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AUGUST 2019 SUPERSEDED AND REPLACED

**BIG SKY TOWN CENTER
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS**

TABLE OF CONTENTS

RECITALS	1
Article I.	<u>Property Subject to Declaration</u>	2
Article II.	<u>Purposes and Intent</u>	2
Article III.	<u>Incorporation of the Gallatin Canyon/Big Sky Zoning Regulation, Big Sky Town Center Design Standards and Guidelines; Master Signage Plan; Town Center Parking Regulation, Management Plan and Ordinance</u>	3
	3.1 Zoning Regulations.....	3
	3.2 Big Sky Town Center Design Standards & Guidelines.....	4
	3.3 Big Sky Town Center Master Signage Plan.....	4
Article IV.	<u>Town Center Owners' Association</u>	4
Article V.	<u>Membership and Initiation Fee</u>	4
Article VI.	<u>Definitions</u>	4
Article VII.	<u>General Covenants, Conditions and Restrictions</u>	10
	7.1 Conformance with the Zoning Regulation; The Big Sky Town Center Design Standards and Guidelines; The Big Sky Town Center Master Signage Plan; The Big Sky Town Center Parking Regulation, Management Plan, and Ordinance; and this Declaration	10
	7.2 Further Subdivision	12
	7.3 Public Uses.....	12
	7.4 Wildfire Protection	12
	7.5 Code Compliance	13
	7.6 Fire Sprinkler Systems	13
	7.7 Use Restrictions for Town Center Property.....	13
	7.8 Basements in the Town Center Commercial District.....	17
Article VIII.	<u>District</u>	17
	8.1 Density.....	17
	8.2 Location	17
	8.3 Permitted Uses	18
	8.4 Conditional and Licensed Uses.....	20
	8.5 Required Setbacks	22
	8.6 Maximum Building Height.....	23
	8.7 Minimum Building Height.....	23
	8.8 Minimum Lot Area.....	23
	8.9 Minimum Lot Width.....	23
	8.10 Minimum Setbacks.....	23
	8.11 Surface Parking, Underground Parking Structures, and Above-Ground Parking Structures	23
	8.12 Town Plaza.....	23
	8.13 Traffic Circulation, Sidewalks, and Easement Restrictions.....	23

	8.14	Parking, Sidewalks, Street and Holiday Lighting and Landscaping Improvements in Town Center Commercial District	23
	8.15	Additional Standards.....	24
Article IX.		<u>Open Space</u>	24
	9.1	Categories of Open Space.....	24
	9.2	Ownership of Open Space	24
	9.3	Easements.....	25
	9.4	Rights of Use	25
	9.5	Assignment of Rights of Use of Open Space.....	25
	9.6	Responsibility for Administration, Maintenance Assessments, Liability Insurance, Real Estate Taxes and All Other Expenses Associated with Open Space	26
Article X.		<u>Common Multi-Family Open Space</u>	26
	10.1	Liability.....	26
	10.2	Levy of Assessments	26
	10.3	Payment	27
	10.4	Unpaid Assessments and Taxes/Liens	27
Article XI.		<u>Roads and Trails</u>	27
	11.1	Types of Roads and Trails	27
	11.2	Ownership of Roads and Trails	27
	11.3	Uses of Roads and Trails.....	28
	11.4	Private Driveways.....	28
	11.5	Rights of Use	28
	11.6	Assignment of Rights of Use.....	29
	11.7	Maintenance and Repair and Snowplowing	29
	11.8	Responsibility for Taxes and Assessments	29
Article XII.		<u>Fire Management</u>	29
Article XIII.		<u>Reserved Rights</u>	30
Article XIV.		<u>Permitting or Approval Requirements</u>	30
	14.1	General Requirements.....	30
	14.2	Exemption.....	30
	14.3	Performance Bond, Remedies and Foreclosure.....	30
Article XV.		<u>Administration</u>	31
	15.1	Overview.....	31
	15.2	Rules of Construction	31
	15.3	Town Center Owners' Association.....	31
Article XVI.		<u>Funds, Assessments and Real Property Taxes</u>	32
	16.1	Association	32
	16.2	Real Property Taxes on Common Areas or Open Space Owned in Common.....	33
	16.3	Common Private Driveways.....	34
	16.4	Parking Lots or Spaces.....	35

Article XVII.	<u>Non-Liability</u>	35
Article XVIII.	<u>Amendment</u>	36
Article XIX.	<u>Severability</u>	37
Article XX.	<u>Duration</u>	37
Article XXI.	<u>Binding Effect</u>	37
<u>Exhibit A</u>	Real Property Description.....	40

THIS AUGUST 2019 SUPERSEDED and REPLACED DECLARATION (herein "Declaration") is made this 26th day of August, 2019, by and between ***WESTLAND ENTERPRISES, INC.***, a Montana Corporation, (herein "Westland"), and ***SIMKINS HOLDINGS, LLC***, a Montana Limited Liability Company (herein "Developer"), successor to Gallatin Peaks Land and Development, LLC, collectively referred to herein as "***DECLARANTS***."

RECITALS

WHEREAS, Westland is the holder of fee title to certain real property near Big Sky, Montana which includes portions of Section 1 and Section 2, Township 7 South, Range 3 East, M.P.M., Gallatin County, Montana and Section 36, Township 6 South, Range 3 East, M.P.M., Gallatin County, Montana; and

WHEREAS, Developer holds a First Option to Purchase on that property it does not presently own in fee; and

WHEREAS, Developer has subdivided said property into smaller Tracts and/or Lots for purposes of resale and/or development for commercial, public or quasi-public, residential and open space uses; and

WHEREAS, Declarants have established a Planned Unit Development for a portion of the property in Section 1 lying North and West of the South Fork of the West Fork of the West Gallatin River and in Sections 2 and 36, referred to herein as the "Town Center Development" or "Town Center Property," said PUD being referred to herein as the "Town Center PUD."

WHEREAS, Declarants have developed, and plan to continue to develop, the Town Center Development which is more particularly described on Exhibit A hereto; and

WHEREAS, Declarants have previously established and recorded covenants applicable to this property and by this Superseded and Replaced Declaration, Declarants desire to replace the covenants on said property with the following covenants, conditions and restrictions;

WHEREAS, Declarants have established an Association, known as the "Town Center Owners' Association, Inc.," a Montana Non-Profit Corporation, to implement, administer and enforce the Declaration;

WHEREAS, Declarants have prepared the following superseded and replaced covenants which have been reviewed and approved by the required percentage of the Directors necessary to amend the covenants;

NOW, THEREFORE, DECLARANTS, upon approval of the Directors, hereby establish, dedicate, publish and impose upon the Town Center Property the following superseded and replaced covenants, conditions and restrictions for the purposes, use, benefit and values set forth in this Declaration.

ARTICLE I
PROPERTY SUBJECT TO DECLARATION

The real property which is and shall be conveyed, transferred, occupied, developed and sold pursuant to and subject to the covenants, conditions and restrictions of this Declaration consists of the

Town Center Property which is more particularly described on Exhibit A.

ARTICLE II
PURPOSES AND INTENT

The purposes and intent of this Declaration are as follows:

- (a) Creation of a pedestrian-oriented, traditional neighborhood, urban environment, containing retail, food and beverage or restaurant, office, public, quasi-public, recreational, parks, open space and residential uses;
- (b) Promotion of development in accordance with the goals and objectives of the Gallatin Canyon/Big Sky Plan;
- (c) Providing economies in the supply of utility service operations and other public services;
- (d) Provision for the placement, height, density and set-backs of buildings, interior circulation and off-street parking areas;
- (e) Minimization of the visual impacts of development;
- (f) Preservation and enhancement of the natural amenities of the Town Center Property and protection of the natural features thereof;
- (g) Protection of areas of important wildlife habitat;
- (h) Preservation of important site vegetation, outstanding natural topography, and geologic features, while preventing soil erosion.
- (i) Management and maintenance of the road and trail systems on lands owned by Declarants;
- (j) Management of open space and parks on lands owned by Declarants and to conserve values associated with open space;
- (k) Promotion of the health, safety and general welfare of Owners of the Property;
- (l) Secure safety from fire, panic and other dangers;
- (m) Provide adequate air and light;

- (n) Establish a system of tracking Single Family Equivalents (SFE) and changes of use to allow for the tracking of commercial and residential entitlements; and
- (o) Establish a general set of covenants, conditions and restrictions applicable to the Property described in Exhibit A to these covenants.

ARTICLE III

INCORPORATION OF GALLATIN CANYON/BIG SKY ZONING REGULATIONS; THE BIG SKY TOWN CENTER DESIGN STANDARDS AND GUIDELINES; THE BIG SKY TOWN CENTER MASTER SIGNAGE PLAN; THE BIG SKY TOWN CENTER PARKING REGULATION, MANAGEMENT PLAN, AND ORDINANCE AND ALL OTHER DOCUMENTS THAT MAY BE NOW OR HEREAFTER ADOPTED BY THE TOWN CENTER OWNERS' ASSOCIATION BOARD OF DIRECTORS.

3.1 Zoning Regulations.

The Town Center Property is within the Gallatin Canyon/Big Sky Planning and Zoning District created by Resolution #1990-33 of the Board of County Commissioners, Gallatin County, Montana on May 15, 1990. The Gallatin Canyon/Big Sky Zoning Regulation, adopted by the Gallatin County Commission by Resolution #1996-38 on July 30, 1996, together with all amendments thereto, together with the Land Use Map contained in the Gallatin Canyon/Big Sky Plan, adopted July 30, 1996 by Resolution #1996-38, and the Gallatin Canyon/Big Sky Zoning Map, kept in the office of the County Clerk and Recorder, Gallatin County, Montana, together with all amendments thereto (herein collectively "The Zoning Regulation"), are by this reference incorporated herein as a part of this Declaration.

Except as otherwise provided in this Declaration, all uses, developments, signage and structures permitted under The Zoning Regulation are permitted under this Declaration, subject to the design, permitting or approval requirements of The Zoning Regulation, this Declaration, the *Big Sky Town Center Design Standards and Guidelines* ("Design Standards & Guidelines"), and the *Big Sky Town Center Master Signage Plan* ("Master Signage Plan"), and all uses, developments or structures prohibited by The Zoning Regulation and the *Master Signage Plan* and/or this Declaration are likewise prohibited hereunder, subject to applicable Variance Provisions of The Zoning Regulation, the *Master Signage Plan*, *The Big Sky Town Center Permitting and Approval Procedures* and this Declaration.

This Declaration supplements The Zoning Regulation as concerns the Town Center Property. Specific reference to, or incorporation of, portions of The Zoning Regulation, the *Master Signage Plan*, and the *Design Standards and Guidelines* in this Declaration are for purposes of convenience or clarity only, and such specific reference or incorporation shall not be construed as excluding the remainder thereof by omission of any reference thereto, it being the purpose and intent of this Article to incorporate the entirety of The Zoning Regulation, the *Master Signage Plan* and the *Design Standards and Guidelines* as supplemented and modified only as herein explicitly set forth.

