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Resort Development, Inc.  
218 Cedar Street  
Sandpoint, ID 83864

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T. G. LARKIN  
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DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS OF  
THE SCHWEITZER MOUNTAIN COMMUNITY  
AN EXPANDABLE PLANNED UNIT DEVELOPMENT  
BONNER COUNTY, IDAHO

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DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS OF  
THE SCHWEITZER MOUNTAIN COMMUNITY  
A PLANNED UNIT DEVELOPMENT

RECITALS

This Declaration, made on the date hereinafter set forth by Resort Development, Inc., an Idaho corporation ("Declarant"), is made with reference to the following facts:

A. Declarant desires to develop that certain tract of land more particularly described on Exhibit "A" attached hereto located in Bonner County, Idaho (the "Property") as an expandable planned unit development (the "Project"). The owners of the Property and the Additional Land (collectively "Fee Title Holders") by their consents which are entered at the end of this Declaration, are willing to subject the Property (and if and when the required amendments are executed by them, the Additional Land [as herein defined]) to the terms and conditions of this Declaration, but shall have no liability under this Declaration and shall not be a "Declarant" as that term is used herein. The Project shall consist of all land described on Exhibit "A" attached hereto, together with such additional lands as may be added to the Project as provided in this Declaration, some of which are described on Exhibit "B" (collectively "Additional Land").

B. The Project possesses great natural beauty which Declarant intends to preserve through the use of a coordinated plan of development and the terms of this Declaration. It is anticipated that the plan will provide for comprehensive land planning, harmonious and appealing landscaping and improvements. It is assumed that each purchaser of property in the Project will be motivated to preserve these qualities through community cooperation and by complying with not only the letter but also the spirit of this Declaration. This Declaration is designed to complement local governmental regulations, and where conflicts occur, the more restrictive requirements shall prevail.

C. It is desirable for the efficient management and preservation of the value and appearance of the Project to create a nonprofit corporation to which shall be assigned the powers and delegated the duties of managing certain aspects of the Project; maintaining and administering the Common Areas; administering, collecting and disbursing funds pursuant to the provisions regarding assessments and charges hereinafter created and referred to; and to perform such other acts as shall generally benefit the Project and the Owners. Schweitzer Mountain Community Association,

a property owners' association and a nonprofit corporation, has or will be incorporated under the laws of the State of Idaho for the purpose of exercising the powers and functions aforesaid.

D. It is anticipated that certain lots created pursuant to this Declaration will be developed as condominium projects pursuant to the Idaho Condominium Property Act. The relationship between lots which are developed into separate condominium regimes and lots which are not so developed will be described hereinafter.

E. Each Owner shall receive an interest in his Lot or Unit (as those terms shall be hereinafter defined) and a Membership in the Maintenance Association appurtenant to his Lot or Unit.

F. By this Declaration, Declarant intends to establish a common scheme and plan for the possession, use, enjoyment, repair, maintenance, restoration and improvement of the Project and the interests therein conveyed and to establish thereon an expandable planned unit development.

NOW, THEREFORE, it is hereby declared that the Project shall be held, sold, conveyed, leased, rented, encumbered and used subject to the following Declaration as to division, easements, rights, assessments, liens, charges, covenants, servitudes, restrictions, limitations, conditions and uses to which the Project may be put, hereby specifying that such Declaration shall operate for the mutual benefit of all Owners of the Project and shall constitute covenants to run with the land and shall be binding on and for the benefit of Declarant, its successors and assigns, the ~~Master Association, its successors and assigns and all subsequent~~ Owners of all or any part of the Project, together with their grantees, successors, heirs, executors, administrators, devisees and assigns, for the benefit of the Project, and shall, further, be imposed upon all of the Project as a servitude in favor of each and every other Owner of any portion thereof as the dominant tenement.

## ARTICLE I

### DEFINITIONS

Unless the context clearly indicates otherwise, the following terms used in this Declaration are defined as follows:

1.1. "Act" shall mean the Idaho Condominium Property Act, Title 55, Chapter 15, Idaho Code Annotated.

1.2. "Architectural Control Committee" or "Committee" shall mean the committee created pursuant to Article X.

.1..3. "Architectural Control Guidelines" or "Guidelines" shall mean the written review standards, if any, promulgated by the Architectural Control Committee as provided in Section 10.3.

.1..4. "Articles" shall mean the Articles of Incorporation of the Master Association as amended from time to time.

.1..5. "Assessments" shall mean the Regular and Special Assessments levied against each Lot or Unit and its Owner by the Master Association as provided in Article VI.

.1..6. "Board" shall mean the Board of Directors of the Master Association.

.1..7. "Bylaws" shall mean the Bylaws of the Master Association as amended from time to time.

.1..8. "Condominium", "Condominium Unit", "Condominium Record of Survey Map" and "Condominium Project" shall mean as those terms are defined in the Act.

.1..9. "Condominium Dwelling" shall mean a structure containing two or more Condominium Units, constituting all or a portion of a residential or commercial Condominium Project.

.1..10. "Common Areas" shall mean (i) the property designated as common area on the Map; (ii) any portion of the Project which is owned by the Master Association for the use and benefit of the Members; (iii) any leases, easements, or other rights over Project property which are owned by the Master Association for the use and benefit of the Members, and ~~(iv) any portion of the Project which is owned by the Members as tenants-in-common but which is maintained by the Master Association for the use and benefit of the Members.~~ The Declarant in its discretion may add additional Common Areas to the Property.

.1..11. "Declarant" shall mean Resort Development, Inc., an Idaho corporation or any successor-in-interest by merger or by express assignment of the rights of Declarant hereunder by an instrument executed by Declarant and recorded in the Bonner County records and filed with the secretary of the Master Association. The term "Declarant" shall not include those owners of the Property or the Additional Land consenting to the recording of this Declaration.

.1..12. "Declaration" shall mean this instrument as amended from time to time.

.1..13. "Developer" shall mean and include Declarant, and any third party to whom Declarant may convey a Lot for purposes of constructing improvements thereon.

1.14. "Dwelling" shall mean a residential dwelling unit together with garages and/or other attached structures on the same Lot, and in the case of a Condominium, all elements of a Condominium Unit as defined in the Act, the Declaration of Condominium or Condominium Record of Survey Map for the Condominium Project in which such Unit is included.

1.15. "Fee Title Holders" shall mean those collective owners of real property described in Exhibits "A" and "B", as the same may be amended as herein provided, who have consented, or who may in the future consent, to the submission of their real property to the terms and conditions of this Declaration.

1.16. "Improvement" shall mean Structures, as defined herein, roads, plants such as trees, hedges, shrubs and bushes and landscaping of every kind. "Improvement" shall also mean any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface or subsurface water from, upon, under or across any portion of the Project. "Improvement" shall also mean any utility line, conduit, pipe or other related facility or equipment.

1.17. "Individual Charges" shall mean those charges levied against an Owner by the Master Association as provided in Section 6.6.

1.18. "Lot" shall mean one or more parcels in the Project each of which is designed to be improved with a Condominium Dwelling, or another structure, as described herein. No portion of the property shall be considered a Lot until so designated by the Declarant in Exhibit "C" hereto as amended from time to time.

1.19. "Maintenance Association" shall mean any incorporated or unincorporated association of Lot or Unit Owners (other than the Master Association) which is formed by operation of law or by the execution and filing of certain documents or by other agreement, formal or tacit, to facilitate the management, maintenance and/or operation of any portion of the Project (i) which portion of the Project is owned by a group of owners of Condominium Units or who are members of such association; or (ii) which portion of the Project is owned by such association for the benefit of a group of owners who are members of such association. Any association of owners of Units (as defined in the Act) of a Condominium Project in the Project shall also be included in the term "Maintenance Association".

1.20. "Map" shall mean the P.U.D. plat entitled "SCHWEITZER MOUNTAIN COMMUNITY, AN EXPANDABLE PLANNED UNIT DEVELOPMENT", filed concurrently herewith in the official records of Bonner County, Idaho, as the same may be amended from time to time, and which is incorporated herein by this reference.



1.21. "Master Association" shall mean the Schweitzer Mountain Community Association, an Idaho nonprofit corporation, the members of which shall be the Declarant and each of the Maintenance Associations organized within the Project.

1.22. "Member" shall mean a person or entity entitled to membership in the Master Association as provided herein.

1.23. "Mortgage" shall mean a mortgage or deed of trust encumbering a Lot or Unit or other portion of the Project. A "Mortgagee" shall include the beneficiary under a deed of trust. A "First Mortgage" or "First Mortgagee" is one having priority as to all other Mortgages or holders of Mortgages encumbering the same Lot or Unit or other portion of the Project. A "First Mortgagee" shall include any holder, insurer or guarantor of a First Mortgage on any Lot or Unit or other portion of the Project. Any and all Mortgagee protections contained in the Project Documents shall also protect Declarant as the holder of a Mortgage or other security interest in any Lot or Unit in the Project.

1.24. "Owner" shall mean the person or entity holding a record fee simple ownership interest in a Lot or Unit or in Additional Land, including Declarant, as well as vendees under installment purchase contracts. "Owner" shall not include persons or entities who hold an interest in a Lot or Unit merely as security for the performance of an obligation. "Owner" shall include the record Owner or contract vendee of each Lot or Unit.

1.25. "Permit" shall mean the permit, if any, issued by the California Department of Real Estate or any successor state agency pursuant to the ~~California Out-of-State Land Promotions Law~~ (Business and Professions Code Section 10249 et seq.) as it may be amended from time to time. The Declarant may, but shall not be obligated to, sell Lots or Units in the Project to purchasers in California. References in the Project Documents to a Permit shall not be construed as a representation by Declarant that such a Permit has been applied for, will be applied for, has been issued or will be issued for the Project but such references are included for the sole purpose of assisting the Declarant in qualifying the Project for a Permit when and if it chooses to do so. Where any right contained in the Project Documents is limited by an event which is defined in relation to the issuance of a Permit, and no such Permit has been issued, such limiting event shall be deemed to have not yet occurred and such right shall continue to exist unlimited by such event.

1.26. "Project" shall mean the real property and improvements located in Bonner County, Idaho, and more particularly described on Exhibit "A," together with the Additional Land which may hereafter be added to the Project in accordance with Article XII, from which Declarant may, at its option, create other Lots, and all of the improvements thereon.

1.27. "Project Documents" shall mean the Articles, Bylaws, Declaration, Rules and Regulations of the Master Association, and the Architectural Control Guidelines.

1.28. "Rules and Regulations" shall mean the rules and regulations promulgated by the Master Association to further govern the possession, use and enjoyment of the Project, as amended from time to time.

1.29. "Share" or "Allotment" shall mean the portion of the Assessments allocated to a Unit and its Owner pursuant to Section 2.1.3 and Article VI.

1.30. "Structure" shall mean any tangible thing or device to be fixed permanently or temporarily to real property including, but not limited to, any Dwelling, as defined herein, building, garage, driveway, walkway, concrete pad, asphalt pad, gravel pad, porch, patio, shed, greenhouse, bathhouse, tennis court, pool, stable, fence, wall, pole, sign, antennae or tent.

1.31. "Unit" shall mean each Condominium Unit in the Project, each separate dwelling in a townhouse, apartment or in any planned unit development other than the Project and each single family residence developed on a subdivided parcel as a free-standing, separate dwelling not included in a condominium regime, as well as such Unit or other Structure on the Project used for commercial purposes, with each separately demised commercial space deemed to constitute a separate unit, whether or not more than one such commercial space is located in the same Structure, and where otherwise consistent with this Declaration, ~~the inferred Unit as provided for under Section 2.1.3(p).~~

## ARTICLE II

### DESCRIPTION OF PROJECT; RIGHTS OF OWNERS, DECLARANT

#### 2.1. Description of Project.

2.1.1. Project. The Project shall consist of all of the real property described in attached Exhibit "A", together with the Additional Land described on Exhibit "B" which may hereafter be added to the Project in accordance with Article XII, from which Declarant may, at its option, create other Lots, and all of the improvements thereon. This Declaration shall be an encumbrance only on the real property described in Exhibit "A", as the same may be amended by Declarant by addition of a portion or all of the Additional Land described on Exhibit "B", or any other land, as further provided in Article XII.

2.1.2. Lots. The Project shall consist of an unlimited number of Lots, each of which is to be improved with one or more Structures. Declarant reserves the right to increase or decrease the number of Lots in order to facilitate proper planning in the discretion of the Declarant. Declarant further reserves the right to create on one or more Lots one or more Condominium Projects, pursuant to the provisions of the Act. Declarant shall also have the right to sell, convey, transfer, assign or otherwise dispose of any Lot, or parcel which has not been divided into Lots, without first constructing a Structure thereon. Any purchaser, transferee or Owner of a vacant Lot shall be entitled to construct a Structure or Structures thereon, subject to the approval and supervision of Declarant as set forth in Section 2.2.2 and the Architectural Control Guidelines and the architectural standards and guidelines set forth in Section 10.3.

2.1.3. Units and Allotments. Except as otherwise provided in this Article II, there shall be deemed to exist, from the date of substantial completion of any Structure on a Lot and until the date such Structure ceases to exist, a number of Units with appurtenant Allotments, expressed in terms of Shares per Unit, with respect to the Lot, based on space within the Structure, which space is designed for lodging, residential, living or sleeping purposes, or allowable commercial uses, as follows (as used herein, "divisible space" means space which can be separately occupied and rented within a Unit):

(a) Hotel Room. A Hotel Room shall mean lodging, residential, living or sleeping space which consists of a living-sleeping room which can accommodate up to two (2) double beds and bathroom and which does not include any kitchen or housekeeping facilities of whatever nature. Each Hotel Room shall be allotted one (1) Share of the Assessments.

(b) Studio. A Studio shall mean lodging, residential, living or sleeping space which consists of a living-sleeping room which can accommodate two (2) double beds, and a bathroom and some type of kitchen facilities, and which consists of a single divisible space and does not exceed 500 square feet of gross area. Each Studio shall be allotted one (1) Share of the Assessments.

(c) One Bedroom. A One (1) Bedroom shall mean lodging, residential, living or sleeping space which consists of a bedroom, a living room which can accommodate two (2) double beds for sleeping, and a bathroom and some type of kitchen facilities, and which consists of a single divisible space and does not exceed 700 square feet of gross area. Each One (1) Bedroom shall be allotted one and one-half (1-1/2) Shares of the Assessments.

(d) One Bedroom Double. A One (1) Bedroom Double shall mean a One (1) Bedroom which also has a second bathroom and consists of two (2) divisible spaces and which may exceed 700 square feet of gross area to the extent necessary to accommodate the additional facilities and to permit the bedroom to accommodate up to two (2) double beds. Each One (1) Bedroom Double shall be allotted two (2) Shares of the Assessments.

(e) Two Bedroom. A Two (2) Bedroom, shall mean lodging, residential, living or sleeping space which consists of two (2) bedrooms, a living room which can accommodate two (2) double beds for sleeping, and two (2) bathrooms and some type of kitchen facilities, and which consists of a single divisible space and does not exceed 960 square feet of gross area. Each Two (2) Bedroom shall be allotted two (2) Shares of the Assessments.

