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**First Amended Declaration of Covenants,
Conditions and Restrictions
For
Gran Cielo Master Subdivision**

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**First Amended Declaration of Covenants, Conditions and Restrictions
for
Gran Cielo Master Subdivision**

This First Amended Declaration of Covenants, Conditions and Restrictions for Gran Cielo Master Subdivision ("Community Declaration") is made this 9th day of November, 2019²⁰, by Bozeman Haus, LLC, a Montana limited liability company ("Declarant"). All capitalized terms used herein are defined in Article 2 below.

Pursuant to the Gran Cielo Master Covenants filed at Document Number 2697022 on August 25, 2020 in the Clerk and Recorder's Office of Gallatin County (Original Covenants), Article 9, amendments, the Covenants may be amended as follows:

The Gran Cielo Covenants, may, at any time, be amended or replaced upon the happening of all the following events:

- A. The vote of Owners having not less than two-thirds (2/3) of the total votes within Gran Cielo at a meeting of the Association duly held. The notice of the meeting shall state that the purpose of the meeting is to consider the amendment or repeal of the Gran Cielo Covenants, giving the substance of any proposed amendments or indicating the provisions to be repealed, as the case may be; and
- B. The recordation of a certificate of the Secretary of the Association setting forth in full the amendment or amendments to the Gran Cielo Covenants so approved, including any portion or portions thereof repealed, and certifying that said amendment or amendments have been approved by vote of the Owners pursuant these Covenants.
- C. The President or Vice-President shall execute and record the amendment, change or addition with the Clerk and Recorder of Gallatin County, Montana.

Any change of these Covenants shall be effective upon the filing and recording of such an instrument in the office of the Gallatin County Clerk and Recorder. No improvements that were constructed and approved in accordance with the Covenants shall be required to be changed because such standards are thereafter amended. All lots within all phases of Gran Cielo shall be required to adhere to these Covenants.

As of the date this Community Declaration was signed, the Declarant owns every lot in the Subdivision and all Board Members on the Association Board are members of the Declarant. Therefore, the Declarant called a meeting to approve that this Community Declaration fully amend and supersede the Original Covenants. At that meeting, the vote passed unanimously by all Lots.

Therefore, this Community Declaration is filed and fully amends and supersedes the Original Declaration as follows.

Article 1 Declaration – Purposes

1.1 General Purposes.

(a) Declarant owns the real property located in Gallatin County, Montana defined in **Exhibit A** and referred to as the “**Property**,” and intends to develop said Property as an integrated residential community (the “**Community**”).

(b) Gran Cielo Property Owners’ Association, a Montana nonprofit corporation (the “**Association**”), was formed to hold, manage, and maintain certain property for the common benefit of some or all of the Members, Licensees, Invitees, and members of the general public within the Property; to administer and enforce the covenants, conditions, restrictions, reservations, and easements created hereby; to collect and enforce the Assessments, charges, and liens imposed pursuant hereto; and for all other purposes set forth in this Declaration, the Articles and Bylaws and the other Governing Documents. This Declaration defines certain rights and obligations of Members, Licensees, Invitees and members of the general public within the Property with respect to the Association and with respect to the Functions undertaken and the Area of Common Responsibility held or maintained by the Association.

(c) By this Declaration, Declarant intends to establish a means to provide for and maintain areas within the Property as a pleasant and desirable environment for all Persons residing or visiting therein. The Community is in a unique mountain setting which has a high natural, scenic, recreational, economic, and wildlife value. This Declaration is adopted to preserve and maintain the foregoing values of the Property for the benefit of all Persons residing or visiting therein.

(d) Declarant reserves the right to develop the Property as otherwise permitted under law and subject to any annexation of real property as permitted herein, regardless of whether said property was originally subject to or ever becomes subject to the Property.

1.2 **Declaration.** To further the general purposes herein expressed, Declarant, with respect to the property described in **Exhibit A** attached hereto and incorporated herein by reference, for itself, its successors and assigns, hereby declares that the property described in **Exhibit A** attached hereto and any property subsequently added, annexed or subjected to this Community Declaration (collectively, the “**Property**”) or to which this Community Declaration relates, shall, at all times, be owned, held, used, occupied, sold, and conveyed subject to the provisions of this Declaration and to the covenants, conditions, restrictions, reservations, easements, Assessments, equitable servitudes, charges, and liens herein contained which shall run with and touch and concern the Property and burden and benefit all portions of the Property, the Declarant, the Association, and all other parties having any right, title, or interest in the Property or any portion thereof, and their respective heirs, devisees, personal representatives, successors, and assigns and any occupants and users of the Property. In addition to the foregoing, other specific covenants, conditions, restrictions, reservations, and easements exist herein, burdening and benefiting the Property and certain other real property and Persons, all as expressly set forth below. Each Member, Licensee, Invitee, or other Person who obtains any interest in the Property or uses the Property, by accepting or using such interest or using the Property agrees to abide by

the provisions of the Governing Documents and to cooperate with the Association and the Declarant in their efforts to enforce such provisions.

Article 2

Definitions

The words and terms used herein shall be deemed to have the definitions and meanings as defined herein.

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

2.2 Affirmative Vote of a Majority. The Affirmative Vote of a Majority means and shall be achieved on any particular matter if (and only if) all of the following occur: **(a)** the Declarant votes in favor of such matter and **(b)** a majority of the Members entitled to vote on such matters vote affirmatively in favor of such matter. For the purpose of determining the vote under clause **(b)**, the members must achieve quorum, as defined in the Bylaws, and then the total votes of a majority of the Members present at such meeting in person, by proxy, or by Written Ballot and entitled to vote on such matter shall be deemed the vote of the Member. Notwithstanding the foregoing, upon the effective resignation of the Declarant, the favorable vote of the Declarant shall no longer be required under clause **(a)** above, except as specifically required in this Declaration.

2.3 Alley. Alley means the portions of the Property designated on Plat(s) as "Alley."

2.4 Antenna. Antenna means any cell tower, television, or radio antenna, "C.B." antenna, satellite dish, over the air reception device, microwave transmitting or receiving antenna, or other antenna, transmitting or receiving device, or communications structure or equipment of any type.

2.5 Approved Antenna. Approved Antenna has the meaning given to it in **Section 8.29.**

2.6 Area of Common Responsibility. Area of Common Responsibility means the Common Area, together with the Open Space, City Park, Alleys, Roadways, Internal Trails and any other areas that by the terms of this Community Declaration, any written notice from the Declarant to the Association, or other applicable covenants, contract, or agreement with Gallatin County, are or become the responsibility of the Association to maintain.

2.7 Articles of Incorporation or Articles. Articles of Incorporation or Articles means the Articles of Incorporation of the Association as filed with the Montana Secretary of State and any amendments and restatements thereto as from time to time.

2.8 Assessments. Assessments mean, collectively, the categories of assessments as established and defined herein and in **Exhibit C** attached hereto, being Base Assessments, Default Assessments, Special Assessments, Special Benefits Area Assessments, Specific Assessments, and any other assessments as may be established by the Board, with the Affirmative Vote of a Majority.

2.9 Association. Association means Gran Cielo Community Association, a Montana nonprofit corporation operating pursuant to the Act, or its successors or assigns.

2.10 Association Expenses. Association Expenses means allocations to reserves and all costs, expenses, and liabilities incurred by or on behalf of the Association, including, but not limited to, costs, expenses, and liabilities for (a) acquiring, leasing, renting, designing, constructing, managing, operating, maintaining, repairing, replacing, and improving the Area of Common Responsibility; (b) administering and enforcing the covenants, conditions, restrictions, reservations, and easements created by this Declaration and Governing Documents; (c) levying, collecting, and enforcing the Assessments, charges, and liens imposed pursuant to this Community Declaration and Governing Documents; (d) regulating and managing the Property; (e) performing any and all Functions permitted by this Community Declaration or any Governing Document; (f) operating the Association; and (g) any other cost or expense legally incurred by the Association.

2.11 Base Assessment. Base Assessment has the meaning given to it in Section 1.1 of Exhibit C.

2.12 Bozeman Fire Department or BFD. The Bozeman Fire Department is the authority having jurisdiction and enforcing the fire code as adopted by the Bozeman Fire District.

2.13 Board of Directors or Board. Board of Directors or Board means the body responsible for administration of the Association, selected as provided in the Bylaws.

2.14 Business. Business means any commercial, retail, or service enterprise, including, without limitation, restaurants; shops; offices offering medical, legal, accounting, engineering, real estate, property management or repair services; and facilities providing the point of sale for recreational services such as horseback riding, guiding, golfing, or other seasonal recreational activities; and, without deeming such uses permitted hereunder, any manufacturing, industrial, warehouse, logistics, storage, or other non-residential use of property; but shall exclude (a) home occupations, (b) rentals of residences as permitted under Section 8.4 and (c) any leases for Antennas and other similar uses as determined by the Association and otherwise permitted under Section 8.29.

2.15 Bylaws. Bylaws means the Bylaws of the Association adopted by the Association and any amendments and restatements thereto.

2.16 Certificate of Survey. Certificate of Survey means a drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations that creates a parcel pursuant to the requirements of the Montana Subdivision and Platting Act and Gallatin County.

2.17 Change in Control Date. Change in Control Date means the date upon which Declarant control terminates, which shall be the later of (a) twenty (20) years after the date of this Declaration, (b) sixty (60) days after conveyance of seventy-five (75%) percent of the maximum number of residential units permitted by the Plat and Condominium Plans, current and as amended, to a Person other than Declarant, or (c) a date when the Declarant records a written statement in the Public Record electing to set the Change in Control Date for a date certain, in the Declarant's sole discretion.

2.18 City Park. City Park means the portions of the Property designated on Plat(s) as "City Park."

2.19 Community. Community means the Property and any other real property developed in the surrounding area by Declarant.

2.20 Condominium Declaration. Condominium Declaration means a declaration which subjects a portion of the Property to the Montana Unit Ownership Act and is recorded in the Public Record.

2.21 Condominium Unit. Condominium Unit means a single residential unit within a larger building or complex, as set forth in a Condominium Declaration recorded in the Public Record.

2.22 Construction Activity. Construction Activity means any site preparation, landscaping, sign erection, construction, reconstruction, drilling of test pits or wells, change, modification, alteration, enlargement or material maintenance of any Improvements or real property within the Property, or any physical changes in the use of any Lot or other property or building or structure thereon, interior or exterior. However, after initial construction of any Improvement on a Lot is completed, Construction Activity shall not include any activities within the interior of such Improvements that do not have a material impact on the exterior of such Improvements, except a change in the use thereof.

2.23 County. County means Gallatin County, Montana.

2.24 Declarant. Declarant means **Bozeman Haus LLC**, a Montana limited liability company, and any Person that is designated by a written instrument, recorded in the Public Record, as a successor or assignee of Bozeman Haus LLC under this Declaration, or who succeeds as Declarant pursuant to the terms of Article 6.

2.25 Declarant Control Period. Declarant Control Period means the period commencing on the date on which this Community Declaration is recorded in the Public Record and ending on the Change in Control Date.

2.26 Declarant Special Member. Declarant Special Member means the Declarant during the Declarant Control Period, as assigned pursuant to the provisions of **Section 4.5**.

2.27 Declarant's Rights. Declarant's Rights has the meaning given to it in **Section 6.3**.

2.28 Declaration. Declaration shall mean this instrument and all amendments, restatements, or supplements thereto hereafter recorded in the Public Record. This Declaration is not a "declaration" as defined in the Unit Ownership Act in that this Declaration does not, and shall not be deemed to, submit any property to the provisions of the Unit Ownership Act. Condominium Units shall only be subjected to the Unit Ownership Act pursuant to a separate Condominium Declaration. This Declaration is a set of covenants, conditions and restrictions that run with the land that binds both Condominium Units subject to the Unit Ownership Act and real property and Lots that have not been and will not be subjected to the Unit Ownership Act.

2.29 Default Assessment. Default Assessment has the meaning given to it in **Section 1.3 of Exhibit C.**

2.30 Design Standards. Design Standards mean any instruments adopted by the DRB for the regulation and management of the Property or any portion thereof, with respect to any matter that the DRB is authorized to review or for which the DRB is authorized to establish standards, as the same may be amended from time to time.

2.31 Design Review Board or DRB. DRB means the Design Review Board as established pursuant to **Article 9.**

2.32 Eligible Holder. Eligible Holder shall have the meaning given in **Article 13.**

2.33 Federal Mortgage Underwriter. Federal Mortgage Underwriter means governmental (including, but not limited to, a governmental sponsored enterprise) or nation-wide institutional lender or purchaser of mortgage loans or governmental provider of credit support for mortgage loans or securitized mortgage loans, including, but not limited to, the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the United States Veterans Administration, and their respective successors and assigns.

2.34 Function. Function means any activity, function, or service listed in this Community 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.

2.35 Good Standing. Good Standing means that a Member is current on the payment of their Assessments, is not deemed by the Board to be in violation of the Governing Documents, and is current on any other payments deemed due and owing to the Association or a Sub-Association.

2.36 Governing Documents. Governing Documents collectively means this Community Declaration, Bylaws, Articles, Rules and Regulations, Design Standards, and resolutions of the Board, all as amended from time to time.

2.37 Improvements. Improvements means all structures and appurtenances thereto of every type and kind, including but not limited to buildings, outbuildings, and all exterior surfaces including the surface finish thereof; Transportation Systems; facilities and illumination equipment for trails, bridges, and other amenities that are part of the Property; security systems; mailbox structures; decks; canopies; patios; awnings; gardens; sprinkler systems and other landscaping; planting, clearing, or removing of trees, shrubs, grass, or plants and appurtenances; ponds and water tanks; drainage, detention, retention facilities, and culverts; monuments; entertainment and recreational areas, amenities, and facilities; facilities to accommodate Invitees and visitors; central waste collection and disposal facilities; paving and parking areas; malls; ducts; shafts and flues; conduit installation areas; storage facilities for supplies and equipment; fences; gates; fire breaks and fire prevention works; screening walls; earth walls, retaining walls, cuts, and fills associated with any Improvements; lighting; signage; pipelines, lift stations, pumps; utilities of any sort; Antennae; communication facilities and lines; management offices; environmental monitoring

equipment and facilities; ground water facilities; waterways; the demolition or destruction by voluntary action of any structure or appurtenance thereto of every type and kind; grading, excavation, filling, or similar disturbance to the surface of the land including, but not limited to, change of grade, change of ground level, change of drainage pattern, change of stream bed, or change of any existing surface contour; equipment related to the foregoing; and all types of structures, facilities, and Improvements that a governmental or quasi-governmental entity may be empowered by law from time to time to construct.

2.38 Internal Revenue Code. Internal Revenue Code means the Internal Revenue Code of 1986, as amended, and the corresponding provisions of any subsequent federal tax laws.

2.39 Internal Trails. Internal Trails means those trails established by the Declarant, and thereafter by the Association, for non-motorized use (other than for maintenance or grooming and emergencies) by Owners, their Invitees, and members of the general public.

2.40 Interval Ownership. Interval Ownership means the holding of rights by which ownership of real property is subject to programs of ownership or use for the operation of a timesharing, fractional ownership, fraction sharing, or similar shared or scheduled occupancy program. There shall be no Interval Ownership at the Property, as stated in **Section 8.30**.

2.41 Invitee. Invitee means any family member, customer, agent, employee, independent contractor, or guest of a Member.

2.42 Licensee. Licensee means any Person who occupies or uses a Lot or portion thereof pursuant to a lease, license, occupancy agreement, concession agreement, or under color of any other arrangement with an Owner.

2.43 Lot. Lot shall mean a physical portion of the Property, designated for separate ownership, which may be conveyed in its entirety to a third party without violating the subdivision regulations of Gallatin County. This includes Condominium Units or the lots described on the Plat. With regards to Apartments, a Lot shall mean five or less dwelling units. For example, if an Apartment contains 21 separate Dwelling Units, then it shall have Five "Units" for the purpose of this definition.

2.44 MCA. MCA means the Montana Codes Annotated 2019 and any subsequent amendments.

2.45 Member. Member means a Person holding a membership in the Association pursuant to **Article 4** of this Community Declaration.

2.46 Membership. Membership means a membership in the Association that is appurtenant to the ownership of a Lot.

2.47 Mortgage. Mortgage means a mortgage, a deed of trust, a deed to secure debt, or any other form of security deed relating to all or a portion of the Property.

