

- (f) “Declaration” means this Declaration of Unit Ownership for The Point at Del Mar Professional Condominiums.
- (g) “Developer” is MONTANA LAND INVESTMENTS LLC, or any person or entity to whom it transfers or assigns its development rights hereunder. A grant of a deed to a single completed unit by Developer shall not be deemed a transfer of development rights.
- (h) “Eligible Mortgage Holder” means the holder of a first mortgage or trust indenture on any unit who has requested, in writing, that the Association notify it of any proposed action requiring the consent of a specified percentage of eligible mortgage holders.
- (i) “General Common Elements” are defined in Section 6(a) of this Declaration. Any exterior portion of the project not identified as part of a unit or as a limited common element shall be a general common element.
- (j) “Limited Common Elements” means those common elements designated in this Declaration or by agreement of the unit owners as reserved for the use of fewer than all of the unit owners.
- (k) “Unit” is defined in Section 5 of this Declaration.
- (l) “Unit Owners or Owner” means the person, partnership, LLC or corporation owning a unit, including a contract purchaser if a Notice of Purchaser’s Interest is recorded with the Park County Clerk and Recorder, and including co-owners. A lessee of a unit shall not be considered a unit owner, unless so designated by the owner of record, following the procedures set forth in 70-23-102(16) MCA.

2. **SUBMISSION TO UNIT OWNERSHIP.**

The purpose of this Declaration is to submit the real property herein described and the improvements constructed thereon to the condominium form of ownership and use provided by Chapter 23, Title 70, MCA, hereinafter referred to as the “Unit Ownership Act”. The real property included within the project, which shall be named The Point at Del Mar Professional Condominiums, is located in Park County, Montana, is owned by MONTANA LAND INVESTMENTS LLC, and is more particularly described as follows:

Lot 1, Lot 2, and the Condo Lot, being tracts of land located in the SE¼ of Section 14, Township 2 South, Range 9 East, P.M.M., Park County, Montana, being all of Block 38 of the Palace Addition to the City of Livingston, Park County, Montana, and the adjoining vacated alleys and streets on file and of record in the office of the County Clerk and Recorder of Park County, Montana, according to Subdivision Plat No. 545, on file in the office of the Clerk and Recorder of said County.

The provisions of this Declaration shall be covenants running with the land and shall be binding on all owners, their tenants and guests, for so long as the real property described herein is subject to the provisions of the Unit Ownership Act.

3. **DESCRIPTION OF PROJECT.**

The project will consist of seven buildings containing up to eighteen units, a sign identifying the project, parking areas adjoining each building, landscaped areas near the buildings, water lines connected to the Livingston City Water System, and septic lines connected to the Livingston City Septic System. The buildings constructed in Phase 1 will be of wood frame construction, concrete foundation and/or slab on grade, with siding made from CaneXel, Brick, Wood, and/or composite, and metal or asphalt shingle roofs. No metal siding shall be permitted. Buildings in subsequent Phases of development will be of steel or wood frame construction, concrete foundation and/or slab on grade, with metal or wood siding and metal roofs. As stated in Paragraph 4 hereof, Developers reserve the right to amend or alter the project as described above.

4. **PLAN OF DEVELOPMENT.**

The project will be developed in two Phases. Phase 1 will consist of five commercial buildings, consisting of one four-unit commercial building, and four one-unit commercial buildings.

At present, Developer intends to construct two buildings with up to five units per building in Phase 2. Developer may complete construction of Phases in any order. The Developer may, but is not obligated to, annex the land described as Lots 26-36, inclusive, Block 37 of the Palace Addition to the City of Livingston, and develop such property in an additional Phase or Phases.

The floor plans for the buildings in Phase 1 are shown on Exhibit "A", attached hereto. Exhibit "B", attached hereto, is a site map showing the location of the buildings and improvements which Developer, plans to construct on the property. Developer reserves the right to modify or change the plans shown on Exhibits "A" and "B", to change the size, design, number and location of the buildings and units to meet the requirements of the sale and leasing market, and to change the type of construction materials used in the buildings in Phase 2, and to amend this Declaration to reflect these changes, without consent of the Association, the unit owners, or any lender. Each owner and each lender, by acceptance of a deed or recordation of a mortgage, consents to such modification or change and grants to Developer the power to record such Amendment without further consent of the owner or lender, subject to the following conditions:

- (a) Each new building shall be included as part of the project upon completion of construction of the building.
- (b) Once construction of a new building has begun, such construction shall be completed within a reasonable time.
- (c) Upon substantial completion of any new building, Developer shall record an amendment to this Declaration with the Park County Clerk and Recorder. The amendment shall include floor plans for the new building, and a site plan showing the location of the new building.
- (d) The owners of units in the new building shall have nonexclusive rights to use general common areas to the same extent as the owners of all other units.

- (e) The owners of each unbuilt unit shall not be assessed for common expenses until construction of the unit is completed.

To facilitate construction of all Phases and completion of the project, Developer hereby:

- (a) Reserves an easement over and upon common elements and land in each Phase for the purpose of access for constructing additional buildings and common elements improvements, and for storage of construction materials.
- (b) Reserves solely to Developer the right to grant utility easements across the common elements reasonably necessary to the ongoing development of the project, without approval of any unit owner or any lender.
- (c) Reserves the right to amend this Declaration, without approval of any unit owner or lender, to create additional general and limited common elements, to change the number of buildings and units and the location on the real property of one or more buildings, to add a more complete description of the buildings to be included in any Phase, to record additional plats and plans to supplement or modify those included herein, and to amend the percentage of interest in common elements attached to each unit, in accordance with the provisions of this Declaration. Each unit owner, and each holder of a mortgage or trust indenture on a unit, by acceptance of a deed to the unit or by recordation of a mortgage or trust indenture on the unit, hereby grants unto the then-acting Manager of Montana Land Investments, LLC, or its designated successor(s), as representative of Developer, a limited irrevocable power of attorney to amend this Declaration in accordance with this plan of development. Recordation of amendments modifying the percentage of interest in common elements attached to each unit shall be deemed a conveyance, transferring title in the common elements in accordance with the amendment.
- (d) Reserves the right to use water and power provided to the above-described property or any unit for construction purposes, provided that Developer shall reimburse the Association for the reasonable cost of such water and power.
- (e) Reserves the right to fence off adjoining common areas during construction, for safety reasons and to facilitate construction.
- (f) Any liens arising as a result of construction of any building shall not attach to the interests of other Unit Owners or those of first mortgagors of other units.

Developer may terminate its right to build additional buildings at any time prior to completion of all Phases by recording a notice of termination with the Park County Clerk and Recorder. Upon termination, Developer may, at its option, elect to include the land on which a

building has not been built as a general common element of the project, or alternatively, Developer may elect to remove the unbuilt land from the project (the “excluded land”), after subdividing the above-described real property (to the extent subdivision is required to legally convey any excluded land). The notice of termination shall state which of these options Developer has elected.

If Developer, upon termination, elects to designate the excluded land as general common elements of the project, upon recordation of the Notice of Termination, Developer’s obligation to pay taxes and assessments on the excluded land shall cease and terminate and Developer shall have no further obligation to make any improvements to any portion of the above-described real property. The notice of termination shall amend this Declaration to reallocate the undivided interest in the common elements in proportion to the undivided interest of completed units and shall include a conveyance of Developer’s interest in the common elements from Developer to all existing unit owners. All unit owners, their lenders, mortgages, successors and assigns, or anyone claiming by and through them, by accepting and recording a deed (or by recording a notice of purchasers interest in the event of a contract sale) to any unit or a mortgage or trust indenture upon a unit are hereby deemed to consent to inclusion of the excluded land as a general common element of the project and to the above-described conveyance of Developer’s interest in the common elements.