(f) Two Bedroom Double. A Two (2) Bedroom Double shall mean a Two (2) Bedroom which consists of two (2) divisible spaces and which may exceed 960 square feet of gross area to the extent necessary to permit one (1) bedroom, to accommodate up to two (2) double beds. Each Two (2) Bedroom Double shall be allotted two and one-half (2-1/2) Shares of the Assessments.

(g) Two Bedroom Triple. A Two (2) Bedroom Triple shall mean a Two (2) Bedroom which also has a second and third bathroom and consists of three (3) divisible spaces and which may exceed 960 square feet of gross area to the extent necessary to accommodate the additional facilities and to permit each bedroom to accommodate up to two (2) double beds. Each Two (2) Bedroom Triple shall be allotted three (3) Shares of the Assessments.

(h) Three Bedroom. A Three (3) Bedroom shall mean lodging, residential, living or sleeping space which consists of three (3) bedrooms, a living room which can accommodate two (2) double beds for sleeping, and two (2) bathrooms and some type of kitchen facilities, and which consists of a single divisible space and does not exceed 1,200 square feet of gross area. Each Three (3) Bedroom shall be allotted two and one-half (2-1/2) Shares of the Assessments.

(i) Three Bedroom Double. A Three (3) Bedroom Double shall mean a Three (3) Bedroom which also has a third bathroom and consists of two (2) divisible spaces and which may exceed 1,200 square feet of gross area to the extent necessary to accommodate the additional facilities and to permit one (1) bedroom to accommodate up to two (2) double beds. Each Three (3) Bedroom Double shall be allotted three (3) Shares of the Assessments.

(j) Three Bedroom Triple. A Three (3) Bedroom Triple shall mean a Three (3) Bedroom which also has a third bathroom and consists of three (3) divisible spaces and which may exceed 1,200 square feet of gross area to the extent necessary to accommodate the additional facilities and to permit two (2) bedrooms to accommodate up to two (2) double beds each. Each Three (3) Bedroom Triple shall be allotted three and one-half (3-1/2) Shares of the Assessments.

(k) Three Bedroom Quadruple. A Three (3) Bedroom Quadruple shall mean a Three (3) Bedroom, which also has a third and fourth bathroom and consists of four (4) divisible spaces and which may exceed 1,200 square feet of gross area to the extent necessary to accommodate the additional facilities and to permit each bedroom to accommodate up to two (2) double beds. Each Three (3) Bedroom Quadruple shall be allotted four (4) Shares of the Assessments.

(l) Other. Any other space within a Structure, which space is designed for lodging, residential, living or sleeping purposes and which is not within one of the foregoing categories, shall be allotted one-half (1/2) Share for each 150 square feet of gross floor area of such space, including bathroom or kitchen space, the total gross area of all such space on any Lot to be rounded to the nearest 150 square feet.

(m) Shares For Supporting Space in Lodging Facilities.  
~~No Shares shall be deemed to exist with respect to a Lot for space occupied by lobbies, halls, service areas, porches, patios, garages, recreational facilities, saunas or similar facilities, which space is designed to be incidental to use of lodging, residential living or sleeping space and which space is within or adjoining a structure containing space designed for lodging, residential, living or sleeping purposes, except that, if a separate or special charge is made for use of facilities on or in any portion of such space or any portion of such space is used for selling of goods or services or for other business or commercial purposes, other than in connection with renting of rooms, for or during the equivalent of five (5) or more full business days in any twelve (12) month period, Shares shall be allotted in accordance with the provisions of this Declaration for that portion of such space.~~

(n) Shares for Employee Quarters in Lodging Facilities.  
No Shares shall be allotted with respect to a Lot for space used for lodging of employees of a lodge, hotel or similar facility for the accommodation of transient guests which space is within such lodge, hotel or similar facility, except that, if a charge is made for use of any portion of such space by such employee or any portion of such space is used for

lodging, residential, living or sleeping purposes by any person other than an employee or is rented or let or is used for selling of goods or services or for other business or commercial purposes, for or during the equivalent of five (5) or more full business days in any twelve (12) month period, Shares shall be allotted in accordance with the provisions of this Declaration for that portion of such space.

(o) Number of Units and Shares - "Indoor Commercial Space". Except as otherwise provided in this Article II, there shall be deemed to exist, from the date of substantial completion of any Structure on a Lot and until the Structure ceases to exist, a number of Units with respect to the Lot, based on non-lodging, indoor commercial space ("Indoor Commercial Space") as provided hereinafter in this Section. Each 150 square feet of gross area of Commercial Space shall be allotted one-half (1/2) Share, the total gross area of all Commercial Space on any Site to be rounded to the nearest 150 square feet; provided that until there exists 30,000 square feet of gross area of Indoor Commercial Space in the Project, there shall be allotted one-half (1/2) Share for each 300 square feet of gross area of Indoor Commercial Space; provided further, that if a Structure containing Indoor Commercial Space exceeds 3,000 square feet of gross area, there shall be allotted one-half (1/2) Share for each 300 square feet above 3,000 square feet in such Structure both before and after there exists 30,000 square feet of gross area of Indoor Commercial Space in the Project.

(p) Number of Units and Shares - Outdoor Commercial Space. ~~Except as otherwise provided in this Article II, there~~ shall be deemed to exist a number of Units with respect to a Lot for non-lodging outdoor commercial space ("Outdoor Commercial Space") as provided hereinafter in this Section. Each 450 square feet of gross area of Outdoor Commercial Space shall equal one-half (1/2) of a Unit, the total gross area of all Outdoor Commercial Space on any Lot to be rounded to the nearest 450 square feet; provided, that if there exists over 4,800 square feet of gross area of Outdoor Commercial Space and Indoor Commercial Space, all in the same Structure on the Lot, each 1,800 square feet of gross area of Outdoor Commercial Space in any such Structure, shall equal one-half (1/2) of a Unit, the total gross area of all Outdoor Commercial Space in excess of said 4,800 square feet in such Structure to be rounded to the nearest 1,800 square feet. Said Units shall be deemed to exist on the date of substantial completion of the improvements comprising the Outdoor Commercial Space.

(q) Minimum of One Unit for a Lot. Each Lot which would, under this Article II, be deemed to consist of less than one (1) Unit or to which the provisions of foregoing

Sections are not, for any reason, applicable shall be deemed to consist of one (1) Unit and shall be allocated one (1) Share of the Assessments.

(r) Information by Owners as to Lots and Units. At the time a Lot is improved with a Structure, the Owner shall give written notice of this fact to the Association, which notice shall, in addition: give the legal description of the Lot; state the name and form of ownership by which Fee Simple Title to the Lot is held; give a single name and address to which notices to the Owner may be sent; give the names and addresses and the nature of the interest of all persons or entities having any right, title or interest in the Lot, including mortgagees and lessees; state the total number of Units existing on the Lot at that time; state the types of Units and the number of each type existing on the Lot at that time. In the event of any change in the facts reported in the original written notice for a Lot, including any change of ownership, the Owner of the Lot shall give a new written notice to the Association containing all the information required to be covered by the original notice. As against any Owner, and any party claiming by, through, or under such Owner, the Association may, but shall not be obligated to, rely, for any and all purposes, on the information reflected in the most recent written notice furnished with respect to the Lot of such Owner. The Association shall keep and preserve the most recent written notice received by the Association with respect to any Lot.

(s) Association Determination as to Units and Shares. The Association, based upon written notices furnished by Owners as aforesaid and based upon its own investigation as to substantial completion of a Structure on a Lot, shall have the right, authority and obligation to fix and determine the number of Units existing with respect to each Lot and the types of Units and to allocate the number of Shares in a Unit. If an Owner fails to furnish the notice required under subsection (q) above, the Association's determination hereunder shall be conclusive. The Association shall make such determination at least annually and shall make supplemental determinations from time to time as may be necessary in the light of changes which may come to its attention. The Association shall keep records of its determinations hereunder which shall be used and may be relied upon for any and all purposes under this Declaration. The Association shall furnish to any Owner or interested party, upon written request, information with respect to the number and types of Units existing with respect to any Lot within the Project and the Shares allocated to each Unit as reflected in its records. An interested person shall include any Owner or, with the written authorization of an Owner, any actual or proposed

purchaser, mortgagee, lessee or other person having or proposing to acquire any right, title or interest in a Unit.

2.1.4. Maintenance Association. It is expected that several Maintenance Associations will be organized in the Project. Each Lot and each Unit in the Project shall be included in a Maintenance Association (commonly referred to as a homeowners' or unit owners' association) created for the purpose of operating, maintaining and governing the use of the Improvements and the common areas and facilities constructed or naturally existing on the Lot(s) included in each Maintenance Association. Each Maintenance Association shall assess and collect fees from its members, in accordance with the provisions of its governing instruments, to cover the cost of its activities and responsibilities. It is anticipated that each Condominium Project shall establish its own Maintenance Association, although there may be one or more Condominium Dwellings in any Condominium Project. A Maintenance Association may be limited to a single Lot and the Improvements thereto, if any, or may be comprised of two or more Lots and the Improvements thereto, if any, at the discretion of the Owner(s) of such Lots, and pursuant to the provisions of Idaho law.

2.1.5. Density. The Project is presently zoned for the construction of a maximum of 7228 Units (on both the land described on Exhibit "A" and the Additional Land described on Exhibit "B"). Declarant shall have the right to allocate the specific number of Units to be constructed on each Lot at the time such Lot is conveyed by Declarant to any third party (or such earlier date as Declarant may desire). Attached Exhibit "C" shall set forth the allocation of Units to be constructed on each Lot in the Project. ~~On or before the sale of any Lot in the Project by Declarant,~~ Exhibit "C" shall be amended, if necessary, to specify the maximum number of Units to be constructed on such Lot. After any Lot has been sold by Declarant to a third party, Exhibit "C" can only be amended with respect to such Lot with the approval of the owner thereof and Declarant. Lot and Unit owners shall execute such documents as are necessary to carry out the provisions of this Section 2.1.5, including, but not limited to, amendments hereto, affidavits, consents, etc.

2.1.6. The Master Association. The Master Association shall maintain the Common areas and all improvements thereon, in a safe, sanitary and attractive condition. Such maintenance responsibility shall include, but shall not be limited to, the control of all weeds and other unsightly vegetation, rubbish, trash, garbage and landscaping visible from other portions of the Project. The Master Association shall assess and collect fees from the Members, in accordance with the provisions hereof. No Common Areas shall be used or operated by the Master Association or by any other person or entity for commercial use, profit or gain without the written consent of Declarant and no charges shall be imposed



by the Association for use of any Common Areas except for recreational facilities covered by Section 5.2.5 hereof.

2.1.7. Common Areas. The Common Areas shall consist of (i) the property designated as common areas on the Map, (ii) all real property and improvements thereto within the Project, which are owned and maintained by the Master Association for the use and benefit of the Members, including any roads which are not situated entirely on any single Lot, (iii) any leases, easements, or other rights over Project property which are owned by the Master Association for the use and benefit of the Members, and (iv) any portion of the Project which is owned by the Members as tenants-in-common but which is maintained by the Master Association for the use and benefit of the Members.

2.1.8. Incidents of Lot Ownership, Inseparability. Every Lot shall have appurtenant to it the following interests:

(a) a number of Memberships in the Master Association equal to the number of Shares allocated to Units on the Lot, and

(b) a nonexclusive easement for use, enjoyment, ingress and egress over the Common Areas subject to such restrictions and limitations as are contained in the Project Documents and subject to other reasonable regulation by the Master Association.

Such interests shall be appurtenant to and inseparable from ownership of the Lot or Unit. Any sale, conveyance, hypothecation, encumbrance or other transfer of a Lot or Unit shall automatically transfer these interests to the same extent, notwithstanding any term or provision to the contrary in the documents effecting such transfer.

2.1.9. Owner's Obligation to Maintain Lot. Except where such duties have been delegated to a Maintenance Association, each Owner shall maintain his Lot or Unit, and all Improvements thereon, in a safe, sanitary and attractive condition. In the event that an Owner fails to maintain his Lot or Unit as provided herein in a manner which the Board reasonably deems necessary to preserve the appearance and/or value of the Project, the Board may notify the Owner of the work required and demand that it be done within a reasonable and specified period. In the event that the Owner fails to carry out such maintenance within said period, the Board shall, subject to the notice and hearing requirements of Section 7.2.1.2 have the right to enter upon the Lot or Unit to cause such work to be done and individually charge the cost thereof to such Owner. Notwithstanding the foregoing, in the event of an emergency arising out of the failure of an Owner to maintain his Lot or Unit, the Board shall have the right to immediately enter upon the Lot or

Unit to abate the emergency and individually charge the cost thereof to such Owner.

2.1.10. Maintenance Association's Obligation to Maintain. The Maintenance Associations shall be responsible for the maintenance of a certain Lot or Lots in the Project pursuant to a recorded declaration of covenants, conditions and restrictions with respect to such Lot or Lots.

The Master Association will be responsible for maintaining (including snow removal), repairing and replacing of all of the private roads in the Project, including the sole access road to the Project (but only to the extent not maintained by Bonner County), but shall assess each Maintenance Association for its share of the cost of such maintenance, repair and replacement as follows: Each of the Maintenance Associations having responsibility for a condominium or planned unit development shall individually bear the expense of maintaining the road(s) located in the area included in each such condominium or planned unit development. The cost of maintaining, repairing and replacing all other private roads in the Project shall be a common expense of the Project. In the event that the maintenance expenses for a particular road are to be paid by more than one Maintenance Association as set forth above, such expenses shall be allocated between the Maintenance Associations to be charged based on the number of Shares in each of such Maintenance Associations.

Each Maintenance Association shall maintain, repair and replace its area of responsibility and all ~~Improvements thereon,~~ in a safe, sanitary and attractive condition. Such maintenance ~~responsibility shall include,~~ but shall not be limited to, the control of rubbish, trash, garbage and landscaping visible from other portions of the Project. In the event that a Maintenance Association fails to maintain its area of responsibility as provided herein in a manner which the Board reasonably deems necessary to preserve the appearance and/or value of the Project, the Board shall notify the Maintenance Association of the work required and demand that it be done within a reasonable and specified period. In the event that the Maintenance Association fails to carry out such maintenance within said period, the Board shall, subject to the notice and hearing requirements of Section 7.2.1.2, have the right to enter upon said area of responsibility to cause such work to be done and individually charge the cost thereof to such Maintenance Association. Notwithstanding the foregoing, in the event of an emergency arising out of the failure of a Maintenance Association to maintain its area of responsibility, the Board shall have the right to immediately enter upon said area of responsibility to abate the emergency and individually charge the cost thereof to such Maintenance Association.

