

**DECLARATION OF TOWNHOME  
UNIT OWNERSHIP FOR  
ALPINE BASIN**

The Declarant, Zorin Development, LLC, a Montana limited liability company, does hereby declare and submit for approval by the Montana Department of Revenue, the following Declaration of Unit Ownership to be filed and recorded in Carbon County, Montana, under the Unit Ownership Act of the State of Montana, § 70-23-301, et seq., Mont. Code Ann. These units are townhomes pursuant to the definition provided by § 70-23-102(16), Mont. Code Ann. and the provisions of § 70-23-103, Mont. Code Ann.

**Article I.**

*Definitions and Construction of Declaration*

1. Definitions. Unless the contents expressly provide otherwise, the following definitions shall pertain throughout this Declaration:
  - a. Association. "Association" or "Townhome Association" means Alpine Basin HOA, Inc., which consists of the individual Unit Owners.
  - b. Association Members. "Association Members" or "Townhome Association Members" means the individual Unit Owners.
  - c. Board. "Board" means the Board of Directors of the Association as more particularly defined in the Bylaws of the Association.
  - d. Building. "Building" means the building or buildings and all additions, improvements, fixtures and related property forming a part of the Townhome Project as at any time may exist.

- e. Bylaws. "Bylaws" means the Bylaws promulgated by the Association under this Declaration and the Montana Unit Ownership Act. The Bylaws are attached hereto as **Exhibit "A"**.
- f. Common Elements. "Common Elements" means the general common elements and the limited common elements.
  - i. General Common Elements. "General Common Elements" means the general common elements of the Townhome Project as said term is defined in Article VI hereunder.
  - ii. Limited Common Elements. "Limited Common Elements" means those common elements designated in Article VII of this Declaration or by agreement of all Unit Owners as reserved for the use of a certain Unit or number of Units to the exclusion of the other Units.
- g. Common Expenses. "Common Expenses" means the expenses of administration, maintenance, repair or replacement of General and Limited Common Elements, expenses agreed upon by the Association and expenses declared common by the Unit Ownership Act.
- h. Declaration of Unit Ownership. "Declaration" or "Declaration of Unit Ownership" means this final Declaration and all parts attached hereto or incorporated by reference as recorded in the records of the Office of the Carbon County Clerk & Recorder and as hereafter amended from time to time.
- i. Majority of the Unit Owners. "Majority" or "Majority of the Unit Owners" means more than 50% in the aggregate of the Unit Owners.
- j. Montana Unit Ownership Act. "The Montana Unit Ownership Act" or "Unit Ownership Act" means Title 70, Chapter 23, et seq., of the Montana Code Annotated, as amended.
- k. Property/Project. "Property" means all the real property, buildings, improvements and structures constructed or to be constructed and all easements, rights and appurtenances belonging thereto described in the Exhibits of this Declaration or annexed hereunder in accordance with the provisions of this Declaration. "Project" means the completed Townhome development as described in the Exhibits of this Declaration.

1. Townhome. "Townhome" means the ownership of single Units with Common Elements located on the property described herein and submitted to the provisions of the Unit Ownership Act and shall also mean the initial Project Townhomes and each Townhome which is annexed under the Declaration pursuant to the provisions of Article V of the Declaration.
- m. Unit or Townhome Unit. "Unit" or "Townhome Unit" means a part of the Property, including:
  - i. any part of any Building intended for independent ownership and use, as designated in the Exhibits of this Declaration,
  - ii. an undivided interest in the General Common Elements, and
  - iii. an undivided interest in the Limited Common Elements reserved for certain Units.
- n. Unit Designation. "Unit Designation" is the combination of numbers and/or words which identify each designated Unit.
- o. Unit Owner. "Unit Owner" or "Owner" means the person owning a Unit in fee simple absolute, individually or as co-owner in any real estate tenancy relationship recognized under the laws of the State of Montana.
2. Form of Words. The singular form of words shall include the plural and the plural shall include the singular. Masculine, feminine, and gender-neutral pronouns shall be used interchangeably.
3. Statutory Definitions. Some of the terms defined above are also defined in the Unit Ownership Act. The definitions in the Declaration are not intended to limit or contradict the definitions in the Unit Ownership Act. If there is any inconsistency or conflict, the definition in the Unit Ownership Act will prevail.
4. Construction and Validity of Declaration. The Declaration and the Unit Ownership Act provide the framework by which the Townhomes are created and operated. In the event of a conflict between the provisions of the Declaration and the Unit Ownership Act, the Unit Ownership Act shall prevail. In the event of a conflict between the provisions of this Declaration and the Bylaws, the Declaration shall prevail except to the extent the Declaration is inconsistent with the Unit Ownership Act. The creation of the Townhomes shall not be impaired and title to a Unit and its interest in the Common Elements shall not be rendered unmarketable or otherwise affected by reason of an insignificant failure of this Declaration or any amendment

thereto to comply with the Unit Ownership Act.

## **Article II.**

### *Name of Townhome Development*

1. Name. The name of the Townhome Project created by this Declaration is “Alpine Basin”.

2. Background. Each Townhome Unit is located within Alpine Basin and it is anticipated the Project will be completed in two or more phases. Each Unit Owner shall be a member of the Association and shall be required to pay assessments as required by the Association in accordance with this Declaration and the Bylaws of the Association.

## **Article III.**

### *Real Estate Submitted to Unit Ownership*

1. Submission of Real Property. The purpose of this Declaration is to submit the real property herein described and the improvements constructed thereon to Townhome Unit form of ownership and use in the manner provided by the Unit Ownership Act. The real property included within the Project, and which is owned by Declarant on the date hereof, is in Carbon County, Montana, and is more particularly described and set forth in **Exhibit "B"** attached hereto and by this reference incorporated in this Declaration. The provisions of this Declaration and the Bylaws shall be construed to be covenants, running with the land, including every Unit, and shall be binding upon the Unit Owners, their heirs, successors, personal representatives and assigns for so long as the Declaration and Bylaws are in effect.

2. Townhome Units. Each Unit, together with the appurtenant undivided interest in the General Common Elements and any designated Limited Common Elements shall together comprise one Townhome Unit, shall be physically inseparable, and may be conveyed, devised or encumbered as a Townhome Unit with a fee simple interest and as a parcel of real property.

## **Article IV.**

### *Description of Project*

1. Project/Units. The Project includes the parcel of real property owned by Zorin Development, LLC and which is described with particularity in **Exhibit "B"** attached hereto, and improvements currently situated (or to be constructed in subsequent phases) thereon which consist of 61 Buildings consisting of 18 separate two-bedroom Units of approximately 1,187 sq. ft. 42 separate three-bedroom Units of approximately 2,084 sq. ft, and one Clubhouse building of approximately 3,586 sq. ft., to be built at a time determined by the Association. A general description of the Buildings and Units is set forth in **Exhibit "C"** attached hereto and by this

reference incorporated in this Declaration. The initial phase of the development will consist of 24 Units, other Buildings will be constructed in subsequent phases. Construction of the common Clubhouse will begin at a time to be determined by the Association.

2. Unit Boundaries. The Project consists of freestanding Buildings containing single Units. The boundaries of each Townhome Unit in all Buildings consist of the area bounded by the interior surface of the exterior walls of the building, the bottom of the concrete foundations, and the interior surface of the roof. The land beneath a Townhome, the garage, and any air conditioner compressors are part of the Unit. Utility lines and pipes which serve each Townhome Unit shall be part of the Unit served from the interior of the Unit to the point where they join public utility lines. All interior surfaces, spaces, interior partitions, and other fixtures and improvements within the boundaries of a Unit are a part of the Unit.

3. Townhome Buildings. **Exhibit "C"** attached hereto and incorporated herein by this reference sets forth a general description of the Buildings and Units in the initial and subsequent phases of the Project and includes but is not limited to the following:

- a. Descriptions of the Buildings;
- b. Description of the attached garage or carport (if applicable);
- c. Principal material of which the Building is or will be constructed;
- d. The designation for each Unit;
- e. The location of each Unit; and
- f. The approximate square footage of each Unit.

4. Floor Plans. **Exhibit "D"** attached hereto and incorporated herein by this reference sets forth the verified floor plans for each Unit to be constructed in the initial phase of the Project. This Declaration will be amended with the verified floorplans for Buildings in the subsequent phases.

5. Site Plan. **Exhibit "E"** attached hereto and incorporated herein by this reference sets forth the site plan for the Project depicting both the initial and subsequent phases.

6. Percentage Interests in General Common Elements. **Exhibit "F"** attached hereto and by this reference incorporated herein sets forth the percentage interests in the General Common Elements owned by each Unit within the proposed Project.

7. Government Certification. **Exhibit "G"** attached hereto and incorporated herein by this reference contains the certification from the applicable local government that the Townhomes are either exempt from review under 76-3-203 of the Montana Code Annotated, as amended, or have been approved following review under Title 76, chapter 3, parts 5 and 6 of the Montana Code Annotated, as amended.

## **Article V.**

### *Phases. Amendment*

1. Plan of Development. The Project shall be developed in phases. **Exhibit "E"** attached hereto, is a site plan showing all Buildings and improvements which Declarant, or its successors or assigns, may construct on the Property in two or more phases, subject to the right of Declarant, in its sole discretion, to change the design and location of the Units to meet the requirements of the sales market and showing the boundaries of each phase. Declarant reserves an easement over and upon Common Elements and land appurtenant to completed phases for the purpose of access for constructing additional phases. Declarant may proceed with such construction, without consent of the Association or the Unit owners, subject to the following conditions:
  - a. The Buildings in each phase shall be annexed to and included as part of the Project at the time a certificate of occupancy is issued for such Building;
  - b. Prior to conveyance of any Unit not constructed in the first phase, Developer shall record an amendment to this Declaration with the Carbon County Clerk and recorder. The amendment shall include a floor plan and elevation for the new Unit, and a site plan showing the location of the new Unit if different from Exhibit "D" attached hereto;
  - c. Upon completion of Units in subsequent phases or termination of the Project, Declarant shall record an amendment to this Declaration, setting forth a reallocation of the percentage of undivided interests of each Unit in the Common Elements. The interest of each Unit shall be equal to the area of floor space of each Unit, as determined by the final recorded floor plan for that Unit, divided by the total area of floor space of all Units;
  - d. New Units shall be similar in material, size and style to the existing Units. However, Declarant reserves the right to modify the design and mixture of floor plans to meet market requirements;
  - e. From and after the recording date of each of the above-described amendments, the

Owners of new Units shall have non-exclusive rights to use General Common Elements to the same extent as the Owners of all other completed Units and shall be assessed and shall be entitled to vote in accordance with their ownership interest in the General Common Elements. However, no new Unit shall be assessed for, nor shall it have any obligation for debts, deficits or obligations in existence prior to the time each Unit is completed as evidenced by issuance of a certificate of occupancy; and

- f. Each newly-completed Unit shall be treated as a part of the Project, developed as a whole from the beginning, except to the extent expressly otherwise provided herein. It is the purpose hereof to provide that from and after the date of the amendment, each newly-completed Unit shall be treated as though it had been a part of a single, undivided Project.
- g. Construction of the project's common Clubhouse will occur on a schedule and terms determined by the Association after the first phase construction has begun.

## **Article VI.**

### *Common Elements*

- 1. General Common Elements. "General Common Elements" means:
  - a. The Common Elements also include any chute, flue, duct, wire, conduit, bearing wall, partition wall, bearing column, or any other fixture which are located in a Building for common use.
  - b. The foundations, columns, girders, beams, supports, main walls, roofs, and similar exterior construction of a Building for common use;
  - c. Installations of central services for common use such as power, light, gas, hot and cold water, heating, and air conditioning of a Building for common use;
  - d. The tanks, pumps, motors, fans, compressors, ducts, and, in general, all apparatus and installations existing for common use;
  - e. All other elements of a Building for common use necessary or convenient to its existence, maintenance, and safety or normally in common use;
  - f. Any Buildings identified on the Site Plan as a maintenance or common use Building and administrative and sales Building and all related improvements;

- g. All Project utilities and infrastructure located on the Property not owned by the City of Red Lodge, including without limitation electric, gas, communication, water, sanitary sewer, storm sewer, sidewalk and streets;
- h. All Project grounds, green spaces and landscaping located on the Property not owned by the city of Red Lodge; and
- i. Facilities and Buildings identified on the Site Plan as the pool, spa, surrounding deck and clubhouse, pavilion, fire pits, horseshoe pit, playgrounds, paths and trails, all related improvements and similar recreational amenities intended for common use.

2. Drinking Water System. The City of Red Lodge will own, operate, and maintain the public water main installations. The Association will own, operate, and maintain the private main installations as set forth herein and as detailed in the Operation and Maintenance Manual for the system, which manual shall be maintained in the records of the Association and the terms and conditions of which are incorporated herein by this reference. The Association will be obligated to pay for some costs to maintain the City of Red Lodge's existing booster station if and when deemed necessary by the City.

3. Stormwater System. The Project is subject to a stormwater management plan and served by a stormwater system. The Association shall be responsible for adherence to the plan and operation and maintenance of the system pursuant to the Stormwater System Operation and Maintenance Plan, which plan shall be maintained in the records of the Association and the terms and conditions of which are incorporated herein by this reference.

4. Conveyance or Encumbrance of General Common Elements. Portions of the General Common Elements not necessary for the habitability of a Unit may be conveyed or subjected to a security interest by the Association with the consent of the Owners having at least eighty percent (80%) of the votes in the Association. Any conveyance, encumbrance, judicial sale or other transfer (voluntary or involuntary) of an individual interest in the General Common Elements shall be void unless the Unit to which that interest is allocated is also transferred.

5. Allocated Interests in General Common Elements. Each Unit Owner shall initially own an undivided interest in the General Common Elements of the Project. The interest of each Unit shall be equal to the area of floor space of each Unit, as determined by the final recorded floor plan for that Unit, divided by the total area of floor space of all Units and is more particularly described on **Exhibit "F"**, attached hereto. In the event additional Units are added or eliminated pursuant to Article V above, each Unit Owner's undivided interest in the General Common Elements shall be modified in proportion to the area of floor space of each completed Unit subject to a certificate of occupancy.



## **Article VII.**

### *Limited Common Elements*

1. Limited Common Elements. "Limited Common Elements" means and those Common Elements designated in this Declaration as reserved for the use of certain Units to the exclusion of other Units as follows:

- a. The driveway located in front of each Unit and the walkway leading from the driveway to the exterior entrance shall constitute Limited Common Elements for the particular Unit to which they apply to the exclusion of the other Units;
- b. All stairways, porches and exterior entrances associated with each Unit shall constitute Limited Common Elements for the particular Unit to which they apply to the exclusion of the other Units;
- c. All sitting patios, decks, or balconies associated with each Unit shall constitute Limited Common Elements for the particular Unit to which they apply to the exclusion of the other Units;
- d. The exterior wall and roof surfaces of each Unit;
- e. Each Unit Owner shall be entitled to a full and exclusive right to use any Limited Common Elements designated by the Association as appertaining exclusively to that Unit. In addition, each Unit Owner shall be entitled to an undivided right to access and use any Limited Common Elements designated by the Association as appertaining to a number of specific Units. Generally, Limited Common Elements shall include only those areas designed to serve a single Unit or a specifically identified number of Units and located outside the immediate boundaries thereof. Any Unit shall be subject to the right of the Association to provide for maintenance of such Limited Common Elements, including but not limited to those specifically designated above.