If, upon termination, Developer elects to subdivide and/or separately convey the excluded land, or any portion thereof, the subdivided parcels shall conform to local zoning requirements and restrictions. The real property and improvements included in the project shall include all completed units, the land beneath each unit and between units, and the utilities and common area improvements serving the completed units. Developer shall grant to all unit

owners easements across the excluded land for utilities and for ingress and egress. Developer shall have the right to grant easements on behalf of all unit owners, to benefit any excluded land removed from project, for use of new or existing utility lines and pipes by the owners of the excluded property and for use of the existing roads which provide access to the excluded property. Easements for new utility lines, if any, shall cross the common elements only. The notice of termination shall amend this Declaration to reallocate the undivided interests in the common elements in accordance with the formula set forth in Section 8 below.

Any land excluded from the project shall no longer be subject to the provisions of this Declaration, the Bylaws of the Association, or the Covenants, and may thereafter be used for any lawful purpose.

Unit owners, their lenders, mortgages, successors and assigns, or anyone claiming by or through them, by accepting and recording a deed (or by recording a notice of purchasers interest in the event of a contract sale) to any unit or a mortgage or trust indenture upon a unit are hereby deemed to consent to subdivision of the real property, to removal of any excluded land from The Point at Del Mar Professional Condominiums Owners Association, to the granting and reserving of the easements described above, and to all conveyances needed to vest ownership of the included land in the existing unit owners and to vest ownership of the excluded land in Developer's name. Any land removed from the project shall be owned by Developer free and clear of this Declaration, the Bylaws, and the Covenants.

All unit owners, their lenders, mortgagees, successors and assigns, or anyone claiming by or through them, by accepting and recording a deed (or notice of purchaser's interest in the event of a contract sale) to any unit or a mortgage or trust indenture upon a unit hereby grants unto the then-acting Manager of Montana Land Investments, LLC, or its designated

successor(s), as representative of Developer, a limited irrevocable power of attorney, to execute and record a notice of termination, subdivision plat, conveyances, easements, amendments to this Declaration and all other documents necessary to comply with the termination provisions of this Section 4.

5. **DESCRIPTION OF UNIT.**

Each unit consists of the area bounded by the exterior surfaces of any exterior walls of the building which constitutes a unit's outer wall; the center of any common walls separating two units; the bottom of any exterior floor; the center of any common floor/ceiling separating two units; and the exterior surface of the roof. Utility lines and pipes which serve only one unit shall be a part of a unit from the interior of the unit to the point where they join lines or pipes serving other units. The lights attached to the exterior walls of a unit are part of the unit. The land beneath each unit shall be a part of the unit. All fixtures and equipment serving a single unit shall be part of that unit. Each unit in Phase 1 will have a finished structural, plumbing, electrical, and other mechanical installations. Finish work within Phase 2 will be as prescribed in the Amendments to the Declaration filed in conjunction with such later Phases of development. Each owner shall be obligated to finish the unit to the extent desired by the owner. However, owners may not make structural modifications to any building without the prior written consent of the Association, acting by and through the Architectural Review Committee, as is specified in the Covenants. All interior modifications and additions must comply with the applicable building code and must not structurally modify the buildings, except as is expressly approved by the Association, acting by and through the Architectural Review Committee.

6. COMMON ELEMENTS.

- (a) General Common Elements. The general common elements include the land described in paragraph 2 above, except that which is part of a unit or a limited common element, including the handicapped parking spaces and all other parking spaces not designated as limited common elements, the roads serving the buildings, the storm drainage system located on the property, the sign identifying the project, any irrigation/watering system, any well/pump/pressure tank on the property, the fences and gates, any utility lines and pipes which serve two or more units, and any other improvement or fixture which is for the obvious common benefit of all units within the development. Any storage area shown on the site plan is a general common area but is reserved for the use of the Association and its employees or contractors.
- (b) Limited Common Elements. The limited common elements include elements so designated in accordance with Paragraph 1(j) hereof. Specifically, the septic line and any pump stations which serve the units in Phase 1 are limited common areas reserved for the exclusive use of the units served. Other improvements and fixtures which are for the obvious benefit of fewer than all units within the development shall be deemed limited common elements. Once an element is designated as a limited common element, such limited common element cannot be altered or amended by subsequent act of the Developer or the Association, unless the Developer/Association provides benefits reasonably equivalent to the common element which has been altered or amended at some other convenient location upon the property.
- (c) Transfer of Use of Limited Common Elements. Limited common parking and storage spaces shall be identified with the number of the unit for which their use is reserved on the attached site plan.

The use of limited common parking spaces and outside storage may be transferred from one unit to another by means of a recorded notice of change of assignment of limited common element setting forth the unit to which the parking or storage space has been assigned and the unit to which it will thereafter be assigned. The notice shall be signed by the owners of both units, recorded with the Park County Clerk and Recorder, and a copy of the notice shall be delivered to the President of the Association. Ownership and use of limited common parking and storage may not be transferred to third parties who do not own a unit within the Association.

7. **MEMBERSHIP IN THE POINT AT DEL MAR PROFESSIONAL CONDOMINIUMS OWNERS ASSOCIATION.**

Each unit shall be a member of The Point at Del Mar Professional Condominiums Owners Association. Membership shall be appurtenant to and may not be separated from ownership of a unit.

Unit owners shall be entitled to one vote in the Association for each unit owned. When more than one person holds an interest in any Unit, all such persons shall be members. The vote for such Unit shall be exercised as the owners determine, but in no event shall more than one vote be cast with respect to any Unit.

8. **OWNERSHIP.**

Each unit owner shall be a fee simple owner of such unit and of an undivided interest in the common elements. Each unit, an appurtenant undivided interest in the common elements, membership in The Point at Del Mar Professional Condominiums Owners Association, and the assessment account for that unit shall together comprise one unit, shall be inseparable, and may be conveyed, devised or encumbered only as a unit. Any conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an individual unit owner's interest in the common elements shall be void unless the unit to which that interest is attached is also included in the transfer. The undivided interest in the common elements appurtenant to each Phase 1 unit is as follows:

Phase 1:

Unit A-1	12.5%	Unit B	12.5%
Unit A-2	12.5%	Unit C	12.5%
Unit A-3	12.5%	Unit D	12.5%
Unit A-4	12.5%	Unit E	12.5%

In the event additional units are built in Phase 2 development, or any subsequent phases, the foregoing percentages shall be modified by Declarant (or its successors/assigns) recording an amendment to this Declaration setting forth amended interests in the common elements, which shall be calculated by dividing the total number of built units into one hundred, and then setting forth the resulting percentages.

The undivided interest in the limited common elements appurtenant to each unit served by a limited common element shall equal one hundred divided by the total number of completed units served by the limited common element, expressed as a percentage.

9. **USE OF UNITS.**

Units in Phases 1 and 2, may be used for business, professional or commercial purposes allowed by the Covenants and by the zoning ordinances affecting the project. Additional conditions regarding use of the units may be contained in the Association Bylaws or the Covenants.

