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Charlotte Mills - Gallatin County, MT MISC

After recording, please return to:
Ryan Hamilton, TCOA
326 N. Broadway
Bozeman, MT 59715

Note: These amended and restated Bylaws supercede all previously recorded Bylaws, including, but not limited to, Document No. 2281028.

OCTOBER 2008 AMENDED AND RESTATED BYLAWS

OF

TOWN CENTER OWNERS' ASSOCIATION, INC.

ARTICLE I - DEFINITIONS

As used herein:

"Simkins Holdings, LLC" (successor to Gallatin Peaks Land & Development, LLC) means the developer of certain real property situated in Gallatin County, Montana, owned by either Westland Enterprises, Inc., a Montana corporation, (herein "Westland") and/or Simkins Holdings, LLC, a Montana Limited Liability Company (herein "Developer"), more particularly described as follows:

Township 7 South, Range 3 East, M.P.M., Gallatin County, Montana

Section 1: All land within the Town Center Planned Unit Development, referred to as the Town Center Development.

Section 2: A portion in the S½ of the NE ¼.

Township 6 South, Range 3 East, M.P.M., Gallatin County, Montana

Section 36: A Portion of Tract 1 of COS No. 2098, and COS No. 2343

“Declaration” means “The Big Sky Town Center Declaration of Covenants, Conditions and Restrictions (“Declaration”)” encumbering a portion of Westland/Developers’ Property referred to herein as the “Town Center Property,” and any subsequent amendments thereto.

“Town Center Property” means Westland/Developers’ Property in Sections 1 and 2, Township 7 South, Range 3 East, M.P.M. and in Section 36, Township 6 South, Range 3 East, M.P.M., Gallatin County, Montana, as described by the Big Sky Town Center Subdivision Plat, Phase I (Plat No. J-336) and COS 2343 on file and of record in the Office of the County Clerk and Recorder of Gallatin County, Montana, together with such additional Subdivision Plats and real property as may be added to and encumbered by the Town Center Declaration for the Town Center Property.

ARTICLE II - OFFICES

The principal office of the Corporation in the State of Montana shall be located at 326 North Broadway, Bozeman, Montana 59715. The Corporation may have such other offices within this state as the Board of Directors may designate, or as the business of the Corporation may from time-to-time require.

ARTICLE III - MEMBERSHIP

1. Eligibility and Classes of Membership:

There are two (2) classes of members of this Corporation. Except with respect to voting rights, discussed below, all members have the same rights and obligations with respect to any other matter involving the Corporation.

The first class of members is the "Lot Owner Members." This class of members consists of all legal or equitable owners of a lot, including Condominium Associations which hold title to a lot, comprising the Town Center Property.

The second class of members is the "Condominium Unit Members." This class consists of all legal or equitable owners of a condominium unit within a Condominium Association that owns a lot comprising the Town Center Property.

All rights of members, as hereinafter designated, are subject to (a) current ownership of an interest by fee or by contract in a lot comprising the Town Center Property or of a condominium unit thereon; and (b) current payment of all dues or assessments levied by the Corporation, the absence of either of which shall result in immediate loss of all rights of membership, except the right to readmission for non-payment of dues or assessments contingent upon full payment of all current and delinquent dues or assessments, together with accrued interest.

2. Rights of Members:

All members have the same rights and obligations with respect to any matters involving the Corporation, except with respect to voting rights, discussed below in Section 10.3 of this Article. All members are entitled to the use and enjoyment of Common Areas, Open Space, Roads and Trails of the Town Center Property in accordance with terms and conditions shown on all recorded subdivision plats and/or surveys of the Town Center Property; the Declaration; the

Amended and Restated Articles of Incorporation of the Town Center Owners Association, Inc. (herein "Articles"); these Bylaws; and any rules or regulations adopted by the Board of Directors in accordance with these Bylaws, as the same may from time-to-time be amended.

3. Membership Duties:

Members shall have all duties imposed by the Declaration; the Articles; these Bylaws; and any rules and regulations adopted by the Board of Directors in accordance with these Bylaws, as the same may from time-to-time be amended.

4. Transfer of Membership:

Membership in this Corporation is appurtenant to the lot or condominium unit giving rise to such membership and, accordingly, is non-transferable except to the successor in title to said lot or condominium unit who satisfies the criteria for membership eligibility in this Corporation. Any transfer of title to a lot or condominium unit, including transfer by way of contract for deed, but excluding transfer by mortgage or deed of trust, shall operate, automatically, to transfer membership in the Corporation to the new owner thereof subject to payment of all unpaid dues or assessments levied by the Corporation against the transferred lot or condominium unit.

5. Annual Meeting:

The annual meeting of the membership shall be held on a day selected by the Board of Directors; the place, day, and time of such meeting shall be contained in the notice of meetings hereinafter described below. The purpose of the annual meeting shall be for the election of the Board of Directors or filling any vacancies thereon, conducting an annual review of the Corporation's past and future business and current financial condition, and for the transaction of such other business as may come before the meeting.

