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**FIRST AMENDED AND RESTATED DECLARATION
FOR
MULLAN HEIGHTS CONDOMINIUMS**

FIRST AMENDED AND RESTATED DECLARATION

FOR

MULLAN HEIGHTS CONDOMINIUMS

This First Amended and Restated Declaration for Mullan Heights Condominiums ("Declaration") is made this 23rd day of August, 2012 by 2025 Mullan Road Missoula LLC, a Montana limited liability company ("Declarant").

This Declaration restates and supersedes the Declaration of Unit Ownership for Mullan Heights Condominium Homeowners Association, Inc. recorded March 11, 2008 in Book 814 of Micro Records at Page 771, records of Missoula County, Montana, as amended by that Amendment to Declaration of Condominium Under Unit Ownership Act Pertaining to Mullan Heights Condominiums recorded February 22, 2010 in Book 8855 of Micro Records at Page 935, records of Missoula County, Montana (as amended, the "First Declaration"), and the Declaration of Restrictions for Mullan Heights Condominiums recorded March 11, 2008 in Book 814 of Micro Records at Page 774, records of Missoula County, Montana ("Restrictions"). Upon the recording of this Declaration, the First Declaration and the Restrictions shall be of no further force and effect.

ARTICLE I - TITLE AND NATURE

The Condominium Project shall be known as Mullan Heights Condominiums. The Condominium Project is established in accordance with the Montana Unit Ownership Act. The Condominium Project contains individual Units for residential use, as set forth herein and in the Mullan Owners Association Bylaws, and each Unit is capable of individual utilization on account of having its own entrance from and exit to a Common Element. Each Unit Owner shall have an exclusive right to his Unit and shall have an undivided and inseparable right to share with other Unit Owners the Common Elements of the Condominium Project.

ARTICLE II - PURPOSE AND NAME

2.1 The purpose of this Declaration is to divide the Property into 44 Units by submitting the land described on Exhibit A (the "Property") and the improvements existing and to be constructed on the Property to the condominium form of ownership and use in the manner provided by Chapter 23, Title 70, Montana Code Annotated, (the "Unit Ownership Act").

2.2 The Property is located in Missoula County, Montana. The property subject to this Declaration shall be known by the name MULLAN HEIGHTS CONDOMINIUMS (the "Condominium Project"). The Property that is subject to this Declaration is owned by Declarant. The address of the Condominium Project is 2025 Mullan Road, Missoula, Montana 59808.

ARTICLE III - DEFINITIONS

Unless the context expressly provides otherwise, the following definitions shall pertain throughout this Declaration and in the interpretation thereof:

3.1 **Association or Association of Unit Owners:** means all of the Mullan Heights Condominium Unit Owners acting as a group and in accordance with duly adopted Mullan Owners Association Bylaws and this Declaration, also referred to as the Mullan Owners Association, a Montana non-profit corporation, or Mullan Association.

3.2 **Board or Board of Directors:** shall mean the Board of Directors of the Mullan Association as more particularly defined in the Bylaws.

3.3 **Building:** means the structure containing the Units.

3.4 **Bylaws:** means the Bylaws of the Association.

3.5 **Common Elements:** means both General Common Elements and Limited Common Elements:

3.5.1 **General Common Elements:** means all those elements which are for the use of all Unit Owners and their guests and invitees. The Declarant or the Association may add or delete Common Elements by amendments to this Declaration and/or by the method set forth in the Unit Ownership Act. The General Common Elements include, but are not limited to, the following:

3.5.1.1. The land on which the buildings are located, except any portion thereof included in a Unit or made a limited common element by the Declaration or amendment thereto;

3.5.1.2. The outside recreational areas, private pathways, sidewalks;

3.5.1.3. Installations of central services existing for common use such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, and waste collection and disposal;

3.5.1.4. The tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for common use; and

3.5.1.5. All General Common Elements shown on the site plan and utility easements and lines.

3.5.2 Limited Common Elements: means those Common Elements designated in this Declaration, site plan, or floor plans or by agreement of the Unit Owners which are reserved for the use of a certain Unit or number of Units to the exclusion of the other Units, including but not limited to decks, porches and patios.

3.6 **Common Expenses**: means expenses of administration, maintenance, repair or replacement of General Common Elements, and all other expenses for the benefit of the Association, and expenses declared common by the Unit Ownership Act (but specifically excluding Limited Expenses).

3.7 **Condominium or Mullan Heights Condominiums**: means the entirety of the property subject to this Declaration.

3.8 **Condominium Documents**: means any and all documents necessary for the formation of the Project, including but not limited to any surveys, plats, or plans.

3.9 **Declarant**: means 2025 Mullan Road Missoula LLC, and its successors and assigns. Both successors and assigns shall always be deemed to be included within the term "Declarant" whenever, however and wherever such terms are used in the Condominium Documents. No party other than 2025 Mullan Road Missoula LLC shall exercise the rights and privileges of the Declarant unless such party receives from the then-existing Declarant and records in the office of the Missoula County Clerk and Recorder, a written instrument assigning such rights.

3.10 **Limited Expenses**: means the expenses attributable to the maintenance, repair and replacement of Limited Common Elements.

3.11 **Manager**: means the manager, the Board, management corporation or any other person or group of persons retained or appointed by the Board, or by the Association for the purpose of conducting the day-to-day operations of the Condominium.

3.12 **Percentage of Interest**: means each Unit Owner's pro rata voting rights in or liability to the Association. The Percentage of Interest is specified on Exhibit E.

3.13 **Plans**: This term shall have the meaning defined in Paragraph 4.1.2.

3.14 **Property or Project**: means the land, building, improvements and structures thereon and all easements, rights and appurtenances belonging thereto, which are herewith submitted to the Unit Ownership Act.

3.15 **Reserve Account**: means the account created by Paragraph 8.7.3 for the purpose of holding non-operating capital.

3.16 **Rules and Regulations:** This term shall have meaning defined in Paragraph 8.2.6.

3.17 **Unit:** shall be the separate condominium Units of the Condominium and is a parcel of real property including and containing one or more rooms occupying one or more floors or a part thereof, intended for independent residential use, and with a direct exit leading to a street or to Common Elements leading to a street whether directly or indirectly by way of an easement connecting to a street. The boundaries of a Unit are further described in Section 4.5.

3.18 **Unit Designation:** is the combination of letters, numbers and words which identify the designated Units.

3.19 **Unit Owner or Owner:** means the person owning a Unit in fee simple absolute individually or as co-Owner in any real estate tenancy relationship recognized under the laws of the State of Montana, in one or more Units of the Condominium. Each Unit has only one owner for any voting purposes described herein.

3.20 **Unit Ownership Act:** means and refers to the Unit Ownership Act of the State of Montana, Chapter 23, Section 70-23-101, MCA (2011) et seq. as amended.

ARTICLE IV - REAL ESTATE

4.1 **Description.** The Property which is by this Declaration submitted and subject to the Montana Unit Ownership Act is described on the attached Exhibit A.

4.1.1 The provisions of this Declaration and the Bylaws shall be construed to be covenants running with the land and shall include every Unit and shall be binding upon the Unit Owners, their heirs, personal representatives and assigns for as long as this Declaration and Bylaws are in effect.

4.1.2 The Project consists of the Property described on Exhibit A and improvements currently existing and to be constructed thereon including the buildings, General Common Elements and Limited Common Elements, to be used for residential use and associated use located on the Property, all as shown on the site plan and floor plans (the "Plans"). The Plans will accurately depict the Units and the Building layouts, as located (or to be located) on the Property, with the square footage, design and dimensions of each unit. The principal construction materials are shown on Exhibit B. There will be a total of one (1) Building situated on the Property as shown on the site plan attached as Exhibit C. The Building shall have four (4) stories and will be comprised of forty-four (44) Units. There will also be General Common Elements as described below for the use and benefit of all Unit owners as well as Limited Common Elements described below reserved for the use of a certain Unit or number of Units to the exclusion of the other Units.

4.2 **Condominium Units.** Each Unit shall be inseparable, and may be conveyed, leased, rented, devised or encumbered as a condominium in accordance with this Declaration. The Units include a proportional undivided interest in the Common Elements as provided in Paragraph 7.1.

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

4.4 Buildings. The Units comprising the condominium will be contained in a single building. The land on which the Building is located is a Common Element.

4.5 Boundaries of Units. Each Unit shall be bounded by the interior surfaces of its perimeter walls, floors, suspended ceilings, and trim. A Unit shall include all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, paint, finished flooring, and any other materials constituting any part of its finished surfaces, including unit access door(s), so described. All other portions of the walls, floors, or ceilings shall be a part of the Common Elements. In addition, each Unit shall include the following:

4.5.1 All spaces, interior partitions, windows, window frames, interior doors, door frames, and all other fixtures and improvements within the boundaries of the Unit.

4.5.2 All outlets of utility service lines, including, but not limited to, power, light, gas, hot and cold water, heating, refrigeration, air conditioning, and waste disposal within the boundaries of the Unit, but shall not include any part of such lines or ducts themselves.

4.5.3 In interpreting deeds, mortgages, deeds of trust, and other instruments for any purpose whatsoever or in connection with any matter, the existing physical boundaries of the Unit or of a Unit reconstructed in substantial accordance with the original plans hereof shall be conclusively presumed to be the boundaries regardless of settling, rising, or lateral movement of the Building and regardless of variances between boundaries as shown on the plat and those of the actual Building.

4.6 Construction Materials. The principal materials of construction of the Building are described on Exhibit B.

ARTICLE V - EASEMENTS

5.1 Common Element Easements. A perpetual nonexclusive right of ingress and egress and support through the General Common Elements is appurtenant to each Unit for the benefit of each Unit Owner and all the General Common Elements are subject to such rights.