10. **COMMON EXPENSES.**

Association expenses shall be charged to the unit owners as follows:

- (a) **General Common Expenses.** All the following Association expenses shall be charged to the owners of completed units as a general common expense, in proportion to each unit owner's undivided interest in the general common elements:

Administrative expenses of the Association; income taxes payable by the Association and corporation fees payable to the Montana Secretary of State;

The cost of maintenance, repair and replacement of all general common elements, as defined herein;

Any other expenses designated as general common expenses in this Declaration or the Bylaws of the Association or agreed upon as common by Association.

- (b) Limited Common Expenses. All costs of maintenance and repair of each limited common element, except those reserved for the use of a single unit, shall be charged to the owners of completed units served by that limited common element, in equal amounts. In addition, the cost of maintenance, repair, and replacement of exterior of each building, except doors and windows, shall be a limited common expense chargeable to all owners of the units in the building in equal amounts for each unit.
- (c) Expenses for Damage by a Unit Owner. Expenses for maintenance or repairs due to the misuse or neglect of a unit owner shall be charged to such unit owner and shall be payable solely by that owner.

11. **EXTERIOR LIGHTS.**

Each unit in Phase 1 will have exterior lighting attached to each building. Developer, in its discretion, may also install exterior lighting in Phase 2. Each owner shall be responsible for maintenance, repair and replacement of the lights attached to that owner's unit and for payment of electricity serving those lights. For security and safety reasons, all owners must keep their lighting system in good working order and must leave it on from sundown to sunrise. Alternatively, the lights may be attached to a working motion detector. The detector must be kept in good working order by the unit owner. Downlighting techniques shall be used to minimize light pollution, and no light shall be constructed that causes a direct or indirect glare into the window of a unit.

12. **WATER AND SEWER.**

There shall be public water and sewer service to all of the units. The cost of connecting each unit to public water and sewer, and the cost of connecting the outdoor watering system to public water shall be borne by the Developer. The ongoing costs of water and sewer service to the common areas shall be a general common expense. The ongoing costs of water and sewer service to each unit shall be separately billed to each unit by the public water provider. In the

event water and sewer expenses cannot be separately billed to a multiple unit building, the collective bill shall be divided amongst the unit owners within such building in proportion to the total number of bathrooms and kitchens/kitchenettes in each unit in such building.

There are no water rights appurtenant to the Association property, but the Association will receive all shares in the Livingston Ditch for water that has historically been used as an appurtenance to the property. The Livingston Ditch does cross the property. The Association and all unit owners covenant and agree to cause no damage or interference to the Livingston Ditch.

13. **COVENANT TO PAY MAINTENANCE ASSESSMENTS.**

Assessments shall be made by the Association for all common expenses set forth in Section 10 above, and otherwise provided for in this Declaration, the Covenants, or in the Bylaws. The obligation to pay assessments for all units in a Phase shall begin upon the initial sale and occupancy of the first unit in that Phase. Each unit owner, by acceptance of a deed, whether or not it shall be expressed in said deed, is deemed to covenant and agree to pay to the Association all periodic and special assessments made by the Association for common expenses.

14. **REMEDIES FOR NON-PAYMENT OF ASSESSMENTS.**

All sums assessed by the Association but unpaid for the share of common expenses chargeable to any unit, together with interest, late fees, collection costs, costs of suit or arbitration and reasonable attorney's fees, shall constitute a lien on such unit, and if filed of record, may be foreclosed in the same manner as a construction lien. Each assessment, together with interest, late fees, collection costs, costs of suit, and reasonable attorney's fees, shall also be the personal obligation of the owner of the unit against which the assessment was made at the

time the assessment fell due and a suit to recover a money judgment for unpaid assessments shall be maintainable by the Association against said owner without foreclosing or waiving the lien securing the same.

15. **PROCESS.**

Service of process in the cases provided for in Section 70-23-901, MCA, shall be made upon ROBERT A. CURRIE, 228 U.S. Highway 10 West, Livingston, Montana, 59047, or its designated successor(s). This provision may be amended in the manner provided in Section 70-23-902, MCA.

16. **EASEMENTS.**

- (a) There shall exist for the benefit of each unit and as a burden on the other units and the common elements the following easements:
- (1) Easement through the general common elements for ingress and egress for all persons making use of such common elements in accordance with the terms of this Declaration; Each unit owner shall have an unrestricted right of ingress and egress across the common elements to his or her unit.
 - (2) Easements through the units and common elements for maintenance, repair and replacement of the units and common elements. Use of these easements, however, for access to the interior of units shall be limited to reasonable hours, except that access may be had at any time in case of emergency.
 - (3) Every portion of a unit which contributes to the structural support of the building shall be burdened with an easement of structural support for the benefit of the common elements and the other units.
 - (4) Easements through the units and common elements for all facilities for the furnishing of utility services within the building, which facilities shall include but not be limited to conduits, ducts, plumbing and wiring where such facilities are now located.
 - (5) Easements for encroachments (and maintenance thereof) of any portion of the common elements upon a unit or units so long as they stand, and easements for encroachments (and maintenance thereof) of any portion

of a unit upon the common elements, and upon an adjoining unit or units, so long as they stand.

Such encroachments and easements shall not be considered or determined to be encumbrances either on the common elements, or on the units for purposes of marketability of title.

17. **GRANT OF UTILITY EASEMENTS.**

The undersigned hereby grants unto the City of Livingston, to Northwestern Energy, to Qwest, to Bresnan, to Bresnan Broadband, and to all other providers of utilities, cable television and internet access, an easement across the above-described real property for the purpose of providing underground utilities, pipelines, cables, television and internet service to each unit, together with the right of ingress and egress for the purpose of installing, maintaining, repairing and replacing all necessary underground pipes, lines, and cables. To the extent that they can conveniently do so, all grantees shall use the same trench for placement of pipes, lines and cables serving each of the units. All utility installations shall be designed and laid out in such a manner as to avoid interference with potential building sites. This easement may not be used for providing utilities, cable television and internet service to any real property not described in this Declaration.

18. **ACCESS TO UNITS.**

The Directors and the Association's manager, if any, shall have the right to enter any unit in case of an emergency originating in or threatening such unit whether or not the owner or occupant is present at the time.

19. **UNITS SUBJECT TO DECLARATION, BYLAWS, RULES AND REGULATIONS, AND COVENANTS.**

All present and future owners of units shall be subject to, and shall comply with the provisions of this Declaration, the Bylaws, Rules and Regulations, and Covenants, if any, adopted by the Association, as these instruments may be amended from time to time. The execution of a purchase contract by a unit owner or the acceptance of a deed thereto shall constitute acceptance of the provisions of such instruments by such owner. All owners shall be responsible for insuring compliance with the provisions of these documents by their tenants, customers and other occupants of their unit. The provisions of the Declaration, the Bylaws, the and Rules and Regulations adopted by the Association, and the Covenants shall be covenants running with the land and shall bind any person having an interest in such unit as though the provisions were recited and fully stipulated in each deed or conveyance of any unit. The invalidity of any provision of this Declaration shall not affect in any manner the validity or enforceability of the remainder of the Declaration. No provision in this Declaration shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations which may occur.

20. **RESTRICTIONS ON LEASING.**

Any lease or rental agreement shall be in writing and shall subject the tenant to the provisions of this Declaration, the Bylaws for the Association, all Rules and Regulations adopted by the Association, and all Covenants. Owners shall be responsible for any violation of the provisions of this Declaration, the Bylaws of the Association, any Rules and Regulations adopted by the Association, or the Covenants by their Tenants, unless the owner has designated the tenant as the unit owner pursuant to the procedure set forth in 70-23-102(16)MCA.