2.48 NFPA. NFPA shall mean the National Fire Protection Association, as described in **Section Error! Reference source not found.**

2.49 Open Space. Open Space means the portions of the Property designated on Plat(s) as "Open Space" or "OS."

2.50 Owner. Owner means the record holder(s) of legal title to the fee simple interest in a Lot, but excluding (a) contract purchasers or holders only of beneficial title unless the record holder has designated in a writing delivered to the Association that such contract purchaser or beneficial title holder is, until further notice, to be deemed to stand in place of the record holder, (b) the Association, and (c) those having an interest merely as security for the performance of an obligation, unless and until a foreclosure or other effective transfer has been completed and all redemption periods have expired. The term Owner shall include Declarant to the extent it is the record owner of fee simple title to a Lot.

2.51 Permitted Household Pets. Permitted Household Pets has the meaning given to it in Section 8.20.

2.52 Person. Person means any natural person, corporation, partnership, limited liability company, association, trustee, or any other legal entity.

2.53 Plat. Plat means a graphical representation of a subdivision within the Community showing the division of land into lots, parcels, blocks, streets, alleys, and other divisions and dedications that satisfies the requirements of the Montana Subdivision and Platting Act and Gallatin County requirements.

2.54 Property. Property means the real property referenced in Section 1.2 and legally described in Exhibit A, as supplemented or otherwise revised from time to time in accordance with Article 14.

2.55 Public Record. Public Record means the office of the Clerk and Recorder of Gallatin County, Montana where land records are recorded or filed.

2.56 Quorum. A Quorum means the presence in person or by proxy of Members who are entitled to vote more than fifty percent (50%) of the total votes of all Members.

2.57 Record Date. Record Date means the date set by the Board for determining the Members entitled to receive notice of any regular, special, or annual meeting. If no date is set by the Board, then such date will be determined by statute under § 35-2-532, MCA.

2.58 Roadway. Roadway means a street or roadway (excluding driveways) within the Property that provides ingress and egress from Montana State Highway 191.

2.59 Rules and Regulations. Rules and Regulations mean any instruments adopted by the Association in accordance with Section 3.10 for the regulation and management of the Property or any portion thereof, as the same may be amended from time to time.

2.60 Special Assessment. Special Assessment has the meaning given to it in Section 1.4 of Exhibit C.

2.61 Special Declarant Rights. Special Declarant Rights means the rights set forth in **Section 6.2**.

2.62 Special Benefits Area. Special Benefits Area means a group of Lots designated for the service of a Special Benefits Amenity in a Supplemental Declaration, or by the Declarant pursuant to **Section 3.11** below.

2.63 Special Benefits Amenity. Special Benefits Amenity means an Improvement designated for use by or benefiting Members in a Special Benefits Area and not all Owners within the Property as a whole, or special services or benefits that are provided by the Association to, or primarily for the benefit of, the Lots within a Special Benefits Area.

2.64 Special Benefits Area Assessment. Special Benefits Area Assessment has the meaning given to it in **Section 1.6** of **Exhibit C**.

2.65 Specific Assessment. Specific Assessment has the meaning given to it in **Section 1.5** of **Exhibit C**.

2.66 Staff. Staff means the employees or agents of the Association.

2.67 Sub-Association. Sub-Association means an incorporated property owners association, other than the Association, that is established pursuant to a Supplemental Declaration or a Condominium Declaration for real property within the Property.

2.68 Supplemental Declaration. Supplemental Declaration means an amendment or supplement to this Declaration which is recorded in the Public Record pursuant to **Article 14** and/or **Article 15** of this Declaration and which subjects additional property to this Declaration, removes property from this Declaration, and/or imposes, whether expressly or by reference, additional, modified, or restated restrictions and obligations on all or any portion of the Property. Each Supplemental Declaration shall (a) describe the property to be added, removed, or otherwise changed; (b) reference the relevant provisions of this Community Declaration; and (c) state that the provisions of this Community Declaration apply to the property described in the Supplemental Declaration, subject to the provisions of the Supplemental Declaration and the conflicts provisions set forth in **Section 3.18**, provided, however that a reference to this Community Declaration in a Supplemental Declaration shall be deemed to incorporate the provisions of this sentence.

2.69 Transportation Systems. Transportation Systems means Roadways, streets, access roads, mountain and other limited access roads, paths, walkways, walks, driveways and other drives, sidewalks, bus stops and other related structures, Internal Trails, parking lots, and any facilities owned by the Association and necessary or useful for transit purpose or other means of transportation to and from or within the Community, and lighting, signage, and any other facilities deemed necessary or appropriate for the proper operation and maintenance of such systems.

2.70 Unit Ownership Act or UOA. Unit Ownership Act means the Montana Unit Ownership Act, § 70-23-101 *et seq.*, MCA as amended, replaced or supplemented.

2.71 Written Ballot. Written Ballot means a written instrument issued to each Member for purposes of voting in situations in which action of the Members is to be taken or authorized with or without a meeting of the Members as provided in the Bylaws and applicable law.

2.72 Zoning Regulations. Zoning Regulations means the regulations adopted for the City of Bozeman and as subsequently amended.

Article 3

Certain Functions and Rights of Association

3.1 General. Certain of the Functions described in this Article 3 are expressly made mandatory performance obligations of the Association. All other Functions described below are voluntary Functions that the Association may, but is not obligated to, provide. For any voluntary Functions, the Association may elect which Functions to perform based on the budget as adopted by the Association.

3.2 Mandatory Property Maintenance Function. The Association shall have the obligation, right, and authority to provide or cause another party to provide for the care, operation, management, maintenance, repair, and replacement of any or all of the Area of Common Responsibility. Moreover, the Association may provide for the care and maintenance of other areas of the Property if the Board, in its sole and exclusive discretion, deems such care and maintenance to be necessary or desirable for access to the boundary of or full utilization of any Lot or any Improvements within the Community. Such Function may include, without limitation, removal of snow from and application of sand and salt to Transportation Systems and operation, management, maintenance, repair, and replacement of Improvements. The Board shall be the sole judge as to the appropriate maintenance, operation, and management of the Area of Common Responsibility and, to the extent that such services are provided by the Association, other areas of the Property.

3.3 Parking Function. The Association may construct, purchase, lease, care for, operate, manage, maintain, repair, or replace parking areas or structures to accommodate Members, Licensees, Invitees, and members of the general public, including, but not limited to, lighting, signs, landscaping, and other similar facilities appurtenant to such parking areas and the removal of snow from and the cleaning of any such parking areas. To the extent practicable, the Association shall maintain such parking areas so as to meet any requirements imposed on the Association or on Declarant with respect to the Property by any local, state, or federal governmental agency.

3.4 Transportation Function. The Association may provide for the operation, maintenance, and repair of one or more Transportation Systems or other transportation systems within the Community, or, with the Affirmative Vote of a Majority, the construction of Transportation Systems or other transportation systems. The Association, as it deems necessary, may extend such transportation systems to areas outside of the Community to provide transportation to and from the Community. Likewise, the Association may contribute funds to the Bozeman Transportation District (which is an "urban transportation district" created under § 7-14-201 *et seq.*, MCA) or its successors or assigns, or, to the extent the Affirmative Vote of a Majority is obtained or a Special Benefits Area is created, other organizations that provide transportation

within or to and from the Community. Such transportation systems may include but are not limited to, the Transportation Systems.

3.5 Recreation Function. The Association may provide a year-round recreational program of suitable variety and such miscellaneous equipment as may be necessary therefor, including, but not limited to, informing visitors of available recreation opportunities and stimulating their participation therein; conducting, operating, managing, and maintaining programs for children; caring for, operating, managing, maintaining, repairing, and replacing within the Community foot and bicycle trails and related facilities, game or sport courts, game and special events areas, fishing areas and facilities, snow shoeing facilities, outdoor entertainment and other recreational amenities, and such equipment as may be appropriate for use in connection therewith. The Association may accept the foregoing that have been constructed by third parties, which are to be maintained by the Association.

3.6 Solid Waste Collection and Disposal Function. The Association may provide a central location for the disposal of all solid waste within the Community, and to the extent such location is provided, will contract with a carrier authorized and regulated by the Montana Public Service Commission or other governmental entity for its removal. The Association may also provide a central location for the disposal of recyclables and contract with a company for its removal.

3.7 Civic Function. The Association, either individually or in cooperation with Declarant or another entity, may expend Assessments to construct, operate, and maintain civic amenities or structures for the benefit of the Community, including, but not limited to recreation centers, meeting halls, or similar facilities. Additionally, the Community is part of the broader Bozeman and Gallatin County communities and may impact, be impacted by or directly or indirectly benefit from activities outside the borders of the Community. The Association is consequently authorized to expend Assessments collected by the Association for Improvements and amenities that are not in the Areas of Common Responsibility and/or are not located within the Community, provided that the Association determines that such Improvements provide a material benefit to the Members or contribute to the vitality or character of the Community. Such Improvements and amenities may include, but are not limited to, the acquisition of open space tracts in critical view sheds and critical habitat areas of the Community, participation in traffic mitigation measures or the provision of transportation with the Bozeman Transportation District, Gallatin County, or similar projects.

3.8 Promotional Function. Subject to the provisions of **Section Error! Reference source not found.**, through a Special Benefits Area or by the use of revenues that are from sources other than Base Assessments paid by Owners, the Association may provide suitable and continuing programs to promote the Community as a whole, including, but not limited to, advertising and placing articles in news and other media, establishing uniform standards for promotional programs of individual Members, publishing a newsletter, and providing and operating reception and information centers. Such activities may be performed within or outside of the Community. Notwithstanding the foregoing, the promotional Function shall solely be in relation to the entirety of the Community, and shall not include information about purchasing Lots. The Association may undertake or fulfill this function hereunder in whole or in part in conjunction with or through any organization which may be engaged in the promotion of the local or state area tourism or economy

including, but not limited to, the Bozeman Chamber of Commerce, Visit Bozeman, Inc. governmental entities, quasi-governmental entities, or non-profit organizations.

3.9 Other Functions. The Association may undertake and perform other functions as the Board deems reasonable or necessary to carry out the provisions of this Community Declaration.

3.10 Right to Make Rules and Regulations.

(a) The Association is authorized to and has the power to adopt, amend, enforce, and repeal Rules and Regulations applicable to the Property, Members, Invitees, Licensees, guests, and members of the general public. Such Rules and Regulations may govern use of the Area of Common Responsibility and Lots; the personal conduct of Owners, Invitees, Licensees, guests, and members of the general public; and construction and design criteria and aesthetic standards so as to further the use, enjoyment, and aesthetics of the Property. Rules and Regulations may include, but are not limited to: (i) prevention or reduction of fire hazard; (ii) prevention of disorder and disturbances of the peace, including regulation of Construction Activity; (iii) regulation of pedestrian and vehicular traffic; (iv) regulation of household animals, the environment, and environmental practices; (v) regulation of signs; (vi) regulation of use of the Area of Common Responsibility to assure fullest enjoyment of use; (vii) promotion of the general health, safety, and welfare of Persons within the Property; and (viii) protection and preservation of property and property rights. Following adoption, amendment, or repeal of any Rules and Regulations, the Board shall provide Owners, and Licensees with notice thereof. Up-to-date copies of all such Rules and Regulations (including amendments thereto) shall be furnished to Owners and Licensees upon request.

(b) The DRB is authorized to and has the power to adopt, accept jurisdiction over, amend, and enforce Design Standards applicable within the Property with respect to any matter that the DRB is authorized to review or for which the DRB is authorized to established standards, including but not limited to, new Design Standards, revised Design Standards, existing Design Standards and procedures to be followed and material which must be provided by any Member or his authorized agents in order to obtain review of proposed construction by the DRB.

(c) All Rules and Regulations adopted by the Association and Design Standards adopted by the DRB shall be reasonable and shall be uniformly applied, except such rules may differentiate between reasonable categories of Lots, Members, Licensees, Invitees, or members of the general public, and in relation to Special Benefit Areas.

(d) The Association and DRB may provide for enforcement of any such Rules and Regulations and Design Standards through reasonable and uniformly applied fines and penalties, through exclusion of violators from Area of Common Responsibility or from enjoyment of any Functions, or otherwise.

(e) Each Member, Licensee, Invitee, and member of the general public is hereby deemed to have notice of all Rules and Regulations adopted by the Association and Design Standards adopted by the DRB, whether or not the same has been recorded, and shall be obligated to and shall comply with and abide by such Rules and Regulations and Design Standards and pay

such fines or penalties upon failure to comply with or abide by such Rules and Regulations and Design Standards. Such unpaid fines and penalties shall be enforceable in accordance with **Article 10**. Any current or potential Member, investor, lender, or purchaser in relation to the Property may request that the Association or DRB provide a copy of the Rules and Regulations and the Design Standards to such Person. Upon the new adoption or material amendment of Rules and Regulations and Design Standards, the Association or DRB shall provide all current Members affected by such Rules and Regulations or Design Standards 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, provided, however, that failure to so inform any, Licensees, or Invitees shall not impair the enforceability of any Governing Document.

3.11 Special Benefits Areas.

(a) **Purpose.** The purpose of a Special Benefits Area is to define which Members, Licensees and Invitees can use a Special Benefits Amenity and to allow for a Special Benefits Area Assessment to be levied to provide for the payment of (i) the expense of providing, repairing, maintaining, and replacing Special Benefits Amenities, and (ii) the additional bookkeeping and accounting expenses incurred due to the Special Benefits Area. (As an example, certain Alleys may be designated as Special Benefits Areas as they are used by less than all of the Owners.)

(b) **Designation of a Special Benefits Area by Declarant.** The Declarant shall have the right, without a vote of the Members, to (i) create a Special Benefits Area, and (ii) create or expand the scope of Special Benefits Areas for Special Benefits Amenities or services that, in Declarant's sole discretion, qualify as Special Benefits Amenities, in a Supplemental Declaration or a Condominium Declaration in relation to Property owned by the Declarant.

(c) **Designation of a Special Benefits Area in General.** Except as provided in **Section 3.11(b)**, any new Special Benefits Area or any new, increased or additional Special Benefits Amenities proposed to be provided to a group of Lots that have not yet been designated as a Special Benefits Area shall not be authorized unless all of the following occur: (i) at least sixty-seven percent (67%) of the Members whose Memberships are appurtenant to the area to be included within the proposed Special Benefits Area approve the new Special Benefits Amenity and creation of the Special Benefits Area, (ii) the Association and, during the Declarant Control Period, the Declarant, approve the new Special Benefits Amenity and creation of the Special Benefits Area, and (iii) any Members currently using the Area of Common Responsibility, service, or benefit proposed to be a Special Benefits Amenity are either going to be part of the Special Benefits Area or will continue to have rights to use such Area of Common Responsibility, service, or benefit in all material ways in the manner that they previously used them.

(d) **Memorializing a Special Benefits Area.** In the event a Special Benefits Area is designated under this **Section 3.11**, such designation shall be memorialized in a Supplemental Declaration. In the case of the designation of a Special Benefits Area by Declarant pursuant to **Section 3.11(b)**, such Supplemental Declaration shall be executed by the Declarant.

In the case of the designation of a Special Benefits Area pursuant to **Section 3.11(c)**, such Supplemental Declaration shall be executed by the Chairman and attested to by the Secretary of the Association, setting forth the amendment and certifying that such Supplemental Declaration has been approved as required pursuant to **Section 3.11(c)**. To the extent a Special Benefits Area is not within the Property, then such Special Benefits Area would need to meet the annexation and jurisdiction expansion provisions of **Article 14**. Other than the foregoing, no additional approvals shall be necessary for the Supplemental Declarations required pursuant to this **Section 3.11**.

(e) **Special Benefits Area Assessments.** The Association may and shall levy the Special Benefits Area Assessments set forth in **Exhibit C**.

3.12 Taxes. The Association shall pay 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 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 Area of Common Responsibility or Association Functions.

3.13 Right to Acquire, Dispose of, and Improve Area of Common Responsibility. The Association may acquire by gift, purchase, lease, trade, or any other method, and may own, operate, build, manage, maintain, rent, sell, develop, encumber, abandon, dispose of, and otherwise deal in and with real and personal property of every kind and character, tangible and intangible, wherever located, and interests of every sort therein; except that the Association may not convey real property, Improvements, or Areas of Common Responsibility owned by the Association without the Affirmative Vote of a Majority (as well as the consent of the Declarant during the Declarant Control Period), unless it is solely a Special Benefit Amenity, in which case only the affirmative vote (i.e., 51%) of the Members who are part of such Special Benefits Area, as well as the Declarant during the Declarant Control Period, shall be required. The Association may cause additional Improvements to be made as part of the Area of Common Responsibility, including the construction of any capital asset, in whole or in part, for the benefit of some or all of the Members, Licensees, Invitees, and members of the general public, subject to the restrictions set forth herein. The Association may grant easements, leases, licenses, and concessions through or over the Area of Common Responsibility, including, but not limited to, easements (including conservation easements), rights-of-way, leases, licenses, and concessions to suppliers of utilities (inclusive of Antennas) serving the Property or property in the Community for the purpose of accommodating minor encroachments onto the Area of Common Responsibility or other purposes that do not unreasonably interfere with the use and enjoyment of the Area of Common Responsibility. Declarant, and thereafter the Association, reserves the right to subject the Transportation Systems to a Rural Improvement District for either capital improvements or maintenance.

