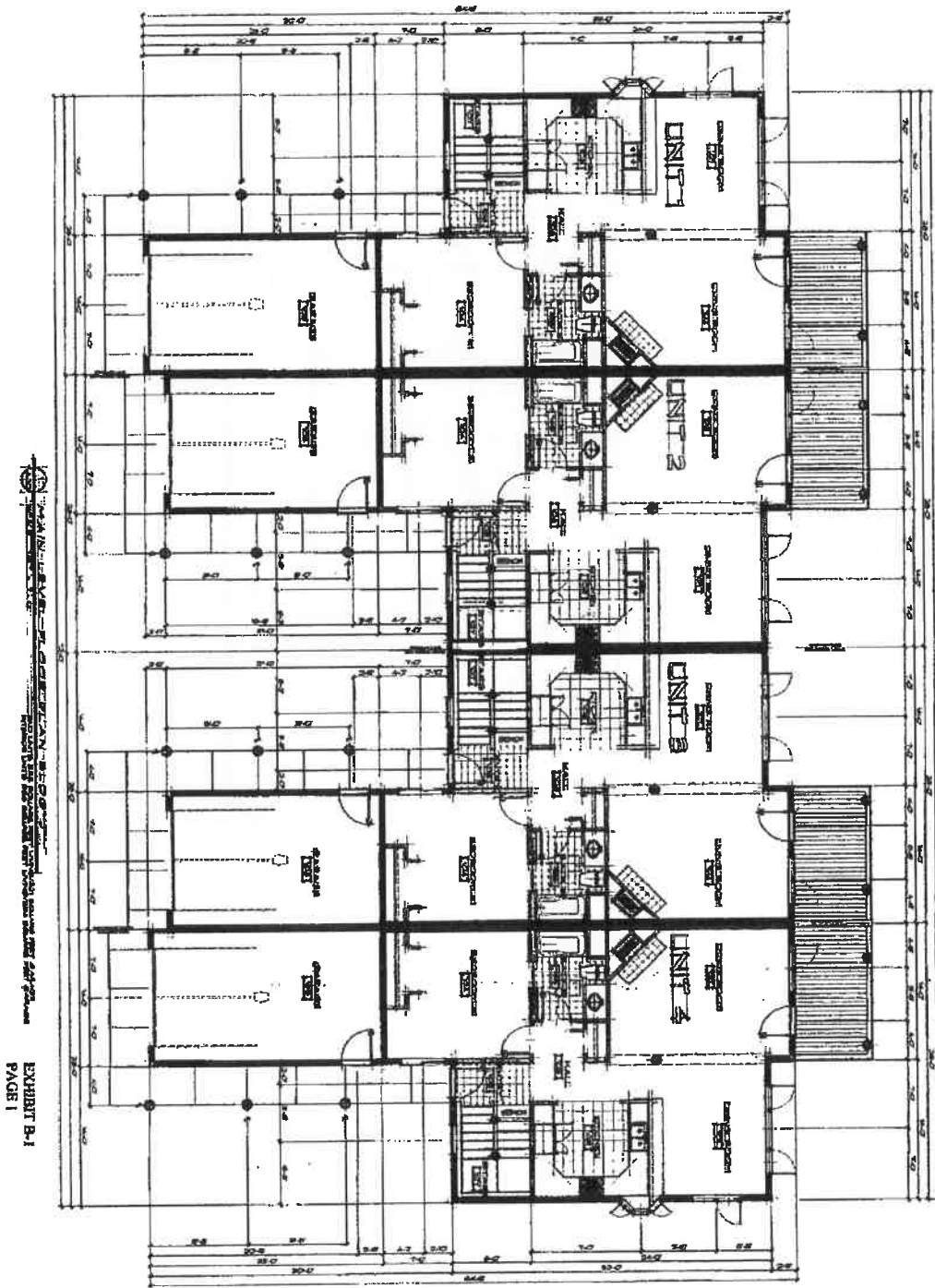


EXHIBIT B-1
PAGE 1

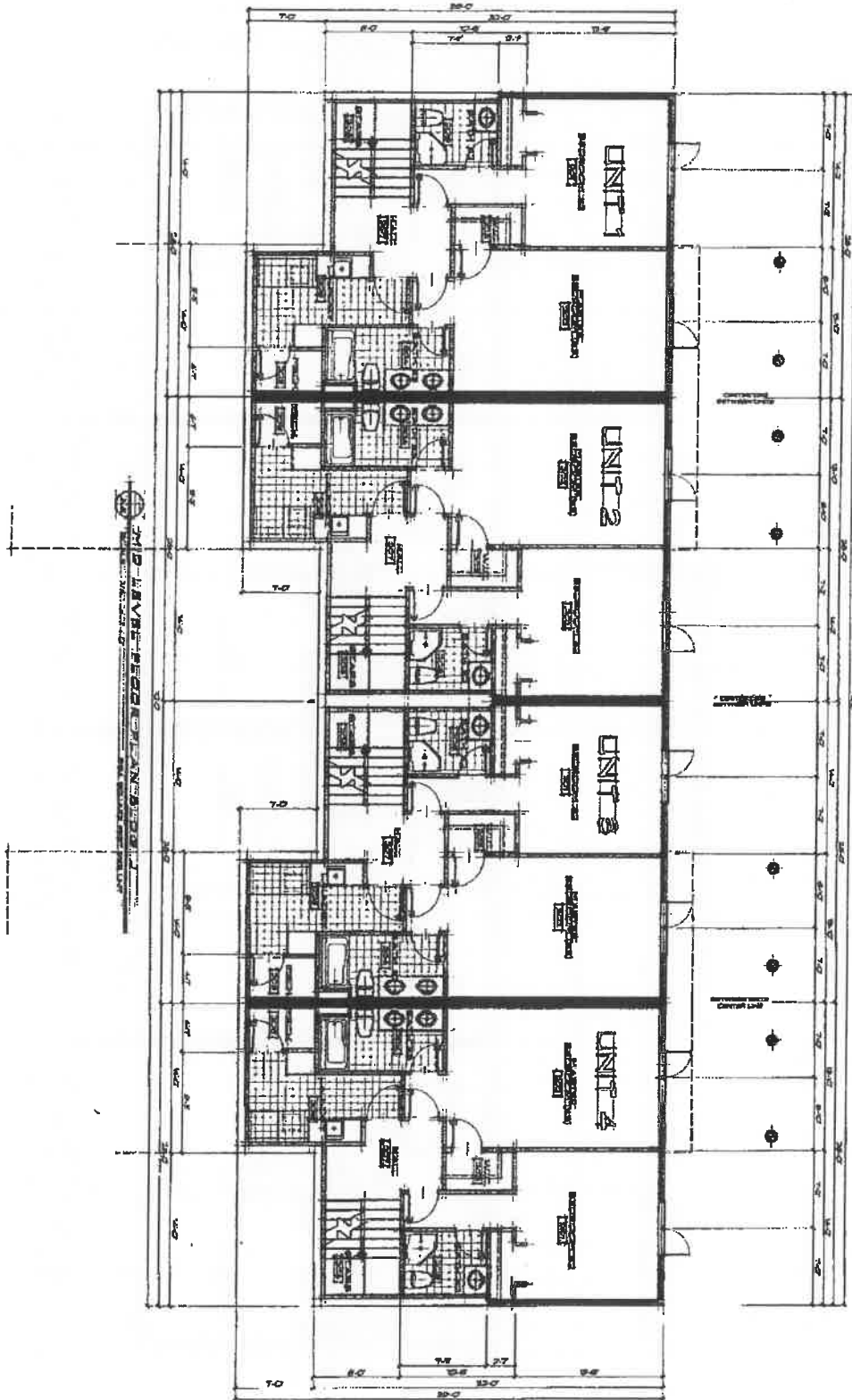


EXHIBIT B-1
PAGE 2

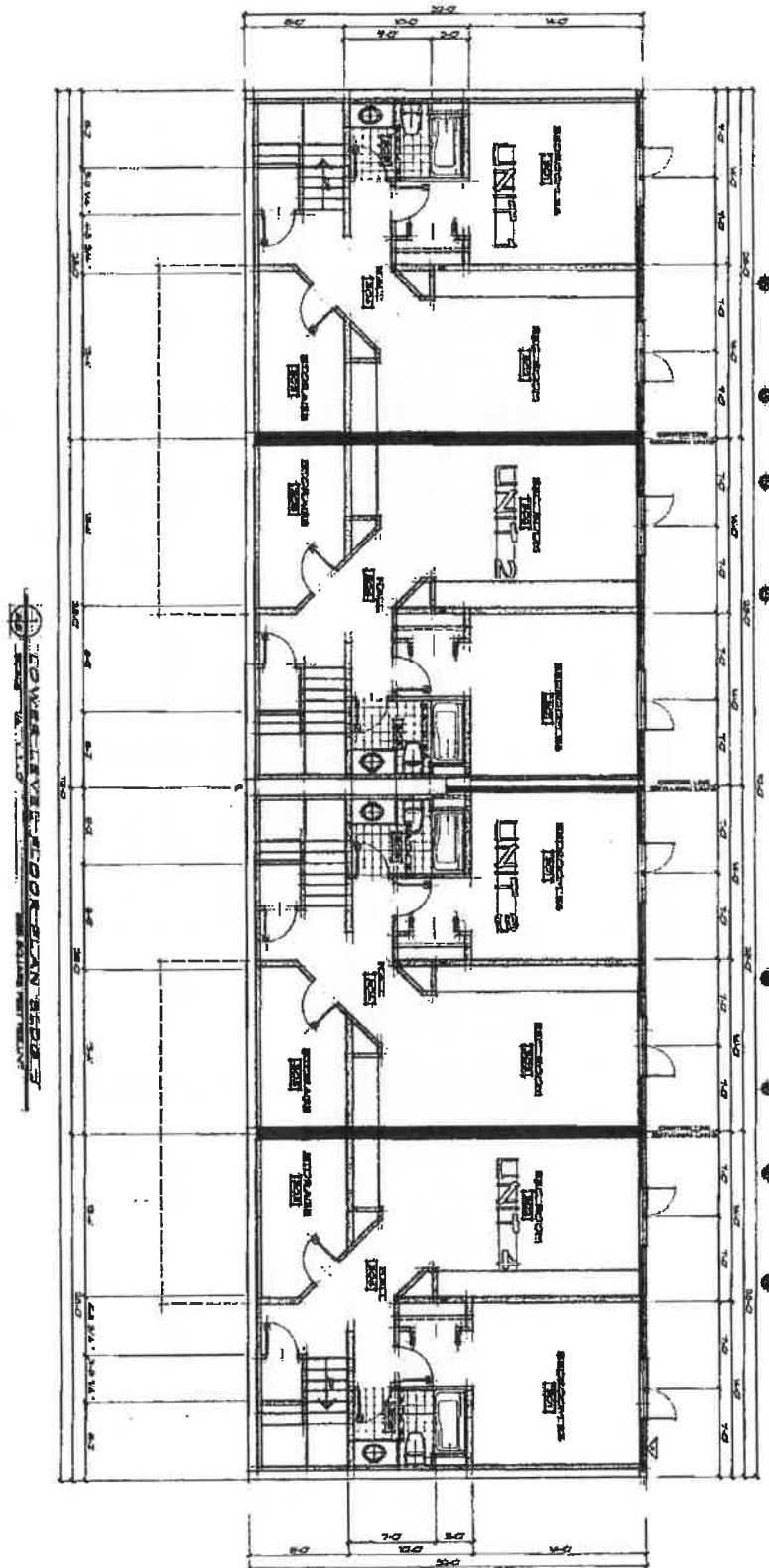


EXHIBIT B-1
PAGE 3

EXHIBIT E-3 -

FLOOR PLANS & CERTIFICATE OF FLOOR PLANS (BUILDING K)

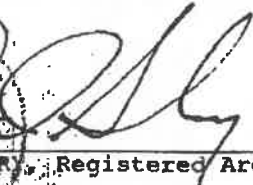
That pursuant to the provisions of MCA 70-23-306(2), the floor plans for units J-1, J-2, J-3, J-4, K-1, K-2, K-3 and K-4 of The Pines Condominium, Phase II, as attached to the Amendment for The Pines Condominium, Phase II Declaration, fully and accurately depict the layout of the units and floors of the building and the buildings are essentially complete as of this date. The original

1

Declaration for The Pines Condominium was recorded as Document No. 2207377, records of Gallatin County, Montana.

2. That this Correction is made to eliminate a typographical error and except as modified, altered or amended by the provisions of this Amendment, the Amendment referenced above shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned has executed this Correction this 14 day of May, 2006.