6. Special Meetings:

Special meetings of the members for any purpose or purposes may be called by the President, by the Board of Directors or by members holding at least five percent (5%) of the voting power of the Corporation.

7. Notice:

Written or printed notice stating the place, day and time of the meeting, and, in the case of a special meeting, the purpose or matter for which the meeting is called, shall be personally delivered not less than ten (10) days before the meeting date, or if notice is mailed by United States first class mail, not less than thirty (30) nor more than sixty (60) days before the meeting date, to each member of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States Mail, addressed to the member at the address as it appears in the books of the Corporation, with postage thereon prepaid.

8. Voting List:

The Secretary of the Corporation shall make a complete list of all members entitled to vote as of the close of business on the business day preceding the day on which notice of the meeting is given, arranged in alphabetical order, which list shall be kept on file at the principal office of the Corporation and shall be subject to inspection by any member at any time during usual business hours. Such list shall be produced and kept open at the time and place of the membership meeting. Said list shall be *prima facie* evidence as to which members are entitled to vote at the meeting of members.

9. Quorum:

Unless otherwise required by Montana law, at any meeting of members, twenty-five percent (25%) of the members then entitled to vote, represented in person or by proxy, shall constitute a quorum. If less than said number of members are represented at a meeting, a majority

of the members then present may adjourn the meeting from time to time without further notice. At any such adjourned meeting at which a quorum of the membership shall be presented or represented, any business may be transacted which might have been transacted at the meeting as originally notified. Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

Unless one-third or more of the voting power is present in person or by proxy, the only matters that may be voted upon at an annual or regular meeting of members are those matters that are described in the meeting notice.

10. Voting.

10.1. Voting Rights - General:

Lot Owner Members shall be entitled to vote for the election of members to the Board of Directors and on amendments to the Articles or these Bylaws. Except only as otherwise required by the Montana Non-Profit Corporation Act, or as may otherwise be provided in resolution of the Board of Directors, members have no other voting rights. Except as otherwise permitted or required by law, cumulative voting and voting by class is prohibited.

10.2. Preferential Voting Rights of Westland and Developer:

Until forty percent (40%) of the maximum projected number of lots comprising the Town Center Property have been sold, Westland and the Developer, collectively, shall have the right to elect two-thirds (2/3) of the members of the Board of Directors. After more than forty percent (40%) of the maximum projected number of lots comprising the Town Center Property have been sold, Westland and the Developer, collectively, shall have the right to elect a majority of the members of the Board of Directors. After eighty percent (80%) of the maximum projected

number of lots comprising the Town Center Property have been sold, Westland and/or the Developer, collectively, shall thereafter have the right to elect one-fourth (1/4) of the members of the Board. As used herein, "maximum projected number of lots comprising the Town Center Property" is two hundred (200).

10.3. Voting Rights of Members:

The two (2) classes of membership have different voting rights, both of which are subject to the preferential voting rights of Westland and the Developer as concerns election of members to the Board of Directors set forth in Subsection 10.2, immediately above.

10.3.a. Lot Owner Class.

Each member of the "Lot Owner Class" shall be entitled to one (1) vote for each lot owned. Where membership stands of record in the names of two or more persons, including condominium associations, all such persons, collectively, shall have only one (1) vote per lot and their acts with respect to voting shall have the following effect:

1. if only one member votes, the act binds all;
2. if more than one member votes, the one vote shall be determined by a vote

of the majority of the members who own the lot or the vote of the majority of unit owners who vote within the Association. In the case of a tie vote, the proposal being considered shall pass.

Condominium Associations, which hold title to a lot within the Town Center, shall be entitled to one (1) vote per Association, as determined by a majority of the unit owners who vote within the Association. In the case of a tie vote, the proposal being considered shall pass.

10.3.b. Condominium Unit Owner Class

Members of the "Condominium Unit Owners" Class have no voting rights except as such rights may be exercised as members of a condominium association which is entitled to one (1) vote, as discussed above.

11. Order of Business:

The order of business at all meetings of members shall be as follows:

- A. Roll call and determination of presence of quorum;
- B. Proof of notice of meeting or waiver of notice;
- C. Reading of minutes of preceding meeting;
- D. Reports of officers;
- E. Reports of committees;
- F. Election of directors (at annual meeting);
- G. Unfinished business;
- H. New business; and
- I. Adjournment.

12. Informal Action by Members:

Unless otherwise provided by law or herein required, any action required to be taken at a meeting of the members, or any other action that may be taken at a meeting of the members, may be taken without notice of a meeting if a consent in writing, setting forth the actions so taken, shall be signed by a majority of the members entitled to vote with respect to the subject matter thereof and by a representative of Westland and the Developer and filed with the Secretary of the Corporation within ten (10) days of the action so taken without a meeting.

