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CITY OF BOZEMAN
PLANNING DEPARTMENT
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Shelley Vance-Gallatin Co MT MISC

**DECLARATION
OF THE
BAXTER MEADOWS CENTRAL CONDOMINIUMS**

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**DECLARATION
OF THE
BAXTER MEADOWS CENTRAL CONDOMINIUMS**

THIS DECLARATION is made on the date hereinafter set forth by Baxter Meadows Development LP, a Montana limited partnership, whose address is 6780 Trade Center Ave., Billings, MT 59108 (“**Declarant**”).

RECITALS

A. Declarant is the owner of certain real estate in Gallatin County, State of Montana, which is more particularly described as set forth in *Exhibit A* and/or *Exhibit C* attached hereto and by reference made a part hereof.

B. Declarant desires to create a Condominium Community on the real estate described in *Exhibit A* under the name of “Baxter Meadows Central Condominiums,” in which portions of the real estate described in *Exhibit A*, as amended and supplemented from time to time, will be designated for separate ownership and uses of a residential nature, and in which portions of the real estate described in *Exhibit A* are to become co-owned by the Unit Owners.

C. Declarant has caused the “Baxter Meadows Central Condominium Association, Inc.,” a Montana nonprofit corporation, to be incorporated under the laws of the State of Montana, as an owners' association, for the purpose of exercising the functions as herein set forth.

**ARTICLE 1.
SUBMISSION/NAMES/DEFINED TERMS**

Section 1.1 Submission of Property . The Declarant hereby submits the real estate described in *Exhibit A*, and such additional real property as may be subsequently added, pursuant to the expansion rights reserved in this Declaration, together with and subject to all easements, rights, and appurtenances thereto and the buildings and improvements erected or to be erected thereon (collectively, the “**Property**”), to the provisions of the Unit Ownership Act, § 70-23-101, *et seq.*, as it may be amended from time to time (the “**Act**”) and to the terms and conditions of this Declaration. In the event the Act is repealed, the Act on the effective date of this Declaration shall remain applicable. Declarant hereby declares that all of the Property described in *Exhibit A*, and as added by expansion, shall be held or sold, and conveyed subject to the following easements, restrictions, covenants, and conditions. Declarant further declares that this Declaration is made for the purpose of protecting the value and desirability of the Property, that this Declaration shall run with the Property and shall be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, legal representatives, successors, and assigns and shall inure to the benefit of each Unit Owner thereof.

Section 1.2 Name and Type. The type of common interest community is a Condominium Community. The name of the Community is “Baxter Meadows Central Condominiums.” The name of the Association is the “Baxter Meadows Central Condominium Association, Inc.”

Section 1.3 Property. The Community is located in Gallatin County, State of Montana. The initial Property of the Community is described in *Exhibit A*. All easements and licenses to which the Community is presently subject are recited in *Exhibit A*. Additional easements may be as allowed for under the Act. The Community may be subject to other easements or licenses granted pursuant to this Declaration, or granted by authority reserved in any recorded document or established in the Act.

Section 1.4 Defined Terms. Each capitalized term in this Declaration or in the Map shall have the meaning specified or as used in the Act, unless otherwise defined in this Declaration or the context requires otherwise:

- (a) “**Act**” shall mean the Unit Ownership Act, § 70-23-101, *et seq.*, as it may be amended from time to time.
- (b) “**Allocated Interests**” shall mean the undivided interest in the Common Elements, the Common Expense liability and the votes in the Association.
- (c) “**Architectural Review Committee**” or “**Committee**” or “**ARC**” means the committee initially established by the Declarant for the purpose of implementing the architectural review provisions of this Declaration and architectural guidelines for the Community to insure proper use, appropriate improvement, and harmonious additions, alterations and improvements within the Community.
- (d) “**Assessment**” shall include all Common Expense Assessments, insurance Assessments, utility Assessments, and any other expense levied to a Unit pursuant to this Declaration or the Act.
- (e) “**Association**” shall mean Baxter Meadows Central Condominium Association, Inc., a Montana nonprofit corporation, and its successors.
- (f) “**Common Elements**” shall mean the Property within this Community other than the Units, which portion of the Property shall be co-owned by the Owners and shall be as designated in a recorded Map and in this Declaration.
- (g) “**Common Expenses**” shall mean any expenditure made or a liability received by or on behalf of the Association, together with any allocations to reserves.
- (h) “**Community**” shall mean and refer to the Condominium Community of Baxter Meadows Central Condominiums, which Community is a Condominium Community as defined in the Act and which Condominium Community is also a common interest community.
- (i) “**Declarant**” shall mean the Declarant named in this Declaration, and any successor and/or assignee designated by written notice or assignment executed by the Declarant designated in this Declaration and executed by the transferee and recorded, to the extent any rights or powers reserved to Declarant are transferred or assigned to that party.
- (j) “**Development Rights**” or “**Special Declarant Rights**” shall mean those rights set forth in this Declaration and those rights, if any, set forth in the Act.

- (k) “**Eligible Holder**” shall mean a holder, insurer or guarantor of a first lien security interest who has delivered a written request to the Association containing its name, address, the legal description and the address of the Unit upon which it holds a security interest.
- (l) “**Executive Board,**” “**Board**” or “**Board of Directors**” shall mean the body, regardless of name, designated in this Declaration to act on behalf of the Association.
- (m) “**Garage Unit**” shall mean any Unit designated as a garage space or to be used as a garage space, as shown on the Map.
- (n) “**Governing Documents**” shall mean this Declaration, the plat and Map, the Articles of Incorporation, the Bylaws, and any Rules and Regulations of the Association, as all of the foregoing may be amended from time to time.
- (o) “**Improvement(s)**” shall mean structures installed within or upon a Unit.
- (p) “**Limited Common Elements**” shall mean those portions of the Common Elements, if any, designated by Declarant or the Association for the exclusive use of one or more but fewer than all of the Units.
- (q) “**Map**” shall mean the Condominium Map of Baxter Meadows Central Condominiums, which is an engineering survey (and any supplements and amendments thereto) of the Community depicting and locating thereon the location of the buildings, the Units, the Common Elements, the floors and elevations, and all of the land and improvements thereon, which Map is incorporated herein and made a part of this Declaration by reference.
- (r) “**Member**” shall mean and refer to those persons entitled to membership as provided in the Bylaws and as set forth herein.
- (s) “**Owner**” or “**Unit Owner**” shall mean the Declarant, or any other person or entity that owns a Unit.
- (t) “**Period of Declarant Control**” shall mean the period of time commencing on the date of recordation of this Declaration and expiring on the earlier of seven years thereafter, 60 days after conveyance of 75% of the Units that may be created or made subject to this Declaration, after conveyance of those Units to Owners other than Declarant, or a builder, two years after the last conveyance of a Unit by the Declarant or a builder in the ordinary course of business or two years after any right to annex property was last exercised; provided, however, that if the Period of Declarant Control has not terminated pursuant to the foregoing provisions, the Period of Declarant Control shall in any case terminate on the date upon which all property subject to annexation to the Community has become a part of the Community and the last Unit within the Community has been conveyed by the Declarant.
- (u) “**Property**” shall mean the property described in *Exhibit A*, and such additional property as may be subsequently added, pursuant to the expansion rights reserved in this Declaration, together with all easements, rights, and appurtenances thereto and the buildings and improvements erected or to be erected thereon. All easements and licenses which the Community is subject to as of the date of this Declaration are recited in *Exhibit A*.

(v) “**Rules and Regulations**” shall mean any instruments, however identified, which are adopted by the Association for the regulation and management of the Community or for clarification of the Governing Documents, including any amendment to those instruments.

(w) “**Unit**” shall mean a physical portion of the Community, designated for separate ownership, shown as a Unit on the recorded Map for the Community, the boundaries of which are defined in the Map and in this Declaration.

ARTICLE 2. EASEMENTS

Section 2.1 Utility, Map and Plat Easements. Easements for utilities and other purposes over and across the Units and Common Elements may be as shown upon a recorded plat and on the recorded Map of the Community, and as may be established pursuant to the provisions of this Declaration, or granted by or under the authority reserved in any recorded document.

Section 2.2 Easements for the Association and Unit Owners. Each Unit shall be subject to an easement in favor of the Association, acting through the Executive Board (including its agents, employees and contractors) and to each Unit Owner to allow for their performance of obligations in this Declaration. On exercising this easement right, the party exercising the right shall be responsible for any resulting damages, and a lien therefore is authorized and established against that party's property, pursuant to this Declaration. The Association shall have an easement to enter a Unit to inspect for events which may be causing waste of water, heat or any other utility provided by the Association or paid as a part of the Common Expenses. If the inspection reveals that the Owner has failed to maintain the Unit so as to prevent waste of common utility services provided for as a Common Expense, the Board shall follow the procedures provided for in this Section.

Section 2.3 Emergency Easements. A nonexclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons, now or hereafter servicing the Community, to enter upon any part of the Community in the performance of their duties.

Section 2.4 Utility Reservations. Declarant hereby creates and reserves to itself, until Declarant or any builder has sold the last Unit that may be created to an Owner other than Declarant, and, thereafter, to the Association, a blanket easement upon, across, over and under the Property, the Community and the Units for access, utilities, drainage and the installation, replacement, repair and maintenance of utilities, including but not limited to water, sewer, waste water treatment, effluent irrigation systems, gas, telephone, electricity and master television antenna or cable systems or subsequent utility as may be desired or provided. By virtue of this blanket easement, it shall be expressly permissible for Declarant or the Association to erect and maintain the necessary facilities, equipment and appurtenances on the Property and to affix, repair, and maintain landscaping, fencing, water, treated waste water, effluent irrigation and sewer pipes, gas, electric, telephone and television wires, circuits, conduits and meters, and such other improvements or facilities. If any utility or quasi-utility company furnishing a service covered by the general easement created herein requests a specific easement, a separate right and authority to grant such easement upon, across, over or under any part or all of the Property is reserved,





provided the easement granted does not conflict with the terms hereof. The easement provided for in this Section shall in no way affect, avoid, extinguish or modify any other recorded easement on the Property. Any damage to any improvement caused by Declarant or the Association in exercising its rights under this Section will be repaired promptly by the entity causing the damage. The foregoing, however, shall not be deemed to render the Association or Declarant liable for any damage caused by any third party, including, without limitation, any utility company.

Section 2.5 Unit Owners' Easements of Enjoyment . Every Unit Owner shall have a right and easement access to their Unit and of enjoyment in and to any Common Elements and Limited Common Elements appurtenant to such Owner’s Unit, and such easement shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

- (a) The right of the Association to promulgate and publish Rules and Regulations with which each Unit Owner and their tenants, invitees, licensees and guests shall strictly comply.
- (b) The right of the Association to suspend the voting rights and rights to use the Common Elements, including any recreational facilities, by a Unit Owner, after notice and the opportunity for a hearing, until cured or during any period of violation of any other provision of the Governing Documents, whichever is greater.
- (c) The right, power and authority of the Association to grant any easement, right-of-way, license, lease, dedication, transfer or conveyance or grant of any similar interest affecting the Common Elements.
- (d) The right of the Association to close or limit the use of the Common Elements while maintaining, repairing and making replacements in the Common Elements.
- (e) the right of the Board to impose reasonable membership requirements and charge reasonable membership admission or other fees for the use of any recreational facility situated upon the Common Elements and the right of the Board to permit use of any recreational facilities situated on the Common Elements by persons other than Owners, their families, lessees and guests upon payment of use fees established by the Board;
- (f) The Development and Special Declarant Rights of the Declarant reserved in this Declaration.

Section 2.6 Delegation of Use . Any Unit Owner may delegate their right of enjoyment to the Common Elements and facilities to the members of their family, their tenants, guests, or contract purchasers who reside at their Unit.

**ARTICLE 3.
THE ASSOCIATION**

Section 3.1 Membership. Every person who is a record Unit Owner of a fee interest in any Unit which is subject to this Declaration shall be a “Member” of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Unit. Ownership of such Unit shall be the sole qualification for such membership. Where more than one person holds an interest in any Unit, all such persons shall be Members.

Section 3.2 General Purposes and Powers of the Association. The Association, through its Executive Board, shall perform functions and manage the Community as provided in this Declaration so as to:

- (a) protect the value and desirability of the Community and the Units;
- (b) further the interests of the residents, occupants, tenants and guests of the Community and members of the Association;
- (c) foster a vibrant, responsive and competent Association; and
- (d) to promote a harmonious community and responsible leadership. Any purchaser of a Unit shall be deemed to have assented to, ratified and approved such designations and management. The Association shall have all power necessary or desirable to effectuate such purposes.

Section 3.3 Authority of the Association. The business affairs of the Community shall be managed by the Association. The Association shall be governed by the Act, this Declaration, the Map, its Articles of Incorporation and Bylaws, and any Rules and Regulations adopted by the Board of Directors. All corporate powers of the Association shall be exercised by or under the authority of the Executive Board, and the business and affairs of the Association shall be managed under the direction of the Executive Board. The Executive Board may, by written resolution, delegate authority to a manager or managing agent for the Association, provided no such delegation shall relieve the Executive Board of final responsibility.

Section 3.4 Allocated Interests.

- (a) The ownership interest, Common Expense liability and votes in the Association allocated to Units are as follows:
 - (i) the percentage of ownership interest of the Common Elements, based on the square footage of each Unit in the Community, including Garage Units;
 - (ii) the percentage of liability for Common Expenses, based on the square footage of each Unit in the Community, including Garage Units;
 - (iii) the number of votes in the Association, on an equal basis for each Unit in the Community. Garage Unit Owners shall be entitled to ½ vote for each Garage Unit owned
- (b) If any Unit is increased in size or reduced in size, the basis for allocating the above interests may be changed to the square footage of each Unit, at the discretion of the Declarant, within the time frame allowed in this Declaration for exercise of Reserved Development Rights.

(c) If Units of the same size are added to or withdrawn from the Community, pursuant to the provisions of this Declaration, the formulas set forth above, or then in use, shall be used to reallocate the Allocated Interests.

Section 3.5 Association Agreements. Any agreement for professional management of the Community must provide for termination by either party with or without cause and without payment of a termination fee or penalty upon 30 days' written notice. The Association shall not be bound either directly or indirectly to contracts or leases (including management contracts) entered into during the Declarant control period unless the Association is provided with a right of termination of any such contract or lease without cause, which is exercisable without penalty at any time after the turnover date upon not more than 30 days' notice to the other party thereto.

Section 3.6 Indemnification. To the full extent permitted by law, each officer, director, committee member or volunteer of the Association shall be indemnified by the Owners and the Association against all expenses and liabilities including attorney fees, reasonably incurred by or imposed upon them in any proceeding to which they may be a party, or in which they may become involved, by reason of being or having been an officer, director, committee member or volunteer of the Association, or any settlements thereof, whether or not they are an officer, director, committee member or volunteer at the time such expenses are incurred; except in such cases wherein such officer, director, committee member or volunteer is adjudged guilty of breaching his or her duty of care in the performance of his or her duties.