DAVID SEABURY, Registered Architect
No. 16300
MONTANA

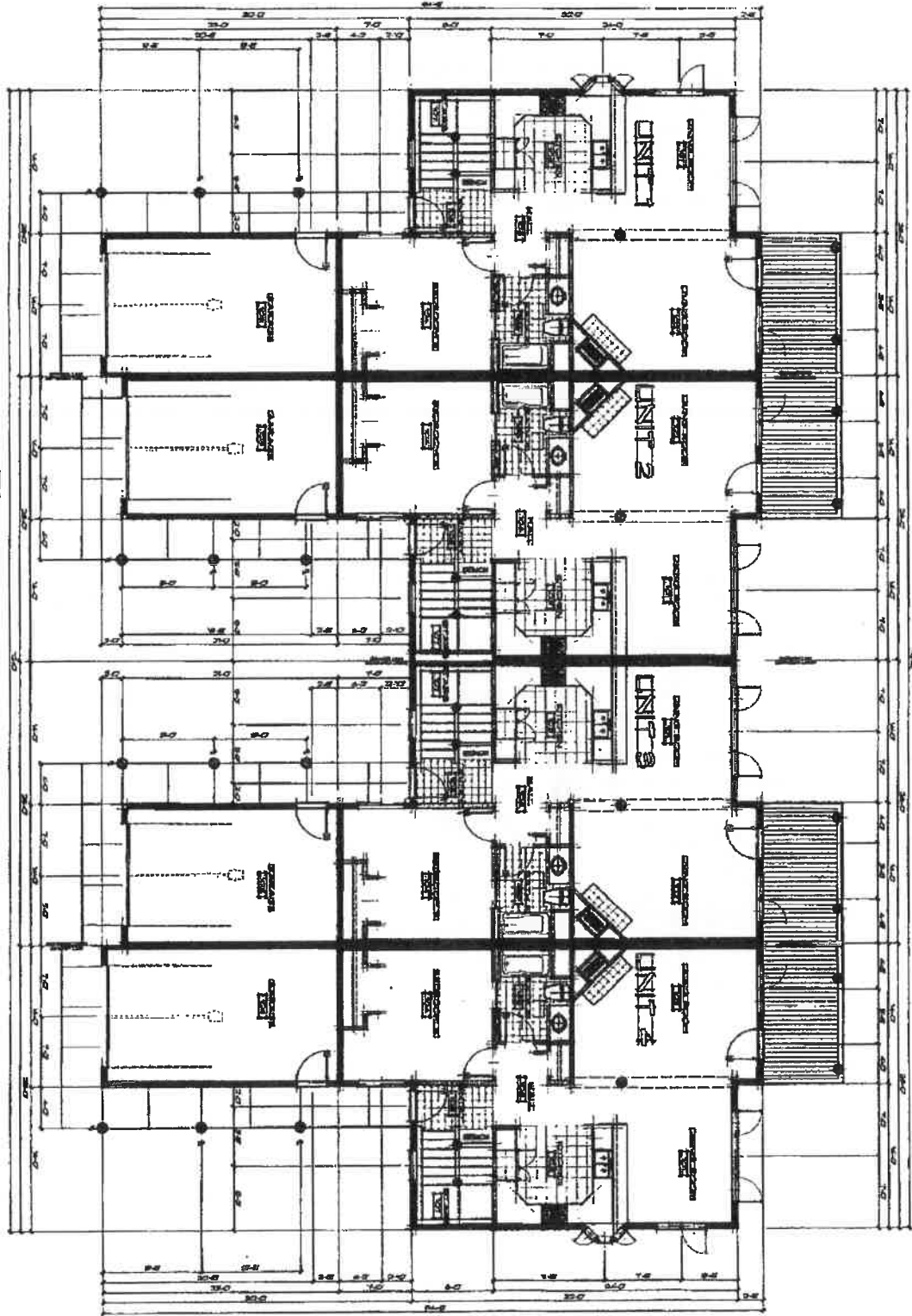
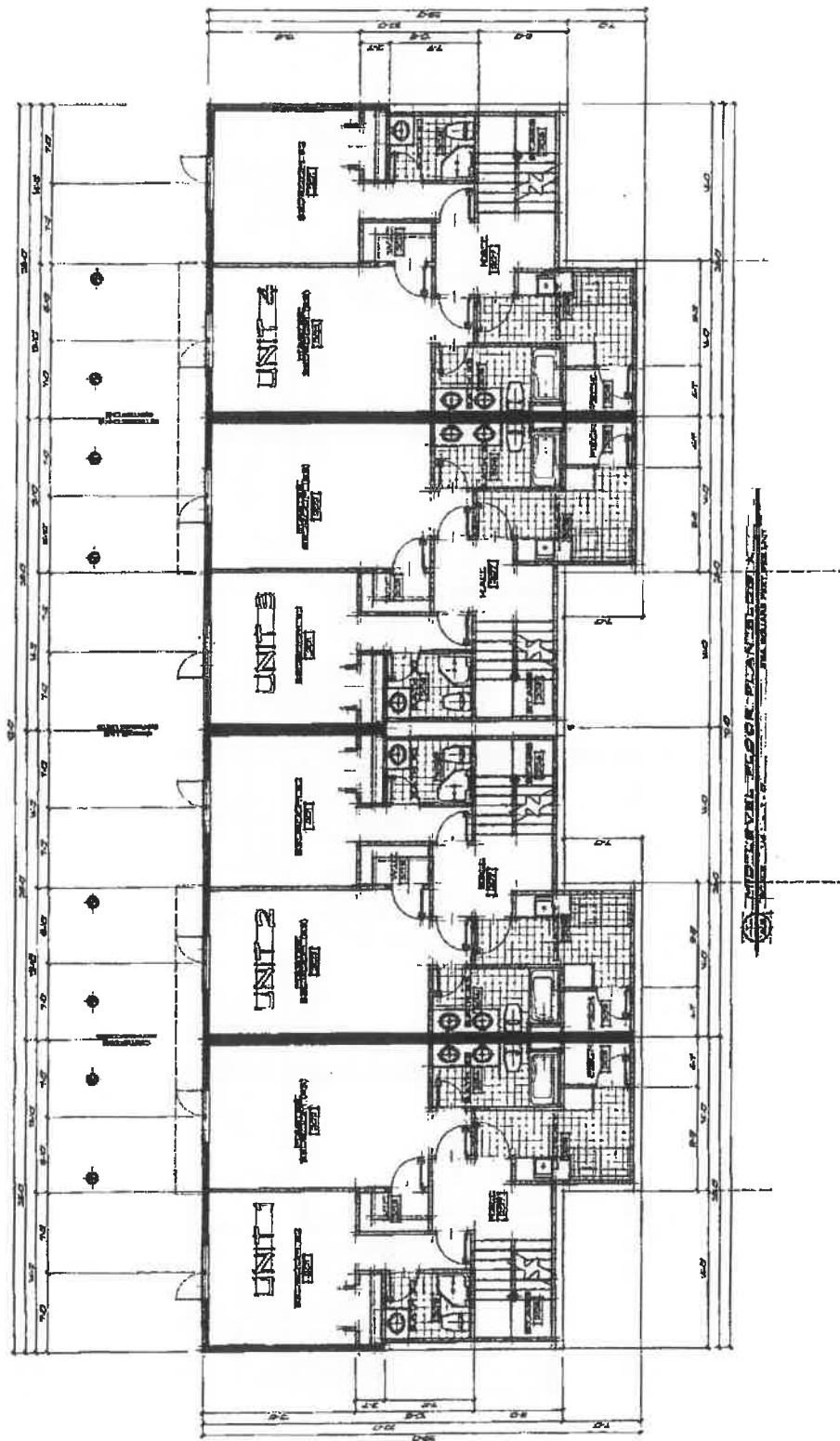