2. Use. Each Owner shall have the exclusive right to use the Limited Common Elements allocated only to the Owner's Unit and an undivided right to access and use any Limited Common Elements allocated to a number of specific Units which right shall be exclusive to Owners of specific Units to which such Limited Common Elements are allocated. The right to use the Limited Common Element extends to the Owner's agents, servants, tenants, family members, invitees and licensees.

## **Article VIII.**

### *Permitted Uses, Restrictions and Maintenance of Units*

1. Residential Use. Each Unit is intended for and restricted to residential use only, on an ownership, rental, or lease basis, and for social, recreational, or other reasonable activities normally incident to such use, including use as a home office not involving use by nonresident employees or regular visits by customers or clients.

2. Timesharing Prohibited. Selling the Units as timeshares, as such is defined in Section 37-53-101, et seq., M.C.A., is prohibited.

3. Leases and Rental Agreements. No Owner other than the Declarant shall be permitted to lease a Unit for a period of less than six (6) months, except through the Declarant or Declarant's designated Rental Manager, and any such lease shall be subject to a twenty-five percent (25%) fee for managing the rental, including all rental marketing, housekeeping, and guest check in and check out, which terms shall be included in a rental agreement between Owner and Declarant or Declarant's designated Rental Manager. If Owner leases a Unit for any period less than sixty (60) days without going through the Declarant or Declarant's designated Rental Manager, Owner shall nevertheless be obligated to pay to Declarant the aforementioned fee of twenty-five percent (25%) of the proceeds from the lease. Any Owner wishing to lease a Unit for a period of six (6) months or more may either utilize the designated Rental Manager under the terms outlined herein, or make their own lease and management arrangements.

- a. Net Gross Unit Rental from Units located in the Condominium Development rented through Manager shall be separately collected and accounted for each Unit on a monthly basis as set forth herein. The term "Net Gross Unit Rental" shall mean the Gross Rental for an individual Unit for each day of rental occupancy less any rental or travel agent commission, credit card charges and sales taxes applicable to revenues received on the individual Unit. The Gross Rental shall not include forfeited rental deposits which shall be the sole property of Manager. Manager shall also receive all revenues generated from charges for telephone usage, cribs and roll-aways, internet usage, television, cable and movie rentals, maid services, laundry and dry cleaning, and such other similar revenues for services provided by Manager. Net Gross Unit Rental shall be calculated and collected monthly for each individual Unit ("Monthly Rental Revenue"). The Monthly Rental Revenue shall be allocated as follows:
- b. Twenty-five percent (25%) of the Gross Rental Revenue for the individual Unit shall be paid to the Manager and seventy-five percent (75%) of the Gross Rental Revenue may be retained by the Owner of the Unit.
- c. The Owners recognize that the Manager herein is also the Declarant under the Declaration of Condominium for Alpine Basin, recorded in Carbon County, Montana, and that if Owner leases a Unit for any period less than sixty (60) days, without going through the Manager, the Owner shall nevertheless be obligated to

pay to Manager the aforementioned fee of twenty-five percent (25%) of the proceeds from the lease. The Manager's right to receive the aforementioned fee of twenty-five percent (25%) of the proceeds from the rental of any Unit shall survive the termination of this Agreement.

d. The amounts outlined herein shall be distributed to the leasing Owner monthly. Any lease or rental agreement must provide that its terms shall be subject in all respects to the provisions of the Declaration and the Bylaws and Rules and Regulations of the Association and that any failure by the tenant to comply with the terms of such documents, rules, and regulations shall be a default under the lease or rental agreement. If any lease under this Section does not contain the foregoing provisions, such provisions shall nevertheless be deemed to be part of the lease and binding upon the Owner and the tenant by reason of their being stated in this Declaration. The Board may adopt a rule that requires any Owner desiring to rent a Unit to have any prospective tenant (other than a relative of the Owner) screened, at the Owner's cost, by a tenant screening service designated or approved by the Board and to furnish the report of the tenant screening service to the Board or its designee prior to Owner's entering into a lease with the prospective tenant. All leases and rental agreements shall be in writing. Copies of all leases and rental agreements shall be delivered to the Association before the tenancy commences. If any lessee or occupant of a Unit violates or permits the violation by guests and invitees of any provisions hereof or of the Bylaws or of the Rules and Regulations of the Association, and the Board determines that such violations have been repeated and that a prior Notice to cease has been given, then the Board may give Notice to the lessee or occupant of the Unit. In said Notice, the Board shall inform the Owner to cease such violations; and if any such violations are thereafter repeated, the Board shall have the authority, on behalf and at the expense of the Owner, to evict the tenant or occupant if the Owner fails to do so after notice from the Board and an opportunity to be heard. The Board shall have no liability to an Owner or tenant for any eviction made in good faith. The Association shall have a lien against the Owner's Unit for any costs incurred by it in connection with such eviction, including reasonable attorneys' fees, which may be collected and foreclosed by the Association in the same manner as Assessments are collected and foreclosed under Article XVI. Other than as stated in this Section, there is no restriction on the right of any Owner to lease or otherwise rent a Unit.

4. Pets. A maximum of two (2) pets (dogs and/or cats) shall be permitted in each Unit only if kept under the Owner's control at all times. No pets shall be allowed to run loose on the Common Elements. Owners shall be responsible for promptly cleaning up after their pets and for payment for any damages caused by their pets. Owners shall pay a fine, imposed by the Board, of \$50.00 for a second violation of any of these pet restrictions and a fine of \$100.00 for each violation thereafter. Such fines shall be a Common Expense, payable by the offending Unit Owner. In addition, the Board may require an Owner to either keep a pet inside or permanently remove it from Project if the Board receives two bona fide complaints that the animal is a nuisance from one or more other Owners within a six (6) month period. In addition to the

foregoing, Owners shall comply with all city or county codes regarding pets and leash requirements.

5. Nuisances. No nuisances or unlawful activities shall be allowed on or within any Unit or Common Element, nor shall any use or practice be allowed which interferes with the peaceful possession or proper use of the Property of other Units.

6. Antennas and Satellite Dishes. No antennas or satellite dishes exceeding one meter in diameter or diagonal measurement, and no post-construction air-conditioning units, wiring, or any other device shall be installed on the exterior of any Building or on Common Elements without prior written approval of the Board. Owners may install a small satellite dish or antenna not exceeding one meter in diameter or diagonal measurement in their yard at the back or side of their Unit or on the exterior surface of their Unit without prior approval of the Board. The location of the satellite dish or antenna must comply with the ordinances of the City of Red Lodge.

7. Garbage. Unit Owners shall comply with the placement, storage and collection regulations set forth in Section 4-1-16 of the Red Lodge Municipal Code entitled "Solid Waste". Pursuant to this section, all garbage and trash must be placed in the property receptacles designated for refuse collection, and no garbage or trash shall be placed elsewhere on any Common Elements; all trash containers must be kept inside the garage except on collection days.

8. Noise. Owners, occupants and their guests shall exercise care about making noise, which may disturb other residents. In accordance with Section 4-1-13 of the Red Lodge Municipal Code entitled "Noise", no Unit Owner shall make or permit noise on Common Elements between the hours of 10:00 p.m. and the following 7:00 a.m. if such noise shall disturb or annoy occupants of other units.

9. Parking. Unit Owners shall not park vehicles in such a manner as to block sidewalks or driveways, nor shall they permit any member of their family, guests, or tenants to do so. No parking shall be permitted on the street by Unit Owners, Occupants or guests. Junked or non-operational vehicles, boats and trailers, and motor homes shall not be parked on Common Elements or in driveways for a period exceeding twenty-four (24) hours. Improperly parked or stored vehicles may be removed at the Owner's expense.

10. Blocking Access. Owners shall not take or permit any occupant or guest to take any action which impairs vehicle or pedestrian access to another Unit.

11. Fire Prevention. No Unit Owner shall perform any act or store anything within or immediately adjacent to his or her Unit which might increase the rate of fire insurance for other homes or increase the probability of fire as a result of such act or the storage of such items.

12. Maintenance of Units, Common Elements, and Limited Common Elements.

Except as provided below, the Association is responsible for maintenance, repair, and replacement of the Common Elements and the Limited Common Elements, and each Owner is responsible for maintenance, repair and replacement within the boundaries of each Owner's Unit.

13. Repair and Maintenance by Owners. Each Unit Owner shall maintain, repair, replace, finish and restore or cause to be so maintained, repaired, replaced and restored, at Owner's sole expense, all portions of Owner's Unit, including, without limitation, shower pans within any Unit bathroom, as well as the windows, doors, light fixtures actuated from switches controlled from, or separately metered to, such Owner's Unit, heating, ventilation and air conditioning equipment located within and/or serving solely such Owner's Unit, utility equipment serving solely such Owner's Unit, and the interior surfaces of the walls, ceilings, floors, permanent fixtures and firebox in the fireplace, in a clean, sanitary and attractive condition, in accordance with the Townhome Rules and Regulations, the Maintenance Standards, and the original Construction Design of the Improvements in the Project. It shall further be the duty of each Owner, at Owner's sole expense, to keep Owner's Unit free from excessive moisture, as moisture can lead to the presence or accumulation of mold and mildew in the Unit. Such preventative measures with respect to mold and mildew shall include, without limitation, promptly treating and/or removing any mold or mildew which may appear, grow, accumulate or spread in such Owner's Unit. No bearing walls, ceilings, floors or other structural or utility bearing portions of the Buildings housing the Units shall be pierced or otherwise altered or repaired, without the prior written approval of the plans for the alteration or repair by the Board or an Architectural Committee appointed by the Board. No Owner shall be responsible for any other periodic structural repair, resurfacing, sealing, caulking, replacement or painting of Owner's Limited Common Element, so long as the need for such painting, repair or replacement is not caused by the willful or negligent acts of the Owner or the Owner's family, tenants, or guests. It shall further be the duty of each Owner to pay when due all charges for any utility service of any type which is separately metered to that Owner's Unit.

14. Inspection Responsibilities of Association. The Association may, as a Common Expense, provide for the inspection of any portion of a Unit or Limited Common Element, the failure of which to maintain properly may cause damage to the Common Elements, Limited Common Elements or another Unit, or cause unnecessary Common Expenses, including, but not limited to, fireplace and flue, bathtubs, sinks, toilets, hot water tanks, and plumbing and electrical fixtures. If the inspection discloses the need for repair or replacement, the Association may either require the responsible Owner to make the repair or replacement or make the repair or replacement itself and allocate the cost thereof, plus interest, to the Owner.

15. Exterior Appearance. In order to preserve a uniform exterior appearance of the Buildings, the Board shall provide for the maintenance of the exterior of the Buildings, including

all roof, exterior walls, driveways, walkways, porches, balconies and decks. No Owner may modify the exterior of a Building or screen, doors, awnings, or other portions of any Unit visible from outside the Unit without the prior written consent of the Board. Any decoration of any exterior portion of a Unit must comply with all Rules and Regulations. No hot tubs, solar panels, radio or television antennas or other appliances may be installed on the exterior of a Building without the prior written consent of the Board. Hot tubs of a specific size may be allowed in specific locations on certain Units. Other than approved furniture and appliances (including barbecue grills), nothing may be stored on porches, balconies or decks of a Building without the prior written consent of the Board. Unless otherwise established by Rule or Regulation of the Board, all portions of curtains, blinds or draperies visible from outside the Units shall be white or off-white, and the Owners shall not replace the glass or screen in the windows or doors of the Units except with materials of similar color and quality to those originally installed.

16. Mold. Each Owner, by acceptance of a Deed to a Unit, acknowledges and understands that there is, and will always be, the presence of certain biological organisms within the Unit. Most typically, this will include the common occurrence of mold and/or mildew. It is important to note that mold and mildew tend to proliferate in warm, wet areas. As such, it is each Owner's responsibility to maintain the Owner's Unit so as to avoid the accumulation of moisture and/or mold and mildew within the Unit. Such mitigation matters should include, without limitation, the frequent ventilation of the Unit, removal of standing water on balcony, patio or deck areas, prompt repair of any leaks which permit water intrusion into the Unit, and prompt repair of plumbing leaks within the Unit (irrespective of who may have caused any such leaks). Each Owner also understands that the presence of indoor plants may also increase moisture and/or mold and mildew. Also, the propping of large pieces of furniture against wall surfaces may lead to mold or mildew accumulation. It is the responsibility of each Owner to monitor and maintain Owner's Unit so as to mitigate and avoid the conditions which are likely to lead to the existence and/or growth of mold and/or mildew. In the event that mold does appear and/or grow within the Unit, it is also the Owner's responsibility to promptly and properly treat such mold to minimize the spreading thereof and/or unhealthy conditions likely to arise as a result thereof. Such measures frequently include, but are not limited to, cleaning mold-affected surfaces with chlorine bleach. Each Owner is responsible to learn how to clean any affected Improvements.

17. Notice Regarding Water Intrusion. Notwithstanding any other provision herein, in the event that there shall be intrusion of water into any Unit (including, without limitation, as a result of any roof, window, siding or other leaks (including, without limitation, plumbing leaks), and whether or not the cause of such leak constitutes an alleged defect), the Owner of the affected Unit shall be obligated to immediately notify Declarant of such event, and Owner shall take all necessary and appropriate action to stop any such water intrusion. Declarant shall thereafter have all of the rights afforded Declarant under this Article to inspect the condition,

including the right to assess the likelihood of mold or mildew, and to offer recommendations for mitigation of mold or mildew. Nothing herein shall obligate Declarant to take any action, nor shall any rights of Declarant under this subsection constitute an admission or acknowledgment that any causes of any water intrusion are the result of defective construction. Failure of any Owner to timely notify Declarant of any such water intrusion shall be cause to deny future claims against Declarant relating thereto, which claims could have been mitigated had earlier action been taken.

18. Effect on Insurance. Nothing shall be done or kept in any Unit or in any Common Element that will increase the rate of insurance on the property without the prior written consent of the Board. Nothing shall be done or kept in any Unit or in any Common Element that will result in the cancellation of insurance on any part of the Property, or that would be in violation of any laws.

19. Use or Alteration of Common and Limited Common Elements. Use of the Common Elements and Limited Common Elements shall be subject to the provisions of this Declaration and the Rules and Regulations of the Board. Nothing shall be altered or constructed in or removed from any Common Element or Limited Common Element except upon the prior written consent of the Board.

20. Quiet Enjoyment and Offensive Activity. No Owner shall permit anything to be done or kept in the Owner's Unit, or in the Limited Common Elements or Common Elements which would interfere with the right of Quiet Enjoyment of the other residents of the Condominium. No noxious or offensive activity shall be carried on in any Unit, Limited Common Element or Common Element, nor shall anything be done therein that may be or become an annoyance or nuisance to other Owners. Any and all covenants relating to the noise, annoyance, or nuisance during the construction, repair or sale of Units are expressly waived as such may pertain to Declarant in the construction, modification, alteration or improvement of any Units, whether in the Initial Condominium Project or any Annexed Property.

21. Additional Restrictions and Fines. Additional limitations to those set forth in the Declaration may be adopted by the Board and may be specified in the Bylaws or in the Rules and Regulations of the Townhomes. The Board may adopt a schedule of fines for violation of any of the provisions contained in this Article and for violation of any additional limitations which may be adopted by the Board and may be specified in the Bylaws or in the Rules and Regulations of the Townhomes, and the Board may assess such fines against all Owners who violate these provisions. The Owner of each Unit shall be responsible for fines resulting from the conduct of the occupants of the Unit and their guests. In the event any Owner, occupant, or guest of any occupant fails to abide by the provisions of this Article, in the Bylaws or in the Rules and Regulations of the Townhomes, the Board shall be entitled to recover from the Unit Owner all costs and attorneys' fees incurred by it in compelling compliance, with or without initiating

arbitration or filing a lawsuit, including collection of fines imposed for violations. If an Owner wishes to dispute the imposition of a fine against that Owner, the Owner must submit the dispute to arbitration within six (6) weeks after receipt of written notice of the fine; failure of an Owner to submit the dispute to arbitration within six (6) weeks shall be deemed an admission that the fine was properly imposed by the Board. All fines shall be a lien on the Unit of the Owner against whom they are imposed, and if unpaid, the lien may be foreclosed in the same manner as a lien for Common Expenses.