Section 3.7 Declarant Control. The Declarant shall have the reserved power, during the Period of Declarant Control, as defined in this Declaration, to appoint and remove officers and members of the Executive Board.

Section 3.8 Optional Audited Financial Statements. The Association may determine, or an agency may request, that the Association prepare and furnish within a reasonable time an audited financial statement or financial review of the Association for the immediately preceding fiscal year.

Section 3.9 Designated Association Agent for Service of Process. The Association's designated agent for service of process shall be its registered agent and registered officer, as maintained, from time to time, with the office of the Montana Secretary of State.

ARTICLE 4. Units, Common Elements and Limited Common Elements

Section 4.1 Number and Type of Units. The number of Units initially included in the Community is zero (0). Declarant reserves the right to create and add additional Units up to four hundred and sixty-three (463) Units or to the maximum number of Units for the properties subject to this Declaration as allowed by any governmental entity having jurisdiction. Units shall be constructed of wood or steel framing, or of brick, mortar, and or masonry, or of any combination thereof. The condominium buildings shall consist of one or more stories and shall not have basements.

Section 4.2 Identification of Units/Unit Descriptions. The identification of each Unit is shown on the Map. Every contract for sale, deed, lease, security interest, will or other legal instrument shall legally describe a Unit by its identifying Unit number, followed by the name of the Community, with reference to the Map and the Declaration. An illustrative description is as follows:

Condominium Unit ____, Baxter Meadows Central Condominiums, according to the Declaration recorded _____, 20__, at Reception No. _____ and the Condominium Map recorded in Book ____, Page ____ of the records of the Clerk and Recorder, Gallatin County State of Montana, with use of the Unit restricted as provided for in the Declaration, and with the allocated interests as provided for in the Declaration (as amended of record).

Reference to the Declaration and Map in any instrument shall be deemed to include any supplement(s) or amendment(s) to the Declaration and Map, without specific references thereto.

Section 4.3 Unit Maintenance Covenant.

- (a) Unit Owners are responsible for the maintenance, repair and replacement of the Improvements and properties located within their Unit boundaries which are not specifically the obligation of the Association to maintain, replace and keep in good repair, including exteriors of windows and doors of their Unit.
- (b) Each Unit, at all times, shall be kept well maintained, in good repair and condition, and in a clean, sightly, and wholesome condition.
- (c) No bicycles, boats of any kind, sport or recreational equipment, trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber, building materials or any item or personal property or other items found by the Association to be objectionable to the Association shall be permitted to remain exposed upon or within any Unit, or, upon or within the Limited Common Elements, balcony, patio or deck of a Unit, or otherwise, so that the same are visible from any neighboring Unit, or any street.
- (d) The Association, and its agents, after 30 days notice to the Unit Owner, shall have the authority to enter, replace, maintain, repair and clean up Units which do not conform to the provisions of this Section, and to charge and collect from the Unit Owners thereof all reasonable costs related thereto as an Assessment hereunder.
- (e) The Board, upon written resolution, shall have the authority to require all Owners to do any act or perform any work involving portions of the Community which are the Owner's maintenance responsibility, which will, in the Board's sole discretion, conserve common utilities.

Section 4.4 Unit Boundaries.

(a) The following are designated as boundaries of each Unit, as defined below and as depicted on the Map:

(i) Upper Boundaries. The horizontal plane of the unfinished lower surface of the ceilings, extended to an intersection with the vertical perimeter boundaries. Space above ceilings to which access is needed for repair and maintenance of the Unit and Common Elements above the Unit are Limited Common Elements to the Unit.

(ii) Lower Boundaries. The horizontal plane of the undecorated or unfinished upper surfaces of the floors, extended to an intersection with the vertical perimeter boundaries.

(iii) Vertical Perimeter Boundaries. The planes defined by the interior unfinished surface of all perimeter walls, the exterior unfinished surface of doors to the Common Elements, the exterior surface of closed exterior windows and doors, areas depicted on the Map as a deck or patio area of a Unit, and the vertical planes indicated by boundary lines as shown on the plat or Map.

(b) Garage Unit Boundaries. The following are designated as the boundaries of each Garage Unit, as defined below and depicted on the Map:

(i) Upper Boundaries. The horizontal plane of the unfinished lower surface of the ceilings, extended to an intersection with the vertical perimeter boundaries.

(ii) Lower Boundaries. The horizontal plane of the undecorated finished upper surfaces of the garage floor extended to an intersection with the vertical perimeter boundaries.

(iii) Vertical Perimeter Boundaries. The places defined by the boundary lines shown on the Map between or as a part of each garage space, including perimeter walls of areas depicted on the Map as finished inner surfaces of poured concrete or other exterior walls or an outside unfinished surface of a wall.

(c) Inclusions. Each Unit includes the spaces and improvements lying within the boundaries described above, as depicted on the Map. Each Unit may also include a garage, the spaces and improvements containing utility meters water heating facilities, all electrical switches, wiring, pipes, ducts, conduits, smoke detector or security systems and communications, television, telephone and electrical receptacles and boxes serving that Unit exclusively, the surface of these items being the boundaries of that Unit, whether or not the spaces are contiguous.

(d) Exclusions. Except when specifically included by other provisions of this Declaration or by the Map, the following are excluded from each Unit: the spaces and improvements lying outside the boundaries described above, support walls, the exterior finished surface of the building in which Units are located, exterior street or common lighting, and any chutes, pipes, flues, ducts, wires, conduits, skylights and other facilities running through or within any interior wall or partition for the purpose of furnishing utility and other service to other Units and the Common Elements.

(e) Noncontiguous Portions. Certain Units may include special portions or pieces of equipment, such as air conditioning compressors, utility meters, meter boxes, utility connection structures, air or gas pump and storage facilities and storage portions, which are situated in buildings or structures that are detached from the Unit. Such special equipment or storage portions are a part of the Unit, notwithstanding their non-contiguity with the principal portions. Each Unit includes the spaces and improvements lying within the boundaries described above, and also includes the utilities and utility meters and communications, television, telephone and electrical receptacles and boxes serving that Unit exclusively, whether or not in the boundaries or contiguous to the Unit, unless the same are maintained by a governmental agency or entity. The Common Elements are excluded from each Unit and any utilities or other facilities running through or within any Unit for the purpose of furnishing utility and other service to other Units and/or the Common Elements are also excluded.

Section 4.5 Mold. Each Owner shall be required to take necessary measures to retard and prevent mold from accumulating in the Unit, and the Common Elements, including but not limited to appropriate climate control, removal of visible moisture accumulation on windows, window sills, walls, floors, ceilings and other surfaces and cleaning of the same. No Owner shall block or cover any heating, ventilation or air conditioning ducts. Owners shall immediately notify the Board in writing of the following: (a) any evidence of water leaks, water infiltration or excessive moisture in a Unit; (b) any evidence of mold that cannot be removed by the Owner with a common household cleaner; (c) any failure or malfunction in heating, ventilation or air conditioning; (d) any inoperable doors, windows, heating, ventilation or air conditioning ducts. The receipt of notice by the Association shall not create any additional Association maintenance responsibility other than those set forth in this Declaration. Owners shall be responsible for any damage to his or her Unit and personal property, to any other Unit or the Common Elements, as well as any injury to the Owner or occupants resulting from the Owner's failure to comply with this section. Owners shall be responsible for all costs and expenses incurred by the Board to remove mold and/or damage within his or her Unit, to any other Unit or to the Common Elements if the Owner fails to meet the requirements of this Section.

Section 4.6 Inspection, Repair and Replacement of Designated Owner Maintenance Components. The Board of Directors may, from time to time and after providing the Owners notice and the opportunity for comment, determine that certain portions of Units required to be maintained by Owners, or certain objects or appliances within the Units, pose a particular risk of damage to other Units and to the Common Elements if they are not properly inspected, maintained, repaired or replaced.

Section 4.7 Maintenance and Insurance Chart. As a Common Expense, the Association may periodically cause to be prepared a chart summarizing the repair, replacement, maintenance and insurance obligations of Owners and the Association, as outlined in this Declaration. Such repair, replacement, maintenance and insurance chart shall be provided to all Owners.

Section 4.8 Association Maintenance.

(a) The Executive Board of the Association shall determine the specifications, scope, extent, nature and parameters of the Association's maintenance responsibilities.

(b) The Association shall be responsible for:

(i) the improvement, maintenance, repair, upkeep and reconstruction, and replacement of the Common Elements;

(ii) the improvement, maintenance, repair, upkeep, reconstruction, replacement and operation of the main water and sewer lines which serve more than one Unit;

(iii) the provisions of common water and common sewer;

(iv) trash removal;

(v) snow clearing;

(vi) the maintenance, repair, and replacement of certain designated perimeter fences and perimeter landscaping;

(vii) the maintenance, repairs, upkeep, reconstruction and replacement of the storm drainage channels, water quality measures and storm sewers constructed as part of the Community, unless an agreement with a governmental authority provides otherwise;

(viii) for the payment of expenses which may be incurred by virtue of maintenance, repair or replacement as set forth on the recorded plat and final development plan, agreement with or requirement of any local governmental authority, Gallatin County or other government authorities; and

(viii) for operational expenses of the Association.

(c) The Association shall have right, but not the obligation, to install water, electricity or other commonly provided utility conservation devices (including, but not limited to, toilets and shower heads) as a Common Expense of the Association and to

require Owners to maintain such devices. If the Association installs such equipment as a Common Expense and the utility provider has a rebate program, the Association shall be entitled to the rebate.

Section 4.9 Common Elements. The real estate described in the initial Map are the initial Common Elements.

Section 4.10 Limited Common Elements.

- (a) In the event a Common Expense is associated with the maintenance, repair or replacement of a Limited Common Element, those Common Expenses may be assessed equally against the Units to which the Limited Common Element is assigned.
- (b) The following portions of the Common Elements are Limited Common Elements assigned to the Units as stated:
- (i) If a chute, flue, pipe, duct, wire, conduit, bearing wall, bearing column or other fixture lies partially within and partially outside the designated boundaries of a Unit, the portion serving only the Unit is a Limited Common Element, allocated solely to the Unit, the use of which is limited to that Unit and any portion serving more than one Unit is a Limited Common Element to those Units and any portion serving only the Common Elements is a part of the Common Elements;
 - (ii) Any shutters, awnings, window boxes, doorsteps, stoops, porches, decks, balconies, patios, entry foyers and exterior doors and windows or other fixtures designed to serve less than all Units, located outside the boundaries of the Unit, are Limited Common Elements allocated exclusively to the Unit and their use is limited to that Unit;
 - (iii) Stoops, steps and walls above door openings at the entrances, which provide access to less than all Units, the use of which is limited to the Units to which they provide access;
 - (iv) Walks, fences, walls and hedges which jointly serve or lie within the boundary plane of more than one Unit or within the boundary plane of a Unit and the Common Elements shall be considered Limited Common Elements appurtenant to the Units enclosed or served; and
 - (v) Utility areas, the use of which is limited to a Unit or Units.
- (c) The Association may modify Limited Common Elements without a membership vote, but only with consent of the Owner(s) to whose Unit(s) the Limited Common Element is appurtenant.

ARTICLE 5.
Covenant For Common Expense Assessments

Section 5.1 Creation of Association Lien and Personal Obligation to Pay Common Expense Assessments. Declarant, for each Unit, shall be deemed to covenant and agree, and each Unit Owner, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association annual Common Expense Assessments, insurance Assessments (assessed in proportion to risk); utility Assessments (assessed in proportion to usage), and such other Assessments as imposed by the Association. Such Assessments, including fees, charges, late charges, attorney fees, fines and interest charged by the Association shall be the personal obligation of the Unit Owner of such Unit at the time when the Assessment or other charges became or fell due. The Association annual Common Expense Assessments and such other Assessments as imposed by the Association, including fees, charges, late charges, attorney fees, fines and interest charged by the Association, shall be a charge on each Unit and shall be a continuing lien upon the Unit against which each such Assessment or charge is made. If any Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment becomes due. The personal obligation to pay any past due sums due the Association shall not pass to a successor in title unless expressly assumed by them. No Unit Owner may become exempt from liability for payment of Assessments by waiver of the use or enjoyment of the Common Elements or by abandonment of the Unit against which Assessments are made. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted by any reason including, without limitation, any claim that the Association or the Executive Board is not properly exercising its duties and powers under this Declaration.

Section 5.2 Apportionment of Common Expenses. Except as provided in this Declaration, all Common Expense Assessments shall be assessed against all Units in accordance with formulas for liability for the Common Expenses as set forth in this Declaration.

Section 5.3 Annual Assessment/Commencement of Common Expense Assessments. The Common Expense Assessment may be made on an annual basis against all Units and shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such Assessment year. The budget may be submitted to the Unit Owners for ratification pursuant to the Bylaws, as the Bylaws may be amended from time to time. If submitted, the budget may be vetoed by votes of Owners representing a majority of the votes in the Association. Common Expense Assessments shall be due and payable in monthly, quarterly, or annual installments, or in any other manner, as determined by the Executive Board. Common Expense Assessments shall be prorated from the date of closing in which conveyance of the first Unit to a Unit Owner other than the Declarant occurs. The omission or failure of the Executive Board to levy the Assessment for any period shall not be deemed a waiver, modification or a release of the Unit Owners from their obligation to pay.

Section 5.4 Special Assessments. In addition to other authorized Assessments, the Association may levy Special Assessments from time to time to cover previously unbudgeted expenses or expenses in excess of those budgeted, including, without limitation, the costs of any

construction, restoration, or unbudgeted repairs or replacements of capital improvements that are not covered by the general reserve fund. Except as provided for in this Section, no Special Assessment proposed by the Association shall be levied until a budget including such Special Assessment is submitted to the Unit Owners for ratification pursuant to the Bylaws, as the Bylaws may be amended from time to time. The budget may be vetoed by votes of Owners representing a majority of the votes in the Association. During the Period of Declarant Control, any proposed Special Assessment shall also require Declarant's consent. Special Assessments may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. The Board shall have the right to require that Special Assessments be paid in advance of the provision of the subject services or materials.