3.2 Big Sky Town Center Design Standards and Guidelines.

All buildings, structures, improvements, lighting, and landscaping, including any modification to any building or site, shall strictly comply with the *Big Sky Town Center Design Standards and Guidelines*, together with all amendments thereto, which document also governs the procedure for issuance of all Big Sky Town Center Design and Land Use Permits, the allocation of sewer and water hookups (Single Family Equivalents – “SFE’s”), and approvals required to be obtained under this Declaration, with the exception of the erection, alteration or relocation of signs which is governed by the *Master Signage Plan*, discussed below.

3.3 Big Sky Town Center Master Signage Plan.

The *Big Sky Town Center Master Signage Plan* (“*Master Signage Plan*”), initially approved and adopted by the Gallatin County Commissioners on July 8, 2004, including any amendments thereto, establishes the requirements for all project and building signs within the Town Center and shall be used in lieu of Section 36 (Signs) of the Gallatin Canyon/Big Sky Zoning Ordinance.

ARTICLE IV **TOWN CENTER OWNERS’ ASSOCIATION**

The Town Center Owners’ Association, Inc. (“TCOA”) has sole authority for implementation, interpretation, administration and enforcement of this Declaration as concerns the Town Center Property.

In addition, an Owner, as defined in Article VI, has the authority to enforce the access right and the right to use Public Open Space (except Civic Park) as those rights are provided for in this Declaration, and such rights shall not be amended or restricted unless otherwise allowed herein, and the Owner specified in the second paragraph of Article XVIII has the authority to enforce the consent rights set forth in that paragraph.

ARTICLE V **MEMBERSHIP & INITIATION FEE**

An Owner of a Unit or Lot in the Big Sky Town Center shall automatically, upon becoming the Owner of a Unit or Lot, be a member of the TCOA, and shall remain a member of TCOA until such time as his, her or its ownership of the Unit or Lot ceases for any reason. Effective upon recordation of this Declaration, new owners of a Unit or Lot within the TCOA will be charged a one-time membership fee of One Thousand Five Hundred Dollars (\$1,500) to be collected at closing, and deposited into the TCOA’s general operating account.

ARTICLE VI **DEFINITIONS**

The following terms and words have the meanings herein set forth:

“Accessory Structures”: Any Building, Structure or Improvement which (1) is subordinate in size, height, area, Building Footprint, extent or purpose to a Primary Dwelling Unit or other principle Building or principal Use; and (2) contributes to the comfort, use, convenience or enjoyment of the Owner or occupant of the Primary Dwelling Unit or other principal Building or principal Use.

“Arterial Road”: A general access road for vehicular use either dedicated to the public or lying

within a dedicated public easement which provides primary access from a public road to a subdivided Tract, Subdivision, PUD, other roads, or an Interior road, and which may also provide access to a Common Private Driveway or a Private Driveway.

“Basement Storage Space”: See Definition of “Storage Space”.

“Building Envelope”: That area and location of a Lot shown on the PUD and on the recorded subdivision plat of the Property, or of any Tract thereof, which is designated for construction of all permitted Buildings or Structures, excepting only those Structures otherwise allowed outside of the Building Envelope under this Declaration. Where a Building Envelope is specifically designed, the Building Envelope is that area and location of a Lot which lies within the greater of any setback from the Lot boundary required by law, The Zoning Regulation, this Declaration or shown on any PUD or recorded subdivision plat of the Property, or of any Tract thereof.

“Building Footprint”: That area of land covered by an individual Structure.

“Commercial Space”: The Occupancy of Buildings or Structures, or any portion thereof, for retail, office, and restaurant uses is as generally defined in Sections 303 (Assembly Group A), 304 (“Business Group B”), 306 (“Factory Group F”), and 309 (“Mercantile Group M”) of the International Building Code.

“Common Private Driveway”: That portion of a road for vehicular use appurtenant to two or more Lots which provides access from an Interior Road or Arterial Road to the Private Driveways of such appurtenant Lots. A Common Private Driveway is incidental to and accompanies a permitted Use.

“Conditional Use”: Uses, other than permitted uses, that may be allowed or permitted by approval of both the Gallatin County Planning and Zoning Commission under The Zoning Regulation, by the TCOA under this Declaration and the *Big Sky Town Center Design Standards and Guidelines*, and under the *Master Signage Plan*.

“Developed Recreational Use”: Any recreational activity that requires a Structure or Improvement for its enjoyment, such as golf, tennis, soccer, ice skating, swimming and the like.

“Developer”: Simkins Holdings, LLC, a Montana Limited Liability Company, its successors or assigns.

“Development”: The making or construction of improvements to real estate.

“Development Standards”: Those standards for development of land set forth in Sections 29 through 35 of The Zoning Regulation, the *Big Sky Town Center Design Standards and Guidelines*, and the *Master Signage Plan*, as added to or modified herein.

“Dispersed Recreational Use”: Any recreational activity that does not require a Structure for its enjoyment, such as cross-country skiing, fishing, hunting, hiking, equestrian/horseback riding, bird watching, picnicking and the like, but including all improvements, such as trails or signage, incidental to its enjoyment.

“District”: Those uses of land identified as Districts in Sections 7 through 28 of The Zoning Regulation, as added to or modified herein.

“Drainfield Site”: That area and location of a Lot outside of the Building Envelope shown in the PUD and on the recorded subdivision plat of the Property, or of any Tract thereof, which is designated for use as a drainfield. A Drainfield Site is either “Primary,” *i.e.* principal, or “Secondary,” *i.e.* alternate or replacement.

“Feed Lot”: The use of land for commercial feeding or boarding of poultry or animals, including, without limitation, zoos, game farms, menageries and kennels, in addition to other types of conventional, “feed lot” operations.

“Holiday Lighting”: The decorative lighting to be installed on the exterior of all improvements within the Commercial District of the Town Center development.

“Home Occupation”: Any occupational use customarily conducted entirely within a Dwelling Unit by the inhabitants thereof, which is clearly incidental and secondary to the use of that Dwelling Unit for Residential Use and in connection with which there are or may be: no sales of products or services not produced on the premises; limited on-site employment of persons other than the residents of the Dwelling Unit; no excessive generation of pedestrian or vehicular traffic beyond that customary and incidental to Residential Use of the Dwelling Unit; limited use of commercial vehicles for deliveries to or from the premises; unless otherwise allowed in a Town Center Conditional Use Permit, no signs or structures advertising the occupation; no excessive or unsightly storage of materials or supplies. For guidance, the following uses are examples of home occupations: the making of clothing; the giving of music lessons; a sole-practitioner professional practice, such as accounting.

“Improvement”: Any man-made modification of, or to, real estate.

“Industrial”: The refining, smelting, milling, processing, manufacture, sale or bulk storage of raw materials for ultimate use in the making of a finished good, including the extraction thereof such as mining or lumbering; vehicle, equipment or rental storage; and those uses encompassed by the definition of “Light Industry.”

“Institutional”: Any use or facility for public purposes, such as parks, schools, police stations, fire stations, water tanks, sewage treatment facilities, utility structures, government offices and the like.

“Interior Road”: A limited access road for vehicular use lying entirely within the boundary of a subdivided Tract, Subdivision or PUD which provides access from an Arterial Road to other interior

roads or to a Common Private Driveway or a Private Driveway for one or more Lots within the Tract, Subdivision or PUD.

“Junk Yard”: Any use of land for the wrecking, dismantling and/or storage of junk, refuse or discarded or inoperable machinery, equipment, vehicles, building scrap, mobile homes and the like.

“Lot”: A smaller portion of a Tract into which the Property has been subdivided as shown on approved PUDs, subdivision plats or certificates of survey of the Property or of a Tract, and shall include any re-subdivision or condominium.

“Lot Coverage”: That area of land covered by all Structures, in the aggregate.

“Mixed Use”: A combination of two or more users defined as “Commercial,” “Professional,” “Industrial,” “Institutional,” or “Residential.”

“Modular Home”: A type of Manufactured Housing constructed in parts or modules for assemblage on a pad or foundation on a Building Site.

“Non-Conforming Tract/Lot”: A Tract/Lot, the area, dimensions, configuration or location of which was lawful prior to the adoption, revision or amendment of The Zoning Regulation, and/or this Declaration, but that fails by reason of such adoption, revision or amendment to conform to the present requirements of The Zoning Regulation, and/or this Declaration.

“Non-Conforming Structure”: A Structure, the area, size, dimensions, Building Footprint or location of which was lawful prior to the adoption, revision or amendment of The Zoning Regulation, and/or this Declaration but that fails by reason of such adoption, revision or amendment to conform to the present requirements of The Zoning Regulation, and/or this Declaration.

“Non-Conforming Use”: A Use or activity that was lawful prior to the adoption, revision or amendment The Zoning Regulation, and/or this Declaration but that fails by reason of such adoption, revision or amendment to conform to the present requirements of The Zoning Regulation, and/or this Declaration.

“Non-Motorized Travel”: Travel that includes traditional bicycles and tricycles, Class 1 and Class 2 electric bicycles and tricycles, walking, jogging, running, cross-country skiing, push scooters, e-scooters, strollers, skateboards, and wheelchair travel, but does not include equestrian or other motorized uses.

“Open Space, Common”: Open space owned by the Town Center Owners’ Association for use by Town Center Owners Association lot owners, residents and guests, unless expanded to include public users by the TCOA or by dedication to a public agency.

“Open Space, Common (Multi-Family)”: Open space owned or dedicated to a public agency or the Town Center Owners’ Association for use by all appurtenant Town Center Multi-Family Lot and Unit

Owners, residents and guests.

“Open Space, Private”: Open space owned by either a homeowner or a private homeowners’ association, the use of which is limited to the occupants of a single Dwelling Unit, Building or property.

“Open Space, Public”: Open space for use by the general public and which may be owned or dedicated to a non-profit (that may include the Town Center Owners’ Association), or governmental or quasi-governmental entity with a mission that includes at least one of the following purposes: to preserve, own, manage and/or improve open space, trails, recreational and/or cultural facilities, or the like.

“Owner”: Any person or entity which is the record owner of fee simple title to the Property, any Tract or any Lot, including all immediate family members and any buyer or purchaser under a contract for deed or agreement for sale and purchase, whether conditional or unconditional, but excluding any interest, or any person or entity who holds such interest, as security for the payment of an obligation, other than a contract seller, mortgagee, or other security holder in actual possession of the Property, a Tract or a Lot.

“Primary Building”: The main or principal Building on a Lot or Tract. A Primary Building is one whose height, size, mass, area and/or function is predominant as compared with that of any other Building permitted and/or in existence on the Lot or Tract.

“Primary Building Site”: That area and location within a Building Envelope shown on the PUD and on the recorded Subdivision Plat of the Property, or any Tract thereof, which is designated for construction of the Primary Dwelling Unit or other Primary Building or Use. If no Primary Building Site is shown, the Primary Building Site is the total area encompassed by the Building Envelope.

