

After Recording Return to:

Trumbull Creek Crossing, LLC
c/o NW Dev Group, LLC
4260 Galewood Street, Suite B
Lake Oswego, OR 97035

200700019913 Fees: \$496.00 by: JL
by SANDS SURV
Date 7/2/2007 Time 12:29 PM Page: 1 of 68
Paula Robinson, Flathead County Montana

PLANNED COMMUNITY SUBDIVISION
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

Trumbull Creek Crossing, Phase 1

0002176

★★

TABLE OF CONTENTS

	Page No.
<u>ARTICLE I. DEFINITIONS</u>	2
<u>1.1 Area of Common Responsibility</u>	2
<u>1.2 Articles of Incorporation</u>	2
<u>1.3 Association</u>	2
<u>1.4 Board of Directors or Board</u>	2
<u>1.5 Bylaws</u>	2
<u>1.6 Class B Control Period</u>	3
<u>1.7 Common Area</u>	3
<u>1.8 Common Assessments</u>	3
<u>1.9 Common Easement Areas</u>	3
<u>1.10 Common Expenses</u>	3
<u>1.11 Community Wide Standard</u>	3
<u>1.12 Declarant</u>	3
<u>1.13 Emergency Assessment</u>	3
<u>1.14 Improvements</u>	3
<u>1.15 Member</u>	3
<u>1.16 Mortgage</u>	4
<u>1.17 Mortgagee</u>	4
<u>1.18 Mortgagor</u>	4
<u>1.19 Owner</u>	4
<u>1.20 Person</u>	4
<u>1.21 Properties</u>	4
<u>1.22 Reserve Fund</u>	4
<u>1.23 Reserve Study</u>	4
<u>1.24 Special Assessment</u>	4
<u>1.25 Supplemental Declaration</u>	4
<u>1.26 Declaration</u>	4
<u>1.27 Turnover Meeting</u>	4
<u>1.28 Lot</u>	4
<u>1.29 Occupant</u>	5
<u>1.30 Home</u>	5
<u>ARTICLE II. PROPERTY SUBJECT TO DECLARATION</u>	5
<u>2.1 Phase 1</u>	5
<u>2.2 Annexation Without Approval of Class A Membership</u>	7
<u>2.3 Annexation With Approval of Class A Membership</u>	7
<u>2.4 Annexation Procedures</u>	7
<u>2.5 Acquisition of Additional Common Area</u>	8
<u>2.6 Withdrawal of Property</u>	8



2.7 Reallocation & Reapportionment of Common Area	
Expenses.....	8
2.8 Voting Rights.....	9
2.9 Amendment.....	9
ARTICLE III. PROPERTY RIGHTS; COMMON AREA.....	9
3.1 Conveyance of Common Area.....	9
3.2 Property Rights in Common Area.....	9
3.3 Common Easement Areas.....	10
3.4 Alienation of the Common Area.....	10
3.5 Easement Reserved by Declarant.....	11
ARTICLE IV. PROPERTY RIGHTS IN UNITS.....	11
4.1 Use and Occupancy.....	11
4.2 Easements Reserved.....	11
4.2.1 Adjacent Common Areas.....	11
4.2.2 Right of Entry.....	11
4.2.3 Utility Easements.....	11
ARTICLE V. ASSOCIATION.....	12
5.1 Organization.....	12
5.2 Membership.....	12
5.3 Voting Rights.....	12
5.3.1 Class A.....	13
5.3.2 Class B.....	13
5.4 Transitional Advisory Committee.....	13
5.5 General Powers and Obligations.....	13
5.6 Specific Powers and Duties.....	14
5.6.1 Common Area.....	14
5.6.2 Personal Property & Real Property for Common Use.....	14
5.6.3 Rules and Regulations and Enforcement.....	14
5.6.4 Implied Rights.....	15
5.6.5 Governmental Interests.....	15
5.6.6 Assessments.....	15
5.6.7 Employment of Agents, Advisers & Contractors.....	15
5.6.8 Create Classes of Service & Make Appropriate	
Charges.....	15
5.7 Liability.....	15
5.8 Turnover Meeting.....	15
5.9 Contacts Entered by Declarant or Board of Directors.....	16
ARTICLE VI. MAINTENANCE, UTILITIES AND SERVICES.....	16
6.1 Association's Responsibility.....	16
6.2 Owner's Responsibility.....	16
6.3 Common Lot Line Walls and Party Fences.....	17
6.3.1 General Rules of Law to Apply.....	17
6.3.2 Sharing of Repair and Maintenance.....	17





6.3.3 Damage and Destruction	17
6.3.4 Right to Contribution Runs with Land	17
6.3.5 Arbitration	17
6.4 Maintenance of Utilities	17
6.5 Security	18
6.6 Services	19
ARTICLE VII. INSURANCE AND CASUALTY LOSSES	19
7.1 Types of Insurance	19
7.1.1 Property Damage Insurance	19
7.1.2 Liability Insurance	19
7.1.3 Worker's Compensation Insurance	19
7.1.4 Fidelity Insurance	20
7.2 Individual Insurance	20
7.3 Damage and Destruction	20
7.4 Disbursement of Proceeds	21
7.5 Repair and Reconstruction	21
ARTICLE VIII. NO PARTITION	22
ARTICLE IX. CONDEMNATION	22
ARTICLE X. ASSESSMENTS	22
10.1 Creation of Assessments	22
10.2 Computation of Common Assessments	24
10.3 Special Assessments	25
10.3.1 Entire Membership	25
10.3.2 Less Than All Members	25
10.4 Emergency Assessments	26
10.5 Lien for Assessments	26
10.6 Date of Commencement of Assessments	26
10.7 Subordination of the Lien to First Mortgages	27
10.8 Capitalization of Association	27
10.9 Exempt Property	28
10.10 Operations Fund	28
10.11 Reserve Fund	28
10.12 Reserve Study	29
ARTICLE XI. ARCHITECTURAL STANDARDS	29
11.1 General	29
11.2 Architectural Review Committee	30
11.3 Procedure	30
11.4 Committee Discretion	31
11.5 No Waiver of Future Approvals	31
11.6 Variance	31
11.7 Compliance With Guidelines	31
11.8 No Liability	32
11.9 Majority Action	32
11.10 Appeal	32

<u>16.6 Evidence</u>	<u>50</u>
<u>16.7 Excluded Matters</u>	<u>50</u>
<u>16.8 Costs and Attorney Fees</u>	<u>51</u>
<u>16.9 Survival</u>	<u>51</u>



Document Number: 200700019913
Page: 7

PLANNED COMMUNITY SUBDIVISION

**DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS
FOR**

Trumbull Creek Crossing

THIS PLANNED COMMUNITY SUBDIVISION DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR TRUMBULL CREEK CROSSING, ("Declaration") is made this 20th day of April, 2007, by TRUMBULL CREEK CROSSING, LLC, an Oregon limited liability company, duly authorized to transact business in the State of Montana ("Declarant").

A. Declarant owns or controls approximately 158 acres within the Flathead County, Montana. Declarant proposes to develop portions of this property, in phases, as a planned development to be known as "Trumbull Creek Crossing". The first phase, known as Trumbull Creek Crossing, Phase I, shall be described according to the Exhibit A attached hereto and by reference incorporated herein.

B. Declarant intends to create in Trumbull Creek Crossing a carefully planned community which will provide an attractive place to live. Declarant will provide leadership in organizing and administering the Trumbull Creek Crossing project during the development period, but expects property owners in Trumbull Creek Crossing to accept the responsibility for community administration by the time the development is complete.

C. The purpose of this Declaration is to provide for the ownership, maintenance and use of all portions of Trumbull Creek Crossing, including certain common areas which will be owned and operated by a homeowner association for the benefit of all properties now or later made subject to this Declaration.

D. Funds for the maintenance and operation of the common areas generally will be provided through assessments against those who purchase property within Trumbull Creek Crossing, although to assist with the development of Trumbull Creek Crossing, Declarant may from time to time itself provide some improvements.

E. One who acquires property in Trumbull Creek Crossing will have the advantage of further development of Trumbull Creek Crossing, but shall not have any legal right to insist that there be development except as provided in this instrument or in the instruments which hereafter may be recorded annexing areas to Trumbull Creek Crossing and subjecting areas to this Declaration.

F. Declarant has recorded or will record a plat entitled "Trumbull Creek Crossing, Phase 1" in the Plat Records of Flathead County, Montana. Declarant desires to establish the property platted as Trumbull Creek Crossing, Phase 1, as the first phase of the planned community known as Trumbull Creek Crossing. For Purposes of this Declaration, all references herein after made to "Phase 1" shall mean the property platted as Trumbull Creek Crossing, Phase 1, as defined above, is approximately 17.9 acres. Part of Phase 1 consists of private ways or streets and part is Common Area, as more particularly shown in the plat of Trumbull Creek Crossing, Phase 1. Declarant contemplates platting the balance of the original total acreage constituting the potential future phases of the planned development known as Trumbull Creek Crossing (as described in Exhibit B). However, Declarant is not committing itself to plat and/or develop any or all of the contemplated phases.

G. Declarant hereby declares that all of the property described in Exhibit A and any additional property which is hereafter subjected to this Declaration by Supplemental Declaration (as defined herein) shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, conditions and charges, which are for the purpose of protecting the value and desirability of an which shall run with the real property subjected to this Declaration and shall be appurtenant thereto, and which shall be binding on all parties having any right, title, or interest in the described Properties or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I. Definitions

1.1 "Area of Common Responsibility" shall mean and refer to the Common Area, and, Common Easement Areas, together with those areas, if any, which by the terms of this Declaration, or any supplemental declaration, become the responsibility of the Association, (identified as private Road, Park A and Park B on the recorded plat of Trumbull Creek Crossing Phase 1).

1.2. "Articles of Incorporation" or "Articles" shall mean and refer to the Articles of Incorporation of Trumbull Creek Crossing Homeowner's Association, as filed with the Secretary of State of the State of Montana.

1.3 "Association" shall mean and refer to Trumbull Creek Crossing Homeowner's Association, which shall be a Montana nonprofit corporation, its successors or assigns. The use of the term "association" or "associations" in lower case shall refer to any other owners association having jurisdiction over any part of the Properties.

1.4 "Board of Directors" or "Board" shall mean and refer to the elected body having its normal meaning under Montana corporate law.

1.5 "Bylaws" shall mean and refer to the Bylaws of Trumbull Creek Crossing Homeowner's Association as they may be amended from time to time. The Bylaws shall be recorded in Flathead County, Montana.



1.6. "Class B Control Period" shall mean and refer to the period of time during which the Class B Member is entitled to appoint all or a majority of the members of the Board of Directors.

1.7. "Common Area" shall be an inclusive term referring to all Common Area as defined herein, (identified as private Road, Park A and Park B on the recorded plat of Trumbull Creek Crossing Phase 1).

1.8. "Common Assessments" shall mean and refer to assessments levied against all Lots in the Properties to fund Common Expenses.

1.9. "Common Easement Areas" shall mean those easements on any Lot established for the benefit of all Owners pursuant to a plat or declaration.

1.10. "Common Expenses" shall mean and include the actual and estimated expenses incurred by the Association for the general benefit of all Lot Owners, including the Reserve Fund, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the Bylaws, and the Articles of Incorporation of the Association, but shall not include any expenses incurred during the Class B Control Period for initial development, original construction or installation of infrastructure, original capital improvements, or other original construction costs unless approved by Members representing a majority of the total Class A vote of the Association.

1.11. "Community Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing throughout the Properties as set forth in Sections 5.5 and 5.6. Such standard may be more specifically determined by the Board of Directors and the . In no event, however, shall such standard be reduced below that standard established by the Declarant as of the termination of the Class B Control Period.

1.12. "Declarant" shall mean and refer to Trumbull Creek Crossing I, LLC, a Montana limited liability company, or its successors, successors-in-title or assigns who take title to any portion of the property described on Exhibit A for the purpose of development and/or sale and are designated as the Declarant hereunder in a recorded instrument executed by the immediately preceding Declarant.

1.13. "Emergency Assessment" shall have the meaning given in Section 10.4.

1.14. "Improvements" means every structure or improvement of any kind, including but not limited to streets, street improvements, sanitary services, storm sewers, water services, lighting, other improvements for utilities, entry monuments, signage, walks, trails, parks, open space amenities, fences, gates walls, driveways, swimming pools, storage shelters, landscaping or other product of construction efforts on or in respect to the Properties.

1.15. "Member" shall mean and refer to a Person entitled to membership in the Association, as provided herein and in the Bylaws.



1.16. "Mortgage" shall mean and refer to a mortgage, a deed of trust, a contract of sale (i.e. land sale contract), a deed to secure debt, or any other form of security deed.

1.17. "Mortgagee" shall mean and refer to a mortgagee, beneficiary, vendor or other holder of a Mortgage.

1.18. "Mortgagor" shall mean and refer to any Person who gives a Mortgage, including a mortgagor, grantor, and vender.

1.19. "Owner" shall mean and refer to one (1) or more Persons who hold the record title to any Lot which is part of the Properties, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Lot is sold under a recorded contract of sale, then the purchaser (rather than the fee owner) will be considered the Owner.

1.20. "Person" means a natural person, a corporation, a partnership, a trustee, or any other legal entity.

1.21. "Properties" shall mean and refer to the real property described in Exhibit A attached hereto, together with such additional property as in hereafter subjected to this Declaration by Supplemental Declaration.

1.22. "Reserve Fund" shall have the meaning given in Section 10.11.

1.23. "Reserve Study" shall have the meaning given in Section 10.12.

1.24. "Special Assessment" shall mean and refer to assessments levied in accordance with Section 10.3 of this Declaration.

1.25. "Supplemental Declaration" shall mean an amendment or supplement to this Declaration executed by or consented to by Declarant which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described therein. The term shall also refer to the instrument recorded by the Association pursuant to Section 2.2 of this Declaration to subject additional property to this Declaration. The term shall also refer to any instrument recorded pursuant to Section 2.1(d) of this Declaration.

1.26. "Declaration" shall mean all of the easements, covenants, restrictions and charges set forth in this instrument, together with any rules or regulations promulgated hereunder, as the same may be amended or supplemented from time to time in accordance with the provisions thereof, including the provisions of any Supplemental Declaration..

1.27. "Turnover Meeting" shall have the meaning given in Section 5.8.

1.28. "Lot" shall mean a platted or partitioned lot or tract within the Properties, whether developed or undeveloped, intended for development, use, and occupancy as an attached or detached residence for a single family, and shall, unless



otherwise specified, include within its meaning (by way of illustration, but not limitation) condominium units, townhouse lots, cluster homes, patio or zero lot line homes, and single-family detached houses on separately platted lots, as well as vacant land intended for development as such, all as may be developed, used, and defined as herein provided or as provided in Supplemental Declarations covering all or a part of the Properties. The term shall include all portions of the lot owned as well as any structure thereon. The term shall not include Common Area. The term shall not include apartment buildings or complexes or other multi-family structures intended for development as rental projects.

In the case of a parcel of vacant land or land on which improvements are under construction, the parcel shall be deemed to contain the number of Lots designated for residential use for such parcel on the site plan approved by Declarant, until such time as a certificate of occupancy is issued on all or a portion thereof by the building department of Flathead County, Montana or the City of Kalispell, as applicable. After issuance of a certificate of occupancy on any portion thereof, the portion designated in the certificate of occupancy shall constitute a separate Lot or Lots as determined above and the number of Lots on the remaining land, if any, shall continue to be determined in accordance with this paragraph.

1.29 "Occupant" shall mean the Owner, Lessee or any other person authorized by the Owner to occupy the premises.

1.30 "Home" shall mean and refer to any portion of a structure situate on a Lot designed and intended for use and occupancy as a residence by a single family or household.

ARTICLE II.

Property Subject to Declaration

2.1 Phase 1. All of the property described in Exhibit A is subject to this Declaration. However, the initial development in Trumbull Creek Crossing, Phase 1 shall be the real property within the plat entitled "Trumbull Creek Crossing, Phase 1" and filed in the Plat Records of Flathead County, Montana. The initial development in Phase 1 will consist of approximately 54 single family Lots.