2.1.11. Delegation of Use; Lessees; Tenants. Any Owner may temporarily delegate his rights of use and enjoyment in the Project to the members of his family, his guests, and invitees, and to such other persons as may be permitted by the Project Documents, subject, however, to the Project Documents. However, if an Owner of a Lot or Unit has sold his Lot or Unit to a contract purchaser or leased or rented his Lot or Unit, the Owner, members of his family, his guests and invitees shall not be entitled to use or enjoy the Project while such contract of sale or such lease is in force. Instead, the contract purchaser, lessee or tenant, while such contract of sale or lease remains in force, shall be entitled to use and enjoy the Project and may delegate the rights of use and enjoyment in the same manner as if such contract purchaser or lessee or tenant were an Owner during the period of his occupancy. Each Owner shall notify the secretary of the Master Association of the names of any contract purchasers, lessees or tenants of such Owner's Lot or Unit. Each Owner, contract purchaser, lessee or tenant also shall notify the secretary of the Master Association of the names of all persons to whom such Owner, contract purchaser, lessee or tenant has delegated any rights of use or enjoyment in the Project and the relationship that each such person bears to the Owner, contract purchaser, lessee or tenant. All persons to whom rights of use and enjoyment of the Project have been delegated shall be subject to the terms and provisions of this Declaration, and such rights are subject to suspension to the same extent as the rights of Owners.

2.1.12. Encroachment Easements. Each Owner is hereby declared to have an easement appurtenant to his Lot, over all adjoining Lots and the Common Areas for the purpose of accommodating the encroachment due to minor and professionally acceptable errors in engineering, original construction, settlement or shifting of a building, or any other cause. The Master Association is hereby declared to have an easement appurtenant to the Common Areas over all adjoining Lots for the purpose of accommodating any Common Areas encroachment due to minor and professionally acceptable errors in engineering, original construction, settlement, or shifting of a building or any other cause. There shall be valid easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachments, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners. In the event a structure is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Lot agree that minor encroachments over adjoining Lots or Common Areas or by Common Areas over Lots shall be permitted and that there shall be a valid easement for the maintenance of such encroachments so long as they shall exist.

2.1.13. Responsibility for Common Areas Damage. The cost of repair or replacement of any portion of the Common Areas resulting from the willful or negligent act of an Owner, lessees, tenants, family, guests or invitees shall be, in addition to the party at fault, the joint responsibility of such Owner to the extent that it is not covered by insurance maintained by the Master Association. The Master Association shall cause such repairs and replacements to be made and the cost thereof may be levied as an Individual Charge against such Owner.

## 2.2. Rights of Declarant

2.2.1. Reservation of Easements to Complete, Sell. Declarant hereby reserves in itself, its successors and assigns, the following easements over the Project to the extent reasonably necessary to complete and sell, lease, rent or otherwise dispose of the Lots or Units constructed thereon:

(a) easements for ingress and egress, drainage, encroachment, utilities, maintenance of temporary structures, operation and storage of construction equipment and vehicles, for doing all acts reasonably necessary to complete or repair the Project, or to discharge any other duty of Declarant under the Project Documents or sales contracts or otherwise imposed by Law.

(b) easements for activity reasonably necessary to sell, lease, rent or otherwise dispose of the Lots or Units.

~~These easements shall exist until the date on which the last Lot or Unit is sold by Declarant.~~

2.2.2. Reservation of Right to Construct Dwellings and Structures. In addition to the reservations of rights set forth in Section 2.1.2 of this Declaration, the Declarant reserves the sole and exclusive right, at its sole option and without creating any duties or liabilities on the part of the Declarant, to construct and/or to directly supervise the construction of all Dwellings and Structures to be erected on the Lots which are a part of the Project in order to protect its integrity and control the grading and site elements relative to each particular Lot. Any Owner of a Lot or Unit shall, however, have the right to submit plans for approval to the Declarant for the development of a particular Dwelling or Structure for his Lot subject to the architectural standards and guidelines established pursuant to Section 10.3 of this Declaration.

2.2.3. Schweitzer Ski Area. By entering into and recording this Declaration, Declarant shall not be deemed to have imposed any limitation whatsoever with respect to the Schweitzer Ski Area which adjoins the Project. The owner of the Schweitzer Ski Area is not restricted in any manner with respect to the

operation, development, management or planning of the Schweitzer Ski Area, nor shall anything herein contained limit the construction of additional ski lifts, moving or eliminating existing ski lifts, recontouring of the ski hills, movement or realignment of ski runs, trails, structures, or any other aspect of the ownership and operation of the Schweitzer Ski Area. Furthermore, Declarant makes no representation or warranty of any kind whatsoever with respect to the Schweitzer Ski Area, nor shall any entity be obligated by virtue of this Declaration to operate or continue to operate the Schweitzer Ski Area.

### 2.3. Utilities

2.3.1. Rights and Duties. Whenever sanitary sewer, water, electric, gas, television receiving, telephone lines or other utility connections are located or installed within the Project, the Owner of each Lot or Unit served by said connections shall be entitled to the nonexclusive use and enjoyment of such portions of said connections as service his Lot or Unit. Every Owner shall pay all utility charges which are separately metered or billed to his Lot or Unit. The Maintenance Association(s) shall pay all common utility charges which are metered or billed to the structures and common areas served by such Maintenance Association. Every Owner shall maintain all utility installations located in or upon his Lot or Unit except for those installations maintained by the Master Association, a Maintenance Association or utility companies, public or private. The Master Association, Maintenance Associations and utility companies shall ~~have the right, at reasonable times after reasonable notice to enter upon the Units, Common Areas, or other portions of the Project to discharge any~~ duty to maintain Project utilities. Provided, however, that in the event of an emergency, the Master Association, Maintenance Associations and utility companies may enter upon the Units, Common Areas or other portions of the Project without notice as necessary to prevent injury, damage or destruction to person or property, in which event notice of such entry shall be given as soon as practicable thereafter.

Whenever sanitary sewer, water, electric, gas, television receiving, telephone lines or other utility connections are located within the Project, the Owner of a Unit served by said connections shall have the right, and is hereby granted an easement to the full extent necessary therefore, to at reasonable times after reasonable notice enter upon Units, Lots, Common Areas or other portions of the Project or to have his agents or the utility companies enter upon the Units, Lots, Common Areas, or other portions of the Project to maintain said connections.

In the event of a dispute between Owners with respect to the maintenance, repair or rebuilding of said connections, or with respect to the sharing of the cost thereof, then the matter shall be submitted to the Board which shall render a decision on the

matter within forty-five (45) days thereafter. The Board shall have final authority to resolve each such dispute.

2.3.2. Easements for Utilities and Maintenance. Easements over and under the Project for the installation, repair and maintenance of sanitary sewer, water, electric, gas and telephone lines, cable or master television antenna lines, and drainage facilities, which are of record in Bonner County, or as may be hereafter required to serve the Project, are hereby reserved for Declarant and the Master Association, together with the right to grant and transfer the same.

2.4. Snow Removal and Storage. Declarant hereby reserves over the Project, for the benefit of the Owners hereof, a snow removal and storage easement for the purpose of providing appropriate locations for the relocation and storage of snow which may accumulate at the Project. Declarant reserves the right to designate one or more locations located on various Lots or on the Common areas as snow storage easement areas. Such areas may be changed at anytime at Declarant's discretion. Such locations may or may not be depicted on the Map and Declarant reserves the right to designate on one or more supplemental Maps the location of such snow removal and storage areas. In the event that such snow removal and storage areas are not so designated on the Map, Declarant nevertheless reserves the right to give notice to the Owners of any area so designated which shall thereupon become a snow removal and storage area. Declarant may unilaterally amend the Declaration and the Map to designate such areas. In the event all designated snow removal and storage areas are full and additional areas are needed, the Declarant or the Master Association may, without notice, utilize such additional areas for snow removal and storage as needed but such use shall not constitute permission to use in the future, and notice to the Owners of any such use shall be given as soon as practicable thereafter.

### ARTICLE III

#### USE RESTRICTIONS

In addition to all of the covenants contained herein, the use of the Project and each Lot and Unit therein is subject to the following:

3.1. Use of Individual Lots. Except as otherwise provided herein, and subject to any additional covenants or restrictions of record, each Lot may be used in any manner consistent with the requirements of applicable zoning and other land use ordinances and regulations, including the construction of one or more Dwellings in accordance with the provisions hereof.

3.2. Nuisances. No noxious, illegal or offensive activities shall be carried on in any Unit, Lot or other part of the Project, nor shall anything be done thereon which may be or may become an annoyance or a nuisance to or which may in any way interfere with each Owner's quiet enjoyment of his respective Lot or Unit, or which shall in any way increase the rate of insurance for the Project or for any other Lot or Unit, or cause any insurance policy to be cancelled or cause a refusal to renew the same.

3.3. Parking. Unless otherwise permitted by the Board, no motor vehicles shall be parked or left on any portion of the Project other than within a driveway, garage or other designated parking area. The Declarant shall have the sole right to designate parking areas for this purpose.

No truck larger than three/quarter (3/4) ton, nor trailer, nor camper shell (other than attached to a pickup truck regularly used by an Owner), nor vehicles designed and operated as off the road equipment for racing or other sporting events, shall be permitted on the Project for longer than twenty-four hours without the consent of the Board. The Master Association may reserve certain portions of any parking area or any parking facility constructed in the Project for the parking of such vehicles.

3.4. Signs. No sign of any kind shall be displayed to the public view from any Lot, Unit or from the Common Areas or from any other portion of the Project without the approval of the Board except (i) one sign not in excess of six (6) square feet of total surface area advertising a Lot or Unit for sale, lease or rent displayed from such Lot or Unit and (ii) such signs as may be used by Declarant or its assignees for the purpose of selling, renting or leasing Lots or Units as permitted by Section 2.2.1. However, the provisions of this Section 3.4 shall not apply to directional or Project signs, or to ski area or commercial use signs that are in compliance with applicable zoning ordinances and Architectural Control Guidelines.

3.5. Animals. No animals of any kind shall be raised, bred or kept on any portion of the Project other than common household pets, subject to Rules and Regulations adopted by the Board; provided, that horses, llamas or other pack animals may be kept in the Project by commercial operators of riding stables for rental by the public in compliance with local ordinances.

3.6. Garbage and Refuse Disposal. All rubbish, trash and garbage and other waste shall be regularly removed from the Project, and shall not be allowed to accumulate thereon. Rubbish, trash, garbage and other waste shall be kept in sanitary containers. All equipment, garbage cans, or storage piles shall be kept screened and concealed from the view of other portions of the Project, except during the scheduled day for trash pick-up. Provided, the foregoing shall not apply to composting of suitable

materials by the Master Association, any Maintenance Association, or by the Declarant.

3.7. Radio and Television Antennas. No Owner may construct, use or operate his own external radio, television or other electronic antenna or satellite receiver. No Citizens Band or other transmission other than community service television and limited range radio broadcasting by Declarant or the Master Association shall be permitted from the Project. All Owners shall be required to utilize antennas located wholly within a structure and not visible on the exterior for television signal reception, or to hook into the existing cable television system. If a cable television system is not available or does not serve a structure, only antennas otherwise meeting the requirements of this paragraph shall be permitted.

3.8. Lights, Sounds and Odors. No light shall be emitted from any Lot or Structure which is unreasonably bright or causes unreasonable glare; no sound shall be emitted on any Lot which is unreasonably loud or annoying; and no odor shall be emitted on any Lot which is noxious or offensive to others. Nothing contained herein shall prohibit the lighting of ski runs of the Schweitzer Ski Area or the commercial use of exterior lighting.

3.9. Right to Lease, Rent. Nothing in this Declaration shall prevent an Owner from leasing or renting his Lot or Unit. However, any lease or rental arrangement shall be expressly subject to the Project Documents and any lease or rental agreement must specify that failure to abide by such provisions shall be a default under ~~the lease or rental agreement.~~

3.10. Power Equipment and Car Maintenance. No power equipment (other than tools and equipment used in the construction of the Improvements), work shops, or car maintenance of any nature, other than emergency repair, shall be permitted on the Project without the consent of the Board. In deciding whether to grant approval, the Board shall consider the effects of noise, air pollution, dirt or grease, unsightliness, fire hazard, interference with radio or television reception, and similar objections. Nothing herein contained shall be deemed to apply to allowable commercial activities nor to maintenance and operation of the Schweitzer Ski Area, normal utility and road maintenance, and similar activities.

3.11. Drainage. No Owner shall do any act or construct any Improvement which would interfere with the natural or established drainage systems or patterns within the Project. The Declarant reserves the right to establish and alter the drainage system on all Lots owned by Declarant prior to sale.

3.12. Mineral Exploration. No portion of the Project shall be used in any manner to explore for or to remove any oil or other



hydrocarbons, minerals of any kind, gravel or earth substance. No drilling, exploration, refining, quarrying, or mining operations of any kind shall be conducted or permitted to be conducted thereon; nor shall wells, tanks, tunnels, mineral excavations, shafts, derricks, or pumps used to mine or drill for any substances be located on the Project. No drilling for water or geothermal resources or the installation of such wells shall be allowed unless specifically approved by the Board.

3.13. Water Use. No owner of a Lot or Unit contiguous to a stream or body of water shall have any rights over or above those of other Owners with respect to use of the water, the land thereunder or the water therein. No Lot shall be contoured or sloped, nor may drains be placed upon any Lot, so as to encourage drainage of water from such Lot into any body of water without the approval of the Board. All streams, wells, seasonal streams or springs and other natural bodies of water within the Project are protected as watershed, and access thereto by persons and domestic animals is strictly prohibited.

3.14. Maintenance Association Use Restrictions. Nothing herein shall prevent Declarant, a Developer or a Maintenance Association from adopting use restrictions for a Lot or portion of the Project which are more restrictive than those set forth herein, provided that such restrictions shall in no way modify the provisions hereof.

3.15. Fair Housing. No Owner shall either directly or indirectly forbid or restrict the conveyance, encumbrance, lease, ~~mortgaging or occupancy~~ of his Lot or Unit to any person on the basis of race, color, sex, religion, ancestry, national origin, or any other basis prohibited by law.

3.16. Compliance with Project Documents. Each Owner, contract purchaser, lessee, tenant, guest, invitee or other occupant of a Lot or Unit or user of the Common Areas shall comply with the provisions of the Project Documents.

3.17. Use of Common Areas by Public. The general public shall have a right of entry through and over the Common Areas for the purpose of access to any portion of the Project used for commercial purposes in accordance with the terms and provisions hereof.

3.18. Lock-Out. In the event of avalanche or landslide, or other natural disaster, or the threat thereof, authorized agents of the Master Association, Declarant or the Manager of Schweitzer Ski Area may prohibit all ingress and egress to and from the Project, as well as all access to or exit from any Unit in the Project by any Owners, lessees, guests, employees or any other persons. In the event of any such prohibition on access and travel, the Declarant, the Master Association or the Manager of Schweitzer

Ski Area or their authorized agents shall not be liable to the Owners, their lessees, guests, employees nor to any other persons for loss or damage occasioned by or resulting from such prohibition.

