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Eric Semerad - Gallatin County, MT MISC



DECLARATION FOR ABIGAIL CONDOMINIUM

This Declaration is hereby made this 15th day of November 2019 by AARON MILLS CONSTRUCTION CORPORATION, a Montana corporation, of 118 Gloria Court, Bozeman, Montana, 59718, hereinafter referred to as the "Declarant", whereby the lands and property hereinafter described are submitted and subject to the provisions of MCA 70-23-101, et. seq., and known as the "Unit Ownership Act".

The property subject to this Declaration shall be known as ABIGAIL CONDOMINIUM, (hereinafter referred to as the "condominium" or the "premises"). The condominium is located in Bozeman, Gallatin County, Montana. This Declaration is intended to set forth the rights and responsibilities of the owners and their lenders.

I. DEFINITIONS

Unless the context expressly provides otherwise, the following definitions shall pertain throughout this Declaration and the Bylaws for the condominium and the interpretation of either document:

1. Aggregate Voting or aggregate interests shall mean the entire number of votes or persons present or available to vote in person or by proxy in a particular circumstance.
2. Association or Owners' Association means all of the Unit Owners acting as a group and in accordance with duly adopted Bylaws and this Declaration. The Association may be incorporated as a non-profit entity, but will not be incorporated at the time of execution of this document.
3. Board or Board of Directors shall mean the Board of Directors of the Association, as more particularly defined in the Bylaws.
4. Building means the building containing the condominium units.

5. Bylaws means the Bylaws promulgated by the Association under this Declaration and the Unit Ownership Act.
6. Common Elements means both general common elements and limited common elements.
 - a. General Common Elements include all those areas which are for the use and benefit of all the Units and of all residents and guests of residents of Abigail Condominium. Specifically included are the real property described in Paragraph II below (except for the portions designated as limited common elements in subparagraph I.6.b below) including the grounds under and surrounding the buildings, footings, foundations, framework, floors, columns, trusses, walls, supports and other structural components of the building, the roof of the building, equipment and all other improvements for sewage lines and a water supply, electrical, cable television, gas and telephone lines and wires and connections serving all of the units; landscaping, plants and other materials and improvements separate from and outside of the building containing the units, street lighting, sidewalks and other areas necessary for the safety, maintenance and existence of the condominium in which each Unit Owner shall have his or her designated percentage of interest, as set forth in paragraph IV below, and as described in the Unit Ownership Act.
 - b. Limited Common Elements as used in this Declaration shall mean those common elements which are reserved for the use of fewer than all of the residents and guests of residents of Abigail Condominium. Specifically, as to any given Unit Owner or Owners, limited common elements shall mean the following common elements which are located within or affixed to the building containing his or her unit in which the elements are located or situated on or associated with the real property known as Abigail Condominium.

Flues, courtyards, driveways, fences, chimneys, ducts, cables, conduits, public utility lines, water, sewer, electrical, cable television lines and hot and cold water pipes, (all such utility pipes and lines are limited common elements where they service only one unit; where they service both units they shall be general common elements), electric meter entrances, and fixtures or other portions of the building servicing only a particular unit. The owner(s) of the unit benefitting

from a particular limited common element shall be responsible for the cost of maintaining such limited common element.

7. Common Expenses means expenses of administration, maintenance, repair or replacement of general common elements, expenses agreed upon by the Association of all Unit Owners, and expenses declared common by the Unit Ownership Act. Also included shall be the cost of any SIDs affecting the property, such as for streets, lighting or trees. The water supply for the condominium is shared between the Units and shall be treated as a common expense for the condominium. Snow shoveling and lawn care shall be the responsibility of the owners of each unit including the snow removal from their driveways, the sidewalks in front of their units and the sidewalks leading up to their units.
8. Condominium means the Abigail Condominium as the same is created by this Declaration and the Bylaws and submitted to the Unit Ownership Act and the condominium units, general common elements, limited common elements, buildings and land and any other improvements thereon, which constitute the condominium.
9. Declaration means this document and all parts attached hereto or incorporated by reference.
10. Limited Expenses means the expenses attributable to the maintenance, repair and replacement of limited common elements.
11. Manager means the manager, the Board of Directors, management corporation or any other person or group of persons retained or appointed by the Board, or by the Owners' Association for the purpose of conducting the day-to-day operations of the condominium.
12. Property and/or Premises means all the land described below, buildings, improvements and structures thereon and all easements, rights and appurtenances belonging thereto, which are herewith submitted to the Unit Ownership Act.
13. Record Officer means the county officer charged with the duty of filing and recording the deeds, mortgages and all other instruments and documents relating to this Declaration and the property to which it is subject.
14. Unit means the separate units, or dwelling spaces, of the condominium.
15. Unit Designation is the combination of letters, numbers and words which identify the designated units.

16. Unit Owner, Owner, or Condominium Owner means the person or persons owning a Unit in fee simple absolute, or one who is a co-owner in any real estate relationship that is recognized under the laws of the State of Montana in one or more Units of Abigail Condominium.
17. Mortgagee means any mortgagee, beneficiary under a trust indenture, or a seller under a contract for deed.

II. REAL ESTATE

1. Description. The real property which is by this Declaration submitted and subject to the Unit Ownership Act, is described as follows:

Lot 8 in Block 8 of Boulder Creek Subdivision, Phase 1, City of Bozeman, Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the County Clerk and Recorder, Gallatin County, Montana.[Plat reference: J-633].

The condominium consists of two (2) Units, including garages, located in one (1) building. The provisions of this Declaration and the Bylaws shall be construed to be covenants running with the land, including and attaching to every Unit, and shall be binding upon the Unit Owners, their heirs, successors, personal representatives and assigns for so long as this Condominium Declaration and Bylaws are in effect.

2. Compliance with environmental health requirements. Document no. 2662166, records of Gallatin County, Montana, is an Affidavit of Compliance with Sewer, Water and Storm Drainage Requirements for Boulder Creek Subdivision, Phase 2. Attached to that affidavit are Exhibits A and B, which are the capacity letters from the City of Bozeman for Boulder Creek Subdivision and the Municipal Facilities Exclusion letter from the Montana Department of Environmental Quality for Boulder Creek Subdivision. Each of the letters references the Boulder Creek Subdivision as a whole, rather than an individual phase, and are therefore applicable to Phase 1 and Phase 2.

By the terms of the plat for Boulder Creek Subdivision, Phase 1 (J-633), document no. 2624222, records of Gallatin County, Montana, the developer of the subdivision paid the City of Bozeman cash in lieu of water rights for Lots 1-9 of Block 8 (18 total multifamily households, or 2 per lot), Lots 1-5 in Block 7 (10 total multifamily households, or 2 per lot), Lots 1-6 in Block 4 (12 total multifamily households, or 2 per lot), of Boulder Creek Subdivision, Phase 1, totaling 40 multifamily households. The plat also shows that the developer paid cash-in-lieu of water rights for Lots 1-4 of Block 5 of Boulder Creek Subdivision, Phase 1, for 52 multifamily households.

The Parkland Dedication Requirement section describes Phase 1 of Boulder Creek Subdivision as consisting of “20 two household lots (actual density - 20 D.U. per 2.9804 total acres = 13.42 D.U. per acre). The 20 two-household lots described are those contained in blocks, 4, 7 and

8. In addition, that section also includes a reference to 4 multi-family (Block 5) required dedication = 8 D.U. per acre.

The plat for Boulder Creek Subdivision - Phase 1, bears the following:

CERTIFICATE OF EXCLUSION FROM MONTANA
DEPARTMENT OF ENVIRONMENTAL QUALITY REVIEW

BOULDER CREEK SUBDIVISION, Phase 1, located in Gallatin County, Montana, is within the City of Bozeman, Montana, a first-class municipality, and within the planning area of the Bozeman growth policy which was adopted pursuant to Section 76-1-601 et seq., M.C.A., and can be provided with adequate storm water drainage and adequate municipal facilities. Therefore, under the provisions of Section 76-4-125(1)(d) M.C.A., this subdivision is excluded from the requirement for Montana Department of Environmental Quality review.

The certificate of exclusion was signed by the Bozeman Director of Public Works prior to the filing of the plat. As shown by the capacity letter from the City of Bozeman Engineering Department, the Municipal Facilities Exclusion letter from the Montana Department of Environmental Quality and the information shown on the face of the plat for Boulder Creek Subdivision - Phase 1.

3. Condominium Units: Each Unit, together with the appurtenant undivided interest in the common elements of Abigail Condominium shall together comprise one condominium Unit, shall be inseparable, and may be conveyed, leased, rented, devised or encumbered as a fee simple interest in a parcel of real property. Included in all Units, as a part of each Unit, are the garages appurtenant to such Unit.

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

5. Unit Boundaries: Each Unit shall include the part of the building containing the Unit that lies within the boundaries of the floors, walls and ceilings of the Unit. All lath, furring, wallboard, plasterboard, sheetrock, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other

materials constituting any part of the finished surfaces thereof are a part of the Unit, and all other portions of the walls, floors, or ceilings are a part of the common elements. The finished portion of the garage (where applicable) within the boundaries of the interior walls, and the floors and ceilings thereof shall constitute a part of and be appurtenant to such Unit.

6. Construction Materials: The principal materials of construction of the Units shall be concrete for the foundations, footings, and slabs, including the garage floors; wood for the framing, structural, and finish work; sheetrock for the interior walls and ceilings; carpet, wood, or vinyl for the floors; lap siding and metal siding, and asphalt shingles on the roof of the building.

7. Automobile Parking: The use of the driveway area in front of each Unit is set aside for the use of the Owner of the Unit that the driveway services.

III. EASEMENT - COMMON ELEMENT - INTERIOR REMODELING

1. Common Element Easements: A nonexclusive right of ingress and egress and support through the general common elements is appurtenant to each Unit and all the general common elements are subject to such rights. Such easements include an easement for ingress and egress from and to each Condominium Unit to the public roads or other means of access bounding the Condominium property.

2. Utilities: An easement shall exist over, across and into the general and limited common elements as shown on the site plan and in the condominium Units themselves for installation, maintenance and repair of all utilities for lines, wires, pipes, equipment and other items necessary for supplying light, heat, water, sewer, power, telephone, any cable television and other means of communication to the condominium.

3. Interior Remodeling: Each Unit Owner shall have the exclusive right to paint, repair, tile, wallpaper, panel, carpet, brick or otherwise maintain, refinish and decorate the inner surfaces of the walls, ceilings, floors, windows and doors bounding his own Unit, and the interior thereof, so long as such work does not affect the structural integrity of the building.

IV. OWNERSHIP AND VOTING - EXHIBITS - USE

1. Percentage of Interest: Each Unit Owner shall be entitled to the exclusive ownership, use and possession of his or her Unit and the percentage of the interest of each Unit Owner in the common elements as shall be set forth in this Declaration and any Amendments to this Declaration. Each Unit Owner shall have a percentage of undivided interest in the general common elements of Abigail Condominium, which is required to be based upon the value of the Unit at the time of its creation. In this case, the Units are of the same size and construction and therefore the relative values of the Units are the same. Such percentage represents his or her ownership interest in the general common elements, and his or her liability for common expenses and taxes. The percentages of interest in the general common elements for the Owners of the Units shall be as follow:

<u>Unit</u>	<u>PERCENTAGE OF INTEREST</u>
942A	50%
942B	50%

Exhibits: Abigail Condominium consists of the real property described above, and a total of two (2) separate Condominium Units. For identification and descriptive purposes the following Exhibits are attached and by reference hereto incorporated into and made a part of this Declaration:

Exhibit A: Showing the site plan of the Abigail Condominium and the location of the building containing the condominium Units on the property and the common elements.