“Primary Dwelling Unit”: The main or principal Dwelling Unit intended for occupancy and use by the Owner.

“Private Driveway”: That portion of a road for vehicular use which provides access from either a Common Private Driveway, Interior Road or Arterial Road to the Building Envelope of a single Lot, or to the boundary of a lot if no building envelope is shown or required for such lot. A Private Driveway is incidental to and accompanies a permitted Use.

“Private Recreational Uses”: Developed and/or Dispersed Recreational Uses intended solely for the private enjoyment of an Owner, residents and guests.

“Profession”: An occupation licensed as a “profession” under the laws of the State of Montana.

“Property”: The real property described in Exhibit A, attached hereto, together with any Additional Property that may be added thereto as provided in Article I.

“Residential Use”: A use for residential living purposes.

“SFE”: Single-Family Equivalent. Measure of sewer usage, as defined by the Big Sky County Water and Sewer District No. 363.

“Silvacultural Use”: The selective harvest, cultivation or management of timber, including measures for fire protection, forest health and scenic resource conservation.

“Storage Space”: The use of a Basement, or a portion thereof, for storage as defined by Section 311 of the International Building Code.

“Structure”: An edifice or building of any kind or any piece of work artificially built up, constructed or composed of parts joined together in some definite manner, including swimming pools and tennis courts but not including fences less than six feet in height or paved areas.

“Subdivision”: A division of land, or land so divided, resulting in the creation of two or more Tracts or Lots of land out of the Property or out of a single, larger Tract or Lot in order that title to, possession or occupancy of the Tract(s) or Lot(s) so created may be sold, rented, leased or otherwise conveyed or transferred and shall include any re-subdivision and any condominium.

“TCOA”: Town Center Owners’ Association, Inc.

“TCOA Licensed Uses”: A use of TCOA-owned property within the Big Sky Town Center that requires the application for, and granting of, a license by the TCOA for that use.

“Town Center Architectural Committee”: That Architectural Committee created by the Town Center Owners’ Association for the purposes set forth in this Declaration, the *Big Sky Town Center Design Standards and Guidelines*, and the Bylaws of the Town Center Owners’ Association.

“Town Center Design and Land Use Permit”: That permit issued by the Town Center Owners’ Association permitting use or development of a Lot or Tract in conformance with The Zoning Regulation, the *Big Sky Town Center Design Standards and Guidelines*, and this Declaration.

“Town Center Occupancy Permit”: That permit(s) issued by the Town Center Owners’ Association of the *Big Sky Town Center Design Standards and Guidelines*, the obtaining of which is a condition to the temporary or final occupancy of a Structure. After initial occupancy by a commercial tenant, an Occupancy Permit must also be approved and issued by the TCOA for *any and all* commercial and office tenant changes within the commercial district.

“Town Center Owners’ Association”: The Town Center Owners’ Association, Inc., a Montana Non-Profit Corporation formed for the purpose, among others, of implementing, administering and enforcing The Zoning Regulation, the *Big Sky Town Center Design Standards and Guidelines*, the *Big Sky Town Center Master Signage Plan*, the *Big Sky Town Center Parking Regulation, Management Plan and Ordinance* and this Declaration, the members of which are all Owners of the Town Center Property or any Lots or Tracts thereof.

“Town Center Parking District”: That Parking District created by the Town Center Owners’ Association for the purpose of acquiring and providing parking spaces and associated administration, enforcement, maintenance and snowplowing for the benefit of Owners and Tenants of Lots in the Town Center Commercial District, their employees and clientele.

“Tract”: A Subdivided portion of the Property that is larger than a Lot as shown on approved PUDs, certificates of survey and/or subdivision plans of the Property.

“Variance”: A procedure whereby an Owner may obtain relief from certain provisions of The Zoning Regulation, the *Big Sky Town Center Design Standards and Guidelines*, the *Master Signage Plan*, and/or this Declaration under circumstances where, because of conditions unique to the OWNER’s property, compliance with the strict terms of The Zoning Regulation, the *Big Sky Town Center Design Standards and Guidelines*, the *Master Signage Plan*, and/or this Declaration would result, among other things, in a particular, unnecessary hardship upon the Owner, as distinguished from a mere inconvenience.

“Viewshed”: That area visible from within the Building Envelope of a Tract or Lot, or from the boundary line of any Tract or Lot on which there is no designated Building Envelope.

ARTICLE VII

GENERAL COVENANTS, CONDITIONS AND RESTRICTIONS

All of the Town Center Property shall be held, conveyed, used, developed and enjoyed subject to the following general covenants, conditions and restrictions.

7.1 Conformance with The Zoning Regulation, the Big Sky Town Center Design Standards and Guidelines, the Big Sky Town Center Master Signage Plan, the Big Sky Town Center Parking Regulation, Management Plan and Ordinance, and this Declaration.

Except as otherwise provided as concerns Non-Conforming Lots, Uses, Structures and Variances, no Use, Lot, Development, Structure or Sign is or shall be permitted unless such use, Lot, Development, Structure or Sign is in strict conformance with all applicable requirements of The Zoning Regulation, the *Big Sky Town Center Design Standards and Guidelines*, the *Master Signage Plan*, the *Big Sky Town Center Parking Regulation, Management Plan and Ordinance*, and this Declaration. Without limiting the generality of the foregoing, the following requirements shall be met for any Use, Lot, Development, Structure or Sign subject to this Declaration:

(a) No Use shall be made of the Town Center Property, including the nature and mix of the proposed businesses to be located or relocated in the Town Center (see Occupancy Permit regulations in the *Big Sky Town Center Design Standards and Guidelines*), unless it is a permitted and approved use under (1) The Zoning Regulation; (2) the *Big Sky Town Center Design Standards and Guidelines*; (3) the *Master Signage Plan*; (4) this Declaration; and (6) all requisite permits or approvals for conducting such Use have been obtained from the TCOA and Gallatin County, and such Use is conducted in strict

conformity therewith.

(b) No Lot shall be created by subdivision of the Town Center Property, unless it is a permitted or approved Lot under State and Gallatin County subdivision laws and regulations, The Zoning Regulation, and this Declaration.

(c) No Development of any part of the Town Center Property shall be engaged in, unless it is a permitted or approved Development under The Zoning Regulation, the *Big Sky Town Center Design Standards and Guidelines*, the *Master Signage Plan*, the *Big Sky Town Center Parking Regulation, Management Plan and Ordinance*, and this Declaration, and any requisite permit or approval for such Development has been obtained, and such Development is done in strict conformity therewith.

(d) No Structure shall be erected, constructed, reconstructed, moved, structurally altered, used or occupied, unless it is permitted or approved under The Zoning Regulation, the *Big Sky Town Center Design Standards and Guidelines*, the *Master Signage Plan*, the *Big Sky Town Center Parking Regulation, Management Plan and Ordinance*, and this Declaration, and any requisite permit or approval for such Structure has been obtained, and such erection, construction, reconstruction, movement, structural alteration, use or occupancy of the Structure is in strict conformity therewith.

(e) No Structure shall be erected, constructed, reconstructed, moved, structurally altered, used or occupied, unless it is has purchased the requisite number of sewer and water hookups (SFE's) from the Developer, as determined by the Big Sky Water and Sewer District, for such use or occupation, in accordance with the provisions for SFE acquisitions, more particularly set forth in the *Big Sky Town Center Design Standards and Guidelines*.

(f) No Sign shall be erected, constructed, reconstructed, moved, structurally altered, or used unless it is permitted and/or approved under the *Master Signage Plan* and this Declaration; any requisite permit or approval for such Sign has been obtained; and such erection, construction, reconstruction, movement, structural alteration, or use of the Sign is in strict conformity therewith.

(g) No Building shall be erected, constructed, reconstructed, moved or altered unless it is in strict compliance with the requirements of The Zoning Regulation, the *Big Sky Town Center Design Standards and Guidelines*, *Master Signage Plan* and this Declaration.

(h) No part of any Yard or Open Space required about, or in connection with, any Building under The Zoning Regulation, the *Big Sky Town Center Design Standards and Guidelines*, or this Declaration shall be included as part of a Yard or Open Space similarly required for any other Building.

(i) No Yard or Lot may be created, unless it meets the minimum requirements established by The Zoning Regulation, the *Big Sky Town Center Design Standards and Guidelines*, and/or this Declaration.

(j) No Dwelling Unit shall be permitted or constructed without an adequate water supply and sewage disposal system as required by applicable state and local laws, including the *Big Sky Town Center Design Standards and Guidelines*, governing domestic water supplies and sanitary sewer systems in subdivisions, and the acquisition and disposal of SFE's.

Notwithstanding anything in this Section to the contrary, any public utility pipeline, well or pumphouse necessary for provision of services required for public health and safety may be exempted from the provisions of this Declaration, provided the Zoning Enforcement Agent under The Zoning Regulation finds such Improvements are consistent with the Gallatin Canyon/Big Sky Plan and will not create a hardship for other property Owners, and the Town Center Owners' Association finds that such Improvements are consistent with the Declaration and will not create a hardship for other Owners of the Property.

7.2 Further Subdivision.

Except for subdivisions created and filed by the Developer, no further Subdivision of the Property is permitted without the prior, written approval of the Town Center Owners' Association.

7.3 Public Uses.

All public uses of the Property shall be as dedicated or established by the Developer in a recorded Master Plan, PUD, certificates of survey, subdivision plats, this Declaration or grants of easement or by the Declarants or Town Center Owners' Association in separately recorded grants of easement. Nothing contained in this Declaration, or in any future superseded, amended and/or replaced Declaration, shall be construed as, or deemed to constitute, a dedication or grant of use, express or implied, of any portion of the Property to or for the benefit of any public use or public purpose, beyond the easement, access and rights of use granted to the public as specifically provided in this Declaration.

7.4 Wildfire Protection.

Pursuant to Section 29.11 of The Zoning Regulation, as modified hereinbelow, the following fire Safety measures are required:

- (a) All Structures located in the Wildland Residential Interface area of the Gallatin Canyon/Big Sky Planning and Zoning District shall use only Class A or B fire-rated roofing materials. Wood shakes or shingles which qualify for a Class B rating, such as those using a foil-faced or equivalent substrate or underlayment of non-combustible material, and which are periodically treated with fire retardant, may be permitted. Periodic maintenance of wood shakes or shingles shall be done in accordance with manufacturer's treatment guidelines and re-treated as specified.
- (b) Rain gutters and roof troughs shall be periodically inspected and annually cleaned of debris.
- (c) Spark arrester screens shall be placed on fireplace and woodstove chimneys. Smoke detectors shall be installed on each level and in each bedroom of a Dwelling Unit.
- (d) The vegetation reduction and clearance guidelines of the *Fire Protection Guidelines for the Wildland Residential Interface Development* shall be met.