EXHIBIT B-1
PAGE 4



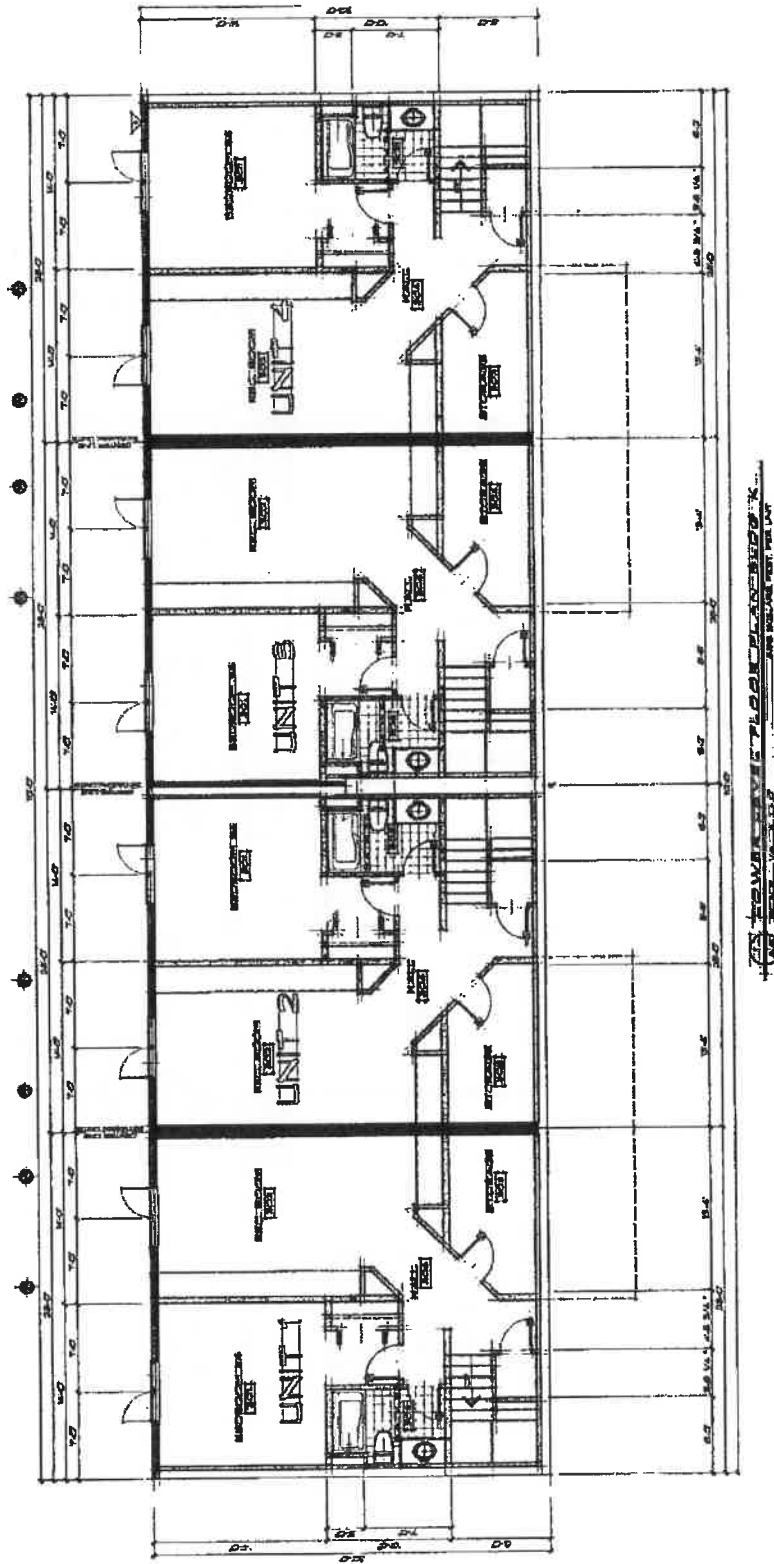


EXHIBIT E-4 – FLOOR PLANS & CERTIFICATE OF FLOOR PLANS (BUILDING L)