Exhibit B: Showing the floor plans for each of the Units of Abigail Condominium, the area of each, the dimensions and the designation for each Unit.

2. Use: The Units and common elements shall be occupied and used as follows:

- a. No part of the property shall be used for other than residential purposes as allowed by the City of Bozeman Municipal Code; except that an Owner may use a portion of his or her Unit for a home office or studio, provided that the activities therein shall not interfere with the quiet enjoyment or comfort of any other Owner or occupant and further that such activities do not violate any applicable zoning regulations or other use restrictions applicable to the property. Such non-residential use shall be subordinate to the residential use of the Unit and the non-residential use shall not exceed 25% of the floor space of an individual Unit, nor shall the non-residential use exceed 25% of the floor space of the condominium project.
- b. Units within the condominium need not be owner-occupied, but all occupants of each unit shall be required to comply with the terms and conditions of this Declaration and each Owner shall be responsible for any violation of the terms and conditions of this Declaration.
- c. There shall be no obstruction of the common elements, nor shall anything be stored in or on the common elements without the prior written consent of the Association Board, or as specifically set forth herein. Each Owner shall be obligated to maintain and keep in good order and repair his or her own Unit. Included in this provision is the requirement that all garbage cans must be stored in the Units except for the day of curb side pickup.
- d. Nothing shall be done or kept in any Unit or in the common elements which will increase the rate of insurance on the buildings or contents thereof, above that which may normally be charged for a residential condominium, without

the prior written consent of the owner(s) of the other Unit, or any mortgagee of either Unit. No Owner shall permit anything to be done or kept in his or her Unit or in the common elements which will result in the cancellation of insurance on the building, or contents thereof, or which would be in violation of any law, this Declaration, or the Association Bylaws. No waste will be permitted in the common elements.

- e. Owners shall not cause or permit anything to be hung or displayed in or upon the outside of windows or placed on the outside walls of the building and no sign, awning, or canopy shall be affixed to or placed upon the exterior walls or roof, or any part thereof, without the prior written consent of the owner(s) of the other Unit, which shall not be unreasonably withheld. The Board shall determine locations upon the building for the placement of satellite dishes which allow for optimum reception while minimizing the visual impact of such dishes.
- f. No pets or other animals of any kind shall be raised, bred or kept in any Unit, except that dogs, cats or other household pets (not to exceed two (2) pets), other than dogs which show aggressive tendencies which may be deemed a hazard to other occupants of the condominium, may be kept in the Units, subject to rules and regulations adopted by the Association, provided that they are not kept, bred or maintained for any commercial purpose. No pet shall be allowed to constitute a nuisance and any animal which does become a nuisance may be removed from the condominium. Any pet which bites another animal or a human upon the premises shall be immediately removed unless it can be shown by clear and convincing evidence that the animal was unreasonably provoked into such action by the person or animal bitten. For purposes of the foregoing sentence, any animal which is restrained in some reasonable fashion but is approached by another animal or human shall be presumed to be the non-aggressor. Failure of an owner to adhere to pet regulations and requirements shall be grounds for the Owner(s) of the other Unit to maintain a nuisance action to remove the offending pet(s).
- g. No nuisances shall be allowed upon the property, nor shall any use or practice be allowed which is a source of annoyance to residents of the Condominium, or which interferes with the peaceful possession and proper use of the property by its residents. No immoral, improper, offensive or unlawful use shall be made of the property, nor any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. For purposes of the foregoing, any activity within a Unit or the common areas which can be heard within another Unit shall be considered a nuisance if such activity occurs between 10:00 p.m. and 8:00 a.m., although the definition of a nuisance shall not be limited to noise

violations. Nothing contained in this paragraph shall preclude the association or any other owner or owners from maintaining a court action to remove the nuisance.

- h. All fences constructed upon the property affected by this Declaration shall conform to the requirements of section 38.350.060 of the Bozeman Municipal Code, titled "Fences, Walls and Hedges." In addition, all fences located in the front, side or rear yard setback of any properties adjacent to any park or areas designated as "open space" shall be of wood construction, no more than four (4) feet high, and shall be in strict conformance with all applicable laws. Fences not bordering parks or designated open spaces may be no more than five (5) feet high. Such fences shall be constructed utilizing the same materials and design as the common fence dividing the rear yard of the property. In addition, the following conditions shall apply:
- i) Each owner shall be responsible for the maintenance of the fence enclosing the portion of the yard accessed from his or her Unit, on both sides, except in the case of that portion of a fence which is shared between two Units within the condominium, in which case each owner shall be responsible for maintenance of the fence on the side facing his or her Unit. In the event that any portion of a shared fence must be replaced, the owners shall each pay one-half of the cost of such replacement.
 - ii) In the event that an owner builds additional fencing to enclose the rear yard of his or her unit, such fence shall include a gate within 5 feet of the building, which shall be unlocked and capable of being opened from outside the rear yard in order to facilitate emergency access to the rear of the building. The gate in the common portion of the fence shall also remain unlocked.
 - iii) In the event of a dispute involving any common fence, the parties agree that if they cannot resolve the dispute through direct discussions, they will submit the matter to mediation. In the event that they cannot agree upon a mediator, the parties shall request a list of three names from the president of the Gallatin County Bar Association of persons qualified to act as mediators. Upon receipt of the list of potential mediators, each party shall strike one name from the list and the remaining person shall act as the mediator for the parties. The parties shall each be obligated to pay one-half of the fee charged by the mediator. In the event that the parties cannot resolve the matter through mediation, they shall then be free to pursue other remedies available to them through this Declaration or Montana law.

For purposes of this Declaration, the term “party” shall refer to the owner(s) of each Unit collectively, so that there will always be two “parties,” regardless of the number of actual owners.

- iv) Any area enclosed by a fence shall be treated as a limited common element, to be maintained solely by the owner(s) of the Unit from which accessed to the enclosed area may be gained. The Association, which will generally have the responsibility to maintain the common elements, including yards and sidewalks, shall not be responsible for maintaining fences or for maintaining any areas enclosed by fences.
- i. Nothing shall be done in any Unit or in, on or to the common elements which will impair the structural integrity of the buildings or which would structurally change the buildings, except as is otherwise provided herein.
- j. Nothing shall be altered or constructed in or removed from the common elements, except upon the written consent of the Association.
- k. Use by the Owners of the Units in Abigail Condominium shall at all times be in compliance with all applicable laws, regulations and ordinances. Such compliance shall also include and extend to any repair, remodeling or refurbishing of the Units.

3. Exclusive Ownership: Each Owner or Owners shall be entitled to exclusive ownership and possession of his or her Unit. Such Owners may use the general and limited common elements in accordance with the purposes for which they are intended and as they may otherwise agree between themselves, so long as they do not hinder or encroach upon the lawful rights of other Unit Owners.

V. THE ASSOCIATION

1. Membership: An Owner of a Unit in Abigail Condominium shall automatically, upon becoming the Owner of the Unit, be a member of the Abigail Condominium Unit Owners Association, hereinafter referred to as the Association. In the event that the Association is incorporated as a mutual benefit nonprofit corporation in the state of Montana, the Articles of Incorporation for the Association shall be incorporated into this Declaration as if the same were more fully set forth herein. Nothing contained herein shall be construed as a requirement that the Association be incorporated.

2. Function: It shall be the function of the Association to:

- a. Be responsible for the upkeep, maintenance, repair, refurbishing and remodeling of the common elements of the condominium including the lands, grounds, lighting, landscaping, shrubbery, and trees, as well as the exteriors of the Units including the walls and roofs, subject to the obligations set forth for the Owners elsewhere in this Declaration.

- b. To maintain and care for the driveways giving access to the various Units. Such maintenance shall be deemed limited common maintenance and shall be assessed against the Owners of the particular Units and the buildings to which the driveways give access.
- c. Adopt Bylaws for the governance of the Association.
- d. Make provisions for the general management of the Condominium.
- e. Levy and collect assessments as provided for in the Declaration, Bylaws, and the Unit Ownership Act. Assessments for the condominium shall include an amount necessary to allow the Association to pay any SIDs attached to the property, including street maintenance, lighting, trees, or any other properly implemented SIDs.
- f. Adopt and implement policies for the governance of the affairs of the Condominium.
- g. Enter into contracts to hire personnel for the management of the affairs of the Association and the maintenance and repairs of the common areas.
- h. To represent the Owners of Abigail Condominium in all affairs affecting the condominium, including condemnation proceedings or in any situation in which a partial or total destruction of condominium property is experienced. In all such cases, each Unit owner shall be deemed to have appointed the Association as his or her attorney-in-fact to carry out such representation.
- i. Additionally, the Association shall have the power to do such other things and take such other action as are deemed necessary, reasonable and proper to carry out its functions and as are allowed by law.

3. Vote: All matters to be decided by the Association shall be decided by the Board of Directors. The owners of each Unit shall be entitled to appoint one person to the Board of Directors. In the event that the Owners elect to hire a management company for the Association, a representative of the management company may be appointed as the third director. All decisions of the Board of Directors shall be by majority vote unless another percentage is designated in this Declaration or the Bylaws for a particular action.

In the event that a management company is not in place to manage the condominium and the two appointed directors cannot agree upon a course of action, and either of the parties determines, in his or her sole discretion, that a decision on the issue is necessary for the operation of the condominium, the directors/owners shall submit the question to a third party for determination and the parties shall be bound by the decision of the third party. The first choice for a third party to determine the question shall be the chairperson of the Professional Standards Committee of the Gallatin Association of Realtors. In the event that the chairperson of the Professional Standards

Committee of the Gallatin Association of Realtors is unable or unwilling to act, for any reason, including an inability to be impartial, the parties shall obtain from the chairperson a list of three real estate agents or brokers in the Bozeman, Montana area who will be willing to act in that capacity, and the parties shall each be allowed to strike one person from the list. The remaining real estate agent or broker shall be the person who shall cast the deciding vote, which shall be binding on the parties. In the event that such a decision arises in an even numbered year, the owner of Unit A shall be given the first opportunity to strike a name from the list. In an odd numbered year the owner of Unit B shall be given first opportunity to strike a name from the list. In the event that a third party is necessary to determine any question coming before the Association, the parties shall split equally the cost of hiring the third party to decide the issue.

4. Failure to Comply: Each Owner shall comply strictly with the provisions of this Declaration and the Bylaws of the Association, as the same may be lawfully amended from time to time, as well as the rules, regulations, decisions and resolutions of the Association adopted pursuant to the Declaration and Bylaws. Failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief or both, or for specific performance in the case of the dispute resolution provisions stated above. In the event that it becomes necessary for either owner to maintain such an action, the prevailing party shall be entitled to reimbursement of all costs, including attorneys fees incurred in connection therewith, which action.