Section 5.5 Effect of Non-Payment of Assessments. Any Assessment, charge or fee provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid within 10 days after the due date thereof, as established by the Executive Board, shall bear interest at the rate established by the Executive Board, on a per annum basis from the due date, and the Association may assess a reasonable late charge thereon as determined by the Executive Board. Failure to make payment within 60 days of the due date thereof shall cause the total amount of such Unit Owner's Common Expense Assessment for the remainder of that fiscal year to become immediately due and payable at the option of the Board. The Board may, in its discretion, unilaterally reverse its prior action under this Section, thereby returning to the original payment schedule, at which point, the Member's annual Assessment for that fiscal year shall no longer be immediately due and payable. Further, the Association may bring an action at law or in equity, or both, against any Unit Owner personally obligated to pay such overdue Assessments, charges or fees, or monthly or other installments thereof, and may also proceed to foreclose its lien against such Unit Owner's Unit. An action at law or in equity by the Association against a Unit Owner to recover a money judgment for unpaid Assessments, charges or fees, or monthly or other installments thereof, may be commenced and pursued by the Association without foreclosing, or in any way waiving, the Association's lien therefor. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent Assessment, charges or fees, or monthly or other installments thereof, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Unit at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, vote the Association votes appurtenant to ownership thereof, convey or otherwise deal with the same. If a foreclosure action is filed to foreclose any Assessment lien, and a Unit Owner abandons or leaves vacant his or her Unit, the Board may take possession and rent said Unit or apply for the appointment of a receiver for the Unit without prior notice to the Unit Owner. The rights of the Association shall be expressly subordinate to the rights of any holder of a first lien security interest as set forth in its deed of trust or mortgage (including any assignment of rents), to the extent permitted under the Act.

Section 5.6 Assignment of Rents. If a Unit is rented by its Owner, the rent is hereby pledged and assigned to the Association as security for the payment of all Assessments due by that Owner to the Association. If the Assessments owed by the Owner of a rented Unit are more than 30 days delinquent, the Board may collect, and the occupant or lessee shall pay to the Board, the rent for any Unit owned by the delinquent Owner, or that portion of the rent equal to the amount due to the Association; provided, however, the lessee need not make such payments to the

Association in excess of or prior to the due date for monthly rental payments unpaid at the time of the Board's request. The Association shall send notice to the Owner by any reasonable means at least 10 days prior to initiating the collection of rent from the Owner's occupant or lessee. The occupant and/or lessee shall not have the right to question the Board's demand for payment. Payment by the occupant or lessee to the Association will satisfy and discharge the occupant or lessee's duty of payment to the Owner for rent, to the extent of the amount paid to the Association. No demand or acceptance of rent under this Section shall be deemed to be a consent or approval of the Unit rental or a waiver of the Owner's obligations as provided in the Declaration. The Board shall not exercise this power where a receiver has been appointed with respect to a Unit or Owner; nor in derogation of the exercise of any rights to rents by a holder of a first lien security interest of a Unit. If an occupant or lessee fails or refuses to pay rent to the Association as provided for in this Section, the Association shall have the right to bring an action for unlawful detainer for non-payment of rent under Montana statutes, and the costs and attorney's fees incurred by the Association in connection with that action shall be collectable from the occupant or lessee in that action, and from the Owner of the Unit in the same manner as any other Assessment under this Declaration.

Section 5.7 Lien Priority. The lien of the Association under this Section is prior to all other liens and encumbrances on a Unit except: (1) liens and encumbrances recorded before the recordation of the Declaration; (2) a first lien security interest on the Unit (if allowed by the Act with regard to the limited lien priority allowed to the Association); and (3) liens for real estate taxes and other governmental assessments or charges against the Unit. This Section does not affect the priority of mechanics' or materialmen's liens. The lien of the Association under this Article is not subject to the provision of any homestead exemption as allowed under state or federal law. Sale or transfer of any Unit shall not affect the lien for said Assessments or charges except that sale or transfer of any Unit pursuant to foreclosure of any first lien security interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the lien of Assessment charges as provided by applicable state law. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Unit from continuing liability for any Assessment charges thereafter becoming due, nor from the lien thereof..

Section 5.8 Working Fund. The Association or Declarant shall require every Unit Owner of a Unit (other than Declarant) to make a non-refundable payment to the Association in an amount equal to one-fourth (1/4) of the annual Common Expense Assessment against that Unit in effect at the closing thereof, which sum shall be held, without interest, by the Association as a working fund. Said working fund shall be collected and transferred to the Association at the time of closing and shall be for the use and benefit of the Association, of the initial sale by Declarant of each Unit, as aforesaid, and shall be for the use and benefit of the Association. Such payment shall not relieve a Unit Owner from making regular payments of Assessments as the same become due.

Section 5.9 Owner's Negligence or Misconduct. In the event that the need for maintenance, repair, or replacement of the Common Elements, or any portion thereof, is caused through or by the negligent or willful act or omission or misconduct of an Owner, or the Owner's agents, employees, guests, customers, or invitees, including, but not limited to, damage from water overflowing from a tub, hot water heater leaks, or water damage from a washing machine,



dishwasher or hose, then the expenses, costs, and fees incurred by the Association for such maintenance, repair, or replacement shall be a personal obligation of such Owner. If such expenses, costs, and fees incurred by the Association are not repaid to the Association within seven days after the Association shall have given notice to the Owner of such expenses, costs, and fees, then the failure to so repay shall be a default by the Owner under the provisions of this Declaration. Such expenses, costs, and fees shall automatically become a default Assessment determined and levied against such Unit, and the Association may proceed in accordance with the applicable provisions of Article 5 hereof.

Section 5.10 Assignment of Assessments. The Association shall have the power to assign its right to future income, including the right to assign its right to receive Common Expense Assessments, but only upon the affirmative vote of a majority of the Unit Owners present and voting, in person or by proxy, at a meeting duly called for that purpose.

ARTICLE 6.
Covenants and Restrictions on Use, Alienation and Occupancy

Section 6.1 Restrictions and Covenants of this Declaration. The Units shall also be subject to the following restrictions and covenants. The strict application of the following limitations and restrictions in any specific case may be modified or waived, in whole or in part, by the Executive Board or by an appropriate committee (subject to review by the Executive Board) if such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing or must be contained in written guidelines or rules. The following use restrictions are also subject to the Development Rights and Special Declarant Rights reserved by the Declarant.

Section 6.2 Leasing and Occupancy Restrictions and Covenants. Any Unit Owner shall have the right to lease or allow occupancy of a Unit upon such terms and conditions as the Unit Owner may deem advisable, subject to restrictions of record and the terms of this Declaration. All leases or rental agreements shall be for a minimum period of six months, shall be in writing and shall include contact information for both the Owner and tenant, a copy of which shall be delivered to the Executive Board or the Association's managing agent prior to the effective date of the lease, and shall provide that the lease or rental agreement is subject to, and that the tenant agrees to, the terms of this Declaration, the Bylaws of the Association, the Articles of Incorporation and the Rules and Regulations of the Association. All leases and rental agreements of Units shall state that the failure of the tenant, renter or guest to comply with the terms of the Declaration or Bylaws of the Association, Articles of Incorporation or the Rules and Regulations of the Association shall constitute a default of the lease or rental agreement and of this Declaration and such default shall be enforceable by either the Association or the landlord, or by both of them. All occupants of a Unit shall be subject to the right of the Association to remove and/or evict the occupant for failure of the occupant to comply with the terms of the Declaration, Bylaws, Articles of Incorporation or the Rules and Regulations of the Association. If the Association requests that the Owner evict the Owner's tenant based on the terms of this Declaration, and the Owner fails to commence such action within 30 days of the date of the Association's request and notice, the Association may commence eviction proceedings. Upon failure by the Owner to comply with the Association's request to evict, the Owner has delegated and assigned to the Association, acting through the Board, the power and

authority to evict the lessee as attorney-in-fact on behalf of and for the benefit of the Owner. If the Association evicts the lessee, any costs, including, but not limited to, reasonable attorney fees actually incurred and court costs associated with the eviction shall be an Assessment and lien against the Unit. Except as restricted in this Declaration, and such Rules and Regulations as the Association may promulgate, the right to lease or allow occupancy of a Unit shall not be restricted.

Section 6.3 Units to be Maintained. Unit Owners are responsible for the maintenance, repair and replacement of the properties located within their Unit boundaries as more fully provided for in other sections of this Declaration.

Section 6.4 Restrictions on Animals and Pets. Pets, including cats, dogs, birds, reptiles, or other household animals, hereinafter for brevity termed "animal," may be kept, maintained or harbored in a Unit, *if* the number of pets is limited to two (2), and *if* the animal is not a nuisance to other Owners or occupants. No Owner or resident shall maintain any animal which, in the sole discretion of the Board, is considered to be a danger to the Owners, management staff or occupants in the Community or is otherwise considered to be a dangerous breed, as may be further defined in the Rules and Regulations. If an animal is deemed a nuisance, the Owner or person having control of the animal shall be given a written notice to correct the problem. If not corrected, that Owner, upon a second written notice, will be required to remove the animal from the Community pursuant to, and in accordance with, any dispute resolution procedures as may be set forth in this Declaration or the Rules and Regulations, if any. The written notices provided for in this Section shall be issued by the authorized representative of the Association or, if there is no authorized representative then by one or more of the members of the Board of Directors of the Association. Animals may not be kept for any commercial purposes. Animals are not permitted in the recreational areas. When on the Common Elements, animals must be on a leash and under the control of the Owner of the animal. Feces left by animals upon the Common Elements, or in any Unit, must be removed promptly by the owner of the animal or the person responsible for the animal. Animals shall not be allowed to defecate or urinate on any patio or balcony in the Community. Owners shall hold the Association harmless from any claim resulting from any action of their animals.

Section 6.5 Antennae Restrictions and Covenants. Exterior television, satellite or other antenna are allowed only to the extent expressly permitted under applicable federal statutes or regulations ("Permitted Antennas"). Permitted Antennas shall be installed in the least conspicuous location available on the Unit which permits acceptable signals, without unreasonable delay or increase in the cost of installation, maintenance or use of the Permitted Antenna. The Association may adopt rules regarding location and installation of Permitted Antennas, subject to limitations of applicable federal law. Except as allowed by federal statutes and regulation, no exterior television or any other antennae, microwave dish, satellite dish, satellite antenna, satellite earth station or similar device of any type shall be erected, installed or maintained on a Unit.

Section 6.6 Nuisances. No nuisance shall be permitted within the Community, nor any use, activity or practice which is the source of unreasonable annoyance or embarrassment to, or which unreasonably offends or disturbs, any Unit Owner or which may unreasonably interfere with the peaceful enjoyment or possession of the proper use of a Unit or Common Element, or any portion of the Community by Unit Owners. Further, no immoral, improper, offensive or unlawful use shall be permitted within the Community or any portion thereof. All valid laws, ordinances and



regulations of all governmental bodies having jurisdiction over the Community or a portion thereof shall be observed. As used herein, the term "nuisance" shall not include any activities of Declarant or its assignees which are reasonably necessary to the development and construction of Improvements within this Community; *provided, however*, that such activities shall not reasonably interfere with any Unit Owner's use and enjoyment of their Unit, or any Unit Owner's ingress and egress to or from their Unit or a public way.

- (a) Articles of clothing and furnishing shall not be air-dried using exterior clothes lines nor hung over balconies, such that such articles are visible to residents within the Association.
- (b) Holiday decoration must be removed or made invisible no later than 30 days after the date of the respective holiday.

Section 6.7 Vehicular Parking, Storage, and Repair Restrictions and Covenants.

- (a) Vehicular parking upon the Common Elements and Limited Common Elements shall be regulated by the Board of Directors.
- (b) Each parking area may be subject to designation of individual spaces as a Limited Common Element appurtenant to certain designated Units. Parking designated as visitor or guest parking shall not be used by Owners or their family members residing with them. All other parking spaces shall be used by the Owners for self-service parking purposes on a "first come, first served" basis; *provided, however*, that no Owner shall park more than one (1) vehicle (owned or leased by such Owner, a member of his or her family or occupant of his or her Unit) on the Common Element parking spaces without the prior written consent of the Board of Directors. While any buildings under construction or completed are owned by Declarant, use of the parking spaces adjacent to that building may be restricted to Declarant's use for construction and sales purposes.
- (c) The following vehicles may not be parked or stored within the Community, unless such parking or storage is parked in a garage or Garage Unit or is authorized in writing by the Executive Board of the Association: oversized vehicles, trailers, camping trailers, boat trailers, hauling trailers, boats or accessories thereto, self-contained motorized recreational vehicles, or other oversized types of vehicles or equipment as prohibited by rule or regulation. Any such oversized vehicle may be parked as a temporary expedience (for up to four hours) for loading, delivery of goods or services, or emergency. Overnight parking of these vehicles is prohibited. This restriction shall not apply to trucks or other commercial vehicles temporarily located within the Community which are necessary for construction or for the maintenance of the Common Elements, Units, Limited Common Elements or any Improvement located thereon.
- (d) No abandoned or inoperable automobiles or vehicles of any kind shall be stored or parked within the Community. An "abandoned or inoperable vehicle" shall be defined by Montana statutes governing inoperable or abandoned vehicles on public streets, or as defined by rule or regulation adopted by the Executive Board of the Association. In the event that the Association shall determine that a vehicle is an abandoned or inoperable vehicle, then a written notice describing said vehicle shall be personally mailed to the Unit Owner thereof

or shall be conspicuously placed upon the vehicle. If the abandoned or inoperable vehicle is not removed within 72 hours after providing such notice, the Association shall have the right to remove the vehicle, and the owner thereof shall be solely responsible for all towing and storage charges.

(e) No activity such as, but not limited to, repair, rebuilding, dismantling, repainting, or servicing of any kind of vehicle, trailer or boat, may be performed or conducted in the Community, unless conducted inside of a garage and out of site of the Community.

(f) Garages, Garage Units and designated parking spaces (designated as a part of a Unit, a Limited Common Element or as a part of Common Elements) are restricted to use for access or as a parking space for vehicles.

(g) The conversion or alteration of garages or Garage Units into living areas, storage areas, work shop areas, or any other modification or alteration of the garages or Garage Units which would hinder, preclude or prevent the parking of the number of vehicles for which the garage or Garage Unit was originally designed is prohibited, without the written consent of the Architectural Review Committee and the Association.

(h) Parking in fire lanes (as designated by the Association or as designated by local government or a local fire protection authority) shall not be permitted.

Section 6.8 Use of Common Elements. There shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements without the prior written approval of the Association. Nothing shall be altered on, constructed in, or removed from the Common Elements without the prior written approval of the Association.

Section 6.9 Restrictions on Annoying Lights, Sounds, Odors and Holiday Decorations. No light shall be emitted from any portion of the Community which is unreasonably bright or causes unreasonable glare, and no sound or odor shall be emitted from any portion of the Community which would reasonably be found by others to be noxious or offensive. Without limiting the generality of the foregoing, no exterior spot lights, searchlights, speakers, horns, whistles, bells or other light or sound devices shall be located or used on any portion of the Community except with the prior written approval of the Executive Board. Holiday and seasonal decorations must be removed within 30 days of such holiday or such other time as determined by the Board.

Section 6.10 No Hazardous Activities. No activity shall be conducted on any portion of the Community which is or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any portion of the Community and no open fires shall be lighted or permitted on any portion of the Community.

Section 6.11 Compliance with Insurance Requirements. Except as may be approved in writing by the Executive Board, nothing shall be done or kept on the Community which may result in a material increase in the rates of insurance or would result in the cancellation of any insurance maintained by the Association.