## **Article IX.**

### *Conveyances of Units and Notice*

The right of an Owner to sell the Owner's Unit shall not be subject to any right of approval, disapproval, first refusal, or similar restriction by the Association or the Board, or anyone acting on their behalf. An Owner intending to convey a Unit shall deliver a written Notice to the Board, at least two weeks before closing, specifying (a) the Unit being sold; (b) the name and address of the purchaser, of the closing agent, and of the title insurance company insuring the purchaser's interest; and (c) the estimated closing date. The Board shall have the right to notify the purchaser, the title insurance company, and the closing agent of the amount of unpaid Assessments and charges outstanding against the Unit, whether or not such information is requested. Promptly upon the conveyance of a Unit, the new Unit Owner shall notify the Association of the date of the conveyance and the Unit Owner's name and address. The Association shall notify each insurance company that has issued an insurance policy under Article XX of the name and address of the new Owner and request that the new Owner be made a named insured under such policy. At the time of the first conveyance of each Unit, every mortgage, lien or other encumbrance affecting that Unit and any other Unit or Units or real property, other than the percentage of undivided interest of that Unit in the Common Elements, shall be paid and satisfied of record, or the Unit being conveyed and its undivided interest in the Common Elements shall be released therefrom by partial release duly recorded or the purchaser of that Unit shall receive title insurance from a licensed title insurance company against such mortgage, lien or other encumbrance.

Furthermore, each Owner, upon the purchase of a Unit shall deposit into the Association's capital account the sum of Five Hundred Dollars (\$500.00) per Unit purchased, which shall be used and utilized by the Association for capital improvements, operations, infrastructure development and maintenance on the Property.

## **Article X.**

### *Special Declarant Rights*

1. The Declarant reserves the following Special Declarant Rights:
  - a. To complete any improvements described in this Declaration and Exhibits



attached hereto and any other maps or plans applicable to the Project;

- b. To maintain sales offices, management offices, signs advertising the Townhomes, and models in unoccupied Units which are for sale by the Declarant, in Units owned by the Declarant, and in the Common Elements of the Townhomes;
- c. To use easements through the Common Elements for the purpose of making improvements within the Townhomes;
- d. To elect, appoint or remove any Officer of the Association or any Member of the Board during the period of Declarant Control;
- e. To use any of the Common Elements for the express use of marketing the property and entertaining potential buyers; and
- f. To rent and manage the rental of Units pursuant to Article VIII section 3.

2. The rights described in this Article shall not be eliminated by amendment after the Transition Date or transferred except by instrument evidencing the transfer executed by the Declarant or the Declarant's successor and the transferee and recorded in the county in which the Condominium Project is located.

## **Article XI.**

### *Entry for Repairs and Maintenance*

The Association and its agents or employees may enter any Unit and the Limited Common Elements allocated thereto to effect repairs, improvements, replacements, maintenance or sanitation work deemed by the Board to be necessary in the performance of its duties, to do necessary work that the Owner has failed to perform, or to prevent damage to the Common Elements or to another Unit. Except in case of an emergency that precludes advance Notice, the Board shall cause the Unit occupant to be given notice and an opportunity to be heard as far in advance of entry as is reasonably practicable. Such entry shall be made with as little inconvenience to the Owners and occupants as practicable. The Board may levy a special Assessment against the Owner of the Unit for all or part of the cost of work that the Owner has failed to perform which may be collected and foreclosed by the Association in the same manner as Assessments are collected and foreclosed.

## **Article XII.**

### *The Association*

1. Form of Association. The Association is a nonprofit corporation organized under

the law of the state of Montana. The Association will be governed by the Board of five (5) directors, as specified in the Bylaws. The rights and duties of the Board and of the Association shall be governed by the provisions of the Unit Ownership Act, the Declaration and the Bylaws.

2. Bylaws. The Board will adopt Bylaws to supplement the Declaration and to provide for the administration of the Association and for other purposes consistent with the Unit Ownership Act or the Declaration.

3. Qualification and Transfer. Each Owner of a completed Unit subject to a certificate of occupancy (including the Declarant) shall be a Member of the Association and shall be entitled to one membership for each Unit owned, which membership shall be considered appurtenant to that Member's Unit. Ownership of a Unit shall be the sole qualification for membership in the Association. A membership shall not be transferred in any way except upon the transfer of title to the Unit and then only to the transferee or title to the Unit; provided, that if Unit has been sold on contract, the contract purchaser shall exercise the rights of the Owner for purposes of the Association, this Declaration, and the Bylaws, except as hereinafter limited, and shall be the voting representative unless otherwise specified. Any attempt to make prohibited transfer shall be void. Any transfer of title to a Unit shall operate automatically to transfer the membership in the Association to the new Owner.

4. Powers of the Association. In addition to those actions authorized elsewhere in the Declaration, the Bylaws, the Unit Ownership Act, and the laws of the State of Montana, the Association shall, by sufficient approval if its Members (as stipulated herein), have the power to:

- a. Adopt and amend the Bylaws and Rules and Regulations;
- b. Adopt and amend budgets for revenues, expenditures, and reserves and impose and collect Common Expenses and special Assessments from Owners;
- c. Hire and discharge or contract with Managing Agents and other employees, agents, and independent contractors;
- d. Institute, defend, or intervene in litigation or administrative proceeding in its own name on behalf of itself or two or more Unit Owners on matters affecting the Condominium;
- e. Make contracts and incur liabilities;
- f. Regulate the use, maintenance, repair, replacement, and modification of Common Elements and Limited Common Elements;

- g. Cause additional improvements to be made as a part of the Common Elements;
- h. Acquire, hold, encumber, convey, and dispose of in the Association's name, right, title, or interest to real or tangible and intangible personal property, and to arrange for and supervise any addition or improvement to the Townhome Project; provided that:
  - i. If the estimated cost of any separate property acquisition or addition or improvement to the Project exceeds \$10,000.00 and has not been included in the current year's budget, the approval of the Owners holding a majority of the votes in the Association shall be required; and if such estimated cost exceeds \$10,000.00 and has not been included in the current year's budget, the approval of the Owners holding seventy-five percent (75%) of the votes in the Association shall be required;
  - ii. no structural changes shall be made to the Buildings or Common Elements without the approval of Owners holding at least seventy-five (75%) of the votes in the Association;
  - iii. no structural change shall be made to a Unit without the approval of the Owner of that Unit; and
  - iv. the beneficial interest in any property acquired by the Association pursuant to this Section shall be owned by the Owners in the same proportion as their respective interests in the Common Elements and shall thereafter be held, sold, leased, mortgaged or otherwise dealt with as the Board shall determine.
- i. Grant easements, leases, licenses, and concessions through or over the Common Elements;
- j. Impose and collect any payment, fees, or charges for the use, rental, or operation of the Common Elements and for services provided to Owners;
- k. Acquire and pay for all goods and services reasonably necessary or convenient for the efficient and orderly functioning of the Condominium;
- l. Impose and collect charges for late payment of Assessments as further provided in Article XVI and, after notice and an opportunity to be heard by the Board, or by such representative designated by the Board, and in accordance with such procedures as provided in this Declaration, the Bylaws, or Rules and Regulations

adopted by the Board, levy reasonable fines in accordance with a previously established schedule thereof adopted by the Board and furnished to the Owners for violations of this Declaration, the Bylaws, and Rules and Regulations of the Association;

- m. Impose and collect reasonable charges for the preparation and recording of amendments to this Declaration;
- n. Provide for the indemnification of its Officers and Board and maintain directors' and officers' liability insurance;
- o. Assign its right to future income, including the right to receive Assessments;
- p. Provide or pay, as part of the Common Expenses, utility services to the Units;
- q. Exercise any other powers conferred by this Declaration or the Bylaws;
- r. Exercise all other powers that may be exercised in this State by the same type of corporation as the Association; and
- s. Exercise any other powers necessary and proper for the governance and operation of the Association.

5. Financial Statements and Records. The Association shall keep financial records in accordance with generally accepted accounting principles. All financial statements and other records shall be made reasonably available for examination by any Unit Owner and the Owner's authorized agents. At least annually, the Association shall prepare, or cause to be prepared, a financial statement of the Association in accordance with generally accepted accounting principles. The financial statement shall be completed in time for the Association's annual meeting and in any event within one hundred twenty (120) days following the end of the fiscal year. Any mortgagee will, upon written request, be entitled to receive the annual financial statement within one hundred twenty (120) days following the end of the fiscal year. An Owner or mortgagee, at the Owner's or mortgagee's expense, may at any reasonable time conduct an audit of the books of the Board and Association.

6. Inspection of Townhome Documents, Books and Records. The Association shall make available to Owners, mortgagees, prospective purchasers and their prospective mortgagees, and the agents or attorneys of any of them, current copies of this Declaration, the Articles, the Bylaws, the Rules and Regulations of the Association, and other books, records, and financial statements of the Association, with the exception of items that contain sensitive or confidential information, including without limitation, social security numbers, tax identification numbers, or account numbers. "Available" shall mean available for inspection upon request, during normal

business hours or under other reasonable circumstances. The Association may require the requesting party to pay a reasonable charge to cover the cost of making any copies.

### **Article XIII.**

#### *Declarant Control Period*

1. Declarant Control Until Transition Date. Until the Transition Date, the Declarant shall have the right to appoint and remove all Members of the Board; provided that not later than ninety (90) days after conveyance of fifty percent (50%) of the Units to Owners other than the Declarant, one Member of the Board must be elected by Owners other than the Declarant.

2. Transition Date. Declarant's Control of the Association shall terminate on the Transition Date. The Transition Date shall be no later than the earlier of: (a) ninety (90) days after conveyance of one hundred percent (100%) of the Units to Owners other than the Declarant; (b) ten (10) years after the first conveyance of a Unit; or (c) the date upon which the Declarant records an amendment to the Declaration pursuant to which the Declarant voluntarily surrenders the right to further appoint and remove Officers and Members of the Board. If the Declarant voluntarily surrenders control pursuant to (c) above, the Declarant may require that for the duration of the period of Declarant Control, specified actions of the Association of the Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

3. Declarant's Transfer of Association Control. Within ninety (90) days after the Transition Date, the Declarant shall deliver to the Association all property of the Owners and of the Association held or controlled by the Declarant including, but not limited to, the following:

- a. The original or a photocopy of the recorded Declaration and each amendment to the Declaration;
- b. The Certificate of Incorporation and a copy or duplicate original of the Articles as filed with the Secretary of State;
- c. The Bylaws;
- d. The minute book, including all minutes and other books and records of the Association;
- e. Any Rules and Regulations that have been adopted;
- f. The financial records, including cancelled checks, bank statements, and financial statements of the Association, and source documents from the time of

incorporation of the Association through the date of transfer of control to the Owners;

- g. Association funds or the control of the funds of the Association;
- h. All tangible personal property of the Association represented by the Declarant to be the property of the Association and inventory of the property;
- i. The copy of the Declarant's plans and specifications utilized in the construction or remodeling of the Condominium, with a certificate of the Declarant of a licensed architect or engineer that the plans and specifications represent, to the best of such Person's knowledge and belief, the actual plans and specifications utilized by the Declarant in the construction or remodeling of the Condominium (which may not include alterations to a Unit done by a Unit Owner other than the Declarant);
- j. Insurance policies or copies thereof for the Condominium and the Association;
- k. Copies of any certificates of occupancy that may have been issued for the Condominium;
- l. Any other permits issued by governmental bodies applicable to the Condominium in force or issued within one (1) year before the Transition Date;
- m. All original warranties that are still in effect for the Common Elements, or any other areas or facilities which the Association has a responsibility to maintain and repair, from the contractor, subcontractors, suppliers, and manufacturers and all owner's manuals or instructions furnished to the Declarant with respect to installed equipment or building systems;
- n. A roster of Unit Owners and Eligible Mortgagees and their addresses and telephone numbers, if known, as shown on the Declarant's records and the date of closing of the first sale of each Unit sold by the Declarant;
- o. Any leases of the Common Elements or areas and other leases to which the Association is a party;
- p. Any employment contracts or service contracts in which the Association is one of the contracting parties, or service contracts in which the Association or the Unit Owners have an obligation or are responsible, directly or indirectly, to pay some or all of the fee or charge of the person performing the services; and

- q. All other contracts to which the Association is a party.

#### **Article XIV.**

##### *The Board of the Association*

1. Selection of the Board and Officers. Prior to the Transition Date, Article XIII, Section 1, shall govern election or appointment of Members of the Board. Within thirty (30) days after the Transition Date, the Owners and Declarant shall elect a new Board. Three (3) Board Members shall be selected by the Declarant. The Owners shall select the remaining Board Members. The number of Board Members and their terms of services shall be specified in the Bylaws. The Board shall elect Officers in accordance with the procedures provided in the Bylaws. The Members of the Board and Officers shall take office upon election. Removal of Board Members, and their terms of service shall be as provided in the Bylaws.

2. Powers of the Board. Except as provided in this Declaration, the Bylaws or the Unit Ownership Act, the Board shall always act on behalf of the Association. The Board may exercise all powers of the Association, except as otherwise provided in the Unit Ownership Act, Declaration or the Bylaws.

3. Managing Agent. The Board may contract with an experienced professional Managing Agent to assist the Board in the management and operation of the Condominium and may delegate such of its powers and duties to the Managing Agent as it deems to be appropriate, except as limited herein. Any contract with a Managing Agent shall have a term no longer than one (1) year (but may be renewable by agreement of the parties for successive one (1) year periods) and shall be terminable by the Board without payment of a termination fee, either (1) for cause, on thirty (30) days written notice, or (2) without cause, on not more than ninety (90) days written notice.

4. Limitations on Board Authority. The Board shall not, at any time after the Transition Date, act on behalf of the Association to amend the Declaration regarding the Declarant's rights in Article X, or in any manner that requires the vote or approval of the Unit Owners pursuant to Article XXV, to terminate the Townhomes pursuant to Article XXVI, or to elect Members of the Board or determine the qualifications, powers, and duties, or terms of office of Members of the Board. The Board may, in accordance with the Bylaws, fill vacancies in its membership for the unexpired portion of any term.

5. Right to Notice and Opportunity to Be Heard. Whenever this Declaration requires that an action of the Board be taken after "notice and opportunity to be heard," the following procedure shall be observed:

The Board shall give written Notice of the proposed action to all Owners, tenants or occupants of Units whose interest would be significantly affected by the proposed action. The Notice shall include a general statement of the proposed action and the date, time and place of the hearing, which shall be not less than five (5) days from the date Notice is delivered by the Board. At the hearing, the affected person shall have the right, personally or by a representative, to give testimony orally, in writing or both (as specified in the Notice), subject to reasonable rules of procedure established by the Board to assure a prompt and orderly resolution of the issues. Such evidence shall be considered in making the decision but shall not bind the Board. The affected person shall be notified of the decision in the same manner in which Notice of the meeting was given.

## **Article XV.**

### *Budget and Assessments*

1. Fiscal Year. The Board may adopt such fiscal year for the Association as it deems to be convenient. Unless another year is adopted, the fiscal year will be the calendar year.