5. Payment of Assessments - When Due: All assessments shall be due thirty (30) days from the date of mailing of such assessments to the Owners by the Association Board or Manager, following the meeting at which the assessments are levied by the Board. Assessments may be payable in installments monthly, quarterly, annually, or at any other time at the option of the Board. The amount of the common expenses assessed against each Condominium Unit shall be the personal and individual debt of the Owner thereof. No Owner may exempt himself or herself from liability for this contribution toward the common expenses by waiver of the use or enjoyment of any of the general common elements or limited common elements, or by abandonment of his or her Unit. All assessments which are not paid within thirty (30) days from the date they are due and payable become delinquent and are subject to interest and penalty charges. The Association Board or Manager shall have the responsibility of taking prompt action to collect any unpaid assessments which become delinquent. In the event of delinquency in the payment of the assessment, the Unit Owner shall be obligated to pay interest at a rate to be determined by the Board on the amount of the assessment from the due date thereof, together with such late charges as provided in the Bylaws of the Association. The interest rate shall not exceed that which is allowed by law and shall be stated at the time of the assessments. In the event that no other rate is established, the rate shall be twelve percent (12%) per annum, commencing on the due date of each assessment. Suit to recover a money judgment for unpaid common expenses and limited expenses may be maintainable without foreclosing or waiving the lien securing the same.

- a. Common expenses and common profits, if any, and limited common expenses of the Condominium shall be distributed among, and charged to the Unit Owners according to the percentage of interest of each in the common elements.

- b. Except as otherwise limited in this Declaration, each Unit Owner shall have the right to use the common elements for all purposes incidental to the use of and occupancy of the respective Unit as a residence, and such other uses permitted by this Declaration, which rights shall be appurtenant to and run with the Unit.

6. Unpaid Assessments - Mortgagee: Where a mortgagee or other purchaser of a Unit obtains title to the Unit as a result of foreclosure of the first mortgage or trust indenture, such party acquiring title, as well as his or her successors and assigns, shall not be liable for the share of common expenses or assessments by the Association chargeable to such Unit which became due prior to the acquisition of title of such Unit by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the Units including such acquirer, his or her successors and assigns. Nothing contained herein shall, however, relieve the owner of the Unit when the assessment is made from his or her liability for the assessment.

7. Levying Assessments - When Made - Purposes: The Board of Directors of the Owners' Association shall levy assessments upon the Unit Owners (except as provided in paragraph 6 above) in the following manner and for the following reasons:

- a. Assessments shall be made as a part of the regular, annual business meeting of the Association Board, as provided in the Bylaws of the Association, or assessments can be made for special purposes at any other regular or special meeting thereof. The board of directors or the Manager shall prepare a preliminary annual budget for income and expenses to be proposed and delivered or mailed to each Unit Owner prior to the Board meeting at which assessments are to be levied. The preliminary annual budget shall be reviewed, amended if necessary and discussed and voted upon by the Board prior to the beginning of the fiscal year in which the budget is to be applied. All assessments shall then be fixed by a majority vote of the Board based upon the annual budget. Written notice of any special assessments, the amount thereof and the purpose for which it is made shall be served on all Unit Owners affected by mailing or delivering a copy of the notice to the Unit Owners at their address of record at least thirty (30) days prior to the date of the Board meeting at which the special assessment is to be adopted. Such written notice need not be sent to any Unit Owner who is present at the directors' meeting at which the assessment is made.
- b. Assessments shall be made for the repair, replacement, insurance, general maintenance, creation of reserves, management and administration of common elements, fees, costs and expenses of the manager, the water bill for the condominium, taxes for common areas if any, and as more particularly provided in the Unit Ownership Act (Section 70-23-101, et. seq., MCA), sidewalks, driveways, weed control and any other matter that falls within the common elements of the condominium. In addition, the Association shall be responsible for all special improvement districts (SIDs) applicable to the condominium, including, but not limited to lighting districts, street maintenance, tree maintenance or any other properly created SID. Assessments shall be based upon and computed by using the

percentage of interest that each Unit Owner has in relation to the common elements.

- c. Assessments may also be made for the payment of limited common element expenses where the Unit Owners are chargeable only for the expenses relating to their respective Units. Unit Owners shall share in the payment of limited expenses for the repair, maintenance and replacement of limited common elements of their respective Units.
 - d. Assessments may also be made for any purpose contemplated by this Declaration and for any purpose set out in the Montana Unit Ownership Act.
 - e. In a voluntary conveyance of a Unit, the Grantee of the Unit shall be jointly and severally liable with the Grantor for all unpaid assessments by the Association against the latter for his or her share of the common expenses up to the time of the grant or conveyance. Such obligation shall be without prejudice to the Grantee's rights to recover from the Grantor the amounts paid by the Grantee therefore. Any such Grantee shall be entitled to a statement from the Manager or Board of Directors of the Association, as the case may be, setting forth the amount of such unpaid assessments against the Grantor which are due to the Association. Such Grantee shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid assessments made by the Association against the Grantor in excess of the amount therein set forth.
 - f. Prior to the initial sales of Units within the condominium, the initial Board shall establish a budget and assessments to be charged to Owners as they acquire Units, including a reserve account for capital expenditures, with the initial payment from each purchaser to equal twice the amount of the initial monthly assessment for operating expenses. The reserve account for the condominium shall remain with the Association at the time of any conveyance of a Unit. Compensation for any funds held in the operating account or reserve account shall be determined between the buyer and seller of the Unit and shall not involve the association or owner of the other Unit in any manner.
8. Notice to mortgagees and guarantors of any mortgage shall be provided as follows:

Written Notice. Upon receipt of a written request from the holder, insurer or guarantor of a mortgage on any Unit within Abigail Condominium, the Association must provide timely written notice to any such mortgagee, insurer, or guarantor at the address provided by such party, concerning any of the following:

- a. Any condemnation or casualty loss that affects either a material portion of Abigail Condominium, or any Unit securing such mortgage;
- b. any sixty day delinquency in the payment of assessments or charges by the owner(s) of any Unit on which it holds the mortgage, or has insured or guaranteed the payment

of the same;

- c. a lapse, cancellation, or material modification of any insurance policy maintained by the Association; and
- d. any proposed action that requires the consent of a specified eligible mortgage holder.
- e. In any such written request for notice, the mortgagee, insurer or guarantor must identify the name and address of the mortgagee, insurer or guarantor and number and address of the applicable Unit.

VI. DECLARANT'S RIGHT TO CHANGE

The Declarant reserves the right to change the interior design and arrangement of a Unit, so long as the Declarant owns the Unit so altered. No such change shall increase the number of Units or alter the boundary of the general common elements without an amendment of this Declaration.

VII. AMENDMENT

1. Amendment of this Declaration, other than amendments by the Declarants, as specified below, shall be made in the following manner:

- a. Except as set forth below, all amendments to this Declaration shall be signed by the owners of each of the Units within the condominium.
- b. For as long as Declarant continues to own a Unit within Abigail Condominium, Declarant shall have the right to amend this Declaration to include or delete any provision required by HUD, Fannie Mae, or VA, to make this Declaration comply with their requirements. Each unit owner and each holder of a mortgage or trust indenture on a unit, by acceptance of the deed or security instrument, hereby consents to all such amendments and grants unto the Declarant, as well as its successors and assigns, a limited irrevocable power of attorney, coupled with an interest, to amend this Declaration in accordance with the previous sentence.
- c. Mortgagee approval of Declaration changes shall be as follows:

Eligible Mortgagee Approvals: A change to any of the provisions of the Declaration pertaining to the following items requires the affirmative vote of eligible mortgagees who represent one hundred percent (100%) of the Units that are subject to mortgages held by eligible mortgagees:

- (i) voting rights;
- (ii) increases in assessments that increase the previous assessment

amount by more than twenty-five percent (25%), assessments liens, or the priority of assessment liens;

- (iii) reductions in reserves for maintenance, repair, and replacement of common elements;
- (iv) responsibility for maintenance or repair;
- (v) insurance or fidelity bonds;
- (vi) reallocation of interests in the general or limited common elements, or rights to their use;
- (vii) rights to use the common elements;
- (viii) changes in the descriptions of any Unit boundaries;
- (ix) convertibility of Units to common elements, or vice-versa;
- (x) expansion or contraction of the condominium, annexation or withdrawal of property from the condominium;
- (xi) leasing of any Units;
- (xii) imposition of any right of first refusal or similar restriction on the right of a Unit owner to sell, transfer or otherwise convey his or her Unit in the condominium;
- (xiii) restoration or repair of the condominium (after damage or partial condemnation) in a manner other than that specified in the Declaration;
- (xiv) any provisions that expressly benefit mortgagees, insurers or guarantors;
- (xv) any action to terminate the legal status of the condominium after substantial destruction or condemnation occurs, or for any other reason; or
- (xvi) establishment of self-management by the association where professional management has been required by any of the agencies or corporations.

Deemed Approvals. If any eligible mortgagee fails to attend any meeting, in person or by proxy, which is called for the purpose of amending the Declaration, notice of which is properly sent to the eligible mortgagee by

certified mail, return receipt requested, or if any eligible mortgage holder fails to submit a response to any written proposal for an amendment to the Declaration within sixty (60) days after proper notice of the proposal is deemed delivered to the mortgagee by certified mail, return receipt requested, then the eligible mortgagee is deemed to have approved the proposed amendment. Delivery is deemed to be made three days after the document is placed in the United States mail.

VIII. CHANGES, REPAIRS AND LIENS

1. Alterations by Unit Owners: The interior plan of a Unit may be changed by its Owner, with the exception of the bearing walls which may not be moved or altered without the prior approval of the Board and a structural engineer. In the event that an owner alters the floor plan of his or her Unit, he or she shall cause an amendment to this Declaration to be recorded, setting forth the alterations accomplished, which shall be accompanied by new as-built floor plans, certified by a registered architect, engineer or land surveyor. In the event that an Owner proposes any change to a bearing wall, the Owner must first obtain a certification by a licensed engineer that the proposed action will not affect the structural integrity of the building. No Units may be subdivided, nor may any change in the boundaries of the Units encroach upon the boundaries of the common elements, except by amendment to this Declaration. Boundary walls must be equal to quality of design and construction of the existing boundary walls. A change in the boundaries between Units shall be set forth in an amendment to this Declaration. In addition to compliance with the provisions of Article VIII above, such an amendment must further set forth and contain plans to the Units concerned, showing the Units after the change in boundaries, and such plans shall be attached to the amendment as exhibits. Such an amendment shall be signed and acknowledged by the Owners of the Units concerned, as well as those Owners with an interest in any common elements affected, together with words of conveyance in the amendment conveying interests acquired in the Units or common elements by such change. The amendment shall also be approved by the Board of Directors of the Association and signed and acknowledged by all lienholders and mortgagees of the Units concerned. It shall be the responsibility of the Owner(s) causing the change to record the Amendment and to pay all expenses associated with such amendment.