5.2 Easement for Utilities Within Units. Each Unit may have its air space penetrated by electrical wires and lines, gas lines, mechanical equipment including air handling ducts, hot and cold water lines, waste water lines and vents and other utility and mechanical lines (including but not limited to power, telephone, natural gas and satellite television), pipes or equipment. These lines, where they serve only one Unit shall be appurtenant to such Unit, but where they serve more than one Unit shall be part of the Common Elements - either Limited or General depending upon how many Units are being served thereby. Such items shall be so installed and maintained so that they shall not unreasonably interfere with the use of the Unit air space by the Owners of the same and shall wherever possible be located in any space available between the actual ceiling and a dropped ceiling or within a wall. A non-exclusive easement shall exist through, over and across each Unit for structural support of the Unit and for the use, inspection, installation, maintenance, replacement and repair of such utility lines and mechanical equipment for the use of all of the Unit Owners or the Unit Owners being serviced by the air space being penetrated by such lines and/or equipment. After completion of construction of a Unit, an easement for ingress and egress for the purpose of such inspection, installation, maintenance, replacement or repair of such easement rights shall only be exercised under the direction and approval and with the authority of the Association and/or the Manager unless an emergency exists in which event any action may reasonably be taken which is justified under the circumstances to minimize damage which would otherwise occur as a consequence of such emergency. There shall be easements to, through and over those portions of the land, structures, buildings, improvements and walls (including interior Unit walls) contained therein for the continuing maintenance and repair of all utilities in the Condominium. There shall exist easements of support with respect to any Unit interior wall that supports a Common Element. The foregoing easements are all permanently reserved to Declarant, the Association and the designees of each.

5.3 Easements for Public Utilities.

5.3.1 There are hereby reserved unto Declarant and granted to the Association and its designees (which may include, without limitation, Missoula County, Montana and any utility) access and maintenance easements upon, across, over, and under all the General Common Elements (provided that such access may not be across, over or under any Buildings or other structures or buildings constituting or located on the General Common Elements) to the extent reasonably necessary for the purpose of replacing, repairing, and maintaining security and similar systems, roads, walkways, bicycle pathways, lakes, ponds, wetlands, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewers, meter boxes, telephone, gas, and electricity, and for the purpose of installing any of the foregoing within easements designated for such purposes on recorded plats of the Property. Declarant specifically reserves and grants to the Association, the right to convey to the local water supplier, electric company, natural gas supplier, or communications systems supplier easements across the General Common Elements (provided that such easements may not be across, over or under the Building or other structures or buildings constituting or located on the General Common Elements) for ingress, egress, installation, reading, replacing, repairing, and maintaining utility meters and boxes. The exercise of this easement shall not extend to permitting entry into the dwelling on any Unit, nor shall any utilities be installed or relocated on the Property, except as approved by the Board.

5.3.2 Should any entity furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Board shall have the right to grant such easement over any portion of the Property 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 Property.

5.3.3 There is hereby reserved unto Declarant and its designees (which may include, without limitation, Missoula County, Montana and any utility) access and maintenance easements upon, across, over and under the Property to the extent reasonably necessary for the purposes of installing, replacing, repairing, and maintaining security systems, roadways and sewer utilities.

5.4 **Grant of Easements by the Association.** The Association, acting through its lawfully constituted Board shall be empowered and obligated to grant such easements, licenses, rights-of-entry and rights-of-way over, under and across the Property for utility purposes, access purposes or other lawful purposes as may be necessary for the benefit of the Condominium.

5.5 **Easements for Maintenance, Repair, and Replacement.** Declarant, the Association and all public or private utilities shall have such easements over, under, across and through the Property, including all Units and Common Elements, as may be necessary to fulfill any responsibilities of maintenance, repair, or replacements which they or any of them are required or permitted to perform under the Condominium Documents. These easements include, without any implication of limitation, the right of the Association to obtain access at all times to meters, controls, valves, pipes, conduits, and other Common Elements located within or to which access may be gained through any Unit or its appurtenant Limited Common Elements. Except in an emergency situation, such entry into a Unit shall only be during reasonable hours and after notice to the Unit Owner.

5.6 **Structural Easements.** Every portion of a Unit which contributes to the structural support of the building shall be burdened with an easement of structural support for the benefit of the Common Elements and other Units.

5.7 **Additional Easements for Declarant's Other Projects.** Declarant hereby reserves to itself the following easements in connection with any improvements constructed or to be constructed by Declarant, whether or not such improvements are made a part of the Property or for the benefit of other projects.

5.7.1 A perpetual nonexclusive easement for installation, utilization, tapping, tying into, extending and enlarging all utility mains located in the General Common Elements, including, but not limited to, connections to water, storm and sanitary sewer mains associated with the Project. Nothing in this paragraph shall allow Declarant to damage any building on the General Common Elements without the consent of the Association.

5.8 **Maintenance Easement.** Public safety and other appropriate persons designated by the Board shall have the right, but not the obligation, to enter upon any Unit or Limited Common Element for emergency, security, and safety reasons, to perform maintenance pursuant to Article VI hereof, and to inspect for the purpose of ensuring compliance with this Declaration,

the Bylaws, and rules. This right may be exercised by policemen, firemen, ambulance personnel, security officers and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association or its designees to enter upon any Unit 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.

ARTICLE VI - MAINTENANCE AND UPKEEP

6.1 Maintenance by Association.

6.1.1 Common Elements: The Association shall maintain and repair all Common Elements.

6.1.2 Exterior Maintenance and Repair: The Association shall maintain and repair the exterior of the Units, including roofs. Such maintenance costs that are attributable to a particular Unit or Units may be assessed to the affected Unit(s) pursuant to paragraph 9.7.6.

6.1.3 Decks, Porches and Patios: The Association may, at its election, maintain and repair decks, porches and patios that are appurtenant to a particular Unit. Such maintenance costs that are attributable to a particular Unit or Units may be assessed to the affected Unit(s) pursuant to paragraph 9.7.6.

6.2 **Maintenance by Unit Owner.** Owners shall maintain and keep in good repair their own Units.

ARTICLE VII - OWNERSHIP AND FLOOR PLANS

7.1 **Ownership of Common Elements.** Each Unit Owner shall own a percentage of undivided interest in the Common Elements. Such percentage represents each Unit Owner's ownership interest in the Common Elements, liability for Common Expenses, and the relative voting interest of each Unit Owner in all matters concerning the Association. Percentage of Interest of each Unit Owner shall be according to the percentage set forth on the Percentage of Interest Exhibit attached as Exhibit E. Except as otherwise limited in this Declaration, each Unit Owner shall have the right to use the Common Elements for all purposes incident to the use of and occupancy of the Unit, and such other incidental uses permitted by this Declaration, which rights shall be appurtenant to and run with the whole Unit.

7.2 **Floor Plans and Exhibits.** The floor plans of the Condominium are attached as Exhibit D. Declarant shall amend Exhibit D from time to time as construction of Units is completed after the date of recording of this Declaration as required by the Unit Ownership Act.

7.3 **Exclusive Ownership.** Each Owner shall be entitled to exclusive Ownership and possession of the Owner's Unit. Such Owners may use the General Common Elements and Limited Common Elements in accordance with the purposes for which they are intended and as they may otherwise agree between themselves, so long as they do not hinder or encroach upon the lawful rights of other Unit Owners.

7.4 **Use.** The Units and Common Elements shall be occupied and used as follows:

7.4.1 The Units may be used for lawful residential purposes only.

7.4.2 There shall be no obstruction of the Common Elements nor shall anything be stored in or on the Common Elements without the prior consent of the Association. Each Owner shall be obligated to maintain and keep in order and repair his own Unit.

7.4.3 Owners shall not cause or permit anything to be hung or displayed on the outside of windows or placed on the outside of windows or placed on the outside walls of a building, including but not limited to any decorations, pieces of art, real estate signs, "for rent" sign, political sign or the like, and no air conditioning, sign, awning, canopy, radio or television antenna, satellite dish, or other reception device shall be affixed to or placed upon the exterior walls or roof or any part thereof, without the prior written consent of the Association

7.4.4 Nothing shall be done in any Unit or in, on or to the Common Elements which will impair the structural integrity of a Building or which would structurally change the Building, except as is otherwise provided herein.

7.4.5 Nothing shall be altered or constructed in or removed from the Common Elements, except upon the written consent of the Board.

ARTICLE VIII - THE BOARD AND ASSOCIATION

8.1 **Membership.** Any Owner of a Unit shall automatically, upon becoming the Owner of a Unit, be a member of the Association, and shall remain a member for the period of the Owner's ownership of the Unit.

8.2 **Function of Board.** It shall be the function of the Board to:

8.2.1 Adopt bylaws for the governance of the Association.

8.2.2 Make provisions for the general management, repairs and maintenance of the General Common Elements, Limited Common Elements, and any other provisions for the benefit of the Association.

8.2.3 Levy assessments as provided for in the Declaration, Bylaws and Unit Ownership Act.

8.2.4 Adopt and implement a policy for the affairs of the Project.

8.2.5 Enter into contracts to hire personnel for the management of the affairs of the Association and the maintenance and repair of the Common Elements.

8.2.6 Adopt rules and regulations pursuant to Section 12.7 ("Rules and Regulations").

8.2.7 Enter into contracts and negotiate and accept easements for the benefit of the Association.

8.2.8 Acquire, operate and maintain equipment for the benefit of the Association.

8.2.9 Operate and maintain any recreational building constructed on the General Common Elements.

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

8.3.1 Elect the Board as provided in the Bylaws.

8.3.2 Approve any changes to this Declaration, subject to the provisions of Article IX.

8.4 **Vote.** Each Owner shall have voting rights as specified in the Bylaws.

8.5 **Failure to Comply - Attorney's Fees.** Each Owner shall comply strictly with the provisions of this Declaration, the Bylaws and the rules, regulations, decisions and resolutions of the Association adopted pursuant thereto as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief or both, and for reimbursement of all costs, including attorney fees incurred in connection therewith, which action shall be maintainable by the Manager in the name of the Association, on behalf of the Owner or by an aggrieved Owner where there has been a failure of the Association to bring such action within a reasonable time.