2. Preparation of Budget. Not less than thirty (30) days before the end of the fiscal year, the Board shall prepare a budget for the Association for the coming year. In preparing its budget, the Board shall estimate the Common Expenses of the Association to be paid during the year, make suitable provision for accumulation of reserves, including amounts reasonably anticipated to be required for operation, maintenance, repair, and replacement of the Common Elements and the Limited Common Elements, and shall take into account any surplus or deficit carried over from the preceding year and any expected income to the Association. The Declarant shall prepare the initial budget for the first fiscal year of the Association.

3. Supplemental Budget. If, at any time during the year, the budget proves to be inadequate for any reason, including nonpayment of any Owner's Assessments, the Board may prepare a supplemental budget for the remainder of the year.

4. Assessments for Common Expenses. Each Owner covenants and agrees to pay, upon demand, to the Association, or its successors or assigns, such Owner's share of such sum as the Association, or its successors or assigns, from time to time may pay or may be required to pay for the cost of the care, maintenance and repair of the Condominium, its Common Elements and Limited Common Elements; provided, however, that the Association, or its successors or assigns, shall always conduct such operations under this Section on a strictly nonprofit basis. Each Owner shall, for each Unit owned, pay a proportionate share of the total amount of such costs, with such share equal to the area of floor space of each Unit, as determined by the final recorded floor plan for that Unit, divided by the total area of floor space of all Units. The total amount shall be more specifically calculated by the Board on a year-to-year basis. This Section, just as the other Sections contained here, shall constitute a covenant running with the land.



5. Special Assessments. For those Common Expenses which cannot reasonably be calculated and paid on a monthly basis, the Board may levy special Assessments for such expenses against the Units.

6. Creation of Reserves: Assessments. The Board shall create reserve accounts for anticipated expenses for repairs, replacement and improvements which will occur in the future in order to accumulate sufficient funds to pay such expenses when they occur. The operation of reserve accounts and Assessments for reserve accounts shall be further governed by the Bylaws.

7. Notice of Assessments. The Board shall notify each Owner in writing of the amount of the monthly general and special Assessments to be paid for the Owner's Unit and shall furnish copies of all budgets and the Common Expense Liability allocations which apply to the Unit, on which the general and special Assessments are based. The Board shall furnish the same information to an Owner's mortgagee, if requested.

8. Payment of Monthly Assessments. On or before the tenth (10<sup>th</sup>) day of each calendar month, each Owner shall pay or cause to be paid to the treasurer or designated agent of the Association all Assessments against the Unit for that month. Any Assessment not paid by the tenth (10<sup>th</sup>) day of the calendar month for which it is due shall be delinquent and subject to late charges, interest charges and collection procedures as provided in Article XVI. The frequency of the payment of Assessments may be modified by the Board.

9. Proceeds Belong to Association. All Assessments and other receipts received by the Association on behalf of the Condominium shall belong to the Association.

10. Failure to Assess. Any failure by the Board or the Association to make the budgets and Assessments hereunder before the expiration of any year for the ensuing year shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of the Owners from the obligation to pay Assessments during that or any subsequent year, and the monthly Assessments amounts established for the preceding year shall continue until new Assessments are established.

11. Certificate of Unpaid Assessments. Upon the request of any Owner or mortgagee of a Unit, the Board will furnish a certificate stating the amount, if any, of unpaid Assessments charged to the Unit. The certificate shall be conclusive upon the Board and the Association as to the amount of such indebtedness on the date of the certificate in favor of all purchasers and mortgagees of the Unit who rely on the certificate in good faith. The Board may establish a reasonable fee to be charged to reimburse it for the cost of preparing the certificate.

12. Recalculation of Assessments. If Common Expense Liabilities are reallocated,

Common Expense Assessments, special Assessments, and any installment thereof not yet due shall be recalculated in accordance with the reallocated liabilities.

## **Article XVI.**

### *Lien and Collection of Assessments.*

1. Unpaid Assessments Are a Lien; Priority. The Association has a lien on a Unit for any unpaid Assessment levied against a Unit from the time the Assessment is due. All sums assessed by the Association but unpaid by the Unit Owner shall constitute a lien on such Unit and its interest in the Common Elements prior to all other liens except tax liens and the first mortgage or trust indenture of record as provided by Section 70-23-607 of the Unit Ownership Act.

2. Lien May be Foreclosed; Judicial Foreclosure. The lien arising under this Article may be enforced judicially by the Association or its authorized representative in the manner set forth in Section 70-23-608, et seq., M.C.A. of the Unit Ownership Act by the Board, acting on behalf of the Unit Owners. Pursuant to Section 70-23-608 M.C.A. of the Unit Ownership Act, an action to recover a money judgment for any unpaid Assessment may be brought without foreclosing or waiving the lien securing the Assessment as provided by law.

3. Receiver During Foreclosure. From the time of commencement of an action by the Association to foreclose a lien for nonpayment of delinquent Assessments against a Unit that is not occupied by the Owner thereof, the Association shall be entitled to the appointment of a receiver to collect from the lessee thereof the rent for the Unit as and when due. If the rent is not paid, the receiver may obtain possession of the Unit, refurbish it for rental up to a reasonable standard for rental Units in this type of Townhome, rent the Unit or permit its rental to others, and apply the rents first to the cost of the receivership and attorneys' fees thereof, then to the cost of refurbishing the Unit, then to applicable charges, then to costs, fees, and charges of the foreclosure action, and then to the payment of the delinquent Assessments. Only a receiver may take possession and collect rents under this Section and a receiver shall not be appointed less than ninety (90) days after the delinquency. The exercise by the Association of the foregoing rights shall not affect the priority of preexisting liens on the Unit.

4. Joint and Several Liability. In addition to constituting a lien on the Unit, each Assessment shall be the joint and several obligations of the Owner or Owners of the Unit to which the same are assessed as of the time the Assessment is due. In a voluntary conveyance, the grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid Assessments against the grantor up to the time of the grantor's conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. Suit to recover a personal judgment for any delinquent Assessment shall be maintainable in any court of

competent jurisdiction without foreclosing or waving the lien securing such sums.

5. Late Charges and Interest on Delinquent Assessments. The Association may from time to time establish reasonable late charges and a rate of interest to be charged on all subsequent delinquent Assessments or installments thereof. In the absence of another established non-usurious rate, delinquent Assessments shall bear interest from the date of delinquency at the maximum rate permitted under Montana law.

6. Recovery of Attorneys' Fees and Costs. The Association shall be entitled to recover any costs and reasonable attorneys' fees incurred in connection with the collection of delinquent Assessments, whether such collection activities result in suit being commenced or prosecuted to judgment. In addition, the Association shall be entitled to recover costs and reasonable attorneys' fees if it prevails on appeal and in the enforcement of a judgment.

7. Security Deposit. An Owner who has been delinquent in paying monthly Assessments for three (3) of the five (5) preceding months may be required by the Board, from time to time, to make and maintain a security deposit not in excess of three months' estimated monthly Assessments, which shall be collected and shall be subject to penalties for nonpayment as are other Assessments. The deposit shall be held in a separate fund, credited to such Owner, and may be resorted to at any time when such Owner is ten (10) days or more delinquent in paying Assessments.

8. Remedies Cumulative. The remedies provided herein are cumulative and the Board may pursue them, and any other remedies which may be available under law, although not expressed herein, either concurrently or in any order.

## **Article XVII.**

### *Enforcement of Declaration, Bylaws and Rules and Regulations*

1. Rights of Action. Each Owner, the Board, and the Association shall comply strictly with this Declaration, the Bylaws, and the Rules and Regulations adopted pursuant thereto, as they may be lawfully amended from time to time, and the decisions of the Board. Failure to comply with all of the foregoing shall be grounds for an action to recover sums due, damages, and for injunctive relief, or any or all of them, maintainable by the Board on behalf of the Association or by an Owner.

2. Failure of Board to Insist on Strict Performance: No Waiver. The failure of the Board or Declarant, in any instance, to insist upon the strict compliance with this Declaration or the Bylaws or Rules and Regulations of the Association, or to exercise any right contained in such documents, or to serve any Notice or to institute any action, shall not be construed as a waiver or a relinquishment for the future of any term, covenant, condition, or restriction. The

receipt by the Board of payment of an Assessment from an Owner, with knowledge of a breach by the Owner, shall not be a waiver of the breach. No waiver by the Board of any requirement shall be effective unless expressed in writing and signed by the Board.

## **Article XVIII.**

### *Tort and Contract Liability*

1. **Declarant Liability.** Neither the Association nor any Owner except the Declarant is liable for the Declarant's torts in connection with any part of the Townhome which the Declarant has the responsibility to maintain. Otherwise, an action alleging a wrong done by the Association must be brought against the Association and not against any Owner or any Officer or Director of the Association.

2. **Limitation of Liability for Utility Failure, etc.** Except to the extent covered by insurance obtained by the Board, neither the Association, the Board, nor the Declarant shall be liable for: the failure of any utility or other service to be obtained and paid for by the Board (if any); or for injury or damage to person or property caused by the elements, or resulting from electricity, water, rain, dust, or sand which may leak or flow from outside or from any parts of the Buildings, or from any of their pipes, drains, conduits, appliances, or equipment, or from any other place; or for inconvenience or discomfort resulting from any action taken to comply with any law, ordinance, or orders of a governmental authority. No diminution or abatement of Assessments shall be claimed or allowed for any such utility or service failure, or for such injury or damage, or for such inconvenience or discomfort.

3. **No Personal Liability.** So long as a Board Member, or Association Committee Member, or Association Officer, or the Declarant or any Authorized Agent of those parties has acted in good faith, without willful or intentional misconduct, upon the basis of such information as is then possessed by such person, no such person shall be personally liable to any Owner, or to any other person, including the Association, for any damage, loss, or prejudice suffered or claimed on account of any act, omission, error, or negligence of such person; provided, that this Section shall not apply where the consequences of such act, omission, error, or negligence is covered by insurance obtained by the Board.

4. **Construction Defects.** Actions for construction defects shall be governed by Section 70-19-427, M.C.A. That chapter contains important requirements that must be followed before a party may file a lawsuit for defective construction against the seller or builder of their Unit. There are strict deadlines and procedures under Montana law, and failure to follow those guidelines may affect a party's ability to file a lawsuit.

5. **Action by Association.** Any action anticipated by the Association against the Declarant shall not be initiated without the Association first calling a special meeting of the Owners, following the provisions set forth in the Bylaws in doing so. In the Notice provided to

the Owners of the special meeting, the action anticipated shall be clearly detailed as a topic of discussion for said meeting. The Association shall not file said action until the meeting is held, and the Owners have assented to the filing of said action.

#### **Article XIX.**

##### *Indemnification*

Each Board Member, Association Committee Member, Association Officer, the Declarant and any Authorized Agent thereof shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed in connection with any proceeding to which such person may be a party, or in which such person may become involved, by reason of holding or having held such position, or any settlement thereof, whether or not such person holds such position at the time such expenses or liabilities are incurred, except to the extent such expenses and liabilities are covered by any type of insurance and except in such cases wherein such person is adjudged guilty of willful misfeasance in the performance of such person's duties; provided, that in the event of a settlement, the indemnification shall apply only when the Board approved such settlement and reimbursement as being for the best interest of the Association.

#### **Article XX.**

##### *Insurance*

1. General Requirements. Commencing not later than the time of the first conveyance of a Unit to a person other than the Declarant, the Association shall maintain, to the extent reasonably available, a policy or policies and bonds necessary to provide (a) property insurance; (b) commercial general liability insurance; (c) worker's compensation insurance to the extent required by applicable laws; (d) directors and officers liability insurance if approved by the Board; and I any other such insurance as the Board deems advisable. The Board shall review at least annually the adequacy of the Association's insurance coverage. All insurance shall be obtained from insurance carriers that are generally acceptable for similar projects and authorized to do business in the State of Montana.

2. Property Insurance. The property insurance shall, at the minimum, provide all risk or special cause of loss coverage in an amount equal to the full replacement cost of the General Common Elements, Limited Common Elements, and personal property of the Association. The policy may, in the discretion of the Board, cover equipment, fixtures, appliances, improvements in the Units installed by the Declarant and improvements or betterments installed by the Unit Owners. The policy shall provide a separate loss payable endorsement in favor of the mortgagee of each Unit. The Association or insurance trustee, if any, shall hold insurance proceeds in trust for the Owners and their mortgagees, as their interests

may appear. Each Owner and the Owner's mortgagee, if any, shall be beneficiaries of the policy in accordance with the interest in Common Elements appertaining to the Owner's Unit. Certificates of insurance shall be issued to each Owner and mortgagee upon request.

3. Commercial General Liability Insurance. The liability insurance coverage shall insure the Board, the Association, the Owners, the Declarant and any Authorized Agent thereof, and cover all of the Common Elements in the Condominium, and shall cover liability of the insureds for property damage and bodily injury and death of persons arising out of the operation, maintenance, and use of the Common Elements, employers' liability insurance, automobile liability insurance, and such other risks as are customarily covered with respect to residential condominium projects of similar construction, location and use. The limits of liability shall be in amounts generally required by mortgagees for projects of similar construction, location and use, but shall be at least \$1,000,000.00 combined single limit for bodily injury and property damage per occurrence and \$2,000,000.00 general aggregate.

4. Insurance Trustee; Power of Attorney. The named insured under the policies referred to in Sections 2 and 3 of this Article shall be the Association, as trustee for each of the Owners in accordance with their respective interests in the Common Elements. The insurance proceeds may be made payable to any trustee with which the Association enters into an insurance trust agreement, or any successor trustee, who shall have exclusive authority to negotiate losses under the policies. Subject to the provisions of Section 6 of this Article, the proceeds must be disbursed first for the repair or restoration of the damaged property, and Unit Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the Condominium is terminated. Each Owner appoints the Association, or any insurance trustee or successor trustee designated by the Association, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including the collection and appropriate disposition of the proceeds thereof, the negotiation of losses and execution of releases of liability, the execution of all documents and the performance of all other acts necessary to accomplish such purposes.

5. Owner's Individual Insurance. An insurance policy issued to the Association does not prevent an Owner from obtaining insurance for the Owner's own benefit.

6. Use of Insurance Proceeds. Any portion of the Townhome for which insurance is required under this Article which is damaged or destroyed shall be repaired or replaced promptly by the Association pursuant to Article XXI, unless: (a) the Townhome is tenanted; (b) repair or replacement would be illegal under any state or local health or safety statute or ordinance; or (c) Owners holding at least eighty percent (80%) of the votes in the Association, including every Owner of a Unit or Limited Common Element which will not be

rebuilt, and Owners other than the Declarant holding at least eighty percent (80%) of the votes in the Association excluding votes held by the Declarant, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If all of the damaged or destroyed portions of the Townhome are not repaired or replaced: (i) The insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Condominium; (ii) the insurance proceeds attributable to Units and Limited Common Elements which are not rebuilt shall be distributed to the Owners of those Units and the Owners of the Units to which those Limited Common Elements were allocated, or to lienholders, as their interests may appear; and (iii) the remainder of the proceeds shall be distributed to all the Unit Owners or lienholders, as their interests may appear, in proportion to the interest in Common Elements of each Unit. If the Unit Owners vote not to rebuild any Unit as set forth herein, that Unit's Allocated Interests are automatically reallocated upon the vote as if the Unit had been condemned under Article XXII, and the Association promptly shall prepare, execute, and record an amendment to this Declaration reflecting the reallocations. Notwithstanding the provisions of this Section, Article XXVI and the determinations of the Board within the parameters of that Article governs the distribution of insurance proceeds if the Condominium is terminated.