2. Maintenance by Unit Owner: An Owner shall maintain and keep in repair the interior of his or her own Unit and the fixtures thereof. All fixtures, utility lines and equipment installed in the Unit commencing at a point where the utilities enter the Unit shall be maintained and kept in repair by the Owner thereof. An Owner shall do no act, nor any work, that will impair the structural soundness or integrity of the building, cause damage within another Unit, or impair any easement. An Owner shall also keep all areas and limited common elements appurtenant to his or her Unit in a clean and sanitary condition. The right of each Owner to repair, alter, and remodel is coupled with the obligation to replace any finishing or other materials removed with similar types or kinds of materials. No acts of alteration, repairing or remodeling by any Unit Owner shall impair or damage in any way the adjoining Unit or the limited common elements or general common elements and each Unit owner shall indemnify the other owner against any such damages caused by any such alteration, repairing or remodeling.

3. Exterior Alterations: No Owner may change, alter or remodel the exterior of his or her Unit without the prior written approval of the adjoining Owner(s).

4. Exterior Maintenance by Association: The Association shall take all necessary steps, including, but not limited to, painting, lawn care, roof maintenance and repair, repair and maintenance of exterior walls, entrances, concrete repairs, ice and snow removal and replacement or repair of all broken or worn parts, to ensure that the condominium shall not unnecessarily deteriorate and the Association shall also provide maintenance, upkeep and repair of the driveways to each Unit (as a limited common expense). The Board of Directors of the Association, or its agent, shall annually inspect the building and proceed with any necessary maintenance or repairs. Failure by the Board of Directors of the Association to make annual inspections and/or proceed with any necessary maintenance shall give any mortgagee or beneficiary of any trust indenture the right to order such work done and bill the Association therefore, after notice to the Association of such intent by the lienholder and giving the Association a reasonable time to perform such work. Any lienholder or representative of the same, upon written request, shall have the right to join the annual inspection made by the Board of Directors and suggest needed repairs and maintenance necessary to preserve the security value of the condominium project.

5. Liens for Alterations: Labor performed and materials furnished and incorporated into a Unit with the consent of or at the request of the Unit Owner, the Owner's agent, contractor or subcontractor, shall be the basis for the filing of a lien against the Unit, in the event that the owner fails to pay for the same in a timely manner. Each Unit Owner shall indemnify and hold harmless the other Owner(s) from and against all liability arising from the claim of any lien against the Unit or against the general common elements or limited common elements for construction performed or for labor, materials, services or other products incorporated in the Owner's Unit at such Owner's request.

6. Liens and Foreclosure: All sums assessed, but unpaid, for the share of general common expenses and limited common expenses chargeable to any condominium Unit shall constitute a lien on such Unit superior to all other liens and encumbrances, except only for taxes and special assessment liens on the Unit in favor of any assessing authority, and all sums unpaid on the first mortgage or a first trust indenture of record, including all unpaid obligatory sums as may be provided by such encumbrance. To evidence such lien, the Board, or its authorized agent, may prepare a written notice of assessment lien setting forth the amount of such unpaid indebtedness, the amount of accrued interest and late charges thereon, the name of the Owner(s) of the Unit and a description of the Unit. Such notice shall be signed and verified by one of the officers of the Association or by its authorized agent, and shall be recorded in the office of the County Clerk and Recorder of Gallatin County, Montana. Copies of such notice shall be mailed to the Owner against whose interest the lien has been filed and the holder of any first lien of record and shall attach from the date of recording such notice. Such lien may be enforced by the foreclosure of the defaulting Owner's Unit by the Association, in the manner provided in the Unit Ownership Act and as provided for the foreclosure of a mortgage on real property. In any such foreclosure the Unit Owner shall be required to pay a reasonable rental for the Unit and the Association shall be entitled to the appointment of a receiver to collect the same. Suit to recover a money judgment for unpaid common expenses may be maintainable without foreclosure or waiving the lien securing the same. In any foreclosure

proceeding or court case to recover money damages, the prevailing party shall be entitled to recover all reasonable court costs, expenses and attorney's fees involved in the court case, as well as those incurred in filing a lien. In the event that a lien is filed, but the delinquent owner cures the default without the need for the Association to bring a court action, the delinquent owner shall be required to pay the reasonable cost of preparing and filing a lien, not to exceed \$125.

7. Bidding at Foreclosure: The Board of Directors of the Association, on behalf of the other Unit Owner(s), shall have the power to bid on and purchase the Condominium Unit at a foreclosure or other legal sale, including the appurtenant interest in the common elements. Any lienholder holding a lien on a Unit may pay, but shall not be required to pay, any unpaid general common expenses, or limited common expenses payable with respect to any such Unit, and upon such payment, the Association shall assign to such person or entity its lien upon the Unit, which shall retain the same priority as the lien of the Association.

IX. INSURANCE

1. All "blanket" or "master" insurance policies upon the condominium building, common elements and real property shall be purchased by the Association and shall be issued by an insurance company authorized to do business in Montana, which shall be a generally accepted insurance carrier.

- a. Named Insured: The named insured shall be the Association, as agent for the Unit Owners. Such policies shall provide that payments for losses thereunder by the insurer shall be paid to the Insurance Trustee hereinafter designated, and all policies and endorsements thereon shall be deposited with the Insurance Trustee. Unit Owners may obtain insurance coverage at their own expense upon their own personal property and for their personal liability and living expenses for alternate accommodations if they are dispossessed.
- b. Copies to Mortgagees: One (1) copy of each insurance policy and of all endorsements thereon shall be furnished by the Association to each mortgagee of a Unit Owner on request.

2. Coverage:

- a. Casualty: All buildings and improvements upon the land, and all personal property included as part of the common elements shall be insured to an amount equal to the full insurable replacement value, subject to such deductible clauses as are required in order to obtain coverage at reasonable costs; provided, however, that deductible levels shall be determined by lender requirements. Such coverage shall afford protection against:
 - i. Loss or damage to the common elements by fire and other hazards covered by a standard coverage endorsement for a residential condominium, and such other coverage deemed appropriate by the Board or Association as a whole. In no event shall insurance coverage be in an amount less than the

replacement value of the condominium;

ii. Flood insurance if the condominium is determined to be within a 100 year flood plain, or as otherwise required by the lender for either Unit;

iii. Such other risks as may from time to time occur shall customarily be covered with respect to buildings similar in construction, location and use as the building that is the subject of this Declaration, and

iv. Errors and Omissions insurance for the Directors, Officers and Managers if the Association so desires, in amounts to be determined by the Board.

b. The policies shall state whether the following items are included within the coverage in order that the Unit Owners may insure themselves if the items are not insured by the Association:

i. Airhandling equipment for space cooling and heating, service equipment such as dishwasher, disposal, laundry, fireplaces, refrigerator, stove, oven, whether or not such items are built-in equipment, interior fixtures such as electrical and plumbing fixtures, floor coverings, inside paint and other inside wall finishes. The Association shall have no obligation to insure items within a Unit, but may do so at the discretion of the Board. In any event, if a loss is experienced within a Unit for which the Association has procured insurance, it shall be the responsibility of the Owner of the Unit to pay the deductible associated with such loss if the fire or other event causing the loss originates within that Unit. In the event that a loss involves both Units and it cannot be clearly shown that the fire or other event causing the loss originated in a particular Unit, the deductible shall be paid by the association.

c. **Public Liability:** In such amounts and with such coverage as shall be required by the Board of Directors of the Association, including, but not limited to hired automobile and non-owned automobile coverage, if applicable, and with cross-liability endorsement to cover liabilities of the Unit Owners as a group. Such policies shall provide coverage of at least \$1,000,000.00 and shall provide coverage for such risks as are customarily covered with respect to condominium developments similar in construction, location and use.

d. **Other Insurance:** Such other insurance as the Board of Directors of the Association shall determine from time to time to be desirable and as may be required by applicable federal and state laws.

e. The policies shall contain a "Special Condominium Endorsement," or its equivalent, providing for recognition of any Insurance Trust Agreements; that the insurance is not prejudiced by any act or neglect of an individual Unit owner which is not in the control of the owners collectively. To the extent

available, and to the extent required by FNMA or FHLMC, the policies shall also contain an "Agreed Amount Endorsement" and an "Inflation Guard Endorsement."

3. Premiums: Premiums for insurance policies purchased by the Association shall be paid by the Association as a common expense, except that the amount of increase in the premium occasioned by misuse, occupancy or abandonment of a Unit or its appurtenances, or of the common elements by a Unit Owner shall be assessed against the Owner causing the increase. Not less than ten (10) days prior to the date when a premium is due, evidence of such payment shall be furnished by the Association to each lienholder listed in the roster of lienholders.

4. Insurance Trustee: All insurance policies purchased by the Association shall be for the benefit of the Association and the Unit Owners and their mortgagees, as their interest may appear. Such policies shall provide that all proceeds covering property losses shall be paid to such bank in Montana with trust powers as may be designated as insurance trustee by the Board of Directors of the Association, which trustee is herein referred to as the insurance trustee. The insurance trustee shall not be liable for payment of premiums, nor for the renewal or the sufficiency of policies, nor for the failure to collect any insurance proceeds. The duty of the insurance trustee shall be to receive such proceeds as are paid and hold the same in trust for the purposes elsewhere stated in this instrument and for the benefit of the Unit Owners and their mortgagees as follows:

- a. Unit Owners: An undivided share for each Unit Owner, such share being the same as the undivided share in the common elements appurtenant to his or her Unit.
- b. Mortgagees: In the event that a mortgagee endorsement has been issued for a Unit, the share of the Unit Owner shall be held in Trust for the mortgagee and the Unit Owner as their interests may appear; provided however, that no mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have the right to apply or have applied to the reduction of a mortgage debt any insurance proceeds, except distributions thereof made to a Unit Owner and mortgagee pursuant to the provisions of this Declaration. The Association shall notify the holder of any first lien on any of the Units of the occurrence of any loss in excess of \$10,000.00, within 30 days of such loss, to the extent that such loss is known to the Association.

5. Distribution of Proceeds: Proceeds of insurance policies received by the insurance trustee shall be distributed to or for the benefit of the beneficial Owners and mortgagees in the following manner only:

- a. Miscellaneous: Expenses of administration, insurance trustee and construction or remodeling supervision shall be considered as part of the cost of construction, replacement or repair.

- b. Reconstruction or Repair: If the damage for which the proceeds are paid is to be repaired or reconstructed by the Association, the remaining proceeds shall be paid to defray the cost thereof, as elsewhere provided.
- c. If there is no reconstruction or repair, the first proceeds for distribution after paying the insurance trustee shall be made to the first lienholders for such Units before distribution to the Unit Owner.
- d. Certificate: In making distribution to Unit Owners and their lienholders, the insurance trustee may rely upon a certificate of the Association made by its representative or manager as to the names of the Unit Owners and their respective shares of the distribution.

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

7. Benefit of Mortgagees: Certain provisions in this article entitled "Insurance" are for the benefit of mortgagees or trust indenture beneficiaries of condominium units, and all such provisions are covenants for the benefit of any mortgagee of a Unit and may be enforced by such mortgagee or beneficiary. As a protection for such mortgagees or trust indenture beneficiaries, all policies obtained pursuant to this article shall contain a provision that the policies may not be cancelled or amended without at least ten (10) days prior written notice to the Association and to each holder of a first mortgage or trust indenture listed as a holder in the policies.