3.14 Governmental or Non-Profit Entity Successor. Any Area of Common Responsibility or any Function may be turned over to a governmental entity, quasi-governmental entity, or non-profit organization which is tax-exempt under the provisions of Section 501(c)(3) or Section 501(c)(4) of the Internal Revenue Code, which is willing to accept and assume the same upon such terms and conditions as the Association shall deem to be appropriate with the Affirmative Vote of a Majority, unless it is solely a Special Benefit Amenity, in which case only the affirmative vote of the Members who are part of such Special Benefits Area, as well as the Declarant during the Declarant Control Period, shall be required.

3.15 Records. The Association shall maintain its records in accordance with applicable law and the Bylaws.

3.16 Rights of Association. The Association 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 and amend the Bylaws by a majority vote of the Board, with such consents as are required pursuant to the Bylaws.

(b) make capital expenditures, incur liabilities, to enter into contracts and agreements, and to 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.

(c) perform any Function; the Association may perform any Function by, through, or under contractual agreements, licenses, or other arrangements with any governmental, quasi-governmental, or private entity, or any non-profit organization, as may be necessary or desirable.

(d) enter upon any Lot for emergency and safety reasons and for the purpose of ensuring compliance with the Governing Documents, which right may be exercised by any member of the Board, the Association, officers, agents, employees, and managers, as well as all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner of the applicable Lot. This right of entry shall include the right of the Association to enter upon any Lot to cure any condition which may increase the possibility of a fire or other hazard in the event that an Owner fails or refuses to cure the condition within a reasonable time after request by the Board, but otherwise shall not authorize entry into any building or Condominium Unit without permission of the Owner except by emergency personnel acting in their official capacities. The rights set forth in this provision shall not obligate the Board or the Association to exercise any such rights or to undertake any of the actions set forth in this provision.

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

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

(g) purchase insurance policies to protect the property of the Association 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 **Section 12.1**.

(h) provide for the indemnification of the Association's officers, directors, and Staff through insurance policies maintained by the Association.

(i) 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 execute all such instruments evidencing such indebtedness as may be necessary or advisable; and assign the right to future income, including the right to receive Base or Special Assessments, as security for any borrowed funds; provided, however, that the Association shall not use reserve funds or pledge its Area of Common Responsibility as collateral for any borrowed funds without the Affirmative Vote of a Majority.

(j) obtain and pay for legal, accounting, and other professional and expert services.

(k) 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.

(l) 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, subject to **Section 3.17**.

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

(n) exercise all the powers that may be exercised by a Montana nonprofit corporation under the Act.

3.17 Conduct of Association Litigation:

(a) In recognition of the expenses and disruption associated with litigation, prior to commencing an adversarial judicial or administrative proceeding in the name of the Association, the Association shall obtain the Affirmative Vote of a Majority. This Section shall not apply to: (i) actions brought by the Association to enforce the Governing Documents; (ii) the collection of Assessments (including, without limitation, the foreclosure of liens or any other action pursuant to **Section 5.5**); (iii) proceedings involving challenges to ad valorem taxation or condemnation; (iv) the defense of claims filed against the Association or the assertion of ancillary claims or counterclaims in proceedings instituted against it; or (v) actions brought by the Association against any contractor, vendor, or supplier of goods or services arising out of a contract with the Association or any agent.

(b) No action requiring the approval of an Affirmative Vote of a Majority to be instituted under this **Section 3.17** shall be conducted utilizing legal counsel who are compensated on a contingency fee or similar means of compensation in which litigation costs and attorneys' fees are not paid on a current basis or are paid out of the settlement or judgment amount recovered by the Association in such action.

(c) Neither the Association nor any Member shall institute an action against any Person which arises out of an alleged defect in the design or construction of the Property until: (i) Declarant and the Person who physically constructed the portion of the Property in which the alleged defect exists have been notified and given a reasonable time and opportunity in which to inspect, assess, correct, or redesign any alleged defect (provided, however, that the terms of this Section shall not create an obligation of any Person to effect a repair of an alleged defect); (ii) the Association or Member has pursued their remedies under any express warranty covering all or any portion of the alleged defect; and (iii) all proposed parties to the action have been given a reasonable opportunity to mediate any dispute or disagreement relating to the alleged defect, and have either participated or refused to participate in such mediation.

3.18 Conflicts among Governing Documents. In the event that there is any conflict or inconsistency between the provisions of Montana law and the Governing Documents, the provisions of Montana law, the Community Declaration, the Articles, the Bylaws, and the Rules and Regulations (in that order) shall prevail. In the event there is a conflict between this Community Declaration and any Supplemental Declaration, the Supplemental Declaration shall control. For the purposes of this Section, in the event that a Supplemental Declaration expressly provides for less restrictive uses of property, then such express less-restrictive provision in the Supplemental Declaration shall be deemed to control as to the relevant Supplemental Declaration parcels. In the event of a conflict between any Supplemental Declarations, the Supplemental Declaration most recently recorded in the Public Record shall control. In the event of a conflict between any Condominium Declaration and the provisions of this Community Declaration, the Community Declaration shall control.

Article 4

Membership, Voting, and Board of Directors

4.1 Regular Membership; Appurtenant Rights.

(a) **Owners.** Every Owner shall be a Member of the Association. There shall be only one Membership attributable to fee simple ownership of each Lot within the Property.

(b) **Memberships Appurtenant.** Membership in the Association shall be limited to Owners and the Declarant Special Member. A party may hold more than one Membership and may also hold other forms of Membership.

(i) Each such Membership of an Owner and the benefits and burdens relating to that Membership shall be appurtenant to the fee simple title to each Lot held by an Owner. The Owner shall automatically hold the Membership appurtenant to that Lot as set forth herein and title to and ownership of the Membership shall automatically pass with fee simple title of a Lot, no matter how such title or interest is acquired. Membership as an Owner may not be transferred separately from the fee simple title.

(ii) By virtue of becoming an Owner, each such Person shall be deemed to consent to becoming a Member of the Association, and no such Person shall be entitled to opt out, resign, or withdraw from being a Member, regardless of whether any Person uses or does not use any Area of Common Responsibility or is the beneficiary of any Function of the Association.

The obligations of each Owner under this Community 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 Lot, are deemed to be an obligation incurred and a commitment made as of the date of such Person becoming an Owner.

4.2 Joint Ownership; Joint and Several Liability. If an Owner's interest in a Lot is held by more than one Person (in tenancy in common, as joint tenants, or otherwise), the Membership appurtenant to such Lot shall be shared by all such Persons in the same proportionate interest and by the same type of ownership as the Lot 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 shall be jointly and severally obligated to perform the responsibilities of the specific Owner. The membership rights of an Owner that is not a natural person may be exercised by any officer, director, partner, trustee, member, or manager, or by an 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 vote. In the case where an Owner is not a natural person, or where there are multiple owners of a Lot, written notice shall be provided to the Secretary of the Association stating which Person has the authority to act (including the payment of any Assessments due) on behalf of the Owner(s) and include that Person's name, mailing and physical address, telephone number, and email address. The Association shall rely on such notice until such notice is updated by the Owner. Where there are multiple owners of a Lot, the liability of each Owner in relation to the Governing Documents is joint and several.

4.3 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 email 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.

4.4 Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to such Owner's Lot shall give the Board at least seven (7) days' prior written notice of the name and address of the proposed purchaser or transferee, the date of such proposed transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Lot including, without limitation, Assessment obligations, until the date such notice is received by the Board, notwithstanding the transfer of title.

4.5 Declarant Special Member. Declarant, during the Declarant Control Period, shall have and be deemed to be the Declarant Special Member in the Association. Declarant shall automatically be entitled to the benefits and subject to the burdens as the Declarant Special Member as set forth in the Governing Documents.

4.6 Voting and Election of Directors. Each Member shall have the voting rights set forth in the Bylaws. In addition, the directors of the Board shall be elected as set forth in the Bylaws.

Article 5

Assessments, Association Expenses, Other Amounts, Lien for Sums Due Association; Enforcement

5.1 Personal Obligation for Assessments and Other Amounts. Each Member, in relation to such Member's Lot, shall be deemed to covenant and agree to pay to the Association and be liable for all Assessments, charges, fines, penalties, or other amounts to be levied, fixed, established, and collected as set forth in the Governing Documents that become due while he is a Member as to each Lot, such obligation being appurtenant to each Lot. Each Lot's allocation of Assessment obligations and such Member's obligation as to Assessments shall be set forth in this **Article 5** and **Exhibit C**. Each Member covenants to cause all Licensees residing on any Lot to timely pay all Assessments, including, but not limited to, which are payable in relation to the activities of the Licensees on such Member's Lot, and to timely make all reports and disclosures required pursuant to **Exhibit C**.

(a) Failure of the Board to set Assessment rates or to deliver or mail to each Member an Assessment notice shall not be deemed a waiver, modification, or a release of any Member from the obligation to pay these Assessments or the effectiveness of the lien in relation to the Assessments. In such event, each Member shall continue to pay their respective Assessments on the same basis as during the last year for which an Assessment was made, if any, until a new budget becomes effective and new Assessments are levied pursuant thereto. Any such budget may include as an expense item any shortfall in amounts previously collected.

(b) No Member may exempt himself from liability for any Assessments or any other obligation under the Governing Documents by non-use of or abandonment of his Lot or any other reason. The obligation to pay Assessments is a separate and independent covenant on the part of each Member in relation to a Lot created as of the acceptance of any interest in a Lot. No diminution or abatement of Assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some Function required of it, or for inconvenience or discomfort arising from the making of repairs or Improvements, or from any other action the Association or Board takes.

(c) Neither Declarant nor any affiliate thereof is obligated to pay Assessments on any Lot it owns. During the Declarant Control Period, Declarant may, but is not obligated to, voluntarily subsidize the Association's budget by contribution, advance, loan, or in any manner the Declarant, in its sole discretion, chooses. Any such voluntary subsidy shall be conspicuously disclosed as a line item in the budget and shall be made known to the Members. Such voluntary subsidy in any year shall under no circumstance obligate the Declarant to continue to provide a

subsidy in future years, unless otherwise provided in a written agreement between the Association and Declarant.

(d) The Area of Common Responsibility shall be exempt from payment of Assessments.

5.2 Verification of Assessments Due. Upon written request, the Association shall furnish to a Member or his title or mortgage company written or oral verification of the amount of such Assessments owing and whether the Member has paid such Assessment. The Association may require the advance payment of a reasonable processing fee for the issuance of such verification.

5.3 Purpose of Assessments and Other Amounts. The Assessments levied and any charge, fine, penalty, or other amount collected by the Association shall be used exclusively to pay expenses and other obligations the Association may incur in performing any actions permitted or required under the Governing Documents, including, but not limited to, operating expenses (inclusive of the overall general administration of the Association), the costs of constructing or purchasing Area of Common Responsibility and performing Functions, the cost of all insurance premiums and applicable deductibles for insurance required under this Community Declaration, repayment of debt and debt service, providing security for third party obligations as provided in the Governing Documents, maintenance of the Roadways within the Community which the Association or its Members utilize, and all other Association Expenses. The Association may invest any funds allocated to reserves in a reasonable and prudent manner. Unless expressly required by a Governing Document, the Association will not refund or credit to any Member any excess funds (including reserves) collected by the Association.

5.4 Types of Assessments. The Association may and shall levy all of the Assessments set forth in **Exhibit C**. Each Member, as applicable, shall be obligated to and shall collect or pay, as applicable, the Base Assessments, Default Assessments, Special Assessments, Special Benefit Area Assessments, and Specific Assessments as levied by the Association, as defined and described in **Exhibit C**.

5.5 Time for Payments; Effect of Non-payment of Sums Due Association; Lien and Remedies of the Association.

(a) The amount of any Assessment, charge, fine, penalty, or other amount payable by any Member shall become due and payable as specified in the Governing Documents.

(b) Any Assessment, charge, fine, penalty, or other amount not paid within sixty (60) days after the due date shall be delinquent, shall incur a late payment penalty and bear interest in an amount to be set by the Board from time to time, not to exceed the maximum permitted by applicable law, from the date due and payable until paid and the Member shall be obligated to pay all lien fees, legal fees, paralegal fees, and recording fees (as applicable).

(c) The Association has a lien on each Lot for any Assessment levied against the Lot, and for any other amounts due hereunder from the Owner in relation to such Lot.

(d) In the event an Owner fails to pay sums due the Association within sixty (60) days of the due date, the Association may (i) bring an action at law to collect the lien or foreclose the lien against the real property in the same manner as a mortgage on real property, (ii) although not necessary in order to foreclose the lien, record notice of the Association's lien against the property being assessed, (iii) institute an action for a money judgment, (iv) apply any deposits held by the Association or DRB to the amount due, and (v) exercise any other remedy at law or equity. Each Assessment or other charge, together with interest and penalties thereon and all costs and expenses incurred by the Association to collect such Assessment, charge, fine, penalty, or other amount, including reasonable attorneys' fees, paralegal fees, and disbursements, may be recovered by suit for a money judgment by the Association without foreclosing or waving any lien securing the same or may be recovered in any foreclosure.

(e) The recording of this Community Declaration constitutes record notice and perfection of a lien of the Association on all Lots. No further recordation or filing of any claim of any lien is required. The Association may, in its discretion, record or file an additional notice of that lien in the Public Record. The priority of the lien of the Association shall be determined pursuant to **Section 5.6** and shall not be dependent upon the recording or filing date of any notice of lien recorded or filed in the Public Record, and shall be binding upon the Owner and its successors. The Association, acting on behalf of the Members, shall have the power to bid (which may be a bid on credit, up to and including the amount secured by the lien) for the Lot at foreclosure sale, and to acquire and hold, lease, mortgage, and convey the same. During the period a Lot is owned by the Association following foreclosure, no right to vote shall be exercised on behalf of the Lot and no Assessment shall be assessed or levied on the Lot.

5.6 Priority and Non-subordination of the Lien. The lien under this **Article 5** is prior to all other liens and encumbrances on a unit except: (a) subject to the other provisions of this Section, a first mortgage or security interest granted to a bona fide, arms' length, third party lender on the Lot recorded before the date on which the Assessment or amount sought to be enforced became delinquent, or (b) to the extent provided by applicable law, liens for real estate taxes, bonds, and other governmental assessments or charges against the Lot. The lien is also prior to all mortgages and security interests described in **Section 5.6(a)** to the extent of the Assessments for Association Expenses based on the periodic budget adopted by the Association that would have become due in the absence of acceleration during the six (6) months immediately preceding institution of an action to enforce the lien, unless federal regulations or written federal underwriting policies adopted by Federal Mortgage Underwriters require a shorter period or allow a longer period for the measurement of the amount of the super-priority of the Association's lien, in which case the period for measurement of the amount of the Association's super-priority lien shall be such shorter or longer period. If federal regulations or written federal underwriting policies adopted by Federal Mortgage Underwriters either require a shorter period or allow for a longer period of priority for the lien of an association such as the Association, the period during which the lien is prior to all mortgages and security interests described in **Section 5.6(a)** shall be determined in accordance with those federal regulations or written federal underwriting policies, granting priority to the maximum period allowed.

5.7 Liability of Members, Purchasers and Encumbrancers. The amount of any Assessment, charge, fine, or penalty payable by any Member shall be a joint and several obligation to the Association of such Member and such Member's heirs, devisees, personal representatives,

successors, and assigns. A Person acquiring fee simple title to a Lot shall be jointly and severally liable with the former owner of the Lot for all such amounts which had accrued and were payable at the time of the acquisition of the title or interest by such Person, without prejudice to such Person's right to recover any such amounts paid from the former Owner. The provisions of this **Section 5.7**, however, are subject to the priority provisions of **Section 5.6**.

5.8 Allocation of Association Expenses. Except as otherwise provided in the Governing Documents, Assessments and Association Expenses shall be allocated in accordance with this **Article 5** and **Exhibit C**.

Article 6

Certain Rights of Declarant

6.1 Declarant's Easements and Related Rights.

(a) Declarant hereby reserves to itself for itself and for the benefit of its Licensees, Invitees, successors, and assigns a non-exclusive, perpetual easement on, over, upon, across, above, under, and through any Area of Common Responsibility as may be reasonably necessary to (i) discharge Declarant's obligations under this Community Declaration; (ii) exercise any Special Declarant Right; (iii) make Improvements within the Property on property owned by the Declarant or in the Area of Common Responsibility; and (iv) maintain, repair, access, replace, relocate, construct, use, and operate utilities where they are located within the Property as of the date of this Community Declaration or any new or relocated utilities.