ARCHITECT'S CERTIFICATE

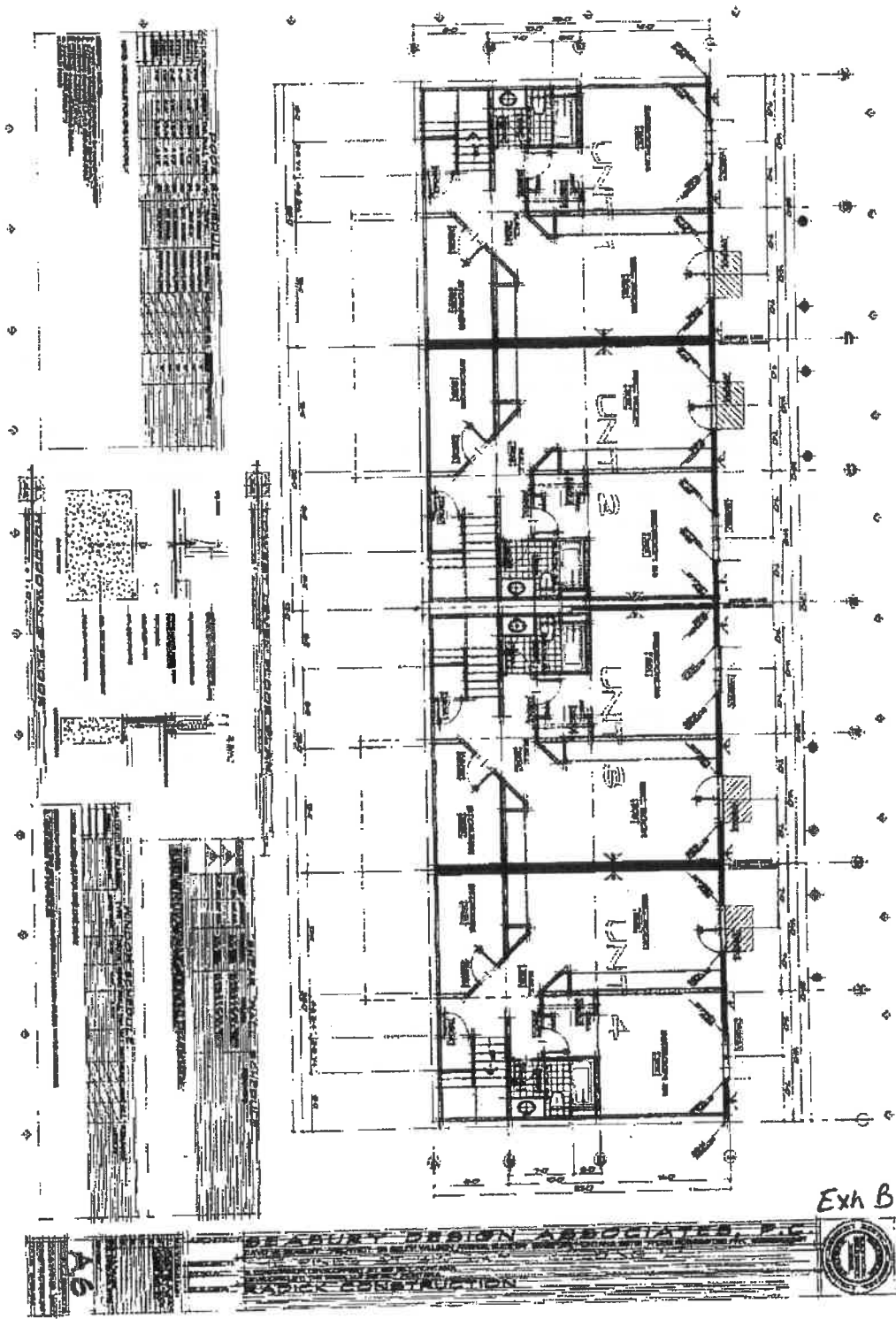
The undersigned, being a duly registered architect in the State of Montana, herewith certifies the following:

That pursuant to the provisions of MCA 70-23-306(2), the floor plans for units L-1, L-2, L-3, and L-4 of The Pines Condominium, Phase II, as attached to the Amendment for The Pines Condominium, Phase II Declaration, fully and accurately depict the layout of the units and floors of the building and the buildings are essentially complete as of this date. The original Declaration for The Pines Condominium was recorded as Document No. 2207377, records of Gallatin County, Montana.

