

Return to: Ogle & Worm, PLLP  
P.O. Box 899  
Kalispell, MT 59903

0005873

0005879

0005880

0005877

0005881

0005882

0005883

0005873

0005884

0005886

0005874

0005887

0005890

0005891

0005892

0005893

0005901

0005894

0005902

0005895

0005903

0005896

0005904

0005897

0005905

0005898

0005906

0005899 0005907



Debbie Pierson, Flathead County MT by DD

201600020045  
Page: 1 of 69  
Fees: \$483.00  
9/15/2016 2:53 PM

## DECLARATION OF COVENANTS, CONDITIONS EASEMENTS AND RESTRICTIONS FOR FAIRWAY PINES

---





## Table of Contents

|   |    |
|---|----|
| DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR FAIRWAY PINES.....   | 3  |
| RECITALS:.....  | 3  |
| ARTICLE I: DEFINITIONS .....  | 3  |
| ARTICLE II: PROPERTY SUBJECT TO DECLARATION.....  | 8  |
| ARTICLE III: EASEMENTS AND RIGHTS OF ENJOYMENT IN COMMUNITY AREAS AND ASSOCIATION SERVICES.....   | 9  |
| ARTICLE IV: LOT AND COMMUNITY AREA LAND USE RESTRICTIONS.....   | 10 |
| ARTICLE V: ORGANIZATION OF ASSOCIATION.....   | 17 |
| ARTICLE VI: MEMBERSHIPS AND VOTING .....  | 19 |
| ARTICLE VII: COVENANT FOR ASSESSMENTS AND CREATION OF LIEN .....  | 20 |
| ARTICLE VIII: ENFORCEMENT OF PAYMENT OF ANNUAL ASSESSMENTS, SPECIALASSESSMENTS, TOWNHOME MAINTENANCE ASSESSMENTS AND MAINTENANCE CHARGES AND OF ASSESSMENT LIEN | 23 |
| ARTICLE IX: USE OF FUNDS: BORROWING POWER; OTHER ASSOCIATION DUTIES .....   | 24 |
| ARTICLE X: MAINTENANCE .....  | 25 |
| ARTICLE XI: DESIGN REVIEW COMMITTEE .....   | 27 |
| ARTICLE XII: RIGHTS AND POWERS OF ASSOCIATION .....   | 29 |
| ARTICLE XIII: INSURANCE AND FIDELITY BONDS .....  | 30 |
| ARTICLE XIV: DAMAGE OR DESTRUCTION .....  | 32 |
| ARTICLE XV: CONDEMNATION .....  | 33 |
| ARTICLE XVI: MORTGAGEE REQUIREMENTS .....   | 33 |
| ARTICLE XVII: TERM: AMENDMENT& TERMINATION .....  | 34 |
| ARTICLE XVIII: MISCELLANEOUS .....  | 35 |



## DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR FAIRWAY PINES

THIS DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR Fairway Pines is made effective this \_\_\_\_ day of \_\_\_\_\_, 2015 by the undersigned owners of property in Fairway Pines.

### RECITALS:

A. Capitalized terms in this Declaration are defined in Article I.

B. Owners are the owners of a certain tracts and Lots of real property located in Flathead County, Montana, more particularly described in Article I hereof as Fairway Pines.

C. Fairway Pines possesses great natural beauty and the Owners intend to preserve this natural beauty through the terms of this Declaration. This Declaration is intended to provide comprehensive land planning, preservation of the natural environment and sensitive riparian areas, harmonious and appealing landscaping, improvements, and the establishment of a governing association known as Fairway Pines. This Declaration is designed to complement local governmental regulations, and where conflicts occur, the more restrictive requirements shall prevail.

D. Each Owner shall be an owner of a Lot as described in Article I and shall be a member of Fairway Pines.

E. By this Declaration, the Owners intend to establish a common scheme and plan for the possession, use, enjoyment, repair, maintenance, restoration, and improvement of property in Fairway Pines, and the interests therein conveyed and to establish thereon a planned unit development.

NOW, THEREFORE, it is hereby declared that the following described property in Fairway Pines, shall be subject to the following Declaration.

### ARTICLE I: DEFINITIONS

The following words, phrases or terms used in this Declaration (including that portion hereof headed 'Recitals') shall have the following meanings:

1. "Land (Lots and Community Land) Subject to this Declaration" shall mean, refer to, and consist of the following described parcels of real property situated in Flathead County, State of Montana:

Lot 1A of Harbor Village No. 7 0005873

Lot 1B of Harbor Village No. 7 0005874

Lot 3A of Harbor Village No. 8 0005877



|   |         |
|---|---------|
| Lot 3B of Harbor Village No. 8  | 0005873 |
| Lot 4A in Block 1 of the Amended Plat of Block 3 and Lots 1A through 16B in Block 1 of Harbor Village at Eagle Bend-Phase 3 | 0005879 |
| Lot 4B in Block 1 of the Amended Plat of Block 3 and Lots 1A through 16B in Block 1 of Harbor Village at Eagle Bend-Phase 3 | 0005880 |
| Lot 5A of the Amended Plat of Block 3 and Lots 1A through 16B in Block 1 of the Harbor Village at Eagle Bend-Phase 3        | 0005881 |
| Lot 5B in Block 1 of the Amended Plat of Block 3 and Lots 1A through 16B in Block 1 of Harbor Village at Eagle Bend-Phase 3 | 0005882 |
| Lot 6A in Block 1 of the Amended Plat of Block 3 and Lots 1A through 16B in Block 1 of Harbor Village at Eagle Bend-Phase 3 | 0005883 |
| Lot 6B in Block 1 of the Amended Plat of Block 3 and Lots 1A through 16B in Block 1 of Harbor Village at Eagle Bend-Phase 3 | 0005884 |
| Lot 7B of the Amended Plat of Block 3 and Lots 1A through 16B in Block 1 of Harbor Village at Eagle Bend-Phase 3            | 0005886 |
| Lot 8A in Block 1 of the Amended Plat of Block 3 and Lots 1A through 16B in Block 1 of harbor Village at Eagle Bend-Phease3 | 0005887 |
| Lot 9B of the Amended Plat of Block 3 and Lots 1A through through 16B in Block 1 of Harbor Village at Eagle Bend-Phase 3    | 0005890 |
| Lot 10A of the Amended Plat of Block 3 and Lots 1A through 16B in Block 1 of Harbor Village at Eagle Bend-Phase 3           | 0005891 |
| Lot 10B of the Amended Plat of Block 3 and Lots 1A through 16B in Block 1 of Harbor Village at Eagle Bend-Phase 3           | 0005892 |
| Lot 11A of the Amended Plat of Block 3 and Lots 1A through 16B in Block 1 of Harbor Village at Eagle Bend-Phase 3           | 0005893 |
| Lot 11B of the Amended Plat of Block 3 and Lots 1A through 16B in Block 1 of Harbor Village at Eagle Bend-Phase 3           | 0005894 |
| Lot 12A of the Amended Plat of Block 3 and Lots 1A through 16B in Block 1 of Harbor Village at Eagle Bend-Phase 3           | 0005895 |
| Lot 12B of the Amended Plat of Block 3 and Lots 1A through 16B in Block 1 of Harbor Village at Eagle Bend-Phase 3           | 0005896 |
| Lot 13A of the Amended Plat of Block 3 and Lots 1A through 16B in Block 1 of Harbor Village at Eagle Bend-Phase 3           | 0005897 |
| Lot 13B of the Amended Plat of Block 3 and Lots 1A through 16B in Block 1 of Harbor Village at Eagle Bend-Phase 3           | 0005898 |
| Lot 14A of the Amended Plat of Block 3 and Lots 1A through 16B in Block 1 of Harbor Village at Eagle Bend-Phase 3           | 0005899 |





|   |         |
|---|---------|
| Lot 14B of the Amended Plat of Block 3 and Lots 1A through 16B in Block 1 of Harbor Village at Eagle Bend-Phase 3 | 0005901 |
| Lot 15A of the Amended Plat of Block 3 and Lots 1A through 16B in Block 1 of Harbor Village at Eagle Bend-Phase 3 | 0005902 |
| Lot 15B of the Amended Plat of Block 3 and Lots 1A through 16B in Block 1 of Harbor Village at Eagle Bend-Phase 3 | 0005903 |
| Lot 16A of the Amended Plat of Block 3 and Lots 1A through 16B in Block 1 of Harbor Village at Eagle Bend-Phase 3 | 0005904 |
| Lot 16B of the Amended Plat of Block 3 and Lots 1A through 16B in Block 1 of Harbor Village at Eagle Bend-Phase 3 | 0005905 |
| Lot 17A of Block 1 of The Harbor Village at Eagle Bend-Phase 3  | 0005906 |
| Lot 17B of Block 1 of The Harbor Village at Eagle Bend-Phase 3  | 0005907 |

2. "Annual Assessment" shall mean the charge levied and assessed each year against each Lot and Owner pursuant to Article VII, Section 2, hereof.
3. "Articles" shall mean the Articles of Incorporation of the Association as the same may from time to time be amended or supplemented.
4. "Assessments" shall mean any of the following: the Annual Assessment and any Special Assessment.
5. "Assessment Lien" shall mean the lien created and imposed by Article VII.
6. "Assessment Period" shall mean the term set forth in Article VII, Section 7.
7. "Association" shall mean Fairway Pines, a Montana nonprofit mutual benefit corporation formed to administer and enforce the Covenants and to exercise the rights, powers and duties set forth in this Declaration, its successors and assigns.
8. "Association Land" shall mean such part or parts of Fairway Pines land, together with the buildings, structures and improvements thereon, which the Association now or hereafter owns in fee or in which the Association now or hereafter has a leasehold interest, for as long as the Association is the Owner of the fee or leasehold interest.
9. "Board" shall mean the Board of Directors of the Association.
10. "Bylaws" shall mean the Bylaws of the Association as the same may from time to time be amended or supplemented.
11. "Community Area," "Community Areas" and "Common Areas" shall mean all Fairway Pines land which the Owners, by this Declaration or other recorded instrument, make available for general use by Owners, and all land or right-of-way easements within Fairway Pines, including but not limited to the



Roadway System, and the pavilion, which are dedicated to the public or other governmental agency requires the Association to maintain.

12. "Community Expense Fund" shall mean and refer to the fund created or to be created pursuant to the provisions of Article VII of this Declaration to cover the Community Area maintenance expenses and capital expenses which together shall constitute the Community Expense Fund.

13. "Community Expense" shall mean and refer to those costs and expenses arising out of or connected with the maintenance and operation of Fairway Pines Community Areas and will be determined as part of the Annual Assessments made to Owners.