(b) Declarant hereby reserves to itself, for itself, and for the benefit of its Licensees, Invitees, successors, and assigns the right from time to time to establish, relocate, and use non-exclusive, perpetual utility and other easements, leases, permits, or licenses on, over, upon, across, above, under, and through the Property for uses of the Association or Declarant, including, without limitation, in relation to any Improvements in order to serve all Persons residing or visiting the Property; provided that any such easement, lease, permit, or license does not unreasonably impair the use of the Areas of Common Responsibility for their intended purpose or unreasonably impair Construction Activity within any Lot.

(c) Declarant hereby reserves to itself, for itself, and for the benefit of its Licensees, Invitees, successors, and assigns the right at any time, and from time to time, to close or restrict the use of any access roads within or in the vicinity of the Community; provided, however, that access by an Owner to his Lot shall not be materially impaired for an unreasonable period of time.

(d) Declarant hereby reserves to itself and its successors, assigns, and designees a perpetual, non-exclusive easement across every Lot (as determined by the Plat) for the establishment and construction of Internal Trails. Such areas shall be Areas of Common Responsibility and may be designated Special Benefits Amenities pursuant to **Section 3.11(b)** hereof. The Declarant further reserves to itself and its successors and assigns the right to grant exclusive and non-exclusive easements to others for purposes of using and/or maintaining such areas from time to time. Declarant hereby reserves an easement in favor of itself and its designees upon, across, over, and under all of the Property for the creation, use, and maintenance of trail

systems, including, without limitation, pedestrian, equestrian, bicycle, Nordic skiing, and for the creation, use, and maintenance of wildlife resistant landscape treatments and features, wildlife corridors, winter wildlife ranges, and natural wildlife habitats. The foregoing easements may traverse the private property of any Owner; provided, however, an easement shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under or through any existing dwelling on a Lot, and any damage to a Lot resulting from the exercise of an easement shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of an easement shall not unreasonably interfere with the use of any Lot, including without limitation any construction of Improvements thereon, and except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant. Declarant reserves the right to declare an easement over any portion of the Property for the purposes of enjoyment, use, access, maintenance, and development of any property which Declarant may acquire an interest in that is adjacent to the Property. This easement includes, but is not limited to, a right of ingress and egress over the Roadways for construction and maintenance of roads and for connecting and installing utilities on such property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Roadways or other Areas of Common Responsibility and Improvements as a result of vehicular traffic connected with development and maintenance of such property. Declarant further agrees that if the easement is exercised for permanent access to the Property and such additional property or any portion thereof is not made subject to this Declaration, the Declarant, its successors or assigns, shall enter into a reasonable agreement with the Association so that each owner of the additional property bears an equitable portion of the cost of maintenance of any access road serving such property.

6.2 Special Declarant Rights. Declarant hereby reserves for itself and its successors and assigns the following rights, which rights may be exercised at any time during the Declarant Control Period (collectively the “Special Declarant Rights”):

(a) The right to complete any Improvements on the Property owned by Declarant or shown on any Plat or Certificate of Survey filed by Declarant or Declarant's predecessors with respect to Property owned by Declarant, and the right to construct any Improvement that Declarant deems necessary or advisable on any Property owned by Declarant or on any Area of Common Responsibility;

(b) The right to construct and maintain sales offices, trailers, booths, Improvements, other structures used for sales or promotional purposes, management offices, and models on the Property, or any Lot owned by Declarant; and the right to construct and maintain signs advertising the Community and properties therein. The number, size, and location of any such sales structures and signage, management offices, or models, or the relocation thereof shall be determined by Declarant;

(c) The right to exercise any development right, including, without limitation, the right to add real property to the Property pursuant to **Article 14** and to make that real property subject to this Community Declaration and the Plat, the right to amend this Community Declaration to create additional Lots and Areas of Common Responsibility within the Property, the right to subdivide Lots, the right to combine Lots, the right to convert any and all Lots owned by Declarant into Areas of Common Responsibility, the right to make applications pursuant to the Zoning Regulations including the right to change any zoning designation, the right to record

Supplemental Declarations and governing documents of any Sub-Association, and the right to withdraw any and all portions of the Property from this Community Declaration as provided in **Article 14**;

(d) The right to create, relocate, and use easements through the Areas of Common Responsibility for the purpose of making Improvements within the Property or within real property which may be added to the Property;

(e) The right to designate real property or Areas of Common Responsibility owned by Declarant within the Property for fire, police, utility service operation facilities (e.g., electric power, propane, sanitation, etc.), water and sewer facilities, public schools and parks, and other public facilities;

(f) The right to merge and consolidate the Association with a property owners association of the same form of ownership; and

(g) The right to accept, establish, and amend reasonable use restrictions with respect to the Property.

6.3 Transfers of Special Declarant Rights and Rights as Declarant. The term **“Declarant’s Rights”** means, collectively, the Special Declarant Rights defined herein as well as all other rights of the Declarant under this Community Declaration, the other Governing Documents, and the rights of a declarant under applicable law.

(a) The Declarant’s Rights may be transferred by the Declarant in whole during the Declarant Control Period; provided, (i) the transfer shall not reduce an obligation or enlarge a right beyond that which Declarant has under this Community Declaration, and (ii) any such transfer shall only be effective if it is in a written instrument signed by Declarant and the transferee, and recorded in the Public Record.

(b) Upon transfer of the Declarant’s Rights, the liability of a transferor is as follows:

(i) A transferor is not relieved of any obligation or liability arising before the transfer.

(ii) A transferor has no liability for any act, omission, or breach of a contractual or warranty obligation arising from and after the date of such transfer.

(c) Upon transfer of the Declarant’s Rights, the liability of a transferee is as follows:

(i) A transferee of the Declarant’s Rights is subject to all obligations and liabilities imposed on the Declarant by this Community Declaration arising from and after the date of such transfer.

6.4 Rights of Declarant after Declarant Control Period Terminates. After termination of the Declarant Control Period, Declarant, if still an Owner, will continue to have all

of the rights and duties given to Members under the Governing Documents. In no event shall the passage of time prevent the Declarant from utilizing any easement, right, or privilege granted by this Community Declaration or otherwise upon the Area of Common Responsibility or portions of the Property owned by Declarant that is necessary or advisable in connection with the development and sale of Lots or amenities in relation to the Property and the Community.

6.5 Right to Develop. The completion of construction and the sale or other disposal of Lots by Declarant is essential to the development of the Property as a community. Accordingly, nothing in this Community Declaration or the other Governing Documents shall be construed to prevent Declarant or its contractors or subcontractors from exercising, in their sole discretion, any Special Declarant Right and utilizing any easement, right, or privilege granted by this Community Declaration or otherwise doing upon the Area of Common Responsibility or portions of the Property owned by Declarant whatever is necessary or advisable in connection with the development and sale of Lots or amenities in relation to the Property and the Community.

Article 7 Easements

7.1 Area of Common Responsibility. Subject to the provisions of this Community Declaration and the power of the Association and the Declarant to regulate the use of and convey or encumber the Areas of Common Responsibility as set forth in the Governing Documents and any Special Benefits Areas, each Member, Licensee, and Invitee shall have a non-exclusive easement over, upon, across, and with respect to any Area of Common Responsibility as appropriate and necessary to use the Area of Common Responsibility for its intended purposes.

7.2 Association Easements.

(a) Declarant hereby grants to the Association and its successors and assigns a non-exclusive, perpetual easement on, over, upon, across, above, under, and through the Property and each portion thereof to **(i)** exercise any right held by the Association under this Community Declaration or any other Governing Document, and **(ii)** perform any obligation imposed upon the Association by this Community Declaration or any other Governing Document. The Association shall not enter upon any Lot without reasonable prior notice to the Owner of the Lot, except in cases of emergency.

(b) Declarant hereby grants to the Association and its successors and assigns a non-exclusive, perpetual blanket easement upon, across, above, and under all property within the Property for access, ingress, egress, installation, repair, relocation, replacement, and maintenance of all utilities serving the Property or any portion thereof, including, but not limited to, gas, water, sanitary sewer, storm drainage, cable, telephone, and electricity, provided, however, that use of such easements shall not unreasonably impair the use of the Areas of Common Responsibility for their intended purposes or unreasonably impair Construction Activity within any Lot. It shall be expressly permissible for the Association or its designee, as the case may be, to install, repair, relocate, replace, and maintain or to authorize the installation, repair, relocation, replacement, and maintenance of wires, conduits, cables and other equipment related to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license

or easement by separate recordable document, the Association shall have the right to grant such license or easement.

7.3 Plat and Services Easements.

(a) Each Owner, by accepting a deed to a Lot, agrees for themselves and their Licensees, Invitees, successors, and assigns to be subject to all easements created by this Community Declaration and the Rules and Regulations from time to time in effect.

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

Article 8 Restrictions Applicable to Property

8.1 **Land Use Restrictions.** In addition to the restrictions found in this Article, all or any portion of the Property may be further restricted in its use, density, or design according to the Plat; any Supplemental Declarations, Condominium Declarations, Rules and Regulations, or Design Standards; wildlife agreements, wildfire mitigation guidelines, and conservation guidelines entered into by Declarant or Association in connection with the development of the Property; zoning regulations adopted by governmental authorities; and similar matters. Each Member, Licensee, and Invitee shall comply with all of the terms, provisions, covenants, conditions, restrictions, easements, and reservations under this Community Declaration, including those referenced above, those imposed by the land use restrictions in this Article 8, and any applicable Supplemental Declaration and Condominium Declaration.

8.2 **Enjoyment of Functions and Area of Common Responsibility.** There shall be no obstruction of any Area of Common Responsibility, nor shall anything be stored in or on any part of Area of Common Responsibility without the prior written consent of the Association. Nothing shall be altered on, constructed in, or removed from any Area of Common Responsibility, except with the prior written consent of the Association. Nothing shall be done or kept on or in any Area of Common Responsibility that would result in cancellation of the insurance or any part thereof which the Association is required to maintain pursuant hereto, or increase the rate of the insurance or any part thereof over the amount that the Association, but for that activity, would pay, without the prior written consent of the Association. Nothing shall be done or kept on or in such Area of Common Responsibility that would be in violation of any statute, rule, ordinance, regulations, permit, or other requirement of any governmental or quasi-governmental entity. No damage to, or waste of, any Area of Common Responsibility shall be committed, and each Member shall indemnify, defend, and hold the Association and other Members harmless against all loss resulting from any such damage or waste caused by such Member, or such Member's Licensee or Invitee. No noxious, destructive, or offensive activity shall be carried on with respect to any Area of Common Responsibility, nor shall anything be done therein or thereon which may be or become a nuisance to any other member of the general public, Member, or Invitee. All restrictions contained in this Article shall also be deemed to apply to the Areas of Common Responsibility.

8.3 Sidewalks. All lot owners are required to install city standard concrete sidewalks, along all lot street frontages, at the time of construction (prior to occupancy) or within three years of final plat approval, whichever occurs first. Unless assessments collected by master association, sub-association or phase, every lot owner shall be responsible for maintenance of the sidewalk located on, adjacent to and between the owner's lot and the nearest right-of-way. Maintenance shall include, but not be limited to snow and ice removal. The Association shall be responsible for maintenance of the sidewalks and pathways located on and adjacent to parks and open space. Maintenance shall include, but not be limited to snow and ice removal.

8.4 Occupancy Limitation. All Lots may be used only for dwelling purposes and typical residential activities. No portion of the Property or a residence shall be used for living or sleeping purposes other than rooms designed for living or sleeping in a completed structure for which the DRB has issued a certificate of substantial completion. No room in any structure shall be used for living or sleeping purposes by more persons than it was designed to reasonably accommodate.

8.5 Leasing. Owners may Lease their Lots to others for residential purposes in a manner consistent with this Community Declaration except as may be prohibited in a Supplemental Declaration or a Condominium Declaration.

(a) Definitions:

(i) A "Lease" is allowing a person(s) to occupy all or any part of a Lot for a monetary consideration or its equivalent.

(ii) A "Long-Term Lease" is a Lease that is for three months or longer.

(iii) A "Short-Term Lease" is a Lease that is for less than three months.

(iv) A "Dwelling" is defined as any home on the Lot providing complete, independent living facilities for one (1) or more person(s), including provision for living, sleeping, cooking and sanitation.

(v) A "Accessory Dwelling Unit" or "ADU" is defined as a Dwelling that is smaller in area and subordinate in Use to the Principal Dwelling, whether attached or detached.

(vi) "Use" is defined as any purpose for which a Structure or Lot may be designed, arranged, intended, maintained or occupied for any activity, occupation or residence.

(vii) "Principal" is defined as the primary Use of a Lot.

(viii) "Living" is defined as Owner occupation of a Dwelling for 6 months or more each year.

(b) Long-Term Leases are allowed as follows:

(i) The entire Principal Dwelling is allowed to be Leased as a Long-Term Lease so long as there is no ADU on the Lot; or if there is an ADU the ADU is occupied by the Owner.

(ii) Bedrooms within the Principal Dwelling are allowed to be Leased as a Long-Term Lease so long as the Owner is Living within the Principal Dwelling at the time of the Lease.

(iii) ADU's are allowed to be Leased as a Long-Term Lease so long as the Owner is Living within the Principal Dwelling at the time of the Lease.

(c) Short-Term Leases are allowed as follows:

(i) The entire Principal Dwelling is NOT allowed to be Leased as a Short-Term Lease.

(ii) Bedrooms within the Principal Dwelling are allowed to be Leased as a Short-Term Lease so long as the Owner is Living within the Principal Dwelling at the time of the Lease and is physically present on the property during the period of each Short-Term Lease term.

(iii) ADU's are allowed to be Leased as a Short-Term Lease so long as the Owner is Living within the Principal Dwelling at the time of the Lease and is physically present on the property during the period of each Short-Term Lease term.

(d) Owner must, at Owner's expense, provide all Long-Term Lessees with copies of the Covenants, Bylaws and Rules and Regulations. Should the Association create a "short form" of the Governing Documents for posting, Owner's who have Short-Term Leases must post the Short Form on or near the Leased property's entry way door. Leases must specify that lessees/occupants must comply with all provisions of the Governing Documents. Long-Term Leases must include the names of every person who will occupy the leased unit, license plate number and make and model for all tenant vehicles, and a signed statement from each occupant certifying that they have read and agree to abide by such rules, policies, regulations, covenants and declarations.

(e) Long-Term Leases must be in writing. All leases shall provide that the lessee(s) shall be subject to the provisions of the Covenants, Bylaws, and the Rules and Regulations of the Association. Should the Association create an Lease information sheet (which may include but is not limited to lessee's names, phone numbers, emails, pets and vehicle information), all Owner's with Long Term Leases must fill out the Lease information sheet and return it to the Association within five days of entering into a Long-Term Lease.

(f) The Association is not responsible for leases negotiated by any of its members, nor is it responsible for its members' advertisements seeking lessees. It is the responsibility of individual owner/lessors to comply with local, state and federal laws relative to the leasing process.

(g) Housesitters and/or caretakers are defined as persons or single families temporarily residing in and responsible for complete units during temporary absences of the owners or lessees. Housesitters and caretakers are allowed to occupy a Unit. They are subject to the provisions of the Bylaws and Covenants, including the Rules and Regulations of the Association.

(h) In the event a lessee fails to comply with the Governing Documents (including Rules and Regulations), or becomes a public nuisance, the Association, after notification to the Owner, shall initiate action against the Owner, offending lessee or occupant. Such proceedings shall be taken in accordance with Association rules, policies, regulations, covenants and declarations. Specifically, should the lessees be in violation of the Governing Documents, the Owner by purchasing a Property within the Association, grants the Association the right to evict all lessee from the Property for violation of the Covenants. The prevailing party in all such proceedings shall be entitled to an award of reasonable attorney's fee and related costs.

8.6 Home Occupations and Business. Businesses not allowed to operate within the Property. Notwithstanding anything to the contrary contained in this Article 8, a gainful home occupation, profession, trade, or other non-residential use will be a permissible use of Lots, so long as: (i) such use is permitted by the Plat and not prohibited by law, (ii) such use is not restricted by this Community Declaration, (iii) such use is carried on entirely within a Lot and is secondary and incidental to its use as a residence, (iv) there is no generation of pedestrian or vehicular traffic beyond that which is customary or incidental to residential use of the dwelling, (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, (viii) the home occupation does not employ any non-resident of the Lot, nor does it attract any non-resident customers, (ix) the Owner receives and maintains a permit from the Association for such use, which permit may be granted, denied or revoked in the Association's sole (but not arbitrary and capricious) discretion, and (x) the use is conducted in compliance with any applicable Supplemental Declaration, Condominium Declaration, the Rules and Regulations, and Design Standards. 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 Lot; the pursuit of artistic endeavors, provided that the products are not marketed and sold from the Lot, and no kilns or foundries are used on the Lot.