8. Reconstruction:

- a. Repair after Casualty: If any part of the condominium property shall be damaged by casualty, whether or not it shall be constructed or repaired, shall be determined in the following manner:
 - i. If a Unit or Units are found by the Board of Directors of the Association to be tenantable after the casualty, the damaged property shall be repaired.
 - ii. If a Unit or Units are found by the Board of Directors to be not tenantable after the casualty, the damaged property may be rebuilt or reconstructed, or, if not, then the property shall be subject to the applicable provisions of the Unit Ownership Act and this Declaration.
 - iii. In the event the Association elects not to rebuild as herein provided and set forth in the Unit Ownership Act, the insurance proceeds shall first be used to satisfy any outstanding liens or encumbrances on the property. The only circumstances under which the Association can elect not to rebuild the condominium Units after a casualty loss is if the Units in the building are

damaged to the extent that they are untenable.

- iv. Certificate: The insurance trustee may rely upon the certificate of the Association made by its Chairperson, President or manager to determine whether or not the damaged property is to be reconstructed.
- b. Plans and Specifications: Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original improvements, or if not, then according to plans and specifications unanimously approved by the Unit Owners. Any such reconstruction not in accordance with the original plans and specifications must be set forth in an amendment to the Declaration, which amendment shall be prepared and recorded in accordance with the provisions governing amendments, more particularly set forth in paragraph VIII and paragraph IX sub-paragraph 1, above. Such amendment must be prepared and approved prior to the commencement of construction.
- c. Responsibility: The responsibility for reconstruction or repair after casualty shall be the same as for maintenance and repair of the condominium property.
- d. Assessments: If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction or repair for which the Association is responsible or if at any time during such reconstruction or repair, or upon completion of such reconstruction or repair, the funds for the payment of the costs thereof are insufficient, assessments shall be made against all Unit Owners in sufficient amounts to provide funds for the payment of such costs. Such assessments shall be in proportion to the Owner's percentage of interest in the general common elements or the limited common elements affected.
- e. Construction Funds: The funds for payment of costs of reconstruction or repair after casualty, which shall consist of proceeds of insurance held by the insurance trustee and funds collected by the Association from assessments against Unit Owners, shall be disbursed in the sound discretion of the trustee and according to the contract of reconstruction or repair, which contract must have the approval of the Board and the Unit Owners involved.
- f. Surplus: It shall be presumed that the first funds disbursed in payment of costs of reconstruction and repair shall be from the insurance proceeds. If there is a balance in a construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be paid to the Association for the use and benefit of the Unit Owners.

X. REMOVAL OR PARTITION - SUBDIVISION

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

- a. The Board of Directors of the Association must approve the plan of removal, partition or sale, including the details of how any partition or sale and the distribution of property or funds shall be accomplished.
- b. The plan of removal, partition, subdivision, abandonment, termination or sale must be approved unanimously by the Unit owners and the first lienholders in the condominium. Upon obtaining such approval, the Board shall be empowered to implement and carry out the plan of removal, partition, subdivision, abandonment, termination or sale.
- c. No Unit may be divided or subdivided into smaller Units, nor any portion thereof sold or otherwise transferred, except as provided above.
- d. This section shall not apply to the sale of individual condominium Units and shall not be considered as a right of first refusal.
- e. The common elements of Abigail Condominium shall not be abandoned, partitioned, subdivided, encumbered, sold or transferred without compliance with all of the above requirements.

XI. INTERPRETATION

The provisions of this Declaration and of the Bylaws to be promulgated and recorded herewith, shall be liberally construed to effectuate the purposes of this Declaration and Bylaws and to create a building or buildings subject to and under the provisions of the Unit Ownership Act.

XII. REMEDIES

The remedies provided for in this Declaration and Bylaws shall not be exclusive of any other remedies which may now be, or are hereafter, available to the parties hereto as provided for by law. It is expressly understood that the condominium consists of only two units and that certain actions called for herein may not be feasible in the event that there are only two directors and a deadlock exists. In such situation, the aggrieved Owner(s) shall have the right to proceed without the participation of the defaulting Owner in an emergency situation. For all defaults or breaches not resulting in an emergency situation, if the parties cannot come to an agreement, they shall submit the dispute to mediation, utilizing the procedure set forth above in Article IV and, if such mediation is unsuccessful, the aggrieved owner shall be entitled to proceed with a court action, in the same manner as could be utilized by the Association. In such case, the prevailing party shall be entitled to recover all reasonable attorney fees and court costs.

XIII. SEVERABILITY

The provisions hereof shall be deemed independent and severable and the invalidity, partial invalidity or unenforceability of any one or more provisions shall not affect the validity or ability to enforce any other provision hereof.

XIV. MISCELLANEOUS

1. Utility and Structural Easement: Easements are reserved through the condominium property as may be required for utility services, including water, sewer, power, telephone, natural gas and cable television, in order to serve the condominium adequately; provided however, such easements through the property or through a Unit shall only be according to the plans and specifications for the Unit or building, as set forth in the recorded plat, or as the building is constructed, unless approved in writing by the Unit Owner. Every portion of a Unit which contributes to the structural support of the building shall be burdened with an easement of structural support for the benefit of the common elements.

2. Right of Access: The Association shall have the irrevocable right, to be exercised by the Board, or its authorized agent, to have access to each Unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the limited or general common elements within such Unit or accessible from such Unit or for making repairs necessary to prevent damage to the general or limited common elements or to any Unit. Damage to the interior or any part of the Unit resulting from maintenance, repair, emergency repair or replacement of any of the general or limited common elements, or as a result of any emergency repair within another Unit at the instance of the Association shall be designated either limited or general common expenses by the Association and assessed in accordance with such designation. Each Owner, his or her guests, invitees, tenants or lessees shall have an unrestricted right of ingress and egress to his or her Unit over and across the general common elements of the condominium.

3. Expenditures: No single expenditure or debt in excess of \$1,000.00, other than for the payment of property taxes and insurance procured by the Association, may be made or incurred by the Association or Manager unless the same has been presented to the Owners during the budgetary process.

4. Benefit: Except as otherwise provided herein, this Declaration shall be binding upon and shall inure to the benefit of the Declarants, the Association and each Unit Owner, and the heirs, personal representatives, successors and assigns of each, as well as holders of any liens or encumbrances.

5. Service of Process: The name and address of the person to receive service of process for Abigail Condominium until another designation is filed of record, shall be Aaron Mills, of 118 Gloria Court, Bozeman, Montana 59718, until such time as both Units are sold.

6. A first lienholder, upon request, will be entitled to written notification from the

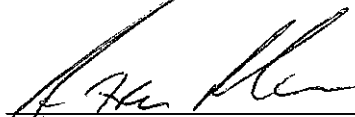
6. A first lienholder, upon request, will be entitled to written notification from the Association of any default in the performance by an individual Unit Owner of any obligation under the condominium documents which is not cured within sixty (60) days.

7. Unit owners, first lienholders, and insurers of the first mortgage on any Unit, shall have the right to examine the books and records of the Association and any Manager for the condominium upon reasonable notice during regular business hours. Such books and records shall include this Declaration, the Association Bylaws, Articles of Incorporation of the Association, minutes of Association meetings, financial records of the Association, including audited financial statements, if prepared. All such examinations shall be upon reasonable notice and for reasonable periods of time. Excessive requests for the purpose of harassing or annoying the keeper of the records may be denied.

8. The Declarant expressly makes no warranties or representations concerning the property, the Units, the Declaration, the Bylaws or deeds of conveyance, except as specifically set forth therein and no one may rely upon such warranty or representation not so specifically expressed therein.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be made and executed according to the provisions of the Unit Ownership Act, Section 70-23-101, et. seq., MCA.

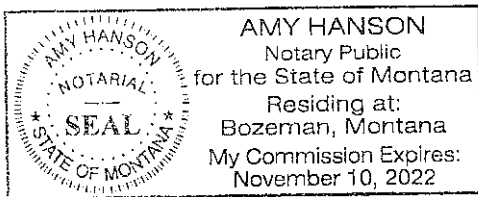
AARON MILLS CONSTRUCTION CORPORATION

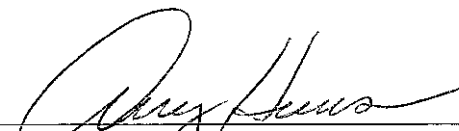


Aaron Mills, President

STATE OF MONTANA)
 :SS
COUNTY OF GALLATIN)

This instrument was acknowledged before me on this 15th day of November 2019, by Aaron Mills, President of AARON MILLS CONSTRUCTION CORPORATION





Notary Public for the State of Montana
Printed name: Amy Hanson
Residing at Bozeman, Montana
My Commission expires: 11/10/2022

BOZEMAN^{MT}

Community Development

CONDOMINIUM REVIEW DECISION

APPLICATION

Date: **December 19, 2019**

Number of Units total / this phase: **2 du**

File Number: **19-501**

Original Project File number, If applicable:

Condominium Name: **Abigail Condominium**

Legal Description: **Lot 8 in Block 8 of Boulder Creek Subdivision, Phase 1, City of Bozeman, Gallatin County, Montana.**

STATUTE

"76-3-203. Exemption for certain condominiums. Condominiums constructed on land subdivided in compliance with parts 5 and 6 of this chapter or on lots within incorporated cities and towns are exempt from the provisions of this chapter if:

- (1) the approval of the original subdivision of land expressly contemplated the construction of the condominiums and any applicable park dedication requirements in 76 -3-621 are complied with; or
- (2) the condominium proposal is in conformance with applicable local zoning regulations when local zoning regulations are in effect."

FINDINGS

Per the above statute, the Department of Community Development finds the condominium development noted above meets the Subdivision & Platting Act (SPA) and Sanitation in Subdivision Act (SiS) by:

- SPA) Does not require subdivision review and has satisfied the exemption criteria.
- SPA) Has completed review as a subdivision.
- SiS) A municipal facilities exemption has been granted (see attached).
- SiS) Exempt from Sanitation Review per: **76-3-203(1)**

DIRECTOR SIGNATURE



Martin Matsen, AICP, Director, City of Bozeman Department of Community Development

CONTACT US

Alfred M. Stiff Professional Building
20 East Olive Street 59715 (FED EX and UPS Only)
PO Box 1230
Bozeman, MT 59771

phone 406-582-2260
fax 406-582-2263
planning@bozeman.net
www.bozeman.net

DEPARTMENT OF REVENUE CERTIFICATE

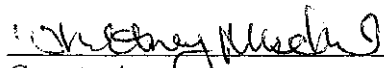
Pursuant to MCA 70-23-304, the undersigned being the duly authorized agent of the Department of Revenue of the State of Montana with the County of Gallatin, herewith executes the following certificate relating to the Abigail Condominium Declaration, Gallatin County, Montana, situated on the property described as follows:

Lot 8 in Block 8 of Boulder Creek Subdivision, Phase 1, City of Bozeman, Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the County Clerk and Recorder, Gallatin County, Montana. [Plat reference: J-633].