#### ARTICLE IV

##### MASTER ASSOCIATION MEMBERSHIP AND VOTING

4.1. Master Association. Schweitzer Mountain Community Association, an Idaho nonprofit corporation, shall be the Master Association.

4.2. Management of Project. The management of the Project shall be vested in the Master Association in accordance with the Project Documents and all applicable laws, regulations and ordinances of any governmental or quasi governmental body or agency having jurisdiction over the Project.

4.3. Membership. Declarant and each Maintenance Association shall be a Member of the Master Association, subject to the Project Documents.

4.4. Transferred Membership. Membership in the Master Association shall not be transferred, pledged or alienated in any way by, or on behalf of, any Maintenance Association.

4.5. Voting. The Master Association shall have two classes of voting membership as follows:

(a) Class A membership shall be that held by each Maintenance Association other than Declarant, and each Class A Member shall be entitled to one vote for each Share allocated to the Units in that Member's Maintenance Association, at the time of a particular vote. Provided, however, each Lot shall be deemed to have one Share for purposes of this Section 4.5(a) if no Units exist on such Lot.

(b) Class B membership shall be that held by Declarant who shall be entitled to three votes for each Unit allocated to the Lot listed on Exhibit "C" and owned by it; provided, however, if no Units have been allocated to a Lot on Exhibit "C", each Lot owned by the Declarant shall be deemed to have at least three Shares for purposes of this Section 4.5(b). The Class B memberships shall be converted to Class A memberships when the Declarant has filed for record with Bonner County a notice that it has completed development of the Project.

4.6. Record Date. The Master Association shall fix, in advance, a date as a record date for the determination of the

Members entitled to vote at and receive notice of any meeting of the Master Association. The record date shall be not less than ten (10) days nor more than ninety (90) days prior to any meeting or taking action.

4.7. Commencement of Voting Rights. The voting rights of each Maintenance Association with respect to any Lot or Unit shall not vest until Assessments have been levied against that Lot or Unit by the Master Association, as set forth in Section 6.7 hereof; provided, however, Declarant's voting rights shall vest upon execution of this Declaration.

4.8. Special Majorities. There are various sections of the Project Documents which require the vote or written assent of a majority of the voting power of the Master Association residing in Members other than Declarant prior to the undertaking of certain actions by the Master Association or the Board. In no event shall such provisions be deemed to preclude Declarant from casting the votes to which it is entitled pursuant to Section 4.5 hereof. Therefore, any provision in the Project Documents which requires the vote or written assent of a majority of the voting power of the Master Association residing in Members other than Declarant shall require the following:

(a) So long as there are Class A and Class B voting memberships, the vote or written assent of a majority of the Class A voting power as well as the vote or written assent of a majority of the Class B voting power; and

(b) After the conversion of the Class B memberships to Class A memberships in accordance with Section 4.5(b) hereof, the vote or written assent of a majority of the total voting power of the Master Association as well as the vote or written assent of a majority of the total voting power of members other than the Declarant.

4.9. Membership Meetings. Regular and special meetings of the Master Association shall be held with the frequency, at the time and place and in accordance with the provisions of the Bylaws.

4.10. Board of Directors. The affairs of the Master Association shall be managed by the Board of Directors, which shall be established, and which shall conduct regular and special meetings according to the provisions of the Articles and Bylaws.

## ARTICLE V

### MASTER ASSOCIATION POWERS, RIGHTS, DUTIES, LIMITATIONS

5.1. Generally. The Master Association shall have the power to perform any action reasonably necessary to exercise any right or discharge any duty enumerated in this Article V or elsewhere in

the Project Documents or reasonably necessary to operate the Project. In addition, the Master Association shall have all the rights and powers of a nonprofit corporation under the laws of the State of Idaho.

The Master Association shall act through its Board of Directors and the Board shall have the power, right and duty to act for the Master Association except that actions which require the approval of the Members of the Master Association shall first receive such approval.

The powers, rights, duties and limitations of the Master Association set forth in this Article V and elsewhere in the Project Documents shall rest in and be imposed on the Master Association concurrently with the close for the first sale of a Lot in the Project.

5.2. Enumerated Rights. In addition to those Master Association rights which are provided elsewhere in the Project Documents the Master Association shall have the following rights:

5.2.1. Delegation. To elect, employ, appoint, to assign and to delegate the rights and duties of the Master Association to officers, employees, agents and independent contractors.

5.2.2. Enter Contracts. To enter contracts with third parties to furnish goods or services to the Project subject to the limitations of Section 5.4.

~~5.2.3. Borrow Money. To borrow money and with the approval by vote or written assent of a majority of the voting power of the Master Association, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.~~

5.2.4. Dedicate and Grant Easements. To dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility or any other entity for such purposes and subject to such conditions as may be agreed to by the Master Association; provided, however, that no such dedication or transfer shall be effective unless (i) such dedication or transfer is approved by two-thirds (2/3) of the voting power of the Master Association, and (ii) an instrument in writing is signed by the Secretary of the Master Association certifying that such dedication or transfer has been approved by the required vote or written assent.

5.2.5. Establish Rules and Regulations. To adopt reasonable rules not inconsistent with this Declaration, the Articles or the Bylaws, relating to the use of the Common Areas and all facilities thereon, and the conduct of Owners and their contract purchasers, lessees, tenants and guests with respect to

the Project and other Owners. Pursuant to those Rules and Regulations, the Master Association shall have the right to limit the number of guests of an Owner utilizing the Common Areas and the manner in which the Common Areas may be used, and the right to charge reasonable admission and other fees for the use of any recreational facility situated on the Common Areas. A copy of the Rules shall be mailed or otherwise delivered to each Owner and Developer and a copy shall be available for inspection at the office of the Master Association during regular business hours.

5.2.6. Entry. To enter upon any portion of the Project, including any Lot or Unit after giving reasonable notice to the Owner thereof, for any purpose reasonably related to the performance by the Master Association of its duties under this Declaration. In the event of an emergency such right of entry upon any Lot or Unit shall be immediate.

5.3. Enumerated Duties. In addition to those Master Association duties which are imposed elsewhere in the Project Documents, the Master Association shall have the following duties:

5.3.1. Manage, Maintain Common Areas. The Master Association shall manage, operate, maintain, repair and replace any property acquired by or subject to the control of the Master Association, including personal property, in a safe, sanitary and attractive condition.

5.3.2. Enforce Project Documents. To enforce the provisions of the Project Documents by appropriate means as provided at Article VII.

5.3.3. Maintain Flood Control System; Snow Removal and Storage. To maintain, repair and replace the flood control facilities and equipment located on and serving the Project, and to remove and store snow throughout the Project.

5.3.4. Levy and Collection of Assessments and Individual Charges. To fix, levy and collect Assessments and Individual Charges in the manner provided in Articles VI and VII.

5.3.5. Taxes and Assessments. To pay all real and personal property taxes and assessments and all other taxes levied against the Common Areas, personal property owned by the Master Association or against the Master Association. Such taxes and assessments may be contested or compromised by the Master Association; provided, that they are paid or that a bond or other security insuring payment is posted before the sale or the disposition of any property to satisfy the payment of such taxes.

To prepare and file annual tax returns with the federal government and the State of Idaho and to make such elections as may

be necessary to reduce or eliminate the tax liability of the Master Association.

5.3.6. Water and Other Utilities. To acquire, provide and pay for utility services as necessary for the Common Areas.

5.3.7. Legal and Accounting. To obtain and pay the cost of legal and accounting services necessary or proper to the maintenance and operation of the Project and the enforcement of the Project Documents.

5.3.8. Insurance. To obtain and pay the cost of insurance for the Project as provided in Section 8.1.

5.3.9. Bank Accounts. To deposit all funds collected from Owners pursuant to Articles VI and VII hereof and all other amounts collected by the Master Association as follows:

(a) All funds shall be deposited in a separate bank account ("General Account") with a federally insured bank located in the States of Idaho and Washington. The Funds deposited in such account may be used by the Master Association only for the purposes for which such funds have been collected.

(b) Funds which the Master Association shall collect for reserves for capital expenditures relating to the repair and maintenance of the Common Area, and for such other contingencies as are required by good business practice shall, within ten (10) days after deposit in the General Account, be deposited into an interest bearing account with a federally insured bank or savings and loan association located in the States of Idaho or Washington and selected by the Master Association, or invested in Treasury Bills or Certificates of Deposit or otherwise prudently invested, which shall all herein be collectively referred to as the "Reserve Account". Funds deposited into the Reserve Account shall be held in trust and may be used by the Master Association only for the purposes for which such amounts have been collected.

5.3.10. Annual Report of Domestic Nonprofit Corporation. To make timely filings of the annual report required by Idaho law for nonprofit corporations.

5.3.11. Preparation and Distribution of Financial Information. To regularly prepare budgets and financial statements and to distribute copies to each Member and each Owner as follows:

(a) A pro forma operating statement (budget) for each fiscal year shall be distributed no later than forty-five (45)

days nor sooner than sixty (60) days before the beginning of the fiscal year;

(b) A balance sheet as of an accounting date which is the last day of the month closest in time to six months from the date of closing of the first sale of a Lot or Unit, and an operating statement, for the period from the date of such first closing to the said accounting date, shall be distributed within 60 days after the accounting date. This operating statement shall include a schedule of assessments received and receivable identified by the number of the Lot or Unit and the name of the entity assessed.

(c) An annual report consisting of the following shall be distributed within one hundred twenty (120) days after the close of the fiscal year as defined below;

(i) A balance sheet as of the last day of the fiscal year;

(ii) An operating (income) statement for said fiscal year; and

(iii) A statement of changes in financial position for said fiscal year.

For any fiscal year in which the gross income to the Master Association exceeds Seventy-Five Thousand Dollars (\$75,000.00) the annual report referred to above shall be prepared by an independent accountant. If the annual report is not required to be prepared by an independent accountant, it shall be accompanied by the certificate of an authorized officer of the Master Association that the statements were prepared without an audit from the books and records of the Master Association.

5.3.12. Maintenance and Inspection of Books and Records.  
To cause to be kept adequate and correct books of account, a register of Members, minutes of Member and Board meetings, a record of all corporate acts, and other records as are reasonably necessary for the prudent management of the Project and to present a statement thereof to the Members at the annual meeting of Members.

The Membership register (including names, addresses and voting rights), books of account and minutes of meetings of the Members, of the Board, and of committees shall be made available for inspection and copying by any Member of the Master Association, or by its duly appointed representative, at any reasonable time and for a purpose reasonably related to his interest as a Member, at the principal office of the Master Association or at such other place within the Project as the Board of Directors shall prescribe. The Board shall establish reasonable rules with respect to:

(a) Notice to be given to the custodian of the records by the Member desiring to make the inspection;

(b) Hours and days of the week when such an inspection may be made; and

(c) Payment of the cost of reproducing copies of the documents requested by a Member.

Every member of the Board shall have the absolute right at any reasonable time to inspect all books, records and documents of the Master Association and the physical properties owned or controlled by the Master Association. The right of inspection by a member of the Board includes the right to make extracts and copies of documents.

5.3.13. Statements of Status. To provide, upon the request of any Owner or Mortgagee, a written statement setting forth the amount, as of a given date, of any unpaid Assessments or Individual Charges against any Owner. Such statement, for which a reasonable fee may be charged, shall be binding upon the Master Association in favor of any person who may rely thereon in good faith. Such written statement shall be provided within ten (10) days of the request.

5.3.14. Architectural Control. To maintain architectural control over the Project and appoint the members of the Architectural Control Committee in connection therewith, as more fully provided in Article X.

5.3.15. Marketing Function. To provide a suitable and continuing program to promote the Project as a desirable vacation and recreation area, including but not limited to a high quality and full program of promotional activities such as stimulating and coordinating major events, advertising and placing articles in news media, establishing uniform standards for promotional programs of individual members, involvement in lecture tours and ski shows and shall spend no less than \$50.00 per year per Unit within the Project for such promotion program. The Master Association shall, to the extent possible, undertake its obligations hereunder in whole or in part in conjunction with or through any organization which may be engaged in the promotion of the entire Schweitzer Basin Area in Bonner County, Idaho, and shall pay its fair share of the costs and expenses of promotional activities of any such organization.

5.3.16. Recreation and Guest Services Function. To provide, but without competing with commercial recreation available within the Project itself, a suitable, highest quality, wide variety, organized, recreational program and such miscellaneous equipment as may be necessary therefor; inform visitors of



recreation available and stimulate their participation therein; and, in the highest quality fashion, care for, operate, manage, maintain, repair and replace swimming pools, ice rinks, sauna or steam baths, game courts, game areas and other recreational facilities which may be in the Common Areas, and such miscellaneous equipment as may be appropriate for use in connection therewith, within the Project; and clean and remove snow from such recreational facilities as necessary to permit their full use and enjoyment. Any addition to or construction of recreational facilities to supplement those facilities provided by the Declarant or other developers may be financed as an expense item. The following specific facilities may be constructed under the intent of this function, but should be limited to the following: a central check-in and information facility, tennis courts, swimming pools, spas, golf courses, playing fields and athletic clubs.

5.3.17. Communications and Telecommunications Function.

To pay a fair share of the costs and expenses of any system provided in the Sandpoint area of Bonner County, Idaho, by an area-wide organization to assure suitable, high quality television and/or radio reception in the area through a television booster, translator, cable system or low-frequency radio transmission system. The Master Association also may establish a centralized telephone system to provide integrated telephone services to the Project. This function shall include, but not limited to the operation of a central switchboard and information service for its members.

5.3.18. Transportation Function. To operate, manage, care for, maintain, repair and replace modes of transportation to include, but not limited to automotive vehicles, trams, people-movers, and other transportation means as may be appropriate for use in connection therewith; and provide responsible transportation services for any Owner, guest, customer, agent, employee, guest or invitee of an Owner, lessee, licensee, concessionaire, or guest or invitee of such person or persons. These services may be provided on a local or regional basis.

5.3.19. Cultural/Special Events Function. To provide a high quality and full program of stimulating and enjoyable events to enhance the Project's desirability as a cultural, vacation and recreation area.

5.3.20. Conventions or Group Sales Function. To provide an on-going group sales function so as to stimulate the use of the Project by conventions and meetings. The activities shall include promotion, co-ordination, provision and subsidization of facilities. It shall also require the repair, maintenance and operation of convention facilities provided to, or developed by the Master Association. The construction of a convention center by the Master Association may also be accomplished within this function.

5.4. Enumerated Limitations. Except with the vote or written assent of a majority of the total voting power of the Master Association residing in Members other than Declarant, the Board shall be prohibited from taking any of the following actions:

(a) Entering into a contract with a third person wherein the third person will furnish goods or services for the Common Areas or to the Master Association for a term longer than one (1) year with the following exceptions:

(i) A contract with a public utility company if the rates charged for the materials or services are regulated by a public utilities entity; provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract the regulated rate.

(ii) Prepaid casualty and/or liability insurance policies of not to exceed three (3) years duration provided that the policy permits short rate cancellation by the insured.

(iii) Lease agreements for laundry room fixtures and equipment of not to exceed five (5) years duration provided that the lessor under the agreement is not an entity in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more.