7.5 Code Compliance.

All structures shall be constructed in accordance with the current edition of applicable building, construction, health, fire and safety codes, including without limitation, the following:

- (a) International Building Code;
- (b) National Plumbing Code;
- (c) National Electric Code;
- (d) National Fire Protection Association Code; and
- (e) Liquified Petroleum Gas Code.

7.6 Fire Sprinkler Systems.

All Dwelling Units shall be constructed to comply with the automatic fire sprinkler system requirements of the Big Sky Fire District. Engineered fire sprinkler system plans shall accompany all Phase B Design and Land Use permit applications and shall also be delivered to the Big Sky Fire District prior to construction. Inspections for compliance with this requirement during and after completion of construction shall be as the Town Center Architectural Committee and/or local governmental body may require.

7.7 Use Restrictions for Town Center Property.**(a) General.**

(1) **Prohibited Uses.** Except as otherwise expressly permitted or approved under this Declaration, all other uses of the Town Center Property are prohibited, including, without limitation, all industrial uses, mining and drilling (with the exception of gravel pits discussed below), junk yards, feedlots, campgrounds and heliports.

(2) **Open Space.** Common Open Space and Public Open Space shall be preserved and maintained in perpetuity for one or more of the following uses, as appropriate: for active and passive recreation; wildlife habitat; and protection of scenic, unique and important natural features. See also those uses set forth in Article VIII.

(3) **Protection of Waters and Aquifers.** No use of, or activity upon, any of the Town Center Property is permitted which is likely to result in pollution or degradation of any well, spring, stream or aquifer beyond that expressly permitted by applicable federal or state water quality laws

(4) **Excavation/Erosion Control.** No excavation of land area is permitted except upon prior approval by the Town Center Owners' Association for the purpose of facilitating construction of Buildings, Structures improvements; the establishment or maintenance of approved roads, private driveways or trails; and the construction or maintenance of utilities. All excavated and disturbed areas shall be promptly reseeded following completion of construction activities, or sooner if required, with appropriate vegetative cover to prevent, minimize and control soil erosion, all in accordance with the Landscape section of the *Big Sky Town Center Design Standards and Guidelines*.

(5) **Landscaping.** No non-native vegetation is permitted, except as may otherwise be permitted in the Landscape section of the *Big Sky Town Center Design Standards and Guidelines*. All landscaping shall comply with the Landscape section of the *Big Sky Town Center Design Standards and Guidelines*. Each Lot Owner will be responsible for installation of sidewalks, streetscape furnishings, lighting (as applicable), and all landscaping from their lot into the adjacent Right of Way to the edge of the asphalt or back of curb. Each Lot Owner acknowledges that wildlife damage to landscaping will occur. Neither local governmental bodies, the Declarants, the members of its Board, the Town Center Owners' Association, the members of the Town Center Owners' Association Board, nor the members of the Town Center Architectural Committee, shall be liable to any Owner or other person for any loss or damage to landscaping arising out of damage caused by wildlife, which risk the Owner accepts as its exclusive risk and responsibility and shall not file claims against any of the foregoing entities or persons for damages arising therefrom, each Owner hereby waiving, releasing and forever discharging the foregoing entities or persons from any liability in connection therewith.

(6) **Noxious Weeds.** The control of noxious weeds by the Town Center Owners' Association ("TCOA") on those areas for which the TCOA is responsible and the control of noxious weeds by individual owners on their respective lots shall be as set forth and specified under the Montana Noxious Weed Control Act (MCA Sections 7-22-2101 through 7-22-2153) and the rules and regulations of the Gallatin County Weed Control District. The TCOA is responsible for control of state and county declared noxious weeds in the subdivision's parks, open spaces, community areas, trails and roadways. Each Owner shall be responsible for the control of the state and county declared noxious weeds on his or her own lot. Both unimproved and improved lots shall be managed for noxious weeds. In the event an Owner does not control the noxious weeds, after 10 days notice from the TCOA, the TCOA may cause the noxious weeds to be controlled. The cost and expense associated with such weed management shall be assessed to the lot and such assessment may become a lien if not paid within thirty (30) days of the mailing of such assessment.

(7) **Animals.** Except for not more than three (3) household pets owned by the occupant of a Dwelling Unit, no animals, including household pets, are permitted to be kept on the Town Center Property.

(8) **Household Pets.** All household pets kept outdoors shall be leashed or kept in a suitable enclosure, except when in the immediate company and control of a responsible person. The keeping of any household pet which is, or has become, a problem or a nuisance to other persons, wildlife, or property is prohibited, and the pet shall be promptly removed upon written notice from the Town Center Owners' Association.

(9) **Wild Animals.** No wild animals shall be kept by anyone and no attempt shall be made by anyone to domesticate any wild animal. Feeding or harassment of wildlife is prohibited. No hunting or trapping of wildlife permitted, except in accordance with applicable law and/or regulations established by the Town Center Owners' Association.

(10) **Apiaries.** No apiaries or bee-keeping is permitted.

(11) **Fire Control.** Each Owner shall be responsible for compliance with the Forestry and Fire Section of this Declaration. The Town Center Owners' Association shall be responsible for fire control on all Common Areas and/or Open Space outside of the platted Lots. In the event any Owner fails to comply with the Forestry and Fire Protection Section of this Declaration, the Town Center Owners' Association may, after reasonable notice, take such action as is necessary to correct such non-compliance, at the Owner's expense.

(12) **Burning.** Except for fires within an outdoor barbeque grill or structure, no outside burning of refuse or other materials shall be permitted without prior approval of the Town Center Owners' Association.

(13) **Snow Removal.** Each Owner shall be responsible for snow removal from the Owner's Private Driveway. The Town Center Owners' Association shall be responsible for snow removal from all Arterial and Interior Roads and sidewalks along road tracts or in rights-of-way and commercial district parking lots and drives.

(14) **Roads.** All use of roads shall be subject to guidelines, rules and regulations established by the TCOA. Gates are prohibited across roads and Private Driveways.

(15) **Snowmobiles, Motorbikes and Other Off-Road Motorized Vehicles.** No snowmobiles, motorcycles, or other off-road motorized vehicles are permitted off of roads, or Private Driveways except in cases of emergency or for purposes of setting cross-country ski trails which have been approved by the Town Center Owners' Association.

(16) **Junk, Garbage and Refuse Disposal.** No junk, junked vehicles, garbage or other refuse shall be stored, dumped or maintained on any of the Town Center Property. All junk or junked vehicles shall be disposed of in an appropriate landfill off of the Town Center Property. All garbage and other refuse shall be collected and stored in animal-proof containers and disposed of in such manner as the Town Center Owners' Association may determine.

(17) **Vehicles.** All vehicles shall be parked only in designated parking lots or spaces. Except as otherwise provided under Section 6.7(a)(15), above, no motorized vehicles are permitted off of roads, or Private Driveways.

(18) **Firearms/Noise.** No discharge of firearms or other loud or noisy activities are permitted.

(19) **Trails.** No new trails may be constructed except upon the prior approval of the TCOA. Ownership, construction, maintenance and use of trails is reserved to the TCOA.

(20) **Outside Lighting.** All outdoor lighting shall comply with Section 29.7 of The Zoning Regulation. Parking lot and street lights may be dusk to dawn.

(21) **Holiday Lighting.** All improvements in the Commercial District of the Town Center shall install and maintain exterior holiday lighting. The exterior lighting shall be illuminated, during the hours of darkness, beginning the day after Thanksgiving, and each day thereafter, until March 31, of the next calendar year. Specific standards applicable to Holiday Lighting requirements are set forth in the *Design Standards and Guidelines*.

(22) **Mobile Homes - Modular Homes - Manufactured Homes.** Mobile homes, modular homes, or manufactured homes are prohibited.

(23) **Temporary Shelters.** Temporary shelters, such as tents, recreational vehicles and campers, are prohibited.

(24) **Mining and Drilling.** Except for such gravel pits as may be permitted by either the Declarants during the course of development or by approved Variance in connection with construction of a road, private driveway, or Structure, no portion of the Property shall be used for the purpose of mining, quarrying, drilling, boring or exploring for, or removing coal, oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth. This subsection does not pertain to, or prohibit excavation and/or removal of, rock or earth incident to construction of improvements, roads and trails.

(25) **Outdoor Speakers.** Speakers installed to the exterior of buildings, or installed within a building for purposes of providing music or other sounds to be heard outside the exterior of any building or improvement, shall meet and comply with the standards and regulations set forth in the *Design Standards and Guidelines* for such uses.

(26) **Satellite Antennae or Satellite Dishes.** Antennae or dishes for satellite television or internet signals may be installed only in accordance with the Town Center *Design Standards and Guidelines*.

(27) **Street Furniture and Trash.** Permitted street furniture, as set forth in the *Design Standards and Guidelines*, shall be maintained in good working order and appearance. Trash cans shall be emptied as necessary to prevent odors and overflow.

(28) **Parking Structures.** Underground or above-ground Parking Structures are a conditional use in the Big Sky Town Center, that must receive prior approval by the TCOA and comply with applicable Town Center Design Standards and Guidelines, or other standards imposed by the TCOA.

(29) **Minimum Hotel Standard.** All hotels in the Property shall be operated to meet or exceed the level of service of the following hotels: Courtyard by Marriott, Residence Inn by Marriott, Hilton Garden Inn, The Element, Hyatt House, or Embassy Suites.

7.8 Basements in Town Center Commercial District.

- (a) **Basement Space in Town Center Commercial District.** Basement space in the Town Center Commercial District may be used for either occupancy (“Commercial Space”) or for “Basement Storage Space”.
- (i) If used for occupancy, the space shall be designated as Commercial Space, and shall be designed and constructed to meet all applicable building codes, including the International Building Code.
 - (ii) If Town Center Commercial District basement space is intended to be used exclusively for storage, design restrictions prohibit the installation of windows in the basement space. Temporary or permanent occupancy is prohibited in any Town Center Commercial District basement space that is designed and approved only for storage.
 - (iii) Owners of basement space must promptly notify the TCOA and Developer of its intention to use its basement space as occupied basement space (Commercial Space), or change the use of its basement space to occupied basement space (Commercial Space) and purchase from Developer additional development rights (entitlements) and SFEs (if applicable) associated with the occupied basement space (Commercial Space), if those development rights (entitlements) and SFEs have not been previously purchased from Developer.
- (b) **Enforcement.**
- (i) The Gallatin County Planning Department and Town Center Owners’ Association are authorized to inspect the interior use of the basement space of any structure in the Commercial District to ensure compliance with Section 7.8.
 - (ii) The Town Center Owners’ Association is responsible for monitoring potential infractions and shall have access to and may provide random inspections of basement space in the Commercial District.
- (c) **Fine and Attorney Fees**
- (i) A \$1,000 fine will be imposed by the Town Center Owners’ Association on any tenant or Owner found in violation of this restriction, with a second offense incurring a \$500 per day fine until corrected. Violators shall also be responsible for reasonable costs and attorney’s fees (on an hourly basis and not a contingency fee basis) incurred by the TCOA to enforce compliance with this provision, including costs incurred to impose and collect fines for violations of this provision.