(a) Nothing contained in this Community Declaration shall be construed to prohibit the employment of household employees for the Lot, whether such household employee resides off the premises or, in conformity with the requirements as to permitted uses and overcrowding, on the premises.

8.7 Maintenance of Lots. All Lots, except for any portion of the Lot then undergoing any Construction Activity, including all Improvements on such Lot and all unimproved Lots, shall be kept and maintained in a clean, safe, attractive, and sightly condition and in good repair.

8.8 Approval of Construction Activities. Unless the approval of the DRB through processes set forth in **Article 9** is obtained in advance, and unless all approvals as may be required by Supplemental Declarations, Condominium Declarations, the Governing Documents, and by any governmental or quasi-governmental entity having jurisdiction over the Property have been obtained in advance by the relevant Member, (i) no Improvements shall be constructed, erected, placed, or installed upon any Lot, (ii) no change or alteration of the materials or appearance (including, but not limited to, color) of the exterior of any Improvements shall be made, (iii) no excavation or change in the grade of any Lot or earth movement shall be performed, (iv) no healthy vegetation or trees shall be cut or removed from any Lot, subject to the provisions of **Section Error! Reference source not found.**, (v) no physical or cosmetic alteration or modification to existing Improvements shall be made, and (vi) no other Construction Activity shall be initiated or performed.

8.9 Trash; Garbage; Organic and Inorganic Materials. No trash, waste, garbage, litter, junk, refuse, weeds, brush, lumber, grass, shrub, soil, tree clippings or plant waste, compost, metals, concrete, building materials, bulk materials, scrap, boxes, containers, bottles, cans, implements, 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 dispose of their trash at the central location provided for by the Association for the disposal of all solid waste and/or recycling. In the event the Association has not provided for a central disposal location, then the Member shall provide suitable receptacles for the containment and collection of trash and garbage, which must be enclosed, must comply with any Plat, Supplemental Declaration, or Condominium Declaration requirement for bear-proof garbage containment, and must be approved by the DRB. Notwithstanding the foregoing, a compost pile or barrel may be specifically allowed by a Supplemental Declaration if reviewed and approved by the DRB.

8.10 Water and Sanitation. All Lots shall comply with water and sanitation use restrictions as required by applicable governmental authority. No surface water shall be used for Construction Activities. All Improvements on the Property designed for residential purposes shall be connected to such water and sewer services as the Association or applicable governmental agency may require.

8.11 Preservation of Water Resources. Members, Licensees, Invitees, and members of the general public shall at all times conduct their use and activities in a manner that will preserve the integrity of the springs, ponds, streams, and creeks within the Community. The degradation or pollution of water is not permitted. All applicable local, state, and federal regulations, guidelines, and standards pertaining to water use must be followed.

8.12 Wildlife Habitat, Hunting, Firearms. In keeping with the purpose of this Community Declaration, Declarant reserves the right to utilize and manage all of the Property for the creation and enhancement of habitat for wildlife and native plants. It is also recognized by Declarant and the Members that wildlife species live in or migrate through the Property during various times of the year. The following limitations on use and development are intended, in addition to all other requirements of this Community Declaration, to protect, preserve, and maintain the existing wildlife habitat in the Property and to minimize the adverse effects of development on the wildlife habitat.

(a) Hunting, capturing, trapping, or killing of wildlife within the Property is prohibited, except as organized and conducted by a governmental agency for game management purposes. The discharge of firearms is prohibited except in conjunction with game management purposes.

(b) No feeding or domestication of any wildlife shall be permitted. No salt licks, bird feeders, or other foods shall be placed upon any Lot to entice wild animals to come upon a Lot. Items such as bird feed, horse feed, grains, garbage, and dog food shall be stored in bear-proof containers.

8.13 Noxious Weeds. As to his Lot, each Member shall control or eliminate all noxious weeds, as such "noxious weeds" are defined by the Gallatin County Weed List, other governmental authority, the Association, or the DRB. Only herbicides approved for domestic use and/or approved by Gallatin County and/or the State of Montana for use around waterways may be used by Members.

8.14 No Noxious or Offensive Activity. No noxious or offensive activity shall be carried out upon any Lot, nor shall anything be done or placed on any Lot which is or may become a nuisance or cause any significant embarrassment, disturbance, or annoyance to others. As used herein, the term "noxious or offensive activity" shall not include any activities of a Member, Declarant, or their respective designees which are reasonably necessary to the development of and construction on the Property, so long as such activities do not violate the Governing Documents, statutes, or rules or regulations of any governmental or quasi-governmental entity having jurisdiction with respect thereto, and do not unreasonably interfere with any Member's use of his Lot or with any Member's ingress and egress to or from his Lot and a Roadway. .

8.15 Lights, Sounds and Odors. All exterior lighting of Improvements and grounds on a Lot will be subject to regulation by the DRB. Such DRB regulations may, at the election of the DRB, follow guidelines established by the International Dark-Sky Association (www.darksky.org) or meet some other standard as established by the DRB. No light shall be emitted from any Lot which is unreasonably bright or causes unreasonable glare or shines directly onto an adjacent Lot; no sound shall be emitted from any Lot which is unreasonably loud or annoying; and no odor shall be emitted from any Lot which is noxious or offensive to others.

8.16 No Hazardous Activities. No activities shall be conducted on any Lot, no Improvements shall be constructed or performed on any Lot, and no Construction Activities shall be conducted on any Lot that are or might be unreasonably unsafe or hazardous to any Person or property.

8.17 Notice of Adjacent Agricultural Uses. Property owners and residents of Gran Cielo are informed that adjacent uses may be agricultural. Lot and unit owners accept and are aware that standard agricultural and farming practices can result in dust, animal odors and noise, smoke, flies, and machinery noise. Standard agricultural practices feature the use of heavy equipment, chemical sprays and the use of machinery early in the morning and sometimes late into the evening. Existing agricultural fences shall be maintained and protected during construction. All new fences bordering agricultural lands shall be maintained by the property owners in accordance with state law.

8.18 No Unsightliness. No unsightliness shall be permitted on any portion of the Property. Without limiting the generality of the foregoing:

(a) All unsightly structures, facilities, equipment, objects, and conditions shall be kept within an enclosed structure at all times;

(b) Motor vehicles classed by manufacturer rating as exceeding one ton, commercial vehicles, recreational vehicles, mobile homes, travel trailers, trailers, trucks (except pickup trucks used for personal, and not commercial transport), motorcycles, snowmobiles, golf carts, boats and other watercraft, boat trailers, tractors, ATVs, detached campers, camper shells, snow removal equipment, and garden or maintenance equipment shall be kept in an enclosed structure at all times, except when in actual use; provided that such equipment and vehicles may be parked in areas specifically designated by the DRB for such equipment and vehicles;

(c) Service areas and facilities for hanging, drying, or airing clothing or fabrics shall be kept within an enclosed structure;

(d) Mechanical and utility equipment, lines, wires, pipes, cables, tanks, poles, meters, and other facilities, loading docks, and sewage disposal systems or devices shall be screened or kept and maintained below the surface of the ground, or to the extent feasible, customary, and sightly, as determined by the DRB, within an enclosed structure, subject to exceptions as determined at the discretion of the DRB;

(e) No tennis courts, outdoor swimming pools, or similar facilities shall be constructed on a Lot.

8.19 Repair of Improvements. No Improvements hereafter constructed upon the Property shall be permitted to fall into disrepair, and each such Improvement shall at all times be kept in good condition and repair.

8.20 Animals. No animals shall be kept, raised, or bred on any Lot. Notwithstanding the foregoing, a reasonable number of birds, dogs, cats, tortoises, or other customary household pets may be brought onto the Property or kept on a Lot ("**Permitted Household Pets**") as determined by the Board, a Sub-Association, or the DRB. 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. The keeping of or grazing of cattle, goats or sheep anywhere on the Property is not permitted. No Permitted Household Pet shall be permitted to harass any wildlife. Permitted Household Pets are not to be kept outdoors or chained up. Any Permitted Household Pet that is on the Property shall be accompanied by the Owner or their guest or Invitee, and kept under control at all times. Owners are responsible for damage and waste caused by any Permitted Household Pet associated with a Lot. 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 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.

8.21 Signs. Except as otherwise provided in **Section 8.39**, no signs or advertising devices of any nature shall be erected or maintained on any Lot except signs approved by the DRB, signs required by the land use restrictions, applicable law or legal proceedings, identification signs for work under construction (as approved by the DRB), temporary signs to caution or warn of danger, Association signs necessary or desirable to give directions or advise of Rules and Regulations or Design Standards, or political signs as permitted pursuant to § 70-1-522, MCA. The DRB shall regulate the terms for maintenance and length of time temporary signs may be placed. Without limiting the generality of the foregoing, no "For Sale," "For Rent," "Open," "Open House," "Garage Sale," "Estate Sale" or similar signs shall not be displayed on the exterior or interior of any Lot, except as permitted under the Design Standards.

8.22 Parking. Members, Licensees, Invitees, and members of the general public shall not park vehicles on the Roadway or along any road within the Property, except in an area specifically designated for parking. The Association shall have the right to remove any vehicle that is parked along the Roadway or along any road within the Property at the vehicle owner's expense.

8.23 Recreational Vehicles. No motorcycle, motorbike, snowmobile, ATV or "ATV-like" vehicle, golf cart, or motorized vehicle used primarily for recreational purposes shall be operated within or on the Property for any purpose, with the following exceptions: (i) in conjunction with the performance of any Function; (ii) in emergencies or for safety purposes; and (iii) vehicular uses that are otherwise specifically permitted by the Design Standards or a Supplemental Declaration.

8.24 Aircraft. No aircraft, including helicopters, or aircraft operations of any kind shall be permitted anywhere in or above the Property, except according to applicable Federal Aviation Administration regulations and in areas specifically designated for airfields, landing strips, or heliports by Declarant during the Declarant Control Period, or thereafter, by the Association. Use of drones in or above the Property shall not be permitted except in accordance with applicable laws and regulations and with approval of Declarant during the Declarant Control Period, and thereafter of the Board. Nothing in this paragraph shall limit the use of an aircraft or drones in the event of an emergency.

8.25 Wood Burning Devices. Any wood burning device installed on the Property shall meet applicable Environmental Protection Agency certification standards. In addition to any regulations under applicable law, the use of wood burning devices may be regulated or prohibited by the Association or DRB pursuant to its Design Standards.

8.26 Grading; Drainage; Erosion. Grading for Improvements shall be confined to the minimum necessary to complete Improvements approved by the DRB. Improvements shall be tailored to the Lot rather than conforming the Lot to the Improvements. All grading shall be contoured into existing ground lines to avoid unnatural sharp edges. Existing natural features, including, but not limited to, trees, shrubs, and rock outcroppings shall be incorporated into any site plan and shall be preserved rather than removed or altered whenever possible. Reasonable caution shall be taken during any Construction Activity, and thereafter, to prevent erosion, dust, and drainage problems. All disturbed soil areas shall be revegetated within a reasonable time in such a fashion as to minimize erosion and dust. Owners shall not obstruct or re-channel drainage

flows after the initial location and installation of drainage swales, storm sewers, or storm drains, except that the Declarant during the Declarant Control Period and thereafter the Association shall have such right; *provided*, the exercise of such right complies with applicable governmental regulations.

8.27 No Mining, Drilling, Commercial Logging or Timber Harvesting. No Lot shall be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil, gas, or other hydrocarbons, minerals, rocks, stones, gravel, or earth, or for commercial logging or timber harvest. Declarant reserves the right to utilize Lots owned by Declarant for mining, drilling, commercial logging, or timber harvest, except where specifically prohibited or restricted by a Supplemental Declaration or Condominium Declaration. Nothing herein shall be interpreted to prohibit a Member from logging their Lot for the purpose of thinning for fire protection to meet the intent of the land use restrictions in **Section Error! Reference source not found. above**.

8.28 Fences and Entry Gates. Except as specifically provided in the Design Standards or as placed by the Association in relation to any of its Functions or Special Benefit Area, entry gates, fences, walls, or other barriers for the purpose of enclosing or demarcating any Lot boundaries are not permitted. No fencing shall unreasonably interrupt or interfere with wildlife migration or movement.

8.29 Cell Towers, Antennas, other Communication Structures, Wind Turbines and Equipment. Exterior, visible Antennas, wind-driven blades or turbines, or windmills are not permitted on any Lot in the Property except where authorized by Declarant, or as authorized in this **Section 8.29**. The Association may place an Antenna on an Area of Common Responsibility with the Affirmative Vote of a Majority. The Declarant may place an Antenna on the Declarant's owned property in the Declarant's sole discretion. Any Antenna equal to or less than one (1) meter in diameter, that falls within the scope of, or is otherwise covered by the Telecommunications Act of 1995, and the provisions of 47 C.F.R. 1.4000, as may be amended from time to time, or any subsequent federal or state law applicable to common interest communities ("**Approved Antenna**"), shall be permitted upon any portion of the Property. Installation of any Approved Antenna shall comply with any and all governmental requirements and guidelines, as well as any and all applicable Design Standards, including, but not limited to, any preferred placement locations; provided, however, that such Design Standards may not unreasonably increase the cost of installing, maintaining, or using the Approved Antenna, unreasonably delay installation of the service, or unreasonably interfere with the quality of reception. Subject to the requirements of applicable law, the DRB may prohibit the installation of any Approved Antenna if the installation, location, or maintenance of such Approved Antenna unreasonably affects the safety of Persons or property, or for any other safety-related reason.

8.30 Interval Ownership. No Lot shall be subjected to an Interval Ownership.

8.31 Interment of Human Remains. No part of the Property shall be used for the interment of human remains either below or above ground. This provision shall not preclude the possession of cremains by a Person within a Lot.

8.32 Temporary Structures. Unless approved by Declarant during the Declarant Control Period, and thereafter, by the DRB, no tent, shack, trailer, or any temporary building or

structure shall be placed upon any portion of the Property. The foregoing shall not prohibit use of tents for recreational purposes for a limited period of time on Lots. Additional Rules and Regulations may be established to further regulate or restrict the use of tents within the Property.

8.33 Handicapped Rights. Subject to the review rights of the DRB and applicable law, each Owner shall have the right to modify his Improvements and the route over the Lot (as applicable and necessary) leading to the entrance of his Improvements, 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.

8.34 Compliance with Law; Hazardous Materials. No Lot or Improvement shall be used, occupied, altered, changed, improved, or repaired except in compliance with all present and then-existing laws, rules, requirements, orders, directions, ordinances, and regulations of any local, state, or federal governmental or quasi-governmental agency. Furthermore, no Person shall release, discharge, emit, or dispose of any material on, above, or under the Property that is designated as a pollutant, hazardous material, or containment under any local, state, or federal regulation or ordinance, except in compliance with all applicable law, nor permit any Person under their control or direction to do so. The Association and the Declarant shall not be obligated to pursue enforcement in the event this Section is violated. The Association and Declarant may notify the applicable governing entity of any alleged violation and may also pursue remedies for the violation of this Community Declaration available to the Association and Declarant for any breach of the provisions of this Community Declaration by a Member or other Person.

8.35 Health, Safety and Welfare. In the event additional uses, activities and/or facilities are deemed by the Board to be nuisances or to adversely affect the health, safety or welfare of the Members, Licensees, Invitees, or members of the general public, or the value of any part of the Property, the Association or DRB may adopt Rules and Regulations or Design Standards restricting or regulating the same.

8.36 Subdivision of and Associations for Lots. Prior to submitting a preliminary or final Plat, Certificate of Survey, or covenants, including an owner's association, Assessment and lien rights, or a Condominium Declaration to any governmental or quasi-governmental entity for review, and prior to recording any of the foregoing in the Public Record, the applicant Owner of such Lot shall submit copies of the proposed documents to both Declarant and the Association for their separate review and approval. Upon request by the Declarant or the Association, the applicant Owner shall also submit a deposit against attorney's fees and costs that Declarant and the Association will incur in reviewing the application, in an amount reasonably estimated by Declarant and the Association. On or before sixty (60) days after the submittal of such documents to Declarant and the Association, Declarant and the Association shall separately approve and execute any plats, maps, and owners' association declarations that are required for each such subdivision, or shall disapprove the documents by written notice to the applicant Owner. If such documents are disapproved by either Declarant or the Association, the disapproving party shall set forth the specific reasons for such disapproval, and the applicant Owner shall thereafter either modify its application to satisfy such concerns (while maintaining the approval of the other approving party) or terminate its subdivision application with the governmental or quasi-governmental entity. If written notice of approval or disapproval is not given by Declarant or the Association on or before such sixty (60) day period, such documents shall be deemed disapproved.