~~(b) Incurring aggregate expenditures for capital improvements to the Common Areas in any fiscal year in excess of five percent 5% of the budgeted gross expenses of the Master Association for that fiscal year;~~

(c) Selling during any fiscal year property of the Master Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Master Association for that fiscal year;

(d) Paying compensation to members of the Board or to officers of the Master Association for services performed in the conduct of the Master Association's business; provided, however, that the Board may reimburse a member of the Board or officer for expenses incurred in carrying on the business of the Master Association.

(e) Filling a vacancy on the Board created by the removal of a Director.

EXHIBIT C

Lot Number

Number of Units  
Allocated to Lot

## ARTICLE VI

### ASSESSMENTS

6.1. Agreement to Pay Assessments and Individual Charges; Vacant Lot Exemption. Declarant for each Lot or Unit owned by it, hereby covenants and agrees, and each Owner, by acceptance of a deed for a Lot or Unit, is deemed to covenant and agree for each Lot or Unit owned, to pay all Regular Assessments and all Special Assessments (collectively "Assessments"), and all Individual Charges, to be established and collected as provided in this Declaration and in the other Project Documents. All Assessments shall be levied against each of the Maintenance Associations for the Lots and Units included in each such Maintenance Association based on the Shares allocated to each Lot or Unit by this Declaration. Each Maintenance Association shall be responsible for collecting from its members their Shares of such Assessments, in accordance with the governing instruments of the Maintenance Association. Provided, Declarant shall not be liable for Assessments with respect to Lots owned by it which are vacant.

6.2. Purpose of Assessments. The purpose of Assessments is to raise funds necessary to operate the Project. Assessments shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and for the improvement, maintenance and administration of the Project and other expenditures incurred in the performance of the duties of the Master Association as set forth in the Project Documents.

6.3. Regular Assessments. The purpose of Regular Assessments is to raise funds necessary to pay the anticipated costs of operating the Project during the fiscal year and to accumulate reserves to pay costs anticipated in future years. No less than sixty (60) days before the beginning of each fiscal year, the Board shall prepare or cause to be prepared, and distributed or cause to be distributed to each member, a proposed pro forma operating statement or budget for the forthcoming fiscal year. Any Member may make written comments to the Board with respect to said pro forma operating statement. The pro forma operating statement shall be prepared consistently with the prior fiscal year's operating statement and shall include adequate reserves for contingencies and for maintenance, repairs and replacement of the Common Areas improvements or Master Association personal property likely to need maintenance, repair or replacement in the future.

Not more than sixty (60) days nor less than thirty (30) days before the beginning of each fiscal year, the Board shall meet for the purpose of establishing the Regular Assessments for the forthcoming fiscal year. At such meeting the Board shall review the proposed pro forma operating statement or budget, and written comments received and any other information available to it and, after making any adjustments that the Board deems appropriate,

shall establish the Regular Assessments for the forthcoming fiscal year; provided, however, that the Board may not establish Regular Assessments for any fiscal year which is more than twenty percent (20%) greater than the Regular Assessments for the immediately preceding fiscal year without the approval of a majority of the voting power of the Master Association residing in Members other than Declarant. Not less than thirty (30) days before the beginning of each fiscal year the Board shall distribute to each Member a final copy of the pro forma operating statement or budget for the forthcoming fiscal year. Regular Assessments shall be payable in equal monthly installments due on the first day of each month, unless the Board adopts some other basis for collection.

#### 6.4. Special Assessments

6.4.1. General. If the Board determines that the estimated total amount of funds necessary to defray the common expenses of the Master Association for a given fiscal year is or will become inadequate to meet expenses for any reason, including, but not limited to, unanticipated delinquencies, costs of construction, unexpected repairs or replacements of capital improvements on the Common Areas, the Board shall determine the approximate amount necessary to defray such expenses, and if the amount is approved by the Board, it shall become a Special Assessment. The Board may, in its discretion, provide for the payment in installments of such Special Assessment over the remaining months of the fiscal year or levy the Assessment immediately against each Lot or Unit. Special Assessments shall be due on the first day of the month following notice of their levy.

6.4.2. Limitation on Special Assessments. Any Special Assessment which singly or in the aggregate with previous Special Assessments for the fiscal year would amount to more than five percent (5%) of the budgeted gross expense of the Master Association for the fiscal year, shall require approval of a majority of the voting power of the Master Association residing in Members other than Declarant.

6.5. Civic Assessments. There shall be collected a charge, herein called the Civic Assessment, which charge shall be in addition to, and shall be a percentage or rate applied to, the price or charge on, or in connection with or with respect to, any sale of goods or services or any other transaction within the Project. Each Owner of a Commercial Space shall be obligated to and shall collect the Civic Assessment and pay the total amounts thereof regularly to the Master Association; or see to it that the Civic Assessment is collected and that the total amounts thereof are paid regularly to the Association as to any transactions with respect to which the Civic Assessment is applicable which occur on, in connection with or with respect to the Lot of such Owner. The percentage or rate for the Civic Assessment shall be determined

from time to time by the Board of Directors of the Master Association. No Civic Assessment shall be collected with respect to any transaction which constitutes, or is directly connected with, the sale or conveyance of an Owner's interest in his Lot or Unit. Subject to the foregoing provision, the Board of Directors of the Master Association shall have the power and authority to determine all matters in connection with the Civic Assessment, including power and authority to determine how the amount of the Civic Assessment should be reflected on bills and charge slips rendered in any transaction, when and how the Civic Assessment should be paid to the Master Association and rules and regulations for reporting and record-keeping with respect to the Civic Assessment and for auditing of such records by the Master Association; and each Owner and any party occupies or uses any portion of a Lot of such Owner shall comply with all such determinations.

6.6. Individual Charges. Individual Charges may be levied against an Owner (i) as a monetary penalty imposed by the Master Association as a disciplinary measure for the failure of the Owner, his family members, lessees, guests, or invitees to comply with the Project Documents, or (ii) as a means of reimbursing the Master Association for costs incurred by the Master Association for repair of damage to Common Areas for which the Owner, his family members, lessees, guests or invitees were responsible, or to otherwise bring the Owner and his Unit into compliance with the Project Documents. Individual Charges against an Owner shall not be enforceable through the lien provisions of the Project Documents. Notwithstanding the foregoing, charges imposed against a Lot or Unit and its Owner consisting of reasonable late payment penalties and/or charges to reimburse the Master Association for loss of interest, and/or for costs reasonably incurred (including attorneys' fees) in the efforts to collect delinquent Assessments shall be fully enforceable through the lien provisions of the Project Documents.

6.7. Allocation of Regular and Special Assessments. Except as otherwise provided herein, Regular and Special Assessments shall be levied against each Maintenance Association based on the number of Shares allocated to each Maintenance Association. The Regular and Special Assessments to be levied against any particular Association shall be calculated by multiplying the total amount of such Assessments by a fraction, the numerator of which is the number of Shares allocated to such Maintenance Association, and the denominator of which is the total number of Shares for which assessments are to be levied. The Assessments levied hereunder may be varied based upon the Board's sole and exclusive determination that any specific item in the Master Association's budget may more directly benefit a certain area or classification of the Project in excess of its proportionate Shares, or that the Master Association has provided services to a Lot in excess of those to other Lots in the Project.

6.8. Commencement of Assessments and Individual Charges. The right to levy Assessments and Individual Charges shall commence as to all Lots on the first day of the month following the closing of the first sale of a Lot in the Project. Thereafter, Regular Assessments shall be levied on the first day of each month of the fiscal year, or at the election of the Board of Directors, on the first day of the first month of the calendar quarter, semi-annually, or annually.

6.9. Personal Obligation for Assessments and Individual Charges. All Assessments and Individual Charges, together with late charges, interest, costs, and reasonable attorneys' fees incurred in collecting delinquent Assessments and Individual Charges shall be the personal obligation of the Owner of such Lot or Unit at the time when the Assessments or Individual Charges fell due. If more than one person or entity was the Owner of a Lot or Unit at the time the Assessments or Individual Charges fell due, the personal obligation to pay each Assessment and Individual Charge shall be joint and several. No Owner may exempt himself from liability for his Assessment or Individual Charges obligation by waiver of the use or enjoyment of any of the Project.

## ARTICLE VII

### ENFORCEMENT OF RESTRICTIONS

7.1. General. The Master Association, any Maintenance Association or any Owner shall have the right to enforce compliance with the Project Documents in any manner provided by law or in equity, including without limitation, the right to enforce the Project Documents by bringing an action for damages, an action to enjoin the violation or specifically enforce the provisions of the Project Documents, to enforce the liens provided for herein (except that no Owner or Maintenance Association shall have the right to enforce independently of the Master Association any Assessment, Individual Charge, or Assessment lien created herein) and any statutory lien provided by law, including the foreclosure of any such lien and the appointment of a receiver for an Owner and the right to take possession of the Lot or Unit in the manner provided by law. However, no Maintenance Association or Owner shall proceed to enforce compliance with the Project Documents unless written notice of the noncomplying act or condition is first given to the Master Association and the Master Association fails to take action to enforce compliance within thirty (30) days following receipt of such notice, or fails, thereafter, to diligently pursue such enforcement. In the event the Master Association, Maintenance Association or any Owner shall employ an attorney to enforce the provisions of the Project Documents against any Owner, or Maintenance Association or the Master Association, as authorized and limited above, the prevailing party shall be entitled to

reasonable attorneys' fees and costs in addition to any other amounts due as provided for herein. All sums payable hereunder by an Owner or a Maintenance Association shall bear interest at eighteen percent (18%) per annum from the due date, or if advanced or incurred by the Master Association, or a Maintenance Association or any other Owner pursuant to authorization contained in the Project Documents, commencing fifteen (15) days after repayment is demanded. All enforcement powers of the Master Association shall be cumulative. Failure by the Master Association or any Owner or Maintenance Association to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

7.2. Specific Enforcement Rights. In amplification of, and not in limitation of, the general rights specified in Section 7.1 above, the Master Association shall have the following rights:

7.2.1. Enforcement by Sanctions

7.2.1.1. Limitation. The Master Association shall have no power to cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of his Lot or Unit on account of a failure by the Owner to comply with provisions of the Project Documents except where the loss or forfeiture is the result of the judgment of a court or a decision arising out of arbitration or on account of a foreclosure or sale under a power of sale for failure of the Owner to pay his share of Assessments levied by the Master Association.

7.2.1.2 Disciplinary Action. The Master Association may impose reasonable monetary penalties, temporary suspensions of reasonable duration (not to exceed thirty (30) days per violation) of an Owner's rights in the Project or other appropriate discipline for failure to comply with the Project Documents. Notwithstanding the foregoing, the Master Association shall have no right to interfere with an Owner's right of ingress or egress to his Lot or Unit.

Before disciplinary action authorized under this Section can be imposed by the Master Association, the Owner against whom such action is proposed to be taken shall be given notice and the opportunity to be heard as follows:

(a) The Board shall give written notice to the Owner at least fifteen (15) days prior to the meeting at which the Board will consider imposing disciplinary action. Such notice shall set forth those facts which the Board believes justify disciplinary action, and the time and place of the meeting;

(b) At such meeting, the Owner shall be given the opportunity to be heard, including the right to present



evidence, either orally or in writing, and to question witnesses;

(c) The Board shall notify the Owner in writing of its decision within three (3) days of the decision. The effective date of any disciplinary action imposed by the Board shall not be less than eight (8) days after the date of said decision.

7.2.1.3 No Lien for Monetary Penalties. A monetary penalty imposed by the Master Association as a disciplinary measure for failure of an Owner to comply with the Project Documents or as a means of reimbursing the Master Association for costs incurred by the Master Association in the repair of damage to Common Areas for which the Owner was allegedly responsible or in bringing the Owner and his Lot or Unit into compliance with the Project Documents shall not be considered an assessment which may become a lien against the Owner's Lot or Unit. Provided, however, the provisions of this Section do not apply to charges imposed against an Owner or Maintenance Association consisting of reasonable late payment penalties for delinquent assessments and/or charges to reimburse the Master Association for the loss of interest and for costs reasonably incurred (including attorneys' fees) in its efforts to collect delinquent assessments.

7.2.2. Suit to Collect Delinquent Assessments or Individual Charges. A suit to recover a money judgment for unpaid Assessments or unpaid Individual Charges, together with late charges, interest, costs, and reasonable attorneys' fees shall be maintainable by the Master Association. In the case of unpaid Assessments such suit shall be maintainable without foreclosing or waiving the lien securing such unpaid Assessments.

7.2.3. Enforcement of Lien. If there is a delinquency in the payment of any Assessment or installment on a Lot or Unit, any amounts that are delinquent together with the late charges, interest (at 18% per annum), costs of collection and reasonable attorneys' fees, shall be a lien against the Lot or Unit upon the recordation in the official records of Bonner County of a Notice of Delinquent Assessment. The Notice of Delinquent Assessment shall be signed by an authorized representative of the Master Association and shall state the amount of the delinquent Assessment, a description of the Lot or Unit assessed, and the name of the record Owner(s). Such lien shall be prior to all other liens and encumbrances, recorded or unrecorded, except only:

(a) Tax and special assessment liens on the Lot or Unit in favor of any assessing agency or special district; and

(b) The First Mortgage on the Lot or Unit recorded prior to the date that the Notice of Delinquent Assessment was recorded.

The Notice of Delinquent Assessment shall not be recorded unless and until the Board or its authorized representative has mailed to the delinquent Owner, not less than fifteen (15) days before the recordation of the Notice of Delinquent Assessment, a written demand for payment, and unless the delinquency has not been cured within said fifteen (15) day period. Any Owner may pay directly to the Master Association his pro-rata share of the delinquent Assessment levied against the Maintenance Association of which he is a member (calculated by dividing the total amount of the delinquent Assessment by the number of Shares allocated to such Maintenance Association, then multiplying the result by the number of Shares held by such Owner's Unit). In the event of payment by an Owner of his portion of any delinquent Assessment, the Master Association shall prepare and record a document releasing such Owner's Unit from the lien of the delinquent Assessment which is so cured. The governing instruments for each Maintenance Association shall provide that any payment made by an Owner to the Master Association for his portion of the Master Association Assessments may be applied by such Owner as a credit against the Assessments levied by his Maintenance Association next becoming due.

After the recording of the Notice of Delinquent Assessment, the Board or its authorized representative may cause the Lot or Unit with respect to which a Notice of Delinquent Assessment has been recorded to be sold in the same manner as a sale under Idaho law for the exercise of powers of sale, or through judicial foreclosure. In connection with any sale under Idaho law or the exercise of a power of sale, the Board is authorized to appoint its attorney, any other attorney licensed to practice law in the state of Idaho, or any title insurance company authorized to do business in Idaho as trustee for purposes of giving notice and conducting the sale, and such trustee is hereby given a power of sale. If a delinquency including Assessments and other proper charges is cured after recordation of the Notice of Delinquent Assessment but before sale, or before completing a judicial foreclosure, the Board or its authorized representative shall cause to be recorded in the records of Bonner County a certificate setting forth the satisfaction of such claim and release of such lien. The Master Association shall have the power to bid upon the Lot or Unit at foreclosure sale and to acquire, hold, lease, mortgage and convey the Lot or Unit.