ARTICLE VIII
DISTRICT

The Town Center Property consists of a Planned Unit Development within the meaning of, and subject to, applicable provisions of Section 24 of The Zoning Regulation, except as otherwise more specifically or restrictively provided for herein.

8.1 Density.

Same as that set forth in The Zoning Regulation.

8.2 Location.

Except for roads, Private Driveways, utility lines, address signs, mailboxes, newspaper delivery boxes, wells, septic systems, drainfields, and further except for such fences as may otherwise be permitted by Variance, all Buildings, Structures, Improvements and Signs shall be located within required setbacks for the Town Center Property.

8.3 Permitted Uses.

- (a) Those permitted under The Zoning Regulation.
- (b) **Signage.** In accordance with the *Master Signage Plan* and this Declaration.
- (c) **Common Open Space.** Only the following uses are permitted on Common Open Space:

(1) Multi-Family Open Space.

- Private, Dispersed Recreational Uses, for active and passive recreation by members of the appurtenant Multi-Family Neighborhood Association(s) and their guests, other than equestrian/horseback riding or motorized uses;
- Informal gathering, strolling, sitting, sunning, etc.;
- Landscaping, including benches, picnic shelters, grills, fences and the like;
- Snow storage;
- Trails for Non-Motorized Travel;
- Lighting;
- Signage in accordance with the *Master Signage Plan*; and
- Public art, sculptures, and/or statutes approved by the TCOA.

(2) Stormwater Ponds.

- Stormwater ponds and associated roads, structures and appliances, including fences;
- Dispersed Recreational Uses for active and passive recreation, other than equestrian/horseback riding or motorized uses;
- Trails for Non-Motorized Travel;
- Lighting;
- Wildlife habitat; and
- Signage in accordance with the *Master Signage Plan*.

(3) Wildland Areas.

- Dispersed Recreational Uses for active and passive recreation;
- Informal gathering, strolling, sitting, sunning, etc.;
- Trails for Non-Motorized Travel, including bridges and lighting, as approved by the TCOA;

- Silvicultural uses;
- Wildlife habitat;
- Snow storage;
- Landscaping, including park benches, fences and the like, as approved by the TCOA;
- Public art, sculptures, and/or statutes, as approved by the TCOA;
- Arterial Road (Aspen Leaf Drive) and bridge; and
- Signage in accordance with the *Master Signage Plan*.

(d) **Public Open Space.** Only the following uses are permitted on Public Open Space:

(1) **Town Plaza.**

- Informal gathering, strolling, sitting, sunning, etc.;
- Dispersed Recreational Uses for passive and active recreation, other than equestrian/horseback riding or motorized uses;
- Landscaping, including park benches, fire pits, lighting, outdoor speakers, fences and the like;
- Sidewalks;
- Kiosks;
- Playground equipment;
- Public art, sculptures, and/or statues approved by TCOA; and
- Signage in accordance with the *Master Signage Plan*.

(2) **Linear Park.**

- Informal gathering, strolling, sitting, sunning, etc.;
- Dispersed Recreational Uses for active and passive recreation, other than equestrian/horseback riding or motorized uses;
- Trails for Non-Motorized Travel, including trail lighting;
- Landscaping, including park benches, fences and the like;
- Wildlife habitat;
- Signage in accordance with the *Master Signage Plan*;
- Temporary storage of excess or fill dirt by the Developer; and
- Snow storage.

(3) **Neighborhood Park.**

- Informal gathering, strolling, sitting, sunning, etc.;
- Dispersed Recreational Uses for active and passive recreation, other than equestrian/horseback riding or motorized uses;
- Trails for Non-Motorized Travel;
- Developed Recreational Uses;
- Parking;
- Landscaping, including park benches, fences and the like;
- Lighting;

- Snow storage;
- Wildlife habitat; and
- Signage in accordance with the *Master Signage Plan*.

(4) Civic Park.

- Informal gathering, strolling, sitting, sunning, etc.;
- Dispersed Recreational Uses for active and passive recreation, other than equestrian/horseback riding or motorized uses;
- Trails for Non-Motorized Travel;
- Developed Recreational Uses, including Structures associated therewith;
- Parking;
- Landscaping, including park benches, fences and the like;
- Wildlife habitat;
- Lighting;
- Signage in accordance with the *Master Signage Plan*;
- Public art, sculptures, and/or statutes approved by the TCOA;
- Outdoor sports and leisure facilities, including but not limited to tennis courts, basketball and other court games, ice skating rinks, swimming pools, health and fitness/exercise facilities, pavilions, band shells and climbing facilities; and
- Indoor sports and leisure facilities, including but not limited to health and fitness/exercise facilities, community centers, recreation centers, swimming pools, performing or visual arts center, concert hall, ice skating rinks, tennis courts, basketball and other court games, and climbing facilities, and associated administrative and maintenance offices and facilities.

(5) The Park.

- Informal gathering, strolling, sitting, sunning, etc.;
- Dispersed Recreational Uses for passive and active recreation, other than equestrian/horseback riding or motorized uses;
- Landscaping, including park benches, fire pits, wood storage shed, lighting, outdoor speakers, fences and the like;
- Sidewalks;
- Kiosks;
- Snow storage;
- Public art, sculptures, and/or statues approved by TCOA;
- Signage in accordance with the *Master Signage Plan*; and

8.4 Conditional and Licensed Uses.

Conditional Uses within the District require the application for and receipt of a Conditional Use Permit from the TCOA and pursuant to The Zoning Regulation ("Conditional Uses"). Licensed Uses listed

below require the application for and receipt of a License from the TCOA:

(a) Lots.

Licensed Uses:

- Temporary staging of construction equipment in connection with development of the Town Center, but not including recreational vehicles or campers.

(b) Common Open Space.

Licensed Uses:

- Mobile vendors;
- Developed Recreational Uses, including Structures associated therewith, such as playground equipment;
- Utility Service Operation Facilities;
- Outdoor seating for adjacent businesses, restaurants, cafes, bars, and lounges which shall be subordinate and auxiliary to the main business, and which area may be fenced, elevated, or recessed, and may have patio umbrellas, heaters, planters, pergolas, sun shades, and the like;

(c) Public Open Space.

Licensed Uses:

- Mobile vendors;
- Bus shelter, bus stop, bus warming hut, and similar community uses;
- Any organized event, including but not limited to merchant sidewalk sales, arts and crafts vendors; organized group picnics and community events (fairs, festivals, farmers markets, concerts, performances, sporting events, product demonstrations, sports and recreation instruction, etc.);
- Developed Recreational Uses, including Structures associated therewith;
- Outdoor displays of merchandise and/or services for adjacent or nearby businesses.
- Utility service operation facilities.

(1) Town Plaza.

Licensed Uses:

- Vendors at the Town Plaza kiosk;
- Any organized event, including but not limited to merchant sidewalk sales, arts and crafts vendors; organized group picnics and community events (fairs, festivals, farmers markets, concerts, performances, sporting events, product demonstrations, sports and recreation instruction, etc.);
- Developed Recreational Uses, including Structures associated therewith; and
- Outdoor seating for adjacent restaurants, cafes, bars, and lounges which shall be subordinate and auxiliary to the main business, and which area may be fenced, elevated, or recessed, and may have patio umbrellas, fire pits, heaters, planters, pergolas, sun shades, and the like.

(2) Linear Park.

Licensed Uses:

- Any organized event, including but not limited to merchant sidewalk sales, arts and crafts vendors; organized group picnics and community events (fairs, festivals, farmers markets, concerts, performances, sporting events, product demonstrations, sports and recreation instruction, etc.);
- Developed Recreational Uses, including Structures associated therewith;
- Trail accoutrements, such as exercise stations; and
- Parking.

(3) Neighborhood Park.

Licensed Uses:

- Field or court games (*e.g.*, football, soccer, basketball, volleyball, etc.);
- Any organized event, including but not limited to merchant sidewalk sales, arts and crafts vendors; organized group picnics and community events (fairs, festivals, farmers markets, concerts, performances, sporting events, product demonstrations, sports and recreation instruction, etc.);
- Developed Recreational Uses, including Structures associated therewith; and
- Temporary or permanent Structures associated with cultural or civic events or activities; developed recreational activities; civic institutions providing after-school or community activities; other educational, preschool and/or daycare providers. Permanent structures associated with any of the foregoing uses are permitted so long as the use does not change from any of the above-listed authorized uses and the structure remains under the ownership of the TCOA or a duly-authorized non-profit entity.

(4) The Park.

Licensed Uses:

- Field or court games (*e.g.*, football, soccer, basketball, volleyball, etc.);
- Any organized event, including but not limited to merchant sidewalk sales, arts and crafts vendors; organized group picnics and community events (fairs, festivals, farmers markets, concerts, performances, sporting events, product demonstrations, sports and recreation instruction, etc.);
- Developed Recreational Uses, including Structures associated therewith; and

8.5 Required Setbacks.**(a) Minimum.**

Those set forth under The Zoning Regulation, unless a greater setback is required by law (*e.g.*, setbacks from water sources) or is required to avoid encroachment on the minimum setback by accessory improvements or structures (*e.g.*, utility service operation facilities, trash dumpsters, propane tanks, generators and the like).

(b) **Applicability.**

Notwithstanding anything to the contrary in The Zoning Regulation, or this Declaration, setbacks do not apply to parking spaces, parking meters, sidewalks, lighting, landscaping or other streetscape improvements.

8.6 **Maximum Building Height.**

That set forth in The Zoning Regulation.

8.7 **Minimum Building Height.**

That set forth in The Zoning Regulation.

8.8 **Minimum Lot Area.**

That set forth in The Zoning Regulation.

8.9 **Minimum Lot Width.**

That set forth in The Zoning Regulation.

8.10 **Minimum Setbacks.**

That set forth in The Zoning Regulation.

8.11 **Surface Parking, Underground Parking Structures, and Above-Ground Parking Structures.**

Surface parking, underground parking structures, and above-ground parking structures shall comply with the Town Center Parking District Regulation, Management Plan and Ordinance, which is incorporated herein by reference.

8.12 **Town Plaza.**

(a) **Administration.**

The Town Plaza is Public Open Space to be administered by the TCOA.

8.13 **Traffic Circulation, Sidewalks and Easement Restrictions.**

(a) **Regulations and Enforcement.**

All use of public right-of-way easements is subject to the laws of the State of Montana and Gallatin County pertaining to use or travel upon public streets, highways, roads, sidewalks and other public rights-of-way, including, without limitation, all traffic control laws and regulations, all of which are by this reference incorporated herein, together with the right of the Town Center Owner's Association or its designee, to police and enforce the same.