21. **CHANGES TO UNITS.**

- (a) No owner shall make any changes to a unit which will impair the structural integrity of a building or which do not comply with building codes in effect at the time the change is made.
- (b) If any owner installs air conditioning in that owner's unit, the compressor must be placed behind the building in an inconspicuous location. No air conditioning equipment may be placed on the roof of the building or on the common elements.
- (c) No unit owner may make changes to the exterior of a unit or the common areas without advance written consent of the Board of Directors of the Association.

22. **ARBITRATION AND RIGHTS OF ACTION.**

The Association, and any aggrieved unit owner, shall have the right to binding arbitration, and to maintain an action for specific performance to compel arbitration or enforce a decision of an arbitrator, against any unit owner or the Association for failure to comply with the provisions of this Declaration or the Bylaws of the Association, or any rules and regulations adopted by the Association, except for claims of non-payment of assessments by any owner and foreclosure of the lien for unpaid assessments.

The prevailing party in any Court action and in binding arbitration shall be entitled to recover its costs and attorney fees actually incurred from the losing party. In addition, the Association shall be entitled to recover from any owner violating the provisions of this Declaration, the Bylaws of the Association, any Rules and Regulations duly adopted by the Association, or any Restrictive Covenants, including failure to pay assessments when due, all costs and attorney fees incurred in compelling compliance without filing for arbitration or bringing a court action. Owners shall be responsible for non-compliance by their tenants, unless the tenant has been designated as the owner pursuant to 70-23-102(16) MCA.

23. **EMINENT DOMAIN.**

- (a) If a portion of the common elements only is acquired by eminent domain and if a separate award is not made to each unit owner, the award shall be allocated to each unit owner in proportion to each unit owner's percentage of undivided interest in the common elements.
- (b) If a part of the project which includes one or more individual units is acquired by eminent domain, the award shall be allocated to unit owners as follows:
 - (1) The owner of each individual unit taken shall receive the fair market value of that owner's unit, including that owner's interest in the common elements, whether or not any common elements are actually taken. Thereafter, the unit owner shall be divested of his or her entire property interest in the project attributable to the unit taken and shall have no further property interest in the property, including the common elements. In addition, the owner of each individual unit taken, following compensation, shall have no further voting rights in the project as owner of the unit taken.
 - (2) The remainder of the award, if any, shall be divided among the remaining unit owners in proportion to each owner's percentage of undivided interest in the common elements.
- (c) If all of the project is acquired by eminent domain and a separate award is not made to each unit owner, each unit owner and any holders of mortgages or liens on the unit shall receive the fair market value of the unit, excluding its appurtenant interest in the common elements, the balance of the award, less any costs incurred by the Association in determining the fair market value of each unit, shall be divided equally among the unit owners.
- (d) The Directors of the Association shall represent the unit owners in any eminent domain negotiations, legal proceedings, settlements or agreements; each unit owner, by acceptance of a deed, irrevocably appoints the Association as that owner's attorney in fact for this purpose.
- (e) If a unit is encumbered by a mortgage or trust indenture, the award shall be jointly made payable to the owners of the unit and the holders of mortgages or liens on the units.

24. INSURANCE.

Purchase and Coverages

All insurance policies upon The Point at Del Mar Professional Condominiums, the Association, the Board, the general common elements, the limited common elements, or any personal property shall be issued by an insurance company authorized to do business in Montana.

- (a) Association Coverage. The Association shall purchase insurance coverage as follows:
- (1) The named insured shall be the Association individually and as agent for the Unit Owners without naming them. Such policies shall provide that payments for losses thereunder by the insurer shall be paid to the insurance Trustee hereinafter designated, and all policies and endorsements thereon shall be deposited with the insurance Trustee.
 - (2) The Association shall only be required to obtain general liability insurance, and casualty insurance for any improvements whose ownership is retained or acquired by the Association.
 - (3) Errors or Omissions Insurance for the Directors, Officers and Managers, if the Association so desires, may be purchased in amounts to be determined by the Board.
 - (4) Other Insurance: Such other insurance as the Board of Directors of the Association shall determine from time to time to be desirable and as may be required by the Federal and State laws.
- (b) Unit Owners' Coverage. Unit Owners shall purchase insurance coverage, at their own expense, as follows:
- (1) Casualty: Each Unit Owner shall be responsible for insuring such Unit Owner's structure and improvements upon the land, and all personal property, in an amount equal to the full insurable replacement value, with all such insurance to be based on current replacement value, but subject to such deductible clauses as are required in order to obtain coverage at reasonable costs. Such coverage shall afford protection against:

- i. Loss or damage by fire and other hazards covered by a standard extended coverage endorsement; and
 - ii. Such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location and use as the building on the land, including, but not limited to, vandalism and malicious mischief.
- (2) **Public Liability:** In such amounts and with such coverage as shall be required by the Board of Directors of the Association. In the event insurance proceeds become payable to a Unit Owner for a casualty that causes damage to any general or limited common element, then such insurance proceeds shall be paid to the Insurance Trustee hereinafter named, rather than to the individual Unit Owner.
- (3) Unit Owners shall furnish copies of their insurance policy declaration pages (documenting that such Unit Owner's policy is in effect) to the Association upon each policy renewal.
- (c) Copies to Mortgagees: One copy of the Association insurance policy, and of all endorsements thereon, shall be furnished by the Association to each mortgagee of a Unit Owner on request.

Premiums

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

Insurance Trustee

All insurance policies purchased by the Association shall be for the benefit of the Association, the Unit Owners, and their mortgagees as their interests may appear. All insurance proceeds paid to the Association that do not inure to the benefit of any Unit Owner,

or the mortgagee of any Unit Owner, shall be retained and expended by the Association in accordance with its duties provided herein and in the Bylaws. In the event insurance proceeds are paid to the Association which inure to the benefit of a Unit Owner or Mortgagee, or in the event insurance proceeds are paid to a Unit Owner for a casualty that causes damage to more than one Unit in the Association, or which causes damage to any general or limited common element, then such proceeds shall be paid to such bank in Montana with trust powers as may be designated as insurance trustee by the Board of Directors of the Association, which trustee is herein referred to as the insurance trustee. Developer hereby designates First Interstate Bank, Livingston Office, as the initial insurance trustee for this project. The insurance trustee shall not be liable for payment of premiums, nor for the renewal or the sufficiency of policies, nor for the failure to collect any insurance proceeds. The duty of the insurance trustee shall be to receive such proceeds as are paid and hold the same in trust for the purposes elsewhere stated in this instrument and for the benefit of the Unit Owners, and their mortgagees.

Proceeds of insurance policies received by the insurance trustee shall be distributed to or for the benefit of the Unit Owners and their mortgagees in the following manner:

- (a) Miscellaneous - Expenses of administration, the insurance trustee, demolition/debris removal costs, and construction or remodeling supervision shall be considered as part of the cost of construction, replacement or repair.
- (b) Reconstruction or Repair - If the damage for which the proceeds are paid is to be repaired or reconstructed by the Association or the affected Unit Owners, the remaining proceeds shall be paid to defray the costs thereof. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners, with remittances to Unit Owners and their mortgagees being payable jointly to them.
- (c) Failure to Reconstruct or Repair - If it is determined, as hereinafter provided, that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial owners,

with remittances to Unit Owners and their mortgagees being payable jointly to them.