Declarant agrees as part of the initial development in Phase 1 that Declarant shall construct and install the following contemplated Improvements: sanitary sewers, storm sewers, and water services; street improvements; various utilities; entry monument; partial perimeter fencing; landscaping along East Reserve Drive; seed and/or sod and plantings in the park area; and a portion of the soft (i.e., woodchips, gravel or similar) path in the landscaping buffer along the East boundary of the property. Notwithstanding the foregoing, Declarant may elect to add other Improvements not listed herein at Declarant's sole discretion. Developer contemplates platting additional phases within Trumbull Creek Crossing, from time to time, in Declarant's sole discretion. With respect to each additional phase platted within the property described in Exhibit B:



(a) At any time during the initial term of this Declaration, the Declarant may, at its sole option, annex additional property into the Association to be subject to the terms hereof to the same extent as if originally included herein and subject to such other terms, covenants, conditions, easements and restrictions as may be imposed thereon by Declarant. Declarant currently anticipates that there will be a total of approximately 650 Lots in the subdivision, including the Lots on this Plat, and Lots expected to be created in property to be annexed to the subdivision, but this number may be adjusted at the sole discretion of Declarant. Declarant shall have no obligation of any kind to annex any additional land to the Property.

(b) Eligible Property. There shall be no limitation on the number of Lots which Declarant may annex to the property, or the right of Declarant to annex common property, except as may be established by applicable ordinances, agreements or land use approvals.

(c) Common Area. There shall be no limitation on the right of Declarant to create Common Area or additional Common area in such phase.

(d) Declaration of Annexation. Annexation shall be evidenced by a written Declaration of Annexation executed by the Declarant, or (in the case of an annexation by action of members) by the Board and the owners of the property being annexed, setting forth the legal description of the property being annexed and any additional covenants, conditions and restrictions to be applied to such annexed property. Notwithstanding any provision apparently to the contrary, a declaration with respect to any annexed property may:

(i). establish such new land classifications and Types of Lots and such limitations, uses, restrictions, covenants and conditions with respect thereto as Declarant may deem to be appropriate for the development of the annexed property;

(ii). with respect to existing land classifications, establish additional or different limitations, uses, restrictions, covenants and conditions with respect thereto as Declarant may deem to be appropriate for the development of such annexed property; and/or

(iii) contain provisions necessary or appropriate to comply with any condition, requirement, or imposition of any governmental or regulatory authority.

Without limitation of the meaning of the foregoing provisions of this section, in any Declaration of Annexation the Declarant may, but shall not be obligated to, establish different types of Lots and have particular rights and obligations pertain to different types of Lots, establish easements particular to different Lots, establish assessments that pertain only to certain types of Lots, establish maintenance obligations of the Association or of Owners that vary in accordance with different types of Lots, establish insurance and casualty provisions that relate to certain types of Lots and not others, and establish limited common areas that benefit particular Lots to the exclusions of other Lots and provisions particular to such limited common areas.



(d). Voting Rights; Allocation of Assessments. Upon annexation, additional Lots so annexed shall be entitled to voting rights and shall be responsible for payment of assessments as required for that fiscal year. At the beginning of the next fiscal year, assessments for the general common areas shall be apportioned equally based upon the total number of Lots following such annexation, but assessments that are relative to a specific product type will be spread equally over only the Lots of that type.

(e). No Duty to Annex. Nothing herein contained shall establish any duty or obligation on the part of the Declarant or any member to annex any property into the Association and no owner of property excluded from the Association shall have any right to have such property annexed thereto. Declarant is under no obligation to build Homes on any or all of the Lots contained in the original Plat.

2.2 Annexation Without Approval of Class A Membership. Declarant shall have the unilateral right, privilege, and option, from time to time at any time, until the expiration of the Class B Control Period, to subject to the provisions of this Declaration and the jurisdiction of the Association all or any portion of the real property adjacent to the Properties owned by Declarant. Such annexation shall be accomplished by filing in the Recorder's Office of Flathead County, Montana, a Supplemental Declaration annexing such property. Such Supplemental Declaration shall not require the consent of the Members. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein. Declarant shall have the unilateral right to transfer to any other Person the right, privilege, and option to annex such adjacent property which is herein reserved to Declarant, provided that such transferee or assignee shall be the developer of at least a portion of the real property described in Exhibit B or such adjacent property and that such transfer is memorialized in a written, recorded instrument executed by the Declarant.

2.3 Annexation With Approval of Class A Membership. Subject to the consent of the owner thereof, the Association may annex real property other than that described in Section 2.2, and following the expiration of the right of Declarant in Section 2.2, any adjacent property described in Section 2.2, to the provisions of this Declaration and the jurisdiction of the Association. Such annexation shall require the affirmative vote of Members representing a majority of the Class A votes of the Association present at a meeting duly called for such a purpose and the consent of Declarant so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 2.2.

2.4 Annexation Procedures. Annexation, under section 2.3, shall be accomplished by filing of record in the Recorder's Office of Flathead County, Montana, a Supplemental Declaration. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the property being annexed, and any such annexation shall be effective upon filing unless otherwise provided therein. The relevant provisions of the Bylaws dealing with regular or special meetings, as the case may be, shall apply to determine the time required for and the proper form of notice of any meeting called for the purpose of considering annexation of property pursuant to this Section 2 and to ascertain the



presence of a quorum at such meeting. The Supplemental Declaration shall, among other things, describe the additional property to be annexed, may establish land classifications for the property to be annexed, may establish any additional limitations, uses, restrictions, covenants and conditions which are intended to be applicable to such property, and shall declare that such property is held and shall be held, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration.

2.5 Acquisition of Additional Common Area. Declarant may convey to the Association additional real property, improved or unimproved, located within the Properties which, upon conveyance or dedication to the Association and acceptance by the Association, shall be maintained by the Association at its expense for the benefit of all its Members. There shall be no limitation on the right of Declarant to create or annex additional real property to the Common Area.

2.6 Withdrawal of Property. Declarant may withdraw property from Trumbull Creek Crossing, only by a duly adopted amendment to this Declaration except as otherwise set forth in this Section 2.6. Declarant may withdraw all or any portion of the unplatted property subject to this Declaration prior to platting, or may withdraw all or any portion of any property annexed pursuant to Sections 2.2 or 2.3, by Supplemental Declaration at any time prior to the sale of the first Lot in the property annexed by such Supplemental Declaration. Any such withdrawal shall be by a Supplemental Declaration executed by Declarant and recorded in Flathead County, Montana. In the event of such withdrawal, all voting rights otherwise allocated to Lots being withdrawn shall be eliminated, and Common Expenses shall be reallocated, to the extent necessary, as provided in Section 2.7. Declarant reserves the right to amend this Declaration unilaterally at any time during the Class B Control Period, without prior notice and without the consent of any Person, for the purpose of removing certain portions of the Properties then owned by the Declarant or its affiliates or the Association from the provisions of this Declaration to the extent originally included in error or as a result of any changes whatsoever in the plans for the Properties desired to be effected by the Declarant, provided, such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Properties, except as expressly set forth in this Section 2.6, the right to withdraw property from Trumbull Creek Crossing, shall not expire.

2.7 Reallocation and Reapportionment of Common Area Expenses. In the event additional Lots are annexed to or withdrawn from the Properties, commencing on the effective date of such annexation or withdrawal ("Change Date") and continuing thereafter, all Common Assessments shall be allocated based on the number of Lots, including the annexed Lots but excluding any withdrawn Lots then existing and subject to the terms of this Declaration, and all Lots shall be assessed a prorata share of all Common Expenses commencing with any Change Date. In the event prior to any Change Date, Common Assessments have been paid for Common Expenses which are in Declarant's reasonable judgment, properly chargeable to the period prior to a Change Date but for which benefits will accrue to Owners after that Change Date, each Owner of any annexed Lot shall pay its prorata share to the Association for such amounts within thirty (30) days after receipt of written demand therefore, which demand shall be accompanied by reasonable supporting

documentation. Adjustments to Common Expenses paid by all other Owners of Lots prior to that Change Date shall be adjusted for the next calendar year for which billings of Common Expenses are rendered by the Association. In no event shall any refund be made to any Owner of a withdrawn Lot.

2.8 Voting Rights. An Owner of a Lot within property annexed pursuant to this Article shall have the same voting rights as an Owner of a Lot within the property described in Exhibit A.

2.9 Amendment. This Article shall not be amended without the prior written consent of Declarant so long as Declarant owns real property subject to this Declaration or which may become subject to this Declaration in accordance with Section 2.2. Any amendment is also subject to Section 13.2.

ARTICLE III. Property Rights: Common Area

3.1 Conveyance of Common Area. The Common Area, (identified as private Road, Park A and Park B on the recorded plat of Trumbull Creek Crossing Phase 1), within the initial phase, that is, Phase 1, shall be conveyed to the Association prior to the conveyance of a Lot to any Lot purchaser other than a builder or developer holding title for the purpose of development and resale. If, as and when each subsequent phase is platted, the Common Area within that phase shall be conveyed to the Association prior to the conveyance of a Lot within the phase to any Lot purchaser other than a builder or developer holding title for the purpose of development and resale. The deed or deeds conveying Common Area shall be delivered to the Association by Declarant free and clear of monetary liens. Such deeds shall not include Common Easement Areas. Title to Common Easement Areas, subject to the easements set forth in this Declaration, shall rest in the Owners of the respective Lots within which such areas are located, or in the public if part of a dedicated street or right of way.

3.2 Property Rights in Common Area. Every Owner shall have a right and nonexclusive easement of use, access and enjoyment in and to the Common Area, subject to:

(a) this Declaration as it may be amended from time to time and to any restrictions or limitations contained in any deed conveying such property to the Association;

(b) the right of the Association to limit the number of guests, and to adopt rules regulating the use and enjoyment of the Common Area;

(c) the right of the Board to suspend the right of an Owner to use recreational facilities within the Common Area (i) for any period during which any charge against such Owner's Lot remains delinquent, and (ii) for a period not to exceed thirty (30) days for a single violation, or for a longer period in the case of any



continuing violation, of the Declaration, Bylaws, or rules of the Association after notice and a hearing pursuant to the Bylaws;

(d) the right of the Association, acting through the Board, to grant easements;

(e) the right of the Association to impose reasonable membership requirements and charge reasonable admission or other fees for the use of any recreational facility situated upon the Common Area;

(f) the right of the Board to permit nonmember use of the Common Area upon payment of use fees established by the Board; and

(g) the right of the Association, acting through the Board, to mortgage, pledge or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

Any Owner may delegate his or her right of use and enjoyment to the members of his or her family, lessees and social invitees, as applicable, subject to reasonable regulation by the Board and in accordance with procedures it may adopt. An Owner who leases his or her Lot shall be deemed to have delegated all such rights to the Lot's lessee.

3.3 Common Easement Areas. Common Easement Areas, as identified on the recorded plat of Trumbull Creek Crossing Phase 1, shall be reserved for signage, visual landscape features, utility and drainage easements (to the extent not located on Common Area). Such areas shall be maintained by the Association and no changes in landscaping will be permitted within such areas without written authorization by the Board. No building, wall, fence, paving, landscaping or construction of any type shall be erected or maintained by any Owner so as to trespass or encroach upon any Common Easement Areas, nor may any such areas be used by any Owner for storm water treatment purposes.

3.4 Alienation of the Common Area. The Association may not by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area owned directly or indirectly by the Association for the benefit of the Lots unless the holders of at least seventy-five percent (75%) of the Class A votes of the Association and the Class B member (as defined in Section 5.3.2 below), if any, have given their written approval. If appropriate, the Association shall first offer to dedicate such property to Flathead County or the City of Kalispell, Montana, whichever is applicable and may provide that the offered property be released from any restriction imposed thereon by this Declaration. This provision shall not apply to the easements described in Section 3.3 above. The Association, upon approval in writing of at least fifty percent (50%) of the Class A votes of the Association and the Class B member, if any, and if approved by order or resolution of Flathead County or the City of Kalispell, Montana, whichever is applicable, may dedicate or convey any portion of the Common Area to a park district or other public body.



3.5 Easement Reserved by Declarant. So long as Declarant owns any Lot, Declarant reserves an easement over, under and across the Common Area in order to carry out sales and rental activities necessary or convenient for the sale or rental of Lots. In addition, Declarant hereby reserves to itself and for the Owners of Lots in all future phases of Trumbull Creek Crossing, Phase 1 a perpetual easement and right of way for access over, upon and across the Common Area for construction, utilities, communication lines, drainage and ingress and egress for the benefit of other property owned by Declarant and future phases of the Properties. Declarant, for itself and for its successors and assigns, hereby retains a right and easement of ingress and egress over, in, upon, under and across the Common Area and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the construction of the Improvements on the Properties or other real property owned by Declarant provided, however, that no such right shall be exercised by Declarant in such a way as to unreasonably interfere with the occupancy, use, enjoyment or access to an Owner's Lot by that Owner or its family, tenants, employees, guest or invitees.

ARTICLE IV. Property Rights in Lots

4.1 Use and Occupancy. The Owner of a Lot in the Properties shall be entitled to the exclusive use and benefit of such Lot, except as otherwise expressly provided in this Declaration, but the Lot shall be bound by and the Owner shall comply with the restrictions contained in Article XII below and all other provisions of this Declaration and provisions of any supplement or amendment to this Declaration.

4.2 Easements Reserved. In addition to the Common Area, Common Easement Areas and any utility and drainage easements shown on any recorded plat, Declarant hereby reserves the following easements for the benefit of Declarant and the Association:

4.2.1 Adjacent Common Areas. The Owner of any Lot which blends together visually with any Common Area shall, if the Association elects from time to time to so require, permit the Association to enter upon the Lot to perform all necessary maintenance of such Common Area.

4.2.2 Right of Entry. Declarant, the Architectural Review Committee, and any representative of the Association authorized by the Association may at any reasonable time, and from time to time at reasonable intervals, enter upon any Lot for the purpose of determining whether or not the use and/or Improvements of such Lot are in compliance with this Declaration. No such entry shall be deemed to constitute a trespass or otherwise create any right of action in the Owner of such Lot.

4.2.3 Utility Easements. Easements for installation and maintenance of utilities and drainage facilities may be reserved over portions of certain Lots, as shown on any recorded plat. Within such easements, the Declarant or the



Architectural Review Committee will not permit any structure, planting or any other material to be placed or permitted to remain on the easement area which may damage or interfere with the installation or maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obscure or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements on it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible; and except for Common Easement Areas, which will be maintained by the Association.

ARTICLE V.

Association

Declarant shall organize an Association of all the Owners with Trumbull Creek Crossing. Such Association, its successor and assigns shall be organized under the name "Trumbull Creek Crossing Community Association" or such similar name as Declarant shall designate, and shall have such property, powers and obligations as are set forth in this Declaration for the benefit of the Properties and all Owners of Lots located therein.

5.1 Organization. Declarant shall, before the first Lot is conveyed to an Owner, organize the Association as a nonprofit corporation under the general nonprofit corporation laws of the State of Montana. The Articles of Incorporation of the Association shall provide for its perpetual existence, but in the event the Association is dissolved, the net assets of the Association shall be distributed as follows: the net assets shall be dedicated to a public body, or conveyed and transferred to a nonprofit organization with similar purposes to that of the Association. Declarant shall cause the Bylaws to be recorded in the Recorder's Office of Flathead County, Montana.

5.2 Membership. Every Owner, as defined in Section 1.19, shall immediately upon creation of the Association and thereafter during the entire period of such Owner's ownership of a Lot, be deemed to be a Member of the Association, which membership rights shall commence, exist and continue simply by virtue of such ownership and need not be confirmed or evidenced by any certificate or acceptance of membership. No Owner, whether one (1) or more Persons, shall have more than one (1) membership per Lot owned. In the event the Owner of a Lot is more than one (1) Person, votes and rights of use and enjoyment shall be as provided herein. The rights and privileges of membership may be exercised by a Member or the Member's spouse, subject to the provisions of this Declaration and the Bylaws. The membership rights of a Lot owned by a corporation or partnership shall be exercised by the individual designated from time to time by the Owner in a written instrument provided to the Secretary, subject to the provisions of this Declaration and the Bylaws.