8.6 **Payment of Assessments.**

8.6.1 Each Unit Owner, by acceptance of a deed, whether or not it is expressed in the deed, is deemed to covenant and agree to pay all assessments of the Association and to waive any rights under Montana or Federal law to claim a homestead exemption for the assessments. Assessments shall be billed in such manner and on such dates as the Board may establish. Unless the Board otherwise provides, assessments shall be due and payable in advance on the first day of each month. The amount of the assessment against each Unit shall be the personal and individual debt of the Owner thereof. No Owner may exempt itself from liability for this contribution toward the Common Expenses by waiver of the use of enjoyment of any of the Common Elements or by abandonment of its Unit. All assessments which are not paid when due and payable become delinquent and are subject to interest and penalty charges. The Board shall have the responsibility of taking prompt action to collect any unpaid assessment which becomes delinquent. In the event of delinquency in the payment of an assessment, the Unit Owner shall be obligated to pay interest at the rate to be determined by the Board or the maximum rate allowed by law, whichever is less, on the amount of the assessment from the due date thereof, together with such late charges as may be required by the Board. Suit to recover a money judgment for unpaid assessments may be maintainable without foreclosing or waiving the lien securing the same. If any Owner is delinquent in paying any assessments or other charges levied on his or

her Unit, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.

8.6.2 Common Expenses of the Association shall be charged to the Unit Owners on a pro rata basis based upon Percentage of Interest as defined on Exhibit E.

8.7 **Levying Assessments.** The Board shall levy assessments upon the Unit Owners in the following manner and for the following reasons:

8.7.1 All assessments shall be fixed by resolution of the Board. Notice of the assessment, whether regular or special, the amount thereof, and the purpose for which it is made, including an annual budget for expenditures and operation, for regular annual assessments, shall be served on all Unit Owners affected, by delivering a copy of the same to the Owners affected, by delivering a copy of the same to the Owner personally or by mailing a copy of the notice to the said Owners at their addresses of record at least ten days prior to the Annual Meeting.

8.7.2 Assessments shall be made for the repair, replacement, insurance, general maintenance, repair and upkeep, management and administration of Common Elements or other common expenses, fees, costs and expenses of the manager, taxes for common areas if any, utilities, reserves for contingent liabilities and other related items. Assessments shall be based upon and computed by using the percentage of interest of each Unit Owner.

8.7.3 Assessments may also be made for the creation of a reserve budget including reserves for the Building. The Board may, in its discretion, levy an assessment in an amount sufficient to meet the projected reserve needs of the Association.

8.7.4 The Declarant shall not pay any assessments on the Units it owns, provided, however, that the Declarant shall reimburse the Association for any expenses the Association incurs in connection with the Units Declarant owns, which are not covered by the assessment of other Unit Owners.

8.7.5 In addition to other authorized assessments, the Board may levy special assessments to cover unbudgeted expenses in excess of those budgeted. In no case may the amount of any special assessment levied on any Unit pursuant to this subparagraph exceed an amount equal to the total amount of the special assessment multiplied by the Percentage of Interest for any Unit. This subparagraph does not apply to special assessments for Limited Common Element expenses provided in the following subparagraph.

8.7.6 Assessments may also be made for the payment of Limited Common Element expenses such that the Unit Owners are chargeable only for the expenses relating to their respective units or building. Unit Owners shall share in the payment for limited Expenses for the repair, maintenance and replacement of limited Common Elements of their respective Units in accordance with the percentage the condominium Unit or Units have in the Limited Common Element for which the assessment is being made. If only one Unit is associated with the Limited Common Element involved, then the entire cost of such repair, maintenance or replacement shall be borne by that Unit.

8.7.7 Assessments may also be made for any purpose contemplated by this Declaration and for any purpose set out in the Montana Unit Ownership Act, including but not limited to any special assessments that are not assessed on an annual basis.

8.7.8 In a voluntary conveyance of a Unit, the Grantee of the Unit shall be jointly and severally liable with the Grantor for all unpaid assessments by the Association against the latter for his share of the Common Expenses up to the time of the grant or conveyance, without prejudice to the Grantee's right to recover from the Grantor the amounts paid by the grantee therefore. However, any such Grantee shall be entitled to a statement from the Manager or Board, as the case may be, setting forth the amount of unpaid assessments against the Grantor due the Association and such Grantee shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid assessments made by the Association against the Grantor in excess of the amount therein set forth.

8.8 Liens for Assessments.

8.8.1 The Association shall have a lien against each Unit to secure payment of delinquent assessments attributable to that Unit, as well as interest, late charges (subject to the limitations of Montana law), and costs of collection (including attorneys fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) 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. Such lien, when delinquent, may be enforced by suit, judgment, and judicial or non-judicial foreclosure.

8.8.2 The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit 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 Unit shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association. The Association may sue for unpaid Common Expenses and costs without foreclosing or waiving the lien securing the same.

8.8.3 The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the junior liens to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Unit who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment, including such acquirer, its successors and assigns.

8.8.4 The Board on behalf of the other Unit Owners shall have the power to bid on the Unit at a foreclosure or other legal sale and to acquire and hold, lease, mortgage and vote the votes appurtenant to, convey or otherwise deal with the same. Any lienholder holding a lien on a Unit may pay, but shall not be required to pay, any unpaid General Common Expenses, or Limited Common Expenses payable with respect to any such Unit,

and upon such payment, such lienholder shall have a lien on the Unit for the amounts paid of the same rank as the lien of his encumbrance without the necessity of having to file a notice or claim of such lien.

8.9 Unpaid Assessments - Mortgagee. Where a lienholder or other purchaser of a Unit obtains title to the Unit as a result of foreclosure of the first mortgage or trust indenture, such acquirer of title, his successors and assigns, shall not be liable for the share of Common Expenses or assessments by the Association chargeable to such Unit which became due prior to the acquisition of title to such Unit by such acquirer. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectable from all of the Units including such acquirer, his successors and assigns.

8.10 Assessments for Damages. Damage to the interior or any part of a Unit resulting from maintenance, repair, emergency repair or replacement of any of the General or Limited Common Elements or as a result of an emergency repair within another Unit at the instance of the Association shall be designated Common Expenses by the Association and assessed accordance with such designation.

ARTICLE IX - AMENDMENT, ANNEXATION AND WITHDRAWAL

9.1 Amendment By Declarant. For so long as Declarant owns at least 25% of the Units in the Project, Declarant may unilaterally amend this Declaration for any purpose, provided the amendment has no material adverse effect on the right of any Owner. Notwithstanding the above, so long as it still owns any portion of the Property, the Declarant shall unilaterally amend this Declaration, if such amendment is (i) necessary to bring any provision in compliance with any applicable governmental statutes; rule, regulation, or judicial determination; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage on the Units; (iii) required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Units; (iv) necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Units; or (v) otherwise necessary to satisfy the requirements of any governmental agency. However, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent thereto in writing.

9.2 Amendment By Owners. Thereafter and otherwise, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof of seventy-five percent (75%) of the total Percentage of Interest of the Association.

9.3 Restriction on Amendment. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. To be effective, any amendment must be recorded in the public records of Missoula County, Montana. If an Owner consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority 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 the Declarant without the written consent of the Declarant or the assignee of such right or privilege.

9.4 **Withdrawal.** For so long as Declarant owns twenty-five percent (25%) of the Units in this Project, Declarant may from time to time unilaterally amend this Declaration for the purpose of removing property then owned by Declarant or its affiliates from the coverage of this Declaration. By accepting a deed to their Unit, Owners are deemed to have consented to any amendment that is consistent with the provisions of this Section and appoint Declarant as their attorney-in-fact for the limited purpose of executing on their behalf any documents necessary for such amendment.

ARTICLE X - CERTAIN OTHER RESTRICTIONS AND RIGHTS RESERVED TO DECLARANT

10.1 **Leasing.** With the exception of the Declarant, who shall be entitled to lease any Unit owned by the Declarant for a period of not less than thirty (30) days, a Unit Owner may not lease his Unit for any period less than six (6) months.

10.2 **Other Rights.** Declarant shall have no other rights except as set forth elsewhere in this Declaration.

10.3 **Plat Amendment.** So long as Declarant owns at least 25% of the Units, Declarant may unilaterally amend the plat of the Property without the additional consent of any other Owners. By accepting a deed to their Unit, Owners are deemed to have consented to any replatting of the Property that is consistent with the provisions of this Section and appoint Declarant as their attorney-in-fact for the limited purpose of executing on their behalf any documents necessary for such replatting. Provided, however, that nothing in this section allows Declarant to replat the property underlying a Unit or diminish the value of a Unit that is not owned by Declarant.

ARTICLE XI - ASSIGNMENT

Any or all of the rights and powers granted or reserved to the Declarant in the Condominium Documents or by law, including the power to approve or disapprove any act, use or proposed action or any other matter or thing, may be assigned by it to any other entity or to the Association. Any such assignment or transfer shall be made by appropriate instrument in writing duly recorded in the office of the Missoula County Clerk and Recorder.

ARTICLE XII - RESTRICTIONS

All of the Units in the Condominium shall be held, used and enjoyed subject to the following limitations and restrictions:

12.1 **Use.** The Residential Units in the Condominium shall be used only for residential occupancy by Unit Owners, their families, and their guests and invitees who do not pay consideration for such occupancy, consistent with the other restrictions contained herein, and in the Rules and Regulations of the Condominium, and may not be used for any other purposes whatsoever.

12.2 **Alterations and Modifications.** No Unit Owner shall make any alteration or modification of any Common Element. No structural modification of any Unit may be made without the written consent of Declarant or the Association.

12.3 **Activities.** No unlawful activity shall be carried on in any Unit or upon the Common Elements nor shall anything be done which may be or become an annoyance or a nuisance to the Unit Owners of the Condominium. No unreasonably noisy activity shall occur in or on the Common Elements or in any Unit at any time and disputes among Unit Owners, arising as a result of this provision which cannot be amicably resolved, shall be arbitrated by the Board. No Unit Owner shall do or permit anything to be done or keep or permit to be kept in his Unit or on the Common Elements anything that will increase the rate of insurance on the Condominium without the written approval of the Board, and each Unit Owner who causes such an increase shall pay to the Association the increased cost of insurance premiums resulting from any such activity or the maintenance of any such condition even if approved. Activities which are deemed offensive and are expressly prohibited include, but are not limited to, the following: any activity involving the use of firearms, fireworks, air rifles, pellet guns, B-B guns, bows and arrows, or other similar dangerous weapons, projectiles or devices.