- (d) Certificate - In making distribution to Unit Owners and their mortgagees, the insurance trustee may rely upon a certificate from the Association made by its representative or Manager as to the names of the Unit Owners and their respective shares of distribution.

Association as Agent

The Association is irrevocably appointed agent for each Unit Owner and for each mortgage/lienholder to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

Benefit to Mortgagees

Certain provisions in this paragraph entitled "Insurance" are for the benefit of mortgagees or trust indenture beneficiaries of The Point at Del Mar Professional Condominiums parcels, and all such provisions are covenants for the benefit of any mortgagee of a Unit and may be enforced by such mortgagee or beneficiary.

Reconstruction

- (a) Repair After Casualty. If any part of the condominium property shall be damaged by casualty, whether or not it shall be reconstructed or repaired shall be determined in the following manner:
 - (1) Lesser Damage - If a Unit or Units are found by the Board of Directors of the Association to be tenantable after the casualty, the damaged property shall be repaired.
 - (2) Greater Damage - If a Unit or Units are found by the Board of Directors to be not tenantable after the casualty, the damaged property shall be reconstructed or rebuilt if the insurance proceeds are sufficient to complete reconstruction. If it appears, in the Board's sole discretion, that the insurance proceeds are insufficient to complete reconstruction, then, after payment of Miscellaneous expenses as defined above, the remaining insurance proceeds shall be distributed to the beneficial owners, with remittances to Unit Owners and their mortgagees being payable jointly to them.

- (3) Certificate - The insurance trustee may rely upon a certificate of the Association made by its president and secretary to determine whether or not the damaged property is to be reconstructed or repaired.
- (b) Plans and Specifications. Any reconstruction or repair must be substantially in accordance with the plans for specifications and the original improvements, or if not, then according to plans and specifications approved by the Board of Directors and by more than seventy-five percent (75%) of the Unit Owners, including seventy-five percent (75%) of the Owners of all Units the plans for which are to be altered. Any such reconstruction not in accordance with the original plans and specifications must be set forth in an amendment to the Declaration, which amendment shall be prepared and filed of record in accordance with the provisions of such amended filing.
- (c) Responsibility. The responsibility for reconstruction or repair after casualty shall be the same as for maintenance and repair of the condominium property, and the Association shall work with the insurance trustee to carry out the provisions of this Article.
- (d) Assessments. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction or repair for which the Association is responsible, or if at any time during such reconstruction or repair, or upon completion of such reconstruction or repair, the funds for the payment of the costs thereof are insufficient, assessments shall be made against all Unit Owners in sufficient amounts to provide funds to the payment of such costs. Such assessments shall be in proportion to the Owner's percentage of interest in the general common elements.
- (e) Construction Funds. The funds for payment of costs of reconstruction or repair after casualty, which shall consist of proceeds of insurance held by the insurance trustee and funds collected by the Association from assessments against Unit Owners, shall be disbursed in the sound discretion of the trustee and according to the contract of reconstruction or repair, which contract must have the approval of the Board and a majority of the Unit Owners involved.
- (f) Surplus. It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from the insurance proceeds. If there is a balance in a construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be paid to the Association for the use and benefit of the Unit Owners.

25. **AMENDMENT.**

Except as specifically prohibited in this Declaration, by law or public regulation, this Declaration may be amended during the first ten (10) years after it is recorded with the Clerk and Recorder of Park County, Montana, as follows: (a) by the Declarant, until 80% of the Lots are sold; or (b) by at least seventy-five percent (75%) of the votes of the Lot and Unit Owners; and after ten (10) years by the vote of not less than sixty percent (60%) of the votes of all the Lot and Unit Owners. Any amendment by Declarant, or amendment by the required percentage of the Lot and Unit Owners, shall be recorded, along with an executed Certificate by Declarant or by the Chair/President and the Secretary of the Association certifying that the amendment was adopted in accordance with these Covenants, in the Office of the Clerk and Recorder of Park County, Montana. Any covenant which is included herein as a condition of the preliminary plat approval and required by the City of Livingston shall not be amended or revoked without the mutual consent of the Owners, in accordance with the amendment procedures in the Declaration, and the approval of the Livingston City Commission.

26. **CONFLICTS.**

In the event of any conflict between this Declaration and the provisions of the Bylaws of the Association, the provisions of this Declaration shall govern and apply.

27. **WARRANTY.**

The undersigned, Developer gives no warranty, express or implied, on any of the units or common area improvements, but will transfer to the initial owners and the Association all manufacturers and dealers warranties received from any general contractor on appliances, materials, fixtures and equipment, and any warranty given by any general contractor or subcontractors who construct the buildings and common area improvements.

DEVELOPER AND OWNER SPECIFICALLY DISCLAIM ANY LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGE TO ANY PERSON, THE UNITS AND COMMON ELEMENTS, OTHER COMPONENTS OR ANY OTHER REAL OR PERSONAL PROPERTY RESULTING FROM A DEFECT. ALL IMPLIED WARRANTIES, INCLUDING WARRANTIES OR WORKMANSHIP, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND HABITABILITY, ARE EXPRESSLY DISCLAIMED AND DO NOT APPLY.

DATED this 21 day of July, 2008.

MONTANA LAND INVESTMENTS, LLC

BY: W. Russell Currie
W. RUSSELL CURRIE,
Member/duly authorized Agent

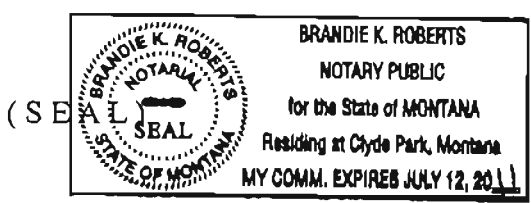
STATE OF MONTANA)
 : ss.
County of Park)

THIS INSTRUMENT was acknowledged before me, on this 21 day of July, 2008, by W. RUSSELL CURRIE, Member and duly authorized Agent of MONTANA LAND INVESTMENTS, LLC.

Brandie K. Roberts

(Printed Name) Brandie K. Roberts

NOTARY PUBLIC for the State of MT
Residing at Livingston, MT
My Commission expires: 7-12-2011



CERTIFICATE

The undersigned, being the duly authorized agent of the Department of Revenue of the State of Montana, within the County of Park, herewith executes the following certificate relating to The Point at Del Mar Professional Condominiums situated on the following described real property:

Lot 1, Lot 2, and the Condo Lot, being tracts of land located in the SE¼ of Section 14, Township 2 South, Range 9 East, P.M.M., Park County, Montana, being all of Block 38 of the Palace Addition to the City of Livingston, Park County, Montana, and the adjoining vacated alleys and streets on file and of record in the office of the County Clerk and Recorder of Park County, Montana, according to Subdivision Plat No. 545, on file in the office of the Clerk and Recorder of said County.

The undersigned herewith certifies that:

1. The name The Point at Del Mar Professional Condominiums is in compliance with 70-23-303, MCA, and
2. All taxes and assessments due and payable for the said real property have been paid to date.

DATED this 22 day of July, 2008.

MONTANA DEPARTMENT OF REVENUE

By: Brandy L. Butler

SIGNED BY BRANDY L. BUTLER BEFORE ME, JUNE LITTLE
NOTARY PUBLIC, THIS 22ND DAY OF JULY, 2008

June Little
my Commission Expires
1-21-2010
RESIDING IN LIVINGSTON, M.