14. "Community Facilities" shall mean all current community facilities and future improvements, if any, constructed or located on Community Areas.

15. "Covenants" shall mean the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements set forth herein.

16. "Declaration" shall mean this DECLARATION OF COVENANTS, CONDITIONS EASEMENTS AND RESTRICTIONS FOR Fairway Pines, as amended or supplemented from time to time.

17. "Deed" shall mean a deed or other instrument conveying fee simple title in a Lot.

18. "Design Guidelines" means those design guidelines for development of all the real property subject to the Declaration as established by the Owners and/or the Design Review Committee from time to time. Owners or the Committee reserve the right to modify the Design Guidelines. There is no assurance that such guidelines will not change from time to time.

19. "Design Review Committee" or "Committee" shall mean the Committee created pursuant to Article XI below.

20. "Dwelling Unit" shall mean any building or portion of a building situated upon an Owner's Lot and designed and intended for use and occupancy as a residence by a Single Family.

21. "First Mortgage" means any Mortgage which is not subject to any lien or encumbrance except liens for taxes or other liens which are given priority by statute.

22. "First Mortgagee" means any person named as a Mortgagee under a First Mortgage, or any successor to the interest of any such person under a First Mortgage, which First Mortgage is not subject to any lien or encumbrance except liens for taxes or other liens which are given priority by statute.

23. "Improvements" shall mean the Dwelling Units and all other buildings, outbuildings, walkways, roads, driveways, utilities, exterior lighting, fences, walls, landscaping, fire breaks, trees, signs, fixtures, equipment and other improvements or facilities whether constructed upon a Lot or upon Community Areas.



24. "Landscaping" shall mean that portion of the Lot which is improved with lawn, ground cover, shrubbery, trees and the like and which may be complimented with earth berms, masonry, or similar materials, all harmoniously combined with other Improvements.
25. "Lease" shall mean a written lease or sublease for the leasing or rental of a Lot and/or Dwelling Unit
26. "Lot" shall mean any area of real property within the Fairway Pines Development designated as Townhome Lots. All Water Resources located on a Lot shall be subject to the exclusive control and regulation of the Association as provided for elsewhere herein.
27. "Maintenance Charges" shall mean any and all costs assessed pursuant to Article X, Sections 2 and 3.
28. "Manager" shall mean such person or entity retained by the Board of Directors to perform certain functions of the Board pursuant to this Declaration or the Bylaws.
29. "Member" shall mean any person holding a Membership in the Association pursuant to this Declaration.
30. "Membership" shall mean a membership in the Association and the rights granted to the Owners pursuant to Article VI to participate in the Association.
31. "Mortgage" shall mean any mortgage, deed of trust, or other document pledging any portion of a Lot or an interest therein as security for the payment of a debtor obligation.
32. "Mortgagee" shall mean a beneficiary of a Mortgage as well as a named Mortgagee.
33. "Municipal Authority" shall mean the applicable governmental entity or municipality which has jurisdiction over some part of Fairway Pines, including but not limited to Army Corps of Engineers.
34. "Municipal Authority Agreement(s)" shall mean any development agreement entered into between the Owners and a Municipal Authority.
35. "Neighboring Property" shall mean property adjacent to the Fairway Pines Development.
36. "Owner" shall mean (a) any person(s) or entity(s) who is (are) record holder(s) of legal, beneficial or equitable title to the fee simple interest of any Lot described in Article I Section 1 above, or any Lot which is subjected to these Covenants, Conditions, Easements and Restrictions hereafter, including, without limitation, one who is buying a Lot under a recorded contract, but excluding others who hold an interest therein merely as security and (b) any person(s) or entity(s) entitled to occupy all of a Lot under a lease.
37. "Plat" shall mean any subdivision plat affecting Fairway Pines filed in the office of the Recorder for Flathead County, Montana, as such may be amended from time to time, including but not limited to any such recorded plats respecting all or any portion of the Additional Land.
38. "Recording" shall mean placing an instrument of public record in the office of the County Recorder of Flathead County, Montana and "Recorded" shall mean having been so placed of public record.



39. "Resident" shall mean:

(a) Each Owner of, and each tenant or lessee actually residing on, a Lot and

(b) Members of the immediate family of each Owner, tenant or lessee referred to in subparagraph (a) actually living in the same household with such Owner, tenant or lessee.

Subject to such rules and regulations as the Association may hereafter specify (including the imposition of special non-resident fees for use of the Community Areas if the Association shall so direct), the term "Resident" also shall include the on-site employees, guests or invitees of any such Owner, tenant or leasee.

40. "Roadway System" shall mean the system of internal and neighboring roadways for Fairway Pines as which have been platted for the Fairway Pines Development. The roadways will be not less than twenty-four feet wide and shall comply with the applicable Municipal Authority road standards. The Roadway System is part of the Community Area.

41. "Rules" shall mean the rules for Fairway Pines, adopted by the Board pursuant to Article V, Section 3 and which shall include, without limitation, rules and regulations pertaining to fire protection of improvements at Fairway Pines.

42. "Single Family" shall mean a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of persons not all so related, who maintain a common household in a Dwelling Unit.

43. "Special Assessment" shall mean any assessment levied and assessed pursuant to Article VII, Section 4.

44. "Townhome Lot" shall mean each of the twin dwelling lots as shown on the Plat and/or the Master Development Plan.

45. "Visible From Neighboring Property" shall mean, with respect to any given object, that such object is or would be visible to a person six feet tall standing on Neighboring Property, on the level of the base of the object being viewed.

## **ARTICLE II: PROPERTY SUBJECT TO DECLARATION**

Section 1: General Declaration Creating Fairway Pines. The Owners hereby declare that all of the real property within Fairway Pines which is defined in Article I above is declared and shall be subject to this Declaration for the purpose of enhancing and perfecting the value, desirability and attractiveness of Fairway Pines, and every part thereof.

Section 2: Association Bound. These Covenants are binding upon and shall benefit the Association, and are binding upon and benefit all Owners, their heirs, personal representatives, successors and assigns.



### **ARTICLE III: EASEMENTS AND RIGHTS OF ENJOYMENT IN COMMUNITY AREAS AND ASSOCIATION SERVICES**

**Section 1: Easements of Enjoyment.** Subject to the limitations contained in this Article III and elsewhere in this Declaration, every Owner shall have a right and easement of enjoyment in and to the Community Areas which shall be appurtenant to and shall pass with the title to every Lot subject to the following provisions:

(a) **Suspension of Rights.** The right of the Association to suspend the voting rights and right to the use of the Community Areas by any Member (i) for any period during which any Assessment against its Lot remains delinquent (ii) for a period not to exceed 60 days for any infraction of this Declaration, the Fairway Pines Rules or the Design Guidelines, and (iii) for successive 60-day periods if any such infraction is not corrected during any prior 60-day suspension period.

(b) **Guest Limitations.** The right of the Association to impose reasonable limitations on the number of guests per Member, who at any given time are permitted to use the Community Areas.

(c) **Transfer of Association Land.** The right of the Association to dedicate or transfer all or any part of the Association Land to any public agency, Municipal Authority or utility for such purposes and subject to such conditions as may be agreed to by the Association. Unless otherwise required by zoning stipulations or any Municipal Authority Agreement with the applicable Municipal Authority effective prior to the date hereof or specified on a Plat, no such dedication or transfer shall be effective unless such action is approved by the Owners of sixty-seven percent (67%) of the Memberships agreeing to such dedication or transfer, except that the Board shall have authority to transfer to such public agencies, Municipal Authority or utilities, easements and rights-of-way which are intended to benefit Fairway Pines, and which do not have any substantial adverse effect on the enjoyment of the Community Areas by the Members.

(d) **Rules.** The right of the Association to regulate the use of the Community Areas through the Fairway Pines Rules. The Fairway Pines Rules shall be intended, in the absolute discretion of the Board, to enhance the preservation of the Community Areas and the safety and convenience of the users thereof, or otherwise shall serve to promote the best interests of the Owners and Residents. The Fairway Pines Rules may limit or prohibit the use of certain Community Areas as described in this Article III.

(e) **Limited Use Community Areas.** The right of the Association to restrict the use of the Community Area to Members of the Association and guests. The Association shall establish a committee of participating Members, who shall have the authority to establish specific rules and regulations for such limited use.

(f) **Municipal Authority Uses.** The right of the applicable Municipal Authority and any other governmental or quasi-governmental body having jurisdiction over Fairway Pines, to access and rights of ingress and egress over and across the Roadway System, any parking area, walkway, or open area contained within Fairway Pines Development, for purposes of providing police and fire protection and providing other governmental or municipal services.

Section 2: Reservation of Rights Regarding Utilities. The Owners and the Association reserve the right to grant non-exclusive and specific, as well as blanket easements, in, on, over, under and through Fairway Pines property, to private and public utility companies for all utility services and purposes. Each grantee of rights to use a utility easement shall be liable for damage to property or injury to persons arising from any use made by such grantee within the utility easement area to which the grantee has been granted rights. The Association reserves the right to abandon any easement or right of way which is no longer reasonably necessary for the proper functioning of the Fairway Pines Development.

Section 3: Easements for Encroachments. If any part of the Community Areas encroach upon a Lot, an easement for such encroachment and for the maintenance of the same shall and does exist, provided, however, except as otherwise prohibited or limited in this Declaration, each Owner shall have an unrestricted right of ingress or egress to and from its Lot.

Section 4: Declaration of Use. Each Member shall, in accordance with this Declaration and the Fairway Pines Rules, and the limitations therein contained, be deemed to have extended its right of enjoyment in the Community Areas to the members of its family, its tenants or lessees, its guests or invitees or to its tenant's family, guests or invitees.

Section 5: Errant Golf Ball Easement. Every Lot and the Community Area is burdened with an easement permitting golf balls unintentionally to come upon such Community Area, Lots and for golfers at reasonable times and in a reasonable manner to come upon the Community Area, or Lot to retrieve errant golf balls; provided, however, if any Lot is fenced or walled, the golfer shall seek the Owner's permission before entry. The existence of this easement shall not relieve golfers of liability for damage caused by errant golf balls. Under no circumstances shall any of the following Persons be liable for any damage or injury resulting from errant golf balls or the exercise of this easement: the Owners, the Association or its Members (in their capacity as such); any builder or contractor (in their capacities as such); any officer or director of any of the foregoing.

## **ARTICLE IV: LOT AND COMMUNITY AREA LAND USE RESTRICTIONS**

Section 1: Covenants, Conditions, Easements and Restrictions. The following covenants, conditions, restrictions and reservations of easements and rights shall apply to all Townhome Lots, the Owners and Residents, as applicable.