The approval of Declarant and the Association under this Section shall not be unreasonably withheld or delayed. All costs and attorneys' fees incurred by Declarant and the Association as a result of an application for approval shall be the sole obligation of the applicant Owner. Nothing entered into or recorded by any Owner (other than the Declarant or a holder of Special Declarant Rights) shall be deemed to be a Supplemental Declaration or Condominium Declaration. This Section shall not apply to properties developed by Declarant or any holder of the relevant Special Declarant Rights. The rights bestowed to Declarant to review and approve such projects and documents under this Section ceases at the end of the Declarant Control Period. Thereafter, the Association shall be the sole reviewing entity under this Section.

8.37 Aggregation of Lots. Lots within the same subdivision within the Property may be aggregated by recording an amended Plat pursuant to § 76-3-103(17)(b)(ii), MCA, but they may not be aggregated by conveyance pursuant to § 76-3-103(17)(b)(i), MCA. Land outside of a platted subdivision within the Property may be aggregated to a Lot within a platted subdivision within the Property by recording an amended Plat or Certificate of Survey pursuant to § 76-3-103(17)(b)(ii), MCA, but they may not be aggregated by conveyance pursuant to § 76-3-103(17)(b)(i), MCA; however, any land that is aggregated to the Lot within the subdivision will remain subject to any Supplemental Declaration for that subdivision. Lots that are part of two different subdivisions and subject to two different Supplemental Declarations within the Property may not be aggregated. Aggregation of two Condominium Units will be in accordance with the Condominium Units' Condominium Declaration. The provisions of this Section shall apply to any amendments of the Montana Subdivision and Platting Act, or similar or replacement acts. Any action permitted pursuant to this Section 8.37 shall still be subject to the required approvals pursuant to Section 8.36.

8.38 Zoning Petition. No Owner shall submit a petition for zoning or take any action to create a zoning district within the Community without the prior consent of Declarant, during the Declarant Control Period, and thereafter of the Association.

8.39 Declarant's Exemption. Notwithstanding any other provision of this Community Declaration, nothing contained in this Article or in Article 9 shall be construed to prevent the exercise by Declarant of any Special Declarant Rights. Further, Declarant's Construction Activity, Declarant's activities of the type listed in Section 8.8, and Declarant's exercise of any Special Declarant Rights are exempt from review by the DRB during the Declarant Control Period.

8.40 Violation. Determination with respect to whether or not a particular activity or occurrence shall constitute a violation of this Article shall be made in accordance with Article 10.

Article 9

Design Review Board

9.1 Purpose. In order to preserve the natural beauty of the Property and its setting, to maintain the Property as a pleasant and desirable environment, to establish and preserve a harmonious design for the Community, and to protect and promote the value of the Property, all exterior design, development, and Improvements, including, but not limited to, new Improvements and additions, changes or alterations to existing uses or Improvements, and Construction Activity at the Property shall be subject to review and approval by the DRB pursuant to this Article 9.

9.2 Objectives. The construction and design review process shall be conducted with the following objectives in mind for the Property:

(a) Preventing excessive or unnecessary grading, earthmoving, or clearing of Property, or removal of trees and vegetation that could cause disruption of natural watercourses or scar natural landforms;

(b) Ensuring that the location and configuration of structures is visually harmonious with the terrain and vegetation of the land and with surrounding Lots, structures, and Open Space, and does not unnecessarily block or intrude into scenic views from existing buildings or public places, or tend to dominate any other development or natural landscape;

(c) Ensuring that the architectural design of structures and their materials and colors are visually harmonious with the Community's overall appearance, history and cultural heritage, the surrounding development, and natural landforms and native vegetation, and that they adhere to or comply with development plans and other restrictions approved by Declarant, the Association, or any governmental or quasi-governmental entity, if any, for the Lots in which the structures are proposed to be located;

(d) Ensuring that plans for the landscaping of open areas of Lots provide visually pleasing settings for structures on such Lots and on adjoining and nearby Lots and blend harmoniously with the natural landscape; and

(e) Ensuring that building design and construction standards and techniques are sound and in accordance with standards established by the DRB and respond to energy consumption and environmental quality considerations, such as heat loss, air emissions, water consumption, and run-off water quality.

9.3 Design Review Board. During the Declarant Control Period, Declarant shall appoint all members of the DRB, who shall serve at the discretion of Declarant. There shall be five members of the DRB. Upon expiration of the Declarant Control Period, the Board shall appoint the members of the DRB, who shall serve at the discretion of the Board.

9.4 Powers and Duties.

(a) Except as otherwise provided in **Section 8.39** and this **Section 9.4**, neither the Association, nor any Member, Licensee, Invitee, or occupant shall perform the activities described in **Section 8.8** above on the Property, a Lot, any Area of Common Responsibility, or a building or structure thereon, or change the use of any Lot or building or structure thereon or engage in any Construction Activity unless the DRB has approved the plans and specifications for the project, showing the nature, kind, shape, height, color, materials, and location of same, and the construction procedures to be used to ensure compliance with this Article, including compliance with applicable law, the Governing Documents, and any Supplemental Declaration or applicable governing document of any Sub-Association. The DRB has the express authority to review, accept, condition, modify or deny all plans for any of the activities described in this **Section 9.4(a)** to the extent they conflict with the Design Standards adopted by the DRB or are not compatible with, or are inappropriate for, the Property.

(b) The DRB has the express authority to enforce those standards as set forth in the Plat.

(c) Design Standards adopted by the DRB shall provide reasonable rules and procedures as the DRB deems necessary to carry out its functions, which Design Standards shall not be inconsistent with the provisions of the other Governing Documents. Design Standards adopted by the DRB shall state the general design theme of all projects in the Property, specific design and construction requirements, and the general construction procedures that will or will not be allowed in the Property. To recognize or encourage a diversity of character between discrete areas within the Property, the Design Standards may be different for different portions of the Property, consistent with the Plat.

(d) Each Member is hereby advised and acknowledges that, in connection with any Construction Activities on his Lot, he must comply with the applicable provisions of Supplemental Declarations, Condominium Declarations, Design Standards adopted by the DRB, and other Governing Documents, which documents may include, among other things, the following: (a) procedures and fees for making application to the DRB for design review approval, including the documents and materials to be submitted and the process the DRB must utilize to approve or disapprove any submission; (b) time limitations for the completion, within specified periods after approval, of the Improvements for which approval is required under such documents; (c) directions pertaining to the siting of Improvements upon Lots with respect to natural topography, preservation of view corridors and similar criteria; (d) minimum and maximum square foot areas of living space and non-habitable or non-living space that may be developed on any Lot; (e) landscaping and irrigation regulations or limitations, and limitations and restrictions prohibiting the removal or requiring the replacement of existing trees, the use of plants indigenous to the locale and other practices benefiting the protection of the environment, aesthetics, and architectural harmony of the Property; (f) instructions and Design Standards for the construction, reconstruction, refinishing, or alteration of any Improvement and addressing matters such as grading, transformers, meters, fire protection, loading areas, waste storage, trash and debris removal, parking areas, outside storage, sanitary facilities, and conduct of behavior of builders, sub-contractors, and Members' representatives on the Property at any time; and (g) the nature, kind, shape, height, color, materials, and location of Improvements, parking, landscaping, open space, signage, skylining, setbacks, utilities, storm water management, grading, erosion control, fencing, interaction with wildlife, fault and landslide areas, air contaminants, water quality, heat, lighting and glare, noise, vibration, electrical disturbances, fire and other hazards, permitted uses within specific areas, the scale of development, maximum floor area and other dimensional limitations, impervious surface, density, construction standards, and any other matter regulated pursuant to Article 8.

(e) The DRB shall have the authority to establish amend, modify or adopt new Design Standards.

(f) The DRB shall have the authority to retain the services of one or more consulting architects, landscape architects, engineers, contractors and experts, who are independent of the DRB, but are, to the extent required under law, licensed in the State of Montana, to advise and assist the DRB in performing the review functions prescribed in this Article and in carrying out provisions of Article 8. Such consultants may be retained to advise the DRB on a

single project, on a number of projects, or on a continuing basis. Consultants shall promptly disclose to the DRB their interests in any project or matter before the DRB prior to such project coming up for DRB consideration.

(g) The DRB may, as a condition to any consent or approval, require a Member to enter into a written agreement with the Association containing such covenants, conditions, and restrictions as the DRB deems necessary or appropriate, including penalties for failure to comply.

(h) The Association and the DRB through their authorized officers, employees, and/or agents shall have the right to enter any Lot upon twenty-four (24) hours' notice (or such notice as is appropriate in the event of an emergency) to the Member or Member's agent for the purpose of ascertaining whether such Lot or the construction, erection, placement, remodeling, or alteration of any Improvement thereon is in compliance with plans or Construction Activity approved by the DRB, the applicable Design Standards, or the terms of this Community Declaration. The DRB, the Association, or such officer, employee, or agent thereof shall not be deemed to have committed a trespass or wrongful act solely by reason of such action or actions under this part. Notice as provided under this Section may be either in person, via telephone, e-mail, or in writing.

(i) The DRB shall have the authority to require reasonable fees to be paid with the filing of plans to offset expenses of the DRB. In addition, the DRB shall have the authority to set and require Members post deposits prior to commencing construction for the purpose of assuring Construction Activities will be completed within the time specified and in compliance approved plans and applicable requirements. The DRB shall adopt a fee and deposit schedule as part of the Design Standards covering what fees and deposits will be required, the format for paying the fees and posting the deposits, and how those deposits are used. The DRB reserves the right to establish special fees and deposits in the case of special projects where design review, oversight, and enforcement costs may be higher than those established in the fee and deposit schedule.

(j) The DRB shall have the authority to revoke or suspend its approval and/or order the suspension or cessation of any Construction Activity for violation(s) of the Governing Documents or for failure to construct the project in accordance with the approved plans. In addition, the DRB shall have the authority to record a notice of such non-compliance in the Public Record.

(k) A Member upon final completion of Construction Activity on his Lot shall request in writing from the DRB a certificate of substantial completion. The DRB will consider the request at a regularly scheduled meeting, for which there is quorum, within forty-five (45) business days from the date the request was received. The DRB will then grant or deny the issuance of the certificate. In the event of denial, the DRB shall state its reasons in writing and provide the Member a reasonable time to address the reasons for denial (e.g., complete the Construction Activity) and reapply for a certificate of substantial completion. The DRB shall not be required to release any deposits held pursuant to this Article until a certificate of substantial completion has been issued, though the DRB may, in its discretion, reduce or release deposits when all that remains is minor, exterior landscaping work that is prevented from being completed by weather conditions. Construction Activity shall not be deemed to be substantially complete

until all exterior finish and landscaping work has been completed, construction equipment and machinery are demobilized, and construction staging materials including, but not limited to, portable toilets, dumpsters, and all debris are cleared from the Lot. Such certificate shall run to third parties at the request of the applicable Member.

(l) The DRB shall have the exclusive right to construe and interpret the pertinent provisions of Design Standards. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the DRB's construction or interpretation of the Design Standards and the provisions of this Article shall be final, conclusive, and binding as to all Persons and property benefitted or bound by the provisions thereof.

(m) The DRB may grant exceptions from the Design Standards when there is a valid justification or where the exception does not have a negative impact on the adjacent properties or the Property as a whole, which shall be determined in the sole and absolute discretion of the DRB, and where the exception is reasonable in relation to the overall character and nature of the area; provided, however, that no exceptions can be granted by the DRB as to specific covenants and restrictions set forth in this Community Declaration, and the DRB may adopt specific guidelines in relation to any exception requests. Any application for an exception shall be pursuant to a written request addressing the above criteria and all exception guidelines adopted by the DRB, and any grant or denial of an exception by the DRB shall be stated in writing, based on written findings.

(n) If a member of the DRB submits a project to the DRB for review or has a personal interest in a submitted project, that DRB member shall recuse himself from the meeting as a voting member of the DRB and participate in the review and discussion of the submitted project.

(o) In addition to the above powers and duties, the DRB may have such powers and duties as delegated to it by the Board.

9.5 Operational Procedures.

(a) The DRB shall hold meetings as necessary. Meetings of the DRB may be called by Staff, the chair of the DRB, or by a majority of the members of the DRB.

(b) A majority of the members of the DRB shall constitute a quorum.

(c) The DRB shall maintain written minutes of its meetings and a record of any votes taken.

(d) All meetings of the DRB shall be open to Members and the Declarant, as well as to any designated professional representatives thereof, and all votes of the DRB shall be taken at such meetings. Nothing contained herein, however, shall prevent the DRB from meeting in executive session, not open to Members, in relation to personnel matters, litigation in which the Association is or may become involved, matters subject to privileges and confidentiality obligations, and matters relating to the formation of contracts with third parties. Any matter discussed in executive session shall be generally noted in the minutes of the immediately following open meeting. No meeting, regular or special, may be audio taped, recorded, or broadcast.

(e) A copy of all minutes, Design Standards, and policy statements shall be filed with the records of the Association and shall be maintained by the Association in accordance with its retention and record keeping policies.

(f) The DRB will adopt procedures for soliciting review from a Sub-Association when a Member makes application to the DRB for a project that is solely within property governed by that Sub-Association.

(g) Approvals and consents of the DRB shall not be arbitrarily and capriciously withheld and actions taken shall not be arbitrary and capricious. DRB decisions shall be conclusive and binding on all interested parties, subject only to the right of appeal detailed below. Any approval or disapproval by the DRB shall be in writing, and in the case of a denial shall state the reasons for such denial. Decisions of the DRB are final; however, a Member can appeal in writing to the DRB to reconsider its decision. A request for reconsideration must be made in writing within ten (10) business days of the DRB's decision and be delivered by certified mail to the Association's office. The DRB will consider the request at a regularly scheduled meeting, for which there is quorum, within forty-five (45) business days from the date the request was received. The DRB will then in writing affirm, modify, or withdraw its decision within twenty (20) business days after the meeting.

9.6 Certificate of Substantial Completion. A Member, upon final completion of Construction Activity on his Lot, shall request in writing from the DRB a certificate of substantial completion. The DRB will consider the request at a regularly scheduled meeting, for which there is quorum, within forty-five (45) business days from the date the request was received. The DRB will then grant or deny the issuance of the certificate. In the event of denial, the DRB shall state its reasons in writing and provide the Member a reasonable time to address the reasons for denial (e.g., complete the Construction Activity) and reapply for a certificate of substantial completion. The DRB shall not be required to release any deposits held pursuant to this Article until a certificate of substantial completion has been issued, though the DRB may, in its discretion, reduce or release deposits when all that remains is minor, exterior landscaping work that is prevented from being completed by weather conditions. Construction Activity shall not be deemed to be substantially complete until all exterior finish and landscaping work has been completed, construction equipment and machinery are demobilized, and construction staging materials including, but not limited to, portable toilets, dumpsters and all debris are cleared from the Lot.

9.7 Enforcement. Prior to completion of construction or action subject to review under this Article, the DRB shall have primary responsibility to enforce the restrictions set forth in **Article 8**, any applicable Design Standards, and restrictions as set forth in any Supplemental Declaration or Condominium Declaration for which jurisdiction has been granted to the DRB; provided, however, that such responsibility shall not limit the right of Declarant or the Association to act under **Article 10**.

9.8 Lapse of Design Review Approval. Approval of the design of a project shall lapse and become void one year following the date of final approval of the project, unless, prior to the expiration of one year, substantial construction is commenced and is diligently pursued toward completion or, upon written request by the Member, the DRB grants a written extension to the

approval. In addition, in any approval of a project, the DRB can establish shorter periods during which Construction Activity must be completed.

9.9 Liability. The standards and procedures established by this Article or the DRB are intended to enhance the overall aesthetics of the Property and the Community. Neither Declarant, nor the Association, the DRB, or any of their respective officers, directors, employees, or agents shall be responsible or liable for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental or quasi-governmental entity requirements, nor for ensuring the appropriateness of soils, drainage, and general site and geotechnical work. A consent, approval, or certificate of substantial completion issued by the DRB means only that the DRB believes that the construction, alteration, installation, or other work for which the consent, approval, or certificate was requested complies with the applicable Design Standards. No such consent or approval shall be interpreted to mean that the construction, alteration, installation, or other work covered thereby (a) complies with laws, rules, regulations, ordinances, or other requirements of any governmental or quasi-governmental authority, or any applicable covenants, conditions, or resolutions, (b) is free from defects, errors, or omissions, (c) is structurally sound, or (d) lies within the boundaries of a Lot. By submitting materials to the DRB for its review, the applicant shall be deemed to have waived all claims against the DRB based on the foregoing disclaimed matters. Neither the Association, nor the Board, the DRB, or any member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved or disapproved construction or modifications to any Lot within the Property. In all matters where the DRB and its members acted within the scope of their duties, the DRB and its members shall be defended and indemnified by the Association through insurance policies maintained by the Association.