ARTICLE IV - BOARD OF DIRECTORS

1. General Powers:

The business and affairs of this Corporation shall be managed by a Board of Directors comprised of individuals. The Directors shall, in all cases, act as a Board, and they may adopt such rules and regulations for the conduct of their meetings and the management of this Corporation as they may deem proper, not inconsistent with the Articles and Bylaw and the laws of this State.

2. Number, Term and Election:

The number of Directors of this Corporation shall be not less than three (3), nor more than seven (7). Directors shall be elected to terms of no more than four (4) years, all of which shall have the same start and ending times.

3. Regular Meetings:

A regular meeting of the Board of Directors shall be held, without other notice than this Bylaw, immediately after and at the same place as the annual meeting of members. The Board may provide, by resolution, the time and place for the holding of additional regular meetings without any further notice than such resolution.

4. Special Meetings:

Special meetings of the Board of Directors may be called by or at the request of the President, the chairperson or other presiding member of the Board or the greater of two (2) Directors or thirty percent (30%) of the Directors then in office. The person or persons authorized to call special meetings of the Board may fix the place for holding any special meeting of the Board called by them.

5. Notice:

Notice of any special meetings shall be given at least five (5) business days previous thereto by written notice delivered personally or by facsimile transmission or mail to each Director at his or her business address. If notice is given by facsimile transmission, such notice shall be deemed delivered on the date and at the time shown on the facsimile transmission report. If mailed, such notice shall be deemed delivered when deposited in the United States Mail so addressed, with postage thereon prepaid. The attendance or participation of a Director at a meeting shall constitute a waiver of notice of such meeting, unless upon arriving at the meeting, or prior to any vote on a matter not noticed in conformity herewith, such Director objects to lack of proper notice and does not vote for or assent to any action or matter being voted upon.

6. Quorum:

Except as otherwise provided in the Articles or these Bylaws, at any meeting of the Board of Directors a majority of the Directors, plus the presence of a representative (who may also be a Director) of either Westland and/or the Developer so long as either entity is a member of the Corporation, shall constitute a quorum for the transaction of business, but if less than said number is present at a meeting, a majority of the Directors present may adjourn the meeting from time-to-time without further notice.

7. Proxies:

At all meetings of the Board of Directors a Director may appear and/or vote by proxy executed in writing by the Director or by his duly authorized attorney-in-fact. Such proxy shall be filed with the Secretary of the Association before or at the time of the meeting.

8. Manner of Acting:

The act of the majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless otherwise provided herein or required by the Articles or the Montana Non-Profit Corporation Act.

9. Action Without Notice or a Meeting:

The Board of Directors shall have the right to take any action in absence of notice or formally convened meeting which could be taken at a meeting by obtaining a written approval of the action taken by all Directors and a representative of either Westland and/or the Developer so long as either entity is a member of the Corporation, and filing such approval with the Minutes of the proceedings of the Board within ten (10) days of the action so taken without a meeting. Any action so approved shall have the same effect as if taken at a duly noticed and convened meeting of the Board of Directors at which a quorum was present.

10. Newly Created Directorships and Vacancies:

Newly created Directorships resulting from an increase in the number of Directors shall be filled by vote of the members subject to, and in accordance with, the voting rights provisions of Article III, Section 10. Vacancies occurring in the Board for any reason, shall be filled only by vote of the member who filled the directorship position at the last election of Directors, (i.e., by Westland/Developer or by the remaining members of the Corporation). A Director elected to fill a vacancy caused by resignation, death or removal shall be elected to hold office for the unexpired term of his or her predecessor.

11. Removal of Directors:

Any or all of the Directors may be removed for cause by vote of the members or by the Board. Directors may be removed without cause only by vote of the member who elected the Director at the last election of Directors, i.e., by Westland/Developer or by the remaining members of the Corporation.

12. Resignations:

A Director may resign at any time by giving notice to the Board, the President, or the Secretary of the Corporation. Unless otherwise specified in the notice, the resignation shall take effect upon receipt thereof by the Board, or such officer, and acceptance of the resignation shall not be necessary to make it effective.

13. Compensation:

No compensation shall be paid to Directors, as such, for their services, but by resolution of the Board a fixed sum and expenses for actual attendance at each regular or special meeting of the Board may be authorized. Nothing herein contained shall be construed to preclude any Director from serving the Corporation in any other capacity and receiving compensation therefor.

14. Committees.

14.1. Architectural Committee:

There is hereby created a "Town Center Architectural Committee," as a standing committee, whose purpose, power, jurisdiction and authority is as specified in Section 15.3 of the Declaration, together with such other purposes, powers, jurisdiction and authority as may be designated to it by the Board of Directors. Such committee shall be comprised of three (3) members, each of whom, except for the initial committee shall serve terms of four (4) years, all