(a) Architectural Control. No improvements (whether temporary or permanent), landscaping, alterations, repairs excavation, grading or other work which in any way alters the exterior appearance of any property within Fairway Pines from its natural state existing on the date this Declaration is recorded shall be made or done without the prior approval of the Design Review Committee, except as otherwise expressly provided in this Declaration. No building, fence, wall, Dwelling Unit or other Improvement shall be commenced, erected, maintained, improved, altered or made without the prior written approval of the Design Review Committee. All subsequent additions to or changes or alterations in any building, fence, Dwelling Unit or other Improvement, including exterior color scheme, and all changes in the grade of Lots, shall be subject to the prior written approval of the Design Review Committee. No



changes or deviations in or from the plans and specifications once approved by the Design Review Committee shall be made without the prior written approval of the Design Review Committee.

(b) Additional Requirements of Design Guidelines. Notwithstanding the specific enumeration of certain requirements with respect to construction activities with respect to Lots, each Owner shall be subject to all of the provisions of the Design Guidelines and all requirements of the Design Review Committee.

(c) Set Backs. In the event of a needed replacement, no Dwelling Unit or other structure shall be situated or constructed on any of the Lots except in conformity with the "Set Back" requirements as established by the Flathead County Zoning Regulations which shall be in conformity with any set back lines shown on the Plat.

(d) Fencing. New fencing will require approval by the Design Review Committee and shall be maintained by the owner of the lot, but in no case shall a fence be installed between attached townhomes unless the unit is susceptible to exceptional golf balls landing on the patio.

(e) Basements. Due to the elevation of the water table, basements shall not be permitted in any Dwelling Unit.

(f) Animal Regulations.

(i) No animals, livestock, reptiles, insects, poultry or other animals of any kind, shall be kept on any Lot except that usual and ordinary domestic dogs, cats, fish, and birds inside bird cages, may be kept as household pets on any Lot provided that they are not kept, bred, or raised therein for commercial purposes or in unreasonable quantities or sizes.

(ii) As used in this Declaration, "unreasonable quantities" shall ordinarily mean more than two (2) pets per Lot provided the Board may determine in its sole discretion that a reasonable number of pets in a given situation may be more or less than two.

(iii) The Board shall have the right to prohibit the maintenance of any animal which constitutes, in the opinion of the Board, a nuisance to any other Owner.

(iv) Animals belonging to Owners, Residents, or their licensees, tenants or invitees, within the Fairway Pines Development must be kept on a leash held by a person capable of controlling the animal. Leashing an animal to permanent structure such as a stake, tree, rock or structure is prohibited to avoid damage to lawns and landscaping and to insure safe access for landscaping personnel.

(v) Any Owner shall be liable to each and all remaining owners, their families, guests and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon a Lot by such Owner or by such Owner's family, tenants, or guests. Each Owner shall be responsible to clean-up after their animals that have soiled the Property or any public street abutting the Property.

(g) Common Walls. Townhome Units share a common wall with other adjoining Townhome Units. Each wall which is built as part of the original construction (or reconstruction) of the Townhome Units upon the Townhome Lots and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. The cost of reasonable repair and maintenance of a party wall shall be shared equally by the Owners who make use of the wall. If a party wall is destroyed or damaged by fire or other casualty, the provisions of Article XIV hereof shall apply. Notwithstanding any other provision of this Section 1 of Article IV, an Owner who by his negligent or willful act causes a party wall to be damaged shall bear the entire cost of furnishing repairs to the party wall. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title. In the event of any dispute arising concerning a party wall, or under the provisions of this Section, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

(h) Landscaping of Townhome Lots. The standard landscaping of the Townhome Lots shall be maintained by the Association all in accordance with the Design Guidelines, annual maintenance plan and annual budget. The cost thereof shall be included in the Townhome Expenses borne by the Owners of Townhome Lots collectively in accordance with Article VII, Section 3 hereof. In the event that the need for maintenance or repair of the Townhome Lot Landscaping is caused through the willful or negligent acts of its Owner or through the willful or negligent acts of the family, guests, or invitees of the Owner of the Townhome Lot needing such maintenance or repair, the cost of such exterior maintenance shall be a Maintenance Charge assessed to the Owner of the particular Townhome Lot. Custom or special landscaping on a Townhome Lot shall be maintained by the owner who installs the landscaping.

(i) Nuisances: Maintenance Activities. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or Community Area or on any homeowner's patio, and no odors or loud noises shall be permitted to arise or emit there from, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No other nuisance shall be permitted to exist or operate upon any Lot or Community Area so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Normal maintenance activities and parking in connection with maintenance activities on a Lot or Community Area shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots shall be kept in a neat and tidy condition during maintenance periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials will be piled only in such areas as may be approved by the Design Review Committee. In addition, any equipment and building materials stored or kept on any maintenance activity may be kept only in areas approved by the Design Review Committee, which may also require screening of the storage areas. The Design Review Committee in its sole discretion shall have the right to determine the existence of any such nuisance.

(j) Diseases and Insects. No Owner shall permit anything or condition to exist upon any Lot which shall induce, breed or harbor infectious plant and animal diseases or noxious insects.



(k) Maintenance and Repair of Improvements on Lots. No Improvements on any Lot shall be permitted to fall into disrepair and each such Improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any Improvement is damaged or destroyed, then, subject to the approvals required by Subsection 1(a) above, such Improvements shall be immediately repaired, rebuilt or demolished

(l) Antennas. Except as otherwise permitted by applicable law, no antenna, satellite receiving station or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors on any Lot, whether attached to a building or structure or otherwise, unless approved by the Design Review Committee. No towers, exposed or outside radio, television or other electronic antennae, shall be allowed or permitted to remain on any Lot. It is recommended that lightning rods be installed on all Dwelling Units and related structures. Satellite dishes shall be no more than 24 inches and no more than one satellite dish may be placed on any building so as not to be obtrusive to neighbors, as determined by the Design Review Committee.

(m) Mineral Exploration. No Lot shall be used in any manner to explore for or to remove any oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind.

(n) Trash Collection and Removal. No garbage or trash shall be placed or kept on any Lot or Community Area. All rubbish, trash and garbage shall be removed regularly from the Lots by Owners and shall not be allowed to accumulate thereon. Provided, however, the Association reserves the right to contract for garbage pickup either from Lots or from other pick-up locations for all of Fairway Pines and treat the cost thereof as a Community Expense.

(o) Clothes Drying Facilities. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Lot.

(p) Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except (i) such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of a building, appurtenant structures, or other improvements; or (ii) that which Owners or the Association may require for the operation and maintenance of Fairway Pines.

(q) Signs. No signs whatsoever (Including, but not limited to political and similar signs) which are visible From Neighboring Property shall be erected or maintained on any Lot except pursuant to the Design Guidelines and except:

(i) Signs required by legal proceedings

(ii) Not more than two (2) identification signs for individual Dwelling Units, each conforming to the Design Guidelines

(iii) Signs (including "for sale" and "for lease" signs) the nature, number and location of which have been approved in advance and in writing by the Design Review Committee

(r) Restriction on Further Subdivision, Property Restrictions and Rezoning. No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner. And no portion less than all of any such Lot, nor any easement or other interest therein, shall be conveyed or transferred by any Owner. No further covenants, conditions, restrictions or easements shall be recorded by any Owner or other person against any Lot without the provisions thereof having been first approved in writing by the Design Review Committee and any covenants, conditions, restrictions or easements recorded without such approval being evidenced thereon shall be null and void. No application for rezoning of any Lot, and no applications for variances or use permits, shall be filed with a Municipal Authority unless the proposed use of the Lot complies with this Declaration and the Owner obtains the prior written consent of the Design Review Committee.

(s) Utility Easements. There is hereby created a blanket easement upon, across, over and under each Lot and the Community Area for ingress to, egress from, and the installation, replacing, repairing and maintaining of, all utility and service lines and systems, including, but not limited to gas, telephone, electricity, television cable or communication lines and systems, etc., as such utilities may be installed. Pursuant to this easement, a providing utility or service company may install and maintain facilities and equipment on the property and affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of Improvements on the Lots. Notwithstanding anything to the contrary contained in this Subsection, no electrical lines or other utilities or service lines may be installed or relocated on any Lot except as initially programmed and approved by the Declarant or the Design Review Committee. No lines, wires or other devices for the communication or transmission of electric current or power, including telephone, television and radio signals, and cable information highways, shall be erected, placed or maintained anywhere in or upon any Lot unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on Improvements or other structures as approved by the Declarant or the Design Review Committee, except for:

(i) Overhead power poles and lines along Holt Drive, and

(ii) Boxes on the ground for electrical or communication connections, junctions, transformers and other apparatus customarily used in connection with such underground lines, wires and other devices, and

(iii) Such above ground electrical apparatus as may be convenient or necessary reasonably on the well sites for the operation of any pumps and wells.

(t) Utility Charges. Each Owner shall pay for all applicable hook-up fees, service charges and other charges on utility services which are separately billed or metered to a Dwelling Unit by the utility or other party furnishing such service. The Association is to pay for all electric, gas, telephone and other utility charges for the Community Areas and Community Area Improvements.

(u) Notice of Intended Conveyances. It shall be the duty and responsibility of an Owner who has entered into an agreement to convey a Lot to notify the Association in writing prior to the conveyance being completed:

- (i) To facilitate the collection by the Association of any Assessments, fees or other amounts due under the provisions of this Declaration.
- (ii) To permit the Association to review its files and to inspect the Lot to assure compliance with this Declaration, the Design Guidelines and the Fairway Pines Rules.
- (iii) To review permits issued by the Association which must be corrected or updated prior to or in connection with the conveyance.

The notice shall state the name and address of the proposed transferee. If the notice required by this Section is not given, the title conveyed shall be subject to all claims and charges of the Association existing prior to the conveyance, whether or not the transferee had actual notice thereof, and the transferee shall be responsible to the Association for outstanding fees and other charges and for correcting any violations of this Declaration, the Design Guidelines, Fairway Pines Rules or permits issued by the Association.

(v) Additional Improvements. In the event the Association is required by a Municipal Authority to develop additional Improvements, all Owners shall proportionately share the development expenses, costs and charges. Said proportionate share shall be calculated on a per Lot basis, and shall be due thirty (30) days prior to construction.

(w) Trucks, Trailers, Campers and Boats. No motor vehicle classed by manufacturer rating as exceeding 3/4-ton, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, boat, boat trailer or other similar equipment or vehicle may be parked, used as a living unit, maintained, constructed, reconstructed or repaired on any Lot in Fairway Pines Home Development, so as to be visible from Neighboring Property. Motor homes may temporarily park in front of a unit for no more than 48 hours for loading and unloading purposes.