5.3 Voting Rights. The Association shall have two (2) classes of membership, Class A and Class B, as follows:



5.3.1 Class A. Class A Members shall be all Owners with the exception of the Class B Member, if any. Therefore, each Class A Member shall be an Owner. Class A Members shall be entitled to one (1) equal vote for each Lot in which they hold the interest required for membership under Section 5.2 hereof; there shall be only one (1) vote per Lot.

In any situation where a Member is entitled personally to exercise the vote for his or her Lot and more than one (1) Person holds the interest in such Lot required for membership, the vote for such Lot shall be exercised as those Persons determined among themselves and advise the Secretary of the Association in writing prior to any meeting. In the absence of such advice, the Lot's vote shall be suspended if more than one (1) Person seeks to exercise it.

5.3.2 Class B. The Class B member shall be Declarant and shall be entitled to three (3) times the voting rights computed under Section 5.3.1 above for each Lot owned by Declarant. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(i) When all of the Lots in the final phase of Trumbull Creek Crossing have been sold and conveyed to Owners other than a successor Declarant or a builder for development; or

(ii) At such earlier time as Declarant may elect in writing to terminate Class B membership.

5.4 Transitional Advisory Committee. Once the Declarant conveys fifty percent (50%) or more of the Lots in Trumbull Creek Crossing to Owners other than a successor Declarant, Declarant shall have the option to call for a meeting of all Owners and shall provide notice of such meeting as provided in the Bylaws. At such meeting, Declarant or the Owners shall form a transitional advisory committee to provide for the transition of administrative responsibility for Trumbull Creek Crossing Phase 1 by the Declarant to the Association. Such committee shall consist of three (3), but no more than five (5), Members selected all of which shall be selected by the Owners except that Declarant may select no more than two (2) Member of such committee. The option to form the Transitional Advisory Committee is strictly at the discretion of the Declarant.

5.5 General Powers and Obligations. The Association shall have, exercise and perform all of the following powers, duties and obligations:

(a) The powers, duties and obligations granted to the Association by this Declaration.

(b) The powers and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State of Montana.

(c) The powers, duties and obligations of a homeowners association pursuant to Montana Law, whether or not such Act is applicable to this Declaration.



(d) Any additional or different powers, duties and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to this Declaration or otherwise promoting the general benefit of the Owner within the Properties.

The powers and obligations of the Association may from time to time be amended, repealed, enlarged or restricted by changes in this Declaration made in accordance with its provisions accompanied by changes in the Articles of Incorporation or Bylaws of the Association made in accordance with such instruments and with the nonprofit corporation laws of the State of Montana.

5.6 Specific Powers and Duties. The powers and duties of the Association shall include, without limitation, the following:

5.6.1 Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon (including, without limitation, furnishings and equipment related thereto and common landscaped areas), and shall keep all Common Areas in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof and consistent with the Community-Wide Standard.

5.6.2 Personal Property and Real Property for Common Use. Subject to the provisions of Section 3.5 above, the Association, through action of its Board of Directors, may acquire, hold title to, convey, and dispose of tangible and intangible personal property and interests therein. The Board, acting on behalf of the Association, shall accept any real or personal property, leasehold, or other property interests within the Properties conveyed to it by the Declarant.

5.6.3 Rules and Regulations and Enforcement. The Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of the Properties, which rules and regulations shall be consistent with the rights and duties established by this Declaration. The Association shall perform such acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce the provisions of this Declaration and the rules and regulations adopted by the Association, including, without limitation, enforcement of the decisions of the Architectural Review Committee. Sanctions may include reasonable monetary fines and suspension of the right to vote and the right to use any recreational facilities on the Common Area, all as more particularly set forth in the Bylaws. The Board shall, in addition, have the power to seek relief in any court for violations or to abate nuisances. Imposition of sanctions shall be as provided in the Bylaws of the Association or as determined by the Board. The Association, through the Board, by contract or other agreement, shall have the additional right to enforce county or city ordinances and to permit Flathead County or the City of Kalispell to enforce ordinances on the Properties for the benefit of the Association and its Members.

5.6.4 Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration or the Bylaws, and every other right or privilege which may be reasonably implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

5.6.5 Governmental Interests. During the Class B Control Period, the Declarant shall have the authority to designate sites within the Properties, which may include Common Area owned by the Association, for fire, police, water, and sewer facilities, public schools and parks, and other public facilities.

5.6.6 Assessments. The Association shall adopt budgets and impose and collect Assessments as provided in Article X of this Declaration.

5.6.7 Employment of Agents, Advisers and Contractors. The Association, through its Board of Directors, may employ the services of any person or corporation as managers, hire employees to manage, conduct and perform the business, obligations and duties of the Association, employ professional counsel and obtain advice from such persons or firms or corporation such as, but not limited to landscape architects, architects, planners, lawyers and accountants, and contract for or otherwise provide for all services necessary or convenient for the management, maintenance and operation of the Properties.

5.6.8 Create Classes of Service and Make Appropriate Charges. The Association may, in its sole discretion, create various classes of services and make appropriate Assessments or changes therefore to the users of such services, including but not limited to reasonable admission and other fees for the use of any and all recreational facilities situated on the Common Areas, without being required to render such services to those of its members who do not assent to such charges and to such other rules and regulations as the Board of Directors deems proper. In addition, the Board of Directors shall have the right to discontinue any services upon nonpayment or to eliminate such service for which there is no demand or adequate funds to maintain the same.

5.7 Liability. A member of the Board of Directors or an officer of the Association shall not be liable to the Association or any member thereof for any damage, loss or prejudice suffered or claimed on account of any action or failure to act in the performance of his duties, except for acts of gross negligence or intentional acts. In the event any member of the Board of Directors or any officer of the Association is made a party to any proceeding because the individual is or was a director or officer of the Association, the Association shall indemnify such individual against liability and expenses incurred to the maximum extent permitted by law.

5.8 Turnover Meeting. Declarant shall call a meeting of the Association for the purpose of turning over administrative responsibility for the Properties to the Association (the "Turnover Meeting") not later than ninety (90) days after termination of the Class B membership in accordance with Section 5.3.2, giving notice to the Owners as provided in the Bylaws. At the Turnover Meeting the then existing directors shall resign and their successors shall be elected by the Owners as



provided in this Declaration and in the Bylaws of the Association. If Declarant fails to call the Turnover Meeting required by this Section, any Owner or Mortgagee of a Lot may call the Turnover Meeting by giving notice as provided in the Bylaws.

5.9 Contracts Entered into by Declarant or Board of Directors Prior to Turnover Meeting. Notwithstanding any other provision of this Declaration, any leases or contracts (including management contracts, service contracts and employment contracts) entered into by the Declarant or the Board of Directors on behalf of the Association prior to the Turnover Meeting shall have a term of not in excess of three (3) years. In addition, any such lease or contract shall provide that it may be terminated without cause or penalty by the Association or Board of Directors upon not less than thirty (30) days' written notice to the other party given not later than sixty (60) days after the Turnover Meeting.

ARTICLE VI

Maintenance, Utilities and Services

6.1 Association's Responsibility. The Association shall maintain and keep in good repair the Area of Common Responsibility, such maintenance to be funded as hereinafter provided. This maintenance shall include, but need not be limited to, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and other flora, structures, and Improvements, including all private streets (including, but not limited to removal of ice and snow therefrom), situated upon the Common Area, all entry features within the Properties, and such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, or by a contract or agreement for maintenance thereof by the Association.

Except as otherwise specifically provided herein, all costs associated with all such maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Lots as part of the Common Assessment, notwithstanding that the Association may be entitled to reimbursement from the owner(s) of certain portions of the Area of Common Responsibility pursuant to this Declaration, other recorded covenants, or agreements with the owners(s) thereof.

The Association may maintain other property which it does not own, including, without limitation, property dedicated to the LID or to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

6.2 Owner's Responsibility. Each Owner shall maintain his or her Lot and all structures, parking areas and other improvements comprising the Lot (including removal of ice and snow, and any debris, from all sidewalk and driveway improvements immediately adjacent to or which are a part of such Owner's Lot) in a manner consistent with the Community-Wide Standard, all applicable covenants and any rules and regulations promulgated by Declarant or the Association unless such maintenance responsibility is otherwise assumed by or assigned to the



Association pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Lot. If any Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner thereof in accordance with Section 10.3.2 of this Declaration; provided, however, except when entry is required due to an emergency situation, the Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry.

6.3 Common Lot Line Walls and Party Fences.

6.3.1 General Rules of Law to Apply. Each common lot line wall or fence built as a part of the original construction on the Lots which shall serve and separate any two (2) adjoining Lots shall constitute a common lot line wall or fence and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding common lot line walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

6.3.2 Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a common lot line wall or fence shall be shared by the Owners who make use of the wall or fence in equal proportions.

6.3.3 Damage and Destruction. If a common lot line wall or fence is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the wall or fence may restore it. Any other Owner or Owners thereafter making use of the wall or fence, shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

6.3.4 Right to Contribution Runs With Land. The right of any Owner to contributions from any other Owner under this Section 6 shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

6.3.5 Arbitration. If any dispute arises concerning a common lot line wall or fence, or under the provisions of the Section, each common lot line wall shall appoint one (1) arbitrator. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefore by the Board of Directors, the Board shall appoint an arbitrator for the refusing party. The arbitrators thus appointed shall appoint one (1) additional arbitrator and a hearing to consider the issue raised shall be held within thirty (30) days of such final appointment. The decision by a majority of all three (3) arbitrators shall be binding upon the parties and shall be a condition precedent to any right of legal action that either party may have against the other.

6.4 Maintenance of Utilities. The Association shall perform or contract to perform maintenance of all private utilities within the Areas of Common Responsibility, such as sanitary sewer service lines, domestic water service lines and

storm drainage lines, except to the extent such maintenance is performed by utilities furnishing such services. The Association shall not be liable for any interruption or failure of such services. Each Owner shall be responsible for maintaining utility lines within such Owners' Lot.

6.5 Security. The Association may, but shall not be obligated to maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. NEITHER THE ASSOCIATION, THE DECLARANT, ANY SUCCESSOR DECLARANT, THE ARCHITECTURAL REVIEW COMMITTEE, NOR ANY AGENT EMPLOYEE, OFFICER, DIRECTOR OR MEMBER OF ANY OF THE FOREGOING (THE "ASSOCIATION PARTIES") SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTIES, HOWEVER, AND NO ASSOCIATION PARTY SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OR FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS AND OCCUPANTS OF ANY LOT, TENANTS, GUESTS AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT THE ASSOCIATION PARTIES DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM OR OTHER SECURITY SYSTEM DESIGNATED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY THE ASSOCIATION PARTIES MAY NOT BE COMPROMISED OR CIRCUMVENTED, THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP, OR OTHERWISE, NOR THAT FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER AND OCCUPANT OF ANY LOT, AND EACH TENANT, GUEST AND INVITEE OF AN OWNER, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE ASSOCIATION PARTIES ARE NOT INSURERS AND THAT EACH OWNER AND OCCUPANT OF ANY LOT AND EACH TENANT, GUEST AND INVITEE OF ANY OWNER ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS AND TO THE CONTENTS OF LOTS AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION PARTIES HAVE MADE NO REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER, OCCUPANT, TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTIES.

6.6 Services. The Association shall provide or contract for such services as the Board of Directors may reasonably deem to be a benefit to the Properties, including, without limitation, landscape services, garbage and trash removal for Common Area and security services (subject to Section 6.5).



ARTICLE VII.

Insurance and Casualty Losses

7.1 Types of Insurance. For the benefit of the Association and the Owners, the Board of Directors shall obtain and maintain at all times, and shall pay for out of the Operations Fund, the following insurance:

7.1.1 Property Damage Insurance.

(i) The Association shall maintain a policy or policies of insurance covering loss or damage from fire, with standard extended coverage and "all risk" endorsements, and such other coverage as the Association may deem desirable.

(ii) The amount of the coverage shall be for not less than one hundred percent (100%) of the current replacement cost of the improvements on the Common Areas (exclusive of land, foundation, excavation and other items normally excluded from coverage), subject to a reasonable deductible.

(iii) The policy or policies shall include all fixtures and building service equipment to the extent that they are part of the Common Areas and all personal property and supplies belonging to the Association.

7.1.2 Liability Insurance.

(i) The Association shall maintain comprehensive general liability insurance coverage insuring the Declarant, the Association, the Board of Directors, and the managing agent, against liability to the public or to Owners and their invitees or tenants, incident to the operation, maintenance, ownership or use of the Common Areas, including legal liability arising out of lawsuits related to employment contracts of the Association. There may be excluded from such policy or policies coverage of an Owner (other than as a member of the Association or Board of Directors) for liability arising out of acts or omissions of such Owner and liability incident to the ownership and/or use of the part of the Property as to which such Owner has the exclusive use or occupancy.

(ii) Limits of liability under such insurance shall not be less than One Million Dollars (\$1,000,000) on a combined single-limit basis.

(iii) Such policy or policies shall be issued on a comprehensive liability basis and shall provide a cross-liability endorsement wherein the rights of named insured(s) under the policy or policies shall not be prejudiced as respects his, her or their action against another named insured.

7.1.3 Worker's Compensation Insurance. The Association shall maintain workers' compensation insurance to the extent necessary to comply with any applicable laws.

7.1.4 Fidelity Insurance.

(i) The Board of Directors may cause the Association to maintain blanket fidelity insurance for all officers, directors, trustees and employees of the Association and all other persons handling or responsible for funds of, or administered by, the Association. In the event that the Association has retained a management agent, the Board of Directors may require such agent to maintain fidelity bonds for its officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association. The cost of such insurance, if any, shall be borne by the Association.

(ii) The total amount of fidelity insurance coverage required shall be based upon the best business judgment of the Board of Directors.

(iii) Such fidelity insurance shall name the Association as obligee and shall contain waivers by the insurance issuers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions. The insurance shall provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days' prior written notice to the Association.

7.2 Individual Insurance. By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket all-risk casualty insurance on the Lot(s) and structures constructed thereon meeting the same requirements as set forth in Section 7.1 for insurance on the Common Area, unless the Association carries such insurance (which it is not obligated to do hereunder). Each Owner further covenants and agrees that in the event of a partial loss or damage resulting in less than total destruction of structures comprising his or her Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article XI of this Declaration. The Owner shall pay any costs of repair or reconstruction which are not covered by insurance proceeds. In the event that structure is totally destroyed, the Owner may decide not to rebuild or to reconstruct, in which case the Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction and thereafter the Owner shall continue to maintain the Lot in a neat and attractive condition consistent with the Community-Wide Standard.

7.3 Damage and Destruction.

(a) Immediately after damage or destruction by fire or other casualty to all or any part of the Properties covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Properties. Repair or reconstruction, as used in this paragraph, means

repairing or restoring the Properties to substantially the same condition in which they existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.

(b) Any damage or destruction to the Common Area shall be repaired or reconstructed unless the Members representing at least seventy-five (75%) percent of the total Class A vote of the Association and the Class B Member (so long as such membership shall exist) shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such funds or information shall be made available; provided, however, such extension shall not exceed sixty (60) additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to Common Area or common property of a Neighborhood shall be repaired or reconstructed.

(c) In the event that it should be determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the affected portion of the Properties shall be restored to their natural state and maintained by the Association in a neat and attractive condition consistent with the Community-Wide Standard.

7.4 Disbursement of Proceeds. If the damage or destruction for which the proceeds of insurance policies held by the Association are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repair or reconstruction shall be retained by and for the benefit of the Association and placed in a capital improvements account. In the event no repair or reconstruction is made, any proceeds remaining after making such settlement as is necessary and appropriate with the affected Owner or Owners and their Mortgagee(s) as their interests may appear, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of any Mortgagee of a Lot and may be enforced by such Mortgagee.

7.5 Repair and Reconstruction. If the damage or destruction to the Common Area for which insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Members, levy a special assessment against all Owners on the same basis as provided for Common Assessments. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.