#### **Article XXI.**

##### *Damage and Repair or Damage to Property*

1. Initial Board Determination. In the event of damage to any Common Element or to any portion of a Unit or its Limited Common Elements, equipment or appliances covered by the Association's insurance policy, the Board shall promptly, and in all events within thirty (30) days after the date of damage, make the following determinations with respect thereto, employing such advice as the Board deems advisable and necessary:

- a. The nature and extent of the damage, together with an inventory of the Improvements and Property directly affected thereby.
- b. A reasonably reliable estimate of the cost to repair the damage, which estimate shall, if reasonably practicable, be based upon two (2) or more firm bids obtained from responsible contractors.
- c. The expected insurance proceeds, if any, to be available from insurance covering the loss based on the amount paid or initially offered by the insurer.
- d. The amount, if any, by which the estimated cost of repair exceeds the expected insurance proceeds, and the amount of the Assessments that would have to be

made against each Unit if the excess cost were to be paid as a Common Expense and assessed against all the Units in proportion to their Common Expense Liabilities.

2. Notice of Damage. The Board shall promptly, and in all events within thirty (30) days after the date of damage, file a proof of loss claim with the insurance company if the loss is covered by insurance and abide by all terms and conditions of its insurance policies, unless the Board determines it would not be in the best interest of the Association to file a proof of loss claim. The Board shall then provide each Owner with written Notice describing the damage and summarizing the initial Board determinations in relation to the damage. If the damage affects a material portion of the Townhome, the Board shall also send the Notice to each mortgagee; and if the damage affects a Unit, the Board shall send the Notice to the mortgagee of that Unit. If the Board fails to do so within the thirty (30) day period, any Owner or mortgagee may make the determinations required under Section I of this Article and give the notice required under this Section.

3. Definitions: Damage, Substantial Damage, Repair, Emergency Work. As used in this Article:

- a. Damage shall mean all kinds of damage, whether of slight degree or total destruction.
- b. Substantial Damage shall mean that, in the judgment of a majority of the Board, the estimated Assessment determined under Section 1.d. of Article XXI for any single Unit exceeds ten percent (10%) of the full, fair market value of the Unit before the damage occurred, as determined by the then current Assessment for the purpose of real estate taxation.
- c. Repair shall mean restoring the improvements to substantially the condition they were in before they were damaged, with each Unit and the Common Elements having substantially the same boundaries as before. Modifications to conform to applicable governmental rules and regulations or available means of construction may be made.
- d. Emergency Work shall mean work that the Board deems reasonably necessary to avoid further damage or substantial diminution in value to the Improvements and to protect the Owners from liability from the condition of the site.
- e. Execution of Repair.
  - i. The Board shall promptly repair the damage and use the available



insurance proceeds therefor as provided in Section 6 of Article XX. If the cost of repair exceeds the available insurance proceeds, the Board shall impose Assessments against all Units in proportion to their Common Expense Liabilities in an aggregate amount sufficient to pay the excess costs.

- ii. The Board shall have the authority to employ architects and engineers, advertise for bids, let contracts to contractors and others, and take such other action as is reasonably necessary to make the repairs. Contracts for the repair work shall be awarded when the Board, by means of insurance proceeds and sufficient Assessments, has provided for paying the cost. The Board may authorize the insurance carrier to make the repairs if the Board is satisfied that the work will be done satisfactorily, and if such authorization does not contravene any insurance trust agreement or requirement of law.

f. Damage Not Substantial. If the damage as determined under Section 3 of Article XXI is not substantial, the provisions of this Section shall apply.

- i. Either the Board or a requisite number of Owners, within fifteen (15) days after the Notice required under Section 2 of Article XX.I has been given, may but shall not be required to call a special Owners' meeting in accordance with the Bylaws to decide whether to repair the damage.
- ii. Except for emergency work, no repairs shall be commenced until after the fifteen (15) day period and until after the conclusion of the special meeting if such special meeting is called within the fifteen (15) days.
- iii. A decision not to repair or rebuild may be made in accordance with Section 6 of Article XX.

g. Substantial Damage. If the damage determined under Section 3 of Article XXI is substantial, the provisions of this Section shall apply.

- i. The Board shall promptly, and in all events within thirty (30) days after the date of damage, call a special Owners' meeting to consider repairing the damage. If the Board fails to do so within thirty (30) days, then notwithstanding the provisions of the Bylaws, any Owner or first mortgagee of a Unit may call and conduct the meeting.
- ii. Except for emergency work, no repairs shall be commenced until the conclusion of the special Owners' meeting.

- iii. At the special meeting, the following consent requirements will apply:
  - 1. The Owners shall be deemed to have elected to repair the damage in accordance with the original plan unless the Owners of at least eighty percent (80%) of the total voting power of the Townhomes other than that held by the Declarant, but including every Owner of a Unit which will not be rebuilt and every Owner of a Unit to which a Limited Common Element which will not be rebuilt is allocated, have given their written consent not to repair the damage.
  - 2. The unanimous consent of all Owners will be required to elect to rebuild it in accordance with a plan that is different from the original plan.
  - 3. In addition to the consent by the Owners specified above, any election not to repair the damage or not to rebuild substantially in accordance with the original plan will require the approval of eligible holders of mortgages on Units that have at least fifty-one percent (51%) of the votes subject to eligible holders of mortgages.
  - 4. Failure to conduct the special meeting provided for under Section 3.g.i. of this Article within ninety (90) days after the date of damage shall be deemed a unanimous decision to repair the damage in accordance with the original plan.
- iv. Effect of Decision Not to Repair. In the event of a decision under either Section 3.f.iii. of this Article or Section 3.g.iii. of this Article not to repair the damage, the Board may nevertheless expend so much of the insurance proceeds and common funds as the Board deems reasonably necessary for emergency work (which emergency work may include, but is not necessarily limited to, removal of the damaged improvements and clearing, filling, and grading the land), and the remaining funds, if any, and the Property shall thereafter be held and distributed as provided in Section 6 of Article XX.

**Article XXII.**  
*Condemnation*

- 1. Consequences of Condemnation: Notices. If any Unit or portion thereof, or the

Common Elements or Limited Common Elements or any portion thereof, is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, Notice of the proceeding or proposed acquisition shall promptly be given to each Owner and mortgagee and the provisions of this Article shall apply.

2. Power of Attorney. Each Owner appoints the Association as attorney-in-fact for the purpose of representing the Owners in condemnation proceedings and negotiations, settlements and agreements with the condemning authority for acquisition of Common Elements, or any part thereof, from the condemning authority. The Board may appoint a trustee to act on behalf of the Owners in carrying out the foregoing functions in lieu of the Association. Should the Association not act, based on their right to act pursuant to this Section, the affected Owners may individually or jointly act their own behalf.

3. Condemnation of a Unit. The proceeds from the condemnation of a Unit shall be paid to the Owner or lienholder of the Unit, as their interests may appear. Upon acquisition, unless the decree otherwise provides, that Unit's Allocated Interests are automatically reallocated to the remaining Units in proportion to the respective Allocated Interests of those Units before the taking, and the Association shall promptly prepare, execute and record an amendment to this Declaration reflecting the reallocations. Any remnant of a Unit remaining after part of a Unit is taken under this Section is thereafter a Common Element.

4. Condemnation of Common Element or Limited Common Element. If part of the Common Elements is acquired by condemnation, the portion of the award attributable to the Common Elements taken shall be paid to the Owners based on their respective interests in the Common Elements, or to lienholders, as their interests may appear. Any portion of the award attributable to the acquisition of a Limited Common Element must be equally divided among the Owners of the Units to which that Limited Common Element was allocated at the time of the acquisition, or to lienholders, as their interests may appear. If the Board determines that a particular Owner's interest in the Common Elements diminished with respect to other Owners, by the acquisition of a Common Element, the Declaration may be amended to adjust that Owner's Common Expense Liability allocation, or to remove the allocation of a Limited Common Element to that Owner's Unit, as the case may be.

5. Reconstruction and Repair. Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified in Article XXI.

## **Article XXIII.**

### *Easements*

1. In General. Each Unit has an easement in and through each other Unit and the Common and Limited Common Elements for all necessary support elements and utility, wiring, heat, and service elements, and for reasonable access thereto, as required to effectuate and

continue proper operation of each Unit.

2. Encroachments. To the extent not provided by the definition of "Unit" in the Declaration and in the Unit Ownership Act, each Unit and all Common and Limited Common Elements are hereby declared to have an easement over all adjoining Units and Common and Limited Common Elements for the purpose of accommodating any present or future encroachment as a result of engineering errors, construction, reconstruction, repairs, settlement, shifting, or movement of any portion of the Property, or any other similar cause, and any encroachment due to building overhang or projection. There shall be valid easements for the maintenance of the encroaching Units and Common and Limited Common Elements so long as the encroachments shall exist, and the rights and obligations of Owner shall not be altered in any way by the encroachment; provided, however, that in no event shall a valid easement for encroachment be created in favor of a Unit if the encroachment was caused by the willful act with full knowledge of the Owner. The encroachments described in this Section shall not be construed to be encumbrances affecting the marketability or title to any Unit.

3. Easement Specifically Reserved by the Declarant. Declarant, for itself and its successors, assigns, agents, employees, contractors, subcontractors, and other authorized personnel, further reserves, for a period expiring on the earlier to occur of: (i) three (3) years following the date of the most recently recorded amendment, or (ii) fifteen (15) years following the date of recording of the first original deed for a Unit within the Project with the Carbon County Clerk & Recorder, an exclusive easement in, over and through the Condominium for the renovation, rehabilitation, remodeling, refurbishment and construction of the Condominium and the improvements to the Common Elements. The use of the easements described above in this subsection shall not unreasonably interfere with or diminish the rights of Owners, permitted users, or Declarant to occupy the Condominium Units, the Limited Common Elements appurtenant thereto, and the Common Elements.

4. Easement for Sales, Resales, Customer Service and Related Purposes. Declarant, for itself and its successors, assigns, agents, employees, contractors, subcontractors and other authorized personnel, reserves, for a period expiring on the earlier of twenty (20) years following the date of recording of the first original deed for a Unit within the Project with the Carbon County Clerk & Recorder or three (3) years after the date of the most recently recorded Declaration of Annexation, an exclusive easement in gross in, over and through those portions of the Townhome Project for the purposes of: (i) marketing and selling the Townhomes; (ii) maintaining customer relations and providing post-sales service to Owners; (iii) displaying signs and erecting, maintaining and operating, for sales and administrative purposes, model Units and a customer relations, customer service and sales office complex in the Townhome Project; and (iv) showing the Units; provided, however, that use of such easement shall not (1) interfere with or diminish the rights of Owners to use and occupy the Townhome Units and the Common Elements, or (2) interfere with the use and occupancy of the Townhome Units and the Common

Elements by the Association as reasonably required to perform its obligations hereunder all as provided in the Declaration and the Rules and Regulations.

5. Utility Easements Granted by the Declarant. The Declarant grants to each company or municipality providing utility services to the Condominium or to the Owners of Units in the Condominium an easement for the installation, construction, maintenance, repair and reconstruction of all utilities serving the Condominium or the Owners, including, without limitation, such utilities services as water, sanitary sewer, storm sewer, electricity, gas, cable television and telephone, data cables, and an easement for access over and under the Common Elements of the Condominium to the utility service facilities.

#### **Article XXIV.**

##### *Procedures for Altering Units*

1. Submission of Proposal to Subdivide Unit. No Unit or Units shall be subdivided either by agreement or legal proceedings.

2. Minor Alterations. No Unit may be altered in any way except in accordance with this Article. An Owner may make any improvements or alterations to the interior of the Owner's Unit that do not affect the structural integrity or mechanical or electrical systems or lessen the support of any portion of the Townhome or cause a substantial change in the aesthetic character of the Unit. An Owner may not change the appearance of the Common Elements or the exterior appearance of a Unit without permission of the Association pursuant to the procedures of Section 3 of this Article.

3. Substantial Alterations and/or Improvements. Any proposal by an Owner that contemplates substantial alteration of one or more Units must be subject to approval by the Board. The Owner must submit the proposed alterations and/or improvements to the Board and shall include the plans and specifications for the proposed alterations and/or improvements. To complete such alterations and/or improvements, the Owner must use licensed and bonded contractors and carry insurance that is satisfactory to the Board. Accordingly, in the submission for a request for approval of alterations and/or improvements to the Board, the Owner must also include the names of all licensed and bonded contractors and information concerning the insurance to be obtained for completion of the alterations and/or improvements. The Board shall approve or reject an Owner's request under this Section within sixty (60) days of receipt of the request. The failure of the Board to act upon a request within such period shall be deemed a denial thereof.

4. Procedure After Approval. Upon approval of a proposal under this Article, the Owner making it may proceed according to the proposed plans and specifications; provided that the Board may, in its sole discretion, require that the Board administer the work or that provisions for the protection of other Units or Common Elements or that reasonable deadlines for

completion of the work be inserted in the contracts for the work. The changes in the plans and Declaration shall be placed of record as amendments thereto.

## **Article XXV.**

### *Amendment of Declaration, Articles or Bylaws*

1. Procedures. Except in cases of amendments that may be executed by the Declarant under the Declaration or the Unit Ownership Act, the Declaration, the Articles and the Bylaws for the Condominium may be amended only by vote or agreement of the Owners, as specified in this Article. An Owner may propose amendments to the Declaration, the Articles or the Bylaws for the Townhomes to the Board. A majority of the Members of the Board may cause a proposed amendment to be submitted to the Members of the Association for their consideration. If an amendment is proposed by Owners with twenty-five percent (25%) or more of the votes in the Association, then, irrespective of whether the Board concurs in the proposed amendment, it shall be submitted to the Members of the Association for their consideration at their next regular or special meeting for which timely Notice must be given. When an amendment is to be considered at such a meeting, then the Notice shall contain a detailed description of the amendment to be considered at such meeting.

2. Percentages of Consent Required. Except as otherwise provided herein or by the Unit Ownership Act, the percentages of consent of Owners and mortgagees required for adoption of amendments to the Declaration, the Articles and the Bylaws for the Townhomes are as follows:

- a. An amendment that creates or increases Special Declarant Rights, increases the number of Units, changes the boundaries of any Unit, the allocated interests of a Unit, the uses to which any Unit is restricted, the easements granted to Declarant (as set forth herein), the levels of insurance that the Association must carry or the level of maintenance/alteration/improvement work performed (as required herein) shall require the vote or agreement of the Owner of each Unit particularly affected, and the Owners holding at least ninety percent (90%) of the votes in the Association, excluding votes held by the Declarant.
- b. All other amendments shall be adopted if consented to by sixty-seven percent (67%) of the Owners, including Owners holding at least sixty-seven percent (67%) of the votes in the Association, excluding votes held by the Declarant.
- c. An Eligible Mortgagee who receives a written request to consent to an amendment who does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have consented to such

request, provided the request was delivered by certified or registered mail, return receipt requested.

3. Limitations on Amendments. No amendment may restrict, eliminate, or otherwise modify any Special Declarant Right provided in the Declaration without the consent of the Declarant and any mortgagee of record with a security interest in the Special Declarant Right or in any real property subject thereto, excluding mortgagees of Units owned by persons other than the Declarant.

4. Adopted Amendments. Upon the adoption of an amendment and the obtaining of any necessary consents of Eligible Mortgagees, an amendment to the Declaration shall become effective when it is recorded in the real property records in the county in which the Townhome is located. Such amendments shall be prepared, executed, recorded and certified on behalf of the Association by any officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association. No action to challenge the validity of an amendment adopted by the Association pursuant to this Article may be brought more than one (1) year after the amendment is recorded. An amendment to the Articles shall be effective upon filing the amendment with the Secretary of State. An amendment to the Bylaws shall be effective upon adoption.