Section 6.12 No Unsightliness. All unsightly conditions, structures, facilities, equipment, objects and conditions shall be enclosed within an approved structure.



Section 6.13 Restriction on Signs and Advertising Devices. No sign, poster, billboard, advertising device or display of any kind shall be erected or maintained anywhere within the Community except such sign or signs as may be approved in writing by the Executive Board.

Section 6.14 No Restrictions on Sale of a Unit. The right of a Unit Owner to sell, transfer or otherwise convey their Unit shall not be subject to any right of first refusal or similar restriction and such Unit may be sold free of any such restrictions.

Section 6.15 No Restrictions on Mortgaging of a Unit. There are no restrictions on the right of the Unit Owners to mortgage or otherwise encumber their Unit. There is no requirement for the use of a specific lending institution or particular type of lender.

Section 6.16 Restrictions on Structural Alterations and Exterior Improvements. No structural alterations to any Unit or any Common or Limited Common Elements shall be done by any Owner, without the prior written approval of the Architectural Review Committee and Association. No Improvement to the exterior of a building which includes a Unit or to the Common Elements or to any landscaping shall be constructed, erected, placed or installed within the Community unless complete plans and specifications thereto shall have been first submitted to and approved in writing by the Architectural Review Committee and Association.

Section 6.17 Plat Restrictions. The restrictions, if any, included on the plat for the Property are incorporated herein by this reference.

Section 6.18 Rules and Regulations. In furtherance of the provisions of this Declaration, and the general plan, Rules and Regulations concerning and governing the Community or any portion thereof may be adopted, amended, or repealed from time-to-time by the Executive Board, or its successors and assigns. The Executive Board may establish and enforce penalties for the infraction thereof.

Section 6.19 Declarant's Use. Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible for Declarant, its assigns, employees and agents, to perform such reasonable activities, and to maintain upon portions of the Community such facilities as deemed reasonably necessary or incidental to the construction and sale of Units in the development of the Community, specifically including, without limiting the generality of the foregoing, the maintenance of temporary business offices, storage areas, trash bins, construction yards and equipment, signs, model units, temporary sales offices, parking areas and lighting facilities.

Section 6.20 Use of the Words Baxter Meadows Central Condominiums and Baxter Meadows Central Condominium Association, Inc. No resident shall use the words Baxter Meadows Central Condominiums or Baxter Meadows Central Condominium Association, Inc. or the logo of the Community or Association, if any, or any derivative thereof, in connection with any goods, materials or services, the use of which is likely to cause confusion, mistake or deception as to the source or origin of such goods, materials or services, without the prior written consent of the Association.

ARTICLE 7.
DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS

Section 7.1 Development Rights and Special Declarant Rights.

(a) The Declarant reserves, through seven years after the recording of this Declaration, the following Development Rights and Special Declarant Rights:

- (i) the right to redesignate uses, to relocate boundaries between adjoining Units, enlarge Units, enlarge the Common Elements, reduce or diminish the size of Units, reduce or diminish the size of areas of the Common Elements, subdivide Units or complete or make improvements, as the same may be indicated on Maps or plats filed of record or filed with the Declaration;
- (ii) to designate portions of Common Elements as a part of a Unit or as a Limited Common Element to a Unit;
- (iii) the right to create or construct additional Units, Common Elements and Limited Common Elements, to subdivide Units and to convert Units into Common Elements or to convert Common Elements into Units;
- (iv) the right to add Units and to subject all or any part of the property described in *Exhibit C* and *Exhibit D* attached hereto and hereby incorporated by reference upon the substantial completion of improvements on any portion of that property;
- (v) the right to amend the use restrictions included in this Declaration, together with the right to add new use restrictions;
- (vi) the right to withdraw all or any part of the Property from the Community, provided portions of the Property included within a building cannot be withdrawn once a Unit in that building has been conveyed;
- (vii) the right to make amendments to the Declaration or other Governing Documents to meet or comply with any requirements of FHA or VA;
- (viii) the right to exercise any development rights reserved or allowed in the Act;
- (ix) the right to use, and to permit others to use, easements through the Common Elements, as may be reasonably necessary;
- (x) the right to merge or consolidate the Community with another Community;
- (xi) the right to appoint or remove any officer of the Association or any Director during the Declarant Control period;
- (xii) the right to exercise any additional reserve right created by any other provision of this Declaration;
- (xiii) the right to amend the Declaration in connection with the exercise of any development right; and
- (xiv) The right to amend the Maps or plat in connection with the exercise of any development right.



(b) As to the properties described in *Exhibit C* and *Exhibit D*, Declarant makes no assurances concerning the construction, building types, architectural style and/or size of Units as may be created; *provided, however*, that the quality of construction will be consistent with the improvements constructed on the property described in *Exhibit A*.

(c) Subsequent to the initial Property and Improvements made subject to this Declaration, any additional buildings, structures and types of Improvements to be placed on the Property or any part thereof may be of such quality and type as the persons developing the same may determine, and those Improvements need not be of the same quality or type as the Improvements previously constructed on the Property, nor of the same size, style or configuration. The Improvements may be located anywhere in the Common Elements of the Community, the same being reserved for future development, or on the additional Property as may be added or as shown on the Map.

Section 7.2 Additional Reserved Rights. In addition to the rights set forth above, Declarant also reserves the following additional rights:

(a) *Sales*. The right to maintain mobile and other sales offices, parking lots, management offices and models in Units or on the Common Elements.

(b) *Signs*. The right to maintain signs and advertising on the Community, to advertise the Community or other communities developed or managed by or affiliated with the Declarant.

(c) *Dedications*. The right to establish, from time-to-time, by dedication or otherwise, public streets, utility and other easements for purposes including, but not limited to, public access, access paths, walkways, drainage, recreation areas, parking areas, ducts, shafts, flues, conduit installation areas, and to create other reservations, exceptions and exclusions.

(d) *Use Agreements*. The right to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair, maintenance or regulations of parking and/or recreational facilities and/or Common Elements, which may or may not be a part of the Community.

(e) *Construction Easement*. Declarant and its assignees expressly reserve the right to perform warranty work, and repairs and construction work, and to store materials in secure areas, in Units and in Common Elements, and the future right to control such work and repairs and the right of access thereto, until completion. All work may be performed without the consent or approval of any Unit Owner or holder of a security interest. Declarant and its assignees have such an easement through the Common Elements as may be reasonably necessary for exercising reserved rights in this Declaration. Such easement includes the right to construct underground utility lines, pipes, wires, ducts, conduits, and other facilities across the Property.

(f) *Access Easement*. Declarant and its successors and assigns shall have an access easement to and from and real property accessible through the Community.

(g) *Other Rights*. The right to exercise any additional reserved right created by any other provision of this Declaration.

Section 7.3 Rights Transferrable/Rights Transferred. Any rights created or reserved under this Article or the Act for the benefit of Declarant may be transferred to any person by an instrument describing the rights transferred recorded in the real property records of Gallatin County. Such instrument shall be executed by the transferor Declarant and the transferee. Any rights created or reserved under this Article or the Act for the benefit of Declarant may also be transferred to the Association by an instrument describing the rights transferred recorded in the real property records of Gallatin County. Such instrument shall be executed by the transferor Declarant and the Association as transferee.

Section 7.4 No Further Authorizations Needed. The consent of Unit Owners or holders of security interests shall not be required for exercise of any reserved rights, and Declarant or its assignees may proceed without limitation at its sole option. Declarant or its assignees may exercise any reserved rights on all or any portion of the property in whatever order determined. Declarant or its assignees shall not be obligated to exercise any reserved rights or to expand the Community beyond the number of Units initially submitted.

Section 7.5 Amendment of the Declaration or Map. If Declarant or its assignees elect to exercise any reserved rights, that party shall comply with applicable provisions of the Act.

Section 7.6 Interpretation. Recording of amendments to the Declaration and the Map or plat pursuant to reserved rights in this Declaration shall automatically effectuate the terms and provisions of that amendment. Further, such amendment shall automatically (a) vest in each existing Unit Owner the reallocated Allocated Interests appurtenant to their Unit, and (b) vest in each existing security interest a perfected security interest in the reallocated Allocated Interests appurtenant to the encumbered Unit. Further, upon the recording of an amendment to the Declaration, the definitions used in this Declaration shall automatically be extended to encompass and to refer to the Community as expanded and to any additional Improvements, and the same shall be added to and become a part of the Community for all purposes. All conveyances of Units after such amendment is recorded shall be effective to transfer rights in all Common Elements, whether or not reference is made to any Amendment of the Declaration Map. Reference to the Declaration and Map in any instrument shall be deemed to include all Amendments to the Declaration, and the Map without specific reference thereto.

Section 7.7 Construction. Subsequent to the initial Property and improvements made subject to this Declaration, any additional buildings, structures and types of improvements to be placed on the Property or any part thereof may be of such quality and type as the persons developing the same may determine, and those improvements need not be of the same quality or type as the Improvements previously constructed on the Property, nor of the same size, style or configuration. The improvements may be located anywhere in the Common Elements of the Community, the same being reserved for future development, or on the additional Property as may be added or as shown on the Map.

Section 7.8 Termination of Reserved Rights. The rights reserved to Declarant, for itself, its successors and assigns, shall expire as set forth above or in the Act, unless (i) reinstated or extended by the Association, subject to whatever terms, conditions, and limitations the Executive

Board may impose on the subsequent exercise of the expansion rights by Declarant, (ii) extended as allowed by law or, (iii) terminated by written instrument executed by the Declarant, recorded in the records of the Clerk and Recorder of Gallatin County, State of Montana.

Section 7.9 Additions by Others. Additions of Units to the Community may be made by others than the Declarant, upon approval of the Association pursuant to a vote of a majority of a quorum of its members and upon approval of 2/3 of the Eligible Holders of first lien security interests. Such approval by the members and Eligible Holders of first lien security interests shall be evidenced by a certified copy of such resolution of approval and a supplement or amendment to this Declaration, both recorded in records of the Clerk and Recorder of Gallatin County, State of Montana.

**ARTICLE 8.
MODIFICATIONS TO UNITS**

Section 8.1 Alterations of Units or Limited Common Elements Without a Change in Allocated Interests or Boundaries of a Unit. Subject to the requirements of any prior approval of the DRB under the Master Declaration, Owners shall have the right, with written approval from the Board, and subject to the provisions of this Article, to make the following alterations to their Units or Limited Common Elements:

- (a) Interiors. Owners have the right to make any improvements or alterations to the interior of his or her Unit as provided for in this Article.
 - (i) Decoration of Unit. The rights and restrictions in this Article shall not be construed to restrict a Member's right to decorate his or her Unit as he or she should so determine; provided, however, that to the extent such decoration is visible from the exterior of any Unit and detracts, in the reasonable judgment of the Board, from the aesthetic or architectural integrity of the Community, the Member may be required to undertake such reasonable measures as the Board may determine to eliminate such detraction.
 - (ii) Nonstructural and Structural Interior Alterations. The rights and restrictions in this Article shall not be construed to restrict a Member's right to move, remove, alter or change any interior, nonstructural wall or partition, or change the use and/or designation of any room within his or her Unit; provided, however, that such change shall not affect the structural integrity of the Community or mechanical or utility systems of the Community. No structural alterations to any Unit or any Common or Limited Common Elements shall be done by any Owner, without the prior written approval of the Association.
 - (iii) Adjoining Units. Owners have the right, after acquiring an adjoining Unit or an adjoining part of an adjoining Unit, to remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a Common Element, all as provided for in this Article.

- (b) Exteriors. Owners have the right to make improvements or alterations to the exterior Limited Common Element balcony, patio or deck area, as provided for in this Article and with approval of at least 67% of the votes in the Association, and approval by the Architectural Review Committee.
- (c) Limitations. Rights of Owners under the prior provisions are limited by the following restrictions:
- (i) General Restriction. The alterations and modifications can not impair the structural integrity, electrical systems, mechanical systems, utilities, lessen the support of any portion of the Community, enclose a Limited Common Element as improved interior space or as a part of a Unit or violate any of the provisions of this Article.
 - (ii) Exterior Changes. No balcony, porch, garden or yard enclosure, awning, screen, sign, banner or other device, and no exterior change, addition, structure, projection, decoration or other feature shall be erected, applied to, placed upon or attached to any Unit, or any part thereof or upon any Common or Limited Common Elements without, in each instance, written approval of the Association.
 - (iii) Painting and Decals. No painting, attaching of decals or other decoration shall be done on any exterior part or surface of any Unit, or on the interior surface of any window without written approval of the Association, except for holiday decorations, displays, flags and/or signs, which shall be expressly allowed, subject to the Board's discretion.
- (d) Application and Approval Requirements. All changes allowed for under the above authority may only be made by the Owners of those Units, as applicant, after application to and approval by the Architectural Review Committee and Association. The application and approval process shall include at least the following:
- (i) Signatures. The signatures of all of the Owners of the Units that are proposed to have changes must be on the application;
 - (ii) Representations. The Owners must represent and warrant that the proposed modifications do not affect the structural integrity, electrical systems, mechanical systems, utilities, lessen the support of any portion of the Community or violate any of the provisions of this Article;
 - (iii) Contents of the Application. The application must contain at least the following:
 - (1) evidence sufficient to the Board that the applicant has complied with and/or will comply with all local rules and ordinances and that the proposed changes do not violate the terms of any document evidencing a security interest of a lender in any of the applicant's Units;



- (2) all necessary and proper permits and approvals from the appropriate governmental authorities have been or will be obtained;
 - (3) proof that the contractor(s) of the Owner is/are licensed and adequately insured; and
 - (4) such other information as may be reasonably requested by the Association.
- (iv) Agreement May Be Required. The Board may require the Owner's written agreement (in the form required by the Association) providing for the following:
- (1) for the Owner to be responsible, now and/or in the future, for any structural deficiencies or problems, electrical deficiencies or problems, mechanical structural integrity, electrical systems, utility or mechanical deficiencies or problems or problems associated with a lessening of support of any portion of the Community, or for violations of any of the provisions of this Article, all as may reasonably be determined by the Association;
 - (2) for the Owner's agreement to be responsible for ongoing maintenance, repair, replacement and improvement of any or all of the proposed additions/modifications of the Owner. The Association may require Owners to be responsible for all or some of the maintenance, repair, replacement and improvement of the proposed modifications;
 - (3) for the Owner's payment of the fees and costs of the Association, together with a deposit against fees and costs which the Association will incur in reviewing and effectuating the application, in an amount reasonably estimated by the Board, in advance of any billing for costs and expenses of the Association;
 - (4) for reasonable advance notice by the Owner for the work to be performed, from the Owner or from the Owner's contractor; and
 - (5) satisfaction of all conditions as may be reasonably imposed by the Board.