1. That the name Abigail Condominium is not the same as, similar to or pronounced the same as any word in the name of any other property or subdivision within Gallatin County except for the word "Condominium", and

2. All taxes and assessments due and payable for the land on which the Abigail Condominium is situated and the improvements thereon have been paid to date.

Dated this 14th day of November 2019.



County Assessor

ENGINEER'S CERTIFICATE

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

That pursuant to the provisions of MCA 70-23-306(2), the floor plans for Units 942 A and 942B, located on:

Lot 8 in Block 8 of Boulder Creek Subdivision, Phase 1, City of Bozeman, Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the County Clerk and Recorder, Gallatin County, Montana.[Plat reference: J-633].

as duly filed with the Declaration and Bylaws thereof, fully and accurately depict the layout of the units and floors of the building as built.

Dated Nov. 14, 2019

Mark A. Chandler

Registration No. 9518-ES



EXHIBIT A

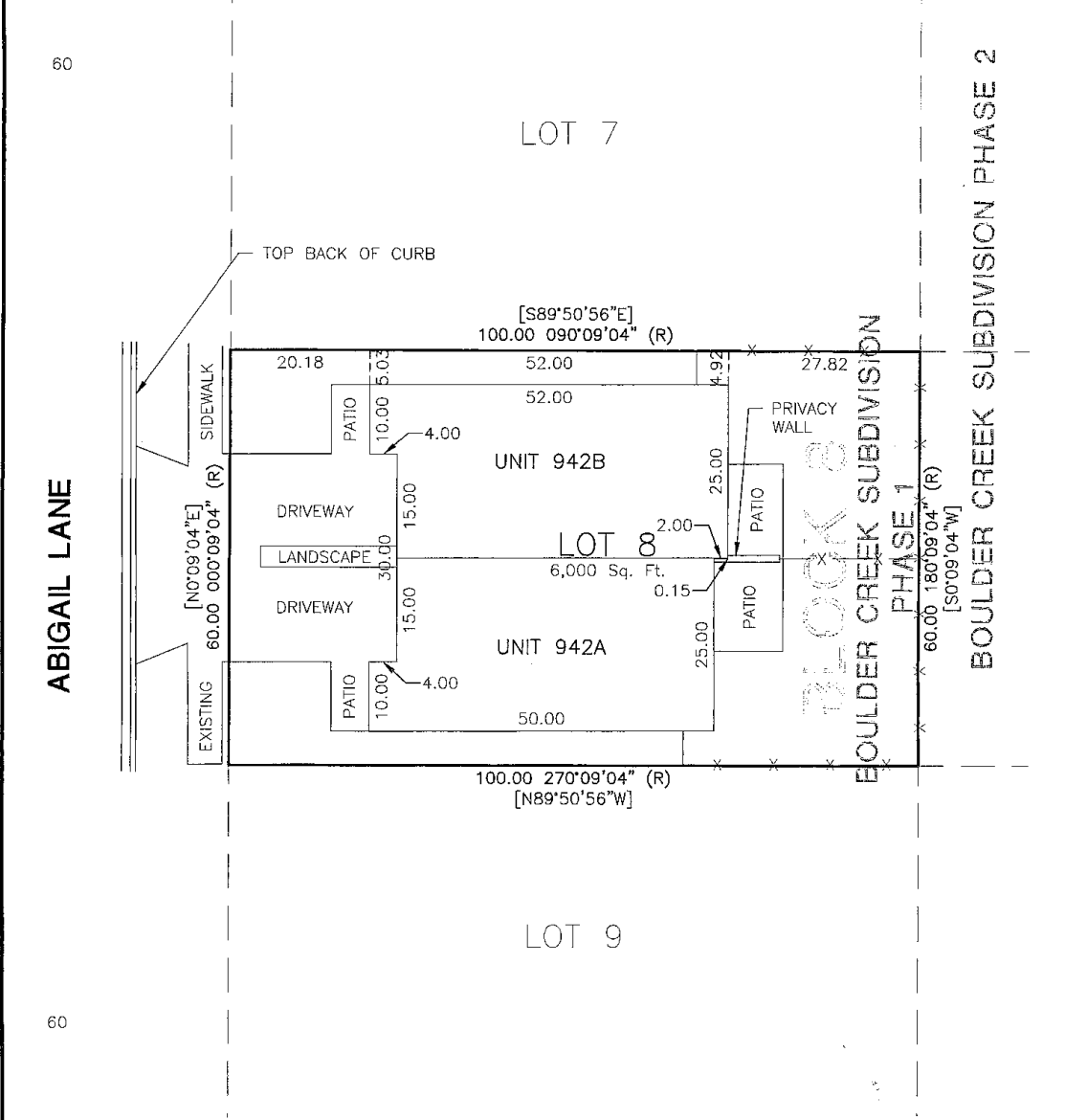
SITE PLAN

ABIGAIL CONDOMINIUM

MEASURED BY: KL 2019.11.11

LEGAL DESCRIPTION

LOT 8, BLOCK 8, BOULDER CREEK SUBD. PH. 1 [PLAT J-633]
 LOCATED IN SE 1/4, SEC. 4, T. 2 S., R. 5 E. OF P.M.M.,
 BOZEMAN, MONTANA



NOTES

1. ALL SIDEWALKS, STOOPS, DRIVEWAYS, PATIOS, PORCHES, DECKS AND ATTICS ARE LIMITED COMMON ELEMENTS ALLOCATED TO UNITS THEY ARE ADJACENT TO.
2. UNIT AREAS SHOWN ON THE FLOOR PLANS ARE MEASURED TO THE EXTERIOR SURFACE OF THE STUD WALLS ON EXTERIOR WALLS, AND TO THE CENTERLINE OF COMMON WALLS. INTERIOR STAIRWAYS ARE INCLUDED IN THE FLOOR AREA OF THE LOWER LEVEL ONLY. THIS IS DONE TO MATCH THE ASSESSOR'S OFFICE FLOOR AREAS AS THEY CALCULATE THEM. THE ACTUAL UNIT BOUNDARIES ARE AS DEFINED IN THE DECLARATION OF CONDOMINIUM.



Engineering and Surveying Inc.
 1091 Stoneridge Drive • Bozeman, MT 59718
 Phone (406) 587-1115 • Fax (406) 587-8768
 www.chengineers.com • info@chengineers.com

UNIT AREAS, 942 ABIGAIL LANE			
	1st FLOOR	2nd FLOOR	TOTAL
UNIT 942A	1,190 SF	958 SF	2,148 SF
UNIT 942B	1,240 SF	1,008 SF	2,248 SF
TOTAL	2,430 SF	1,966 SF	4,396 SF

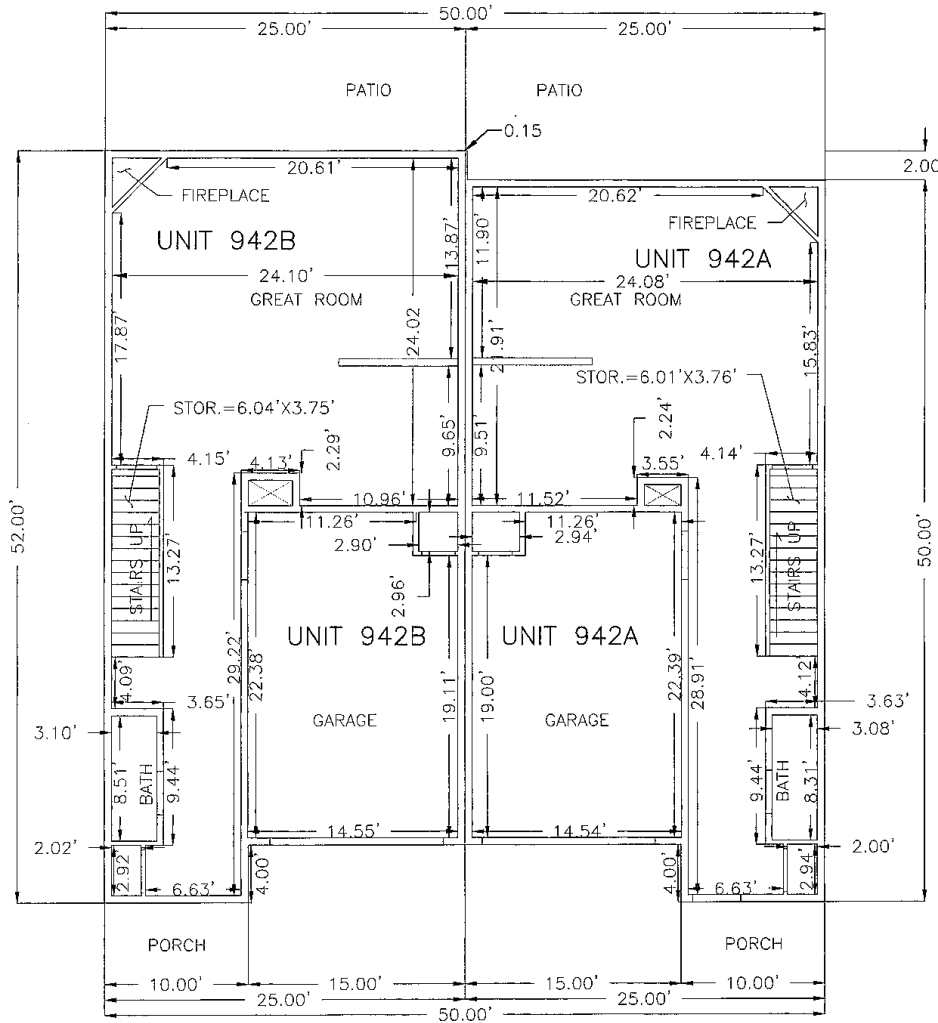
EXHIBIT B

FIRST FLOOR PLAN ABIGAIL CONDOMINIUM

MEASURED BY: NM 2019.11.05

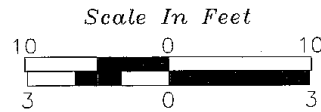
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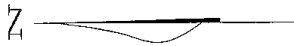