12.4 **Pets.** No animals, other than domestic household pets, shall be maintained by any Unit Owner in any Unit. Unless a Unit Owner has obtained the prior consent of the Declarant or the Board, no more than one domestic dog and two cats, fish in aquariums or birds inside bird cages may be kept as household pets within any Unit. Domestic dogs cannot exceed fifty (50) pounds. All permitted pets and their owners shall be subject to the noise and nuisance restrictions. No pet shall be housed outdoors. No pet shall be allowed outside unleashed or unattended by its owner except as permitted by applicable rules or restrictions established by the Board. Unit Owners are responsible for damage and wastes caused by such animals. All pet owners will promptly clean any mess left by a pet on the Property. Any Unit Owner who causes any impermissible animal to be brought or kept upon the Property shall indemnify and hold harmless the Association from any loss, damage or liability which the Association may sustain as the result of the presence of such animal on the Property. The Association may, without liability to the owner thereof, remove or cause to be removed any impermissible animal from any Unit or the Property. In the event of any violation of this Section, the Board may assess fines for such violation in accordance with this Declaration and the Bylaws and in accordance with any duly adopted rules and regulations of the Association. The Board may adopt and enforce rules and regulations governing the type or types of permitted and impermissible animals, their conduct and the manner and location of their housing, and the permissible number of such animals per Unit Owner.

12.5 **Aesthetics.** The Common Elements shall not be used for storage of supplies, materials, personal property or trash or refuse of any kind, except as provided in duly adopted Rules and Regulations. No unsightly conditions shall be maintained on any patio, porch or deck and only furniture and equipment consistent with the normal and reasonable use of such areas shall be permitted to remain there during seasons when such areas are reasonably in use and no furniture or equipment of any kind shall be stored thereon during seasons when such areas are not reasonably in use. Except as they may be used in a Residential Unit with a limited common element exterior deck, barbeque grills are expressly prohibited in any Unit or in any Common Elements appurtenant thereto. The Common Elements shall not be used in any way for the

drying, shaking or airing of clothing or other fabrics. In general, no activity shall be carried on nor condition maintained by a Unit Owner, either in his Unit or upon the Common Elements, which is detrimental to the appearance of the Condominium. By way of example, outdoor basketball hoops are not permitted.

12.6 Advertising. No signs or other advertising devices of any kind shall be displayed which are visible from the exterior of a residential Unit or on the Common Elements, including but not limited to real estate sign, "for rent" sign, political sign or the like, without written permission from the Board.

12.7 Rules and Regulations. It is intended that the Board of Directors may make Rules and Regulations from time to time to reflect the needs and desires of the majority of the Unit Owners in the Condominium. Reasonable regulations consistent with the Act, this Declaration and the Bylaws concerning the use of the Common Elements may be made and amended from time to time by the Association. Copies of all such Rules and Regulations and amendments thereto shall be furnished to all Unit Owners.

12.8 Parking. No cars that are not regularly used by an Owner may be stored anywhere on the Property. The Board may establish such other reasonable rules and regulations concerning parking as it deems reasonable.

12.9 Reserved Rights of Declarant. None of the restrictions contained in Article XII shall apply to the commercial activities or signs or billboards, if any, of the Declarant during the development and sales period or of the Association in furtherance of its powers and purposes set forth herein, as the same may be amended from time to time.

ARTICLE XIII - CHANGES, REPAIRS, LIENS

13.1 Alterations by Unit Owners.

13.1.1 Bearing Walls. Notwithstanding any rights to remodel the Units, bearing walls may not be moved.

13.1.2 Change in Unit Boundaries Upon Common Elements. No change in the boundaries of existing Units shall encroach upon the boundaries of the Common Elements except by amendment to this Declaration and with the written approval of the Board of Directors. Such an amendment shall be signed and acknowledged by the Board, and the Owners of the Units concerned. The amendment shall also be approved, signed and acknowledged by all lienors and mortgagees of the Units concerned. Boundary walls must be equal in quality of design and construction to the existing boundary walls.

13.1.3 Change in Unit Boundaries. A change in the boundaries between Units that does not encroach upon the Common Elements shall be set forth in an amendment to this Declaration. In addition to compliance with the provisions of this Declaration, such an amendment must further set forth and contain plans to the Units concerned showing the Units after the change in boundaries, and attached to the amendment as exhibits. Such an amendment shall be signed and acknowledged by the Association and the owners of the Units concerned. The amendment must also be approved by the Board of Directors and signed and

acknowledged by all lienors and mortgagees of the Units concerned. Boundary walls must be equal in quality of design and construction to the existing boundary walls.

13.2 **Exterior Alterations.** No Owner may change, alter or remodel the exterior of the Owner's Unit without the prior written approval of the Board.

13.3 **Liens for Alterations.** Labor performed and materials furnished and incorporated into a Unit with the consent of or at the request of the Unit Owner, his agent, his contractor or subcontractor may be the basis for the filing of a lien against the Unit or the Unit Owner consenting to or requesting the same. Each Unit Owner shall indemnify and hold harmless each of the other Owners against the Unit or against the General Common Elements or Limited Common Elements for construction performed or for labor, materials, services or other products incorporated in the Owner's Unit at such Owner's request.

ARTICLE XIV - INSURANCE

14.1 **Policies.** All insurance policies upon the Common Elements shall be purchased by the Association and shall be insured by an insurance company authorized to do business in Montana.

14.2 Coverage.

14.2.1 **Casualty:** All buildings and improvements included in the Common Elements shall be fully insured upon the land shall be insured to any amount equal to the full insurable replacement value with all such insurance to be based on current replacement value, as determined annually by the Board, the insurer and any first lienholder or their representatives, but subject to such deductible clauses as are required in order to obtain coverage at reasonable costs, and which coverage shall be increased by the Board as may be necessary to provide that the insurance proceeds will be sufficient to cover replacement, repairs or reconstruction. Such coverage shall afford protection against:

14.2.1.1. Loss or damage by fire and other hazards covered by a standard extended coverage endorsement; and

14.2.1.2. Specifically such other risks including flood and earthquake loss as from time to time shall customarily be covered with respect to buildings similar in construction, location and use as the building on the land, if the Association so desires, in amounts to be determined by the Board; and

14.2.1.3. Errors or Omissions Insurance for the Directors, Officers and Managers, if the Association so desires, in amounts to be determined by the Board; and

14.2.1.4. The policies shall cover property included in Units which is initially installed in accordance with the Association's original plans and specifications or a replacement of like kind and quality, such property to include, but not be limited to, air-handling equipment for space cooling and heating, service equipment such as dishwasher, disposal, laundry, fireplaces, refrigerator, stove, oven, interior fixtures such as electrical and plumbing

fixtures, floor coverings, inside paint and other wall finishing regardless of whether such items are included within the definition of Common Elements.

14.2.2 Public liability: In such amounts and with such coverage as shall be required by the Board of Directors, including, but not limited to, hired automobile and non Owner automobile coverage, if applicable, and with cross-liability endorsement to cover liabilities of the Unit Owners as a group to a Unit Owner.

14.2.3 Other Insurance: Such other insurance as the Board of Directors shall determine from time to time to be desirable and as may be required by the Federal and State laws.

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

14.4 **Insurance Trustee**. All insurance policies purchased by the Association shall be for the benefit of the Association and the Unit Owners and their mortgagees as their interests may appear of record. Upon such election being made by the Board of Directors, the Board shall provide that all proceeds covering property losses shall be paid to such bank in Montana with trust powers as may be designated as Insurance Trustee by the Board of Directors, which trustee is herein referred to as the Insurance Trustee. The Insurance Trustee shall not be liable for payment of premiums nor for the renewal or the sufficiency of policies nor for the failure to collect any insurance proceeds. The duty of the insurance trustee shall be to receive such proceeds as are paid and hold the same in trust for the purposes elsewhere stated in this instrument and for the benefit of the Unit Owners and their mortgagees in the following shares, but which shares need not be set forth in the records of the insurance Trustee.

14.4.1 Unit Owners: Where all Units are destroyed, an undivided share for each Unit Owner, such share being the same as the undivided share in the Common Elements appurtenant to this Unit. In the event less than all Units are damaged or destroyed, then such proceeds shall be held only for the Owner(s) of the damaged Unit(s) to the extent of the repair costs of the damage or in the event of destruction, to the extent of the fair market value of the Unit before the destruction.

14.4.2 Mortgagees: In the event a mortgagee endorsement has been issued as to a Unit, the share of the Unit Owner shall be held in Trust for the mortgagee and the Unit Owner as their interests may appear, provided however, that no mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds except distributions thereof made to a Unit Owner and mortgagee pursuant to the provisions of this Declaration.

14.5 Distribution of Proceeds. Proceeds of insurance policies received by the Insurance Trustee shall be distributed to or for the benefit of the beneficial Owners in the following manner:

14.5.1 Miscellaneous: Expenses of administration, Insurance Trustee and construction or remodeling supervision shall be considered as part of the cost of construction, replacement or repair.

14.5.2 Reconstruction or Repair: Any balance remaining shall be used for reconstruction and repair as hereafter provided.

14.5.3 Partial Reconstruction: If the Unit or Units are destroyed and partially rebuilt, distribution shall be made to Unit Owners or the Insurance Trustee as their interests appear based on the reconstruction of the Units.

14.5.4 No Reconstruction or Repair. If there is no reconstruction or repair the first proceeds for distribution after paying the Insurance Trustee shall be made to the first lienholders for such Units before distribution to the Unit Owners. If the Unit or Units are destroyed and partially rebuilt, distribution shall be made to Unit Owners or the Insurance Trustee as their interests appear based on the reconstruction of the Units.

14.5.5 After distribution of the insurance proceeds as set forth above, any remaining proceeds shall be distributed to the Units Owner(s) as such Owner(s) interest shall appear. In the event less than all Units are damaged or destroyed, then such proceeds shall be held only for the Owner(s) of the damaged Unit(s) to the extent of the repair costs of the damage or in the event of destruction, to the extent of the fair market value of the Unit before the destruction.

14.5.6 Certificate: In making distribution to Unit Owners and their lienholders, the Insurance Trustee may rely upon a certificate of the Association made by its representative or manager as to the names of the Unit Owners and their respective shares of the distribution.

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

14.7 Benefit to Mortgagees. Certain provisions in this paragraph entitled "Insurance" are for the benefit of mortgagees or trust indenture beneficiaries or leasehold condominium parcels, and all such provisions are covenants for the benefit of any mortgagee of a Unit and may be endorsed by such mortgagee or beneficiary.