After recording, return to:
Montana Land Investments, LLC
1106 West Park, Box 422
Livingston, MT 59047

REGISTERED PROFESSIONAL SURVEYOR'S CERTIFICATE

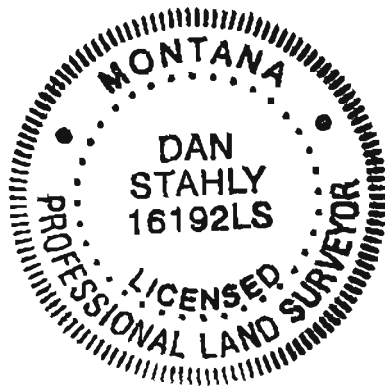
The undersigned, being a duly registered professional surveyor in the State of Montana, herewith certifies the following:


That pursuant to the provisions of MCA § 70-23-306(2), the site layout and floor plans for THE POINT AT DEL MAR PROFESSIONAL CONDOMINIUMS located on:

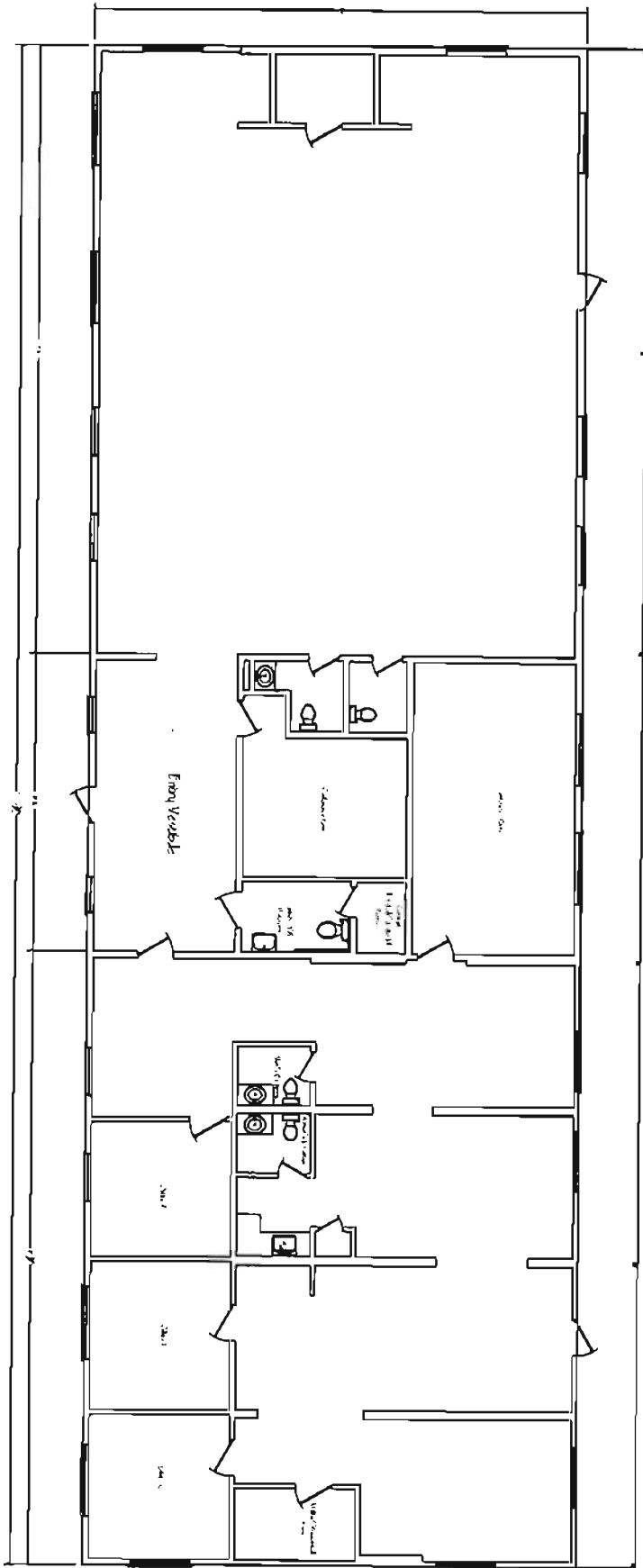
A tract of land located in the southeast ¼ of Section 14, Township 2 South, Range 9 East, P.M.M., Park County, Montana, being more particularly described as the Condo Lot on Plat S/D 545 on file and of record in the office of the Clerk and Recorder of Park County, Montana.

as duly filed with the Declaration thereof (and attached hereto as Exhibit "B"), depict the site layout of the units and floor plans of the buildings constructed as of this date, or to be constructed during the ongoing development of Phase I of the condominium project.

Dated: 7/15/08




[Print Name] Dan Stahly
Registered Professional Surveyor
Registration No. 16192 LS



Point at Del Mar
Building "A" Upper Floor
As-Built Floor Plan



Office 2

Office 1

As-Built Floor
Upper Floor

Scale: 1/8" = 1'-0"

Genesis Design and Drafting, LLC

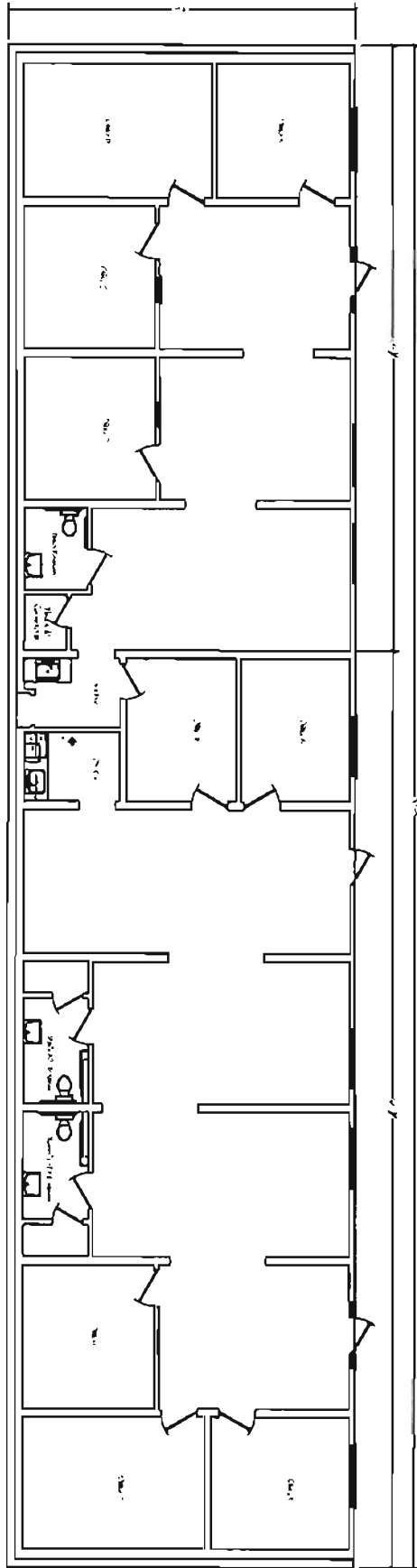
1125 North Rock
Suite 100
Bozeman, MT 59717
Phone: (406) 592-1111
Fax: (406) 592-1112
www.genesisdesign.com

Montana Land Investments
Point at Del Mar
Building A, As-Built Plans

These plans were prepared by the Architect for the purpose of construction. They do not constitute a contract. The contract documents, including the General Conditions, shall govern. The Architect is not responsible for construction methods or for the accuracy of the information provided by others. The Architect is not responsible for the construction of the building or for the safety of the building during or after construction.