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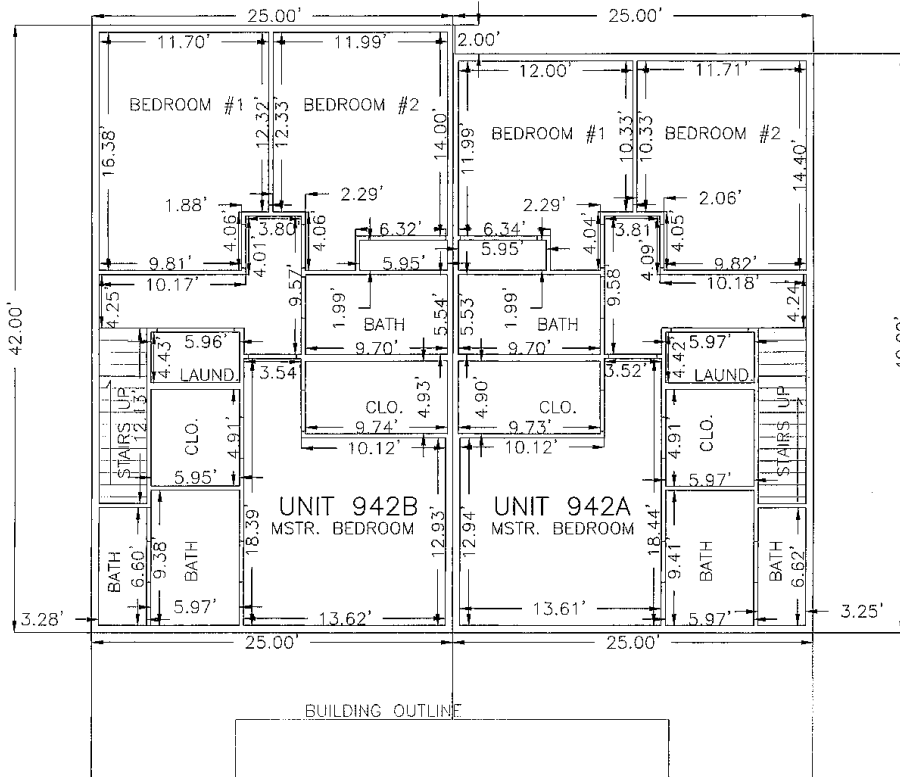
EXHIBIT B

SECOND FLOOR PLAN ABIGAIL CONDOMINIUM

MEASURED BY: NM 2019.11.05

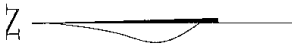
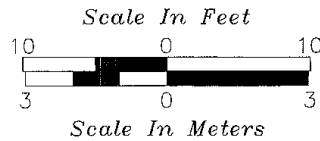
LEGAL DESCRIPTION

LOT 8, BLOCK 8, BOULDER CREEK SUBD. PH. 1 [PLAT J-633]
 LOCATED IN SE 1/4, SEC. 4, T. 2 S., R. 5 E. OF P.M.M.,
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**BYLAWS OF THE ABIGAIL
CONDOMINIUM UNIT OWNERS ASSOCIATION**

GALLATIN COUNTY, STATE OF MONTANA

1. PURPOSE AND APPLICATION:

These Bylaws shall, upon being recorded with the County Clerk and Recorder, County of Gallatin, State of Montana, become a part of the Declaration for Abigail Condominium, and shall govern and control the administration of Abigail Condominium, which may be incorporated in the office of the Montana Secretary of State. All Unit Owners, their guests and any renters or sub-lessees, present and future shall have the rights and responsibilities described in these Bylaws and shall be subject to the provisions thereof.

The acquisition of an ownership interest in a Unit in Abigail Condominium signifies that the Owner accepts, ratifies and agrees to comply with these Bylaws.

2. MEMBERSHIP:

Persons owning a Unit in Abigail Condominium or owning a Unit in any real estate tenancy relationship recognized by the State of Montana, shall be members of the Owners Association ("Association"), which shall be the same as the Association or Owners Association or Condominium Association established in the Declaration for the Condominium. Membership begins concurrently with the acquisition of an ownership interest in a Unit and terminates at the time such ownership interest is terminated, but such termination shall not relieve any Owner of liability for obligations incurred while a member of the Association. Membership in the Association does not in any way negate or impair any Owner's legal remedies, right to bring legal action, or defenses to any and all actions involving the Association, other Owners, or the management which may arise from or be incidents of ownership.

3. OBLIGATIONS:

Each Owner shall be obligated to comply with the Bylaws, Condominium Declaration, and the laws of the county of Gallatin and the state of Montana. Such obligation shall include, but not be limited to, the paying of assessments to the Association. Failure of any Owner to abide by these Bylaws and all rules made pursuant to these Bylaws, the Declaration, and the laws of the county of Gallatin and the state of Montana, shall be grounds for appropriate legal action by the Owners' Association or by an aggrieved Owner against such non-complying Owner.

4. MEETINGS AND VOTING:

a. Regular Meetings: There shall be a regular meeting of the Association annually, no later than the first Monday of June of each year. Any first lienholder shall have the right to have a representative attend any regular meeting and shall be given notice thereof, provided that such lienholder requests notice to be given. The first meeting of the Association shall take place not more than 30 days after the date by which both of the Units in the condominium are sold to their initial buyers. The regular meeting of the Owners shall be combined with a meeting of the Board of Directors.

b. Special Meetings: Pursuant to these Bylaws, the Association may at any time hold special meetings, notice of which must be sent to any first lienholders who so request notice, who shall have the right to have a representative attend. Such special meetings shall be held upon request of either Owner, or request of the Manager. Notice of any special meetings must specify the reason for such meeting and the matters to be raised. Only matters set forth in the request may be brought before such meeting, unless Owners agree otherwise.

c. Notice: Notice of all meetings, regular or special, shall be mailed by the Association's Secretary to every Unit Owner and first lienholder of record at their address of record, at least ten (10) days prior to the time for holding such meeting. Such notices shall specify the date, time and place of the meeting and shall make provision to allow the voting of each Owner's interest by proxy at the discretion of the Owner. The mailing of a notice in the manner provided in this paragraph or the personal delivery of such notice by the Secretary of the Association shall be considered as notice served.

d. Quorum: No meeting of the Owners, regular or special, shall be convened to conduct business, unless a quorum is present in person or by proxy. A quorum of Owners for any issue requiring a vote solely of the Owners, shall consist of one hundred percent (100%) of the total aggregate interest of the Condominium. At any time, during any meeting of the Owners or Directors that a quorum is not present, such meeting shall be adjourned forthwith. A quorum for a meeting of the Board of Directors shall be at least 2 directors present.

5. VOTING INTEREST:

Each Unit is entitled to appoint a member of the Board of Directors and the Board of Directors, consisting of two Owners (and a representative of the management company, should a management company be hired) shall manage the affairs of the condominium.

The Unit Owners, acting through their representatives on the Board of Directors, shall vote on all matters affecting the general business of Abigail Condominium, including all matters affecting the common elements, and all other matters properly coming before the Association.

Whenever a quorum is present at a meeting of the Association or the Board of Directors, those present may do any and all acts they are empowered to do, unless specific provision of these Bylaws, the Declaration, or the laws of the state of Montana direct otherwise.

6. BOARD OF DIRECTORS:

The governance of Abigail Condominium shall be by a Board of Directors chosen from among the Unit Owners, with each Unit to appoint one Director. Such Board shall have all powers and responsibilities attendant to the general administration and control necessary to carry into effect the powers and duties specified by these Bylaws. The number of Directors shall be at least two, unless the Association is incorporated as a mutual benefit corporation, in which case the Board will consist of three members, and all directors shall serve for one year terms. The two Owners on the Board of Directors may make a determination as to whether to hire a management company to manage the condominium. In the event that a management company is hired, a representative of the management company shall constitute the third member of the Board, if such person agrees to the appointment.

7. OFFICERS OF THE BOARD OF DIRECTORS:

The Board shall elect from its membership a Board of Directors which shall include a President, Secretary and Treasurer, with the latter two offices combined at the discretion of the Association. The manner of election of the Board shall be as follows:

- i. President: The President shall preside at all meetings of the Association and meetings of the Board and shall have such other powers and duties as are provided in the Declaration, these Bylaws or by law, and as are ordinarily exercised by the presiding officer of an association, including the appointment of committees from among the Owners, and as may be delegated to him or her by the Board or the Association from time to time.
- ii. Secretary: The Secretary shall record the proceedings of the meetings of the Board and meetings of the Association, shall keep such records and all other records, documents and other papers of the Board and of the Association and shall have such other powers and duties as may be delegated to him or her by the Board or the Association from time to time.
- iii. Treasurer: The Treasurer shall be responsible for the funds of the Association and shall be responsible for keeping and having kept full and accurate financial records and books of account showing all receipts and disbursements of the Association and any other financial data required by the Board or the Association. He or she shall be responsible for the deposit of all funds in the name of the Board of the Association in such depositories as may be designated by the Board from time to time and shall have such other powers and duties as may be delegated to him or her by the Board or the Association from time to time. The Board may delegate such of the Treasurer's powers and duties to the Manager as it deems to be advisable.

8. POWERS AND DUTIES OF THE BOARD OF DIRECTORS:

The Board of Directors shall have the following powers and duties:

- a. To call annual meetings of the Association and give due notice thereof.
- b. To provide a mechanism for appointment of members of the Board.
- c. To enforce the provisions of the Declaration and Bylaws of Abigail Condominium by appropriate action.
- d. To promulgate rules and regulations for the use of the common elements and for the occupancy of the Units so as to not interfere with the peace and quiet of all the residents.
- e. To provide for the management of Abigail Condominium by hiring or contracting with suitable and capable management personnel for the day-to-day operation, maintenance, upkeep and repair of the general common and limited common elements.
- f. To create a budget and levy assessments as allowed by the Declaration, these Bylaws, and the state of Montana, and to provide for the collection, expenditure and accounting of the assessments.
- g. To collect the assessments for Abigail Condominium Unit Owners Association.
- h. To pay for the expenses of the maintenance, repair and upkeep of the general common elements and the limited common elements, and to approve payment vouchers, either at regular or special meetings.
- i. To delegate authority to the Manager for the conduct of condominium business, to carry out the duties and powers of the Board; provided, however, that such authority shall be precisely defined with ultimate authority at all times residing in the Board of Directors.
- j. To provide a means of hearing grievances and foreclosure proceedings of Unit Owners and to observe all due process requirements imposed upon owners associations for condominiums.
- k. To meet at regularly scheduled times and hold such meetings open to all Unit Owners or their agents.
- l. To prepare an annual budget for the condominium in order to determine the amount of the assessments payable by the Unit Owners to meet the general common and limited common expenses. To allocate and assess such charges among the Unit Owners according to their respective interests in the general common and limited common elements and to submit such budget to the Unit Owners on or before the date of the annual meeting.

m. To levy and collect special assessments whenever, in the opinion of the Board, it is necessary to do so in order to meet increased operating or maintenance expenses, costs, or additional capital expenses, or because of emergencies.

n. To take appropriate legal action to collect any delinquent assessments, payments or amounts due from Unit Owners or from any person or persons owing money to the condominium, and to charge interest on unpaid amounts due and owing.

o. To defend in the name of the Association any and all lawsuits wherein Abigail Condominium is a party defendant.

p. To enter into contracts with third parties to carry out the duties set forth, for and in behalf of the Board of the Association.

q. To establish a bank account for Abigail Condominium and to keep therein all funds of the Association. Withdrawal of monies from such accounts shall only be by checks signed by such persons as are authorized by the Board of Directors.

r. In general, to act for and carry on the administration and affairs of the Association as authorized and prescribed by the Declaration and to do all those things which are necessary and reasonable in order to carry out the governance and operation of the Condominium.

s. To make repairs, alterations and improvements to the general common and limited common elements consistent with managing the condominium in a first class manner and in the best interests of the Unit Owners.

t. To arrange, keep, maintain and renew the insurance for the Association as set forth in the Declaration.

u. To carry out the duties and responsibilities of the Board in all other matters as may be authorized, needed or required by the Declaration.

v. To allow first lienholders to inspect Association and Board records upon proper notice and during reasonable business hours.