14.8 Notice to Lienholder. The Unit owners and not the Board nor the Association, shall notify the holder of any first lien on any of the Units of the occurrence of any loss in excess of \$10,000.00 within thirty (30) days of such loss.

14.9 Reconstruction.

14.9.1 Repair after Casualty: If any part of the Condominium Property shall be damaged by casualty, whether or not it shall be reconstructed or repaired, shall be determined in the following manner:

14.9.1.1. Lessor Damage: If a Unit or Units are found by the Board of Directors to be tenable after the casualty, the damaged property shall be repaired.

14.9.1.2. If a Unit or Units are found by the Board of Directors to be not tenable after the casualty, the damaged property may be reconstructed or rebuilt as provided in the applicable provisions of the Unit Ownership Act. If the decision is made not to rebuild then the property shall be subject to the applicable provisions of the Unit Ownership Act.

14.9.1.3. In the event the Association election not to rebuild as herein provided and set forth in 70-23-803 MCA, and less than all of the Units have been damaged or destroyed, the Insurance Trustee shall be instructed to disburse the proceeds in accordance with paragraph 14.9.5 and 14.9.6.

14.9.1.4. Certificate: The Insurance Trustee may rely upon a certificate of the Association made by its Chairman, President or Manager to determine whether or not the damaged property is to be reconstructed or rebuilt.

14.9.2 Plans and Specifications: Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original improvements, or if not, then according to plans and specifications approved by not less than seventy-five percent (75%) of the Unit Owners, including the Owners of all Units the plans for which are to be altered. Any such reconstruction not in accordance with the original plans and specifications must be set forth in an amendment to the Declaration, which amendment shall be prepared and filed of record in accordance with the provisions of such amended filing.

14.9.3 Responsibility: The responsibility for reconstruction or repair after casualty shall be the Association who shall work with the Insurance Trustee to carry out the provisions of this Article.

14.9.4 Assessments: If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction or repair for which the Association is responsible, or if at any time during such reconstruction or repair, or upon completion of such reconstruction or repair, the funds for the payment of the costs thereof are insufficient, assessments shall be made against all Unit Owners in sufficient amounts to provide funds to cover the payment of such costs. Such assessments shall be in proportion to the Owner's percentage of interest in the General Common Elements.

14.9.5 Construction Funds: The funds for payment of costs of reconstruction or repair after casualty, which shall consist of proceeds of insurance held by the Insurance Trustee and funds collected by the Association from assessments against Unit Owners, shall be disbursed in the sound discretion of the trustee and according to the contract

of reconstruction or repair, which contract must have the approval of the Board of the Unit Owners involved.

14.9.6 Surplus: It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from the insurance proceeds. If there is a balance in a construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be paid to the Mullan Owners Association for the use and benefit of the Unit Owners.

ARTICLE XV - REMOVAL OR PARTITION - SUBDIVISION

The Condominium may only be removed from condominium ownership, upon compliance with each of the conditions hereof:

15.1 The Board of Directors must approve the plans of removal, partition or sale. Such approval shall include the details of how any partition or sale, and the distribution of property or funds shall be accomplished.

15.2 The plan of removal, partition, subdivision, abandonment, termination or sale must be approved as provided in the Montana Unit Ownership Act. If approval for any of the forgoing is not required by the Unit Ownership Act, then approval shall be required from at least seventy-five percent (75%) of the Owners or first lienholder in the Condominium project. Upon obtaining such approval, the Board shall be empowered to implement and carry out the plan of removal, partition, subdivision, abandonment, termination or sale.

15.3 No Unit may be divided or subdivided into a smaller Unit, nor any portion thereof sold or otherwise transferred, except as provided above.

15.4 The Common Elements of the Condominium shall not be abandoned, partitioned, subdivided, encumbered, or sold or transferred (except to the Association) without compliance with all of the above requirements.

ARTICLE XVI - INTERPRETATION

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

ARTICLE XVII - REMEDIES

All remedies provided for in this Declaration and Bylaws shall not be exclusive of any other remedies which may now be, or are hereafter, available to the parties hereto as provided for by law.

ARTICLE XVIII - SEVERABILITY

The provisions hereof shall be deemed independent and severable and the invalidity or partial invalidity or unenforceability of anyone or more provision shall not affect the validity or enforceability of any other provision hereof.

ARTICLE XIX - MISCELLANEOUS

19.1 **Utilities.** The Units on the Property shall be individually responsible for payment of all charges and compliance with all rules of any utility or other provider of utility service.

19.2 **Expenditures.** With the exception of expenditures required for emergency situations, no single expenditure or debt in excess of Ten Thousand Dollars (\$10,000.00) may be made or incurred by the Association without the prior approval of the Board. The limitation on single expenditures may be modified by the Board without amendment to this Declaration.

19.3 **Benefit.** Except as otherwise provided herein, this Declaration shall be binding upon and shall inure to the benefit of the Declarant, the Association and each Unit Owner, and the heirs, personal representatives, successors and assigns of each.

19.4 **Service of Process.** The name and address of the person to receive service of process for the Association until another designation is filed of record shall be LAWCO.

19.5 **Notice to Lienholder.** A first lienholder, upon request, will be entitled to written notification from the Board of any default in the performance by an individual Unit Owner of any obligation under the Condominium Documents which is not cured within 60 days.

19.6 **Right to Examine Books.** Every Unit Owner and first lienholder shall have the right to examine the books and records of the Association and of any Manager for the condominium project by giving a written notice requesting such examination. Upon receipt of such notice, the party receiving the notice shall schedule a mutually agreeable date and time during normal business hours for the examination which date shall be not more than ten days following the receipt of the notice requesting the examination.

19.7 **Warranties.** The Declarant expressly makes no warranties or representations concerning the Property, the Units, the Declaration, the Bylaws or deeds of conveyance except as specifically set forth therein and no one may rely upon such warranty or representation not so specifically expressed therein. Estimates of Common Expenses are deemed accurate, but no warranty or guarantee is made or is intended, nor may one be relied upon.

19.8 **Notices.** All writings required or permitted to be given or delivered under this Declaration shall be deemed to have been given or delivered when deposited in the United States mail or by delivering it personally to an officer of the Association, or directly to a Unit Owner.

19.9 **Sale Disclosures.** At any time that Declarant or any other person owns a majority of the Units, Declarant or such other person shall provide to any purchaser the disclosure required by Montana Code Annotated § 70-23-613.

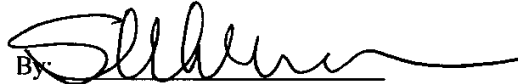
19.10 **Gender.** Whenever any reference herein is made to one gender, the same shall include a reference to any and all genders where the same would be appropriate; similarly, whenever a reference is made herein to the singular, a reference shall also be included to the plural where the same would be appropriate and vice versa.

19.11 Limitation on Liability. Notwithstanding anything to the contrary contained in this Declaration, any liability or claims against the Declarant shall, except in connection with any express written warranty of the Declarant, be strictly limited to the Declarant's then-existing interest in the Property, and in no event shall any recovery or judgment be sought against any of the Declarant's other assets (if any) or against any of the Declarant's manager, members or partners (or their constituent members or partners) or any manager, director, officer, employee or shareholder of any of the foregoing. Further, in no event shall any claimant be entitled to seek or obtain any special, consequential, indirect or punitive damages."

IN WITNESS WHEREOF, the Declarant, being the owner of all Units in the Project except Unit 406, has caused this Declaration to be made and executed according to the provisions of the Montana Unit Ownership Act, Section 70-23-101, et seq., MCA 2011.

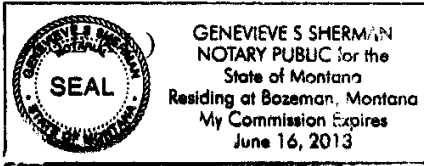
2025 MULLAN ROAD MISSOULA LLC, a Montana limited liability company


By: Mullan Manager, Inc., its sole member

By: 
Sally Uhlman, President

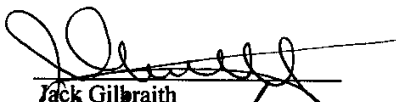
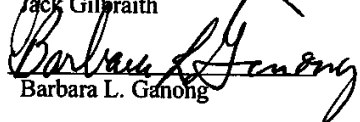
STATE OF Montana)
: ss.
County of Gallatin)

This instrument was acknowledged before me on August 23, 2012, by Sally Uhlman, as President of Mullan Manager, Inc., sole member of 2025 Mullan Road Missoula LLC.




Notary Public for the State of _____
Genevieve S. Sherman
(Printed Name)
Residing at: Bozeman MT [city & state]
My commission expires: June 16, 2013

The undersigned, being the owners of Unit 406, hereby consent to this First Amended and Restated Declaration for Mullan Heights Condominiums, and acknowledges that such Declaration supersedes and replaces the Declaration of Unit Ownership for Mullan Heights Condominium Homeowners Association, Inc. recorded March 11, 2008 in Book 814 of Micro Records at Page 771, records of Missoula County, Montana, as amended by that Amendment to Declaration of Condominium Under Unit Ownership Act Pertaining to Mullan Heights Condominiums recorded February 22, 2010 in Book 8855 of Micro Records at Page 935, records of Missoula County, Montana (as amended, the "First Declaration"), and the Declaration of Restrictions for Mullan Heights Condominiums recorded March 11, 2008 in Book 814 of Micro Records at Page 774, records of Missoula County, Montana ("Restrictions"). Upon the recording of this Declaration, the First Declaration and the Restrictions shall be of no further force and effect.

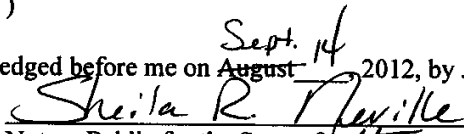

Jack Gilbraith

Barbara L. Ganong

STATE OF Montana)
) : ss.
County of Missoula)

This instrument was acknowledged before me on Sept. 14 ~~August~~ 2012, by Jack Gilbraith.