7.2.4. Transfer by Sale or Foreclosure. In a voluntary conveyance, the grantee of a Lot or Unit (which shall also include the purchaser of a Lot or Unit under an installment sales contract) shall be jointly and severally liable with the grantor (which shall also include the seller of a Lot or Unit under an installment sales contract) for all unpaid Assessments against the latter for his share of the Assessments up to the time of the grant, sale or conveyance, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee. However, any

such grantee shall be entitled to a statement from the Board or its agent setting forth the amounts of the unpaid Assessments against the grantor, and such grantee shall not be liable for, nor shall the Lot or Unit conveyed be subject to a lien for, any unpaid Assessments against the grantor in excess of the amount set forth. Otherwise, the sale or transfer of any Lot or Unit shall not affect the Assessment's lien or lien right. However, the sale or transfer of any Lot or Unit pursuant to the exercise of a power of sale or judicial foreclosure involving a default under a First Mortgage shall extinguish the lien for Assessments which became due prior to such sale or transfer, provided, no transfer of the Lot or Unit as the result of a foreclosure or exercise of a power of sale shall relieve the new Owner, whether it be the former beneficiary of the First Mortgage or another person, from liability for any Assessments or Individual Charges thereafter becoming due or from the lien thereof.

## ARTICLE VIII

### INSURANCE, DESTRUCTION, CONDEMNATION

8.1. Insurance. In addition to other insurance required to be maintained by the Project Documents, the Master Association shall maintain in effect at all times the following insurance:

8.1.1. Liability Insurance. The Master Association shall obtain and maintain comprehensive public liability insurance insuring the Master Association, the Board, the officers of the Master Association, the Declarant, Owners, occupants of Lots and Units, ~~their respective family members, guests, invitees, and the agents and employees of each,~~ against any liability incident to the ownership, use or maintenance of the Common Areas and shall include a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured, and which shall preclude the insurer from denying the claim of an Owner based on negligent acts of the Master Association. The limits of such insurance shall not be less than One Million Dollars (\$1,000,000) covering all claims for death, personal injury and property damage arising out of a single occurrence. Such insurance shall include coverage against any liability customarily covered with respect to projects similar in construction, location, and use.

8.1.2. Fire and Extended Coverage for Common Areas. The Master Association also shall obtain and maintain a policy of fire and extended coverage insurance for no less than the full replacement cost (without deduction for depreciation) of all of the insurable improvements within the Common Areas. Such insurance shall include coverage against any risk customarily covered with respect to projects similar in construction, location, and use. The policy shall name as insured the Master Association for the benefit

of the Owners and Declarant, as long as Declarant is the Owner of any Lot and Unit or Lots and Units, and all Mortgagees as their respective interests may appear, and may contain a loss payable endorsement in favor of any trustee described in Section 8.1.3.

8.1.3. Trustee. All casualty insurance proceeds payable under Section 8.1.2 for losses to real property and improvements may be paid to a trustee, to be held and expended for the benefit of the Owners, Mortgagees, and others, as their respective interests shall appear. Said trustee shall be an Idaho commercial bank or trust company that agrees in writing to accept such trust.

8.1.4. Other Insurance. The Board shall purchase and maintain workers compensation insurance, to the extent that it is required by law, for all employees or uninsured contractors of the Master Association. The Board also shall purchase and maintain fidelity coverage against dishonest acts on the part of , members of the Board, officers, managers, employees or volunteers who handle or who are responsible to handle the funds of the Master Association, and such fidelity bonds or insurance shall name the Master Association as the named insured, and shall be written in an amount greater than or equal to one hundred fifty percent (150%) of the estimated annual operating expenses of the Master Association, including reserves. In connection with such fidelity coverage, an appropriate endorsement to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers. The Board shall also purchase and maintain insurance on personal property owned by the Master Association for one hundred percent (100%) of the replacement cost of such property, and any other insurance that it deems necessary, that is required by any First Mortgagee or is customarily obtained for projects similar in construction, location and use.

8.1.5. Owner's Liability Insurance. Subject to the limitations herein, an Owner, individually may carry whatever personal and property damage liability insurance with respect to his Lot or Unit that he desires.

8.1.6. Owner's Fire and Extended Coverage Insurance. Each Owner shall obtain and maintain fire, casualty and extended coverage insurance for the full replacement cost of his Structures and Dwelling. Notwithstanding the foregoing this subarticle shall be deemed satisfied where a Maintenance Association has obtained fire, casualty and extended coverage insurance for an Owner's Lot or Unit (including Condominiums). An Owner may insure his personal property.

8.1.7. Flood Insurance. If it is determined that the Project is in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards, flood insurance shall be maintained for each Unit or Structure in the amount of the outstanding principal balance of any First Mortgage

encumbering such Unit or Structure, or the maximum limit of coverage available under the National Flood Insurance Act of 1968, as amended, whichever is less.

8.1.8. Officer and Director Insurance. The Master Association may purchase and maintain insurance on behalf of any member of the Board, officer, or member of a committee of the Master Association (collectively the "agent") against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, whether or not the Master Association would have the power to indemnify the agent against such liability under applicable law.

8.1.9. Waiver of Subrogation. All property and liability insurance carried by the Master Association, or the Owners shall contain provisions whereby the insurer waives rights of subrogation as to the Master Association, members of the Board, officers, Committee members, Declarant, Owners, their family, guests, agents and employees.

8.1.10. Mortgagee Clause. All policies of hazard insurance must include a standard mortgagee clause commonly accepted by the private institutional mortgage investors doing business in the State of Idaho. The mortgagee clause must require the insurer to notify any First Mortgagee named at least thirty (30) days in advance of the effective date of any reduction in or cancellation of the policy.

8.1.11. Annual Review of Policies. All insurance policies shall be reviewed at least annually by the Board in order to ascertain whether the coverage contained in the policies is adequate in light of increased construction costs, inflation or any other factor which tends to indicate that either additional insurance policies or increased coverage under existing policies are necessary or desirable to protect the interest of the Master Association.

8.1.12. Payment of Premiums. Premiums on insurance maintained by the Master Association shall be a expense funded by Assessments levied by the Master Association.

8.1.13. Rating of Insurance Carrier. Each hazard insurance policy must be written by a hazard insurance carrier which has a current rating by Best's Insurance Reports of B/VI or better. Hazard insurance policies are also acceptable from an insurance carrier which has a financial rating by Best's Insurance Reports of Class V, provided it has a general policy holder's rating of at least A. Each insurer must be specifically licensed or authorized by law to transact business within the State of Idaho. Policy contracts shall provide that no assessment may be made against any First Mortgagee, and that any assessment made

against others may not become a lien on any property in the Project superior to the First Mortgage on such property.

## 8.2. Destruction

8.2.1. Minor Destruction Affecting the Common Areas. Notwithstanding Section 8.2.2 the Board shall have the duty to repair and reconstruct the Common Areas without the consent of Members and irrespective of the amount of available insurance proceeds, in all instances of destruction where the estimated cost of repair and reconstruction does not exceed five percent (5%) of the budgeted gross expenses of the Master Association for that fiscal year.

## 8.2.2. Major Destruction Affecting the Common Areas.

8.2.2.1. Destruction; Proceeds Exceed 85% of Reconstruction Costs. If there is a total or partial destruction of the Common Areas, and if the available proceeds of the insurance carried pursuant to Section 8.1 are sufficient to cover not less than eighty-five percent (85%) of the costs of repair and reconstruction, the Common Areas shall be promptly rebuilt unless, within forty-five (45) days from the date of destruction, Members then holding at least seventy-five percent (75%) of the voting power of the Master Association determine that repair and reconstruction shall not take place.

8.2.2.2 Destruction; Proceeds Less Than 85% of Reconstruction Costs. If the proceeds of insurance carried pursuant to Section 8.1 are less than eighty-five percent (85%) of the costs of repair and reconstruction, repair and reconstruction of the Common Areas shall not take place unless, within forty-five (45) days from the date of destruction, Members then holding at least a majority of the voting power of the Members other than Declarant determine that repair and reconstruction shall take place.

8.2.3. Special Assessment to Rebuild. If the determination is made to rebuild the Association shall levy a Special Assessment to cover the cost of rebuilding not covered by insurance proceeds.

8.2.4. Rebuilding Contract. If the determination is made to rebuild, the Board shall obtain bids from at least two (2) reputable contractors, and shall award the repair and reconstruction work to the most reasonable bidder in the opinion of a majority of the Board. The Board shall have the authority to enter into a written contract with the contractor for the repair and reconstruction, and the insurance proceeds shall be disbursed to said contractor according to the terms of the contract. It shall be the obligation of the Board to take all steps necessary to

assure the commencement and completion of authorized repair and reconstruction within a reasonable time.

8.2.5. Rebuilding Not Authorized. If the determination is made not to rebuild, then any insurance proceeds and any other funds held for rebuilding of the Common Areas shall be distributed among the Members on the same basis as their Regular Assessment obligation, and between the Members and Mortgagee(s) as their interests shall appear.

8.2.6. Destruction Affecting Structure. If there is a total or partial destruction of a Structure, the Owners of Units therein through their Maintenance Association shall have the following options:

(a) The Owners shall rebuild or repair the Structure in substantial conformity with its appearance, design and structural integrity immediately prior to the damage or destruction. However, the Maintenance Association of an affected Lot or Unit may apply to the Architectural Control Committee for reconstruction of its Structure in a manner which will provide for an exterior appearance and/or design which is different from that which existed prior to the date of the destruction. Application for such approval shall be made in compliance with the provisions of Article X; or

(b) The Maintenance Association shall clear all Structures from the Lot and shall landscape it in a manner which is approved by the Architectural Control Committee.

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~~Rebuilding or landscaping shall be commenced within a reasonable time after the date of the damage or destruction and shall be diligently pursued to completion.~~

### 8.3. Condemnation

#### 8.3.1. Condemnation Affecting Common Areas

8.3.1.1 Sale in Lieu. If an action for condemnation of all or a portion of the Common Areas is proposed or threatened by any entity having the right of eminent domain, then on the written consent of seventy-five percent (75%) of the Owners and subject to the rights of all Mortgagees, the Common Areas, or a portion of it may be sold by the Board. The proceeds of the sale shall be distributed among the Maintenance Associations on the same basis as their Regular Assessment obligations and between the Unit Owners in accordance with their respective Shares.

8.3.1.2 Award. If the Common Areas, or a portion of it, is not sold but is instead taken, the judgment of condemnation shall by its terms apportion the award among the Maintenance Associations or Owners and their respective Mortgagees.

If the judgment of condemnation does not apportion the award then the award shall be distributed as provided in Section 8.3.1.1.

8.3.2. Condemnation Affecting Lots. If an action for condemnation of all or a portion of, or otherwise affecting a Lot is proposed or threatened, the Owner and the Mortgagees of the affected Lots, as their respective interests shall appear, shall be entitled to the proceeds of any sale or award relating to the affected Lot.

If any Lot is rendered irreparably uninhabitable as a result of such a taking, that portion of the Lot so taken shall be deemed deleted from the Project and the Owners and Mortgagees of the affected Lot, upon receiving the award and any portion of the reserve funds of the Master Association reserved for the Lot, shall be released from the applicability of the Project Documents and deemed divested of any interest in the Common Areas. Any portion of such Lot remaining after the taking shall, thereafter, be included as part of the Common Areas of the Project. Provided, however, the governing documents of each Condominium Lot shall govern the effect of condemnation upon the Owners of Units constructed on such Lot and the common areas and facilities of such condominium regime.

## ARTICLE IX

### MORTGAGEE PROTECTIONS

~~9.1. Mortgages Permitted. Any Owner may encumber his Lot or Unit with Mortgages.~~

9.2. Subordination. Any lien created or claimed under the provisions of this Declaration is expressly made subject and subordinate to the rights of any First Mortgage that encumbers any Lot or Unit or other portion of the Project, made in good faith for value, and no such lien shall in any way defeat, invalidate, or impair the obligation or priority of such First Mortgage unless the First Mortgagee expressly subordinates his interest, in writing, to such lien.

9.3. Effect of Breach. No breach of any provision of this Declaration shall invalidate the lien of any Mortgage in good faith and for value, but all of the covenants, conditions and restrictions shall be binding on any Owner whose title is derived through foreclosure sale, trustee's sale, or otherwise.

9.4. Incurable Breach. No Mortgagee who acquires title to a Lot or Unit by foreclosure or by deed in lieu of foreclosure or assignment-in-lieu of foreclosure shall be obligated to cure any breach of this Declaration that is incurable or of a type that is not practical or feasible to cure.



9.5. Actions Requiring First Mortgagee Approval. Unless at least two-thirds (2/3) of the First Mortgagees (based upon one vote for each First Mortgage owned) or at least two-thirds (2/3) of the Owners (other than Declarant) in the Project have given their prior written approval, the Master Association shall not be entitled to:

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas or other property owned, directly or indirectly, by the Master Association for the benefit of the Lots in the Project (the granting of easements for public utilities or for other public purposes consistent with the intended use of such common property by the Owners shall not be deemed a transfer within the meaning of this clause);

(b) change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner;

(c) by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Dwellings, the exterior maintenance of Dwellings, the maintenance of the Common Areas, or the upkeep of landscaping in the Project;

(d) fail to maintain fire and extended coverage on insurable Common Areas on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost);

(e) use hazard insurance proceeds for losses to any Common Areas for other than the repair, replacement or reconstruction of such facilities.

9.6. Right to Appear at Meetings. Any Mortgagee may appear at meetings of the Master Association or the Board, in accordance with the provisions of the Bylaws.

9.7. Right to Furnish Information. Any Mortgagee may furnish information to the Board concerning the status of any Mortgage.

9.8. Right to Examine Books and Records, Etc. The Master Association shall make available to Owners, prospective purchasers and First Mortgagees, current copies of the Project Documents and the books, records and financial statements of the Master Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances.

Any First Mortgagee shall be entitled, upon written request, to a financial statement of the Master Association for the immediately preceding fiscal year, free of charge. Such financial statement shall be furnished by the Master Association within a reasonable time following such request.

9.9. Owners Right to Ingress and Egress. There shall be no restriction upon any Owner's right of ingress and egress to his Lot or Unit which right shall be perpetual and appurtenant to his ownership.

9.10. Notice of Intended Action. Upon written request to the Master Association, any First Mortgagee shall be entitled to timely written notice of:

(a) Any proposed termination of the legal status of the Project as a Planned Unit Development.

(b) Any condemnation loss or casualty loss which affects a material portion of the Project or any Lot or Unit on which there is a First Mortgage held, insured, or guaranteed by such requesting party.