ARTICLE VIII.
No Partition

8.1 Except as is permitted in the Declaration or amendments thereto, there shall be no judicial partition of the Common Area or any part thereof, nor shall any Person acquiring any interest in the Properties or any part thereof seek any judicial partition unless the Properties have been removed from the provisions of this Declaration. This Article shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

ARTICLE IX.
Condemnation

9.1 Whenever all or any part of the Common Area shall be taken (or conveyed in lieu or under threat of condemnation by the Board acting on the written direction of Members representing at least seventy-five (75%) percent of the total Class A vote in the Association) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof. 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 Common Area on which improvement have constructed, then, unless within sixty (60) days after such taking the Declarant (during the Class B Control Period only) and Members representing at least seventy-five (75%) percent of the total Class A vote of the Association shall otherwise determine, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available therefore, in accordance with plans approved by the Board of Directors of the Association. If such improvements are to be repaired or restored, the above provisions in Article VIII hereof 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 Common Area, 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 disbursed to the Association and used for such purposes as the Board of Directors of the Association shall determine.

ARTICLE X.
Assessments

10.1 Creation of Assessments. There are hereby created assessments for Association expenses as may from time to time specifically be authorized by the Board of Directors, to be commenced at the time and in the manner set forth in Section 10.6. There shall be three (3) types of assessments: (a) Common Assessments to fund Common Expenses for the benefit of all Members of the

Association; (b) Special Assessments as described in Section 10.3 below; and (c) Emergency Assessments as described in Section 10.4 below. Each Owner, by acceptance of a deed or recorded contract for any portion of the Properties, is deemed to covenant and agree to pay these assessments. Common Assessments shall be levied on all Lots as set forth in this Article X.

All Common and Special Assessments, together with interest (at a rate established by resolution of the Board of Directors but not to exceed the highest rate allowed by Montana law) as computed from the date the delinquency first occurs, late charges, costs, reasonable attorney fees, and fines or other charges imposed under this Declaration or the Bylaws, shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made until paid. Each such assessment, together with interest, late charges, costs, and reasonable attorney fees, shall also be the personal obligation of the Person who was the Owner of such Lot at the time the assessment arose, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance, except no first Mortgagee who obtains title to a Lot pursuant to the remedies provided in the Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

The Association shall, upon demand at any time, furnish to any Owner liable for any type of assessment a certificate in writing signed by an officer of the Association setting forth whether such assessment has been paid as to any particular Lot. Such certificate shall be conclusive evidence of payment to the Association of such assessment therein stated to have been paid. The Association may require the advance payment of a processing fee not to exceed fifty (\$50.00) dollars for the issuance of such certificate.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors. Unless the Board otherwise provides, the Common Assessments may be paid in monthly installments. Each owner, by acceptance of a deed to his or her Lot, acknowledges that all Common Assessments levied hereunder are annual assessments due and payable in advance on the first day of the fiscal year; nevertheless, the Board may permit any assessment to be paid in installments. Assessment shall be due and payable in a manner and on a schedule as the Board of Directors may provide. The first annual assessment levied on each Lot shall be adjusted according to the number of months remaining in the fiscal year as of the Assessment Date. If any Owner is delinquent in paying any assessments or other charges levied on his Lot, the Board may revoke the privilege of paying in installments and require annual assessments to be paid in full immediately.

No Owner may waive or otherwise exempt himself or herself from liability for the assessments provided for herein, including, by way of illustration and not limitation, by nonuse of Common Area or abandonment of the Lot. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the Bylaws, or for inconvenience or discomfort



arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

The Association is specifically authorized but not obligated, to enter into subsidy contracts or contracts for "in kind" contribution of services or materials for a combination of services and materials for the payment of some portion of the Common Expenses.

10.2 Computation of Common Assessments. It shall be the duty of the Board, at least sixty (60) days before the beginning of each fiscal year, to prepare a budget covering the estimated Common Expenses of the Association during the coming year. The budget shall include a capital contribution establishing the Reserve Fund in accordance with a budget separately prepared as provided in Section 10.11 below.

The Common Assessment to be levied against each Lot for the coming year shall be set a level which is reasonably expected to produce total income to the Association equal to the total budgeted Common Expenses, including the Reserve Fund. In determining the amount of the Common Assessments, the Board, in its discretion, may consider other sources of funds available to the Association.

Each Lot shall be assessed for Common Expenses based on the following formula: Subject to the provisions of Section 10.3.2, all Lots shall be assessed on the basis of one assessment per Lot. The amount of the assessment for each Lot shall be determined by dividing the amount of the annual total budgeted Common Expenses or other aggregate assessment (Special Assessment or Emergency Assessment) by the total number of Lots. With respect to Common Assessments, the total number of Lots shall be those Lots subject to Common Assessments determined in accordance with Section 10.6. The assessment determination will initially be made as of the first day of each fiscal year. However, in determining the number of Lots, the Board shall take into account the number of Lots reasonably anticipated to become subject to Common Assessments during the fiscal year. The determination for other assessments to be made upon the entire membership may be made by the Board at or about the time of such assessment rather than on the first day of the fiscal year, and if such other assessment is payable over a period of time, the Board may take into account the number of Lots reasonably anticipated to become subject to that assessment during the same period of time. If the foregoing formula appears to be inequitable to the Board at any time by reason of materially miscalculating the number of Lots that will be subject to assessment, the Board may from time to time reallocate any assessment in accordance with the foregoing formula by adjusting the number of Lots subject to assessment to a more accurate number. The common profits of the Association shall be allocated among the Lots on the same basis and formula as is above applied with respect to assessments.

So long as the Declarant has the right to annex additional property pursuant to Section 2.2 hereof, the Declarant may elect on an annual basis, but shall not be obligated, to reduce the resulting assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Section 10.1 above);



provided, any such subsidy shall be conspicuously disclosed as a line item in the income portion of the Common Expense budget and shall be made known to the membership. The payment of such subsidy in any year shall under no circumstances obligate the Declarant to continue payment of such subsidy in future years.

Regardless of the number of Members or the amount of assets of the Association, each year the Board shall prepare, approve and make available to each Member a pro forma operating statement (budget) containing: (i) estimated revenue and expenses on an accrual basis; (ii) the amount of the total cash reserves of the Association currently available for replacement or major repair of the Common Area and for contingencies; (iii) an itemized estimate for the remaining life of, and the methods of funding to defray repair, replacement or additions to major components of the Common Area; and (iv) a general statement setting forth the procedures used by the Board in the calculation and establishment of reserves to defray the costs and repair, replacement or additions to major components of the Common Area. For the first fiscal year, the budget shall be approved by the Board no later than the date on which annual assessments are scheduled to commence. Thereafter, the Board shall annually prepare and approve the budget and distribute a copy thereof to each Member, together with written notice of the amount of the annual assessments to be levied against the Owner's Lot, not less than thirty (30) days and not more than ninety (90) days prior to the beginning of the fiscal year. The assessments in the budget to be collected at intervals as determined by the Board of Directors may include both operating and maintenance costs and the reserve assessments, all as defined in the Association documents

Notwithstanding the foregoing, however, in the event the proposed budget is disapproved or the Board fails for any reason so to determine the budget for any year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the immediately preceding year shall continue for the current year.

10.3 Special Assessments.

10.3.1 Entire Membership. The Association may levy Special Assessments, including Special Assessment for capital improvements or additions, from time to time provided such assessment receives the affirmative vote or written consent of Members representing a majority of the total Class A votes in the Association and the affirmative vote or written consent of the Class B Member, if such then exists. Special Assessments pursuant to this paragraph shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved, if the Board so determines. Declarant shall not at any time be subject to Special Assessments on Lots owned by Declarant.

10.3.2 Less Than All Members. The Association may levy a Special Assessment against any Member individually and against such Member's Lot to reimburse the Association for costs incurred in bringing a Member and such Member's Lot into compliance with the provisions of this Declaration, any



amendments hereto, the Articles, the Bylaws, or the Association rules, which Special Assessment may be levied upon the vote of the Board after notice to the Member and an opportunity for a hearing. Notwithstanding the other provisions of this Article X, the Association may assess a Lot for the full amount of any Common Expense, the incurring of which is solely attributable to the negligence or willful misconduct of the Owner of such Lot or of such Owner's family members or invitees. Any Common Expense or any part of a Common Expense benefiting fewer than all of the Lots may be assessed exclusively against the Lots benefited.

10.4 Emergency Assessments. If the Common Assessments levied at any time are, or will become, in the opinion of the Board of Directors, inadequate to meet all expenses incurred under this Declaration for any reason, including nonpayment of any Owner's assessments on a current basis, the Board of Directors shall immediately determine the approximate amount of such inadequacy and issue a supplemental budget, noting the reason thereof, and levy an emergency assessment ("Emergency Assessment") for the amount required to meet all such expenses on a current basis. Emergency Assessments shall be apportioned as set forth in Section 10.3.1 above and be payable as determined by the Board of Directors.

10.5 Lien for Assessments. Upon recording of a claim of lien on any Lot, there shall exist a perfected lien for unpaid assessments (together with interest, late charges, costs, attorney fees, fines and other charges) prior and superior to all other liens, except (1) all taxes, bonds, assessments, and other levies which by law would be superior thereto, and (2) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value and which was recorded prior to the recordation of the notice of lien. Such lien, when delinquent, may be enforced in accordance with Montana law.

The Association, acting on behalf of the Owners, shall have the power (but not the obligation) to bid for the Lot at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. During the period in which a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged such Lot had it not been acquired by the Association as a result of foreclosure. Suit to recover a money judgment for unpaid assessments, late charges, interest, costs, and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same.

10.6 Date of Commencement of Assessments. Each Lot shall be subject to Common Assessments on the first date of the first month following the conveyance of such Lot, (the "Assessment Date"). The first assessment shall be adjusted according to the number of days then remaining in that month of conveyance. In addition, the first assessment levied on each Lot shall be adjusted according to the number of months remaining in the fiscal year as of the Assessment Date. The commencement of assessments is subject to accrual of reserves as described in Section 10.11, and subject to the following exceptions:



10.6.1 Assessments are to be levied against all Lots, except those owned by the Declarant, or any successor Declarant or Builder who acquires all of the platted Lots in a bulk purchase, whether or not such Lots have been improved with a substantially completed Home. However, no assessment shall be levied against any Lot, until such time as it is first conveyed to a purchaser other than Declarant or Declarant's assignee. Assessments for all Lots conveyed by the Declarant to a purchaser/Owner, either by deed or land sales contract, shall begin on the day of the recording of the deed or land sale contract conveying or contracting to convey the Lot to the new Owner. Declarant shall not at any time be subject to Common Assessments on Lots that have not been conveyed by Declarant to a Builder or Owner.

10.6.2 In lieu of paying operating assessments, Declarant will contribute in a timely manner non-refundable monies to the Association in order to support budgeted, or previously agreed to, operating costs in excess of current Association revenues, so long as Declarant owns any Lots. After the date of the Turnover Meeting, said contributions shall be in accordance with the last Association budget approved prior to the Turnover Meeting.

10.6.3 Notwithstanding Section 10.6.1 above, to the extent required by law, Reserve Fund Assessments described in Section 10.11 shall begin accruing on each platted Lot from the date of the first Lot as the property becomes subject to assessment under Section 10.1; provided, however, that Declarant may defer payment of any accrued assessment for a Lot under this Section 10.6 until the date such Lot is first conveyed to a purchaser other than Declarant or Declarant assignee. The books and records of the Association shall reflect the amount owing from Declarant for all such Reserve Fund Assessments.

10.7 Subordination of the Lien to First Mortgages. The lien of assessments, including interest, late charges (subject to the limitations of Montana law), and costs (including attorney fees) provided for herein, shall be subordinate to the lien of any first Mortgage upon any Lot. The sale or transfer of any Lot recorded prior to recording the claim of lien shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to judicial or non judicial foreclosure of a first Mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from lien rights for any assessments thereafter becoming due. Where the Mortgagee holding a first Mortgage of record or other purchaser of a Lot obtains title pursuant to judicial or non judicial foreclosure of the Mortgage, it shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Lot which became due prior to such acquisition of title. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from Owners of all the Lots, including such acquirer, its successors and assigns.

10.8 Capitalization of Association. Upon acquisition of record title to a Lot by any purchaser thereof other than the Declarant or an Owner who purchases solely for the purpose of constructing a dwelling thereon for resale, a contribution shall be made by or on behalf of the purchaser to the working capital of the



Association in an amount equal to two times the monthly assessment, based upon the current budget for the Association. However, if a Lot/Lot purchased solely for the purpose of construction has not been conveyed to an Owner within one (1) year from date of initial conveyance to Owner/builder, then Owner/builder shall within 15-days from that date fund the working capital contribution to the Association. This amount shall be in addition to, not in lieu of, the annual Common Assessment levied on the Lot and shall not be considered an advance payment of any portion thereof. This amount shall be deposited into the purchase and sales escrow and disbursed there from to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to the terms of this Declaration and the Bylaws.

10.9 Exempt Property. Notwithstanding anything to the contrary herein, the following property shall be exempt from payment of Common Assessments, Special Assessments and Emergency Assessments:

10.9.1 all Common Area; and

10.9.2 all property dedicated to and accepted by any governmental authority, public utility, including, without limitation, public schools, public streets, public lights, and public parks.

10.10 Operations Fund. The Association shall keep all funds received by it as assessments, other than the reserves described in Section 10.11 below, separate and apart from its other funds, in a bank account in the name of the Association to be known as the "Operations Fund". The Association shall use such fund exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents within the Properties and in particular for the improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area and of the Lots situated upon the Properties, including but not limited to:

(a) Payment of the cost of maintenance, utilities and services as described in Article VI.

(b) Payment of the cost of insurance as described in Section 7.1.

(c) Payment of taxes assessed against the Common Area and any improvements thereon.

(d) Payment of the cost of other services which the Association deems to be of general benefit to the Owners, including but not limited to management, accounting, legal and secretarial services.

10.11 Reserve Fund. The Declarant shall establish a budget based upon the Reserve Study set forth in Section 10.12 below and other reliable information and a reserve fund in the name of the Association in a bank account, for replacement of those items to be maintained by the Association all or a part of which will normally require replacement in more than three (3) and less than thirty (30) years



and for exterior painting if items to be maintained by the Association include exterior painted surfaces ("Reserve Fund"). Such Reserve Fund shall be funded by assessments against the individual Lots assessed for maintenance of the items for which the Reserve Fund is being established (except those items that can reasonably be funded from the Operations Fund) and shall be kept separate from the all other Association funds, including the Operations Fund. Such assessments shall be included in the Common Assessments established pursuant to Section 10.2. After the Turnover Meeting, the Board of Directors may borrow funds from the Reserve Fund to meet high seasonal demands on a regular Operating Funds or to meet unexpected increases in expenses, which borrowing will later be repaid from Common Assessments, Special Assessments, or Emergency Assessments. Nothing in this Section shall prohibit prudent investment of the Reserve Fund. Following the second year after the Turnover Meeting, future assessments for the Reserve Fund may be reduced or increased by an affirmative vote of not less than seventy-five percent (75%) of the Members or eliminated by a unanimous vote of the Members. Assessments paid into the Reserve Fund are the property of the Association and are not refundable to sellers or Owners of Lots. Sellers of the Lots, however, may treat their outstanding share of the Reserve Fund as a separate item in any sales agreement.

10.12 Reserve Study. Prior to the Turnover Meeting, Declarant shall conduct a Reserve Study (the "Reserve Study") to determine the requirements for the Reserve Fund and may adjust the payments into the Reserve Fund as indicated by the Reserve Study or update thereof and provide for other reserve items as the Board of Directors deems appropriate. After the Turnover Meeting, the Board of Directors shall conduct a Reserve Study or review and update the existing Reserve Study annually. The Reserve Study shall include the identification of all items for which reserves are required to be established; the estimated remaining usable life of each item as of the date of the Reserve Study; the estimated cost of maintenance, repair or replacement of each item at the end of its useful life; and a thirty (30) year plan with regular and adequate contributions, adjusted by estimated inflation and interest earned on reserves, to meet the maintenance, repair and replacement schedule.