(x) Motor Vehicles. No automobile, motorcycle, motorbike or other motor vehicle shall be constructed, reconstructed or repaired upon any Lot in Fairway Pines Development and no inoperable vehicle may be stored or parked on any such Lot so as to be Visible From Neighboring Property or to be visible from Community Areas; provided, however, that the provisions of this Section shall not apply to: (i) emergency vehicle repairs; (ii) temporary construction of any improvement approved by the Design Review Committee; and (iii) vehicles parked in garages. All vehicles operated in Fairway Pines shall be properly licensed, inspected and maintained so as not to create a dangerous situation, become a nuisance, nor emit unreasonable smoke, oil or noise. Motorized vehicles may not be operated in any manner which could cause unreasonable damage or harm to the natural environment and landscape of Fairway Pines property, provided, however, golf carts may also be operated on the Roadway System. Inoperative vehicles may not be parked on the Roadway System. Garage doors shall not be left open overnight. The Design Review Committee shall have the power to restrict the use of any vehicle which may create any nuisance. All drivers of vehicles must be legally licensed. All motorized vehicles shall be restricted to the Roadway System and designated pathways except where a motorized vehicle may be necessary for maintenance of Fairway Pines. All vehicles of owners shall be parked in garages or on the

driveway of the residence of the owner. No vehicles shall be parked on sidewalks at any time and no vehicles shall be parked on the roadways overnight.

(y) Drainage. No Owner or Resident shall interfere with or obstruct the drainage pattern over its Lot from or to any other Lot as that pattern may exist as of the date of recording this Declaration or as may be established by Declarant.

(z) Right of Entry. During reasonable hours and upon reasonable notice to the Owner or other occupant of a Lot, any member of the Design Review Committee, any member of the Board or any authorized representative of either of them, shall have the right to enter upon and inspect any Lot, and the improvements thereon, except for the interior portions of any completed Dwelling Unit for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with and such persons shall not be deemed guilty of trespass by reason of such entry.

(aa) Health, Safety and Welfare. In the event additional uses, activities and facilities are deemed by the Design Review Committee to be a nuisance or to adversely affect the health, safety or welfare of owners and Residents, the Design Review Committee may make rules restricting or regulating their Presence on Fairway Pines, as part of the architectural rules and guidelines.

(ab) Leases. In order to prevent transient occupancy of Lots and/or Dwelling Units, any lease agreement between an Owner and a lessee respecting a Lot or Dwelling Unit shall be in writing and shall be subject in all respects to the provisions of this Declaration, the Articles and Bylaws. Owners are to provide a copy of the Declaration of Covenants, Conditions, Easements and Restrictions for Fairway Pines and are to review this document with the lessee. No lease shall be for a period of less than one (1) month. Any failure by the lessee to comply with the terms of such documents shall be a default under the lease. Copies of all such lease agreements shall be furnished to the Association prior to commencement of the Lease term. Other than the foregoing, there is no restriction on the right of any Owner to lease its Lot or Dwelling Unit. Owners shall be responsible to insure that their lessees comply with all the terms and provisions of this Declaration and such Owners shall pay any expense incurred by the Association as a result of their lessees' failure to comply.

(ac) Wildlife Harassment. Any harassing of wildlife which may live on the lands or in the waters within or near Fairway Pines is prohibited. Owners and Residents shall be responsible for their pets, children and guests complying with this provision.

(ad) Pollution. In the interest of public health and sanitation, and so that Fairway Pines, may be benefited by a decrease in hazards of stream pollution and fire, and by the protection of water supplies and wildlife, no Owner shall use any Lot for any purpose that would result in the pollution of any waterway that flows through or adjacent to such Lot or Community Areas by refuse, sewage or other material that might tend to pollute the water of any such stream or streams or otherwise impair the ecological balance of the surrounding lands.

(ae) No Hazardous Activities. No hazardous activities shall be conducted on any Lot or the Community Areas. No open fires shall be lighted or permitted on a Lot or the Community Areas, but fires shall be

permitted on a Lot only in a contained barbecue unit well attended and in use for cooking purposes or within a safe and well-designed fireplace or fire pit.

(af) No Annoying Lights, Sounds or Odors. No light shall be omitted from any Lot or Dwelling Unit which is not shielded or above the eave line and which is unreasonably bright or causes unreasonable glare. No sound shall be emitted from any Lot or Dwelling Unit which is unreasonably loud or annoying including but without limitation, speakers, horns, whistles, bells or other sound devices, with the exception of security devices and/or fire alarms used exclusively to protect any of the property or Dwelling Units. No odors shall be emitted from any Lot or Dwelling Unit which are noxious or offensive to others.

(ag) Residential Use. Fairway Pines, is exclusively restricted to residential uses and those related uses permitted under this Declaration. No business or industry shall be conducted on a Lot except as expressly permitted hereunder. Use of a portion of a Dwelling Unit as a business office or for other business purposes may be allowed only as such terms and conditions as the Board may determine.

(ah) Illegal Activities. No Owner shall Permit any use of a Lot or Community Area in violation of any applicable Municipal Authority ordinance, or other law or regulation to which Fairway Pines, is subject

(ai) Disclaimer Regarding Fire and Police Protection. Each Owner who purchases a Lot acknowledges that Fairway Pines is located in an area of Flathead County, Montana, where the level of police and fire protection, as well as other public services, is less than would be available in a more populated or more highly developed area. Each Owner assumes the risk of less responsive municipal services including police protection, fire protection and delivery of emergency medical services. Neither the Association nor the Declarant shall have any liability to the Owners and Residents as a result of any delay or failure of any person or entity to provide adequate or timely fire protection, police protection, emergency medical and other similar services to the Owners.

Section 2: Variances. Subject to the provisions of the Design Guidelines, the Design Review Committee may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article or if the Design Review Committee determines in its discretion (a) either (i) that a restriction would create an unreasonable hardship or burden on an Owner or (ii) that a change of circumstances since the recordation of this Declaration has rendered such restriction obsolete and (b) that the activity permitted under the variance will not have any material adverse affect on the Owners and Residents of Fairway Pines and is consistent with the high quality of life intended for Owners and Residents of Fairway Pines.

## **ARTICLE V: ORGANIZATION OF ASSOCIATION**

Section 1: Formation of Association. The Association shall be a nonprofit Montana corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws and this Declaration. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

Section 2: Board of Directors and Office. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws as the same may be amended from time to time. The Board shall be composed of three (3) members. The Board may also appoint various committees and appoint a Manager who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association. The Board shall determine the compensation to be paid to the Manager. The Board's responsibilities shall include, but shall not be limited to, the following:

- (a) administration, including administrative support as required for the Design Review Committee;
- (b) preparing and administering an operational budget;
- (c) establishing and administering an adequate reserve fund;
- (d) scheduling and conducting the annual meeting and other meetings of the Members;
- (e) collecting and enforcing the assessments;
- (f) performing accounting functions and maintaining records;
- (g) promulgation and enforcement of the Fairway Pines Rules (but not the Design Guidelines);
- (h) maintenance of the Community Areas; and
- (i) all the other duties imposed upon the Board pursuant to this Declaration, the Bylaws, the Articles and the Fairway Pines Rules.

Section 3: The Fairway Pines Rules. By a majority vote, the Board may, from time to time and subject to the provisions of this Declaration, adopt amend and repeal rules and regulations to be known as the Fairway Pines Rules. Fairway Pines Rules may restrict and govern the use of any area by any Owner or Resident provided, however, that the Fairway Pines Rules shall not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or the Bylaws.

Section 4: Personal Liability. No member of the Board or of any committee of the Association (including but not limited to the Design Review Committee), no officer of the Association and no Manager or other employee of the Association shall be personally liable to any Member or to any other person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board, the Manager, any representative or employee of the Association or any committee, committee member or officer of the Association; provided, however, the limitations set forth in this Section 4 of Article V shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct.

Section 5: Professional Management. The Association may carry out through the Manager those of its functions which are properly subject to delegation. The Manager so engaged shall be an independent contractor and not an agent or employee of the Association, shall be responsible for managing Fairway



Pines for the benefit of the Association and the Owners, and shall, to the extent permitted by law and by the terms of the agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association itself.

## **ARTICLE VI: MEMBERSHIPS AND VOTING**

**Section 1: Owners of Lots.** Membership in the Corporation shall be open to anyone who owns property in the Fairway Pines Development, Bigfork, Montana. The Board of Directors may, but shall not be required to, impose dues for membership. Each such Owner shall have one Membership for each Lot owned by the Member. Upon recordation of this Declaration, there are thirty four (34) Lots in the Fairway Pines area, thirty two (32) of which shall initially be members of Fairway Pines. Each such Membership shall be appurtenant to and may not be separated from Ownership of the Lot to which the Membership is attributable. There shall be only one Membership for each Lot which Memberships shall be shared by any joint owners of or owners of undivided interests in a Lot.

**Section 2. Right to Vote.** No change in the ownership of a Membership shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided satisfactory proof thereof. The vote for each such Membership must be cast as a unit; fractional votes shall not be allowed. In the event that a Membership is owned by more than one person or entity and such Owners are unable to agree among themselves as to how their vote or votes shall be cast, their vote on the matter in question shall be determined by majority vote of such Owners. If any Member casts a vote representing a certain Membership, it will thereafter be conclusively presumed for all purposes that such Member was acting with the authority and consent of all other owners of the same Membership unless objection thereto is made at the time the vote is cast. The right to vote will also require that the Member is current with all Assessments and that all billed Assessments have been paid in full.

**Section 3. Membership Rights.** Each Member shall have the rights, duties and obligations set forth in this Declaration and such other rights, duties and obligations as are set forth in the Articles and Bylaws, as the same may be amended from time to time.

**Section 4: Transfer of Membership.** The rights and obligations of the owner of a Membership in the Association shall not be assigned, transferred, pledged, designated, conveyed or alienated in any way except upon transfer of ownership to an Owner's Lot and then only to the transferee of ownership to the Lot. A transfer of ownership to a Lot may be affected by deed, intestate succession, testamentary disposition, foreclosure of a Mortgage or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Montana. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Lot shall operate to transfer the Membership(s) appurtenant to said Lot to the new Owner thereof.