9. VACANCIES AND REMOVAL:

As stated above, it shall be the responsibility of the Owners of the individual Units to appoint their representative to the Board of Directors.

10. COMPENSATION:

No member of the Board of Directors who is also an Owner of a Unit within Abigail Condominium shall receive any compensation for acting as such, except to be reimbursed for

expenses incurred in attending Board meetings or carrying out Board functions. Nothing herein however, shall be construed to preclude compensation being paid to Managers who are hired by the Board.

11. LIABILITY OF MEMBERS OF THE BOARD OF DIRECTORS:

No member shall be liable to the Association or any of the members or Owners or any third party for harm, injury, loss or damage suffered because of any action taken or omitted to be taken by any member of the Board serving as Board member in good faith if:

a. The Board member exercised and used the same degree of care and skill as a prudent person would have exercised or used under the circumstances in the conduct of his or her own affairs, or

b. The Board member took or did not take action in reliance upon advice of counsel or upon statements or information of other Owners or employees of the Association which the member had reasonable grounds to believe.

12. MANAGERS:

A Manager may be appointed and/or removed by the Owners who are appointed to the Board of Directors. The Manager, any employee of the Manager or the Association, or any member of the Board or Association handling Association funds or having power to withdraw or spend such funds, regardless of whether such person receives compensation for such duties, shall be bonded and shall maintain records of the financial affairs of the condominium, unless specifically waived by the Board. Any such bond shall name the Association as obligee and shall be in a sum equal to three months aggregate assessments on all Units plus reserve funds. The financial records shall also detail all assessments made by the Association and the status of payments of assessments by all Unit Owners. All records shall be available for examination during normal business hours by any Owner, or his or her assigned representative, upon reasonable notice and for reasonable periods of time. No Owner or the Owner's representative shall be allowed to utilize this provision to harass or annoy the keeper of the records and excessive requests may be denied.

a. Accounts: The receipts and expenditures of the Association shall be under the direction of the Board or a Manager, should a manager be appointed, and be classified as appropriate into general common expenses and limited common expenses and shall include a provision for:

1. Current Expenses: Which shall include all receipts and expenditures to be made within the year for which the budget is made, including a reasonable allowance for contingencies and working funds, except expenditures chargeable to reserve or to betterments. The Association shall maintain an appropriate reserve for operating expenses, which may be carried over from one year to the next. Any excess funds in the operating account at the end of each year, other than reserves, shall be applied to reduce the assessments for expenses for the succeeding year.

2. Reserve for Deferred Maintenance: Which shall include funds for maintenance and items which occur less frequently than annually.

3. Reserve for Replacement: Which shall include funds for repair or replacement required because of damage, depreciation or obsolescence.

4. Betterments: Which shall include the funds to be used for capital expenditures for additional improvements or additional personal property which shall be a part of the common elements.

b. In the event that a Manager is appointed, the Manager shall prepare and submit to the Board a budget, each calendar year, which must be approved and adopted by the Board. The budget shall include the estimated funds required to defray the general common and limited common expenses and to provide and maintain funds for the foregoing accounts, according to good accounting practices.

Copies of the proposed budget and proposed assessments shall be transmitted to each member along with the notice of the annual meeting at which such budget will be adopted. If the budget is subsequently amended, a copy of the amended budget shall be furnished to each member.

c. The Board shall provide a financial report of the accounts of the Association on an annual basis, which report shall be furnished to each member at the annual meeting.

The Manager shall generally operate and manage the condominium for and on behalf of the Unit Owners and shall have such other powers and authority as the Board may designate. If there is no Manager or if the Manager resigns, is terminated or his or her contract expires and a successor is not chosen, the Board shall perform all the duties of the Manager until a Manager is hired or the former manager is replaced.

13. AMENDMENT OF BYLAWS:

These Bylaws may be amended at any regular or special meeting of the Association provided that a copy of the proposed revision is included in the notice of such meeting. Upon a vote of one hundred percent (100%) of the aggregate interest in the condominium, or upon the signing of the Amendment by one hundred percent (100%) of the Owners, the amendment shall be declared adopted; provided, however, if such amendment shall affect the rights of any lender, lender approval, as set forth in the Declaration, shall be required. The Secretary shall, as soon as practicable after adoption, prepare a copy of the Bylaws, as amended, for certification by the President and Secretary of the Association. Such amended and certified Bylaws shall then be recorded in the office of the County Clerk and Recorder of Gallatin County, State of Montana. Bylaws as amended shall become effective at the time of such recording.

14. ASSESSMENTS:

In accordance with the percentage of interest in the general common elements as set forth in the Declaration, each Owner shall be assessed for general or limited common expenses as defined in the Declaration. Such assessments, and assessments for limited common expenses, shall be collected and paid according to the terms and under the procedures more particularly set forth in the Declaration. The amounts of assessments described above and any other assessments allowed by these Bylaws, the Declaration and by the State of Montana, shall be fixed by the Board of Directors. Notice of each Owner's assessments shall be mailed to the Owner at his or her address of record.

15. NOTICE OF DEFAULT TO LIENHOLDERS:

A first lienholder, upon request, will be entitled to written notification from the Association of any default in the performance by the individual Unit borrower of any obligation under the condominium documents which is not cured within sixty (60) days.

16. NOTICES - DAMAGES:

The Association shall notify all first lienholders in writing of any loss to or taking of the common elements of the condominium if such loss or taking exceeds \$10,000.00, or damage to an individual Unit securing a mortgage held by the first lienholder exceeds \$1,000.00, to the extent that such damage is known to the Association.

17. FISCAL YEAR:

The fiscal year of the Association shall be as determined by the Board of Directors to be most appropriate to carry out the functions of the Association.

18. DUE PROCESS:

In the event there shall be default, except for the payment of assessments, by a Unit Owner or violation of any of the provisions of the Declaration or Bylaws, or non-compliance, notice of the same shall be sent to the Owner in writing by the other Owner, setting forth the nature of the violation or non-compliance and demanding a time certain in which to respond. Upon receipt of such response, the parties shall then attempt to resolve the dispute informally between themselves. If they cannot do so informally, the parties shall submit the matter to mediation, prior to initiation of a court action. Such mediation shall be conducted as set forth in the Declaration for Stevens Pond Condominium.

19. MISCELLANEOUS:

a. Costs and Attorney's Fees: In any proceeding arising because of an alleged default by an Owner, the prevailing party shall be entitled to recover the costs of the proceedings and such reasonable attorney's fees as may be determined by the Court.

b. No Waiver of Rights: The failure of the Association or of an Owner to enforce any right, provision, covenant or condition which may be granted by the condominium documents, shall not constitute a waiver of the right of the Association or Owner to enforce such right, provision, covenant or condition in the future.

c. Election of Remedies: All rights, remedies and privileges granted to the Association or an Owner pursuant to any term, provision, covenant or condition of the condominium documents shall be deemed cumulative and the exercise of any one or more rights, remedies or privileges shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be granted to such other party by the condominium documents, or at law or in equity.

d. Surplus: Any surplus of common expense payment by Owners over the actual expenses (including the reserve for contingencies and replacements) during a fiscal year of the Association shall be applied towards common expenses for the following year, or shall be applied in any other manner which shall benefit the Association and which, on the basis of United States tax code, regulations and interpretations existing from time to time, in the sole discretion of the Board, is most likely to avoid taxation of such surplus; provided that such application is consistent with the proportional interest of all the Owners, and is not precluded by the terms of the Act, as amended from time to time.

e. Parliamentary Rules: Roberts Rules of Order (latest edition) shall govern the conduct of the Association's meetings when not in conflict with the Unit Ownership Act, the Declaration or these Bylaws, unless other rules governing the procedures of the Association are properly adopted.

f. Invalidity: The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability or effect of the balance hereof, or the Declaration.

20. THE DECLARATION:

The Declarant has filed along with these Bylaws, a Declaration whereby the property known as Abigail Condominium is submitted, subject to Section 70-23-101 et. seq., MCA. The Declaration shall govern the acts, powers, duties and responsibilities of the Association and in the event these Bylaws and Declaration are in conflict, the Declaration shall prevail.

The definition of terms set forth in the Declaration shall be applicable throughout these by-Laws and the interpretation thereof.

By virtue of these Bylaws and the Declaration, each Owner has the right to membership in the Owners' Association and any Owner may be on the Board of Abigail Condominium Unit Owners Association.

The Abigail Condominium Unit Owners Association and its Board of Directors shall have the primary and final authority on all matters solely affecting the condominium area, subject to the laws, rules and regulations of the County of Gallatin and the State of Montana.

IN WITNESS WHEREOF, AARON MILLS CONSTRUCTION CORPORATION, as owner of record of all of the condominium Units and 100% of the voting interest of Abigail Condominium as of the date hereof, hereby appoint the following persons to serve on the Board of Directors until the first meeting of the Association, to-wit:

PRESIDENT: Aaron Mills

SECRETARY: Jennifer Mills

TREASURER: Jennifer Mills

and the undersigned record Owner and the Board hereby certify, declare and affirm the adoption of the foregoing Bylaws on the 15th day of November 2019.


DECLARANT/OWNER:

AARON MILLS CONSTRUCTION CORPORATION

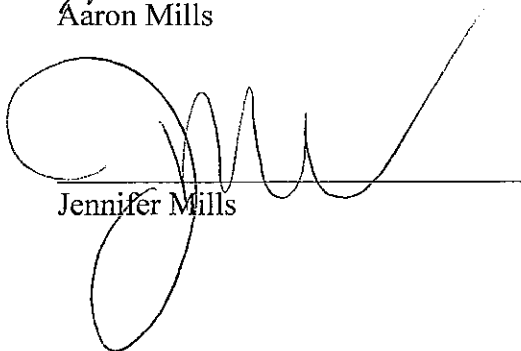


Aaron Mills, President

BOARD OF DIRECTORS:



Aaron Mills



Jennifer Mills

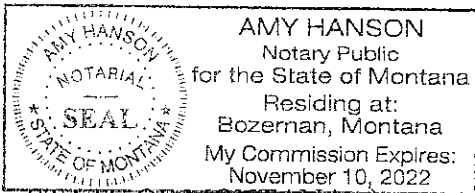
ACKNOWLEDGMENTS

STATE OF MONTANA)
:SS
COUNTY OF GALLATIN)

This instrument was acknowledged before me on this 15th day of November 2019, by Aaron Mills, President of AARON MILLS CONSTRUCTION CORPORATION, and by Aaron Mills individually as a board member.

Amy Hanson

Notary Public for the State of Montana
Printed name: Amy Hanson
Residing at Bozeman, Montana
My Commission expires: 11/10, 20 22



STATE OF MONTANA)
:SS
COUNTY OF GALLATIN)

This instrument was acknowledged before me on this 15th day of November 2019, by Jennifer Mills, individually as a board member.

Amy Hanson

Notary Public for the State of Montana
Printed name: Amy Hanson
Residing at Bozeman, Montana
My Commission expires: 11/10, 20 22