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Blumberg No. 5208
EXHIBIT
"B"



Point at Del Mar
Building A, Lower Floor
As-Built Floor Plan



Office 3

Office 4

As-Built Floor
Lower Floor
2

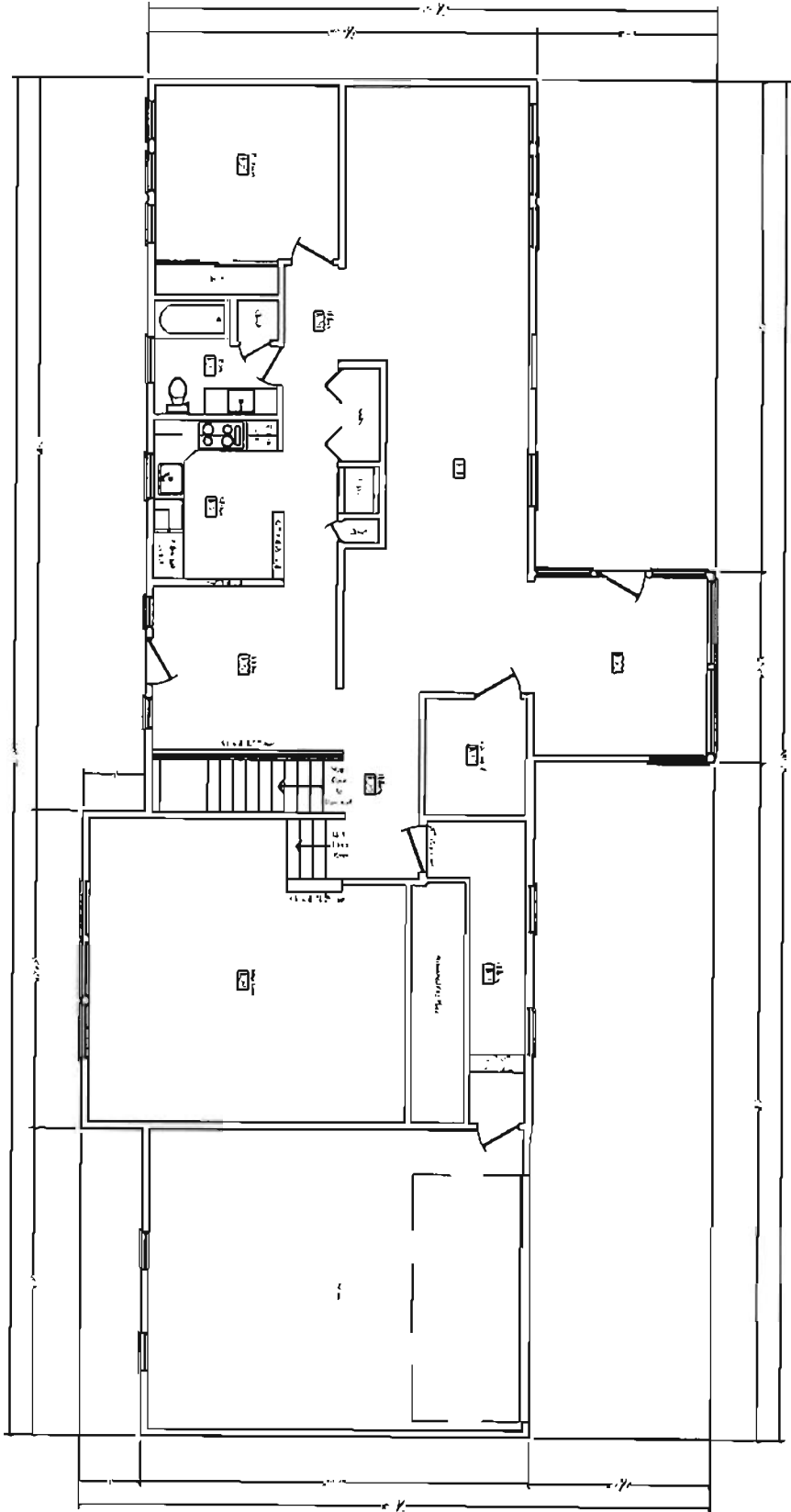
DATE: 11/11/11
BY: [Signature]

Genesis Design and Drafting, LLC
 12314 Old Orchard
 Suite 100
 San Diego, CA 92131
 Tel: 619-444-1111
 Fax: 619-444-1112
 Email: info@genesisdd.com
 www.genesisdd.com

Montana Land Investments
 Point at Del Mar
 Building A, As-Built Plans

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Point at Del Mar
Building "B"
As-Built Floor Plan




As-built floor
PLAN 1107

11/11/11

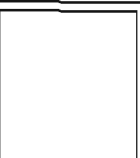
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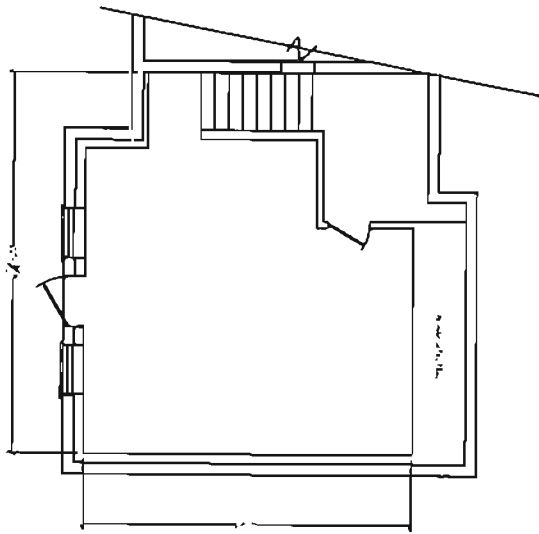
1200 W. 10th Street
Billings, MT 59102
Phone: 406.251.1111
Fax: 406.251.1112
www.genesisdd.com



Montana Land Investments
Point at Del Mar
Building B - As-Built Plans

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described herein.





Point at Del Mar
 Building 119911
 Partial Basement As-Built Floor Plan
 (Floor Dimensions)