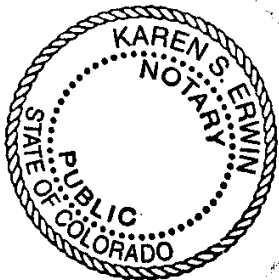
SHEILA R. NEVILLE
NOTARY PUBLIC - MONTANA
Residing at Superior, Montana
My Comm. Expires Mar. 1, 2013


Notary Public for the State of MT
Sheila R. Neville
(Printed Name)
Residing at: Florence, MT [city & state]
My commission expires: March 1, 2013

STATE OF Colorado)
) : ss.
County of Denver)

This instrument was acknowledged before me on August 10th, 2012, by Barbara L. Ganong.

(SEAL)





Notary Public for the State of Colorado
Karen S. Erwin
(Printed Name) Denver, CO 80202
Residing at: 60017th St, #100N, [city & state]
My commission expires: June 25, 2015

EXHIBIT A

Parcel I

Lots 24, 25, 26 and 27, in Block 15, and Lots 23, 24, 25, 26, 27, 28 and 29, in Block 14, all being in MCCORMICK'S ADDITION NO. 2, a platted subdivision in the City of Missoula, Missoula County, Montana, LESS Tracts A and B as shown and described in Deed Exhibit 1888 referenced in a Warranty Deed filed in Micro Book 3, Page 1433, records of Missoula County, Montana.

TOGETHER WITH those portions of vacated alleys in Block 14 and 15 and those portions of vacated Sherwood, Beaver and Cooper Streets, all of which are appurtenant to the above-described lots and located Northwest of the Northwest boundary of Tracts A and B noted above.

Parcel II

Lots 18, 19, 20, 21, 22, 23, 28, 29, 30, 31, 32 and 33 in Block 15 and Lots 14, 15, 16, 17, 18, 19, 20, 21 and 22 in Block 14 together with any and all vacated streets and alleys appurtenant to said Lots EXCEPTING THEREFROM Tracts A and B of Deed Exhibit No. 1888, all being in McCormick Addition No. 2, a platted subdivision in the City of Missoula, Missoula County, Montana, according to the official recorded plat thereof.

EXHIBIT B

Construction Materials

Wood frame.

Wood and stone exterior.

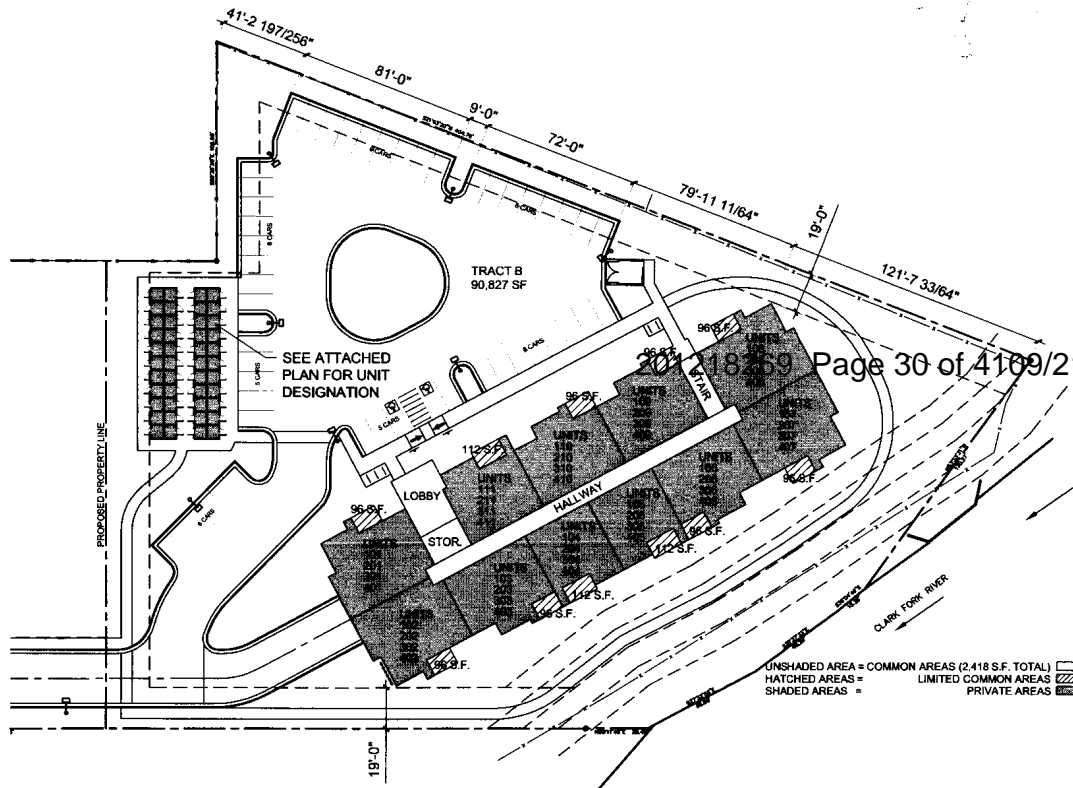
Steel.

Drywall and stone interiors with ceramic tile.

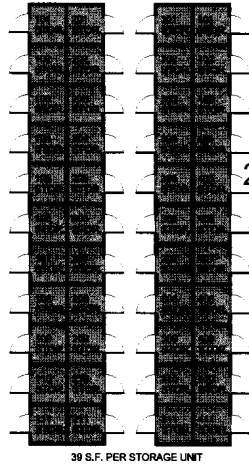
Concrete foundations.

EXHIBIT C




Site Plan



 Mullan Heights Condominiums
Site Plan



39 S.F. PER STORAGE UNIT

UNSHADED AREA =	COMMON AREAS (2,418 S.F. TOTAL)	
HATCHED AREAS =	LIMITED COMMON AREAS	
SHADED AREAS =	PRIVATE AREAS	



Mullan Heights Storage
Site Plan

Schedule 1

LIST OF UNIT NUMBERS WITH FLOOR PLANS AS
DEPICTED ON FOLLOWING PAGES

101
102
103
104
105
106
107
108
109
110
111
201
202
203
204
205
206
207
208
209
210
211
301
302
303
304
305
306
307
308
309
310
311
401
402
403
404
405
406