ARTICLE XI

Architectural Standards

11.1 General

No construction, which term shall include within its definition staking, clearing, excavation, grading, and other site work, no exterior alteration or modification of existing improvements, and no planting or removal of plants, trees, or shrubs shall take place except in strict compliance with this Article, until the requirements below have been fully met, and until the approval of the appropriate committee has been obtained pursuant to the provisions of this Article XI. The Board of Directors may establish reasonable fees to be charged by the committees on behalf of the Association for review of applications hereunder and may require such fees to be paid in full prior to review of any application.



All dwellings constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications prepared by an architect which are approved by Flathead County or the City of Kalispell, as applicable, and the Architectural Review Committee (the "ARC").

This Article shall not apply to the activities of the Declarant, nor to construction or improvements or modifications to the Common Area by or on behalf of the Association.

The Board of Directors shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction decisions of the committees established in Sections 11.2 and 11.3. This Article may not be amended without the Declarant's written consent so long as the Declarant owns any land subject to this Declaration or subject to annexation to this Declaration.

11.2 Architectural Review Committee. The ARC shall consist of at least three (3), but not more than five (5), persons and shall have exclusive jurisdiction over all original construction on any portion of the Properties. During the Class B Control Period, the Declarant retains the right to appoint all members of the ARC who shall serve at the discretion of the Declarant or the Declarant shall be the ARC if Declarant so chooses. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration of such right, the Board of Directors shall appoint the members of the ARC, who shall serve and may be removed at the discretion of the Board of Directors. The members of the ARC may include architects, engineers and other persons who are not members of the Association.

No exterior construction, addition, improvement, or alteration to a Lot shall be made, (including without limitation, re-roofing, residing or repainting), unless and until plans and specifications showing the nature, kind, shape, color, size, materials, and location of such modifications, additions, or alterations, shall have been submitted in writing to the ARC for approval as to quality of workmanship and design and as to harmony of external design with existing structures, location in relation to surrounding structures, topography, and finish grade elevation. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his or her Lot, or to paint the interior of his or her Lot any color desired; provided, modifications or alterations to the interior of his or her screened porches, patios and similar portions of a Lot visible from outside the Lot shall be subject to approval hereunder.

11.3 Procedure. In addition to any other procedures which the ARC may reasonably promulgate, any Member or person desiring a decision by ARC shall deliver a complete package of information, as reasonably determined by the ARC. Written design guidelines and procedures may be promulgated for the exercise of this review, which guidelines may provide for a reasonable review fee.



If the ARC fails to approve or to disapprove the submitted package within thirty (30) days after a Member has submitted a package to the ARC, approval will not be required, and this section shall be deemed to have been fully complied with.

11.4 Committee Discretion. The ARC shall be the sole arbiter of such package and may, within such thirty (30) day period, at its sole discretion, give written notice of its disapproval for any reason such committee finds the proposed work would be inappropriate for the particular Lot or incompatible with the design standards that such committee intends for Trumbull Creek Crossing. Consideration such as siding, shape, size, color, design, materials, height, solar access, screen, impairment of view from other Lots, or other affect on the enjoyment of other Lots or the Common Area, disturbance of existing terrain and vegetation and any other factors which such committee reasonably believes to be relevant, may be taken into account by such committee in determining whether or not to consent to any proposed work. However, the specific reasons for disapproval shall be fully stated in such notice of disapproval. Upon notice of disapproval, a Member shall have the right to submit a revised package for further consideration in the manner set forth above.

Any member of the ARC or its representative shall have the right, during reasonable hours and after reasonable notice, to enter upon any lot to inspect for the purpose of ascertaining whether or not this Declaration has been or is being complied with. Such person or persons shall not be deemed guilty of trespass by reason of such entry.

11.5 No Waiver of Future Approvals. The approval of ARC of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

11.6 Variance. The ARC may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, (b) be contrary to the restrictions set forth in the body of this Declaration, or (c) estop the Committee from denying a variance in other circumstances. For purposes of this Section 12.7, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

11.7 Compliance With Guidelines. Any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of the guidelines and procedures promulgated by the ARC may be excluded by the Board from the Properties without liability to any person, subject to the notice and hearing procedures contained in the Bylaws. The ARC shall be entitled to bring an injunction to stop any construction in violation of these restrictions.



11.8 No Liability. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and neither committee shall bear any responsibility of ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the ARC, Declarant, the Association, the Board of Directors, any officer, any committee, or member of any of the foregoing (collectively, the "Indemnified Parties") shall be held liable for any injury, damages or loss arising out of the manner or quality of approved construction on or modifications to any Lot and the Association shall indemnify the Indemnified Parties there from, provided only that the Indemnified Parties, in accordance with the actual knowledge possessed by such Party, acted in good faith.

11.9 Majority Action. Except as otherwise provided in this Declaration, a majority of the members of ARC shall have the power to act on behalf of the committee of which they are a member without the necessity of a meeting and without the necessity of consulting the remaining members of the committee of which they are a member. The ARC may render its decision only by written instrument setting forth the action taken by the consenting members.

11.10 Appeal. At any time after Declarant has delegated appointment of the members of the ARC to the Board of Directors of the Association pursuant to Section 12.2, any Owner adversely affected by action of ARC may appeal any action adverse to such Owner to the Board of Directors of the Association. Appeals shall be made in writing within ten (10) days of the action taken by the ARC and shall contain specific objections or mitigating circumstances justifying the appeal. A final, conclusive decision shall be made by the Board of Directors of the Association within fifteen (15) working days after receipt of such notification.

11.11 Effective Period of Consent. Consent of ARC to any proposed work shall automatically be revoked one (1) year after issuance unless construction of the work has been substantially commenced in the judgment of the ARC, as appropriate and thereafter diligently pursued, unless the Owner has applied for and received and extension of time from the applicable committee.

11.12 Estoppel Certificate. Within fifteen (15) working days after written request is delivered to the ARC by any Owner, and upon payment to the applicable committee of a reasonable fee fixed by such committee to cover costs, the applicable committee shall provide such Owner with an estoppel certificate executed by an authorized member of such committee and acknowledged, certifying with respect to any Lot owned by the Owner that as of the date thereof, either: (i) all improvements made or done upon or within such Lot by the Owner comply with this Declaration or (ii) such improvements do not so comply, in which event the Certificate shall also identify the non-complying improvements and set forth with particularity the nature of such non-compliance.



ARTICLE XII.
Use Restrictions

12.1 General Provisions.

The Properties shall be used only for residential, recreational, and related purposes (which may include, without limitation, offices for any property manager retained by the Association or business offices for the Declarant or the Association consistent with this Declaration and amendments hereto). Any Supplemental Declaration or amendments to this Declaration may impose stricter standards than those contained in this Article. The Association, acting through its Board of Directors, shall have standing and the power to enforce such standards.

The Association, acting through its Board of Directors, shall have authority to make and enforce standards and restrictions governing the use of the Properties, in addition to those contained herein, and to impose reasonable user fees for use of Common Area facilities. Such regulations and use restrictions shall be binding upon all Owners, occupants, invitees and licensees, if any, until and unless overruled, canceled or modified in a regular or special meeting of the Association by the vote of Members representing a majority of the total Class A votes in the Association and by the Class B Member, so long as such membership shall exist.

12.2 Delegation by Board. Whenever in the use restrictions set forth in this Article XII, the consent or approval of the Board of Directors is required for certain activities, the Board of Directors may from time to time adopt resolutions designating an authorized representative to give such consent or approvals in lieu of the Board, and such resolutions may include conditions to and limitations on the authority granted by the Board.

12.3 Signs. Standard "For Sale" and "For Rent" signs have been designed for Trumbull Creek Crossing, see Exhibit C. No other "For Sale" or "For Rent" signs shall be permitted. No sign of any kind shall be erected within the Properties without the written consent of the Board of Directors, except entry and directional signs installed by Declarant; provided, however, that not more than one (1) "For Sale" or "For Rent" sign placed by the Owner, Declarant or by a licensed real estate agent, not exceeding eighteen (18) inches high and twenty-four (24) inches long may be temporarily displayed on any Lot so long as such sign complies with all applicable ordinances of the City of Kalispell. If permission is granted to any Person to erect a sign within the Properties, the Board reserves the right to restrict the size, color, lettering and placement of such sign. The Board of Directors or Declarant (during the Class B Control Period) shall each have the right to erect signs as they, in their discretion, deem appropriate. Notwithstanding the above, no signs, flags, banners or similar items advertising or providing directional information with respect to activities being conducted outside the Properties shall be permitted within the Properties.

12.4 Traffic, Parking and Prohibited Vehicles.



12.4.1 Traffic Rules and Regulations. The Board of Directors may adopt speed limits, use restrictions and other traffic-related rules and regulations for the private streets, and shall have the right and authority to enforce such rules and regulations, and the right to levy fines and other sanctions for violations (see Section 5.6.3 for fines and other sanctions).

12.4.2 Parking. Vehicles shall be parked only in the garages or in the driveways, if any, serving the Lots or in appropriate spaces or designated areas in which parking may or may not be assigned and then subject to such reasonable rules and regulations as the Board of Directors may adopt. The Board of Directors may designate certain on-street parking areas on the private streets within the Properties for visitors or guests subject to reasonable rules and regulations. The Board of Directors shall have the right and authority to enforce parking rules and regulations and to levy fines and other sanctions for violations.

12.4.3 Prohibited Vehicles. Commercial vehicles, vehicles with commercial writing on their exteriors, vehicles primarily used or designed for commercial purposes, tractors, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, and boat trailers shall be parked only in enclosed garages or special parking areas, if any, designated by the Board. The mere parking on a Lot or in the street, of a vehicle bearing the name of a business shall not, in and of itself, constitute a violation of this provision. Moreover, a pick-up truck owned or used by an owner of the Lot, which does not remain parked on a Lot or in the street for more than 96 hours in a week, shall not be considered a violation of these provisions. Stored vehicles and vehicles which are either obviously inoperable, in extreme state of disrepair or do not have current operating licenses shall not be permitted on the Properties except within enclosed garages. For purposes of this Section, a vehicle shall be considered "stored" if it is put up on blocks or covered with a tarpaulin and remains on blocks or so covered for fourteen (14) consecutive days without the prior approval of the Board. For purposes of this Section, a vehicle shall be considered in "extreme state of disrepair" when the Board of Directors reasonably determines that its presence offends the occupants of the area of the Properties in which the vehicle is located. Notwithstanding the foregoing, service and delivery vehicles may be parked in the Properties during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Lot or the Common Areas. Any vehicle parked in violation of this Section or parking rules promulgated by the Board for five (5) days following the date notice is mailed to such Owner may be towed by the agent of the Association in accordance with the Bylaws and at such Owner's cost and expense.

12.5 Occupants Bound. All provisions of the Declaration, Bylaws and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants, guests and invitees of any Lot. Every Owner shall cause all Occupants of his or her Lot to comply with this Declaration, the Bylaws, and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations and losses to the Common Areas caused by such Occupants, notwithstanding the fact that such occupants of a Lot are fully liable and may be



sanctioned for any violation of this Declaration, the Bylaws, and rules and regulations adopted pursuant thereto.

12.6 Animal and Pets.

12.6.1 No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any portion of the Properties, except that dogs, cats or other usual and common household pets not to exceed the total of two (2) may be permitted in a Lot.

(i) Excluded from the foregoing restriction shall be birds, fish, small reptiles and small animals which are kept in cages or tanks which are permanently kept within the interior of a dwelling or residence situated on the Lot.

(ii) The Owner of a Lot may apply to the Board of Directors to increase the maximum number of two (2) household pets set forth above if the increased number and the type of household pet or pets would not be reasonably objectionable to the Owners of neighboring Lots or other Lots in the vicinity. The Board, in its sole discretion, may grant such applications subject to such terms, conditions and modifications as the Board may determine to be appropriate to accomplish the intent and purpose of this Section 12.6 and the other use restrictions of this Article.

12.6.2 Provided, however, and notwithstanding anything to the contrary set forth in paragraph 12.6.1 above, those pets which are permitted to roam free, or, in the sole discretion of the Board, endanger the health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners of other Lots or the owner of any portion of the Properties shall be removed upon request of the Board; and if the Owner fails to honor such request, the pet may be removed by the Board at the cost and expense of the offending Owner.

12.6.3 No pets shall be kept, bred, or maintained for any commercial purpose.

12.6.4 Dogs shall at all times whenever they are outside a Lot be confined on a leash held by a responsible person. All Owners shall comply with the Flathead County Dog Ordinance or any other Ordinance, Rule or Regulation of Flathead County or the State of Montana regarding animals.

12.7 Quiet Enjoyment. No portion of the Properties or any Lot shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any portion of the Properties that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property.

No noxious, illegal, or offensive activity shall be carried on upon any portion of the Properties or any Lot, nor shall anything be done thereon tending to cause



embarrassment, discomfort, annoyance, or nuisance to any person using any portion of the Properties. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, hazardous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Properties. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted within the Properties.

12.8 Unsightly or Unkempt Conditions. It shall be the responsibility of each Owner to prevent any unclean, unhealthy, unsightly, hazardous or unkempt condition on his or her Lot. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions are prohibited on any part of the Properties, including on or in any Lot.

12.9 Antennas. To the extent limitations are permitted by applicable law, no exterior antennas, aerials, satellite dishes, or other apparatus for the reception or transmission of television, radio, satellite or other signals of any kind shall be placed, allowed, or maintained upon any portion of the Properties, including any Lot, without the prior written consent of the Board. In order to comply with the applicable rules of the Federal Communications Commission relating to the installation of an antenna or dish, and notwithstanding any other provision of this Declaration expressing or implying to the contrary, the Board shall act promptly in responding to any request for installation thereof, and any restrictions which the Board places on the installation of such antenna or dish shall not (a) unreasonably delay or prevent its installation, maintenance or use (b) unreasonably increase the cost of its installation, maintenance or use, or (c) preclude reception of an acceptable quality signal. Provided, however, there may be installed within a Lot a satellite systems dish not to exceed one (1) meter (i.e. 39.37 inches) in diameter, screened by fencing or tasteful landscaping so as to be concealed from the view of neighboring Lots, streets, and property located adjacent to the Lot. The Declarant and/or the Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna or cable system for the benefit of all or a portion of the Properties, should any such master system or systems be utilized by the Association and require any such exterior apparatus.

12.10 Basketball Equipment, Clotheslines, Garbage Cans, Tanks, Etc. All basketball hoops and backboards shall be portable and shall be confined to a driveway or backyard within a Lot. Basketball hoops and backboards shall not be affixed to a garage, residence, stationary post or other structure on a Lot. When not in use, basketball hoops and backboards shall be stored out of sight of neighboring Lots, Persons on adjacent streets and other property located adjacent to the Lot. Clotheslines, garbage cans, above ground storage tanks, mechanical equipment, and other similar items on Lots shall be located or screened so as to be concealed from view of neighboring Lots, streets, and property located adjacent to the Lot. All rubbish, trash, and garbage shall be stored in appropriate containers approved pursuant to this Article XII and shall regularly be removed from the Properties and shall not be allowed to accumulate thereon.



12.11 Subdivision of Lot. No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Board of Directors. Declarant, however, hereby expressly reserves the right to replat any Lot or Lots owned by Declarant. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations.

12.12 Firearms. The discharge of firearms within the Properties, including on or in any Lot, is prohibited. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size. Notwithstanding anything to the contrary contained herein or in the Bylaws, neither the Association nor the Board shall be obligated to take action to enforce this Section and shall have no liability to any person as a result of the breach of this Section by any Person.

12.13 Front Yard Landscaping. All Lots are required to complete the front yard landscaping, including front side yard landscaping, within: (a) sixty (60) days from occupying the Property; (b) within sixty (60) days from the Property being completed; or (c) within sixty (60) days from when weather will allow, but no later than July 1st if installation has been postponed due to weather. Owners are restricted from using chemical fertilizers that have ingredients that cause or potentially cause damage to downstream habitat and fisheries wildlife. All boulevard planter strips shall be planted with sod only. No bark mulch, rock, or other form of dry landscaping shall be allowed. Each Lot shall maintain the tree that exists in the boulevard planting strip. If any said tree dies, then another tree, approved by the Declarant, the ARC or the Board of Directors shall be planted in its place.