(c) Any delinquency in the payment of Assessments or Individual Charges owed by an Owner of a Lot or Unit or by a Maintenance association subject to a First Mortgage held, insured, or guaranteed by such requesting party which remains uncured for a period of sixty (60) days.

9.11. First Mortgagee Assessment Liability. Any First Mortgagee who obtains title to a Lot or Unit pursuant to the remedies provided in the Mortgage or foreclosure of the Mortgage shall not be liable for such Lot's or Unit's unpaid Assessments or Individual Charges which accrue prior to the acquisition of title to such Lot or Unit by the Mortgagee, but shall be liable for Assessments and Individual Charges assessed or accrued thereafter.

9.12. Distribution; Insurance and Condemnation Proceeds. No provision of the Project Documents shall give a Lot or Unit Owner, or any other party, priority over any rights of the First Mortgagee of the Lot or Unit pursuant to its Mortgage in the case of a distribution to such Lot or Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of the Lot, Unit and/or Common Areas.

9.13. Taxes. First Mortgagees of Lots or Units may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Areas, or any portion thereof, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for the Common Areas, and First Mortgagees making such payments shall be entitled to immediate reimbursement therefore

from the Master Association. Entitlement to such reimbursement shall be reflected in an agreement in favor of all First Mortgagees of Lots duly executed by the Master Association, and an original or certified copy of such agreement shall be possessed by Declarant.

9.14. Maintenance Reserves. Master Association Assessments or charges shall include an adequate reserve fund for maintenance, repairs, and replacement of those elements of the Common Areas that must be replaced on a periodic basis, and such reserves shall be payable as part of the Regular Assessments made pursuant to Section 6.3 hereof rather than by special assessments.

9.15. Notice of Default. A First Mortgagee, upon request, shall be entitled to written notification from the Master Association of any default in the performance by the affected Owner of any obligation under the Project Documents which is not cured within sixty (60) days.

9.16. Management Contracts. Any agreement for professional management of the Project, or any contract for the Declarant to perform services for the Project or the Master Association shall not exceed one (1) year, and shall provide for termination by either party without cause and without payment of a termination fee upon not more than ninety (90) days prior written notice.

9.17. Conflicts. In the event of a conflict of any of the provisions of this Article IX and any other provisions of this Declaration, the provisions of this Article IX shall control.

## ARTICLE X

### ARCHITECTURAL CONTROL

#### 10.1. Approval of Alteration and Improvements

10.1.1. General Limitation. Subject to the exceptions described at Section 10.1.2 no Improvement may be constructed, painted, altered or in any other way changed on any portion of the Project without the prior written approval of the Architectural Control Committee ("Committee").

10.1.2. Exemption. Notwithstanding Section 10.1.1, no Committee approval shall be required for (i) initial Improvements constructed by, at the direction of, or with the express written approval of Declarant; (ii) normal maintenance of exempt or previously approved Improvements; (iii) rebuilding an exempt or previously approved Improvement in accordance with its original design and dimensions; (iv) changes to the interior of an exempt or previously approved Structure; (v) work reasonably required to

be performed in an emergency for the purpose of protecting any person or property from damage.

#### 10.2. Architectural Control Committee

10.2.1. Number, Appointment, Terms. The Committee shall be composed of three (3) members. Declarant shall appoint all of the initial members, and reserves the right to appoint a majority of the members of the Committee until Lots designated for ninety percent (90%) of all Units in the Project have been sold (based on the zoning density set forth in Section 2.1.5 hereof).

After one (1) year from the date hereof, the Board shall have the right to appoint one (1) member of the Committee until Lots designated for ninety percent (90%) of all Units in the Project have been sold (based on the zoning density set forth in Section 2.1.5 hereof). Thereafter the Board shall have the right to appoint all members of the Committee.

Members appointed to the Committee by the Board shall be from the Membership of any Maintenance Association. Members appointed to the Committee by Declarant need not be members of the Master Association or any Maintenance Association.

The terms of the Committee members shall be two (2) years. Any new member appointed to replace a member who has resigned or been removed shall serve such member's unexpired term. Vacancies on the Committee caused by resignation or removal of a member shall be filled by the party empowered to originally appoint such member. ~~No member of the Committee may be removed without the vote or~~ written consent of the Board; provided, however, that Declarant may change its designated members of the Committee without such vote or consent.

10.2.2. Operation. The Committee shall meet from time to time as necessary to properly perform its duties hereunder. The requirements for valid Committee meetings and actions shall be the same as that which is required for valid Board meetings and action as provided in the Bylaws. The Committee shall keep and maintain a record of all action from time to time taken by the Committee at meetings or otherwise, and shall maintain files of all documents submitted to it, along with records of its activities. Unless authorized by the Master Association, the members of the Committee shall not receive any compensation for services rendered. All members shall be entitled to reimbursement by the Master Association for reasonable expenses incurred by them in connection with the performance of their duties.

10.2.3. Duties. The Committee may adopt Architectural Control Guidelines ("Guidelines") as provided in Section 10.3 and shall perform other duties imposed upon it by the Project Documents or delegated to it by the Board.

The address of the Committee shall be the principal office of the Master Association as designated by the Board pursuant to the Bylaws. Such address shall be the place for the submittal of plans and specifications and the place where current copies of the Guidelines shall be kept.

### 10.3. Architectural Standards, Guidelines

10.3.1. Committee Guidelines. The Board shall approve the initial Guidelines adopted by the Committee. The Committee may, from time to time, amend said Guidelines prospectively, if approved by two (2) members of the Committee; otherwise Board approval shall be required for any amendment. Said Guidelines shall interpret and implement the provisions of this Article X by setting forth more specific standards and procedures for Committee review. All Guidelines shall be in compliance with all applicable laws and regulations of any governmental entity having jurisdiction over Improvements on the Project, shall incorporate high standards of architectural design and construction engineering, shall be in compliance with the minimum standards of Section 10.3.2 and otherwise shall be in conformity with the purposes and provisions of the Project Documents.

A copy of the current Guidelines shall be available for inspection and copying by any Owner at any reasonable time during business hours of the Master Association.

10.3.2. Standards. The following minimum standards shall apply to any Improvements constructed on the Project:

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(a) All Improvements shall be constructed in compliance with the applicable zoning laws, building codes, subdivision restrictions and all other laws, ordinances and regulations applicable to Project Improvements.

(b) In reviewing proposed Improvements for approval, the Committee shall consider at least the following:

(i) Does the proposed Improvement conform to the purposes and provisions of the Project Documents?

(ii) Is the proposed Improvement of a quality of workmanship and materials comparable to other Improvements that are proposed or existing on the Project?

(iii) Is the proposed Improvement of a design and character which is harmonious with proposed or existing Improvements and with the natural topography in the immediate vicinity?

(c) The Committee may adopt specific height limitations with respect to Structures erected on "downhill" Lots to preserve and protect the view from Dwellings constructed on "uphill" Lots. To further protect the views of Owners, the Committee may adopt standards requiring Dwellings to be constructed as close to the front of Lots as practically possible.

(d) All Dwellings and Improvements shall be constructed by, or under the direct supervision of, the Declarant as set forth in Sections 2.1.2 and 2.2.2 hereof in order to control grades, protect vegetation and adhere to any site limitations relative to a particular Dwelling Site.

#### 10.4. Committee Approval Process

10.4.1. Approval Application. Any Owner proposing to construct, paint, alter or change any Improvement on the Project which requires the prior approval of the Committee shall apply to the Committee in writing for approval of the work to be performed and a proposed time schedule for performing the work. The Committee may charge an Owner a reasonable fee for application review.

In the event additional plans and specifications for the work are required by the Committee, the applicant shall be notified of the requirement within thirty (30) days of receipt by the Committee of his initial application or the application shall be deemed sufficiently submitted. If timely notified the applicant shall submit plans and specifications for the proposed work in the form ~~and context~~ reasonably required by the Committee and the date of his application shall not be deemed submitted until that date. Such plans and specifications may include, but are not limited to, showing the nature, kind, shape, color, size, materials and location of the proposed work, or the size, species and location of any plants, trees, shrubs and other proposed landscaping.

10.4.2. Review and Approval. Upon receipt of all documents reasonably required by the Committee to consider the application, the Committee shall proceed expeditiously to review all of such documents to determine whether the proposed work is in compliance with the provisions and purposes of the Project Documents and all Guidelines of the Committee in effect at the time the documents are submitted. The application must be approved by the Committee in writing. In the event the Committee fails to approve an application, it shall notify the applicant in writing of the specific matters to which it objects. In the event the Committee fails to notify the applicant within forty-five (45) days after receipt of all documents reasonably required to consider an application or a correction or resubmittal thereof of the action taken by the Committee, the application shall be deemed approved. One set of plans as finally approved shall be retained by the

Committee as a permanent record. The determination of the Committee shall be final and conclusive and, except for an application to the Committee for reconsideration, there shall be no appeal therefrom.

10.4.3. Building Permit. No building permit shall be issued to an applicant until he or she has received the approval of the Committee pursuant to this Article X. The issuance of a building permit shall not be evidence of compliance with this Article X, and the Committee shall be entitled upon verified affidavit to an injunction against commencement of construction pursuant to a building permit issued in contravention of this Article X.

10.4.4. Commencement and Completion of Approved Work. Upon receipt of the approval of the Committee, the applicant shall proceed to have the work commenced and diligently and continuously pursued to completion in substantial compliance with the approval of the Committee including all conditions imposed therewith. The approval of the Committee shall be effective for a period of one (1) year after the date of the approval subject to the right of the Committee to provide for a longer period at the time of its approval, or subsequently to extend the period upon a showing of good cause, and in the event the approved work is not commenced within the effective period of the approval, then the applicant, before commencing any work, shall be required to resubmit its application for the approval of the Committee.

All work approved shall be completed within one (1) year after the date of commencement, or such other reasonable period specified by the Committee at the time of approval, with the period of time subject to extension, at the option of the Committee, by the number of days that work is delayed by causes not under the control of the applicant or his contractor or as otherwise extended by the Board. Upon completion of approved work, the applicant shall give written notice thereof to the Committee.

If for any reason the Committee fails to notify the applicant of any noncompliance within sixty (60) days after receipt of said notice of completion from the application, the improvement shall be deemed to be completed in accordance with said approved plans.

10.4.5. Inspection, Noncompliance. The Committee, or any authorized representative shall have the right at any reasonable time, after reasonable notice, to enter upon any portion of the Project for the purpose of determining whether or not any work is being performed or was performed in compliance with the Project Documents.

If at any time the Committee determines that work is not being performed or was not performed in compliance with the Project Documents or the Guidelines, whether based on a failure to apply for or obtain approval, a failure to comply with approval, a

failure to timely commence or complete approved work or otherwise, the Committee shall notify the Owner in writing of such noncompliance specifying the particulars of noncompliance within a reasonable and specified time period. Issuance of a certificate of occupancy by the cognizant local authority shall not be evidence of compliance with the Project Documents or the Guidelines, and all rights and remedies conferred by this Declaration shall survive such issuance.

In the event that the offending owner fails to remedy such noncompliance within the specified period the Committee shall notify the Board in writing of such failure. The Board shall, subject to the notice and hearing requirements of Section 7.2.1.2, have the right to remedy the noncompliance in any appropriate manner permitted by the Project Documents or otherwise permitted by law, or in equity, including but not limited to removing the noncomplying Improvement, or recording a notice of noncompliance on the property, as appropriate. The Owner shall have the obligation to reimburse the Master Association for any costs incurred in enforcing these provisions and if the Master Association is not reimbursed upon demand the Board shall have the right to Individually Charge the cost thereof to such Owner.

10.5. Waiver. The approval by the Committee of any plans, drawings, specifications of any Improvements constructed or proposed, or in connection with any matter requiring the approval of the Committee under the Project Documents shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter submitted for approval. Where unusual circumstances warrant it, the Committee may grant reasonable variances from the architectural control provisions hereof or from the Guidelines. Such variances shall be made on a case-by-case basis and shall not serve as precedent for the granting of any other variance.

10.6. Estoppel Certificate. Within thirty (30) days after written demand is delivered therefor to the Committee by any Owner or Mortgagee, and upon payment to the Master Association of a reasonable fee (as fixed from time to time by the Board), the Committee shall execute and deliver in recordable form, if requested, an estoppel certificate executed by any two (2) of its members, certifying, with respect to any portion of the Project, that as of the date thereof either (a) all Improvements made and other work done upon or within said portion of the Project comply with the Project Documents, or (b) such Improvements or work do not so comply in which event the certificate shall also identify the noncomplying Improvements or work and set forth with particularly the basis of such noncompliance. Such statement shall be binding upon the Master Association and Committee in favor of any person who may rely thereon in good faith.



10.7. Liability. Neither the Declarant, the Committee, the Board nor any member thereof shall be liable to the Master Association, any Maintenance Association, or to any Owner or to any third party for any damages, loss, prejudice suffered or claimed on account of (a) the approval or disapproval of such plans, drawings and specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, (c) the development of any portion of the Project, or (d) the execution and filing of an estoppel certificate pursuant to Section 10.6 or the execution and filing of a notice of noncompliance or noncompletion pursuant to Section 10.4.4, whether or not the facts therein are correct, if the Declarant, the Board, the Committee or such member has acted in good faith on the basis of such information as may be possessed by him. Specifically, but not by way of limitation, it is understood that with respect to plans and specifications neither the Committee, the members thereof, the Master Association, the Members, the Board nor Declarant assumes liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications.

## ARTICLE XI

### GENERAL PROVISIONS

11.1. Notices. Notices provided for in the Project Documents shall be in writing and shall be deemed sufficiently given when delivered personally or five (5) days after deposit in the United States mail, postage prepaid, addressed to an Owner at the last address such Owner designates to the Master Association for delivery of notices, or in the event of no such designation, at such Owner's last known address, or if there be none, at the address of the Owner's Unit. Notices to the Master Association shall be addressed to the address designated by the Master Association by written notice to all owners.

11.2. Notice of Transfer. No later than five (5) days after the sale or transfer of any Lot or Unit under circumstances whereby the transferee becomes the Owner thereof, the transferee shall notify the Master Association in writing of such sale or transfer. Such notice shall set forth: (i) the Lot or Unit involved; (ii) the name and address of the transferee and transferor; and (iii) the date of sale. Unless and until such notice is given, the Master Association shall not be required to recognize the transferee for any purpose, and any action taken by the transferor as an Owner may be recognized by the Master Association. Prior to receipt of any such notification by the Master Association, any and all communications required or permitted to be given by the Master Association shall be deemed duly given and made to the transferee if duly and timely made and given to such transferee's transferor.

11.3. Construction, Headings. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a planned community and for the maintenance of the Project. The Article headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

11.4. Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or provisions contained herein shall not invalidate any other provisions hereof.

11.5. Exhibits. All exhibits referred to are incorporated herein by such reference.

11.6. Easements Reserved and Granted. Any easements referred to in this Declaration shall be deemed reserved or granted as applicable, or both reserved and granted, by reference to this Declaration in a deed to any Lot.