8.14 **Parking, Sidewalks, Street and Holiday Lighting, and Landscaping Improvements in Town Center Commercial District.**

(a) **Responsibility for Improvements.**

Each Lot Owner is responsible for Right-of-Way Improvements, including installation of sidewalks, streetscape furnishings, street lighting (as applicable), holiday lighting, and all landscaping

from their lot into the adjacent right-of-way to the edge of the asphalt or back of curb.

(b) Installation of Improvements.

No certificate of occupancy pursuant to a land use permit approved under Section 42 of The Zoning Regulation or under a Town Center Occupancy Permit approved under the *Big Sky Town Center Design Standards and Guidelines* shall be issued for any Building within the Town Center Commercial District unless all required parking, sidewalks and street lighting has been constructed and all required street and parking lot landscaping has been placed. To avoid damage to sidewalks, street landscaping, parking lots and parking lot landscaping during the course of development, required sidewalks and street landscaping may be met through gravel surface sidewalks and required parking and parking lot landscaping may be met through gravel surfaced lots until a Gallatin County Land Use Permit and for the last Building to be served thereby has been approved, at which time sidewalks shall be paved, the entire surface of the parking lot(s) shall be paved and all required street and parking lot landscaping shall be placed prior to a certificate of occupancy or Occupancy Permit being issued for such Building, unless seasonal weather conditions don't reasonably permit such paving to be done or landscaping to be placed, in which case such improvements may be bonded for completion under an improvements agreement which requires completion of required paving and landscaping within the next calendar year. The bond, or other form of security, shall be in such amount and form and be accompanied by such sureties as the Town Center Owners' Association may determine.

8.15 Additional Standards. See Development Standards contained in Sections 29-37 of The Zoning Regulation.

ARTICLE IX
OPEN SPACE

9.1 Categories of Open Space.

There are two (2) general categories of Open Space, as defined below:

(a) Common Open Space.

The Multi-Family Open Space, Stormwater Ponds and Wildland Areas shown on subdivision plats for the Town Center.

(b) Public Open Space.

The Town Plaza, Linear Park, Neighborhood Park, Civic Park, and The Park, as shown on subdivision plats for the Town Center.

9.2 Ownership of Open Space.

All Open Space is owned by the Town Center Owners' Association, Inc., with the exception of Public Open Space, which is for use by the general public and may be owned or dedicated to a non-profit (which may include the Town Center Owners' Association), or governmental or quasi-governmental entity with a mission that includes at least one of the following purposes: to preserve, own, manage and/or improve open space, trails, recreational and/or cultural facilities, or the like.

9.3 **Easements.**

(a) **Common Open Space.**

Roads, Trails and Utility Easements reserved by the Declarants shown on recorded subdivision plats for the Town Center and other recorded instruments of record.

A “floating” easement for Trails to be located across Common Open Space to be reserved by the Declarants and located in the future by subsequently recorded instruments.

(b) **Public Open Space.**

Roads, bridges, trails and utility easements reserved by Declarants shown on recorded subdivision plats for the Town Center and other instruments of record.

A “floating” easement for trails to be located across Public Open Space to be reserved by the Declarants and located in the future by subsequently recorded instruments.

Town Center Owners’ Association hereby grants to the public an access easement for ingress, and egress, and an easement allowing the use of Public Open Space (except Civic Park) as provided in this Declaration, which easements shall apply to the Public Open Space (except Civic Park) as shown on the recorded subdivision plats for the Property, and which uses shall be subject to rules or restrictions as may be adopted by the Board of Directors for public health and safety purposes, provided that such rules and restrictions shall not unreasonably interfere with public access and use. Civic Park as indicated on the recorded subdivision plats for the Property is encumbered by access easements for ingress, egress, to the general public. However, such use by the public shall be subject to restrictions as may be set forth in this Declaration and reasonable rules and regulations as may be adopted by the owner of record of Civic Park.

9.4 **Rights of Use.**

(a) **Common Open Space.**

All TCOA Lot Owners, Unit Owners, residents and guests, unless expanded to include public users by the TCOA.

(b) **Common Multi-Family Open Space.**

All appurtenant Town Center Multi-Family Lot Owners, Unit Owners, residents and guests.

(c) **Public Open Space.**

All Lot Owners, Unit Owners, residents and guests and the general public.

(d) **All Open Space.**

The reserved rights of Declarants set forth in Article XIII of the Town Center Declaration.

9.5 **Assignment of Rights of Use of Open Space.**

(a) **Common Open Space.**

All Lot Owners, Unit Owners, residents and guests are assigned the non-exclusive right to use Common Open Spaces, subject to reasonable limits and restrictions.

(b) Common Multi-Family Open Space.

All appurtenant Town Center Multi-Family Lot Owners, Unit Owners, residents and guests are assigned the non-exclusive right to use Common Multi-Family Open Spaces.

(c) Public Open Space.

All Lot Owners, Unit Owners, residents and guests and the general public are assigned the non-exclusive right to use Public Open Spaces.

9.6 Responsibility for Administration, Maintenance, Assessments, Liability Insurance, Real Estate Taxes and All Other Expenses Associated With Open Space.**(a) Common Multi-Family Open Space.**

The TCOA is responsible for the maintenance, liability insurance and taxes association with the Common Multi-Family Open Space. The TCOA will levy special assessments against those Multi-Family condominium units appurtenant to the Common Multi-Family Open Space, as shown on the books of the TCOA, for their pro-rata share of costs incurred by the TCOA for all expenses incurred with respect to the Common Multi-Family Open Space, including but not limited to, maintenance, liability insurance and taxes. The amount of the pro rata share shall be determined by dividing the total expenses incurred by the Common Multi-Family Open Space by the total number of multi-family condominium units appurtenant to the Common Multi-Family Open Space, as shown on the books of the TCOA.

(b) Utility Easements.

Utility provider or Town Center Owners' Association, Inc.

(c) Public Open Space.

Town Center Owners' Association, Inc., non-profit, or governmental or quasi-governmental entity owner, as applicable.

ARTICLE X**Common Multi-Family Open Space****10.1 Liability.**

Open Space in the Town Center designated as Common Multi-Family Open Space, is owned in common by the TCOA which shall be responsible for purchasing and maintaining liability insurance, paying local taxes, maintaining the recreational facilities, if any, and all other expenses associated with the common multi-family open space. The TCOA shall be responsible for levying and collecting assessments for the payment of these expenses from the benefited property or unit owners. The amount of the pro rata share shall be determined by dividing the total expenses incurred by the Common Multi-Family Open Space by the total number of multi-family condominium units appurtenant to the Common Multi-Family Open Space, as shown on the books of the TCOA.

10.2 Levy of Assessments.

All assessments for construction, maintenance and repair and for real property taxes levied against Multi-Family Open Space shall be levied by the TCOA, or a Multi-Family Neighborhood Association as

its delegatee, against all appurtenant Multi-Family Lots or units, equally. All assessments shall be adjusted as required to meet changed needs.

10.3 Payment.

Notwithstanding levy of assessments by the TCOA, or the Multi-Family Neighborhood Association as its delegatee, for payment of real property taxes on Multi-Family Open Space, each Owner of an appurtenant Multi-Family Lot or unit is and remains personally liable for payment of the pro rata share of such taxes for which such Owner is liable under subsection (a) immediately above. Each Owner of an appurtenant Multi-Family Lot or unit is also personally liable for payment of such Owner's pro rata share of all assessments levied by the TCOA for the other purposes set forth in this section. Payment shall be as the TCOA may provide in its Bylaws.

10.4 Unpaid Assessments and Taxes/Lien.

Any assessments under this Section, including assessments for real estate taxes by governmental authorities, not paid when due, shall constitute a lien against such Owner's appurtenant Multi-Family Lot, the Dwelling Unit and all Improvements situated thereon, in the amount of such Owner's pro rata share of the liability for such assessments, including taxes, all accrued interest and penalties, if any. Such lien may be foreclosed upon in like manner as a mortgage or other lien upon real property and may include additional cost of expenses, not less than Two Hundred Dollars (\$200.00), and reasonable attorney's fee. The governing taxing authority shall also be entitled to proceed directly against the Owner, personally, and/or against the Lot(s) of such Owner which are subject to such lien for unpaid real estate taxes. Such lien shall continue until fully paid or otherwise satisfied. When such lien for assessments levied by the Town Center Owners' Association has been fully paid or satisfied, the Town Center Owners' Association shall file a subsequent notice releasing the lien.

ARTICLE XI **ROADS AND TRAILS**

11.1 Types of Roads and Trails.

(a) Roads.

Arterial: Aspen Leaf Drive and Ousel Falls Road, as shown on the recorded subdivision plats of the Town Center;
Interior: All other roads, except private driveways;

(b) Private Driveways.

(c) Trails.

- Pedestrian;
- Cross-Country Skiing;
- Equestrian/Horseback Riding; and
- Non-Motorized Travel.

11.2 Ownership of Roads and Trails.

With the exception of private driveways, all roads and trails are owned by the TCOA.

11.3 Uses of Roads and Trails.**(a) Prohibited.**

All uses not permitted or conditionally permitted uses.

(b) Permitted.**(1) Roads.**

- Arterial;
- Interior;
- General vehicular access for ingress or egress to the Town Center Property and adjacent properties;
- Utilities;
- Trails (outside of roadbed, except at crossings);
- Interior: The same as arterial roads, with the exception of vehicular access, which shall be provide for limited vehicular access for ingress or egress to Town Center, platted Lots or Open Space.

(c) Conditional and Licenses Uses.

Conditional Uses within the District require the application for and receipt of a Conditional Use Permit from the TCOA and pursuant to The Zoning Regulation ("Conditional Uses").

The following uses of Roads require the application for and receipt of a License from the TCOA ("TCOA Licensed Uses"):

- Mobile vendors;
- Parades;
- Bus shelter, bus stop, bus warming hut, and similar community uses; and
- Any organized event, including but not limited to merchant sidewalk sales, arts and crafts vendors; organized group picnics and community events (fairs, festivals, farmers markets, concerts, performances, sporting events, product demonstrations, sports and recreation instruction, etc.).

11.4 Private Driveways.

The same as Roads, with the exception of vehicular access, which shall be limited to private vehicular access for ingress or egress to a platted lot.

(a) Trails.**(b) Pedestrian.**

All trails.

(c) Cross-Country Skiing, Equestrian/Horse Back Riding, and Non-Motorized Travel.

As designated by the Town Center Owners' Association, and subject to avoiding conflicts with other uses and budgetary constraints.

11.5 Rights of Use.**(a) Roads.**

All roads may be used by the general public, all Town Center Lot and Unit Owners, residents, guests, invitees and emergency service providers.

(b) Private Driveways.

Private driveways may be used by Individual Town Center Lot and Unit Owners, residents, guests and invitees, the Town Center Owners' Association and their permittees, and emergency service providers.

(c) Trails.

TCOA and their permittees, and all Town Center Lot and Unit Owners, residents, and guests, unless expanded to include public users by the TCOA.