Article 10

Enforcement and Remedies

10.1 Procedure. The Association shall have the right (but not the obligation) to enforce the Governing Documents through procedures adopted by resolution of the Board, abatement of any violation by the Association, by charging the violator for the cost of abatement, or by proceedings either at law or in equity against any Person(s) violating or attempting to violate any of the Governing Documents. Legal proceedings may be instituted to restrain violation of the Governing Documents, to recover damages, or both.

10.2 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: (i) the Association's position is not strong enough to justify taking any or further action; (ii) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; (iii) 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 Association resources; or (iv) it is not in the Association's best interest, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

(a) 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 to preclude the Association from enforcing any other covenant, restriction, or rule, nor shall it preclude any Member from taking action at law or in equity to enforce the Governing Documents.

(b) In addition to all other enforcement rights and remedies available to the Association, the Association may suspend the right of an Owner to use the Area of Common Responsibility and Improvements located therein (i) for any period during which any charge against such Owner's Lot remains delinquent, (ii) for a period not to exceed thirty (30) days for a single violation, or for a longer period in the case of any continuing violation, or (iii) for any period in which such Owner is not in Good Standing.

10.3 Costs of Enforcement.

(a) Costs incurred through enforcement of the provisions of the Governing Documents (inclusive of giving notice of the violation), costs of correcting the defect or undoing or curing the violation, if undertaken by the Association, or any fines levied against the Member after the Member, occupant, or a guest or invitee of a Member or occupant is determined by the Board to be in violation of the Governing Documents shall be paid by the Member. Any costs incurred for enforcing the provisions of the Governing Documents, for correcting the defect or curing the violation, or fine assessed against the Member that is not paid within sixty (60) days may result in a lien in accordance with **Section 5.5** above.

(b) Should any lawsuit, arbitration, or other legal proceeding be instituted by a Member against the Association, or the Association against a Member alleged to have violated one or more of the provisions of the Governing Documents, and should the Association be wholly or partially successful in such proceeding, the offending Member shall be obligated to pay all the costs of such proceeding, including reasonable attorney's fees, costs, and costs of collecting the judgment.

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

10.5 Remedies Cumulative. Each remedy provided under the Governing Documents is cumulative and not exclusive of any other remedies which may not be, or are hereafter, available to the parties as provided by law.

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

Article 11 Special Disclosure Matters

Each Member, Licensee, Invitee, or member of the general public is hereby advised of the following matters affecting the Property and the use and enjoyment thereof:

11.1 Geotechnical. The Property is located in mountainous terrain and due to variable surface and subsurface conditions found in mountainous terrain, Members are on notice that they should or may be required to obtain a Lot-specific geotechnical analysis of such conditions prior to the construction of any Improvement, to ensure that the design of the Improvement is appropriate for the Lot. Geotechnical hazards and risks include, but are not limited to, landslides, earthquakes, abnormally high water tables, soil instability, and potentially more extensive engineering and construction requirements in order to limit the destabilizing potential of any particular Lot. All Members shall verify what is required of them with regard to conducting a Lot-specific geotechnical analysis by checking the Plat or Certificate of Survey for their Lot and/or their Supplemental Declarations, and all other requirements of law or best practices for engineering and construction. Regardless of whether any requirements or recommendation for Lot-specific geotechnical analysis is or is not made, it is the Member's sole responsibility to obtain all required analyses for their Lot and provide all required engineering and construction for their Lot.

11.2 Water Retention and/or Storm Water Drainage Facilities. This Property contains DEQ required water retention and/or storm water drainage facilities. These are required by the DEQ to be maintained by the Association. The City enforced this maintenance.

11.3 Zoning. Members, Licensees, Invitees, and members of the general public acknowledge that all or a portion of the Property may be included in a zoning district that is adopted pursuant to public petition or adopted by the City of Bozeman.

Article 12 Insurance, Casualty and Condemnation

12.1 Insurance.

(a) Required Coverages. 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:

(i) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name determined) for all insurable Improvements on Area of Common Responsibility to the extent the Association has assumed responsibility in the event of a casualty, regardless of ownership. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured Improvements under current building ordinances and codes;

(ii) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, such coverage (including primary and umbrella coverage) shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage; provided, should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits;

(iii) Workers compensation insurance and employer's liability insurance, if and to the extent required by law;

(iv) Directors' and officers' liability coverage;

(v) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds, in an amount determined by the Board's business judgment, but not less than an amount equal to one-sixth of the annual revenue of the Association plus reserves on hand, or such lesser amount as is commercially reasonably obtainable. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(vi) Such additional insurance as the Board, in the exercise of its business judgment, determines advisable.

(b) 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 Bozeman, Gallatin County, Montana. The policies may contain a reasonable deductible (the determination of "reasonable" including all reserves maintained by the Association) and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of **Section 12.1(a)**. In the event of an insured loss, the deductible shall be treated as an Association Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines that the loss is the result of the negligence or willful misconduct of one or more Members, Licensees, or Invitees, then the Board may assess the full amount of such deductible against such Member and their Lot (as applicable) as a Default Assessment.

All insurance coverage obtained by the Board shall (if reasonably available):

(i) Be written with a company authorized to do business in Montana;

(ii) Be written in the name of the Association as trustee for the benefited parties. Policies on Area of Common Responsibility shall be for the benefit of the Association and its Members;

(iii) Not be brought into contribution with insurance purchased by Owners, occupants, or their mortgagees individually;

(iv) Contain an inflation guard endorsement;

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

(vi) Provide that each Member is an insured Person under the policy with respect to liability arising out of such Member's interest as a Member of the Association in the Area of Common Responsibility (provided, this provision shall not be construed as giving a Member any interest in the Area of Common Responsibility other than that of a Member);

(vii) Include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any act or omission of one or more Members or on account of any curable defect or violation of any Member without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure; and

(viii) 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 within the scope of its authority on behalf of the Association.

(c) **Waiver of Subrogation and Endorsements.** In addition, the Board shall use reasonable efforts to secure insurance policies which name the Members, collectively, as additional insureds for claims arising in connection with the ownership, existence, use, or management of the Area of Common Responsibility and provide:

(i) A waiver of subrogation as to any claims against the Association's Board, Staff, officers, any manager, the Members, and their Licensees and Invitees;

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

(iii) An endorsement excluding Member's individual policies from consideration under any "other insurance" clause;

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

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

(vi) 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.

(d) Each Owner shall maintain property and casualty insurance on any structures located on such Owner's Lot which provides full replacement cost coverage, less a reasonable deductible. Upon the Association's request, an Owner shall provide the Association with a current certificate of insurance evidencing the insurance required in this **Section 12.1(d)**.

12.2 Casualty.

(a) In the event of damage or destruction to any part of the Area of Common Responsibility, any insurance proceeds shall be collected by and paid to the Association and such insurance proceeds, if sufficient to reconstruct or repair the damage in the estimation of the Board, shall be applied by the Association to such reconstruction and repair. If the insurance proceeds with respect to such damage or destruction are insufficient to repair and reconstruct the damaged or destroyed Area of Common Responsibility, as applicable, or if there are no insurance proceeds,

the Board shall levy a Special Assessment pursuant to the Governing Documents in the aggregate amount of such deficiency and shall proceed to make such repairs or reconstruction. Notwithstanding the foregoing, the Association shall not repair or reconstruct the damaged or destroyed Area of Common Responsibility if (i) such repair or reconstruction would be illegal under any local, state or federal law, or (ii) if within sixty (60) days after such damage or destruction (A) during the Declarant Control Period the Declarant elects not to rebuild, or (B) after the Declarant Control Period, the Board elects not to rebuild. If the Declarant or the Board elects not to rebuild as provided above, the Association shall demolish any destroyed or damaged Improvements, remove all debris and rubble caused by such demolition, and return the damaged or destroyed area to a sightly condition. The Board shall have the right to levy against and collect from the Members a Special Assessment for this limited purpose, if necessary. The Special Assessment provided for herein shall be a debt of each Member, and may be enforced and collected in the same manner as any assessment lien provided for in the Governing Documents.

(b) Subject to the terms of any Supplemental Declaration or governing document of a Sub-Association, in the event of damage or destruction of the Improvements located on any Lot or any part thereof (other than any Area of Common Responsibility which is governed by **Section 12.2(a)**), the Owner of such Lot shall, at its sole cost and expense, with due diligence, either (i) cause the damaged or destroyed Improvements to be repaired and restored to a condition comparable to that prior to the damage or destruction, or (ii) demolish the destroyed or damaged Improvements, in which event the rubble caused by such demolition shall be removed and the affected Lot graded and landscaped. If such repair or restoration or such demolition, debris removal, grading, and landscaping is not commenced within one hundred eighty (180) days from the date of such damage or destruction, or if the same is commenced but then abandoned for a period of more than ninety (90) days, the Association may initiate proceedings under **Article 10**, inclusive of fining the Owner until such repair or restoration or such demolition, debris removal, grading and landscaping is commenced or re-commenced, as the case may be, unless the Owner can prove to the satisfaction of the Board that such failure is due to circumstances beyond the Owner's control. All Construction Activity commenced under this **Section 12.2(b)** shall be subject to DRB review and approval, which will not be unreasonably withheld. In addition to the remedies available pursuant to **Article 10**, the Association, acting through the Board, may undertake demolition, grading, and landscaping of the affected Lot and charge the Owner for the costs thereof as a Default Assessment.

(c) In the event of damage or destruction to any part of a Special Benefits Amenity due to fire or other adversity or disaster, the casualty shall be handled in the same manner as detailed in **Section 12.2(a)** above, but that only those Members whose Lots are included in the applicable Special Benefits Area, together with the Declarant during the Declarant Control Period, are entitled to vote and are subject to any Special Assessment as applicable.

12.3 Condemnation.

(a) In the event an Area of Common Responsibility, 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 Member will be entitled to notice thereof, but the Association will act as attorney-in-fact for all Members 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 Members to be used as follows:

(i) If the taking involves a portion of the Area of Common Responsibility on which Improvements have been constructed, then, unless (A) restoration or replacement of such Improvements would be illegal under any state, local, or federal law or (B) within sixty (60) days after such taking (I) during the Declarant Control Period, Declarant elects not to restore or replace such Improvements, or (II) after the Declarant Control Period, the Board elects not to restore or replace such Improvements, the Association shall restore or replace such Improvements so taken on the remaining land included in the Area of Common Responsibility, to the extent lands are available therefor, in accordance with plans approved by the DRB and other 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 in the aggregate amount of such deficiency and shall proceed to restore or replace such Improvements. The Special Assessment provided for herein shall be a debt of each Member, and may be enforced and collected in the same manner as any assessment lien provided for in the Governing Documents.

(ii) If the taking does not involve any 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 Lot or any portion thereof (other than any Area of Common Responsibility which is governed by Section 12.3(a)) shall be taken, the condemnation award for such taking shall be paid solely to the Owner of such Lot. The repair or restoration of any Improvements located on such Lot which are affected by the taking shall be completed as if it were a casualty, in accordance with the terms of Section 12.2(b). If an entire Lot shall be condemned, the Owner thereof shall automatically cease to be a Member of the Association with respect to such Lot, but obligations arising prior to such taking shall remain the obligation of such Person regardless of the termination of Membership.

(c) In the event a Special Benefits Amenity, 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, the condemnation shall be handled in the same manner as detailed in Section 12.3(a) above, but that only those Members whose Lots are included in the applicable Special Benefits Area, together with the Declarant during the Declarant Control Period, are entitled to notice and the right to vote and are subject to any Special Assessment, as applicable.

Article 13 **Mortgagee Provisions**

13.1 Notices 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 or casualty loss of which the Association has notice and 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 Lot subject to the mortgage of such Eligible Holder. Such notice shall be given at least thirty (30) days prior to the foreclosure.

13.2 Written Request Requirements. 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.

13.3 Form of Notices. 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 e-mail.

13.4 Payment of Unpaid Assessment. Any mortgagee or other lienholder holding a lien on a Lot may pay any unpaid Assessment with respect to such Lot, together with any and all costs and expenses incurred with respect to the Assessment lien securing such unpaid Assessment.

Article 14

Jurisdiction, Annexation, and Withdrawal

14.1 Jurisdiction. The Property within the jurisdiction of the Association and subject to this Community Declaration and the Governing Documents as of the date hereof is described in **Exhibit A**. Property within the jurisdiction of the Association and subject to this Community Declaration is subject to all provisions of the Governing Documents. Pursuant to the provisions of this **Article 14**, other real property may be subjected to the jurisdiction of the Association and become part of the Property subject to this Community Declaration.

14.2 Expansion of Jurisdiction by the Declarant .

(a) During the Declarant Control Period, the jurisdiction of the Association and the Property subject to this Declaration may be expanded. Notwithstanding any other term herein, in relation to any annexation, the Declarant may modify the provisions of this Declaration in relation to applicable types of Assessments and applicable Assessment rates and amounts, in the Declarant's sole discretion, any such modifications to be set forth in a Supplemental Declaration.

(b) Any such annexation shall be effective upon the recording of such Supplemental Declaration, unless otherwise provided therein. Upon annexation, the owner or owners of the annexed property shall become Member(s) of the Association and will be subject to the Governing Documents and entitled to the rights and obligations of the Members as set forth in

the Governing Documents. The Association may in its sole discretion impose a fee to be paid by the owner(s) of the annexed property to defray any costs of annexation.

(c) Nothing in this Community Declaration shall be construed to require Declarant or any successor to subject additional property to this Community Declaration or to develop any of the property whatsoever.

14.3 Expansion of Jurisdiction by the Association.

(a) After the Declarant Control Period, the jurisdiction of the Association and the Property subject to this Declaration may be expanded by annexation of any real property, subject to the Affirmative Vote of a Majority. Such annexation shall be accomplished by recording in the Public Record a Supplemental Declaration describing the property being annexed, stating the results of the vote taken, and signed by the Association and the owner of the real property being annexed.

(b) Any such annexation shall be effective upon the recording of such Supplemental Declaration, unless otherwise provided therein. Upon annexation, the owner of the annexed property shall become a Member in the Association and will be subject to the Governing Documents and entitled to the rights and obligations of the Members as set forth in the Governing Documents. The Association, in its sole discretion, may impose a fee to be paid by the owner of the annexed property to defray any costs of annexation.

(c) Nothing herein shall be construed to require the Association to annex or develop any property whatsoever.

14.4 Withdrawal from Jurisdiction.

(a) Declarant, during the Declarant Control Period, and thereafter the Association, reserves the right to remove any property from the area subject to this Community Declaration, with the written consent of the Owner of such property. In the event such property is owned by the Association, only the written consent of a majority of the Board shall be required. Such withdrawal shall be accomplished by recording in the Public Record a Supplemental Declaration describing the property being withdrawn, stating the authority for withdrawal, and signed by Declarant during the Declarant Control Period, and thereafter by the Association, and applicable Owners.

(b) Prior to any withdrawal, all applicable Assessments that are owed to the Association must be paid or waived in writing by the Association. Any such withdrawal shall be effective upon the recording of such Supplemental Declaration, unless otherwise provided therein.

(c) This right of withdrawal during the Declarant Control Period is specifically reserved to Declarant.

14.5 Additional Covenants and Easements. During the Declarant Control Period, the Declarant may unilaterally subject any portion of the Property subject to this Community Declaration initially or by Supplemental Declaration to additional covenants and easements, including, without limitation, covenants obligating the Association to maintain and insure such

property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrently with or after the annexation of the subject property, and shall require the written consent of the Owner(s) of such property, if other than the Declarant.

Article 15 Amendment

15.1 Amendment.

(a) Amendment By Declarant. During the Declarant Control Period, Declarant may unilaterally amend this Declaration for any purpose, provided the amendment has no material adverse effect on the right of any Owner (or the consent of any such Owner is obtained). Notwithstanding the above, during the Declarant Control Period, Declarant may unilaterally amend this Declaration if such amendment is **(a)** necessary to bring any provision in compliance with any applicable governmental statutes, necessary governmental registrations, rule, regulation, or judicial determination; **(b)** necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots; **(c)** required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Lots; **(d)** necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots or to insure the Project or any portion thereof; **(e)** necessary to develop in accordance with the Plat; **(f)** otherwise necessary to satisfy the requirements of any governmental or quasi-governmental agency or to comply with the Community Association Governing Documents. However, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent thereto in writing.