11.7. Binding Effect. This Declaration shall inure to the benefit of and be binding on the successors and assigns of the Declarant, and the heirs, personal representatives, grantees, tenants, successors and assigns of any Owner.

11.8. Violations and Nuisance. Every act or omission whereby a covenant, condition or restriction of this Declaration is violated in whole or in part is hereby declared to be a nuisance ~~and may be enjoined or abated, whether or not the relief sought is~~ for negative or affirmative action, by Declarant, the Master Association or any Owner or Owners.

11.9. Violation of Law. Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any of the Project is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures herein set forth.

11.10. Singular Includes Plural. Whenever the context of this Declaration requires same, the singular shall include the plural and the masculine shall include the feminine.

11.11. Conflict of Project Documents. If there is any conflict among or between the Project Documents, the provisions of this Declaration shall prevail; thereafter, priority shall be given to Project Documents in the following order: Articles, Bylaws, Rules and Regulations of the Master Association and Architectural Control Guidelines.

11.12. Termination of Declaration. This Declaration shall run with the land, and shall continue in full force and effect for

a period of fifty (50) years from the date on which this Declaration is executed. After that time, this Declaration and all its covenants and other provisions shall be automatically extended for successive ten (10) year periods unless this Declaration is revoked by an instrument executed by Owners of not less than three-fourths (3/4) of the Lots and Units in the Project, and recorded in the official records of Bonner County within one year prior to the end of said 50-year period or any succeeding 10-year period.

## ARTICLE XII

### OPTION TO EXPAND

12.1. Option to Expand. Declarant hereby reserves the option to expand the Project without the prior consent of the Owners or the Master Association or any Maintenance Association at any time.

12.2. Property Subject to Option. The real property subject to this option consists of that Additional Land more particularly described on Exhibit "B" attached hereto or any other land that is located in Bonner County, Idaho. Declarant shall be permitted to add any or all portions of the Additional Land to the Project at any time, at different times, in any order, without limitation, except as set forth in this Article. This Declaration shall not be deemed to constitute any lien, encumbrance, restriction, or limitation upon any portion of the Additional Land until such portion is added to the Project in accordance with the provisions hereof. Declarant shall be permitted to amend Exhibit "B" hereto from time to time for the purpose of identifying areas of possible expansion, but such amendment shall not be deemed a dedication of any particular area nor shall it limit the ability of the Declarant to add other land to the Project that is not described therein.

12.3. Lots and Improvements. Declarant shall not be restricted in the location of Lots, Units, Common Areas or other improvements on the Additional Land or in the number of Lots or Units that may be created on the Additional Land, except as may be required by applicable zoning requirements. The Lots and Units to be located on the Additional Land shall be subject to the use restrictions contained in Article III, and the Structures and improvements to be built on the Additional Land shall be compatible with the Structures and improvements on the Property in terms of quality of construction and principal materials to be used. Declarant reserves the right to create additional Common Areas from the Additional Land without limitation, and the right to create Condominium Projects on one or more Lots, pursuant to the provisions of the Act. Declarant makes no assurances as to location, size, type or number of Lots, Structures, Units, Common Areas or other improvements to be created from the Additional Land, and any Structures, Units or other improvements to be built on the

Additional Land may, in the sole discretion of the Declarant, be dissimilar to the Structures, Units and Improvements on the Property.

12.4. Amendment of Lots. Until such time as any Lot in the Project shall be sold, Declarant shall have the right, at its sole discretion, to amend the Map and this Declaration for the purpose of altering the boundaries, changing the location, or increasing or decreasing the size of such Lot, including the right to include Additional Land, portions of unsold Lots and Common Areas in such Lot.

12.5. Consent of Owners. Each Owner, by the acceptance of a deed to a Lot or Unit in the Project, shall be deemed to have consented to all provisions of this Article XII, and does hereby appoint Declarant as such Owner's agent to execute amendments to the Declaration and the plat map, for the purposes of exercising Declarant's option to expand the Project or otherwise alter the boundaries, location and size of unsold Lots within the Project. The agency created hereby is limited to the purposes stated above and is non-revocable and constitutes a power coupled with an interest so long as Declarant shall be an owner of land within the Project. The agency hereby created shall be binding upon the heirs, executors, personal representatives, administrators, and assigns of Declarant and all Owners of Lots and Units within the Project. Provided, that if the Declarant is not the owner of record of the Additional Land at the time Declarant exercises its right to expand the Project, the Fee Title Holders' consent to such expansion shall be required.

12.6. Ownership of Lots. Except as provided in Section 12.7 below, after the filing for record of any amendment to this Declaration and an amended or supplemental map reflecting Declarant's exercise of the option to expand, title to each Lot or Unit thereby created within the Additional Land shall be vested in and held by Declarant, and none of the other Owners shall have any claim or title to or interest in such Lot or Unit.

12.7. Consent of Fee Title Holders. All or portions of the Additional Land are or may be titled in the Fee Title Holders. The Fee Title Holders by consenting to this Declaration have agreed that their interests in the Additional Land shall be subject to this Declaration from and after the date Declarant exercises its option under this Article XII, to the extent such exercise includes their real property. Notwithstanding the provisions of Section 12.6, Declarant shall not own any interest in the real property of the Fee Title Holders subjected to this Declaration except pursuant to a recorded conveyance from the Fee Title Holders to the Declarant.

## ARTICLE XIII

### AMENDMENT

13.1. Amendment by Declarant. Until sale of the first Lot, Declarant shall have the sole right to amend this Declaration. In addition, Declarant shall have the right to amend this Declaration and the Map for the Project, after sale of the first Lot, for the sole purpose of exercising its option to expand the Project and to alter the boundaries of unsold Lots as set forth in Article XII hereof.

13.2. Amendment After First Sale. After the first sale of a Lot, this Declaration shall be amended upon the vote or written assent of a majority of the total voting power of the Master Association and a majority of the total voting power of the Master Association other than Declarant; provided, however, that Declarant shall have the right to amend this Declaration and the Map for the sole purpose of exercising its option to expand the Project or to alter the boundaries of unsold Lots, as set forth above. All Owners shall execute any documents necessary to carry out the provisions of this Section 13.2.

13.3. Specific Provisions. The percentage of the voting power necessary to amend a specific clause or provision herein shall not be less than a percentage of affirmative votes prescribed for action to be taken under such clause or provision.

13.4. Amendment to Satisfy Other State Laws. Declarant or others may sell Lots in the Project to purchasers in several states. In the event that the Project documents do not comply with the requirements of any state in which Declarant intends to sell Lots, Declarant shall have the unilateral right, without the approval of the Board or of the Members, to amend the Project documents as necessary to conform to the requirements of the applicable state. In the event of conflict between this Section 13.4 and any other provision of Article XIII, this Section 13.4 shall control.

13.5. Amendment Instrument. An amendment shall become effective when it has received the required approvals and the Board has executed, acknowledged and recorded in the official records of Bonner County, an instrument expressing the amendment and certifying that the required approvals were received.

CONSENT OF FEE TITLE HOLDERS

The undersigned, being the owners of the real property described on Exhibits "A" and "B", hereby consent to the recording of the foregoing Declaration of Covenants, Conditions and Restrictions of the Schweitzer Mountain Community, an Expandable Planned Unit Development.

Jean O. Brown

Jean O. Brown

Barbara Jean Huguenin

Barbara Jean Huguenin

Jacqueline Graham Gran

Jacqueline Graham Gran

Josephine Helen Bopp

Josephine Helen Bopp

TRUSTEES FOR THE BENEFIT OF  
JOSEPHINE HELEN (BROWN) BOPP

Barbara Jean Huguenin

Barbara Jean Huguenin

Jacqueline Graham Gran

Jacqueline Graham Gran

THE ESTATE OF JAMES M. BROWN, JR.

Jean O. Brown

Jean O. Brown

Barbara Jean Huguenin

Barbara Jean Huguenin

Jacqueline Graham Gran

Jacqueline Graham Gran

TRUSTEES FOR THE BENEFIT OF PATRICIA  
ELEANOR (BROWN) BAILEY

Barbara Jean Huguenin  
Barbara Jean Huguenin

Jacqueline Graham Gran  
Jacqueline Graham Gran

PACK RIVER MANAGEMENT COMPANY,  
a Washington General Partnership

By Barbara Huguenin  
MANAGING PARTNER

STATE OF IDAHO           )  
                                  : ss.  
COUNTY OF BONNER    )

The foregoing instrument was acknowledged before me this 13<sup>th</sup>  
day of June, 1990, by Jean O. Brown.

Roberta A. Bostock

NOTARY PUBLIC

Residing at Sagle

STATE OF IDAHO           )  
                                  : ss.  
COUNTY OF BONNER    )

The foregoing instrument was acknowledged before me this 14<sup>th</sup>  
day of June, 1990, by Barbara Jean Huguenin.

Roberta A. Bostock

NOTARY PUBLIC

Residing at Sagle

STATE OF IDAHO           )  
                                  : ss.  
COUNTY OF BONNER       )

The foregoing instrument was acknowledged before me this 13<sup>th</sup>  
day of June, 1990, by Jacqueline Graham Gran.

Roberta A. Bostock  
NOTARY PUBLIC  
Residing at Sagle

STATE OF IDAHO           )  
                                  : ss.  
COUNTY OF BONNER       )

The foregoing instrument was acknowledged before me this 13<sup>th</sup>  
day of June, 1990, by Josephine Helen Bopp.

Roberta A. Bostock  
NOTARY PUBLIC  
Residing at Sagle

STATE OF IDAHO           )  
                                  : ss.  
COUNTY OF BONNER       )

The foregoing instrument was acknowledged before me this 14<sup>th</sup>  
day of June, 1990, by ~~Barbara Jean Huguenin and Jacqueline~~  
Graham Gran, Trustees for the Benefit of Josephine Helen (Brown)  
Bopp.

Roberta A. Bostock  
NOTARY PUBLIC  
Residing at Sagle

STATE OF IDAHO           )  
                                  : ss.  
COUNTY OF BONNER       )

The foregoing instrument was acknowledged before me this 14<sup>th</sup>  
day of June, 1990, by Jean O. Brown, Barbara Jean Huguenin  
and Jacqueline Graham Gran, on behalf of the Estate of James N.  
Brown, Jr.

Roberta A. Bostock  
NOTARY PUBLIC  
Residing at Sagle



STATE OF IDAHO           )  
                                  :ss.  
COUNTY OF BONNER       )

The foregoing instrument was acknowledged before me this 14<sup>th</sup>  
day of June, 1990, by Barbara Jean Huguenin and Jacqueline  
Graham Gran, Trustees for the Benefit of Patricia Eleanor (Brown)  
Bailey.

Roberta A. Bostock  
NOTARY PUBLIC  
Residing at Sagle

STATE OF IDAHO           )  
                                  :ss.  
COUNTY OF BONNER       )

The foregoing instrument was acknowledged before me this 11<sup>th</sup>  
day of June, 1990, by Barbara Huguenin,  
managing partner of Pack River Management Company, a Washington  
general partnership.

Roberta A. Bostock  
NOTARY PUBLIC  
Residing at Sagle

The undersigned, being the Declarant herein, has executed this Declaration on \_\_\_\_\_, 1990.

Resort Development, Inc.

By Barbara Huguenin  
Its President

STATE OF IDAHO           )  
                                  : ss.  
COUNTY OF BONNER    )

On this 14<sup>th</sup> day of June, 1990, personally appeared before me Barbara Huguenin, who being by me duly sworn, did acknowledge before me that she is the President of Resort Development, Inc., an Idaho corporation, and that the foregoing instrument was signed on behalf of said corporation by authority of its bylaws or a resolution of its Board of Directors, and said officer acknowledged before me that said corporation executed the same.

Roberta A. Bostock  
NOTARY PUBLIC  
Residing at Sagle

## EXHIBIT A

A parcel of land lying in a portion of Section 20, Township 58 North, Range 2 West, Boise Meridian, Bonner County, Idaho, more particularly described as follows:

Beginning at a point that is N 19°41'17" W a distance of 421.07 feet from the center of Section 20, said point being the initial point, thence N 85°18'42" W a distance of 100.00 feet, thence S 34°33'17" W a distance of 306.95 feet, thence S 26°37'07" W a distance of 307.09 feet, thence S 75°25'43" W a distance of 131.52 feet, thence S 75°00'00" W a distance of 0.91 feet, thence S 21°07'36" W a distance of 93.54 feet, thence around a curve to the left with a radius of 128.38 feet a distance of 162.04 feet (the chord of which bears S 15°02'02" E a distance of 151.49 feet) to a point of compound curvature, thence around a curve to the left with a radius of 185.40 feet a distance of 88.23 feet (the chord of which bears S 64°49'28" E a distance of 87.40 feet), thence S 78°27'24" E a distance of 61.93 feet, thence around a curve to the right with a radius of 551.05 feet a distance of 71.19 feet (the chord of which bears S 74°45'20" E a distance of 71.14 feet), thence S 71°03'15" E a distance of 142.29 feet, thence around a curve to the left with a radius of 165.00 feet a distance of 90.39 feet (the chord of which bears S 86°44'50" E a distance of 89.26 feet) to a point of compound curvature, thence around a curve to the left with a radius of 52.50 feet a distance of 136.15 feet (the chord of which bears N 3°15'55" E a distance of 101.08 feet), thence N 71°01'46" W a distance of 32.41 feet, thence N 67°53'31" W a distance of 96.03 feet, thence around a curve to the right with a radius of 160.00 feet a distance of 249.98 feet (the chord of which bears N 23°08'04" W a distance of 225.32 feet), thence N 74°03'02" W a distance of 9.88 feet, thence N 26°35'55" E a distance of 277.00 feet, thence N 39°26'58" E a distance of 265.69 feet, thence N 30°56'57" E a distance of 40.00 feet, thence N 00°00'00" E a distance of 60.00 feet to the initial point.

Also beginning at a point that is S 38°54'04" W a distance of 344.20 feet from the center of Section 20, thence S 22°14'21" W a distance of 120.00 feet, thence N 67°53'31" W a distance of 95.49 feet, thence around a curve to the right with a radius of 140.00 feet a distance of 95.04 feet (the chord of which bears N 48°26'42" W a distance of 93.23 feet), thence N 40°02'23" E a distance of 93.50 feet, thence S 67°53'31" E a distance of 154.88 feet to the point of beginning.

EXHIBIT B

Section 4S 1/2 SE, SESW

7E 1/2, NESW, E 1/2 NW, E 1/2 Gov't Lot 1

8A11

9A11

16A11

17A11

18E 1/2 E 1/2, E 1/2 SWSE

19A11

20NW, N 1/2 SW, W 1/2 NE, excluding the Crystal Springs  
Plat (Instrument No. 364825 Records of Bonner County)

The remaining land in Section 20 W 1/2 NE, SE, S 1/2 SW  
including the Crystal Springs plat are privately owned. They are  
however included in Exhibit "B" to allow those parcels to adopt  
these C.C. & R's if they desire.

21A11

22NW, SWNE, N 1/2 SW, SWSE

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29N 1/2 NW, NE