12.14 Sprinklers and Irrigation. All Lots are required to have a front yard sprinkler or irrigation system installed within thirty (30) days from occupying the Property or thirty (30) days from the Property being completed, whichever occurs first. All sprinkler or irrigation systems installed in Lots which are connected to a public or potable water supply must include the necessary back flow control devices. With respect to any sprinkler or irrigation system utilized by a Lot, the water shall be confined within the boundaries of such Lot. Provided, however, this Section 12.14 shall not apply to the Declarant, and it may not be amended without Declarant's written consent so long as Declarant has the right to annex property in accordance with Section 2.2.

12.15 Tents, Trailers and Temporary Structures. Except as may be permitted by the Declarant, the ARC or the Board of Directors, no tent, utility shed, shack, trailer or other structure of a temporary nature shall be placed upon a Lot or any part of the Properties.

12.16 Drainage and Septic Systems. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Person other than Declarant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Declarant hereby reserves for itself and the Association a perpetual easement across the Properties for the purpose of altering drainage and water flow. Septic tanks and drain fields are prohibited on the Properties, including on any Lot.



12.17 Tree Removal. No trees shall be removed, except for diseased or dead trees and trees needing to be removed to promote the growth of other trees or for safety reasons, unless approved in accordance with Article XI of this Declaration. In the event of an intentional or unintentional violation of this Section, the violator may be required, by the committee having jurisdiction, to replace the removed tree with one (1) or more comparable trees of such size and number, and in such locations, as such committee may determine necessary in its sole discretion to mitigate the damage.

12.18 Sight Distance at Intersections. All property located at street intersections shall be landscaped so as to permit a clear line of vision across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.

12.19 Air Conditioning. Except as may be permitted by the Board or its designee, no window air conditioning units may be installed in any Home.

12.20 Exterior Lighting or Noisemaking Devices. Except with the consent of the ARC, no exterior lighting or noisemaking devices shall be installed or maintained on any Lot, other than security and fire alarms. However, false alarms of security and fire systems will not be allowed to repeatedly occur. Seasonal holiday lighting and decorations are permissible if consistent with any applicable rules and regulations and if installed no more than thirty (30) days before the celebrated holiday, and removed within thirty (30) days after the celebrated holiday.

12.21 Artificial Vegetation, Exterior Sculpture, and Similar Items. No artificial vegetation shall be permitted on the exterior of any portion of the Properties, including any Lot. Exterior sculpture, fountains, flags, and similar items must be approved in accordance with Article XI of this Declaration.

12.22 Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed on any Lot unless it is an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the ARC, as appropriate.

12.23 Wetlands, Lakes and Water Bodies. All wetlands, lakes, storm water ponds, irrigation water ponds and other ponds, streams, bio filtration swales and water retention facilities within the Properties, if any, shall be aesthetic amenities only, and no other use thereof, including, without limitation, fishing, swimming, boating, playing, or use of personal flotation devices, shall be permitted without the prior approval of the Board. The Association shall not be responsible for any loss, damage, or injury to any Person or property arising out of the authorized or unauthorized use of wetlands, lakes, storm water ponds and other ponds, streams, biofiltration swales or water retention facilities within the Properties. No docks, piers, or other structures shall be constructed on or over any body of water within the Properties, except such as may be constructed by the Declarant or the Association.



12.24 Playground. Any playground or other play areas or equipment furnished by the Association or erected within the Properties shall be used at the risk of the user, and the Association shall not be held liable to any Person for any claim, damage, or injury occurring thereon or related to use thereof.

12.25 Fences. A standard fence type has been designed for Trumbull Creek Crossing, see Exhibit D. No other fence type, hedge, or wall shall be permitted without written permission from the Declarant or ARC. Dog runs, animal pens or animal fences shall only be permitted on any Lot if they are located or screened so as to be concealed from view of neighboring Lots, streets, and property located adjacent to the Lot and must be approved in accordance with Article XI of this Declaration.

12.26 Business Use. Lots shall be used for residential purposes only. Except with the consent of the Board of Directors, no trade, craft, business, profession, commercial or similar activity of any kind shall be conducted on any Lot, nor shall any goods, equipment, vehicles, materials or supplies used in connection with any trade, service or business be kept or stored on any Lot. Nothing in this paragraph shall be deemed to prohibit (a) activities relating to the sale of residences, (b) the right of Declarant or any contractor or homebuilder to construct residences on any Lot, to store construction materials and equipment on such Lots in the normal course of construction of Trumbull Creek Crossing, and to use any residence as a sales office or model home for purposes of sales in Trumbull Creek Crossing, to maintain on site a temporary construction office or trailer, and (c) the right of the Owner of a Lot to maintain his/her professional or personal library, keep his/her personal business or professional records or accounts, handle his/her personal business or professional telephone calls or confer with business or professional associates, clients or customers, in his/her residence, so long as such activity is not observable outside of the residence, does not significantly increase parking or vehicular traffic, or is in violation of applicable local government ordinances. The mere parking on a Lot or in the street, of a vehicle bearing the name of a business shall not, in and of itself, constitute a violation of this provision. The Board of Directors shall not approve commercial activities otherwise prohibited by this paragraph unless the Board determines that only normal residential activities would be observable outside of the residence and that the activities would not be in violation of applicable local government ordinances.

12.27 On-Site Fuel Storage. No on-site storage of gasoline, heating or other fuels or any flammable liquids or gases shall be permitted on any part of the Properties, including any Lot, except that up to five (5) gallons of fuel may be stored on each Lot for emergency purposes and for the operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators and similar equipment.

12.28 Pest Control. No Owner shall permit any thing or condition to exist upon any portion of the Properties which shall induce, breed or harbor any infectious plant, animal, or disease or any noxious insects or vermin.



12.29 Grades, Slopes and Drainage. Each Owner of a Lot shall accept the burden of and shall not in any manner alter, modify or interfere with, the established drainage pattern in grades, slopes and courses related thereto over any Lot or Common Area without the express written permission of the ARC, and then only to the extent and in the manner specifically approved. No structure, plantings or other materials shall be placed or permitted to remain on or within any grades, slopes or courses, nor shall any other activities be undertaken which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of flow, or obstruct or retard the flow of water through drainage channels.

12.30 Retaining Walls. Retaining walls may have been constructed within the Property (the "Retaining Walls"). The Retaining Walls are not in all cases located on a Lot or Tract line. The location of a Retaining Wall (or the construction by an Owner of any improvements on or near the Retaining Wall) shall not constitute evidence of the intended location of a Lot line, or provide grounds for any claim of adverse possession or prescriptive easement. Each Lot upon which any portion of a Retaining Wall is located shall be subject to an easement, for the benefit of all other Lots, for the purposes of support by and natural drainage from such Retaining Wall. Retaining Walls may or may not have been designed by a professional engineer, and no Owner shall take any action to add, construct or place any improvement on the Lot so that it may, in the judgment of the Association: result in disturbance of, weakening of, or damage to the Retaining Walls; increase any engineered load or alter design criteria; or cause damage to the wall and surrounding properties. Any improvements on Lot will need prior approval of Architectural Review Committee. Regardless of such approval, any Lot Owner who takes such action shall be responsible for all resulting costs of repair and restoration of the Retaining Wall. Otherwise, neither the Association nor any other Owner shall have any affirmative obligation to maintain or repair the Retaining Walls. However, should they elect to do so, the Association, any Owner whose Lot is adjacent to a Retaining Wall, and their duly authorized agents and representatives, shall have the right to enter the property upon which any portion of a Retaining Wall is located for the purpose of making any necessary repair to or maintenance of the Retaining Wall.

12.31 Leasing of Lots.

12.31.1 Definition. "Leasing", for purposes of this Declaration, is defined as regular, exclusive occupancy of a Lot by any person or Persons other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to a fee, service, gratuity, or emolument.

12.31.2 Leasing. Properties may be leased only for residential purposes. All leases shall require, without limitation, that the tenant acknowledges receipt of a copy of the Declaration, Bylaws, use restrictions, and rules and regulations of the Association. The lease shall also obligate the tenant to comply with the foregoing and shall provide that in the event of noncompliance, the Board of Directors, in addition to any other remedies available to it, may evict the tenant on behalf of the Owner and specifically assess all costs associated therewith against the

Owner and the Owner's Property. All signs advertising that a Lot is "For Lease" and/or "For Rent" shall comply with section 12.3.

The Board shall have the power to make and enforce reasonable rules and regulations and to fine, in accordance with the Declaration and Bylaws, in order to enforce the provisions of this Section 12.31. Any transaction which does not comply with this Section shall be voidable at the option of the Board.

12.31.3 Leasing Provisions. Such leasing as is permitted by this Section 12.31 shall be governed by the provisions set forth below. Each Owner covenants and agrees that such Owner shall cause any lease of a Lot to contain the following language and agrees that if such language is not expressly contained therein, then such language shall be deemed incorporated into such lease by existence of this covenant on the Lot. Any tenant, by occupancy in a Lot, agrees to the applicability of this covenant and incorporation of the following provisions into the lease:

(i) General. Lots may be rented only in their entirety; no fraction or portion may be rented. There shall be no subleasing of Lots or assignment of leases unless approved in writing by the Board. No transient tenants may be accommodated in the Lot. All leases shall be in writing and in a form approved by the Association. All rentals must be for a term of no less than six (6) months. The Lot Owner must make available to the tenant copies of the Declaration, Bylaws, and the rules and regulations.

(ii) Liability for Assessments. Each tenant agrees to be personally obligated for the payment of all assessments against the Owner which become due during the term of the lease and any other period of occupancy by the tenant or which become due as a consequence of the tenant's activities which violate provisions of the Act, the Declaration, the Bylaws, or the rules and regulations adopted pursuant thereto. The above provision shall not be construed to release the Lot Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible.

When a Lot Owner who is leasing his or her Lot fails to pay any annual or special assessment for a period of more than thirty (30) days after it is due and payable, then, upon request by the Board, the tenant shall pay to the Association all unpaid annual and special assessments, as lawfully determined and made payable during the term of the lease and any other period of occupancy by the tenant; provided, however, the tenant need not make such payments to the association in excess of or prior to the due dates for monthly rental payments unpaid at the time of the Association's request. All such payments made by the tenant shall reduce, by the same amount, the tenant's obligation to make monthly rental payments to the Lot Owner. If the tenant fails to comply with the Board's request to pay assessments, the tenant shall pay to the Association all late charges, fines, interest, and costs of collection, including, but not limited to, reasonable attorney fees actually incurred, to the same extent the tenant would be required to make such payment to the Association if the tenant were the Owner of the premises during the term of the lease and any other period of occupancy by the tenant.



(iii) Compliance with Declaration, Bylaws, and Rules and Regulations. The tenant shall abide by and comply with all provisions of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto and shall control the conduct of all other occupants and guests in order to ensure compliance with the foregoing. The tenant acknowledges that the violation by the tenant or any occupant living with the tenant of any provision of the Declaration, Bylaws, or rules and regulations adopted thereunder shall constitute a default under the lease. The Owner shall cause all occupants of his or her Lot to comply with the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, and is responsible for all violations and losses caused by such occupants, notwithstanding the fact that such occupants of a Lot are fully liable and may be sanctioned for any violation of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto. In the event that the tenant, or a Person living with the tenant, violates the Declaration, Bylaws, or a rule and regulation for which a fine is imposed, such fine shall be assessed against the tenant; provided, however, if the fine is not paid by the tenant within the time period set by the Board, the Owner shall pay the fine upon notice from the Association of the tenant's failure to pay the fine. Unpaid fines constitute a lien against the Lot. Any tenant charged with violation of the Declaration, Bylaws, or rules and regulations adopted pursuant thereto is entitled to the same procedure to which an Owner is entitled prior to the imposition of a fine or other sanction.

(iv) Use of Common Areas. The Owner transfers and assigns to the tenant, for the term of the lease, any and all rights and privileges that the Owner has to use the Common Area of the Properties, including, but not limited to, the use of any and all recreational facilities and other amenities.

12.32 Architectural Requirements. The following restrictions are minimum standards applicable to all Lots:

12.32.1 Floor Area. No square footage area of a Home shall not be less than one thousand two hundred (1,200) square feet for single story homes and one thousand five hundred (1,500) square feet for all others, exclusive of attics, patios, decks, porches, balconies, roof overhangs, and garages.

12.32.2 Garages. A minimum of a two (2) car garage must be constructed on each Lot. Garages may be used as a sales office by Declarant, but must be converted to a garage before permanent occupancy. Garages are to be maintained primarily for the storage of automobiles or similar vehicles. No garage may be enclosed or otherwise used for habitation, nor may any garage door be removed except when necessary to repair or replace a garage door with the same type of garage door.

12.32.3 Basements. Basements are not allowed.

12.32.4 Siding. Exterior siding shall be cedar lap siding, cedar shingles, composition or cement fiber lap siding, brick, cultured brick, stone, cultured stone, or masonry stucco. Vinyl, aluminum, metal, T-1-11 plywood or other pressed wood composition sheet siding materials shall not be permitted.

12.32.5 Roofing. Roofing material shall be at least 30 year asphalt composition shingles, tile or slate.

12.32.6 Exterior Detail. There are no minimum requirements for exterior trim, stone or masonry. However, in order to provide architectural character within Trumbull Creek Crossing, each Owner is encouraged to design their Home with some exterior trim work, stone or masonry in mind. Exterior details are subject to ARC approval, per Article XI.

12.32.7 Driveways and Walkways. All driveways and walkways shall be constructed of concrete. Asphalt is not allowed.

12.32.8 Outbuildings. Outbuildings shall only be allowed upon ARC approval.

12.33 Laws and Ordinances. Every Owner and occupant of any Lot, their guests and invitees, shall comply with all laws, statutes, ordinances and rules of federal, state and municipal governments applicable to the Properties and any violation thereof may be considered a violation of this Declaration; provided, the Board shall have no obligation to take action to enforce such laws, statutes, ordinances and rules.

ARTICLE XIII. General Provisions

13.1 Terms. The covenants and restrictions of this Declaration shall run with and bind the Properties, shall be appurtenant thereto, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated as specified therein.

13.2 Amendment. This Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing at least seventy-five percent (75%) of the total voting rights in the Association, and the consent of the Class B Member, so long as such membership exists. In addition, the approval requirements set forth in Article XIV hereof shall be met if applicable. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall be not less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment to be effective must be recorded in the Recorder's Office of Flathead County, Montana.

If any Owner consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority so to consent and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege during the Class B Control Period. Furthermore, no amendment may increase the number of Lots or change the boundaries of any Lot or any uses to which any Lot is restricted unless the Owners of the affected Lot(s) unanimously consent to such amendment.

13.2.1 Unilateral Amendment by Declarant. The Declarant may amend this Declaration in order to comply with the requirements of the Federal Housing Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Mortgage Loan Corporation, any department, bureau, board, commission or agency of the United States or the State of Oregon, or any other state in which the Lots are marketed and sold, or any corporation wholly owned, directly or indirectly, by the United States or the State of Montana, or such other state, the approval of which entity is required in order for it to insure, guarantee or provide financing in connection with development of the Property and sale of Lots. Prior to the Turnover Meeting, no Declarant amendment shall require notice to or approval by any Class A member.

13.3 Indemnification. The Association shall indemnify every officer, director, and committee member against any and all expenses, including counsel fees, reasonably incurred by or imposed upon such officer, director, or committee member in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member. The officers, directors, and committee members shall not be liable for any mistakes of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director, or committee member, or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and the officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

13.4 Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any such easement of



encroachment, between each Lot and such portion or portions of the Common Area as are adjacent thereto due to unintentional engineering errors, unintentional errors in original construction, unintentional building overhangs or projections, or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three (3) feet, as measured from any point on the common boundary between each Lot and the adjacent portion of the Common Area, along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing action (not unintentional action) on the part of, or with the knowledge and consent of, the encroaching Owner or the encroaching Association, as the case may be.