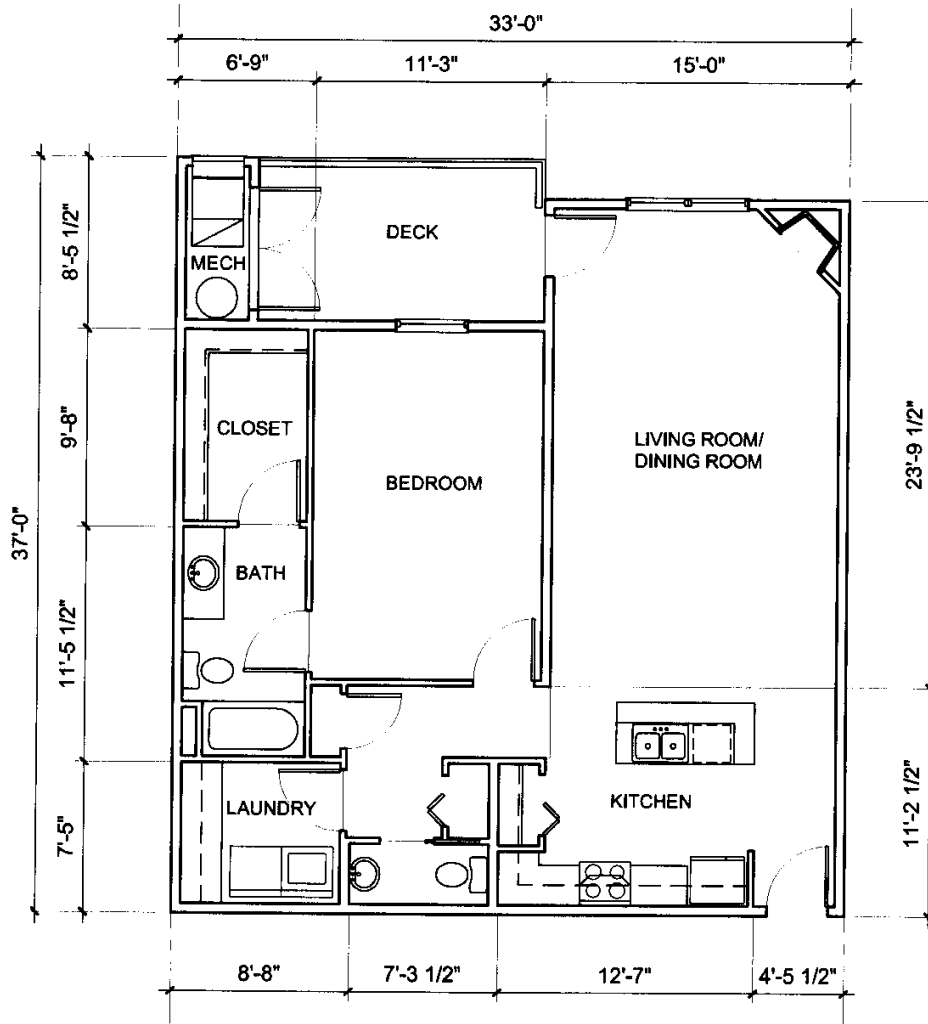
407

408

409

410

411



a

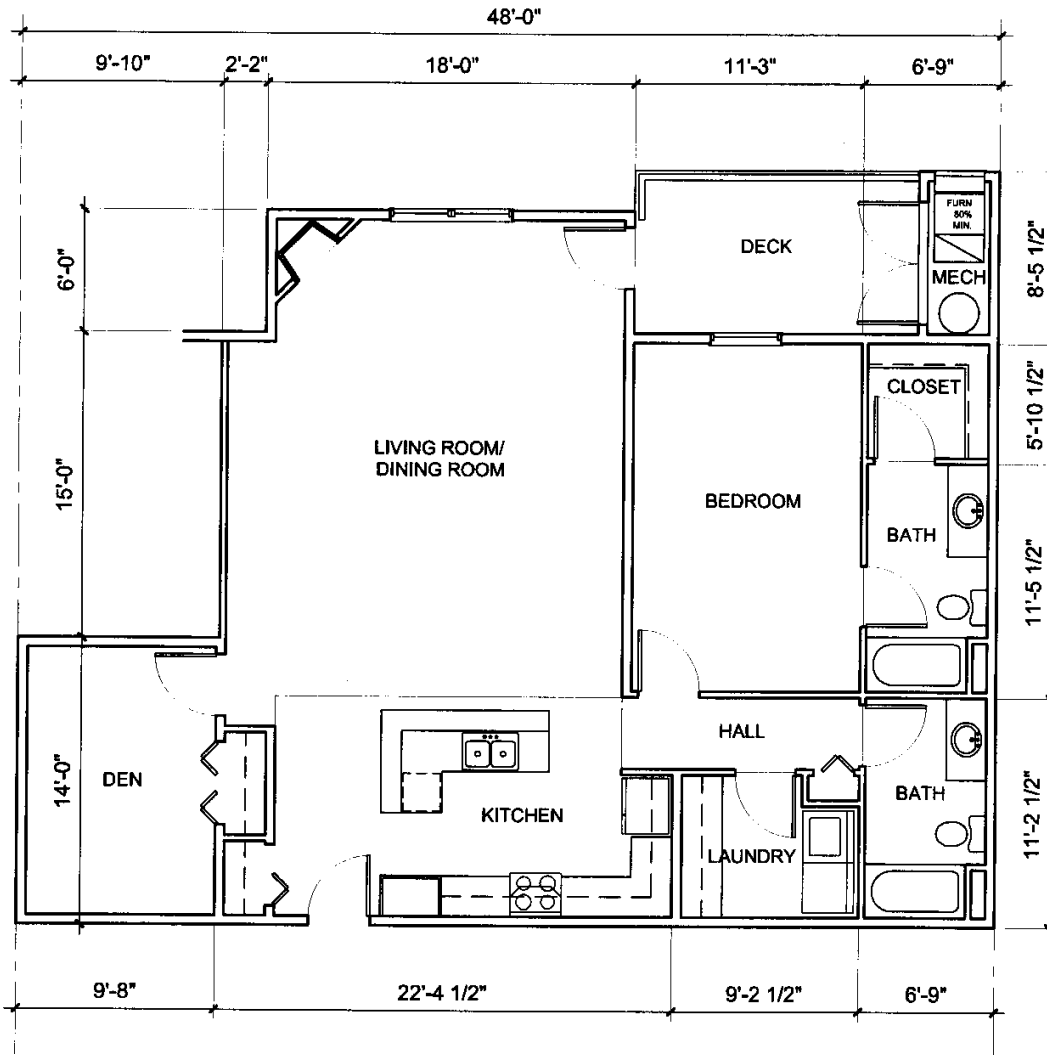
Typical 'A1' Unit - 1 Bedroom

1/8" = 1'-0"

1,079 S.F.

104 mirrored	304 mirrored
105	305
204 mirrored	404 mirrored
205	405





b

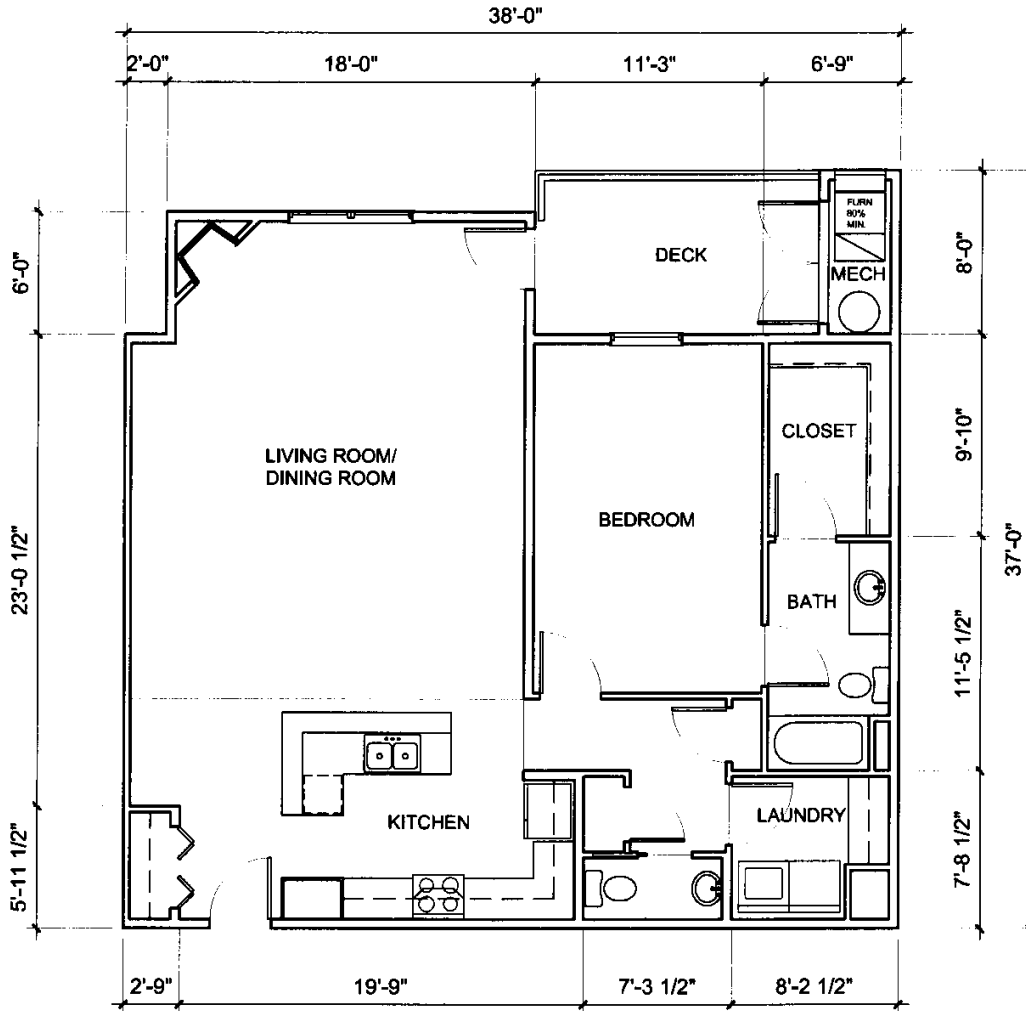
Typical 'A2' Unit - 1 Bedroom

1/8" = 1'-0"

1,385 S.F.

- 211
- 311
- 411





C

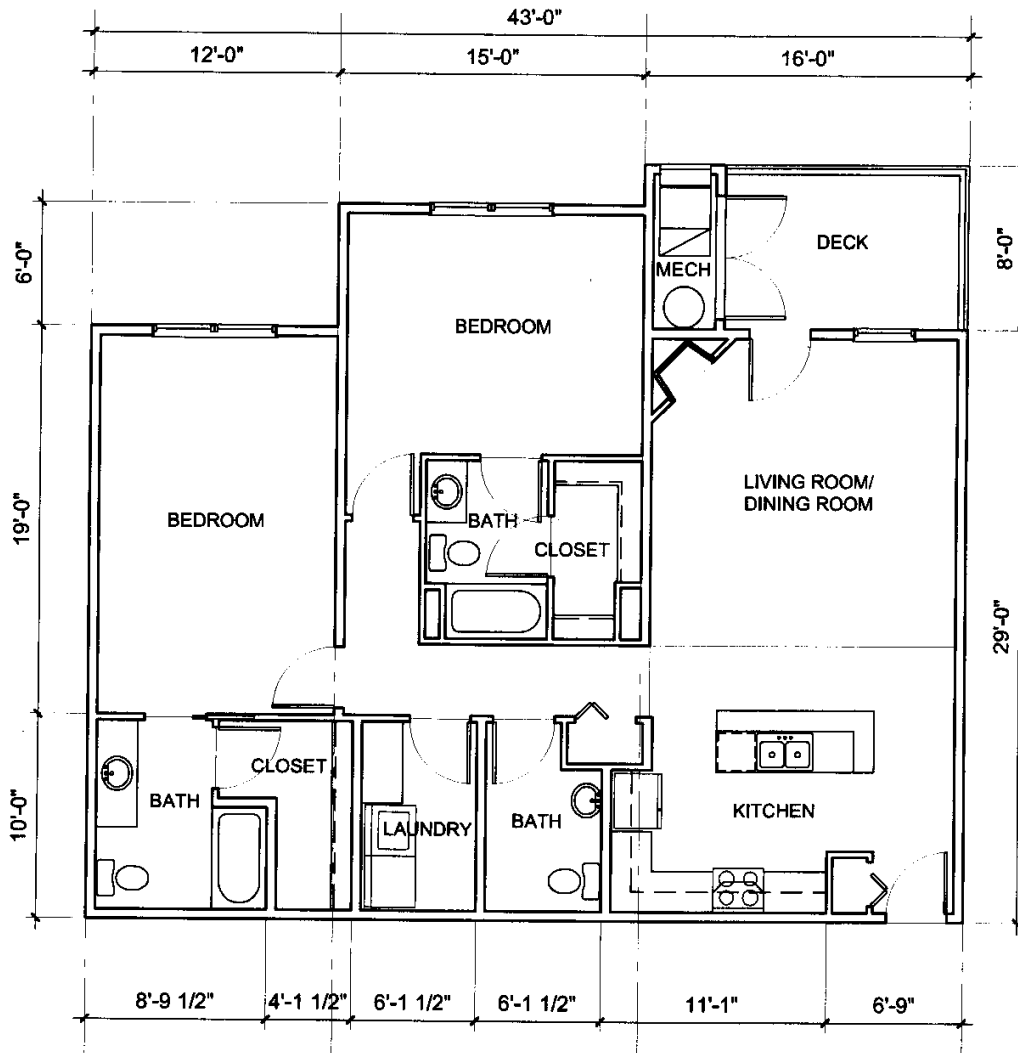
Typical 'A3' Unit - 1 Bedroom

1/8" = 1'-0"

1,242 S.F.