11.6 Assignment of Rights of Use.**(a) Roads.**

All roads are either dedicated to the public or lie within a dedicated public easement for use by the general public, all Town Center Lot and Unit Owners, residents and guests.

(b) Private Driveways.

Use of Private driveways by the individual Town Center Lot Owner is included in the "bundle of rights" conveyed to such Lot Owner by Deed.

(c) Trails.

All Town Center Lot and Unit Owners, residents and guests are assigned the non-exclusive right to use, subject to the trails, subject to the limitations and restrictions of this Declaration.

11.7 Maintenance and Repair and Snowplowing.**(a) Roads & Trails.**

Maintenance, repair and snowplowing of roads and trails is the responsibility of the TCOA. All contracts between the TCOA and the contractor hired to plow snow from the streets of the Town Center shall mandate that the snowplow contractor clear the snow within six inches (6") of the face of all curbs.

(b) Private Driveways.

Maintenance, repair and snowplowing of private driveways is the responsibility of the individual Lot Owner.

11.8 Responsibility for Taxes and Assessments.**(a) Roads and Trails.**

TCOA and all Town Center Lot and Unit Owners.

(b) Private Driveways.

Individual Town Center Lot Owner.

(c) Liens.

Liens for taxes and assessments shall be as provided by law and Article XVI of this Declaration.

ARTICLE XII
FIRE MANAGEMENT

Fire management shall be in accordance with those plans, codes, regulations, etc. that have been

adopted by the Big Sky Fire District.

ARTICLE XIII
RESERVED RIGHTS

The Town Center Property, each Lot thereof, and all Open Space is subject to the following reserved rights:

(a) The right of Declarants, the Town Center Owners' Association to enter upon the Town Center Property, or any Lot thereof, for the purpose of ascertaining or enforcing compliance with The Zoning Regulation, this Declaration, the *Master Signage Plan* and the *Big Sky Town Center Design Standards and Guidelines*.

(b) The right of Declarants, the Town Center Owners' Association, and/or their respective assigns, successors or designees in all easements for access, utilities, roads or trails shown on any recorded subdivision plat of the Town Center Property, or of any portion thereof, or in any other instrument of record.

(c) The right of Declarants to all excess dirt excavated from the Town Center Property during the course of its development.

The Town Center Property, exclusive of platted Lots but inclusive of all Open Space, is further subject to the following additional, reserved rights:

(a) All rights of Declarants in timber.

(b) The right of Declarants in all easements for trails across Open Space to be located in the future by subsequently recorded instrument.

(c) The right of Declarants to construct, operate, and maintain an underground and/or structured parking lot in the Town Center Parking District, together with surface rights of ingress thereto and egress therefrom.

The right of Declarants, the Town Center Owners' Association, and/or their respective assigns, successors or designees, to construct, conduct or enjoy any Use permitted or conditionally permitted on Open Space.

ARTICLE XIV
PERMITTING OR APPROVAL REQUIREMENTS

14.1 General Requirements.

All permits or approvals required to be obtained under The Zoning Regulation are also required to be obtained from the Town Center Owners' Association in accordance with the *Big Sky Town Center Design Standards and Guidelines* and the *Big Sky Town Center Master Signage Plan*.

14.2 Exemption.

Notwithstanding the foregoing, the Developer, during the course of development of the Property, shall be exempt from all permitting or approval requirements under this Declaration.

14.3 Performance Bond, Remedies and Foreclosure.

For all new construction and remodeling in the Town Center, the TCOA may require the Owner

to post a Performance Bond with the TCOA, together with any necessary fees, in accordance with and as more particularly set forth in the *Big Sky Town Center Design Standards and Guidelines*, in force and in effect at the time of construction or remodeling. This Performance Bond shall be released to the Owner upon completion and acceptance of the project by TCOA. In the event the project has not been completed, or completed as approved, the TCOA may have all remedies set forth in the Big Sky Town Center Design Standards and Guidelines, and to the extent TCOA performs work or expends funds on the project to achieve or complete the approved plan, such work or expenditure of funds to improve or complete the project shall constitute a lien on the property. Such lien may be foreclosed upon in like manner as a mortgage or other lien upon real property and may include additional cost of expenses and reasonable attorney's fee. Such liens shall continue until fully paid or otherwise satisfied. When such lien has been fully paid or satisfied, the TCOA shall file a subsequent notice releasing the lien.

ARTICLE XV **ADMINISTRATION**

15.1 Overview.

Administration and enforcement of this Declaration shall be carried out by the Town Center Owners' Association, Inc.

15.2 Rules of Construction.

Unless the context clearly otherwise requires, the following rules of Construction shall apply and govern this Declaration:

- (a) The singular shall include the plural and vice versa.
- (b) "And" is conjunctive; "or" is disjunctive; "and/or" is both conjunctive and disjunctive, as the context and circumstances may require.
- (c) Defined terms are capitalized and when not capitalized are not in reference to the defined term, but rather, to the common, ordinary or accepted meaning of the word or term.
- (d) "Shall" is mandatory. "May" is permissive.
- (e) "Person" is referred to a natural person or persons. "Entity" is in reference to all forms of organizations, public or private, incorporated or not, and includes corporations, limited liability companies, associations, trusts, partnerships, limited partnerships, and the like.

15.3 Town Center Owners' Association ("TCOA").

(a) Description.

The TCOA is a non-profit, mutual benefit corporation formed by Declarants under the Montana Non-Profit Corporation Act with the powers and duties prescribed by law, the TCOA's Articles and Bylaws and this Declaration.

(b) Purpose and Powers.

The TCOA has as its purposes and powers all those conferred upon corporations under the Montana Non-Profit Corporation Act, including, without limitation, the following: implementation, administration, enforcement and amendment of this Declaration; holding of title to and administration of any portion of the Property or of any Development or Improvements hereon that may be conveyed to the TCOA; adoption, implementation, administration and enforcement of all plans and sections thereof provided for in Articles

XII, XIII and XIV, and XV hereof, levy and collection of assessments pursuant to Article XVI hereof through the Town Center Architectural Committee, the adoption, administration and enforcement of any *Design Standards and Guidelines*; the adoption, administration and enforcement of any *Master Signage Plan*; monitoring and regulating changes of use within the district to ensure compliance with limitations of commercial and residential entitlements granted by Gallatin County and SFE entitlements granted by the Big Sky County Water and Sewer District #363; and levying and collecting membership and initiation fees; together with such other purposes and/or powers as the Board of Directors of the Association may from time to time determine.

(c) **Enforcement and Attorneys Fees.**

The TCOA shall have the right to enforce, by any proceeding at law and/or in equity, all restrictions, conditions, covenants, reservations, easements, liens, charges or other obligations or terms now or hereafter imposed by the provisions of this Declaration, the Articles of Incorporation and Bylaws of the TCOA, the *Design Standards and Guidelines*, or any *Master Signage Plan*, any Rule or Regulation promulgated by the Association pursuant to its authority as provided in the Declaration, Articles of Incorporation, Bylaws, *Design Standards and Guidelines*, and/or any *Master Signage Plan*. Failure by the TCOA to enforce any covenant or restriction herein contained, or any provision of the Bylaws, Articles of Incorporation, *Design Standards and Guidelines*, the *Master Signage Plan*, or Rules and Regulations of the TCOA shall in no event be deemed a waiver of the right to do so thereafter. In any action to enforce compliance with any provision of these covenants and restrictions, or to remedy violations of the same, or to enforce the provisions of the Bylaws, Articles of Incorporation, or Rules and Regulations of the TCOA, including any *Design Standard and Guideline*, or any *Master Signage Plan*, the prevailing party in any such action, arbitration or litigation shall be entitled to its reasonable attorneys fees (as determined on an hourly basis and not a contingency fee basis) and costs incurred in the prosecution or defense of any such action.

ARTICLE XVI

FUNDS, ASSESSMENTS AND REAL PROPERTY TAXES

16.1. Association.

(a) **Capital Improvements, Maintenance and Enforcement Funds.**

The Board of Directors of the Association may, through its Bylaws, establish a fund, or funds, for capital improvements, maintenance and enforcement, into which shall be deposited all membership and initiation fees and assessments levied by the Association for capital improvements, maintenance and enforcement. Assessments shall be as the Association may provide by its Bylaws and shall be used solely for purposes related to those areas and improvements owned by the Association or for which it is responsible pursuant to this Declaration.

(b) **Levy of Membership and Initiation Fees, and Assessments.**

All membership and initiation fees and assessments shall be levied as the Association may provide in its Bylaws.

(c) **Payment of Membership and Initiation Fees, and Assessments.**

All Owners of the Property, or of a Tract, Unit or Lot thereof, shall be personally liable for payment of all membership and initiation fees upon the purchase of real property within the Town Center and, thereafter, for all assessments levied by the Association for the purposes herein set forth. Payment shall be as the Association may provide in its Bylaws.

(d) **Unpaid Membership and Initiation Fees, and Assessments/Liens.**

Any membership and initiation fees or assessments not paid when due shall, upon notice thereof being filed of record in the Office of the Gallatin County Clerk and Recorder, constitute a lien against the Tract, Unit or Lot against which such assessment was made. Such lien may be foreclosed upon in like manner as a mortgage or other lien upon real property and shall include the additional cost of expenses incurred by the Association with respect to the preparation, service, recording and release of the lien(s) of not less than Two Hundred Dollars (\$200) and a reasonable attorney's fee. Such lien shall continue until fully paid or otherwise satisfied. When such lien has been fully paid or satisfied, the Association shall file a subsequent notice releasing the lien.

16.2 Real Property Taxes on Common Areas or Open Space Owned in Common.

(a) Each Owner of a Tract, Unit or Lot is also personally liable for a *pro rata* share of all real property taxes levied by governmental taxing authorities against such Common Area or Open Space, such pro rata share being determined by dividing the number of Tracts, Unit or Lots held by such Owner by the total number of Tracts, Units or Lots within the jurisdictional boundary of the Association.

(b) **Payment.**

Notwithstanding the levy of assessments by the Association for payment of real property taxes on Common Area(s) or Open Space owned in common by the Association, each Owner of a Tract, Unit or Lot is and remains personally liable for payment of the pro rata share of such taxes for which such Owner is liable under subsection (a), immediately above.

(c) **Unpaid Taxes/Liens.**

Any unpaid real estate taxes against Common Areas or Open Space for which an Owner of a Tract, Unit or Lot is liable for payment of a pro rata share under this Section shall also constitute a lien against such Owner's Tract(s), Unit(s) or Lot(s), the Dwelling Unit and all Improvements situation thereon, in the amount of such Owner's pro rata share of the liability for such taxes, all accrued interest and penalties, if any, which lien may be satisfied by a proceeding by the governing taxing authority against the Owner, personally, and/or against the Tract(s), Unit(s) or Lot(s) of such Owner which are subject to such lien.