13.5 Easements for Utilities, Etc. There is hereby reserved unto Declarant, so long as the Declarant owns any property described on Exhibit B, the Association, and the designees of each (which may include, without limitation, Flathead County, Montana, the City of Kalispell, and any utility), blanket easements upon, across, over, and under all of the Properties for ingress, egress, installation, replacing, repairing, and maintaining cable television systems, master television antenna systems, security, and similar systems, roads, walkways, bicycle pathways, drainage systems, irrigation water systems, street lights, signage, entry features, all other portions of the Area of Common Responsibility, and all utilities, including, but not limited to, water, sewers, meter boxes, telephones, gas, and electricity; provided, the exercise of this easement shall not unreasonably interfere with the use of any Lot and, except in an emergency, entry into any Lot shall be made only after reasonable notice to the Owner or occupant thereof.

Without limiting the generality of the foregoing, there are hereby reserved for the local water supplier easements across all Lots and Common Areas for ingress, egress, installation, reading, replacing, repairing, and maintaining water meter boxes. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Properties, except as may be approved by the Association's Board of Directors or as provided by Declarant.

Should any entity furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Board of Directors shall have the right to grant such easement over the Properties without conflicting with the terms hereof. The easements provided for in this Article shall in no way adversely affect any other recorded easement on the Properties.

The Board shall have, by a two-thirds (2/3) vote, the power to dedicate portions of the Common Area to Flathead County, Montana, the City of Kalispell, or to any other local, state, or federal governmental entity, subject to such approval requirements as may be contained in section 3.4 of this Declaration.

13.6 Easement for Future Development. The Declarant and its duly authorized agents, representatives, and employees as well as its successors, assigns, licensees and mortgagees, shall have and there is hereby reserved an easement over the Common Area for the purpose of enjoyment, use, access and development of the

property annexed pursuant to Section 2.2 or Section 2.3. This easement includes but is not limited to a right of ingress and egress over the Common Area for construction of roads and for tying in and installation of utilities on such property. Declarant agrees that it, its successors or assigns, shall be responsible for any damage caused to the Common Area as a result of vehicular traffic connected with development of such property.

13.7 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

13.8 Right of Entry. The Association shall have the right, but not the obligation, to enter into any Lot for emergency, security, and safety reasons, and to inspect for the purpose of ensuring compliance with this Declaration, the Bylaws, and the Association rules, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in performance of their respective duties. Except in an emergency situation in which no notice shall be required, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter a Lot to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after request by the Board.

13.9 Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of seventy-five (75%) percent of the Members. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of assessments as provided in Article X hereof, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it.

13.10 Use of the Words "Trumbull Creek Crossing". No Person shall use the words "Trumbull Creek Crossing" or any derivative thereof in any printed or promotional material without the prior written consent of the Declarant. However, Owners may use the words "Trumbull Creek Crossing" in printed or promotional matter where such words are used solely to specify that particular property is located within Trumbull Creek Crossing, and the Association shall be entitled to use the words "Trumbull Creek Crossing" in its name.

13.11 Compliance. Every Owner and occupant of any Lot shall comply with all lawful provisions of this Declaration, the Bylaws and rules and regulations of the Association. Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the Association or, by any aggrieved Lot Owner or Owners.

13.12 Notice of Sale or Transfer of Title. In the event that any Owner desires to sell or otherwise transfer title to his or her Lot, such Owner shall give the



Board of Directors at least seven (7) days prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board of Directors may reasonably require. Until such written notice is received by the Board of Directors, the transferor shall continue to be jointly and severally responsible for all obligations of the Owner of the Lot hereunder, including payment of assessments, notwithstanding the transfer of title to the Lot.

13.13 Common Irrigation System. The Declarant shall have the right, but not the obligation, to install an irrigation system with non-potable water to service the Common Area. Such irrigation system may be constructed, operated and maintained on a joint basis with other property owners adjacent to the Properties upon such terms and conditions as the Declarant or the Board of Directors may determine on behalf of the Association. The Board of Directors may from time to time adopt rules and regulations as to the irrigation water. Costs in connection with a common irrigation system for Common Area shall be treated as Common Expenses, which will be funded by Common Assessments.

ARTICLE XIV. Mortgagee Provisions

The following provisions are for the benefit of holders of first Mortgages on Lots in the Properties. The provisions of this Article apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

14.1 Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Lot number, therefore becoming an "eligible holder"), will be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such eligible holder;

(b) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Lot of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days;

(c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) any proposed action which would require the consent of a specified percentage of eligible holders.

14.2 No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

14.3 Notice to the Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

14.4 Amendment by Board. Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate some of the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

14.5 Amendment to Comply with Federal Laws. Declarant may unilaterally amend this Declaration in order to comply with requirements of the Federal Housing Administration, the United States Department of Veterans Affairs, the Farmer's Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Mortgage Loan Corporation, any department, bureau, board, commission or agency of the United States or the state of Montana, or any corporation wholly owned, directly or indirectly, by the United States or the state of Montana which insures, guaranties or provides financing for a planned community or lots in a planned community. However, if the need to amend the Declaration occurs after the Turnover Meeting, the amendment must be approved by the Members in accordance with Section 13.2.

14.6 Applicability of Article XIV. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws, or Montana law for any of the acts set out in this Article.

14.7 Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

ARTICLE XV. Declarant's Rights

Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the Bylaws may be transferred to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein or in the Bylaws, as applicable, and provided further, no such transfer shall



be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Recorder's Office of Flathead County, Montana.

Notwithstanding any provisions contained in the Declaration to the contrary, so long as construction and initial sale of Lots shall continue, it shall be expressly permissible for Declarant to maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of such Lots, including, but not limited to, business offices, signs, model Lots, and sales offices, and the Declarant shall have an easement for access to and use of such facilities. The right to maintain and carry on such facilities and activities shall include specifically, without limitation, the right to use Lots owned by the Declarant and any clubhouse or community center which may be owned by the Association, as models and sales offices, respectively.

So long as Declarant continues to have rights under this paragraph, no Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Properties without Declarant's review and written consent thereto, and any attempted recordation without compliance herewith shall result in such declaration of covenants, conditions and restrictions, or declaration of condominium or similar Instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the Declarant.

This Article may not be amended without the express written consent of the Declarant; provided, however, the rights contained in this Article shall terminate upon the earlier of (a) December 31, 2026, (b) the termination of the Class B membership, or (c) upon recording by Declarant of a written statement that all sales activity has ceased.

ARTICLE XVI.

Dispute Resolution

16.1 Mediation. Any claim, controversy or dispute by or among Declarant, the Association or one or more Owners, or any of them, arising out of or related to this Declaration, the Bylaws or the Properties shall be first subject to mediation and, if not timely settled by mediation, resolved by arbitration. Any party may at any time opt to forego mediation and submit the matter directly to arbitration as provided in this Declaration.

16.2 Arbitration. Any claim, controversy, or dispute by or among Declarant (including members, officers, directors, shareholders and affiliates of Declarant), any developer or builder of any Lot, the Association, the Architectural Review Committee, or one or more Owners, or any of them, arising out of or related to this Declaration, the Bylaws of the Association, the Rules and Regulations, or the Property shall be first subject to mediation as described in Section 16.1 above or otherwise, and if not timely settled by mediation, resolved by arbitration in accordance with this Article 16.2. The decisions and award of the arbitrator shall be



final, binding and nonappealable. The arbitration shall be conducted in Flathead County, Montana, or at such other location as may be agreed upon by the parties, pursuant to the arbitration statutes of the State of Montana and any arbitration award may be enforced by any court with jurisdiction. Filing for arbitration shall be treated the same as filing in court for purposes of meeting any applicable statute of limitations or for purposes of filing a notice of pending action ("lis pendens").

16.3 Selection of Arbitrator. The arbitration shall be conducted by a single arbitrator selected by mutual agreement of the parties. The arbitrator selected shall be neutral and unbiased, except to the extent the arbitrator's prior relationship with any party is fully disclosed and consented to by the other party or parties. If the parties are unable to agree upon the arbitrator within ten (10) days after a party's demand for arbitration, upon application of any party, the presiding judge of the District Court of Flathead County, Montana shall designate the arbitrator.

16.4 Consolidated Arbitration. Upon demand by any party, claims between or among the parties and third parties shall be submitted in a single, consolidated arbitration. Notwithstanding the provisions of this Article, in the event any claim, controversy or dispute involves a claim by either party against a third party who is not required to and does not voluntarily agree to submit such claim to arbitration, then either party may elect to have the matter determined by a court of law in a consolidated proceeding, rather than by arbitration. In such case, the parties hereby waive trial by jury and agree that the matter shall be determined by a judge sitting without a jury.

16.5 Discovery. The parties to the arbitration shall be entitled to such discovery as would be available to them in an action in Flathead County District Court. The arbitrator shall have all of the authority of the court incidental to such discovery, including, without limitation, authority to issue orders to produce documents or other materials, to issue orders to appear and submit to deposition, and to impose appropriate sanctions including, without limitation, award against a party for failure to comply with any order.

16.6 Evidence. The parties to the arbitration may offer such evidence as they desire and shall produce such additional evidence as the arbitrator may deem necessary for an understanding and determination of the dispute. The arbitrator shall determine the admissibility of the evidence offered. All evidence shall be taken in the presence of the arbitrator and all of the parties, except when any of the parties is absent in default or has waived its right to be present.

16.7 Excluded Matters. Notwithstanding the foregoing, the following matters shall not be subject to mediation or arbitration under this Article 16 (but shall be subject to the applicable provisions of Section 16.8 below): (a) actions relating to the collection of fees, Assessments, fines and other charges imposed or levied by the Association (other than disputes as to the validity or amount of such fees, Assessments, fines or charges, which disputes shall be subject to mediation/arbitration as provided above); and (b) actions to enforce any order, decision or award rendered by arbitration pursuant to this Article 16. The filing of a lis pendens or the application to any court for the issuance of any provisional process

or similar remedy shall not constitute a waiver of the right or duty to utilize the procedures specified in this Article 16.

16.8 Costs and Attorneys' Fees. The fees of any mediator and the costs of mediation shall be divided and paid equally by the parties. Each party shall pay its own attorneys' fees and costs in connection with any mediation. The fees of any arbitrator and the costs of arbitration shall be paid by the nonprevailing party or parties; if none, such fees and costs shall be divided and paid equally by the parties. Should any suit, action or arbitration be commenced in connection with any dispute related to or arising out of this Declaration, the Bylaws or the Rules and Regulations; to obtain a judicial construction of any provision of this Declaration, the Bylaws or the Rules and Regulations; to rescind this Declaration; or to enforce or collect any judgment or decree of any court or any award obtained during arbitration, the prevailing party shall be entitled to recover its costs and disbursements, together with such investigation, expert witness and attorneys' fees incurred in connection with such dispute as the court or arbitrator may adjudge reasonable, at trial, in the arbitration, upon any motion for reconsideration, upon petition for review, and on any appeal of such suit, action or arbitration proceeding. The determination of who is the prevailing party and the amount of reasonable attorneys' fees to be paid to the prevailing party shall be decided by the arbitrator (with respect to attorneys' fees incurred before and during the arbitration proceeding) and by the court or courts, including any appellate or review court, in which such matter is tried, heard or decided, including a court that hears a request to compel or enjoin arbitration or that hears exceptions made to an arbitration award submitted to it for confirmation as a judgment (with respect to attorneys' fees incurred in such proceedings).

16.9 Survival. The mediation and arbitration agreement set forth in this Article 16 shall survive the transfer by any party of its interest or involvement in the Properties and any Lot therein and shall survive the termination of this Declaration.



Document Number: 200700019913

Page: 59

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 20th day of April, 2007.

Trumbull Creek Crossing, LLC
An Oregon limited liability company

By: Michael W. Anders

Name: Michael W. Anders.

Title: Managing Member

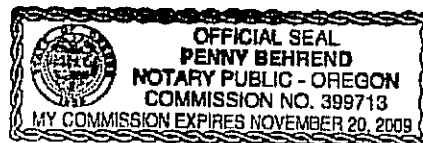
STATE OF OREGON)
) ss.
County of Clackamas)

I certify that I know or have satisfactory evidence that Michael W. Anders, is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute this instrument and acknowledged it as Managing Member of TRUMBULL CREEK CROSSING, LLC, an Oregon limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: April 20, 2007.

[Signature]
Notary Public in and for the State of Oregon

Residing at: Lake Oswego, Oregon
My appointment expires: Nov 20, 2007





IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 2 day of July, 2007.

Trumbull Creek Crossing, LLC
An Oregon limited liability company and
NW Dev Group, LLC

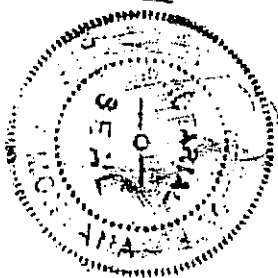
By: Michael W. Anders
Michael W. Anders, Managing Member

STATE OF MONTANA)
)
County of Flathead)

On this 2nd day of July, 2007, before me, a Notary Public for the State of Montana, personally appeared, Michael W. Anders, Managing Member for Trumbull Creek Crossing, LLC and NW Dev Group, LLC, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same.

Brenda L.D. Wolff
Signature
Notary Public for the State of Montana
Residing at Whitefish
My commission Expires 03/25/2011

Brenda L.D. Wolff
Printed Name





CONSENT TO DECLARATION

The undersigned owner of the real property described in Exhibit A of the within Declaration of Covenants, Conditions and Restrictions for Trumbull Creek Crossing (the "**Declaration**") hereby consents to the Declaration and subjects such real property to all of the easements, covenants, conditions, restrictions and charges contained in the Declaration and agrees that such real property shall be held, sold and conveyed subject to the easements, covenants, conditions, restrictions and charges contained therein.

DATED this 20th day of April, 2007

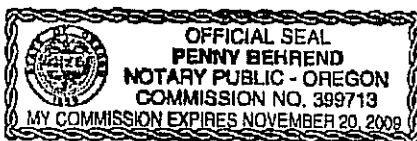
Michael W. Anders

By: Michael W. Anders
Its: Managing Member, Trumbull Creek Crossing I, LLC

STATE OF OREGON)
) ss
COUNTY OF CLACKAMS)

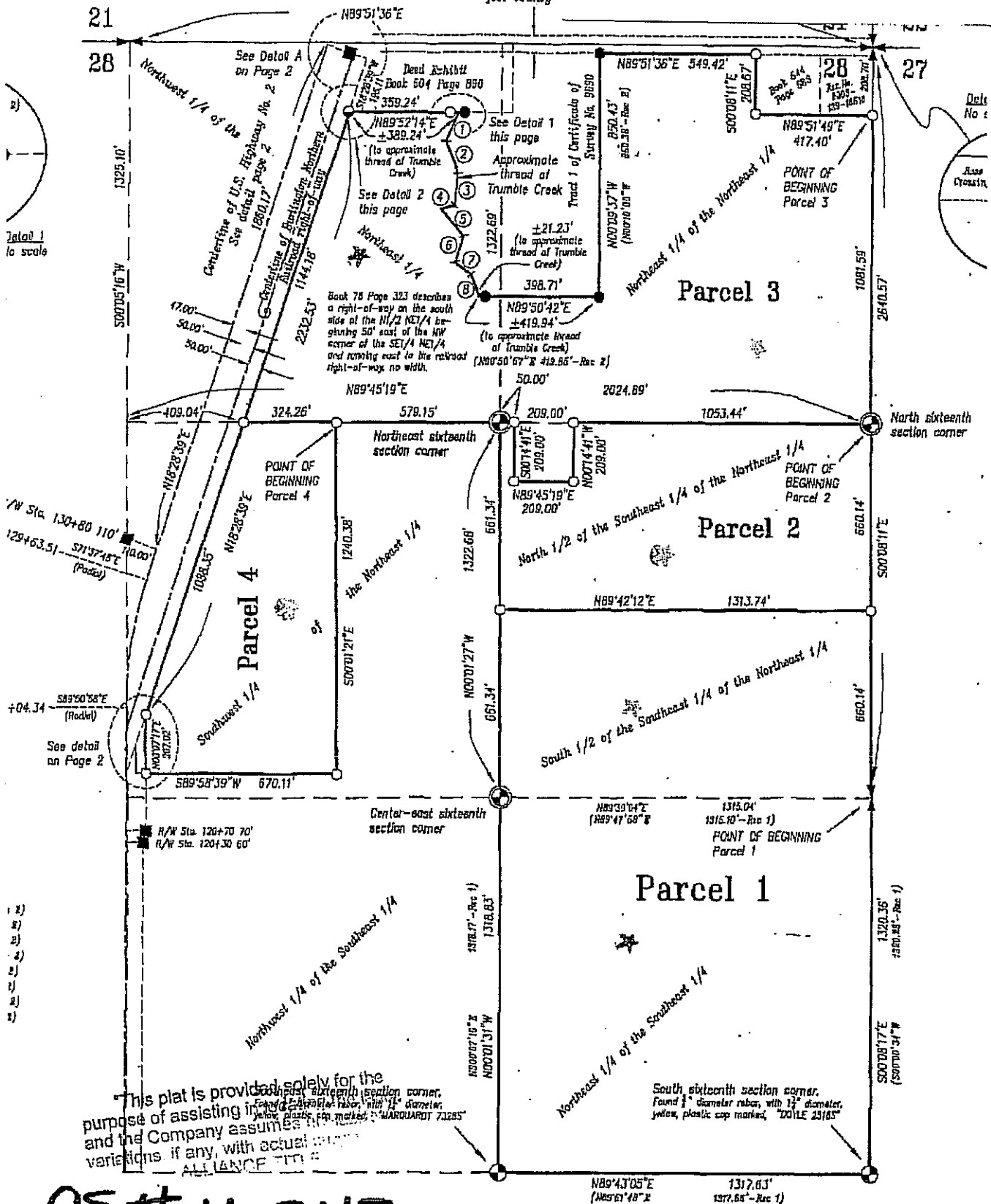
I certify that I know or have satisfactory evidence that Michael W. Anders is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute this instrument and acknowledged it as Managing Member of Trumbull Creek Crossing I, LLC an Oregon Limited Liability Company, to be the free and voluntary act of such party for the uses and purposes contained in the instrument.