## **ARTICLE VII: COVENANT FOR ASSESSMENTS AND CREATION OF LIEN**

**Section 1: Creation of Lien and Personal Obligation of Assessments and Maintenance Charges.** Each Owner by acceptance of a deed or other conveyance of a Lot (whether or not it shall be so expressed in such deed or conveyance) is deemed to covenant and agree, to pay to the Association the following assessments and charges: Annual Assessments established by this Article VII and Special Assessments for capital improvements or other extraordinary expenses or costs established by this Article VII. All such Assessments shall be established and collected as hereinafter provided. The Annual Assessments, Special Assessments and Maintenance Charges, together with interest, costs and reasonable attorney's fees, shall be a charge on the Lot and shall be a continuing servitude and lien upon the Lot against which each such Assessment is made. The Annual and Special Assessments against each Lot shall be based on a pro rata share per Lot as described in Section 4 hereof. Townhome Maintenance Assessments against each Townhome lot shall be based on a pro rata share per Townhome Lot as described in Section 4 hereof. Townhome Assessments shall be established and collected for each Townhome Lot based upon the procedures established in Section 4 hereof. Each such Annual and Special Assessment, Townhome Maintenance Assessment (where applicable) and Maintenance Charge, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of the Lot at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them.

**Section 2: Annual Assessments.** Annual Assessments shall be computed and assessed against all Lots as follows:

(a) **Community Expenses.** Annual assessments shall be based upon advance estimates of the Association's cash requirements to provide for payment of all estimated expenses arising out of or connected with the maintenance and operation of the Community Areas and operating the Association. Such estimated expenses may include, without limitation, the following; expenses of management, and special assessments (unless and until the Lots are separately assessed); premiums for all insurance that the Association is required or permitted to maintain hereunder; repairs and maintenance to Landscaping on Townhome Lots, paint and stain of Townhome Units, or Landscaping on Townhome Lots; wages of Association employees, including fees for a Manager; utility charges; legal and accounting fees; any deficit remaining from a previous period; creation of an adequate contingency reserve, major maintenance reserve and/or sinking fund; creation of an adequate reserve fund for maintenance, repairs, and replacement of those Community Areas; and any other expenses and liabilities which may be incurred by the Association for the benefit of the Members under or by reason of this Declaration. Such shall constitute the Community Expense, and all funds received from assessments under this Section 2(a) shall be part of the Community Expense Fund. Three separate and distinct funds shall be created and maintained hereunder, one for operating expenses, one for paint reserve and one for community area maintenance.

(b) **Apportionment.** Community Expenses shall be apportioned equally among and assessed to Owners of all Lots subject to this Declaration of Covenants, Conditions, Easements and Restrictions.



(c) Annual Budget. Annual Assessments shall be determined on the basis of a fiscal year beginning January 1 and ending December 31 next following, and, on or before November 1 of each year thereafter, the Board shall prepare and furnish to each Member, or cause to be prepared and furnished to each Member, an operating budget for the upcoming fiscal year. The budget shall itemize the estimated Community Expenses for such fiscal year, anticipated receipts (if any) and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the Annual Assessment for the upcoming fiscal year and as the major guideline under which the Fairway Pines as shall be operated during such annual period.

(d) Notice and Payment. Except with respect to the first fiscal year, the Board shall notify each Owner in writing as to the amount of the Annual Assessment against his or her Lot on or before December 1 each year for the fiscal year beginning on January 1 next following. Except as otherwise provided by the Board, each Annual Assessment shall be payable in four equal quarterly installments, one such installment due on the first day of each quarter during the fiscal year to which the assessment relates; provided, however, the Annual Assessment for the first fiscal year shall be based upon such portion of the first fiscal year remaining from and after the date an Owner signs an agreement to purchase a Lot. All unpaid installments of any Annual Assessment shall bear interest at the rate established by the Board not to exceed eighteen percent (18%) per annum fifteen (15) days after the date each such installment became due until paid and the Member shall be liable for all costs, including attorneys' fees incurred by the Association in collecting the same. In addition, in the event that any installment of the Annual Assessment is not paid within fifteen (15) days of the date such installment becomes due, the Association may, at its option, and upon fifteen (15) days prior written notice to the Member, accelerate the due date for all remaining unpaid installments of the Annual Assessment for the remainder of the fiscal year and all accrued but unpaid interest thereon. Payment of the Annual Assessment installments so accelerated shall be due at the expiration of said fifteen (15) day notice period and interest shall accrue on the entire sum at the rate established by the Board not to exceed eighteen percent (18%) per annum from such date until paid in full. The failure of the Board to give timely notice of any Annual Assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Member from the obligation to pay such assessment or any other assessment but the date when the payment shall become due in such case shall be deferred to a date fifteen (15) days after notice of such assessment shall have been given to the Member in the manner provided in this Declaration.

(e) Inadequate Funds. In the event that the Community Expense Fund proves inadequate at any time for whatever reason, including nonpayment of any Member's assessment, the Board may, on behalf of the Association, levy special Assessments in accordance with the procedure set forth in Article VII, Section 4 below, except that the vote therein specified shall be unnecessary.

Section 3: Uniform Rate of Assessment. The amount of any Annual or Special Townhome Maintenance Assessment against each Townhome Lot shall be fixed at a uniform rate per Townhome Lot.

Section 4: Special Assessments for Capital Improvements and Extraordinary Expenses. In addition to the Annual Assessments, Townhome Maintenance Assessments authorized above, the Association may levy,

in any Assessment Period, a Special Assessment applicable to that period only for the purpose of defraying in whole or in part, extraordinary expenses, provided that any such assessment shall have the assent of sixty-seven percent (67 %) of the votes of Members who are voting in person or by proxy at a meeting duly called for such purpose or by written approval of sixty-seven percent (67%) of Members (provided that Special Assessments applicable only to the Townhome Lots shall only be payable by the Townhome Owners collectively and shall require the vote or written assent of sixty-seven percent (67%) of the Owners of affected Townhome). The provisions of this Section are not intended to preclude or limit the assessment, collection or use of Annual Assessments, Townhome Maintenance Assessments for the aforesaid purposes.

Section 5: Notice and Quorum for Any Action Authorized Under Section 6. Written notice of any meeting called for the purpose of taking any action authorized under Section 4 of this Article shall be sent to all Members no less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast twenty-five percent (25 %) of all the votes (exclusive of suspended voting rights) of Membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6: Establishment of Assessment Period. The period for which the Annual Assessments are to be levied (the "Assessment Period") shall be the calendar year. The Board in its sole discretion from time to time may change the Assessment Period by written notice to the Owners specifying the new Assessment Period.

Section 7: Rules Regarding Billing and Collection Procedures. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making the Assessments provided herein and for the billing and collection of the annual Assessments, pursuant to Article X, Section 2, 3, 4, 5 and 6, provided that said procedures are not inconsistent with the provisions hereof. The failure of the Association to send a bill to a Member shall not relieve any Member of its liability for any Assessment or charge under this Declaration, but the Assessment Lien therefore shall not be foreclosed or otherwise enforced until the Member has been given not less than fifteen (15) days written notice prior to such foreclosure or enforcement, at the address of the Member on the records of the Association, that the Assessment or any installment thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after the delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Membership changes during an Assessment Period; successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners. In case the Owner of a Membership becomes liable for payment of an increased sum pursuant to this Article during the Assessment Period, the Owner shall notify the Association but its failure to notify the Association shall not relieve such Owner of the liability for such amounts.

Section 8: Reserves. From the Annual Assessment, the Board shall set aside sufficient reserves to: (i) provide for the expense of periodic painting and staining of the exterior of Member's townhomes as scheduled by the Board (the "Paint Fund"); and (ii) provide for the Association's pro rata share of the expense of maintaining and repairing the Roadway System (the "Road Reserve")

Section 9: Evidence of Payment of Assessments. Upon receipt of a written request by a Member or any other person, the Association within a reasonable period of time thereafter shall issue to such Member or other person a written certificate stating (a) that all Assessments (including interest, costs and attorneys' fees, if any, as provided in Sections 2 and 3 above) have been paid with respect to any specified Lot as of the date of such certificate, or (b) if any Assessments have not been paid, the amount of such Assessments (including interest, costs and attorneys' fees, if any) due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates, which charges must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matter therein stated as against any bona fide purchaser of, or Mortgagee on, the Lot in question.

## **ARTICLE VIII: ENFORCEMENT OF PAYMENT OF ANNUAL ASSESSMENTS, SPECIAL ASSESSMENTS AND OF ASSESSMENT LIEN**

Section 1: Association as Enforcing Body. The Association, as the agent and representative of the Members, shall have the exclusive right to enforce the provisions of this Declaration. However, if the Association shall fail or refuse to enforce this Declaration or any provision hereof for an unreasonable period of time after written request to do so, then any Member may enforce them at its own expense by any appropriate action, whether in law or in equity.

Section 2: Association's Remedies to Enforce Payment of Annual Assessments and Special Assessments. If any Member fails to pay any Assessment the Association may enforce the payment of any Assessment, and/or Assessment Lien by taking either or both of the following actions, concurrently or separately (and by exercising either of the remedies hereinafter set forth, the Association does not prejudice or waive its right to exercise the other remedy):

(a) Bring an action at law and recover judgment against the Member personally obligated to pay the Assessments. (b) Foreclose the Assessment Lien against the Lot in accordance with the then prevailing Montana law relating to the foreclosure of trust indentures (including the right to recover any deficiency) including by judicial action or by advertisement or any other means permitted by law, and the Lot may be redeemed after foreclosure sale if provided by law.

Notwithstanding subordination of an Assessment Lien as described in Section 3 of this Article VIII, the delinquent Member shall remain personally liable for the Assessments and related costs after its membership is terminated by foreclosure or deed in lieu of foreclosure or otherwise.

Section 3: Costs to be Born by Member in Connection with Enforcement of Payment of any Assessments. In any action taken pursuant to Section 2 of this Article, the Member shall be personally liable for, and the Assessment Lien shall be deemed to secure the amount of, any outstanding Assessments, together with interest and the Association's collection costs and attorneys' fees, including those costs and fees specified in Article VII, Sections 2 and 3.

## **ARTICLE IX: USE OF FUNDS: BORROWING POWER; OTHER ASSOCIATION DUTIES**

Section 1: Purposes for Which Association's Funds May Be Used. The Association shall apply all funds and property collected and received by it (including all Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of the Fairway Pines and its members by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by manner or method whatsoever of any kind, all land, properties, improvements, facilities, services, projects, programs, studies and systems, within the Fairway Pines Development, which may be necessary, desirable or beneficial to the general common interests of Fairway Pines Development, the Owners and the Residents. The following are some, but not all, of the areas in which the Association may seek to aid, promote and provide for such common benefit; maintenance of the Community Areas and public rights-of-way and drainage areas within Fairway Pines: maintenance of landscaping on Townhome Lots and recreation, liability insurance, communications, ownership and operation of common areas, , utilities, public services, safety and indemnification of officers and directors of the Association and payment of sums due, if any, under Municipal Authority Agreements. The Association also may expend its funds as permitted under the laws of the State of Montana.