Section 8.2 Alterations of Units or Limited Common Element Balconies With a Requested Change in Allocated Interests or the Boundaries of a Unit. Subject to the requirements of any prior approval of the DRB under the Master Declaration, and subject to the provisions of this Article, the following changes may be made, after application to the Association by the Owners of those Units and written approval by the Association:

- (a) Boundary Change. Boundaries between adjoining Units may be changed as provided for in this Article.

(b) Conversion of Limited Common Element to Unit. Boundaries of a Unit, to include a former Limited Common Element balcony or deck on which an Owner has been approved to make alterations (as provided for in this Section of this Article), may be changed, as provided for in this Article and with approval of at least 67% of the votes in the Association.

(c) Limitations. No relocation of boundaries between adjoining Units shall be effected without the necessary amendments to the Declaration and Map, as provided for in this Article with those amendments, executed and recorded by the Association.

(d) Application and Approval Requirements. The Owners of the Units, as the applicant, must submit an application to the Association, which must be approved by the Association before the Owner proceeds, including all of the criteria set forth above and the following additional items set forth below and must also enter into an agreement with the Association, including the items set forth above:

(i) Re-allocations. The proposed reallocation of interests, if any, which may include a re-allocation of Common Expense liability, to account for an increase in size to the Unit or Units of the Owner, if sought by the applicant or required by the Association; and

(ii) Forms of Amendments. The proposed form for amendments to this Declaration, including the Map, as may be necessary to show the altered boundaries, and their dimensions and identification.

Section 8.3 Reply and Communication. The Association shall reply to all submittals of plans made in accordance with this Article in writing within 60 days after receipt. In the event the Association fails to take any action on submitted plans and specifications within 60 days after the Association has received the plans and specifications, approval shall be deemed denied. Yet, the Owner shall have a right of appeal to the Association. All communications and submittals shall be addressed to the Association at such address as is the registered address for the Association as maintained with the office of the Montana Secretary of State.

Section 8.4 Maintenance Responsibilities. For all modifications made to a Unit by an Owner, whether made under the authority and with the approvals under this Article, or whether made previously or without approvals required under this Article, the Owner shall be responsible for maintenance, repair and replacement of all modifications unless the Association expressly assumes any of those responsibilities in writing.

Section 8.5 Fees and Costs. Owners shall be obligated to pay all fees and costs incurred by the Association in reviewing and effectuating an Owners's application, whether by deposit, or subsequent invoice from the Association.

**ARTICLE 9.
INSURANCE/CONDEMNATION**

Section 9.1 Insurance to be Carried by the Association. The Association shall obtain and maintain in full force and effect, to the extent reasonably available and at all times, the insurance coverage set forth herein and as may be set forth in the Act, which insurance coverage shall be provided by financially responsible and able companies duly authorized to do business in the State of Montana commencing not later than the time of the first conveyance of a Unit to a person other than Declarant, or the first occupancy of a Unit.

Section 9.2 Hazard Insurance on the Units and Common Elements. The Association shall obtain adequate hazard insurance covering loss, damage or destruction by fire or other casualty to the improvements, installed or made to Units and to the Common Elements and the other property of the Association. Insurance obtained on the Units is not required to include improvements and betterments installed by Unit Owners. If coverage purchased by the Association includes improvements and betterments installed by Unit Owners, the cost thereof shall be assessed to each Unit in proportion to risk. All blanket hazard insurance policies shall contain a standard non-contributory mortgage clause in favor of each holder of first lien security interests, and their successors and assigns, which shall provide that the loss, if any thereunder, shall be payable to the Association for the use and benefit of such holders of first lien security interests, and their successors and assigns, as their interests may appear of record in the records of the office of the Clerk and Recorder of Gallatin County, State of Montana. If obtainable, the Association shall also obtain the following and any additional endorsements deemed advisable by the Executive Board: (a) an Inflation guard endorsement, (b) a Construction Code endorsement, (c) a demolition cost endorsement, (d) a contingent liability from operation of building laws endorsement, (e) an increased cost of construction endorsement, and/or (f) any special PUD endorsements.

Section 9.3 Liability Insurance. The Association shall obtain adequate comprehensive policy of public liability and property damage liability insurance covering the Common Elements in such limits as the Board may determine from time-to-time, but not in any amount less than \$1,000,000 per injury, per person, and per occurrence, and in all cases covering all claims for bodily injury or property damage. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other uses of the Community. All liability insurance shall name the Association as the insured. If there are steam boilers in operation on the Community, or if the Community has central heating or cooling, there must be in force boiler explosion and machinery coverage insurance providing for not less than \$1,000,000 per accident, per location. Additionally, for such times, if any, as the Declarant has the reserved development right to expand the Community by adding additional Units, the Declarant shall purchase, at Declarant's expense, an additional general liability insurance policy for the benefit of the Association, existing Unit Owners and existing holders of first lien security interests.

Section 9.4 Fidelity Insurance. The Association shall obtain adequate fidelity coverage or fidelity bonds to protect against dishonest acts on the parts of its officers, directors, trustees and employees and on the part of all others who handle or are responsible for handling the funds of the Association, including persons who serve the Association with or without compensation. The fidelity coverage or bonds should be in an amount sufficient to cover the maximum funds that will be in the control of the Association, its officers, directors, trustees and employees.

Section 9.5 Worker's Compensation and Employer's Liability Insurance. The Association shall obtain worker's compensation and employer's liability insurance and all other similar insurance with respect to its employees in the amounts and forms as may now or hereafter be required by law.

Section 9.6 Officers' and Directors' Personal Liability Insurance. The Association shall obtain officers' and directors' personal liability insurance to protect the officers and directors from personal liability in relation to their duties and responsibilities in acting as officers and directors on behalf of the Association.

Section 9.7 Other Insurance. The Association may obtain insurance against such other risks, of similar or dissimilar nature, including flood insurance, as it shall deem appropriate with respect to the Association responsibilities and duties.

Section 9.8 Miscellaneous Terms Governing Insurance Carried by the Association. The Association shall maintain, to the extent reasonably available, insurance policies with the following terms or provisions:

- (a) All policies of insurance shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of a Unit Owner and shall provide that such policies may not be canceled or modified without at least 30 days' prior written notice to all of the Unit Owners, holders of first lien security interests and the Association.
- (b) If requested, duplicate originals of all policies and renewals thereof, together with proof of payments of premiums, shall be delivered to all holders of first lien security interests at least 10 days prior to the expiration of the then-current policies.
- (c) All liability insurance shall be carried in blanket form, naming the Association, the Board, the manager or managing agent, if any, the officers of the Association, the Declarant, holders of first lien security interests, their successors and assigns and Unit Owners as insureds.
- (d) Prior to obtaining any policy of casualty insurance or renewal thereof, pursuant to the provisions hereof, the Board may obtain an appraisal from a duly qualified real estate or insurance appraiser, which appraiser shall reasonably estimate the full replacement value of the Units and the Common Elements, without deduction for depreciation, review any increases in the cost of living, and/or consider other factors, for the purpose of determining the amount of the insurance to be effected pursuant to the provisions hereof. In no event shall any casualty insurance policy contain a co-insurance clause for less than 100% of the full insurable replacement cost.



(e) Unit Owners may carry and are advised to carry other insurance on the Improvements and personal property in their Unit for their benefit and at their expenses, provided that the liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished by reason of any such insurance carried by Unit Owners and provided, further, that the policies of insurance carried by the Association shall be primary, even if a Unit Owner has other insurance that covers the same loss or losses as covered by policies of the Association. In this regard, Declarant discloses that the Association's insurance coverage, as specified hereunder and under the Act, does not obviate the need for Unit Owners to obtain insurance for their own benefit.

(f) All policies of insurance shall provide that the insurance thereunder shall be invalidated or suspended only in respect to the interest of any particular Unit Owner guilty of a breach of warranty, act, omission, negligence or non-compliance of any provision of such policy, including payment of the insurance premium applicable to the Unit Owner's interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy, but the insurance under any such policy, as to the interests of all other insured Unit Owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect.

Section 9.9 Insurance Premium. Except as assessed in proportion to risk, insurance premiums for the above provided insurance shall be a Common Expense to be included as a part of the annual Assessments levied by the Association.

Section 9.10 Managing Agent Insurance. The manager or managing agent, if any, shall be adequately insured for the benefit of the Association and shall maintain and submit evidence of such coverage to the Association. The Association may indemnify its managing agent, except for that agent's intentional acts or omissions or negligence outside the scope of their duties and obligations to the Association, or outside of direction from or of the Association.

Section 9.11 Waiver of Claims Against Association. As to all policies of insurance maintained by or for the benefit of the Association and Unit Owners, the Association and the Unit Owners hereby waive and release all claims against one another, the Board and Declarant, to the extent of the insurance proceeds available, whether or not the insurance damage or injury is caused by the negligence of or breach of any agreement by and of said persons.

Section 9.12 Annual Insurance Review. The Board shall review the insurance carried by and on behalf of the Association at least annually, for the purpose of determining the amount of insurance required.

Section 9.13 Adjustments by the Association. Any loss covered by an insurance policy described above shall be adjusted by the Association, and the insurance proceeds for that loss shall be payable to the Association and not to any holder of a first lien security interest. The Association shall hold any insurance proceeds in trust for the Association, Unit Owners and holders of first lien security interests as their interests may appear. The proceeds must be distributed first for the repair or restoration of the damaged property, and the Association, Unit Owners and holders of first lien

security interest are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored.

Section 9.14 Claims. The Board may, in its discretion, choose to submit a claim under the Association's insurance policy. If a claim is submitted, the payment of the deductible amount for claims which the Association is responsible for insuring shall be as follows:

(a) The Association shall pay or absorb said deductible for any work, repairs or reconstruction for damage incurred to Common Elements or an area for which the Association has a maintenance responsibility, or for damage to Common Elements or any area which the Association maintains that originates in the Common Elements or an area that the Association maintains, or for damages to the Common Elements or an area which the Association maintains which originates from natural causes, unless said damage is caused by the negligent or willful act or omission of an Owner, his family, guests, or invitees.

(b) The Owner shall pay or absorb said deductible for any loss that would be the responsibility of the Owner in the absence of insurance and any deductible assessed against the Owner pursuant to subsection (a) above.

(c) If a Unit is damaged, then the Owner of that Unit or the Owners sharing the Party Wall shall have primary responsibility, either directly or through his insurance company, for handling and paying for, any work, repairs, reconstruction or replacement.

Section 9.15 Duty to Repair. Any portion of the Community for which insurance is required under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association or Unit Owner, at the Unit Owner's option as to whether the repair is done by the Association or the Unit Owner, except as provided or allowed for in the Act.

Section 9.16 Condemnation and Hazard Insurance Allocations and Distributions. In the event of a distribution of condemnation proceeds or hazard insurance proceeds to the Unit Owners, the distribution shall be as the parties with interests and rights are determined or allocated by record and also by any applicable provisions of the Act.

Section 9.17 Insurance Assessments. If the proceeds of insurance are not sufficient to defray the costs of reconstruction and repair due to deductibles allocated to the Association or failure of the Association to maintain coverage to defray costs of repair and reconstruction which in the absence of insurance would be the maintenance responsibility of the Association, the deductible or additional cost shall be a Common Expense. This Assessment shall not be considered a special Assessment as discussed in this Declaration and shall not require any vote of the Owners.

Section 9.18 Payment of Claims to Delinquent Owners. Notwithstanding anything to the contrary herein, in the event of an insured loss under the Association's master hazard insurance policy for which the Association receives from the insurer payment for a loss sustained by an Owner who is delinquent in the payment of Assessments owed to the Association under this Declaration, then the Association may retain and apply such proceeds to the delinquency. Any surplus remaining after application of the proceeds to any delinquency shall be paid by the Association to the affected Owner.



ARTICLE 10.
SPECIAL RIGHTS OF HOLDERS OF FIRST LIEN SECURITY INTERESTS

Section 10.1 General Provisions. The provisions of this Article are for the benefit of holders, insurers, or guarantors of holders of first lien security interests recorded within the Community. To the extent applicable, necessary or proper, the provisions of this Article apply to both this Declaration and to the Articles and Bylaws of the Association. A holder, insurer or guarantor of a first lien security interest who has delivered a written request to the Association containing its name, address, the legal description and the address of the Unit upon which it holds a security interest shall be considered an "Eligible Holder." Eligible insurers and guarantors of a first lien security interest shall have the same rights as Eligible Holder.

Section 10.2 Special Rights. Eligible Holders shall be entitled to: (a) timely written notice from the Association of any default by a mortgagor of a Unit in the performance of the mortgagor's obligations under this Declaration, the Articles of Incorporation, the Bylaws or the Rules and Regulations, which default is not cured within 60 days after the Association learns of such default; (b) examine the books and records of the Association during normal business hours; (c) receive a copy of financial statements of the Association, including any annual audited financial statement; (d) receive written notice of all meetings of the Executive Board or Members of the Association; (e) designate a representative to attend any such meetings; (f) written notice of any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; (g) written notice of abandonment or termination of the Association of the plan contemplated under this Declaration; (h) thirty (30) days' written notice prior to the effective date of any proposed, material amendment to this Declaration, the Articles of Incorporation, or the Bylaws; (i) thirty (30) days' written notice prior to the effective date of termination of any agreement for professional management of the Association or the Common Elements, when professional management had been required previously under the legal documents for the Community or by an Eligible Holder; and (j) immediate written notice as soon as the Association receives notice or otherwise learns of any damage to the Common Elements or to the Unit on which the Eligible Holder holds a security interest, if the cost of reconstruction exceeds \$20,000 and as soon as the Association receives notice or otherwise learns of any condemnation or eminent domain proceedings or other proposed acquisition with respect to any portion of the Common Elements or any Units.

Section 10.3 Special Approvals. Unless at least 67% of the Eligible Holders of first lien security interests (based on one (1) vote for each mortgage owned) of Units in the Association and requisite Unit Owners have given their written approval, neither the Association nor any Member shall (a) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements or any improvements thereon which are owned, directly or indirectly, by the Association (except that the granting of access easements, utility easements, drainage easements and water facilities easements or easements for other public purposes consistent with the intended use of such Property by the Association shall not be deemed within the meaning of this provision); (b) change the method of determining the obligations, Assessments or other charges which may be levied against Members or the method of allocating distributions of hazard insurance policy proceeds or condemnation awards; (c) by act or omission change, waive or abandon any scheme or regulation, or enforcement thereof, pertaining to architectural approval of improvement of Units, including the architectural design of the exterior appearance of Units, or the upkeep of the Common



Elements; (d) fail to maintain the casualty, fire and extended coverage insurance as elsewhere provided in this Declaration; (e) use hazard insurance proceeds for losses other than the repair, replacement or reconstruction of the improvements which were damaged or destroyed; (f) take action to terminate the legal status of the Community after substantial destruction or condemnation occurs; (g) amend any material provision of this Declaration; and (h) establish self-management by the Association when professional management has previously been required by the legal documents for the Community or by an Eligible Holder. An amendment shall not be deemed material if it is for the purpose of correcting technical errors, or for clarification only. If an Eligible Holder of a first lien security interest receives written request for approval of the proposed act, omission, change or amendment by certified or registered mail, with a return receipt requested, and does not deliver or post to the requesting party a negative response within thirty (30) days, it shall be deemed to have approved such request.