## **Article XXVI.**

### *Termination of Unit Ownership*

1. Action Required. Except as provided in Articles XX and XXI, the Townhome may only be terminated only by agreement of Owners of Units to which at least eighty percent (80%) of the votes in the Association are allocated and with the consent of Eligible Mortgagees of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated and in accordance with the Unit Ownership Act. An Eligible Mortgagee who receives a written request to consent to termination who does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have consented to such request, provided the request was delivered by certified or registered mail, return receipt requested.

2. Unit Ownership Act Governs. The provisions of the Unit Ownership Act relating to termination of unit ownership, as set forth in Section 70-23-801, et seq., of the Unit Ownership Act, as it may be amended, shall govern the termination of the Townhomes, including, but not limited to, the disposition of the real property in the Townhomes and the distribution of proceeds from the sale of the real property.

## **Article XXVII.**

### *Notices*

1. Form and Delivery of Notice. Unless provided otherwise in this Declaration, all Notices given under the provisions of this Declaration or the Bylaws or Rules and Regulations of the Association shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, the Notice must be sent via certified, return receipt mail and shall be deemed to have been delivered upon the date of postmark of the mail. Such Notice must be addressed to the person entitled to such Notice at the most recent address known to the Board. Notice to the Owner of any Unit shall be sufficient if mailed to the Unit if the Owner has not given the Board any other mailing address. Mailing addresses may be changed by Notice in writing to the Board. Notices to the Board shall be given to the Declarant until the Transition Date, and thereafter shall be given to the president or secretary of the Association.

2. Notices to Eligible Mortgagees. An Eligible Mortgagee is a mortgagee that has filed with the secretary of the Board a written request that it be given copies of the Notices listed below. The request must state the name and address of the Eligible Mortgagee and the identifying number or address of the Unit on which it has (or insures or guarantees) a mortgage. Until such time thereafter that the Eligible Mortgagee withdraws the request or the mortgage held, insured, or guaranteed by the Eligible Mortgagee is satisfied, the Board shall send to the Eligible Mortgagee timely written notice of the following:

- a. any proposed amendment of the Declaration for Unit Ownership effecting a change in: (i) the boundaries of any Unit, (ii) the exclusive easement rights, if any, appertaining to any Unit, (iii) the interest in the Common Elements or the liability for Common Expenses of any Unit, (iv) the number of votes in the Association allocated to any Unit, or (v) the purposes to which a Unit or the Common Elements are restricted;
- b. any proposed termination of Townhome status, transfer of any part of the Common Elements, or termination of professional management of the Townhomes;
- c. any condemnation loss or casualty loss that affects a material portion of the Townhomes or that affects any Unit on which an Eligible Mortgagee has a first mortgage;
- d. any delinquency which has continued for sixty (60) days in the payment of Assessments or charges owed by an Owner of a Unit on which an Eligible Mortgagee had a mortgage;
- e. any lapse, cancellation or material modification of any insurance policy maintained by the Association pursuant to Article XX;



- f. any proposed action that would require the consent of a specified percentage of Eligible Mortgagees pursuant to Articles XXI, XXIV or XXV.

**Article XXVIII.**

*Owner 's Roster*

Each Owner's use, and the Declarant's use, of the roster of names of Owners of Units is limited to only being used for purposes directly related to the Owner's interest in the Townhome Project. Such roster of Owner's names shall not be used for any commercial related or solicitation-related purpose.

**Article XXIX.**

*Severability*

The provisions of this Declaration shall be independent and severable, and the unenforceability of any one provision shall not affect the enforceability of any other provision, if the remaining provision or provisions comply with the Unit Ownership Act.

**Article XXX.**

*Effective Date*

This Declaration shall take effect upon recording.

**Article XXXI.**

*Project Documents*

The Project Documents shall consist of this Declaration; the Bylaws; any Rules and Regulations adopted pursuant to this Declaration or the Bylaws; the Building description; the Floor Plans; the Site Plan; the plat map of Alpine Basin; other applicable map and plans for the Project and any Amendments thereto.

**Article XXXII.**

*Service of Process-Initial Registered Agent*

The initial registered agent and person to receive service of process and mailing address as required by law is as follows:

Adam S. Quick  
414 S. Hauser Ave.  
Red Lodge, MT 59068

**Article XXXIII.**

*Arbitration*

Any controversy or claim relating to or arising out of the Declaration or any other formation document for the Condominium or out of the operation of the Townhomes, in general, shall be settled by arbitration in Billings, Montana in accordance with the then current rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

(Signatures to follow)

IN WITNESS WHEREOF, the undersigned Declarant and Owner of Alpine Basin have herunto executed this Declaration on the \_\_\_\_\_ day of \_\_\_\_\_, 2022

ZORIN DEVELOPMENT, LLC

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss:

County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2022 before me a Notary Public for the State of \_\_\_\_\_ appeared \_\_\_\_\_ on behalf of Zorin Development, LLC, known to me to be the person whose name is subscribed hereto and acknowledged to me that they executed the same.

(SEAL)

\_\_\_\_\_  
Notary Public



## Certification of Architect

I, Rhet Fiskness, of Rhet Architecture, a registered professional architect, provide this verified certification in accordance with the provisions of MCA § 70-23-301, et. seq:

I hereby certify that the site plan and design plans and specifications attached to and recorded with this Declaration of Unit Ownership accurately depicts the layout, location, and specifications of the Units in the Townhome Project and that such plan and design documents attached hereto is an accurate copy of the plan filed with the relevant officers and officials of Carbon County having jurisdiction to issue building permits, and that the facts and matters herein are true to the best of my knowledge.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2022

## Rhet Architecture

## Rhet Fiskness

STATE OF \_\_\_\_\_ )  
 ) ss:  
County of \_\_\_\_\_ )

SUBSCRIBED AND SWORN TO before me on \_\_\_\_\_ day of \_\_\_\_\_, 2022 by  
Rhet Fiskness.

(SEAL)

Notary Public

## **Exhibit A – Bylaws**

See included Bylaws of Alpine basin HOA, Inc.

**BYLAWS OF  
ALPINE BASIN HOA, INC.**

**Article I.**

*Purpose and Assent*

1. Purpose. The purpose for which this association is formed is to govern the Townhome development property which is described in, and attached to, the Declaration, and which property has been submitted to the provisions of the Montana Unit Ownership Act (the "Unit Ownership Act") by a Declaration entitled "Declaration of Unit Ownership for Alpine Basin" (the "Declaration") establishing a plan for Townhome unit ownership of Units within the Townhome project.

2. Assent. All present or future owners or tenants or any other person using the Townhomes or any facilities thereof in any manner are subject to the regulations set forth in these Bylaws. The mere acquisition or rental of any of the units ("Units") in the Townhomes or the mere act of occupancy of any of the Units shall constitute ratification and acceptance of these Bylaws.

**Article II.**

*Definitions*

1. Definitions. The definitions set forth in the Declaration are hereby incorporated by reference. Said Declaration is recorded as Document No. \_\_\_\_\_ in the records of Carbon County, Montana. These Bylaws are prepared and submitted by Declarant to the unit owners of Alpine Basin HOA, Inc. (hereinafter the "Association") pursuant to the Declaration, and pursuant to Mont. Code Ann. §§ 70-23-307 and 308.

**Article III.**

*Qualifications for Membership*

1. Membership. Every owner of a completed Townhome, subject to a certificate of occupancy, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to, and may not be separated from, ownership of any completed Townhome. Ownership of such Townhome shall be the sole qualification for membership. Voting on any issue shall be limited to one vote per unit as provided in the Articles of Incorporation.

2. Proof of Membership. No person or persons shall exercise the rights of the membership until satisfactory proof has been furnished to the Secretary of the Association of

qualification as a member or nominee of a member pursuant to the terms of the Declaration and Articles of Incorporation. Such proof may consist of a copy of a duly executed and acknowledged grant deed or title insurance policy showing said person or the person nominating that person qualified in accordance therewith, which said deed or policy shall be deemed conclusive in the absence of a conflicting claim based upon a later deed or policy.

#### **Article IV.** *Meeting of Members*

1. Annual Meetings. The first meeting of the members shall be held at such time as Declarant shall elect after the Transition Date (or within 30 days prior to Transition Date) and each subsequent meeting of the members shall be held on the same day of the month of each year thereafter at the hour of 7:00 o'clock p.m., unless the time of such meeting shall be changed by resolution of the Board. If the day for the annual meeting of the members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday.

2. Special Meetings. Special meetings of the members may be called at any time by the President, the Declarant or by the Board, or after the Transition Date, upon written request of the members who are entitled to vote one-third (1/3) of the total votes of the entire Association.

3. Notice of Meeting. Unless otherwise specifically provided in the Declarations, or in the Articles or Bylaws, written notice of each meeting of the 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, not less than twenty (20) days nor more than fifty (50) days before such meeting, to each Owner, addressed to the Owner's address last appearing on the books of the Association. 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. Presence at any such meeting shall be deemed a waiver of any required notice, or defect therein. Notice of meetings may be delivered via electronic communication in any manner authorized by the Board and acceptable under Montana laws governing corporations.

4. Except as otherwise provided in these Bylaws, the presence in person or by proxy of Owners of Units to which at least sixty percent (60%) of the total votes in the Association are allocated shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirements set forth above, and the required quorum of the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. Alternatively, the Owners who are present either in person or by proxy, may adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called, and the same sixty percent (60%) quorum requirement



shall apply to the reconvened meeting. Except as otherwise provided in the Declaration or in these Bylaws, an affirmative vote of Owners of Units to which are allocated a majority of the votes in the Association and which are present, either in person or by proxy, shall be required to transact business; provided, however, that no Member-elected Director shall be removed unless by a two-thirds vote of the voting power in the Association present and entitled to vote at any meeting of the owners at which a quorum is present.

5. Proxies. Votes may be cast in person or by proxy. Proxies shall be in writing, dated, and duly executed by the Owner. Multiple Owners of a Unit each may vote or register protest to casting of votes by the other Owners of the Unit through a duly appointed proxy. Proxies must be filed with the Secretary of the Association (the "Secretary") before the appointed time of each meeting. No proxy shall be valid for a period longer than eleven (11) months after the date thereof. Each proxy shall be revocable and shall automatically cease, in effectiveness, upon conveyance by the member of their respective Unit. Revocation of a proxy must be by written notice to the Secretary. Proxies and the filing and revocation of the same may be transmitted via electronic communication in any matter authorized by the Board and acceptable under Montana laws governing corporations.

6. Voting by Mail. The Board may decide that voting of the Members shall be by mail with respect to any particular election of Member-elected Directors, adoption of any proposed amendment to the Declaration or Bylaws or any other matter for which approval by Owners is required by the Declaration or Bylaws, in accordance with the following procedure:

- a. In case of election of Member-elected Director(s) by mail, the existing Director(s) shall advise the Secretary in writing of the names of proposed Director(s) sufficient to fulfill open Director positions and of a date at least fifty (50) days after such advice is given by which all votes are to be received. The Secretary within five (5) days after such advice is given shall give written notice of the number of Directors to be elected and of the names of the nominees to all Owners. The notice shall state that any Owner may nominate an additional candidate or candidates, not to exceed the number of Directors to be elected, by notice in writing to the Secretary at the specified address of the principal office of the Association, to be received on or before a specified date fifteen (15) days from the date the notice is given by the Secretary. Within five (5) days after such specified date the Secretary shall give written notice to all Owners, stating the number of Directors to be elected, the names of all persons nominated by the Board and by the Members on or before said specified date, that each Owner may cast its vote by mail and the date established by the Board by which such votes must be received by the Secretary at the address of the principal office of the Association,

which shall be specified in the notice. Votes received after the established date shall not be effective. All persons elected as Directors pursuant to such an election by mail shall take office effective on the date specified in the notice for receipt of such votes.

- b. In the case of a vote by mail relating to any other matter, the Secretary shall give written notice to all Owners, which notice shall include a proposed written resolution setting forth a description of the proposed action and shall state (i) that such persons are entitled to vote by mail for or against such proposal, (ii) a date, not less than twenty (20) days after the date such notice shall have been given on or before which all votes must be received and (iii) that they must be sent to the specified address of the principal office of the Association. Votes received after that date shall not be effective. Any such proposal shall be adopted if approved by the affirmative vote of not less than a majority of the votes entitled to be cast on such question, unless a greater or lesser voting requirement is established by the Articles of Incorporation, the Declaration or Bylaws for the matter in question.
- c. Delivery of a vote in writing to the principal office of the Association shall be equivalent to receipt of a vote by mail as such address for the purpose of this Section. For purposes of a vote by mail, quorum requirements shall be deemed satisfied based on the number of ballots timely submitted. If enough ballots are not received by the Association by the required date to either constitute a quorum, or to approve a proposal, the board may extend the date for solicitation of ballots on further notices to all members of not less than ten (10) and no more than thirty (30) days of the new date for counting of ballots. In that event all ballots previously cast on the proposal shall be counted. No such vote may be extended by more than a total of sixty (60) days.
- d. Voting by mail may be completed via electronic balloting and voting in any manner determined by the Board and acceptable under Montana laws governing corporations.

7. If any meeting of the Owners cannot be organized because a quorum has not been obtained (including a vote by mail), the Owners who are present either in person or by proxy may adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called.

8. Order of Business. The order of business at all meetings of the Owners shall be as follows:

- a. Roll call;

- b. Proof of notice of meeting or waiver of notice;
- c. Reading of minutes of preceding meeting;
- d. Reports of officers;
- e. Reports of committees;
- f. Election of Directors (annual meeting only);
- g. Unfinished business; and
- h. New business.

9. Suspension of Voting Rights and Fines. During any period in which an Owner shall be in default in the payment of any assessment levied by the Association or the Declaration, the voting rights of such Owner may be suspended by the Board until such assessment has been paid. Such voting right may also be suspended after notice and a hearing, for a period not to exceed sixty (60) days, for violation of any provision of the Declaration or the rules and regulations established by the Board. In the event voting rights are suspended, such vote(s) shall not be counted for any purpose including for the purpose of determining whether a quorum has been achieved or whether any required majority or super majority has been achieved. The Board may also impose a fine in an amount not exceeding Fifty Dollars (\$50.00) for any single infraction of the rules and/or regulations of the Association by such member, members of his or her family or his or her social guests, or by such member's tenant or contract purchaser, their family members or social guests.

## **Article V.**

### *Board of Directors - Selection - Term of Office*

1. Number. The affairs of this corporation shall be managed by a Board of five (5) Directors. Three (3) Directors shall always be selected by the Declarant. The number of Directors selected by the Declarant may be amended only if the Declarant sets forth, in writing, his assent to such amendment. Election to the Board shall be by secret written ballot on a noncumulative basis.

2. Term in Office. The first Association meeting after the Transition Date, the Owners shall elect, by majority vote, one (1) Director for a term of one (1) year and one (1) Director for a term of two (2) years, and the Declarant shall appoint three (3) Directors for a term of three (3) years. At each annual meeting thereafter, the voters shall elect the appropriate number of retiring Directors for a term of one (1) year. The Declarant shall appoint three (3) Directors upon the retirement of the previously appointed Directors, whether such retirement

comes as a result of the expiration of term, retirement, death, or removal.