Section 2: Borrowing Power. The Association may borrow money in such amounts, at such rates, upon such terms and security, for such periods of time as is necessary or appropriate.

Section 3: Association's Rights in Spending Funds From Year to Year. The Association shall not be obligated to spend in any year all the sums received by it in such year (whether by way of any Assessment, fees or otherwise), and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of any Assessment, as applicable, in the succeeding year if a surplus exists from a prior year and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

Section 4: Administration of Maintenance Charges. The Association is authorized to bill for, sue for, collect, administer and disburse all Assessment Charges and the payment thereof shall be secured by the Assessment Lien.

Section 5: Reserve Funds. From the Annual Assessments received by the Association, the Board shall establish an adequate reserve fund for the maintenance, repair and replacement of the Community Areas and from the Townhome Assessments received by the Association; the Board shall establish an adequate reserve fund for the maintenance, repair and replacement of the landscaping on Townhome Lots and paint and stain of Townhome Units and for its prorated share of road maintenance and repairs.

## **ARTICLE X: MAINTENANCE**

Section 1: Community Areas. Members of the Association, or its duly delegated representative, shall contribute to the maintenance and management of all Community Areas in which it shares expenses, including, but not limited to, the Roadway System, Landscaping, walkways, recreational facilities and the buildings and structures, if any, located upon said properties.

The Board shall use a reasonably high standard of care in providing for the repair, management and maintenance of said property so that Fairway Pines will reflect a high grade of ownership. In this connection the Association may, subject to any applicable provisions on Special Assessments for capital improvements, and so long as maintenance of the Open Space Preserve is consistent with any applicable requirements set out by the Army Corps of Engineers, in the discretion of the Board:

- (a) Reconstruct, repair, replace or refinish any improvement or portion thereof upon Association Land;
- (b) Construct, reconstruct, repair, replace or refinish any road improvement or surface upon any portion of the Community Areas used as a road, trail, walk, and driveway or parking area, except that no permanent improvements shall be made by the Association on any Community Area that is not Association Land.
- (c) Replace injured and diseased trees and other vegetation in any Community Area, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes;
- (d) Place and maintain upon any Community Area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof,
- (e) Provide services and maintenance including snow plowing, repair work, road, tree and vegetation maintenance, maintenance of riparian areas and water features, maintenance of any entrance monuments, maintenance and repair of all common amenities and any related required maintenance; and
- (f) Do all such other and further acts which the Board deems necessary to preserve and protect the Community Areas and the beauty thereof, in accordance with the general purposes specified in this Declaration.

The Board shall be the sole judge as to the appropriate maintenance of all Community Areas and other properties maintained by the Association. Any cooperative action necessary or appropriate to the



proper maintenance and upkeep of said properties shall be taken by the Board or by its duly delegated representative.

In the event any Plat, deed restriction or this Declaration permits the Board to determine whether or not Owners of certain Lots will be responsible for maintenance of certain Community Areas, Water Resources or public right-of-way areas, the Board shall have the sole discretion to determine whether or not it would be in the best interest of the Owners and Residents of Fairway Pines, for the Association or for an individual Owner to be responsible for such maintenance, considering cost, uniformity of appearance, location and other factors deemed relevant by the Board. The Board may cause the Association to contract with others for the performance of the maintenance and other obligations of the Association under this Article X and, in order to promote uniformity and harmony of appearance, the Board may also cause the Association to contract to provide maintenance services to Owners of Lots having such responsibilities in exchange for the payment of such fees as the Association and Owner may agree upon.

The Association shall enter into a cost sharing agreement with owners of other real estate utilizing the Roadway System for access to and from such real estate.

Section 2: Assessment of Certain Costs of Maintenance and Repair of Community Areas. In the event that the need for maintenance or repair of Community Areas, structures and other property maintained by the Association is caused through the willful or negligent act of any Owner, Resident, or any family, guests, invitees or tenants of such persons, the cost of such maintenance or repairs is a Maintenance Charge and shall be added to and become a part of the Assessment to which such Owner and the Owner's Lot is subject and shall be secured by the Assessment Lien. Any charges or fees to be paid by the Owner of a Lot pursuant to Section 1 of this Article X in connection with a contract entered into by the Association with an Owner for the performance of an Owner's maintenance responsibilities is a Maintenance Charge and shall also become a part of such Assessment and shall be secured by the Assessment Lien.

Section 3: Maintenance and Use of Townhome Lots. The Association shall maintain all Townhome Units as follows: paint and stain, doors, gutters, downspouts, and the cost thereof shall be included in the Townhome Annual Assessments per schedule prepared by the Board. Such exterior maintenance shall not include glass surfaces and window screens. The Association shall have a right of entry to any Townhome units to perform emergency repairs or do other work necessary for maintenance of the Townhome Unit exteriors. In the event that the need for maintenance or repair of the Townhome Unit exteriors is caused through the willful or negligent acts of its Owner or through the willful or negligent acts of the family, guests, or invitees of the Owner of the Townhouse Lot needing such maintenance or repair, the cost of such exterior maintenance shall be a Maintenance Charge assessed to the Owner of the particular Townhouse Lot.

## **ARTICLE XI: DESIGN REVIEW COMMITTEE**

**Section 1: Membership.** There is hereby established a Design Review Committee which shall be responsible for the establishment and administration of the Design Guidelines and to carry out all other responsibilities assigned to the Committee in order to carry out the purposes and intent of this Declaration.

**Section 2: Initial Design Review Committee Members.** The initial Design Review committee shall be comprised of the board of directors and shall be removed or replaced in the sole discretion of the board of directors.

**Section 3: Purpose.** The Committee shall review, study and either approve, reject or request resubmittal of proposed developments and Improvements to a Lot or building, all in compliance with this Declaration and as further set forth in the rules and regulations of the Committee and the Design Guidelines adopted and established from time to time by the Committee.

The Committee shall exercise its best judgment to see that all Improvements conform and harmonize with any existing structures as to external design, quality and type of construction, materials, color, location on the Lot, height, grade and finished ground elevation, and all aesthetic considerations set forth in this Declaration or in the Design Guidelines.

**Section 4: Organization and Operation of Committee.**

(a) **Term.** The term of office of each member of the Committee, subject to Section 1 hereof, shall be three (3) years, commencing January 1 of each year, and continuing until its successor shall have been appointed. Should a Committee member die, retire, become incapacitated, or in the event of a temporary absence of a member, a successor may be appointed as provided in Section 1 hereof.

(b) **Chairman.** At such time as the Committee is appointed by the Board of Directors, the chairman shall, be elected annually from among the members of the Committee by majority vote of said members.

(c) **Operations.** The chairman shall take charge of and conduct all meetings and shall provide for reasonable notice to each member of the Committee prior to any meeting. The notice shall set forth the time and place of the meeting, and notice may be waived by any member. In the absence of a chairman, the party responsible for appointing or electing the chairman may appoint or elect a successor, or if the absence is temporary, a temporary successor.

(d) **Voting.** The affirmative vote of a majority of the members of the Committee shall govern its actions and be the act of the Committee. A quorum shall consist of a majority of the members.

(e) **Expert Consultation.** The Committee may avail itself of technical and professional advice and consultants as it deems appropriate.

**Section 5: Expenses.** Except as provided below, all expenses of the Committee shall be paid by the applicant requesting the improvement. The Committee shall have the right to charge a fee for each application submitted to it for review, in an amount which may be established by the Committee based

on applicable expenses reasonably required to complete the review, and such fees shall be collected by the Committee and remitted to the Association to help defray the expenses of the Committee's operation.

Section 6: Design Guidelines and Rules. The Committee shall maintain Design Guidelines. The Design Guidelines shall define and describe the design standards for Fairway Pines and the various uses within the Subdivision. The Design Guidelines may be modified or amended from time to time by the Committee. To the extent permitted by the Design Guidelines, the Committee, in its sole discretion, may excuse compliance with such requirements as are not necessary or appropriate in specific situations and may permit compliance with different or alternative requirements. Compliance with the design review process is not a substitute for compliance with applicable Municipal Authority building, zoning, and subdivision regulations and each Owner is responsible for obtaining all approvals, licenses, and permits as may be required prior to obtaining final approval of any improvements from the Committee and prior to commencing construction

Section 7: Limitation of Liability. The Committee shall use reasonable judgment in accepting or disapproving all plans and specifications submitted to it. Neither the Committee, nor any individual Committee member, shall be liable to any person for any official act of the Committee in connection with submitted plans and specifications, except to the extent the Committee or any individual Committee member acted with malice or wrongful intent. Approval by the Committee does not necessarily assure approval by the appropriate Governmental Authority. Notwithstanding that the Committee has approved plans and specifications, neither the Committee nor any of its members shall be responsible or liable to any Owner, developer, or contractor with respect to any loss, liability, claim, or expense which may arise by reason of such approval of the construction of any improvements. Neither the Board, the Design Review Committee, or any agent thereof, nor Declarant or any of its owners, employees, agents, or consultants shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the provisions of this Declaration, nor for any structural or other defects in any work done according to such plans and specifications. In all events the Committee shall be defended and indemnified by the Association in any such suit or proceeding which may arise by reason of the Committee's decision. The Association, however, shall not be obligated to indemnify each member of the Committee to the extent any such member of the Committee shall be adjudged to be liable for gross negligence or willful misconduct in the performance of its duty as a member of the Committee, unless and then only to the extent that the Court in which such action or suit may be brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expense as such court shall deem proper.

Section 8: Certificate of Compliance. Upon payment of a reasonable fee established from time to time by the Board, and upon written request of any Owner or its agent, an existing or prospective Mortgagee, or a prospective grantee, the Committee shall issue an acknowledged certificate, in recordable form, setting forth generally whether, to the best of the Committee's knowledge, the Owner is not in violation of any of the terms and conditions of the Declaration or other documents of Fairway Pines Homeowners Association. Unless such request shall be complied with within 30 days after receipt of the request, it



shall be conclusively presumed that the Owner and the Owner's improvements are in conformance with all the terms and conditions subject to the control of the Committee.