Section 10.4 Right to Pay Taxes and Insurance Premiums. Any holder of a first lien security interest shall be entitled to pay any taxes or other charges which are in default and which may or have become a lien against a Unit or any of the Common Elements and may pay any overdue premiums on hazard insurance policies or secure new hazard insurance coverage for the Common Elements or Units, and the holder of a first lien security interest making such payments shall be entitled to immediate reimbursement therefor from the Association.

ARTICLE 11. GENERAL PROVISIONS

Section 11.1 Compliance and Enforcement.

- (a) Every Owner and occupant of a Unit shall comply with the Governing Documents, and each Owner shall have the right to enforce the covenants and restrictions, as set forth in this Declaration.
- (b) The Association, acting through the Board, may enforce all applicable provisions of this Declaration, and may impose sanctions for violation of the Governing Documents. Such sanctions may include, without limitation:
 - (i) imposing reasonable monetary fines, after notice and opportunity for a hearing, which fine shall constitute a lien upon the violator's Unit. (In the event that any occupant, guest, or invitee of a Unit violates the Governing Documents and a fine is imposed, at the Board's discretion, the fine may first be assessed against the violator; provided, however, if the fine is assessed against the violator and is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board and the opportunity for a hearing have been provided);
 - (ii) suspending the right to vote;
 - (iii) exercising self-help (including, but not limited to, performing such maintenance responsibilities which are the Owner's responsibility under this Declaration and assessing all costs incurred by the Association against the Unit and the Owner as an Assessment) or taking action to abate any violation of the Governing Documents;



- (iv) requiring an Owner, at the Owner's expense, to remove any structure or Improvement on such Owner's Unit in violation of the Governing Documents and to restore the Unit to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed, at the Owner's expense, and any such action shall not be deemed a trespass;
 - (v) without liability to any person, the Association precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Declaration from continuing or performing any further activities in the Community;
 - (vi) levying specific Assessments to cover costs incurred by the Association to bring a Unit into compliance with the Governing Documents; and
 - (vii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.
- (c) In addition to any other enforcement rights, if an Owner fails to properly perform his or her maintenance responsibility, or otherwise fails to comply with the Governing Documents, the Association may record a notice of violation against the Owner and the Unit.
- (d) All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, the prevailing party shall be entitled to recover all costs, including, without limitation, attorney fees and court costs, reasonably incurred in such action.
- (e) The decision of the Association to pursue enforcement action in any particular case shall be left to the Board's discretion, subject to the duty to exercise judgment and be reasonable, as provided for in this Declaration, and further restricted in that the Board shall not be arbitrary or capricious in taking enforcement action. A decision of the Association to pursue enforcement action shall not be construed as a waiver of the Association's right to enforce such provisions at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule. Without limiting the generality of the foregoing, the Board may determine that, under the circumstances of a particular case:
- (i) the Association's legal 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; or
 - (iii) that it is not in the Association's best interests, based upon hardship, expense or other reasonable criteria, to pursue enforcement action.

Section 11.2 Severability. Each of the provisions of this Declaration shall be deemed independent and severable. If any provision of this Declaration or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Declaration which can be given effect without the invalid provisions or applications.

Section 11.3 Term of Declaration. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity.

Section 11.4 Amendment of Declaration, Map or Plat by Declarant. If Declarant shall determine that any amendments to this Declaration or the Map shall be necessary in order to make non-material changes, such as for the correction of a technical, clerical or typographical error or clarification of a statement or for any changes to property not yet part of the Community, then, subject to the following sentence of this Section, Declarant shall have the right and power to make and execute any such amendments without obtaining the approval of any Unit Owners. Each such amendment of this Declaration shall be made, if at all, by Declarant prior to the expiration of seven years from the date this Declaration is recorded. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant to make or consent to an amendment under this section on behalf of each Unit Owner and holder of a security interest. Each deed, security interest, other evidence of obligation or other instrument affecting a Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power of Declarant to make, execute and record an amendment under this Section.

Section 11.5 Amendment of Declaration by Unit Owners. Except as otherwise provided in this Declaration, and subject to provisions elsewhere contained in this Declaration requiring the consent of Declarant or others, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended, revised, removed or repealed, and new provisions, covenants, conditions, restrictions or equitable servitudes may be added, at any time and from time to time upon approval of at least 67% of the votes in the Association and with the written consent of the Association. Notice of any meeting at which a proposed amendment will be considered shall state the fact of consideration and the subject matter of the proposed amendment. The amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of Gallatin County, State of Montana of a certificate setting forth the amendment in full and certifying that the amendment has been approved as set forth above, and containing the written consent and approval of the Association.

Section 11.6 Amendment Required by Mortgage Agencies. Prior to seven years after recording of this Declaration, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration which a holder of a first lien security interest, or FHA, VA, FHLMC, GNMA, FNMA or any similar entity authorized to insure, guarantee, make or purchase mortgage loans requires to be amended or repealed may be amended or repealed by Declarant or the Association. Any such amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of Gallatin County, State of Montana of a certificate setting forth the amendment or repeal in full.

Section 11.7 Required Consent of Declarant to Amendment. Notwithstanding any other provision in this Declaration to the contrary, any proposed amendment or repeal of any provision of this Declaration reserving development rights or for the benefit of the Declarant, or the assignees,



shall not be effective unless Declarant, and its assignees, if any, have given written consent to such amendment or repeal, which consent may be evidenced by the execution by Declarant or its assignees of any certificate of amendment or repeal. The foregoing requirement for consent to any amendment or repeal shall terminate seven years after the recording of this Declaration, or upon conveyance of 100% of the Units to Unit Owners, whichever occurs first.

Section 11.8 Required Consent of VA/FHA to Certain Amendments. While the Declarant is in control of the Association (i.e., Unit Owners other than Declarant have not yet elected a majority of the Executive Board), amendments to the Declaration, Articles of Incorporation or Bylaws of the Association must first be approved by the VA or FHA if either VA or FHA has approved the Community for VA guaranteed or FHA insured loans. Further, the Association may not be merged or consolidated with another association without the prior written consent of the VA or FHA if either VA or FHA has approved the Community for VA guaranteed or FHA insured loans.

Section 11.9 Security Disclaimer. The Association may, but shall not be required to, from time to time, provide measures or take actions which directly or indirectly improve security in the Community; however, each Owner, for himself or herself and his or her tenants, guests, licensees and invitees, acknowledges and agrees that the Association is not a provider of security and shall have no duty to provide security in the Community. Furthermore, the Association does not guarantee that non-Owners and non-occupants will not gain access to the Community and commit criminal acts in the Community, nor does the Association guarantee that criminal acts in the Community will not be committed by other Owners or occupants. It shall be the responsibility of each Owner to protect his or her person and property and all responsibility to provide such security shall lie solely with each Owner. The Association shall not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of measures taken.

Section 11.10 Notices. Any notices served upon the Association shall be delivered to the Association c/o David Finegan, 3985 Valley Commons Drive, Bozeman, MT 59718 or to the registered agent and office of record with the Montana Secretary of State.

Section 11.11 Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any paragraph, section or article hereof.

Section 11.12 Interpretation. The provisions of this Declaration shall be construed to effectuate their purposes of creating a uniform plan for promoting and effectuating the fundamental concepts as set forth in this Declaration. The Board of Directors shall have the authority to interpret the meaning of any provision contained in this Declaration.

Section 11.13 Singular Includes the Plural. Unless the context otherwise requires, the singular shall include the plural, and the plural shall include the singular, and each gender referral shall be deemed to include the masculine, feminine and neuter.

Section 11.14 Education and Training. As a Common Expense, the Association may provide education and training opportunities for Owners, residents and occupants, including providing funding and permitting facilities use for such purposes. The Association may provide

education and training activities as a tool for fostering Owner, resident and occupant awareness of governance, operations and concerns of the Community and of the Association. Appropriate educational topics include dispute or conflict resolution, issues involving the Governing Documents, and education or topics benefitting or contributing to operation or governance of the Community. The Association may also fund and support education and training for officers and Directors.

Section 11.15 Validity of Amendments. Any action to challenge the validity of an amendment of this Declaration must be brought within one year after the amendment is recorded in the real property records of Gallatin County, Montana.



IN WITNESS WHEREOF, the Declarant has caused this Declaration of the Baxter Meadows Central Condominiums to be executed by its duly authorized agents this 19th day of September, 2005.

Baxter Meadows Development LP,
a Montana limited partnership

By: [Signature]
Authorized Agent

STATE OF MONTANA)
COUNTY OF Gallatin) ss.

The foregoing Declaration was acknowledged before me on this 19th day of September, 2005, by Gerald R. Williams as Authorized Agent of Baxter Meadows Development LP, a Montana limited partnership.

Witness my hand and official seal.



Terri Zullo
Terri Zullo
Notary Public for the State of Montana
Residing at Bozeman
My Commission expires: July 31, 2007

EXHIBIT A

DESCRIPTION OF PROPERTY

There is no initial "Property" in the Community. Property may be added by exercise of reserved development rights, as set forth in this Declaration.

Property added to the Community may be subject to the following easements and interests of record:

1. Plat of Baxter Meadows West as amended and supplemented of record;
2. The Master or Community Declaration for the Baxter Meadows Master Community.
3. Other instruments of record.



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EXHIBIT B

INITIAL UNITS

There are no initial Units in the Community. Units may be added or created by exercise of reserved development rights, which rights are set forth in this Declaration.



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EXHIBIT C

PROPERTIES OWNED BY DECLARANT WHICH MAY BE ADDED TO THE DECLARATION

All or part of any real estate located adjacent to the Community, or across a public street, ditch or easement from the Community, provided the owner of that real estate consents, and provided all other consents or votes required by this Declaration are first obtained.



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EXHIBIT D

**OTHER PROPERTIES WHICH MAY
BE ADDED TO THE DECLARATION**

All or part of any real estate located adjacent to the Community, or across a public street or alley from the Community, provided the owner of that real estate consent.



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***BYLAWS
OF
BAXTER MEADOWS CENTRAL
CONDOMINIUM ASSOCIATION, INC.***



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BYLAWS
OF
BAXTER MEADOWS CENTRAL CONDOMINIUM ASSOCIATION, INC.

ARTICLE 1
INTRODUCTION, PURPOSES AND DEFINITIONS

Section 1.1 Introduction . These are the Bylaws of Baxter Meadows Central Condominium Association, Inc. (the “**Association**”), which Association operates under the Montana nonprofit corporate law, as amended, and applicable portions of the Unit Ownership Act, as amended (the “**Act**”).

Section 1.2 Purposes . The purposes for which the Association was formed are to preserve and enhance the value of the properties of Members and to operate, govern, manage, supervise and care for the Common Interest Community and the Common Elements of “Baxter Meadows Central Condominiums” (the “**Community**”), situated in Gallatin County, State of Montana, as the Community was created pursuant to the Declaration and Map.

Section 1.3 Definitions . Terms used herein shall have the meanings set forth in the Declaration, unless expressly defined herein.

ARTICLE 2
MEMBERSHIP

Section 2.1 Membership . Every person or entity who is a record owner of a Unit which is subject to the Declaration shall be a Member of the Association. Members shall be of such classes, if any, established by the Declarant, or established in the Declaration, as the Declaration is amended from time to time. Membership shall be appurtenant to and may not be separated from ownership of any Unit. Ownership of a Unit shall be the sole qualification for membership. Each Member shall be allocated votes pursuant to the Declaration.

Section 2.2 Suspension of Member Rights . During any period in which a Member shall be in default in the payment of any Common Expense Assessment levied by the Association, the voting rights of and right to use any recreational facilities of the Community by such Member shall be deemed suspended by the Executive Board, without notice or hearing, until such Assessment has been paid. Voting rights and use rights of an Owner may also be suspended, after notice and the opportunity for a hearing, during any period of violation of any other provision of the Governing Documents, whichever is greater.



ARTICLE 3 MEETINGS OF MEMBERS

Section 3.1 Annual Meetings. An annual meeting of the Members shall be held during each of the Association's fiscal years, at such time of the year and date as determined by the Executive Board and set forth in the notice. At these meetings, the Directors shall be elected by ballot of the Members, in accordance with the provisions of these Bylaws, the Declaration and Articles. The Members may transact other business as may properly come before them at these meetings. Failure to hold an annual meeting shall not work a forfeiture or dissolution of the Association.

Section 3.2 Special Meetings. Special meetings of the Association may be called by the President, by a majority of the members of the Executive Board or by the Secretary upon receipt of a petition signed by Owners comprising at least 20% of the votes in the Association. The form of notice, date, time and place of the meeting shall be determined by the Board. If a notice for a special meeting demanded pursuant to petition is not given by the Secretary within 30 days after the date the written demand or demands are delivered to the Secretary, the person signing the demand or demands may set the time and place of the meeting and give notice, pursuant to the terms of these Bylaws. Any meeting called under this Section shall be conducted by the President of the Board, or in his/her absence, a person chosen by a majority of the Board.

Section 3.3 Budget Meeting . Meetings to consider proposed budgets may be called in accordance with the Declaration. If a budget meeting is called, the budget process allows for a veto by a percentage of the membership of a proposed budget adopted by the Executive Board. If a budget meeting of the Members is called, the budget process to be followed is as follows:

- (a) Effective the first full fiscal year after these Bylaws are adopted and become effective, and for each year thereafter, the Executive Board of the Association is to prepare and approve a proposed budget at least annually. Each such proposed budget is first prepared and approved by the Executive Board as a proposed budget.
- (b) Then, within 90 days after the Board of Director's adoption of the proposed budget, the Executive Board must mail or deliver a summary of the proposed budget to those entitled to vote and set a date for a special or annual meeting to consider ratification of the proposed budget.
- (c) Notice for the meeting at which the budget will be considered must be mailed not less than 10 days nor more than 60 days before the meeting.
- (d) At the meeting, unless Owners holding a majority of the total Association vote to reject the proposed budget, the proposed budget is ratified and becomes the approved budget of the Association.



(e) A quorum is not required at the meeting if the meeting is just a budget meeting. If the meeting is also an annual meeting at which other business is to be conducted, a quorum is required for other business to be conducted at the annual meeting, but not for ratification of the budget.

(f) In the event the proposed budget is rejected by a majority vote, the budget last ratified is continued until such time as a subsequent budget proposed by the Executive Board is ratified.

Section 3.4 Notice of Meetings . Written notice of each meeting of Members shall be given by or at the direction of the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, or by personal delivery, at least 10 days before, but not more than 60 days before such meeting, to each Member entitled to vote, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting and, in the case of a special meeting, the purpose of the meeting. No matters shall be heard nor action adopted at a special meeting except as stated or allowed in the notice.