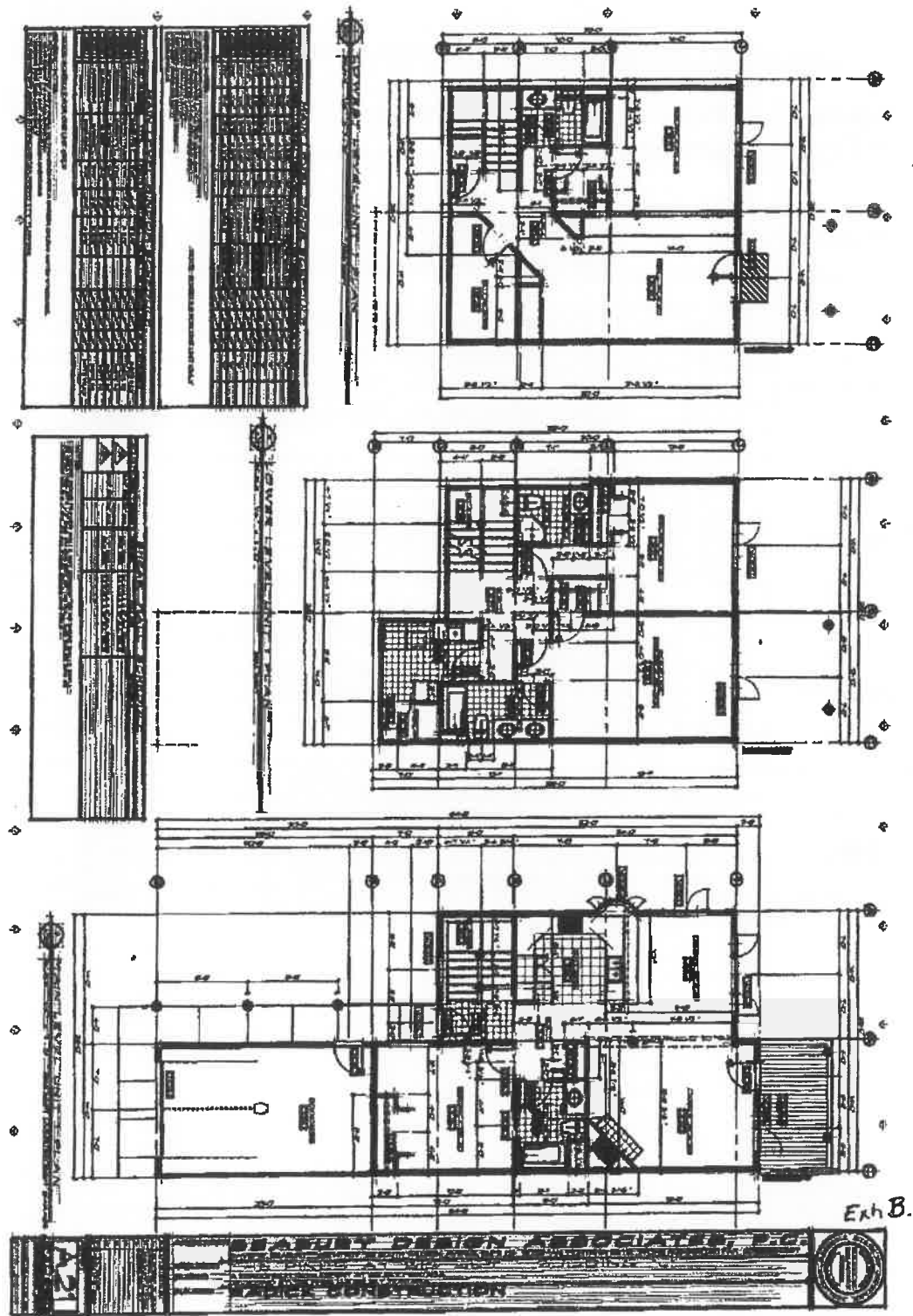
Dated March 19, 2012


Registered Architect
Registration No. 1630





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Exh B.

EXHIBIT F – UNIT DESIGNATION AND PERCENTAGE OF INTEREST

Building & Type	Unit Designation	Unit Address	Percentage of Interest
I (duplex)	I-1	130 Timbercrest Dr., Unit I1	1/18
	I-2	130 Timbercrest Dr., Unit I2	1/18
J (fourplex)	J-1	170 Timbercrest Dr., Unit J1	1/18
	J-2	170 Timbercrest Dr., Unit J2	1/18
	J-3	170 Timbercrest Dr., Unit J3	1/18
	J-4	170 Timbercrest Dr., Unit J4	1/18
K (fourplex)	K-1	190 Timbercrest Dr., Unit K1	1/18
	K-2	190 Timbercrest Dr., Unit K2	1/18
	K-3	190 Timbercrest Dr., Unit K3	1/18
	K-4	190 Timbercrest Dr., Unit K4	1/18
L (fourplex)	L-1	90 Coniferous Court, Unit L1	1/18
	L-2	90 Coniferous Court, Unit L2	1/18
	L-3	90 Coniferous Court, Unit L3	1/18
	L-4	90 Coniferous Court, Unit L4	1/18
M (fourplex)	M-1	70 Coniferous Court, Unit M1	1/18
	M-2	70 Coniferous Court, Unit M2	1/18
	M-3	70 Coniferous Court, Unit M3	1/18
	M-4	70 Coniferous Court, Unit M4	1/18
TOTALS			100%