DATED: April 20, 2007.



[Signature]
Notary Public in and for the State of Oregon
Residing at: Lake Oswego, Oregon
My appointment expires: Nov 20, 2009

Road Crossing,
foot count



16320 / 6150

EXHIBIT "B"

TRACT 1

That portion of the Northeast 1/4 and the Southeast 1/4 of Section 28, Township 29 North, Range 21 West, Principal Meridian, Flathead County, Montana described as follows:

The Northeast 1/4 of the Southeast 1/4, and the South 1/2 of the Southeast 1/4 of the Northeast 1/4, Section 28, Township 29 North, Range 21 West.

Shown as Parcel 1 of Certificate of Survey No. 16242.

TRACT 2

That portion of the Southeast 1/4 of the Northeast 1/4 of Section 28, Township 29 North, Range 21 West, Principal Meridian, Flathead County, Montana described as follows:

Beginning at the Northeast corner of the North 1/2 of the Southeast 1/4 of the Northeast 1/4; thence along the Easterly boundary of said aliquot part South 00°08'11" East 660.14 feet of the Southeast corner thereof; thence along the Southerly boundary of said aliquot part South 89°42'12" West 1313.74 feet to the Southwest corner thereof; thence along the Westerly boundary of said aliquot part North 00°01'27" West 661.34 feet to the Northwest corner thereof; thence along the Northerly boundary of said aliquot part North 89°45'19" East 50.00 feet; thence South 00°14'41" East 209.00 feet; thence North 89°45'19" East 209.00 feet; thence North 00°14'41" West 209.00 feet to said Northerly boundary of said aliquot part; thence along said Northerly boundary of said aliquot part North 89°45'19" East 1053.44 feet to the Point of Beginning.

Shown as Parcel 2 of Certificate of Survey No. 16242.

TRACT 3

The portion of the Northeast 1/4 of Section 28, Township 29 North, Range 21 West, Principal Meridian, Flathead County, Montana described as follows:

Commencing at the Northeast corner of the Northeast 1/4 of the Northeast 1/4, Section 28, Township 29 North, Range 21 West; thence along the Easterly boundary of said aliquot part South 00°08'11" East 238.70 feet to the Point of Beginning of the parcel being described; thence continuing along said Easterly boundary of said aliquot part South 00°08'11" East 1081.59 feet to the Southeast corner thereof; thence along the Southerly boundary of said aliquot part South 89°45'19" West 1053.44 feet; thence South 00°14'41" East 209.00 feet; thence South 89°45'19" West 209.00 feet; thence North 00°14'41" West 209.00 feet to said Southerly boundary of said aliquot part; thence along said Southerly boundary of said aliquot part and along the Southerly boundary of the Northwest 1/4 of the Northeast 1/4 of said Section 28 South 89°45'19" West 953.41 feet to the Easterly boundary of the Burlington Northern Railroad; thence along said Easterly boundary of said Burlington Northern Railroad North 18°28'39" East 1144.18 feet to the Southerly boundary of that tract of land shown

EXHIBIT "B"

Document Number: 200700019913
Page: 65

on Deed Exhibit Book 504 Page 890; thence along said Southerly boundary of said Deed Exhibit North 89°52'14" East 389.24 feet, more or less, to the approximate thread of Trumbull Creek; thence along said approximate thread of said Trumbull Creek the following eight courses: South 23°39'19" West 109.09 feet South 20°37'16" East 122.19 feet South 06°14'03" West 110.74 feet South 73°43'29" West 47.93 feet South 39°50'37" East 121.98 feet South 18°16'00" West 93.53 feet South 53°59'51" East 72.73 feet, and South 19°40'51" East 82.01 feet to the Southerly boundary of Tract 1 of Certificate of Survey No. 9690; thence along said Southerly boundary and along the Easterly boundary of said Tract 1 the following two courses: North 89°50'42" East 419.94 feet, more or less, and North 00°09'37" West 850.43 feet to the Southerly boundary of said Rose Crossing, a 60.00 foot county road; thence along said Southerly boundary of said Rose Crossing North 89°51'36" East 549.42 feet to the Northwest corner of that tract of land described in Book 544 Page 583; thence along the Westerly boundary of said tract of land South 00°08'11" East 208.67 feet to the Southwest corner thereof; thence along the Southerly boundary of said tract of land and along the Southerly boundary of that tract of land described in Reception No. 2003-139-1651-0 North 89°51'49" East 417.40 feet to the Point of Beginning

Shown as Parcel 3 of Certificate of Survey No. 16242.

TRACT 4

That portion of the Southwest 1/4 of the Northeast 1/4 of Section 28, Township 29 North, Range 21 West, Principal Meridian, Flathead County, Montana described as follows:

Commencing at the Northwest corner of the Northwest 1/4 of the Northeast 1/4, Section 28, Township 29 North, Range 21 West; thence along the Westerly boundary of said aliquot part South 00°05'16" West 1325.10 feet to the Northwest corner of the Southwest 1/4 of the Northeast 1/4 of said Section 28; thence along the Northerly boundary of said aliquot part North 89°45'19" East 409.04 feet to the Point of Beginning of the parcel being described, said point being on the Easterly boundary of the Burlington Northern Railroad; thence continuing along said Northerly boundary of said aliquot part North 89°45'19" East 324.26 feet; thence South 00°01'21" East 1240.38 feet; thence South 89°58'39" West 670.11 feet to the Easterly boundary of U.S. Highway No. 2; thence along said Easterly boundary of said U.S. Highway No. 2 North 00°07'17" East 207.02 feet to the Easterly boundary of said Burlington Northern Railroad; thence along said Easterly boundary of said Burlington Northern Railroad North 18°28'39" East 1088.35 feet to the Point of Beginning.

Shown as Parcel 4 of Certificate of Survey No. 16242.

TOGETHER WITH AND SUBJECT TO:

1. Easement granted to Flathead Power Company, a corporation. Recorded January 26, 1978, Instrument No. 1219 in Book 635 Page 424, of Official Records. (Affects: Tract 4)
2. Easement granted to Flathead Electric Cooperative, Inc. Recorded March 30, 1964, Instrument No. 2546 in Book 461 Page 172, of Official Records. (Affects: Tract 2).

EXHIBIT "B"



Document Number: 200700019913

Page: 66

3. Interlocal Agreement regarding sanitary sewer for Evergreen Water and Sewer District. Recorded November 27, 1991, Instrument No. 1991-331-1137-0 and Recorded October 25, 1990, Instrument No. 1990-298-09200, of Official Records.
4. Bargain and Sale Deed for access control. Recorded May 7, 1991, Instrument No. 1991-127-16120, of Official Records.
5. Easement granted to Andrew R. Ferris for a future water line, ten feet in width and along the South boundary of the Northeast Quarter of the Southeast Quarter. Recorded November 12, 1998, Instrument/File No. 1998-316-1318-0, of Official Records. (Affects: Tract 1).
6. Easement granted to Flathead Power Company, a corporation. Recorded February 28, 2002, Instrument No. 2002-059-1008-0, of Official Records.



8' POST

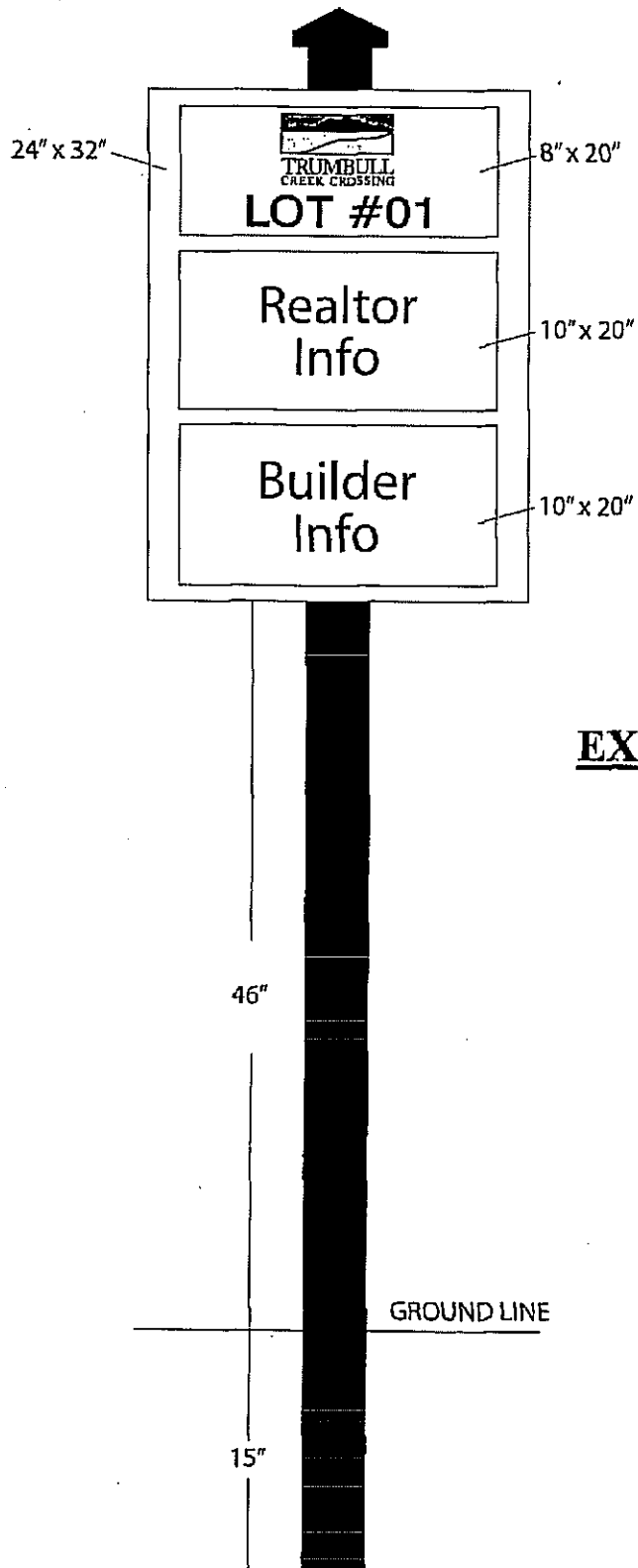
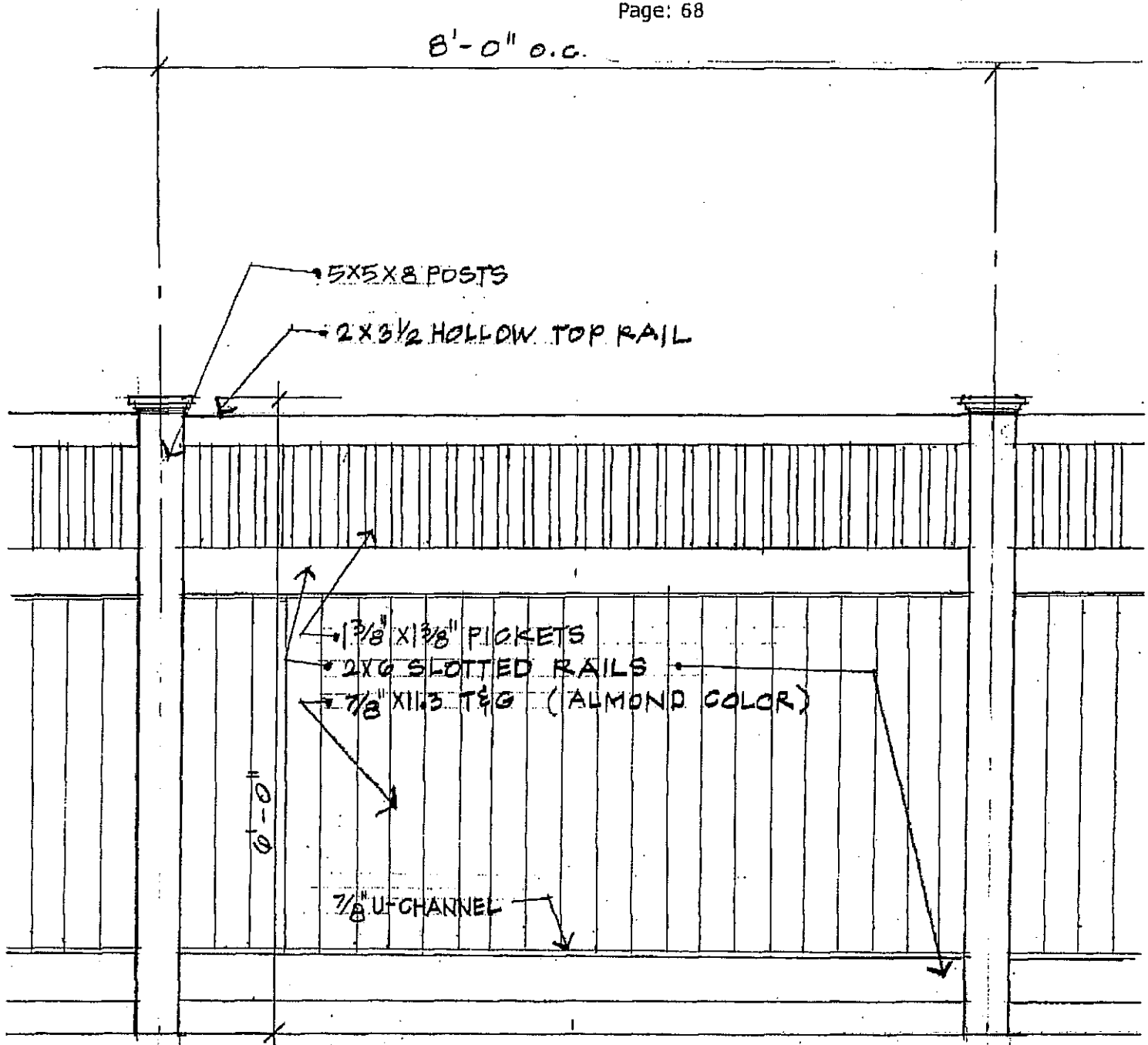


EXHIBIT "C"



TRUMBULL CREEK CROSSING
VINYL FENCE

$\frac{3}{4}" = 1'-0"$

EXHIBIT "D"