111





d

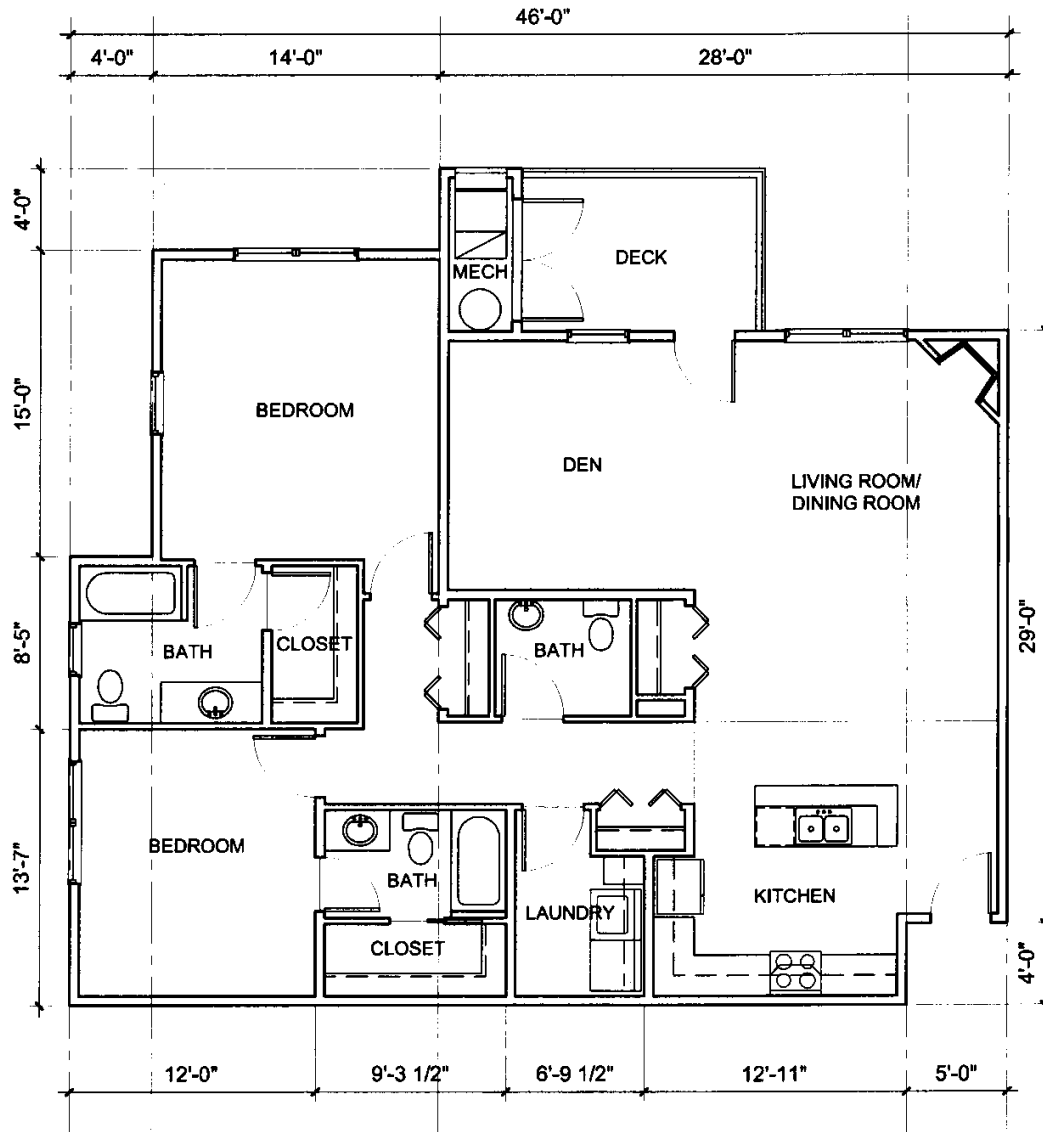
Typical 'B1' Unit - 2 Bedroom

1/8" = 1'-0"

1,369 S.F.

103 mirrored	203 mirrored	303 mirrored	403 mirrored
106	206	306	406
109	209	309	409
110	210	310	410





e

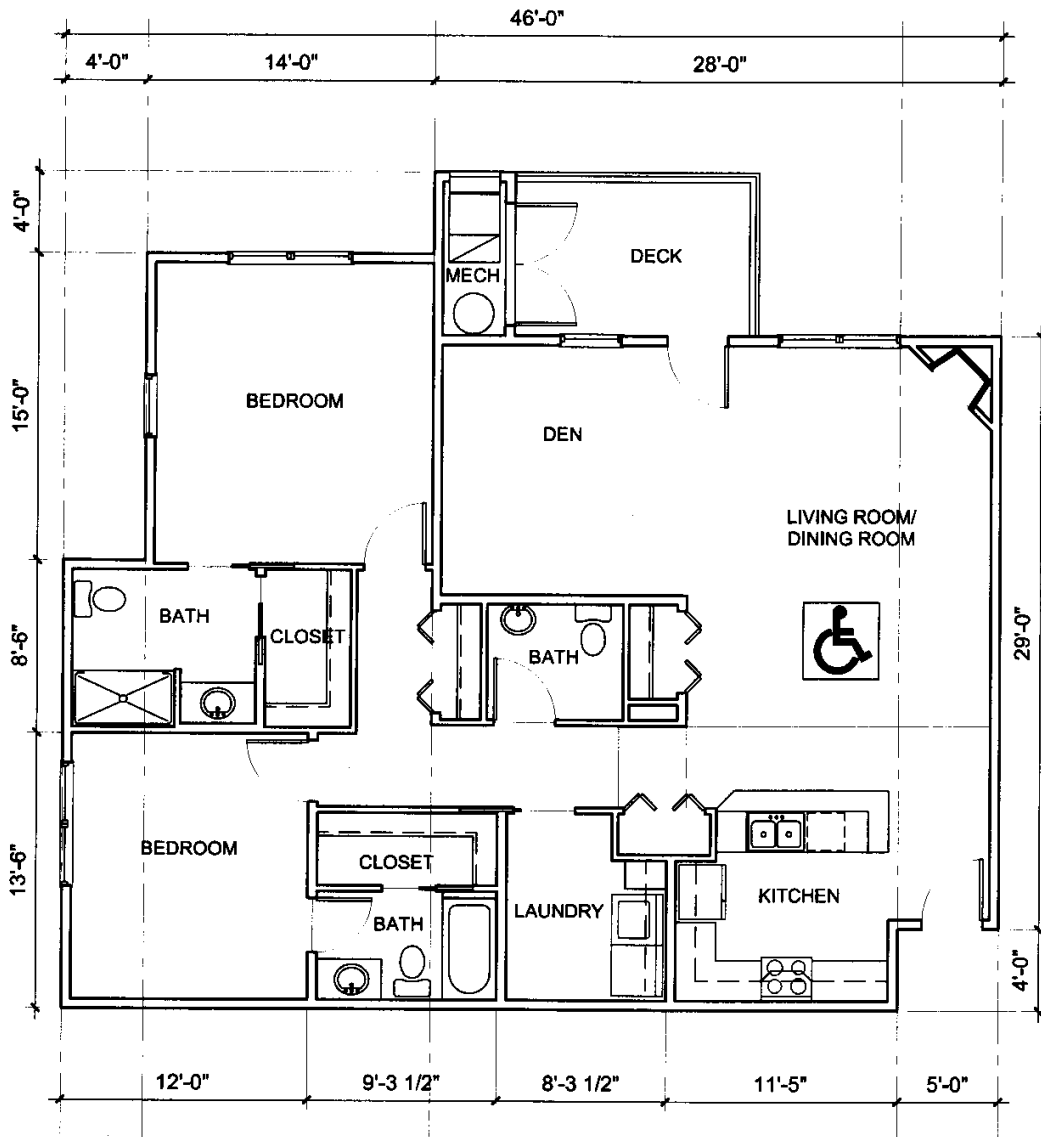
Typical 'B2' Unit - 2 Bedroom

1/8" = 1'-0"

1,542 S.F.

101	202 mirrored	302 mirrored	401
102 mirrored	207	307	402 mirrored
107	208 mirrored	308 mirrored	407
108 mirrored			408 mirrored





Typical Accessible 'B3' Unit - 2 Bedroom

1/8" = 1'-0"

1,542 S.F.

201
301



EXHIBIT "E"

PERCENTAGE OF OWNERSHIP INTEREST

RESIDENTIAL UNITS

UNIT NUMBER	FLOOR PLAN	FLOOR	TOTAL SQUARE FOOTAGE	PERCENTAGE INTEREST
101	B2	First	1677	0.025128489
102	B2	First	1677	0.025128489
103	B1	First	1504	0.022536224
104	A1	First	1230	0.018430556
105	A1	First	1230	0.018430556
106	B1	First	1504	0.022536224
107	B2	First	1677	0.025128489
108	B2	First	1677	0.025128489
109	B1	First	1504	0.022536224
110	B1	First	1504	0.022536224
111	A3	First	1393	0.020872979
201	B3	Second	1677	0.025128489
202	B2	Second	1677	0.025128489
203	B1	Second	1504	0.022536224
204	A1	Second	1230	0.018430556
205	A1	Second	1230	0.018430556
206	B1	Second	1504	0.022536224
207	B2	Second	1677	0.025128489
208	B2	Second	1677	0.025128489
209	B1	Second	1504	0.022536224
210	B1	Second	1504	0.022536224
211	A2	Second	1536	0.023015718
301	B3	Third	1677	0.025128489
302	B2	Third	1677	0.025128489
303	B1	Third	1504	0.022536224
304	A1	Third	1230	0.018430556
305	A1	Third	1230	0.018430556
306	B1	Third	1504	0.022536224
307	B2	Third	1677	0.025128489
308	B2	Third	1677	0.025128489
309	B1	Third	1504	0.022536224
310	B1	Third	1504	0.022536224
311	A2	Third	1536	0.023015718
401	B2	Fourth	1677	0.025128489
402	B2	Fourth	1677	0.025128489
403	B1	Fourth	1504	0.022536224
404	A1	Fourth	1230	0.018430556
405	A1	Fourth	1230	0.018430556
406	B1	Fourth	1504	0.022536224
407	B2	Fourth	1677	0.025128489
408	B2	Fourth	1677	0.025128489
409	B1	Fourth	1504	0.022536224
410	B1	Fourth	1504	0.022536224
411	A2	Fourth	1536	0.023015718
TOTAL			66737	100%