Section 3.5 Owner Addresses for Notices . Unless an Owner shall have notified the Association by registered or certified mail of a different address, any notice required to be given, or otherwise given by the Association under these Bylaws to any Owner or any other written instrument to be given to any Owner, may be mailed to such Owner in a postage prepaid envelope and mailed by first-class, registered or certified mail to the address of the Unit shown upon the Association's records as being owned by such Owner. If more than one Owner owns a particular Unit, then any notice or other written instrument may be addressed to all of such Owners and may be mailed in one envelope in accordance with the foregoing. Any notice or other written instrument given by the Association in accordance with the foregoing will be deemed to have been given on the date that it is mailed.

Section 3.6 Place of Meetings . Meetings of the Members shall be held in the Community, or in the Gallatin County area, and may be adjourned to a suitable place convenient to the Members, as may be designated by the Executive Board or the President.

Section 3.7 Quorum of Members . The presence at a meeting of Members, in person or by proxy, of Members entitled to cast 25% of all the votes shall constitute a quorum for any action except as otherwise provided in the Articles, Declaration and these Bylaws. If the required quorum is not present at a meeting, the Members who are present shall have power to adjourn the meeting from time to time (to a later date) without notice other than announcement at the meeting until a quorum of 12% of the Members, in person or by proxy shall be present or represented.

Section 3.8 Adjournment of the Meeting . By majority vote (as provided herein), any meeting of the Owners may be adjourned to another time and place or to a time and place to be designated by notice.



Section 3.9 Member Voting. At all meetings of Members, each Member may vote in person or by proxy. If only one of several Owners of a Unit is present at a meeting of the Association, the Owner present is entitled to cast the vote allocated to the Unit. If more than one of the Owners is present, the vote allocated to the Unit may be cast only in accordance with the agreement of a majority of those Owners. Majority agreement exists if any one of the Owners casts the vote allocated to the Unit without protest being made promptly to the person presiding over the meeting by another Owner of the Unit. In the event of disagreement between or among co-Owners and an attempt by two or more of them to cast such vote or votes, such vote or votes shall not be counted. The vote of a corporation or business trust may be cast by any officer of that corporation or business trust in the absence of express notice of the designation of a specific person by the Executive Board or Bylaws of the owning corporation or business trust. The vote of a partnership may be cast by any general partner of the owning partnership in the absence of express notice of the designation of a specific person by the owning partnership. The moderator of the meeting may require reasonable evidence that a person voting on behalf of a corporation, partnership or business trust Unit Owner is qualified to vote. Votes allocated to Units owned by the Association may not be cast.

Section 3.10 Proxies. The vote allocated to a Unit may be cast under a proxy duly executed by a Unit Owner. All proxies shall be in writing and filed with the Secretary or designee of the Association. If a Unit is owned by more than one person, each Unit Owner of the Unit may vote or register protest to the casting of the vote by the other Owners of the Unit through a duly executed proxy. In the event of disagreement between or among co-Owners and an attempt by two or more of them to cast such vote or votes, such vote or votes shall not be counted. A Unit Owner may revoke a proxy given under this section only by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates 11 months after its date, unless it specifies a shorter term or a specific purpose.

Section 3.11 Majority Vote. The vote of a majority of the votes present, in person or by proxy at a meeting at which a quorum is present, shall be binding upon all Unit Owners for all purposes except where a higher percentage vote is required in the Declaration, Articles, these Bylaws or by law.

Section 3.12 Voting Procedures. Voting may be by voice, by show of hands, by consent, by mail, by electronic means, by directed proxy, by written ballot, or as otherwise determined by the Executive Board or the Members present at a meeting.

(a) In case of a vote by mail or electronic means, the Secretary shall mail or deliver written notice to all Members at each Member's address as it appears in the records of the Association given for notice purposes. The notice shall include: (i) a proposed written resolution setting forth a description of the proposed action, (ii) a statement that Members are entitled to vote by mail or electronic means for or against such proposal, (iii) a date at least 10 days after the date such notice shall have been given on or before which all votes must be received at the office of the Association at the



address designated in the notice, and (iv) the number of votes which must be received to meet the quorum requirement and the percentage of votes received needed to carry the vote. Voting by mail shall be acceptable in all instances in the Declaration, Articles or these Bylaws requiring the vote of Members at a meeting.

(b) The Executive Board may conduct elections of Directors by mail or electronic means, in its sole discretion, and pursuant to procedures adopted by it; *provided however*, that any procedures adopted shall provide for notice to Members of the opportunity to run for a vacant position and/or nominate any Member of the Association for a vacant position, subject to the nominated Member's consent.

(c) In an election of Directors, the Members receiving the largest number of votes shall be elected.

Section 3.13 Order of Business and Rules at Meeting . The Executive Board may establish the order of business and prescribe reasonable rules for the conduct of all meetings of the Executive Board and Unit Owners. At meetings of the Members, the Executive Board may order the business of the meeting as follows:

- (a) Roll call (or check-in procedure);
- (b) Proof of notice of meeting;
- (c) Reading of Minutes of preceding meeting;
- (d) Reports;
- (e) Establish number and term of memberships of the Executive Board (if required and noticed);
- (f) Selection of inspectors/tellers to count ballots;
- (g) Election of Directors of the Executive Board (when required);
- (h) Consideration of budget and possible veto by the Owners (if required and noticed);
- (i) Unfinished business; and
- (j) New business.

Failure to strictly follow Robert's Rules of Order shall not invalidate any action taken at a meeting of the Board or Members.

Section 3.14 Waiver of Notice . Any Member may, at any time, waive notice of any meeting of the Members in writing, and the waiver shall be deemed equivalent to the receipt of notice. Attendance at the meeting shall constitute a waiver of notice unless attendance is for the express purpose of objecting to the sufficiency of the notice, in which case, such objection must be raised before the business of which proper notice as not given is put to a vote.



ARTICLE 4 EXECUTIVE BOARD

Section 4.1 Number and Term of Office . The affairs of the Community and the Association shall be governed by an Executive Board which shall consist of three Members, elected or appointed as provided below (the “**Executive Board**”). The terms of office of Directors shall be three years or until such time as a successor is elected, and the terms of at least 1/3 of the Directors shall expire annually. At any meeting at which Directors are to be elected, the Unit Owners may, by resolution, adopt specific procedures which are not inconsistent with these Bylaws or the Montana nonprofit corporate law for conducting the elections.

Section 4.2 Qualification .

- (a) Only Owners, eligible to vote, current in the payment of Assessments, and otherwise in good standing, may be elected to, or appointed to fill a vacancy on the Board.
- (b) If any Unit is owned by a partnership or corporation, any officer, partner or employee of that Member shall be eligible to serve as a Director and shall be deemed to be a Member for the purposes of these Bylaws.
- (c) Once elected, a Director may not be more than 60 days delinquent in payment of any Assessment.
- (d) Any Director who has un-excused absences from three consecutive Board meetings shall not be qualified to serve on the Board.
- (e) Once elected or appointed, each Director shall attend at least one educational program per year related to the management, operation or law of community associations. The Director shall be entitled to reimbursement of any expenses incurred in attending such educational program(s), as long as approved, in advance, by the Board of Directors. Any Director who has failed to attend an educational program as set forth in this provision shall not be qualified to serve on the Board.
- (f) If a Director is not qualified, the Director’s position shall be deemed vacant.

Section 4.3 Election . The Executive Board shall be elected by the Members at the Annual Meeting. The Members may adopt specific procedures which are not inconsistent with these Bylaws or the Act for conducting the elections by written ballot. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted. The Declaration shall govern appointment of Directors of the Executive Board during the Period of Declarant Control, as allowed under the Declaration.



Section 4.4 Resignation of Directors . Any Director may resign at any time by giving written notice to the President, to the Secretary or to the Executive Board stating the effective date of such resignation. Acceptance of such resignation shall not be necessary to make the resignation effective.

Section 4.5 Removal of Directors .

(a) One or more Directors or the entire Executive Board may be removed at any meeting of the Members called pursuant to these Bylaws, with or without cause, by a vote of 67% of all Members present and entitled to vote. Notice of a meeting of the Members to remove Directors shall set forth that the meeting is being conducted for that purpose and shall be provided to every Member of the Association, including the Directors sought to be removed, as provided in these Bylaws. Directors appointed by the Declarant may not be removed by the Members under this section of the Bylaws. Directors sought to be removed shall have the right to be present at this meeting and shall be given the opportunity to speak to the Members prior to a vote to remove being taken.

(b) In the event of removal of one or more Directors, a successor shall be elected by the Members at the meeting to serve for the unexpired term of his or her predecessor.

Section 4.6 Vacancies . Vacancies in the Executive Board caused by any reason (other than removal) may be filled by the Executive Board at any time after the occurrence of the vacancy, even though the Directors present at that meeting may constitute less than a quorum. These appointments shall be subject to the reserved rights of Declarant to appoint Directors, unless those rights have expired, in which event, appointments shall be made by a majority of the remaining elected Directors constituting the Executive Board. Each person so appointed shall be a Director who shall serve for the remainder of the unexpired term.

Section 4.7 Compensation . No Director shall receive any compensation from the Association for any service they may render as a Director, or for acting as such, unless approved by a majority of the votes in the Association at a regular or special meeting of the Association. However, any Director may be reimbursed for actual expenses incurred in the performance of Association duties on behalf of the Association upon approval of a majority of the other Directors. Nothing herein shall prohibit the Association from compensating a Director, or any entity with which a Director is affiliated, for services or supplies furnished to the Association in a capacity other than as a Director pursuant to a contract or agreement with the Association, provided that such Director's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Executive Board, excluding the interested Director.

ARTICLE 5 MEETINGS OF THE EXECUTIVE BOARD

Section 5.1 Regular Meetings . Regular meetings of the Executive Board shall be held at least twice per year at such place and hour as may be fixed by the Board, without notice. The Board may set a schedule of additional regular meetings by resolution and no further notice is necessary to constitute regular meetings, except as may be required by law.



Section 5.2 Special Meetings . Special meetings of the Executive Board shall be held when called by the President of the Association or by any two Directors after not less than one day notice to each Director. The notice shall be delivered in a manner whereby confirmation of receipt of the notice is received and shall state the time, place and purpose of the meeting.

Section 5.3 Notice of Board Meetings . Except as set forth in Section 5.1 above, written notice of each meeting of the Board shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least three days before such meeting, or by any other means permitted by the Montana nonprofit corporate law, including, but not limited to, personal delivery, facsimile, and e-mail delivery, to each Board member entitled to vote, addressed to the Board member's address last appearing on the books of the Association, or supplied by such Board member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting.

Section 5.4 Location of Meetings and Open Meetings . All meetings of the Executive Board shall be open to attendance by Members, as provided by applicable Montana law. All meetings of the Executive Board shall be held in the Community, by conference call, electronic means or within the Gallatin County area, unless all Directors consent in writing to another location.

Section 5.5 Waiver of Notice . Any Director may waive notice of any meeting in writing. Attendance by a Director at any meeting of the Board shall constitute a waiver of notice. If all the Directors are present at any meeting, no notice shall be required and any business may be transacted at such meeting.

Section 5.6 Quorum . At all meetings of the Executive Board, a majority of the Directors shall constitute a quorum for the transaction of business, unless there are less than three Directors, in which case, all Directors must be present to constitute a quorum. The votes of a majority of the Directors present at a meeting at which a quorum is present shall constitute a decision of the Board unless there are less than three Directors, in which case, unanimity of the Directors is required to constitute a decision of the Board. If, at any meeting, there shall be less than a quorum present, a majority of those present may adjourn the meeting.

Section 5.7 Proxies for Board Meetings . For the purposes of determining a quorum with respect to a particular proposal and for the purposes of casting a vote for or against that particular proposal, a Director may execute, in writing, a proxy, to be held by another Director. The proxy shall specify either a yes, no or abstain vote on each particular issue for which the proxy was executed. Proxies which do not specify a yes, no or abstain vote shall not be counted for the purpose of having a quorum present or as a vote on the particular proposal before the Board.

Section 5.8 Consent to Corporate Action . The Directors shall have the right to take any action in the absence of a meeting, which they could otherwise have taken at a meeting, by:

- (a) Obtaining the unanimous verbal vote of all Directors which vote shall be noted in the minutes of the next meeting of the Board and ratified at such time;



(b) Obtaining the written vote of all of the Directors, with at least a majority of the Directors approving the action, provided that those Directors who vote "no" or abstain from voting have waived notice of a meeting in writing. The Secretary shall file the written votes with the minutes of the meetings of the Executive Board;

(c) Any action taken under subsections (a) and (b) shall have the same effect as though taken at a meeting of the Directors.

Section 5.9 Telephone Communication in Lieu of Attendance . A Director may attend a meeting of the Executive Board by using an electronic or telephonic communication method whereby the Director may be heard by the other members and may hear the deliberations of the other members on any matter properly brought before the Executive Board. The Director's vote shall be counted and his or her presence noted as if that Director were present in person on that particular matter.

ARTICLE 6 POWERS AND DUTIES OF THE EXECUTIVE BOARD

Section 6.1 Powers and Duties . The Executive Board may act in all instances on behalf of the Association, except as provided in the Declaration, Articles, these Bylaws or the Act. The Executive Board shall have, subject to the limitations contained in the Declaration, Articles and the Act, the powers and duties necessary for the administration of the affairs of the Association and of the Community, and for the operation and maintenance of the Community as a first class residential property, including the following powers and duties:

(a) Exercise any other powers conferred by the Declaration, Bylaws or Articles of Incorporation;

(b) Adopt and amend Bylaws and Rules and Regulations, including penalties for infraction thereof;

(c) To keep and maintain full and accurate books and records showing all of the receipts, expenses, or disbursements of the Association;

(d) Adopt and amend budgets for revenues, expenditures and reserves (subject to the budget being distributed to the Owners and not vetoed by the Owners at a meeting of the Owners, as that procedure is set forth in the Declaration and in these Bylaws);

(e) As a part of the adoption of the regular budget the Executive Board shall include an amount which, in its reasonable business judgment, will establish and maintain a reserve fund for the replacement of those Improvements that it is obligated to maintain, based upon age, remaining life, quantity and replacement cost;

(f) Allocate, assess and collect from each Owner its proportionate share of the Assessments imposed by the Association and pay those Assessments to the Association.