3. Vacancies. Vacancies in the Board caused by any reason other than the removal of a Director by a vote of the Association shall be filled by vote of the majority of the remaining Directors, even though they may constitute less than a quorum; and each person so elected shall be a Director until a successor is elected at the next annual meeting of the Association. A quorum for purposes of meetings and votes on the filling of vacancies shall be one-half( $\frac{1}{2}$ ) of the membership fixed for the Board.

4. Removal. Any Director, elected by the voting Members, may be removed from the Board, with or without cause, by a majority vote of the members of the corporation. Directors appointed by the Declarant may only be removed from the Board, with or without cause, by the Declarant. In the event of death, resignation or removal of a Director by the Members, then his/her successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor. In the event of death, resignation or removal of a Declarant-appointed Director by the Declarant, then his/her successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

5. Action Taken Without a Meeting. The Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Directors. Written approval of all Directors may be delivered via electronic communication in any manner authorized by the Board and acceptable under Montana laws governing corporations.

6. Organization Meeting. The first meeting of a newly elected Board shall be held immediately following the annual meeting of the members, and no notice to the newly elected Directors shall be necessary to legally constitute such meeting.

7. Right to Notice and Opportunity to Be Heard. Whenever the Declaration requires that an action of the Board be taken after "Notice and Opportunity to be Heard," and notwithstanding anything to the contrary set forth herein, the following procedure shall be observed: The Board shall give written notice of the proposed action to all Owners, tenants or occupants of Units whose interest would be significantly affected by the proposed action. The notice shall include a general statement of the proposed action and the date, time and place of the hearing, which shall be not less than five days from the date notice is delivered by the Board. At the hearing, the affected person shall have the right, personally or by a representative, to give testimony orally, in writing or both (as specified in the notice), subject to reasonable rules of procedure established by the Board to assure a prompt and orderly resolution of the issues. Such evidence shall be considered in making the decision but shall not bind the Board. The affected person shall be notified of the decision in the same manner in which notice of the meeting was

given

8. Waiver of Notice. Before, at or after any meeting of the Board, any Director may, in writing, waive notice of such meeting, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board shall be a waiver of notice by him of the time and place thereof, unless his appearance is limited to the purpose of objection to the validity of the meeting, and in such event a written statement of the limited purpose and of the objection to the meeting shall be filed with the Board prior to the meeting. If all the Directors are present without objection at any meeting of the Board, no notice shall be required, and any business may be transacted at such meeting. The Board may act without a meeting if all Directors concur and sign minutes confirming the action of the Board and waiving notice and actual meeting. Waiver of notice and confirmation of Board actions may be accomplished via electronic communication in any manner authorized by the Board and acceptable under Montana laws governing corporations.

9. Compensation and Fees. Each Director shall receive such sum as the Owners may from time to time determine, plus transportation expenses, for attendance at any regular or special meeting of the Board. However, such expense must be approved for reimbursement by the Owners, in writing, prior to the incurrence of such expense.

10. Open Meeting. Any Member of the Association or voting representative may attend any meeting of the Board which occurs after the Transition Date but shall not be entitled to prior notice or a right to participate.

## **Article VI.**

### *Meeting of Directors*

1. Regular Meeting. A regular meeting of the Board of Directors shall be held without other notice as provided herein, immediately after, and at the same place as, the annual meeting of the members. The Board of Directors may provide, by resolution, the time and place for the holding of additional regular meetings without other notice than such resolution. The Board shall elect a Chairman, Secretary and Treasurer from its members.

2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the corporation, the Declarant or by any three (3) Directors, after not less than five (5) days' notice to each Director. Notice may be delivered via electronic communication in any manner authorized by the Board and acceptable under Montana laws governing corporations.

3. Quorum. A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by majority of the Directors present

at a duly held meeting at which a quorum is present shall be regarded as the act of the Board. At any meeting, a chairman, secretary and treasurer of the Board shall be elected.

4. Suspension of Voting Rights. During any period in which a Director shall be in default in the payment of any assessment levied by the Association or the Declaration, the voting rights of such Director may be suspended by the Board until such assessment has been paid. Such voting right may also be suspended after notice and a hearing, for a period not to exceed sixty (60) days, for violation of any provision of the Declaration or the rules and regulations established by the Board. In the event voting rights are suspended, such vote(s) shall not be counted for any purpose including for the purpose of determining whether a quorum has been achieved or whether any required majority or super majority has been achieved.

## **Article VII.**

### *Powers and Duties of the Board of Directors*

1. Powers. The board of Directors shall have the power to do all of the following:
  - a. Establish rules and regulations governing the members and their guests, and to establish penalties for the infraction thereof.
  - b. Exercise for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the membership by other provision of these Bylaws, the Articles of Incorporation or the Declaration.
  - c. Declare the office of a Director to be vacant in the event such Director shall be absent from three (3) consecutive regular meetings of the Board.
  - d. Employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties.
  - e. Take any and all actions necessary to comply with and enforce the provisions and requirements of the Declaration, the Articles of Incorporation and these Bylaws, and all powers and rights as provided in the Declaration.
2. Duties. It shall **be the** duty of the Board to do all of the following:
  - a. Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members of the Association at the annual meeting of the members.
  - b. Supervise all officers, agents and employees of this Association, and see that their

duties are properly performed.

- c. Create a budget as provided for in the Declarations.
- d. Fix, levy and collect assessments as provided in the Declarations.
- e. Cause the Common Elements, Limited Common Elements, entry signs, park and recreation areas, trails and rights of way to be maintained.
- f. Issue, or cause an appropriate officer to issue, upon demand by any person or entity, a certificate setting forth whether or not any assessments have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment.
- g. Cause the expenses relating to the Common Elements and Limited Common Elements to be paid as appropriate.
- h. Obtain insurance as required in the Declarations and as it may deem appropriate.
- i. Cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate.
- j. Cause the landscaping to be maintained as provided in the Declarations.
- k. Perform any and all duties necessary to comply with the provisions and requirements of the Declarations, the Articles of Incorporation, these Bylaws and the Unit Ownership Act.

### **Article VIII.**

#### *Officers and Their Duties*

1. Designation. The officers of the Association shall be a President, a Vice President, a Secretary and a Treasurer, all of whom shall be elected annually by the Board.
2. Election of Officers. The officers of the Association shall be elected annually by the Board at the organizational meeting of each new Board and shall hold office at the pleasure of the Board. Any person may hold concurrently any two (2) offices, except that the same person may not concurrently hold the offices of President and Secretary. The office of Vice President need not be filled. The Board may elect officers from among its members or otherwise.
3. Removal of Officers. Upon an affirmative vote of a majority of the members of the Board, any officer may be removed, with or without cause, and his successor elected at any

regular or special meetings of the Board called for such purposes.

4. President. The President shall be the chief executive officer of the Association. He or she shall preside at all meetings of the Association and the Board. He or she shall have all of the general powers and duties which are usually vested in the office of the President of a nonprofit association including, but not limited to, the power to appoint committees from among the owners from time to time as he or she may in his or her discretion decide to appropriate to assist in the conduct of the affairs of the Association.

5. Vice President. A Vice President shall have all the powers and authority and perform all of the functions and duties of the President in the absence of the President or his or her inability for any reason to exercise such powers and functions or perform such duties.

6. Secretary. The Secretary shall keep the minutes of meetings of the Board and minutes of meetings of the Association; have charge of such books and papers as the Board may direct; and, in general, perform the duties incident of the office of Secretary. The Secretary may compile and keep up to date at the principal office of the Association a complete list of Members and their registered mailing addresses. Such list shall also show opposite each Member's name the number or other appropriate designation of the Unit owned by such Member. Such list shall be open to inspection by Members and other persons lawfully entitled to inspect the same at reasonable times during regular business hours.

7. Treasurer. The Treasurer shall have responsibility for Association funds and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. He or she shall be responsible for the deposit of all moneys and other valuable effects in the name and to the credit of the Association in such depositories as may from time to time be designated by the Board or Managers.

8. Assistant Secretary. The Board may appoint one or more Assistant Secretaries to perform all of the duties of the Secretary in the absence of the Secretary.

9. Assistant Treasurer. The Board may appoint one or more Assistant Treasurers to perform all of the duties of the Treasurer in the absence of the Treasurer.

10. Vacancies. A vacant officer position shall be filled in the same manner as provided for vacant Board positions in Article N, Section 3.

11. Amendment to Declaration. The Secretary and the President shall be authorized to prepare, execute, certify and record Amendments to the Condominium Declaration on behalf of the Association to the extent such Amendments are allowed by the terms of the Condominium Declaration.



## **Article IX.**

### *Indemnification of Officers and Managers*

1. Indemnification. The Association shall indemnify every Director or officer and his or her heirs, executors and administrators against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed in connection with any proceeding to which he or she may be a party or in which he or she may become involved by reason of holding or having held such position at the time such expenses or liabilities are incurred, except to the extent such expenses and liabilities are covered by insurance and except in cases wherein such person is adjudged guilty of willful misfeasance in the performance of his or her duties; provided that, in the event of a settlement, the indemnification shall apply only when the Board approves such settlement and reimbursement as being for the best interests of the Association. Nothing contained in the Declaration shall, however, be deemed to obligate the Association to indemnify any Owner who is or has been a Director or officer of the Association with respect to any duties or obligations assumed or liabilities incurred by him under and by virtue of the Declaration as an Owner of a Unit covered thereby.

## **Article X.**

### *Obligations of Owners*

1. In General. Each Owner shall always endeavor to observe and promote the cooperative purposes for the accomplishment of which the Townhomes were built, and each Owner shall comply strictly with all provisions of the Declaration.

2. Use of Common Elements and Limited Common Elements. Each Owner shall use the Common Elements and Limited Common Elements in accordance with the purpose for which they were intended without hindering or encroaching upon the lawful rights of the other Owners.

3. Compliance with Covenants, Bylaws, and Administrative Rules and Regulations. Each member of the Association shall comply strictly with the Declarations, these Bylaws and with the administrative rules and regulations adopted pursuant thereto, as they may be lawfully amended from time to time. and with the covenants, conditions, and restrictions set forth in the deed to his lot.

4. Right of Entry.

- a. An Owner shall permit the Managing Agent or other person authorized by the Board the right of access to the Owner's Unit and appurtenant Limited Common Elements from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of the Common Elements or at any time

deemed necessary, by the Managing Agent of Board for the making of emergency repairs or to prevent damage to any part of the Common Elements.

- b. An Owner shall permit the Managing Agent, other persons authorized by the Board, other Owners or their representatives, when so required, to enter his Unit for the purpose of performing installations, alterations or repairs to the mechanical or electrical services or to the Units and Limited Common Elements of other Owners; provided that requests for entry are made in advance and that such entry is at a time convenient to the Owner. In case of an emergency, such right of entry shall be immediate.

5. Assessment Obligation. Each Owner is obligated to pay the assessments imposed on such Owner's Unit by the Association and to pay the common expenses of the Townhomes as provided in the Declaration.

6. Association Funds. All funds paid to the Association, whether as contribution to working capital or as assessments, shall be the common property of the Association, held in trust for the benefit of the Owners, in the accounts to which such funds are from time to time allocated by the Board.

7. Rules and Regulations. The Board or the Association may adopt rules and regulations necessary or advisable for the proper administration of the Townhomes. The rules and regulations may be amended by the Board (or the Owners in the same manner as amending these Bylaws), and such rules and regulations shall be deemed a part of these Bylaws.

## **Article XI.**

### *Committees*

1. Committees Created by the Board. The Board of Directors may appoint an Executive Committee and such other committees as deemed appropriate in carrying out its purpose.

## **Article XII.**

### *Audit*

1. Audits. An owner may, at any time at his or her own expense, cause an audit or inspection to be made of the books and records of the Association. The Board, at the expense of the maintenance fund, shall regularly obtain an audit of all books and records pertaining to the Project and the shall prepare and distribute to the members and any holder, insurer or guarantor of any first mortgage or trust indenture (on written request) financial and related information concerning the budget for each fiscal year.

### **Article XIII.**

#### *Amendments*

- I. Amendments.
  - a. Bylaws (and amendments thereto) for the administration of the Association and the Condominium, and for other purposes not inconsistent with the Condominium Statute or with the intent of the Declaration, shall be adopted by the Board at its first meeting. Thereafter the Bylaws may be amended by the Association by concurrence of Owners of Units to which seventy-five percent (75%) of the votes in the Association are allocated and who are present and entitled to vote at a regular or special meeting.
  - b. Notwithstanding Article XIII, Section 1, if the Townhome is subject to a mortgage held by HUD, FHA or VA, these bylaws may not be amended by Declarant at any time prior to the Transition Date without the prior approval of the HUD, FHA, and VA agencies. The Bylaws may be amended at any time by majority vote of the Board with prior approval from the HUD, FHA, and VA agencies. After the Transition Date, any Unit Owner or Owners who desire that these Bylaws be amended may cause a proposed amendment to be submitted to the members of the Association for their consideration. If an amendment is proposed by Owner of 20% or more of the Units, then irrespective of whether the Board concurs in the proposed amendment it shall be submitted to the members of the Association for their consideration at their next regular or special meeting for which timely notice may be given.
  - c. Notice of a meeting at which an amendment is to be considered shall include the text of the proposed amendment. Amendments may be adopted at a meeting of the Association or by written consent of the requisite number of Owners entitled to vote, after notice has been given to all persons (including Mortgagees) entitled to receive notice of a meeting of the Association, and such notice shall be delivered to each Owner and Mortgagee at least ten ( 10) days prior to such meeting. These Bylaws may not be amended so as to render them inconsistent with the Declarations.

### **Article XIV.**

#### *Mortgages*

1. Notice to Association. An Owner who mortgages his Unit shall notify the Association through the Managing Agent, if any, or the President of the Board, giving the name and address of his mortgagee. The Association shall maintain such information in a book or list

entitled "Mortgagees of Units."

2. Notice of Unpaid Assessments. The Association shall at the request of a mortgagee of a Unit report any unpaid assessments due from the Owner of such Unit.

#### **Article XV.**

##### *Evidence of Ownership, Registration Of Mailing Address and Completion Requirement*

1. Proof of Ownership. Upon becoming an Owner of a Unit, the Owner shall furnish to the Board a photocopy of a certified copy of the recorded instrument vesting that person with an interest or ownership, which instrument shall remain in the files of the Association.

2. Registration of Mailing Address. The Owners of each Unit shall have one and the same registered mailing address to be used by the Association for mailing of monthly statements, notices, demands and all other communications; and such registered address shall be the only mailing address of a person or persons, firm, corporation, partnership, association or other legal entity or any combination thereof to be used by the Association. Such registered address of an Owner or owners shall be furnished by such Owners to the Secretary within five (5) days after transfer of title; such registration shall be in written form and signed by all of the Owners of the Unit or by such persons as are authorized to represent the interests of the Owners thereof. If no such address is registered or if all of the Owners cannot agree, then the address of the Unit shall be the designated valid registered address until another registered address is furnished as permitted under this Section. Registered addresses may be changed from time to time by similar designation.

3. Completion Requirement. The requirements contained in this Article shall be first met before any Owner of a Unit shall be deemed in good standing or entitled to vote at any annual or special meetings of Members.

#### **Article XV.**

##### *Conflict with Declaration or Law*

1. Controlling Provisions. These Bylaws are intended to comply with and supplement the requirements of the Unit Ownership Act and the Declaration. If any of these Bylaws conflict with the provisions of said statute or the Declaration, the provisions of the statute and Declaration will apply.