## **ARTICLE XII: RIGHTS AND POWERS OF ASSOCIATION**

**Section 1: Association's Rights and Powers as Set Forth in Articles and Bylaws.** In addition to the rights and powers of the Association set forth in this Declaration, the Association shall have such rights and powers as are set forth in its Articles and Bylaws or permitted under applicable state law. Such rights and powers, subject to the approval thereof by any agencies or institutions deemed necessary by the Association, may encompass any and all things which a natural person could do or which now or hereafter may be authorized by law, provided such Articles and Bylaws are not inconsistent with the provisions of this Declaration and are necessary, desirable or convenient for effectuating the purposes set forth in this Declaration. After incorporation of the Association, a copy of the Articles and Bylaws of the Association shall be available for inspection at the office of the Association during reasonable business hours.

**Section 2: Association's Rights of Enforcement of Provisions of This and Other Instruments.** The Association, as the agent and representative of the Owners and Members shall have the right to enforce, by any proceeding at law or in equity, the Covenants set forth in this Declaration and/or any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements provided for in any contract, deed, declaration or other instrument which (a) shall have been executed pursuant to, or subject to, the provisions of this Declaration, or (b) otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Association. In the event suit is brought or arbitration is instituted or an attorney is retained by the Association to enforce the terms of this Declaration or other document as described in this Section 2 and the Association prevails, the Association shall be entitled to recover, in addition to any other remedy, reimbursement for attorneys' fees, court costs, costs of investigation and other related expenses incurred in connection therewith including but not limited to the Association's administrative costs and fees. Said attorneys' fees, costs and expenses shall be the personal liability of the breaching Owner and shall also be secured by the Assessment Lien against said Owner's Lot. If the Association should fail to act within a reasonable time, any Owner shall have the right to enforce the Covenants set forth in this Declaration.

**Section 3: Contracts with Others for Performance of Association's Duties.** Subject to the restrictions and limitations contained herein, the Association may enter into contracts and transactions with others, and such contracts or transactions shall not be invalidated or in any way affected by the fact that one or more directors or officers of the Association or members of any committee are employed by or otherwise connected with contracting party, provided that the fact of such interest shall be disclosed or known to the other directors acting upon such contract or transaction, and provided further that the transaction or contract is fair and reasonable. Any such director, officer or committee member may be counted in determining the existence of a quorum at any meeting of the Board or committee of which such Member is a member which shall authorize any contract or transaction described above or grant or deny any approval sought by the Owners, its affiliated companies or any competitor thereof.

and may vote thereat to authorize any such contract, transaction or approval with like force and effect as if such Member were not so interested.

Section 4: Change of Use of Association Land and Procedure Therefore. (a) adoption of a resolution by the Board stating that in the Board's opinion the then present use of a designated part of the Association Land or of the Association's interest in other Community Areas is no longer in the best interests of the Owners and Residents and (b) the approval of such resolution by a majority of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for such purpose, the Board shall have the power and right to change the use thereof (and in connection therewith, construct, reconstruct, alter or change the buildings, structures and improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided such new use (i) shall be for the benefit of the Owners and Residents, and (ii) shall be consistent with any deed restrictions (or zoning regulations) restricting or limiting the use of the Association Land. Any construction, reconstruction, alteration or change of the buildings, structures and improvements on Association Land shall require the approval of the Design Review Committee.

### **ARTICLE XIII: INSURANCE AND FIDELITY BONDS**

Section 1: Hazard Insurance. The Association shall at all times maintain in force insurance meeting the following requirements: A "master" or "blanket" type policy of property insurance shall be maintained covering all insurable improvements, if any, on the Association Land and where appropriate on the Community Areas, fixtures, building service equipment, personal property and supplies comprising a part of the Community Areas or owned by the Association, but excluding land, foundations, excavations, and other items normally not covered by such policies. As a minimum, such "master" or "blanket" policy shall afford protection against loss or damage by fire, by other perils normally covered by the standard extended coverage endorsement, and by all other perils which are customarily covered with respect to projects similar to Fairway Pines, in construction, location, and use, including (without limitation) all perils normally covered by the standard "all risk" endorsement, where such endorsement is available. Such "master" or "blanket" policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all elements of the Community Areas covered by such policy, exclusive of land, foundations, excavation, and other items normally excluded from coverage.

Section 2: Flood Insurance. If any part of the Community Areas comes to be situated in a Special Flood Hazard Area as designated on a Flood Insurance Rate Map, a "master" or "blanket" policy of flood insurance shall be maintained covering the improvements located on the Community Areas, (hereinafter "Insurable Property") in an amount deemed appropriate.

Section 3: Fidelity Bonds. The Association shall at all times maintain in force and pay the premiums for "blanket" fidelity bonds for all officers, Members, and employees of the Association and for all other persons handling or responsible for funds of or administered by the Association. Furthermore, where the Association has delegated some or all of the responsibility for the handling of funds to a Manager, the Manager shall provide "blanket" fidelity bonds, with coverage identical to such bonds required of the Association, for the Manager's officers, employees and agents handling or responsible for funds of

or administered on behalf of, the Association. The total amount of fidelity bond coverage required shall be based upon the Association's best business judgment and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association, or the Manager, as the case may be, at any given time during the term of each bond.

Section 4: Liability Insurance. The Association shall maintain in force, and pay the premium for a policy providing comprehensive general liability insurance coverage covering all of the Community Areas, public ways in Fairway Pines, if any, Pavilion and all other areas of Fairway Pines that are under the Association's supervision. Such coverage shall be for at least One Million Dollars (\$1,000,000) for bodily injury, including deaths of persons, and property damage arising out of a single occurrence. Coverage under such policy shall include, without limitation, legal liability of the insured for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance, or use of the Community Areas, and legal liability arising out of lawsuits related to employment contracts of the Association. Such policy shall provide that it may not be cancelled or substantially modified, by any party, without at least ten (10) days' prior written notice to the Association.

Section 5: Insurance Trustees and General Requirements Concerning Insurance. Notwithstanding any of the foregoing provisions and requirements relating to property or liability insurance, there may be named as an insured on behalf of the Association, the Association's authorized representative, including any trustee with whom the Association may enter into any Insurance Trust Agreement or any successor to such trustee (each of whom shall be referred to herein as the "Insurance Trustee"), who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance- Each Owner hereby appoints the Association, or any Insurance Trustee or substitute Insurance Trustee designated by the Association, as his or her attorney-in-fact for the purpose of purchasing and maintaining such insurance, including the collection and appropriate disposition of the proceeds thereof the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association, or any Insurance Trustee, shall receive, hold, or otherwise properly dispose of any proceeds of insurance in trust for the use and benefit of the Owners and their Mortgagees, as their interests may appear.

Each insurance Policy maintained, pursuant to the foregoing Sections 1, 2, 3 and 4, shall be written by an insurance carries which is licensed to transact business in the State of Montana.

Section 6: Lots and Dwelling Units Not Insured by Association. The Association shall have no duty or responsibility to procure or maintain any fire, liability, extended coverage or other insurance covering any Dwelling Unit or any other Improvements located on either a Townhome Lot, or with respect to any acts and events occurring thereon. Accordingly, each Owner shall secure and keep in force at all times fire, extended coverage and other insurance which shall be of a type and in an amount commonly required by private institutional mortgage investors in the area in which the Townhome is located.

Section 7: 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 sufficient to make any necessary repairs or replacement of the Community Areas and improvements thereon which may have

been damaged or destroyed. In addition, such policies shall be reviewed to determine their compliance with the provisions of this Declaration.

## **ARTICLE XIV: DAMAGE OR DESTRUCTION**

**Section 1: Association as Attorney in Fact.** Each and every Owner hereby irrevocably constitutes and appoints the Association as such Owner's true and lawful attorney-in-fact in such Owner's name, place, and stead for the purpose of dealing with the improvements on the Community Areas upon damage or destruction as provided in this Article or a complete or partial taking as provided in Article XV below. Acceptance by any grantee of a deed or other instrument of conveyance from the Declarant or from any Owner shall constitute appointment of the attorney-in-fact as herein provided. As attorney-in-fact, the Association shall have full and complete authorization, right, and power to make, execute, and deliver any contract, assignment, deed, waiver, or other instrument with respect to the interest of any Owner which may be necessary or appropriate to exercise the powers granted to the Association as attorney-in-fact. All insurance proceeds shall be payable to the Association except as otherwise provided in this Declaration.

**Section 2: Estimate of Damages or Destruction.** As soon as practical after an event causing damage to or destruction of any part of the improvements on the Community Areas in Fairway Pines, the Association shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction of that part of the Community Areas so damaged or destroyed. "Repair and reconstruction" as used in this Article XIV shall mean restoring the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction.

**Section 3: Repair and Reconstruction.** As soon as practical after obtaining estimates, the Association shall diligently pursue to completion the repair and reconstruction of the damaged or destroyed improvements. As attorney-in-fact for the Owners, the Association may take any and all necessary or appropriate action to effect repair and reconstruction, and no consent or other action by any Owner shall be necessary. Assessments of the Association shall not be abated during the period of insurance adjustments and repair and reconstruction.

**Section 4: Funds for Repair and Reconstruction.** The proceeds received by the Association from any hazard insurance shall be used for the purpose of repair, replacement, and reconstruction. If the proceeds of the insurance are insufficient to pay the estimated or actual cost of such repair and reconstruction, the Association may, pursuant to Article VII, Section 4 above, levy, assess, and collect in advance from all Owners, without the necessity of a special vote of the Owners, a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair and reconstruction.

**Section 5: Disbursement of Funds for Repair and Reconstruction.** The insurance proceeds held by the Association and the amounts received from the Special Assessments provided for in Article VII, Section 4

above constitute a fund for the payment of the costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments.

Section 6: Decision Not to Rebuild. If Owners representing at least sixty-seven percent (67%) of the votes of each class of Members in the Association agree in writing not to repair and reconstruct and no alternative improvements are authorized, then and in that event the Community Areas shall be restored to their natural state and maintained as an undeveloped portion of the Community Areas by the Association in a neat and attractive condition, and any remaining insurance proceeds shall be distributed in equal shares per Lot first to the Mortgagees, and then to the Owners, as their interests appear.

Section 7: Notice to First Mortgagees. The Association shall give timely written notice to any holder of any First Mortgage on a Lot who requests such notice in writing in the event of substantial damage to or destruction of any part of the Community Areas.

## **ARTICLE XV: CONDEMNATION**

Section 1: Rights of Owners. Whenever all or any part of the Community Areas shall be taken or conveyed in lieu of and under threat of condemnation, each Owner shall be entitled to notice of the taking, but the Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

Section 2: Partial Condemnation; Distribution of Award; Reconstruction. The award made for such taking shall be payable to the Association as Trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Community Areas on which improvements have been constructed, then, unless within sixty days after such taking Declarant and Owners representing at least sixty-seven percent (67%) of the votes in the Association shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Community Areas to the extent lands are available therefore, in accordance with plans approved by the Board of Directors and the Design Review Committee. If such improvements are to be repaired or restored, the provisions in Article XIV above regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Community Areas, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be distributed in equal shares per Lot, first to the Mortgagees and then to the Owners, as their interests appear.