(b) Amendment By Board. After the Declarant Control Period, the Board may unilaterally amend this Declaration if such amendment is **(a)** necessary to bring any provision in compliance with any applicable governmental statutes, necessary governmental registrations, rule, regulation, or judicial determination; **(b)** necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots; **(c)** 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 Lots; **(d)** necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots or to insure the Project or any portion thereof; **(e)** 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 **(f)** otherwise necessary to satisfy the requirements of any governmental or quasi-governmental agency.

(c) Amendment By Owners. After the Declarant Control Period, this Community Declaration may be amended by an Affirmative Vote of Sixty Percent (60%) of the Lots.

15.2 Application. Owners are on notice that by virtue of taking title to a Lot 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 of the MCA (2019) with regard to amendments duly adopted pursuant to this Article.

15.3 Plat Amendment. Declarant may unilaterally amend any subdivision plat without the additional consent of any Owner or the Board; provided, however, that nothing in this paragraph allows Declarant to replat the property underlying a Lot (*i.e.*, change a boundary line or platted easement under a Lot) without the consent of the Owner of such Lot.

15.4 Agreement Regarding Amendments. The Owners, the Community Association, lienholders, mortgagees, and all others acquiring any interest in or lien on the Lots, or any other portion of the Project shall be bound by the rights of Declarant to amend and supplement this Community Declaration and any subdivision Plat as set forth in this Community Declaration, including, without limitation, in connection with removal of property from this Declaration, reduction or increase in the number of Lots, and their consent to such amendments and supplements is implied and agreed to by the acceptance or acquisition of any interest in or lien on the Lots, or any other portion of the Project. Declarant is hereby appointed the Owners', Community Association's, lienholders', and mortgagees' agent and attorney-in-fact to execute and record such amendments, supplements, and related documents.

15.5 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 16

Miscellaneous

16.1 Effect of Provisions of Community Declaration. Each provision of this Community Declaration, and any agreement, promise, covenant, or undertaking to comply with each provision of this Community Declaration, and any necessary exception, reservation, or grant of title, estate, right, or interest to effectuate all easements, grants, and conveyances herein and all other provisions of this Community Declaration shall be deemed incorporated in each deed or other instrument by which any right, title, or interest in any real property within the Property is granted, devised, or conveyed, whether or not set forth or referred to in such deed or other instrument.

16.2 Interpretation of the Community Declaration. The Association, by and through its Board, shall have the exclusive right to construe and interpret the provisions of this Community Declaration, except for provisions expressly delegated to the DRB. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Board's construction or interpretation of the provisions hereof shall be final, conclusive, and binding as to all Persons and property benefitted or bound by the covenants and the provisions hereof.

16.3 Attorney's Fees. In the event suit or action is instituted for a declaration of rights hereunder or to enforce any of the provisions of this Community Declaration or the other

Governing Documents, the parties agree to pay to the prevailing party all reasonable costs, fees, and attorney's fees (as calculated on an hourly fee basis and not a contingency fee basis) and all costs of collection and enforcement, including, but not limited to, any appeals.

16.4 Limited Liability. None of Declarant, the Association, the DRB, or the Board, nor any member, agent, or employee of any of the same shall be liable to any party for any action or for any failure to act with respect to any matter if the action taken or failure to act was in good faith and without malice. Such parties shall additionally be entitled to indemnification to the extent required under applicable law or any Governing Document.

16.5 Disclaimer of Representations. Anything to the contrary in this Community Declaration notwithstanding, and except as otherwise may expressly be set forth on a Plat or other instrument recorded in the Public Record, Declarant makes no, and disclaims any and all, warranties or representations whatsoever that the Plat (as presently envisioned or as amended in the future) for the development of the Property can or will be carried out or that any real property now owned or hereafter acquired by Declarant is or will be subjected to this Community Declaration, or that any such land, whether or not it has been subjected to this Community Declaration, is or will be committed to or developed for a particular use, or that if such real property is once used for a particular use, that such use will continue in effect. No assurances are made regarding the preservation of views from any Lot or configuration, location, Lot type, or other aspect of the development in the vicinity of any Lot.

16.6 Successors and Assigns. Except as otherwise provided herein, this Community Declaration shall inure to the benefit of Declarant, the Association, and each Member, and shall be binding upon Declarant, the Association, each Member, any person or entity holding any interest in or operating on or using the Property, and their respective heirs, devisees, personal representatives, successors, and assigns.

16.7 Severability. A determination of invalidity of any one or more of the provisions or conditions hereof by judgment, order, or decree of a court shall not affect in any manner the other provisions hereof, which shall remain in full force and effect.

16.8 Captions. The captions and headings in this Community Declaration are for convenience only and shall not be considered in construing any provisions of this Community Declaration.

16.9 Gender. The use of the masculine gender in this Community Declaration shall be deemed to include the feminine and neuter genders and the use of the singular shall be deemed to include the plural, and *vice versa*, whenever the context so requires.

16.10 No Waiver. Failure to enforce any provisions of this Community Declaration shall not operate as a waiver of any such provision or of any other provision of this Community Declaration.

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IN WITNESS WHEREOF President of the Managing corporation to the Declarant (as sole owner of the Lots in the Association) executed this Community Declaration on the day and year first written above.

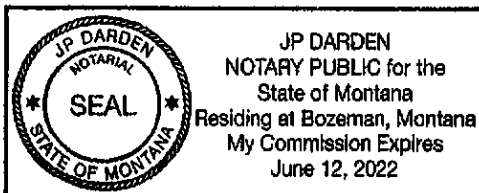
Bozeman Haus, LLC,
a Washington limited liability company
By: CP Manage, LLC,
a Montana limited liability company
Its: Manager
By: Cadius Partners Ltd.,
a Montana corporation
Its: Sole Member


By: Gregory J. Allen
Its: President

STATE of Montana)
County of Gallatin) : ss.

On this 9th day of November, 2020, before me, a Notary Public in and for said State, personally appeared Gregory Allen as the President of Cadius Partners Ltd., the sole member of CP Manage, LLC, a Montana limited liability company which is the Manager of Bozeman Haus, LLC, a Washington limited liability company and Declarant and acknowledged to me that he executed the same on behalf of the limited liability company pursuant to the power and authority vested in him.

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



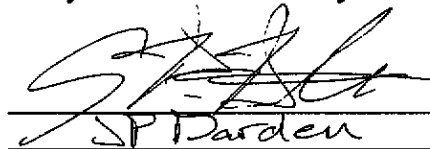

JP Darden [print name]
Notary Public for the State of Montana
Residing at: Bozeman, MT
My commission expires: 06/12/22 [mm/dd/yyyy]

Exhibit A**of the Declaration of Covenants, Conditions and Restrictions for
Gran Cielo Master Subdivision****LEGAL DESCRIPTION OF THE PROPERTY**

Tracts 3 & 4 and portions of Tract 1 of Certificate of Survey No. 2725, on record with the Gallatin County Clerk and Recorder located in the Northwest One-Quarter of Section 23, Township 2 South, Range 5 East, Principal Meridian Montana (P.M.M), Gallatin County, Montana, being more particularly described as follows:

Beginning at the northwest 1/16 corner of said Section 23, a Kerin aluminum cap; thence S 89°16'35" E a distance of 669.64' to an Allen aluminum cap; thence N 01°22'34" E a distance of 670.81' to an Allen aluminum cap; thence S 89°24'55" E a distance of 654.14' to an Allen aluminum cap; thence S 89°24'55" E a distance of 16.27' to a calculated point; thence S 01°27'30" W a distance of 92.27' to an Alpine aluminum cap; thence along a curve concave to the west 99.39', having a radius of 300.00', a central angle of 18°58'53", a chord length of 98.93' and a chord bearing of S 10°56'57" W, to an Alpine aluminum cap; thence along a curve concave to the northwest 74.00', having a radius of 300.00', a central angle of 14°07'58", a chord length of 73.81' and a chord bearing of S 27°30'22" W, to an Alpine aluminum cap; thence S 34°34'21" W a distance of 101.25' to an Alpine aluminum cap; thence along a curve concave to the southeast 173.39', having a radius of 300.00', a central angle of 33°06'51", a chord length of 170.98' and a chord bearing of S 18°00'55" W, to an Alpine aluminum cap; thence S 01°27'30" W a distance of 169.67' to an Alpine aluminum cap; thence S 01°27'30" W a distance of 189.86' to an Alpine aluminum cap; thence along a curve concave to the northeast 173.39', having a radius of 300.00', a central angle of 33°06'51", a chord length of 170.98' and a chord bearing of S 15°05'56" E, to an Alpine aluminum cap; thence S 31°39'21" E a distance of 101.25' to an Alpine aluminum cap; thence along a curve concave to the southwest 173.39', having a radius of 300.00', a central angle of 33°06'51", a chord length of 170.98' and a chord bearing of S 15°05'56" E, to an Alpine aluminum cap; thence S 01°27'30" W a distance of 415.87' to an Allen aluminum cap; thence S 01°27'30" W a distance of 280.46' to an Allied aluminum cap; thence S 01°27'30" W a distance of 45.06' to the Center 1/4 of said Section 23, a calculated point; thence N 88°56'35" W a distance of 667.72' to Allen aluminum cap; thence N 88°56'35" W a distance of 667.46' to Allen aluminum cap; thence N 01°17'45" E a distance of 1338.11' to the Point of Beginning, containing 48.813 acres, more or less.

SUBJECT to all easements of record or apparent from a visual inspection of the property.

Exhibit B

**of the Declaration of Covenants, Conditions and Restrictions for
Gran Cielo Master Subdivision**

CITY REQUIRED COVENANTS

1. Trees may not be located within 10 feet of sewer and water services. Sewer and water services must be shown on the landscaping plan of the park and open space plan, and approved by the Water/Sewer Superintendent.
2. All street trees must be installed pursuant to the City of Bozeman's planning regulations. Currently, the planting hole of any tree must be at least twice the diameter of the root ball. The root flare of the newly planted tree must be visible and above ground. There must be a mulch ring 3'-4' in diameter around each newly planted boulevard tree. Please check the current regulations for the current requirements before planning.
3. A property owners association shall be created for the entire property with the first platting so that all elements of common maintenance are included.
4. No basements or crawl spaces may be constructed within the subdivision.
5. The homeowner's association is responsible to maintain all stormwater facilities located in the common open space.

Exhibit C
of the Declaration of Covenants, Conditions and Restrictions for
Gran Cielo Master Subdivision

ASSESSMENTS

Article 1
Types of Assessments

1.1 Base Assessments.

(a) **Budget.** At least sixty (60) days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Association 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) **Rate.** The Base Assessment shall be levied equally against all Lots which are subject to the Base Assessment pursuant to this Declaration and shall be set at a level which is reasonably expected to produce total revenue for the Association equal to the total budgeted Association Expenses for the benefit of all Owners, including, without limitation, reserves ("**Base Assessment**"). In determining the level of Base Assessments, the Board, in its discretion, may consider other sources of funds (exclusive of Specific Assessments) available to the Association. In addition, the Board shall take into account the number of Lots subject to the Base Assessment on the first day of the fiscal year for which the budget is prepared and the number of Lots reasonably anticipated to become subject to Base Assessments during the fiscal year.

(c) **Notices.** The Board shall send a copy of the budget and notice of the amount of the Base Assessment 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. Such budget and assessment shall become effective unless disapproved at a meeting by at least fifty-one percent (51%) of the combined voting power of the Members of the Association, and, during the Declarant Control Period, the Declarant. There shall be no obligation to call a meeting of the Members for the purpose of considering the budget except on petition of the Membership as provided for special meetings in the Bylaws or, if the Bylaws are silent, the Act, which petition must be presented to the Board within ten (10) days after delivery of the budget and notice of the amount of the Base Assessments.

(d) **Failure to Approve Budget.** If the proposed budget 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.

1.2 Left Blank Intentionally.

1.3 Default Assessment. Notwithstanding anything to the contrary contained herein, if any cost or expense of the Association is caused by (a) the negligence or misconduct of a Member or a Member's family member, employee, agent, Licensee or Invitee, or (b) a violation of any covenant or condition of a Governing Document by a Member or a Member's family member, employee, agent, Licensee or Invitee, the Association may, if the Board deems necessary or advisable, levy a default Assessment against such Member. The Association may also, in the discretion of the Board, levy a default Assessment against any Lot to reimburse the Association for costs incurred in bringing the Lot into compliance with the provisions of the Governing Documents, provided the Association gives prior notice to the Owner and an opportunity for a hearing. Any such assessment levied by the Association pursuant to this **Section 1.3**, and each fine, penalty, fee, or other charge imposed upon a Member for the Member's violation of any covenant or condition of any Governing Document, are each referred to herein as a "**Default Assessment.**"

1.4 Special Assessment. The Association may levy "**Special Assessments**" from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Except as otherwise specifically provided in this Declaration, any Special Assessment for Association Expenses for the general benefit of all Owners shall require the Affirmative Vote of a Majority. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

1.5 Specific Assessments.

The Board shall have the power to specifically assess Association Expenses against Lots receiving benefits, items, or services not provided to all Lots within an area or within the Property that are incurred for the benefit of the Owner of a Lot or the Owners of Lots within a section of the Property for specific items or services relating to the Lot(s), as determined by the Board in good faith. All such assessments shall be "**Specific Assessments.**"

1.6 Special Benefits Area Assessment.

(a) **Amounts Included in Special Benefits Area Assessments.** Assessments in relation to Special Benefits Areas ("**Special Benefits Area Assessments**") shall be levied as follows. Each Special Benefits Area Budget (as defined below) shall include estimated expenditures for the following purposes: (i) to operate, manage, maintain, replace, rebuild and repair the Special Benefits Amenities and to defray the cost of services provided by or on behalf of the Association to Members whose Memberships are appurtenant to each Special Benefits Area, and (ii) to provide for reserves attributable to the Special Benefits Amenities. Such estimated expenditures shall include, but not be limited to, all charges, costs, and expenses whatsoever incurred by the Association for or in connection with the administration of the Special Benefits Amenity and Special Benefits Area, including, but not limited to; (A) any taxes and assessments assessed against the Special Benefits Amenities for which the Association is responsible; (B) insurance premiums, including fire and other casualty insurance, liability insurance, workman's compensation insurance, and other insurance obtained for the Special Benefits Amenities; (C)

payment of any liability of such Association for loss or damage arising out of or in connection with the Special Benefits Amenities or any fire, accident, or nuisance occurring within or in relation to the Special Benefits Amenities; **(D)** the cost of all utility services to the Special Benefits Amenities, including water, electricity, refuse removal, landscape maintenance services, and any other service attributable thereto; **(E)** the unpaid share of any Special Benefits Area Assessments levied during the previous fiscal year against Members who have defaulted in payment thereof, to the extent that the same becomes uncollectible; and **(F)** cleaning, janitorial and landscape care fees, and other necessary expenses of upkeep, maintenance, management and operation incurred with respect to the Special Benefits Amenities.

(b) Allocation of Special Benefits Area Assessments. The Special Benefits Area Assessments shall be levied against the Owners of each of the Lots within the applicable Special Benefits Area based on the same methodology as the Base Assessments are calculated that will result in assessments being equitably apportioned to all Lots within the Special Benefits Area.

(c) Procedure for Establishing Special Benefits Area Assessments. At such time as the Board meets for the purpose of preparing the proposed budget of the Association for the next succeeding fiscal year, the Board will also establish a budget for the expenses of each Special Benefits Amenity ("**Special Benefits Area Budget**"), which Special Benefits Area Budget will be distributed to the Owners of Lots located within the Special Benefits Area.

1.7 General Provisions. Any payment or report required hereunder to be made to the Association shall be deemed to have been made in a timely fashion if sent to the principal office of the Association by **(a)** first class U.S. mail, postage prepaid and postmarked no later than the date such payment or report is due, or **(b)** reputable overnight delivery service sent no later than the date such payment or report is due. The Association at its own expense shall have the right at any time during regular business hours to inspect and copy all records and to audit all accounts of any Member which are reasonably related to such Member's obligation hereunder to pay Assessments or make reports to the Association. The Board shall have the power to determine any matter and to resolve any dispute arising out of the application, determination, payment and collection of any Assessment or the making of any report provided for in this Declaration or any other Governing Document, and may promulgate such additional Rules and Regulations which are consistent with the provisions hereof as the Board may deem necessary, useful or appropriate to the reasonable and efficient administration of such provision.