#### **Article XVI.**

##### *Nonprofit Association*

1. This Association is not organized for profit. Members, Directors and any individual from whom the Association receives property or funds shall not receive nor shall they be lawfully entitled to receive any pecuniary profit from the operations of the Association. In no event shall any part of the funds or assets of the Association be distributed to or inure to the benefit of any Directors or Members. The foregoing, however, shall neither prevent nor restrict the following:

a. the payment of reasonable compensation to any Member or manager while acting as an agent or employee of the Association for services rendered in effecting one or more of the purposes of the Association, and

b. the reimbursement of approved expenses incurred by a Member or Director member for said Member's or Director's actual and reasonable expenses incurred in connection with the administration of the affairs of the Association.

IN WITNESS WHEREOF, the undersigned, being the Declarant of Alpine Basin, has hereunto certified these Bylaws this \_\_\_\_\_ day of \_\_\_\_\_, 2022

ZORIN DEVELOPMENT, LLC

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

) ss:

County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2022 before me a Notary Public for the State of \_\_\_\_\_ appeared \_\_\_\_\_ on behalf of Zorin Development, LLC, known to me to be the person whose name is subscribed hereto and acknowledged to me that they executed the same.

(SEAL)

---

Notary Public

## **Exhibit B – Legal Description**

### **LEGAL DESCRIPTION OF PROPERTY**

Legal description of the Property upon which the Alpine Basin condominiums are located:

RED LODGE COUNTRY CLUB ESTATES, S27, T07 S, R20 E, RLCCE 3<sup>RD</sup> FILING LT 58A  
BLK 4 COS 1318 6<sup>TH</sup> AM.

## **Exhibit C – Description of Buildings and Units**

The following information is intended to provide a general description of the Buildings and Units of Alpine Basin located in Red Lodge, Montana.

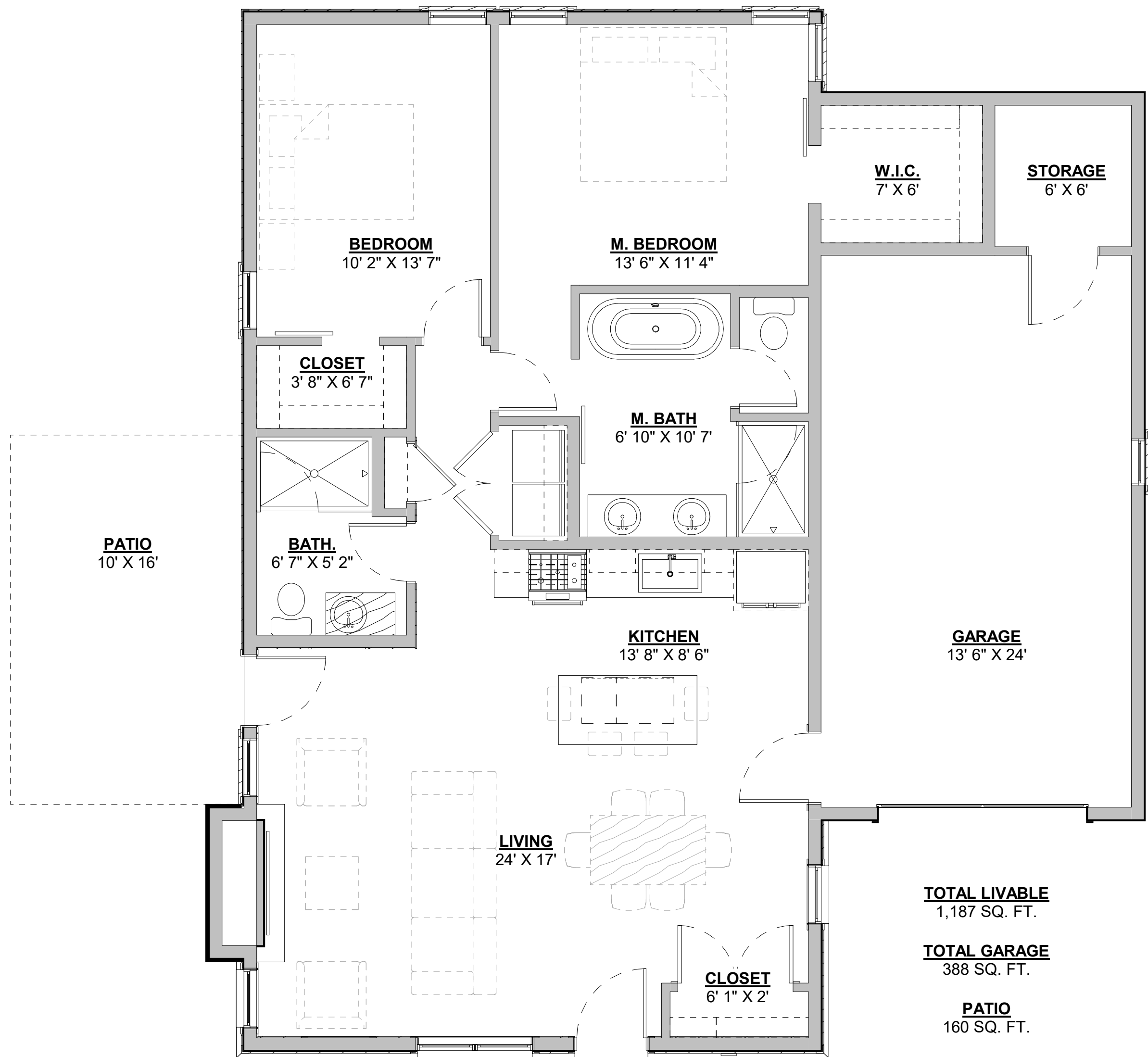
- a. General Descriptions of the Units:** Alpine Basin is a townhome development consisting of 61 buildings and 60 separate Units within the 61 buildings. The 60 separate Units consist of 18 two bedroom Units approximately 1,187 sq. ft. (“SF”) with an attached 13’6” X 24’ one stall garage; 42 three bedroom Units approximately 2,087 sq. ft. with an attached 14’X23’5” and 13’6” X 24’5” two car garage. Each Unit contains at least the following: bathroom, bedroom, closet, kitchen and living room. The initial phase of the development will consist of eleven (11) two bedroom Units and thirteen (13) three bedroom Units. The remaining seven (7) two bedroom Units and twenty nine (29) three bedroom Units will be built in subsequent phases.
- b. Description of the eighteen (18) two bedroom Buildings:**
  - Total Square Footage: approximately 1,187 SF
  - Number of stories: 1
  - Attached 13’6” X 24’ garage
  - 10’X16’ concrete patio
  - Principal Materials of Building Construction: wood frame on concrete foundation with drywall finishing, and metal, wood, glass exterior.
- c. Description of the forty-two (42) two bedroom Buildings:**
  - Total Square Footage: approximately 2,084 SF
  - Number of stories: 2
  - Attached 14 X 23’5” and 13’6” X 24’5” two car garage
  - 10’X16’ concrete patio
  - 13’11” X 24’ 7” cover second story patio
  - Principal Materials of Building Construction: wood frame on concrete foundation with drywall finishing, and metal, wood, glass exterior.



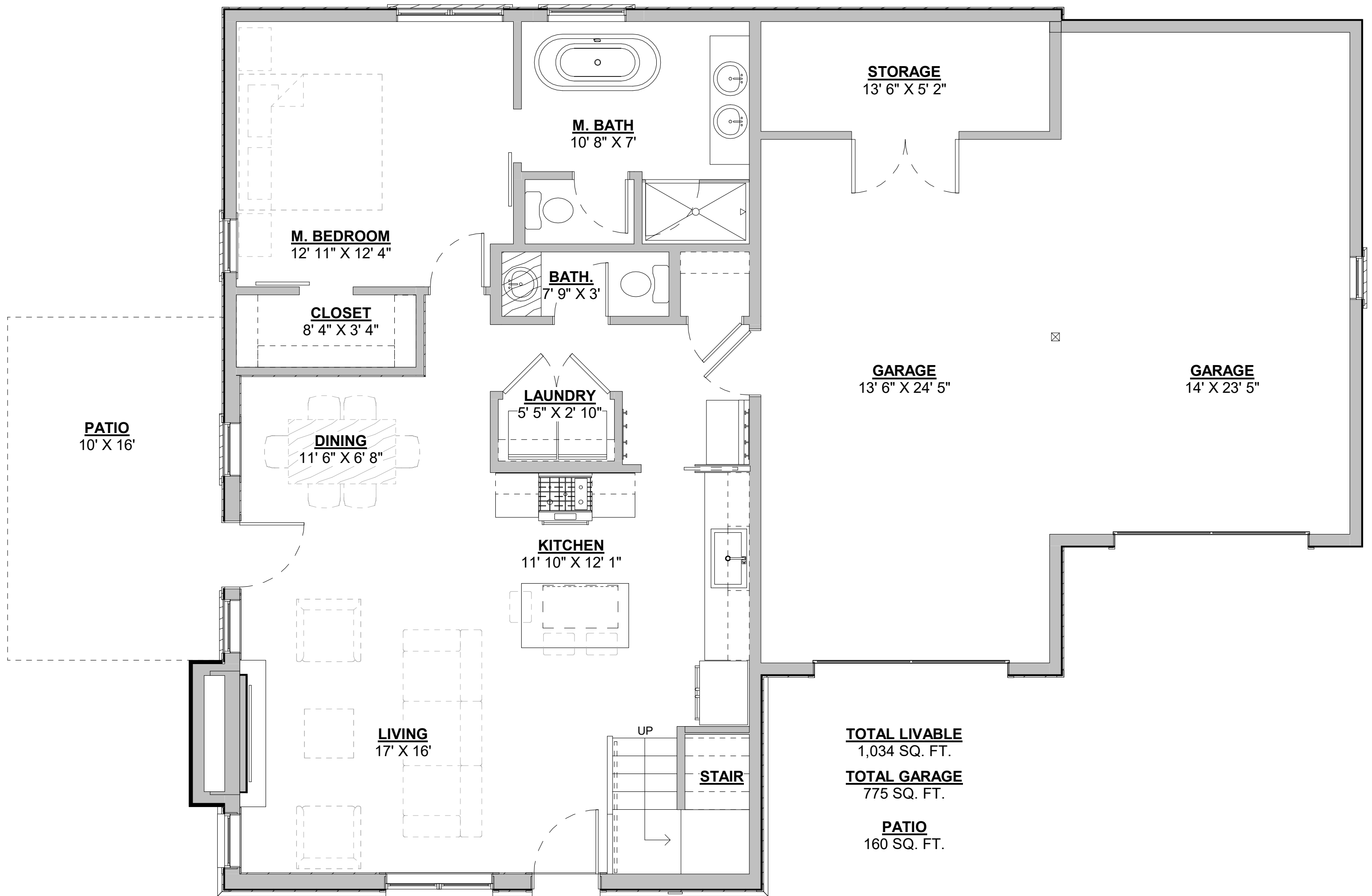
## **Exhibit D – Floor Plans**

Verified floor plans for the Buildings and Units located at the Alpine Basin condominiums to be constructed in Phase 1 of the Project. This Declaration will be amended with verified floorplans for Buildings in subsequent phases:

See included proposals.



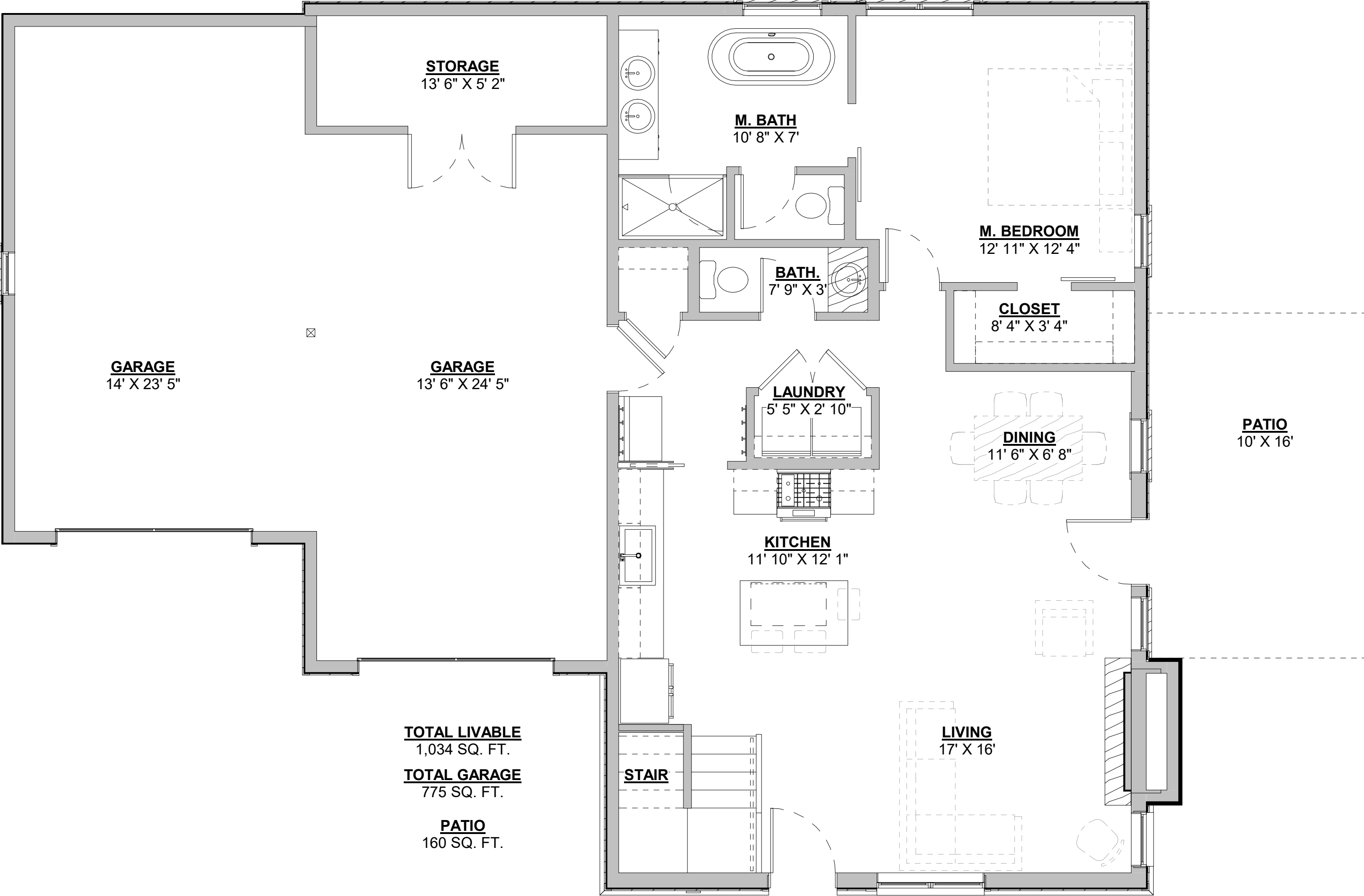
Two Bedroom Unit-Standard



Three Bedroom Unit-Lower Level (Standard)



Three Bedroom Unit-Upper Level (Standard)



Three Bedroom Unit-Lower Level  
(Reversed)



Three Bedroom Unit-Upper Level  
(Reversed)

Exhibit E – Site Plan



**Exhibit F – Percentage interest in General Common Elements for Project**

<b>Unit Type</b>	<b>Unit Square Feet</b>	<b>Percentage Interest Per Unit</b>	<b># of Units</b>	<b>Total Square Feet</b>
2 Bedroom	1187	1.09%	18	21,366
3 Bedroom	2084	1.9137%	42	87,528
Total			60	108,894



## **Exhibit G – Government Certifications or Approvals**

See included Original Signed Certification.