## **ARTICLE XVI: MORTGAGEE REQUIREMENTS**

Section 1: Notice of Action. Upon written request made to the Association by a Mortgagee which written request shall identify the name and address of such Mortgagee, and Lot number or address of the Dwelling Unit, any such Mortgagee, insurer or governmental guarantor shall be entitled to timely written notice of:



(a) Any condemnation loss or any casualty loss which affects a material portion of Fairway Pines, or any Lot on which there is a Mortgage held by such Mortgagee;

(b) Any delinquency in the payment of Assessments or charges owed by an Owner, whose Lot is subject to a Mortgage held by such Mortgagee, which default remains uncured for a period of sixty (60) days; and

(c) Any lapse or cancellation of any insurance policy or fidelity bond maintained by the Association.

Section 2: Availability of Property Documents and Financial Statements. The Association shall maintain and have current copies of the Declaration, Articles, Bylaws, and other rules concerning Fairway Pines, as well as its own books, records, and financial statements available for inspection by Owners or by holders of Mortgages that are secured by Lots. Generally, these documents shall be available during normal business hours.

Section 3: Priority. No provision of this Declaration or the Articles gives or may give an Owner or any other party priority over any rights of Mortgagees pursuant to their respective Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for loss to or taking of all or any part of the Lots, Parcels or the Community Areas.

## **ARTICLE XVII: TERM: AMENDMENT& TERMINATION**

Section 1: Term: Method of Termination. This Declaration shall be effective upon the date of recordation hereof and, as amended from time to time, shall continue in full force and effect for a term of fifty (50) years from the date this Declaration is recorded. From and after said date, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote to terminate this Declaration by the then Members casting eighty percent (80%) of the total votes cast at an election held for such purpose or otherwise approved in writing within six (6) months prior to the expiration of the initial effective period hereof or any ten (10) year extension. The Declaration may be terminated at any time if eighty percent (80%) of the votes cast by the Members shall be cast in favor of termination at an election held for such purpose. Anything in the foregoing to the contrary notwithstanding, no vote to terminate (or amend as provided in Section 2 below) this Declaration shall be effective unless and until written consent to such termination or amendment has been obtained, within a period from six (6) months prior to such vote to six (6) months after such vote, from First Mortgagees on fifty-one percent (51%) of the Lots upon which there are such First Mortgages. If the necessary votes and consents are obtained, the Board shall cause to be recorded with the County Recorder of Flathead County, Montana, a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon these Covenants shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

Section 2: Amendments. This Declaration may be amended by recording with the County Recorder of Flathead County, Montana, a Certificate of Amendment, duly signed and acknowledged as required for a Certificate of Termination in Section I of this Article. The Certificate of Amendment shall set forth in full the amendment adopted, and, except as provided in this Section 2 of this Article, shall certify that an election duly held pursuant to the provisions of the Articles and Bylaws the Members casting sixty-seven percent (67%) of the votes of the Members at the election voted affirmatively for the adoption of the amendment.

## **ARTICLE XVIII: MISCELLANEOUS**

Section 1: Interpretation of the Covenants. Except for judicial construction, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by the Covenants and provisions hereof.

Section 2: Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

Section 3: Change of Circumstances. Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

Section 4: References to the Covenants in Deeds. Deeds or any instruments affecting any Lot or any part of Fairway Pines may contain the Covenants herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any deed or instrument, each and all of the Covenants shall be binding upon the grantee-Owner or other person claiming through any instrument and its heirs, executors, administrators, successors and assigns.

Section 5: List of Owners and Eligible Members. The Board shall maintain up-to-date records showing: (i) the name of each person who is an Owner, the address of such person, and the Lot which is owned by him; (it) the name of each person or entity who is an eligible Mortgagee, the address of such person or entity and the Lot which is encumbered by the Mortgage held by such person or entity. In the event of any transfer of a fee or undivided fee interest in a Townhome, either the transferor or transferee shall furnish the Board with evidence establishing that the transfer has occurred and that the deed or other instrument accomplishing the transfer is of record in the office of the County Recorder of Flathead County, Montana. The Board may for all purposes act and rely on the information concerning Owners and Lot ownership which is thus acquired by it or, at its option, the Board may act and rely on current ownership information respecting any Townhome(s) which is obtained from the office of the County Recorder of Flathead County, Montana. The address of an Owner shall be deemed to be the address of the Townhome owned by such person unless the Board is otherwise advised. The list of Owners shall be

made available by the Board to any Owner for noncommercial purposes upon such Owner's written request and such Owner's payment of any copying charges.

Section 6: General Obligations. Each Owner shall enjoy and be subject to all rights and duties assigned to Owners pursuant to this Declaration.

Section 7: Rights of Action. The Association and any aggrieved Owner shall have a right of action against Owners who fail to comply with the provisions of the Declaration or the decisions of the Association. Owners shall have a similar right of action against the Association.

Section 8: Successors and Assigns. Any reference in this Declaration shall include any successors or assigns of an owner's rights and powers hereunder.

Section 9: Gender and Number. Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.

Section 10: Captions and Titles. All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

Section 11: Notices. Any notice permitted or required to be delivered as provided herein may be delivered either personally, by mail, by facsimile or by electronic communication. If delivery is made by mail, it shall be deemed to have been delivered twenty-four (24) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to such person at the address given by that person to the Association for the purpose of service of such notice or to the address of the lot of such person if no address has been given. Such address may be changed from time to time by notice in writing received by the Association. Notice to the Board or to the Design Review Committee shall also be delivered or mailed to the Association.

Section 12: Consent of Lieu of Vote. In any case in which this Declaration requires for authorization or approval of a transaction, the assent or affirmative vote of a stated percentage of the votes present or represented at a meeting, such requirement may be satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Members entitled to cast at least the stated percentage of all Membership votes outstanding in connection with the class of membership concerned. The following provisions shall govern any application of this Section 12:

- (a) all necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Member;
- (b) the total number of votes required for authorization or approval under this Section 12 shall be determined as of the date on which the last consent is signed;



(c) except as provided in the following sentence, any change in ownership of a Lot which occurs after consent has been obtained from the Owners thereof shall not be considered or taken into account for any purpose. A change in ownership which would otherwise result in an increase in the total number of Class A votes outstanding shall, however, be effective in that regard and shall entitle the new Owner to give or withhold its consent;

(d) unless the consent of all Members whose Memberships are appurtenant to the same Lot are secured the consent of none of such Members shall be effective.

Section 13: Tax Collection From Lot Owners by Flathead County Authorized. It is recognized that, under the Declaration, the Association will own the Association Land and that it will be obligated to pay property taxes to Flathead County. It is further recognized that each Owner of a Lot is a Member of the Association and as part of its quarterly assessment will be required to pay to the Association its pro rata share of such taxes. Notwithstanding anything to the contrary contained in this Declaration or otherwise, Flathead County shall be and is authorized to collect such pro rata share (an equal basis) of taxes directly from each Owner by inclusion of said share with the tax levied on each Lot To the extent allowable, Flathead County is hereby directed so to do. In the event that an assessor shall separately assess Association Land to the Association, the Board of Directors may require in its discretion, a Special Assessment to pay such taxes, or they may be included in the regular Assessment budget.

Section 14: Liability for Willful or Negligent Damage. Maintenance, repair or replacement of all or any part of the Community Facilities arising out of or caused by the willful or negligent act of an Owner or Resident shall be done at said Owner's expense or a Maintenance Charge therefore shall be made against its Lot.

Section 15: Enforcement. The Design Review Committee, the Association, or any owner shall have the right to enforce, by any proceeding in law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration Failure by the Design Review Committee, the Association, or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so hereafter.

Section 16: Enforcement of Covenants. In the event of any act or condition of non-compliance of the covenants contained in this Declaration by an Owner, the Design Review Committee or the Association shall provide to the Owner a notice on non-compliance and demand that said Owner take any and all steps necessary to correct said act or condition of non-compliance within fifteen (15) days. If the Owner fails to terminate or correct the non-complying act or condition within fifteen (15) days, then the Association, the Design Review Committee or their duly authorized agents, in furtherance of the general health, welfare and safety of the Owners, shall have the right to undertake any and all action that they in their sole discretion deem necessary and reasonable under the circumstances in order to terminate or correct the act or condition of noncompliance including without limitation, obtaining legal or equitable relief including injunctions or orders of specific performance and/or entering upon the premises for the purpose of removing any non-complying Improvement, nuisance or garbage, Landscaping, restoring the Lot and Improvements thereon to a clean, attractive and well maintained state, and terminating any

unsafe or hazardous activity. In the event of an emergency arising from any act or condition of non-compliance which the Association or the Design Review Committee determines to constitute or pose a health hazard or dangerous condition threatening the life or safety of any persons, the Association or the Design Review Committee or their duly authorized agent shall be entitled to immediately undertake any and all action that it determines in its sole discretion to be reasonable and necessary, without notice to the Owner, in order to terminate, eliminate, remove or correct the dangerous or hazardous non-complying act or condition including, without limitation, obtaining legal or equitable relief including injunctions or orders of specific performance and/or entering upon the premises in order to undertake corrective action. The Owner of the Lot on which any such non-complying act or condition exists shall solely be responsible for repaying to the Association or the Design Review Committee any and all costs incurred by the Association or the Design Review Committee, including attorney's fees and costs of court, in terminating or correcting the non-complying act or condition on the Lot. The Association shall further be entitled to a lien upon said Owner's Lot in the amount of such costs, including attorney's fees and costs of court, the creation, maintenance and foreclosure of which lien is to be governed by the same terms and conditions as those governing the creation, maintenance and foreclosure of liens for unpaid Assessments to the Association as set forth in this Declaration.

Section 17: No Public Right or Dedication. Nothing contained in the Declaration shall be deemed to be a gift or dedication of all or any part of Fairway Pines to the public, or for any public use. This will include, but not be limited to, non-owner use of the community area and/or usage of the Roadway System for non-owner use and any other use of the amenities without Association approval.

Section 18: Counterpart Execution. This Declaration may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All counterparts shall be construed together and shall constitute one Declaration, but in making proof hereof it shall only be necessary to produce one such counterpart

In witness whereof the and following Lot Owners have executed, this Declaration on the dates so indicated below, effective as of the date first written above.

END OF DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS  
AND RESTRICTIONS FOR FAIRWAY PINES

SIGNATURE PAGES ONLY FOLLOW THIS PAGE