- (g) Hire and discharge managing agents, provided that any agreement for professional management of the Community may not exceed one year. Any such agreement must provide for the termination by either party without cause and without payment of a termination fee or penalty upon 30 days written notice;
- (h) Hire and discharge employees, independent contractors and agents other than managing agents, and prescribe their duties;
- (i) Institute, defend or intervene in litigation or administrative proceedings or seek injunctive relief for violations of the Governing Documents in the Association's name, on behalf of the Association or two or more Owners on matters affecting the Community;
- (j) Make contracts, administer financial accounts and incur liabilities in the name of the Association;
- (k) Regulate the use, maintenance, repair, replacement and modifications of Common Elements;
- (l) Cause additional improvements to be made as a part of the Common Elements;
- (m) Acquire, hold, encumber and convey, in the Association's name and in the ordinary course of business, any right, title or interest to real estate or personal property;
- (n) Borrow funds and secure loans with an interest in future Assessments in order to pay for any expenditure or outlay required pursuant to the authority granted by the provisions of the recorded Declaration and these Bylaws, and to execute all such instruments evidencing such indebtedness as the Board of Directors may deem necessary and give security therefore subject to the requirements set forth in the Declaration;
- (o) Grant easements for any period of time, including permanent easements, and grant leases, licenses and concessions for no more than one year, through or over the Common Elements;
- (p) Impose and receive a payment, fee or charge for services provided to Unit Owners and for the use, rental or operation of the Common Elements;
- (q) Impose a reasonable charge for late payment of Assessments and after notice and hearing, levy reasonable fines or Assessments provided for or allowed in the Declaration, Bylaws, Rules and Regulations of the Association;
- (r) Keep and maintain full and accurate books and records showing all of the receipts, expenses or disbursements of the Association;
- (s) Impose a reasonable charge for the preparation and recording of amendments to the Declaration, liens or statements of unpaid Assessments;
- (t) Provide for the indemnification of the Association's Officers and the Executive Board and maintain Directors' and Officers' liability insurance;
- (u) Procure and maintain adequate liability and hazard insurance on property owned by the Association and as further set forth in the Declaration;



- (v) Cause all Directors, Officers, employees or agents having fiscal responsibilities to be bonded or insured, as it may deem appropriate and in such amounts as it may deem appropriate;
- (w) Exercise for the Association all powers, duties, rights and obligations in or delegated to the Association and not reserved to the membership by other provisions of the Declaration, Articles, these Bylaws or the Act; and
- (x) Exercise any other powers conferred by the Declaration or Bylaws.

Section 6.2 Manager . The Executive Board may employ a manager, at a compensation established by the Board, to perform duties and services authorized by the Board. Licenses, concessions and contracts may be executed by the manager pursuant to specific resolutions of the Board and to fulfill the requirements of the budget. The Board shall have the authority to delegate any of the powers and duties set forth in this Article to a manager or managing agent. Regardless of any delegation to a manager or managing agent, the members of the Board shall not be relieved of responsibilities under the Declaration, Articles, these Bylaws or Montana law.

ARTICLE 7 OFFICERS AND THEIR DUTIES

Section 7.1 Enumeration of Offices . The Officers of this Association shall be a President, Vice President, Secretary and Treasurer, who shall at all times be members of the Executive Board, and such other officers as the Executive Board may from time to time create by resolution. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to authority in these Bylaws, and that the offices of the Secretary and Treasurer may be held by the same person.

Section 7.2 Appointment of Officers . The Officers shall be appointed by the Executive Board at the organizational meeting of each new Executive Board. The Officers shall hold office at the pleasure of the Executive Board. Thereafter, the Officers shall be elected for a one year term at the first meeting of the Executive Board following each annual meeting of the Members.

Section 7.3 Special Appointments . The Executive Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Executive Board may, from time to time, determine.

Section 7.4 Resignation and Removal . Any Officer may resign at any time by giving written notice to the Executive Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein. Acceptance of such resignation shall not be necessary to make it effective. Any Officer may be removed from office with or without cause by a majority of the Executive Board.



Section 7.5 Vacancies . A vacancy in any office may be filled by appointment by the Executive Board by majority vote of the Board. The Officer appointed to such vacancy shall serve for the remainder of the term of the Officer he replaces.

Section 7.6 Duties . The Duties of the Officers are as follows:

7.6.1 President. The President shall have all of the general powers and duties which are incident to the office of president of a Montana nonprofit corporation including, but not limited to, the following: preside at all meetings of the Executive Board, appoint committees, and see that orders and resolutions of the Executive Board are carried out; sign all contracts, leases and other written instruments; direct, supervise, coordinate and have general control over the day to day affairs. The President may cause to be prepared and may execute amendments, attested by the Secretary, to the Declaration and these Bylaws on behalf of the Association, following authorization or approval of the particular amendment, as applicable.

7.6.2 Vice President. The Vice President shall take the place of the President and perform the President's duties whenever the President is absent or unable to act. If neither the President nor the Vice President is able to act, the Executive Board shall appoint some other Director to act in the place of the President on an interim basis. The Vice President shall also perform other duties imposed by the Executive Board or by the President.

7.6.3 Secretary. The Secretary shall have charge or shall keep the Minutes of all meetings of the Owners and proceedings of the Executive Board and the Members; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Member's names and addresses. The Secretary shall have charge of the Association's books and papers and shall perform all the duties incident to the office of secretary of a nonprofit corporation organized under the laws of the State of Montana. The Secretary may cause to be prepared and may attest to execution by the President of amendments to the Declaration and the Bylaws on behalf of the Association, following authorization or approval of the particular amendment, as applicable.

7.6.4 Treasurer. The Treasurer shall be responsible for Association funds and for keeping full and accurate financial records and books of account showing all receipts and disbursements and for the preparation of all required financial data. This Officer shall be responsible for the deposit of all monies and other valuable effects in depositories designated by the Executive Board and shall perform all the duties incident to the office of treasurer of a nonprofit corporation organized under the laws of the State of Montana. The Treasurer may endorse on behalf of the Association, for collection only, checks, notes and other obligations and shall deposit the same and all monies in the name of and to the credit of the Association in banks designated by the Association.

Section 7.7 Delegation . The duties of any Officer may be delegated to the manager or another Executive Board member; *provided, however*, the Officer shall not be relieved of any responsibility under these Bylaws or under Montana law.



Section 7.8 Agreements, Contracts, Deeds, Checks, Etc . Except as provided in these Bylaws, all agreements, contracts, deeds, leases, checks and other instruments of the Association shall be executed by any Officer of the Association or by any other person or persons designated by the Executive Board.

Section 7.9 Statements of Unpaid Assessments . The Treasurer, assistant treasurer, a manager employed by the Association, if any, or, in their absence, any Officer having access to the books and records of the Association may prepare, certify, and execute statements of unpaid Assessments.

The Association may charge a reasonable fee for preparing statements of unpaid Assessments. The amount of this fee and the time of payment shall be established by resolution of the Executive Board. Any unpaid fees may be assessed as a Common Expense against the Unit for which the certificate or statement is furnished.

Section 7.10 Compensation . Compensation of Officers shall be subject to the same limitations as imposed in these Bylaws on compensation of Directors.

ARTICLE 8 COMMITTEES

Section 8.1 Designated Committees . The Association may appoint committees, as deemed appropriate, in carrying out its purposes. Committees shall have authority to act only to the extent designated in the Governing Documents or delegated by the Executive Board.

ARTICLE 9 ENFORCEMENT

Section 9.1 Abatement and Enjoinment of Violations by Unit Owners . The violation of any of the Rules and Regulations adopted by the Executive Board or the breach of any provision of the Governing Documents shall give the Executive Board the right, after notice and hearing, except in case of an emergency, in addition to any other rights set forth in these Bylaws:

- (a) To enter the Unit or Limited Common Element in which, or as to which, the violation or breach exists and to summarily abate and remove, at the expense of the defaulting Unit Owner, any structure, thing or condition (except for additions or alterations of a permanent nature that may exist in that Unit) that is existing and creating a danger to the Common Elements contrary to the intent and meaning of the provisions of the Governing Documents. The Executive Board shall not be deemed liable for any manner of trespass by this action; or
- (b) To enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach.



Section 9.2 Fines for Violation . By action of the Executive Board, following notice and hearing, the Executive Board may levy reasonable fines for a violation of the Governing Documents or rules.

ARTICLE 10 BOOKS AND RECORDS

Section 10.1 Records . The Association or its manager or managing agent, if any, shall keep the following records:

- (a) An account for each Unit, which shall designate the name and address of each Unit Owner, the name and address of each mortgagee who has given notice to the Association that it holds a mortgage on the Unit, the amount of each Common Expense Assessment, the dates on which each Assessment comes due, any other fees payable by the Unit Owner, the amounts paid on the account and the balance due;
- (b) An account for each Unit Owner showing any other fees payable by the Unit Owner;
- (c) The most recent regularly prepared balance sheet and income and expense statement, if any, of the Association;
- (d) The current operating budget;
- (e) A record of any unsatisfied judgments against the Association and the existence of any pending suits in which the Association is a defendant;
- (f) A record of insurance coverage provided for the benefit of Unit Owners and the Association;
- (g) Tax returns for state and federal income taxation;
- (h) Minutes of proceedings of meetings of the Unit Owners, Directors, committees of Directors and waivers of notice;
- (i) Copies of at least the three most recent years' correspondence between the Association and Owners; and
- (j) A copy of the most current versions of the Declaration, Articles, Bylaws, Rules and Regulations, and Resolutions of the Executive Board, along with their exhibits and schedules.

Section 10.2 Examination . The books, records and papers of the Association shall at all times, during normal business hours and after reasonable notice, be subject to inspection and copying by any Member, at their expense, for any proper purpose, except documents determined by the Board to be confidential pursuant to a written policy or applicable law. The Executive Board or the manager shall determine reasonable fees for copying.



**ARTICLE 11
INDEMNIFICATION**

Section 11.1 Obligation to Indemnify .

(a) The Association shall indemnify any person:

(i) Who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association);

(ii) By reason of the fact that, that person is or was a Director, Officer or committee member of the Association;

(iii) Provided that the person is or was serving at the request of the Association in such capacity;

(iv) But no indemnification shall be made where:

(1) The person has been adjudged to be liable for negligence or misconduct in the performance of his or her duties to the Association, unless a court determines that, despite the adjudication of liability, but in view of all circumstances of the case, the person is fairly and reasonably entitled to indemnification for the expenses if the court deems proper.

(b) The Association's obligation for indemnification shall include: (i) Actual and reasonable expenses (including expert witness fees, attorney fees and costs); (ii) Judgments and fines; and (iii) Reasonable amounts paid in settlement.

(c) The Association shall indemnify when the person identified in subsection (a) of this Section:

(i) Acted in good faith, and;

(ii) In a manner which the person reasonably believed to be in the best interests of the Association, and;

(iii) With respect to any criminal action or proceeding, had no reasonable cause to believe the conduct was unlawful;

(iv) To the extent that the person has been wholly successful on the merits in defense of any action, suit or proceeding as described above, the person shall be indemnified against actual and reasonable expenses



(including expert witness fees, attorney fees and costs) incurred in connection with the action, suit or proceeding.

Section 11.2 Determination Required .

(a) The Executive Board shall determine whether the person requesting indemnification has met the applicable standard of conduct set forth above. The determination shall be made by the Executive Board:

(i) By majority vote of a quorum consisting of those members of the Executive Board who were not parties to the action, suit or proceeding, or;

(ii) By independent legal counsel in a written opinion if a majority of those members of the Executive Board who were not parties to the action, suit or proceeding so directs, or;

(b) Additionally, the determination may be made by:

(i) By a vote of the Members if a majority of those members of the Executive Board who were not parties to the action, suit or proceeding so directs.

(c) Determination of any action, suit or proceeding by judgment, order, settlement or conviction, or upon a plea of *nolo contendere* or its equivalent, shall not of itself create a presumption that the person did not act in good faith and in a manner reasonably believed to be in the best interests of the Association and, with respect to any criminal action or proceeding, had reasonable cause to believe the conduct was unlawful.

Section 11.3 Payment in Advance of Final Disposition . The Association shall pay for or reimburse the reasonable expenses as described above in advance of final disposition of the action, suit or proceeding if the person requesting indemnification provides the Executive Board with:

(a) A written affirmation of that person's good faith belief that he or she has met the standard of conduct described above and;

(b) A written statement that such person shall repay the advance if it is ultimately determined that he or she did not meet the standard of conduct described above.

Section 11.4 No Limitation of Rights . The indemnification provided in this Article shall not be deemed exclusive of nor a limitation upon any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of the Members or disinterested members of the Executive Board, or otherwise, nor by any rights which are granted pursuant to C.R.S. § 38-33.3-101, *et seq.*, and the Montana nonprofit corporate law, as those statutes may be amended from time to time.



Section 11.5 Directors and Officers Insurance . The Association may purchase and maintain insurance on behalf of any person who is or was a member of the Executive Board, the manager, committee members, or anyone acting at the direction of the Board, covering defense and liability expenses arising out of any action, suit or proceeding asserted against such person by virtue of such person's actions on behalf of the Association or at the direction of the Board, whether or not the Association would have the power to indemnify such person against such liability under provisions of this Article.

ARTICLE 12 MISCELLANEOUS

Section 12.1 Notices to the Association . All notices to the Association or the Executive Board shall be delivered to the office of the manager, or if there is no manager, to the office of the Association, or to such other address as the Executive Board may designate by written notice to all Owners. Except as otherwise provided, all notices to any Owner shall be mailed to the Owner's address as it appears in the records of the Association. All notices shall be deemed to have been given when mailed or transmitted, except notices of changes of address, which shall be deemed to have been given when received.

Section 12.2 Waiver . No restriction, condition, obligation or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 12.3 Office . The principal office of the Association shall be within the Community or at such other place as the Executive Board may from time to time designate.

Section 12.4 Working Capital . A working capital fund is established pursuant to the Declaration. Any amounts paid into this fund shall not be considered as advance payment of Assessments. Each Unit's share of the working capital fund may be collected and then contributed to the Association by the Declarant at the time the sale of the Unit is closed or at the termination of Declarant control. Until paid to the Association, the contribution to the working capital shall be considered an unpaid Common Expense Assessment.

ARTICLE 13 AMENDMENTS

Section 13.1 Bylaw Amendments/Vote of the Members . These Bylaws may be amended only by the affirmative vote of Owners representing at least 75% of all votes in the Association, and by recording of the amendment, if required under the Act.

Section 13.2 Restrictions on Amendments . No amendment of the Bylaws of this Association shall be adopted which would affect or impair the validity or priority of any security interest covering any Unit, or which would materially change the provisions of the Bylaws with respect to a first lien security interest or the interest of an institutional mortgagees of record.



CERTIFICATION

I, the undersigned, do hereby certify that I am the Secretary of Baxter Meadows Central Condominium Association, Inc., a Montana nonprofit corporation, and that the foregoing Bylaws constitute the Bylaws of said Association, as duly adopted by the Executive Board.

Rebekah Williams
Secretary

STATE OF MONTANA)
) ss.
COUNTY OF Gallatin)

The foregoing was acknowledged before me this 19th day of September, 2005, by Rebekah Williams, as Authorized Agent of Baxter Meadows Central Condominium Association, Inc.

Witness my hand and official seal.

Terri Zullo
Terri Zullo
Notary Public for the State of Montana
Residing at Bozeman
My Commission expires: July 31, 2007