(d) **Recoupment/Contribution.**

Any Owner of a Tract, Unit or Lot which has paid assessments levied by the Association for payment of real estate taxes on Common Areas or Open Space owned in common by the Association shall have a claim for recoupment against the Association and a claim for contribution against the other Owners of Tracts, Units or Lots within the jurisdictional

boundary of the Declaration governing such Tracts, Common Area(s) and/or Open Space for any tax liability, including without limitation, any disproportionate tax liability, such Owner is required to personally pay to the taxing authority because of the Association's failure to pay such taxes when due or because of a shortfall in levy and/or collection of assessments by the Association for payment of such tax liability, or for any other reason, whatsoever, together with interest thereon, all penalties paid, and all expenses reasonably and necessarily incurred in connection therewith, including a reasonable attorney's fee and the reasonable fees of any other professionals or experts.

16.3 Common Private Driveways

(a) Liability.

Except for any Common Private Driveway which may initially be constructed by the Developer, the Association shall be responsible for all construction, reconstruction, maintenance, repair and snowplowing of any Common Private Driveway and for real property taxes, if any, levied by governmental taxing authorities against any Common Private Driveway. The Owner of each appurtenant Lot or Tract is also personally liable for a pro rata share of all such costs, such pro rata share being determined by dividing the number of Lots or Tracts held by such Owner to which such Common Driveway is appurtenant by the total number of all Lots, Units, or Tracts to which such Common Driveway is appurtenant.

(b) Levy of Assessments.

All assessments for construction, reconstruction, maintenance, repair, snowplowing and real property taxes, if any, levied against a Common Private Driveway shall be levied by the Association uniformly against all appurtenant Lots, Units or Tracts, equally. All assessments shall be adjusted as required to meet changed needs.

(c) Payment of Assessments.

Each Owner of a Lot, Unit or Tract appurtenant to a Common Private Driveway shall be personally liable for payment of such Owner's pro rata share of all assessments levied by the Association for the purposes set forth in this Section. Payment shall be as the Association may provide in its Bylaws.

(d) Unpaid Assessments/Liens.

Any assessments under this Section not paid when due, upon notice thereof being filed of record in the Office of the Gallatin County Clerk and Recorder, shall constitute a lien against the Tract, Unit or Lot against which such assessment was made by the Association. Such lien may be foreclosed upon in like manner as a mortgage or other lien upon real property and shall include the additional cost of expenses incurred by the Association with respect to the preparation, service, recording and release of the lien(s) of not less than Two Hundred Dollars (\$200) and a reasonable attorney's fee. Such liens shall continue until fully paid or otherwise satisfied. When such lien has been fully paid or satisfied, the Association shall file a subsequent notice releasing the lien.

16.4 Parking Lots or Spaces.**(a) Liability.**

Except for any parking lots or spaces that may be initially constructed by the Developer in the Town Center, the TCOA, or Town Center Parking District, as its designee, or other entities designated by the Declarants, shall be responsible for the acquisition, construction, reconstruction, maintenance, repair, administration and enforcement of certain parking lots or parking spaces in the Town Center Commercial District, for all snowplowing of all parking lots, for all real property taxes levied by governmental taxing authorities against the real estate on which such parking lots or spaces are constructed and for all insurance procured in connection therewith.

(b) Levy of Assessments.

All assessments levied for acquisition, capital improvements, maintenance, administration and enforcement in connection with parking lots or spaces in the Town Center Commercial District shall be levied by the TCOA, or the Town Center Parking District, as its designee, or other entities designated by the Declarants against all Owners of Lots within the Town Center Commercial District in such manner as the TCOA may provide in its Bylaws. All assessments shall be adjusted as required to meet changed needs.

(c) Payment of Assessments.

Each Owner of a Lot in the Town Center Commercial District shall be personally liable for payment of such Owner's share of all assessments levied by the TCOA, or the Town Center Parking District, as its designee, or other entity designated by the Declarants for the purposes set forth in this Section. Payment shall be as the TCOA may provide in its Bylaws.

(d) Unpaid Assessments/Liens.

Any assessments under this Section not paid when due, upon notice thereof being filed of record in the Office of the Gallatin County Clerk and Recorder, shall constitute a lien against the Lot or Unit owned by the Owner against whom such assessment was made by the Town Center Owners' Association, or Town Center Parking District, as its designee or other entities designated by the Declarants. Such lien may be foreclosed upon in like manner as a mortgage or other lien upon real property and shall include the additional cost of expenses incurred by the Association with respect to the preparation, service, recording and release of the lien(s) of not less than Two Hundred Dollars (\$200) and a reasonable attorney's fee. Such liens shall continue until fully paid or otherwise satisfied. When such lien has been fully paid or satisfied, the Town Center Owners' Association, or Town Center Parking District, as its designee, or other entities designated by the Declarants, shall file a subsequent notice releasing the lien.

ARTICLE XVII
NON-LIABILITY

Neither the Declarants, their planning consultants, surveyors, geotechnical engineers, or attorneys, the Association, the members of its Board, the members of any Architectural Committee, shall be liable to any Owner or other person for any loss, damage or injury arising out of or related to adoption, publication, implementation, administration or enforcement of the Master PUD, any Supplemental PUD, any subdivision plats or certificates of survey, The Zoning Regulation, Declaration, the *Big Sky Town*

Center Design Standards and Guidelines and the *Master Signage Plan* (herein collectively “Documents”), and all Owners and Tenants waive, release and forever discharge the foregoing entities and persons from any liability arising out of or related to adoption, publication, implementation, administration or enforcement of the Documents.

ARTICLE XVIII **AMENDMENT**

This Declaration may be amended, waived, abandoned, terminated, modified, altered or changed as to the whole of the Town Center Property, or any portion thereof, including, without limitation, adoption of entirely new covenants containing permitted uses and/or prohibited uses from those set forth herein, at any time, only by the Declarants, acting jointly or severally, or by two-thirds vote of the majority of the Board of Directors of the Town Center Owners’ Association at a meeting specially, called for such purpose; provided, however, no revisions can be made to those portions of the Declaration that also require the consent of the Gallatin County Commissioners. The portions of this Declaration that require the consent of the Gallatin County Commissioners, for purposes of amendment are as follows:

Article IV (in its entirety)

Article VI

Definition of “Town Center Owners’ Association;”

Article VII.

Section 7.5;

Section 7.7.a.2;

Section 7.7.a.6;

Section 7.7.a.8;

Section 7.7.a.16;

Article VIII.

Section 8.6;

Article IX

Section 9.2;

Section 9.6.a;

Section 9.6.c;

Article X (in its entirety)

Article XI

Section 11.7;

Article XVI

Section 16.1.b;

Section 16.2;

Article XVIII (in its entirety).

The portions of this Declaration that require the written consent of the Owner of Lot 14A1 in Block 3 of the Big Sky Town Center Subdivision, Plat Reference: J-561-C, as it may be amended from time to time, which consent right shall run with, benefit and be appurtenant to such lot, for purposes of amendment are as follows:

Article VI

Definition of "Open Space, Public;"

Article VII

Section 7.7.a.2;

Article VIII

Section 8.3.d.1;

Section 8.4.c;

Section 8.4.c.1;

Section 8.12;

Article IX

Section 9.3.b;

Section 9.4.c;

Section 9.5.c;

Section 9.6.c;

Article XVIII

This paragraph regarding amendments requiring consent of the Owner of Lot 14A1 in Block 3 of the Plat of Big Sky Town Center Subdivision, Plat Reference: J-561-C, as it may be amended from time to time.

ARTICLE XIX
SEVERABILITY

Each and every provision of this Declaration is severable from the remainder as a consequence of which invalidation of any one of the covenants, conditions or restrictions set forth in this Declaration shall not affect the validity or enforcement of the remainder.

ARTICLE XX
DURATION

This Declaration shall run with the land and the term shall be perpetual, unless amended per Article XVIII above.

ARTICLE XXI
BINDING EFFECT

This Declaration shall attach to and run with the Town Center Property for all purposes and shall be binding upon, and inure to the benefit of the Town Center Property, the DECLARANTS, the Town Center Owners' Association and all Owners, Tenants and other parties having, acquiring or otherwise at any time possessing any right, title or interest in or to the Town Center Property, or any part thereof, their respective heirs, personal representatives, successors and assigns.

IN WITNESS WHEREOF, the undersigned Declarants have executed this instrument as of the date and year first above written.

DECLARANTS:

WESTLAND ENTERPRISES, INC., a Montana Corporation

By: William G. Simkins
William G. Simkins, President

SIMKINS HOLDINGS, LLC, a Montana Limited Liability Company

By: William G. Simkins
William G. Simkins, Manager

Town Center Owners' Association, Inc. is signing this superseded and replaced Declaration solely for the purpose of acknowledging its rights and responsibilities herein.

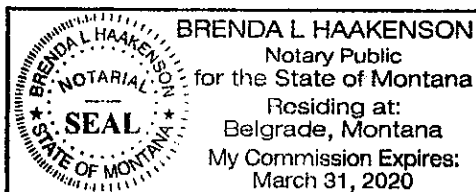
TOWN CENTER OWNERS' ASSOCIATION, INC.,
a Montana Non-Profit Corporation

By: William G. Simkins
William G. Simkins, President

ACKNOWLEDGEMENTS

STATE OF MONTANA)
 : ss.
County of Gallatin)

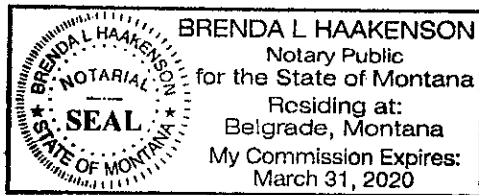
This instrument was acknowledged before me on the 4th day of September, 2019, by William G. Simkins, as President of WESTLAND ENTERPRISES, INC.



Brenda L. Haakenson
Signature of Notary Public for the State of Montana
Printed Name of Notary Brenda L. Haakenson
Residing at Belgrade, MT
My Commission expires: March 31, 2020

STATE OF MONTANA)
 :SS
County of Gallatin)

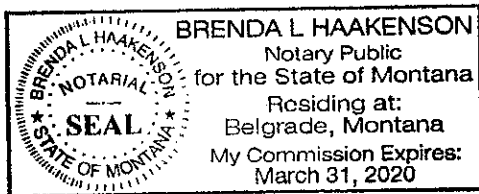
This instrument was acknowledged before me on the 4th day of September, 2019, by William G. Simkins, as Manager of SIMKINS HOLDINGS LLC.



Brenda L. Haakenson
Signature of Notary Public for the State of Montana
Printed Name of Notary Brenda L. Haakenson
Residing at Belgrade, MT
My commission expires: March 31, 2020

STATE OF MONTANA)
 :SS
County of Gallatin)

This instrument was acknowledged before me on the 4th day of September, 2019, by William G. Simkins, as President of TOWN CENTER OWNERS' ASSOCIATION, INC.



Brenda L. Haakenson
Signature of Notary Public for the State of Montana
Printed Name of Notary Brenda L. Haakenson
Residing at Belgrade, MT
My commission expires: March 31, 2020