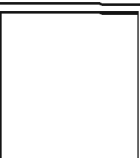
As-Built floor
 lower floor
 2

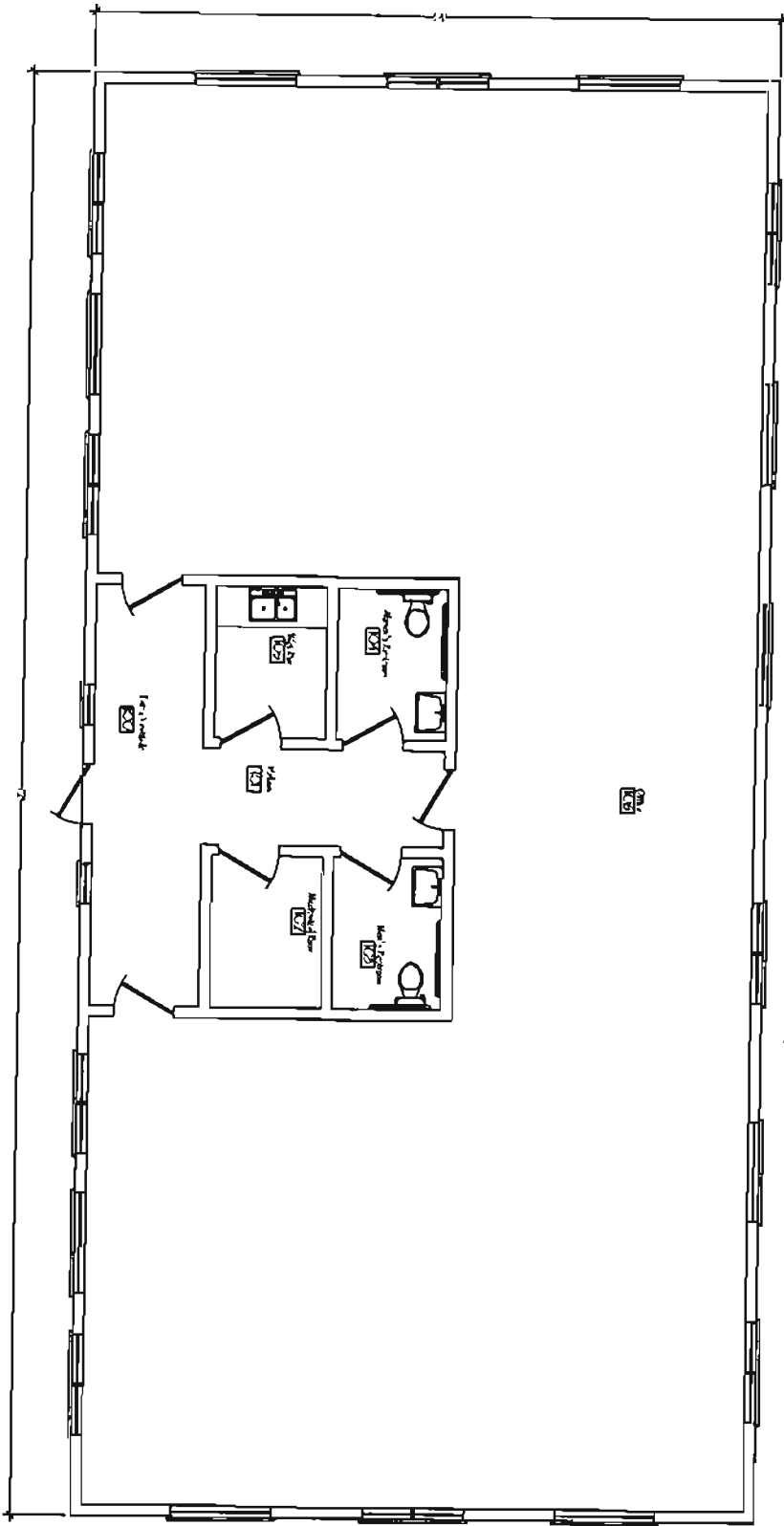
DATE: 10/20/2018
 TIME: 11:11 AM

Genesis Design and Drafting, LLC
 1225 East 10th Street
 Bozeman, Montana 59717
 Phone: (406) 592-1234
 Fax: (406) 592-1235
 Email: info@geniusdd.com

Montana Land Investments
 Point at Del Mar
 Building B, As-Built Plans

10/20/2018
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Building C
As-built Floor Plan



As-built floor plan

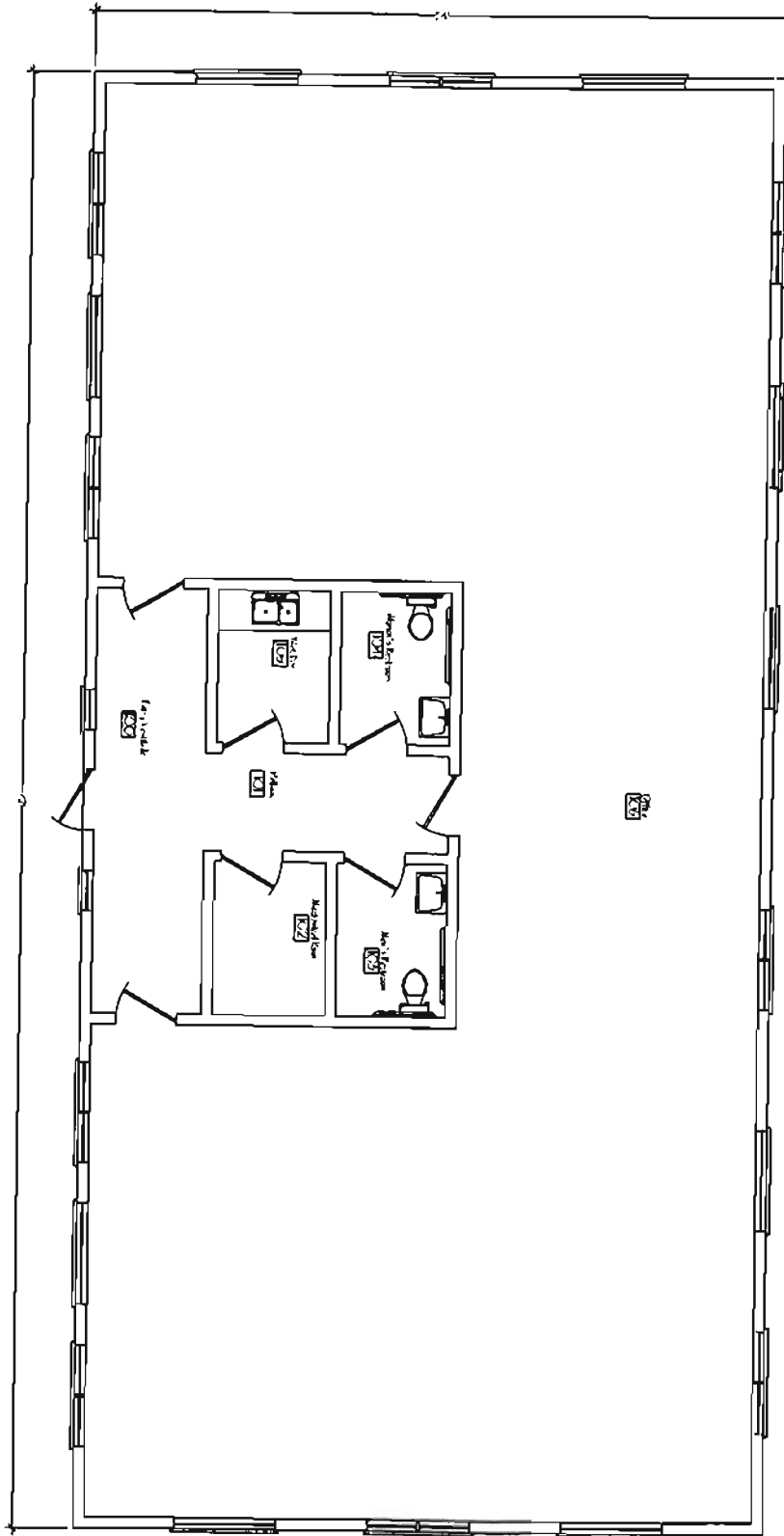
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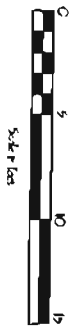
Montana Land Investments
 Port of Del Mar
 Building E, As Built Floor Plan

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Scale: 1/8" = 1'-0"



Building D
As-built Floor Plan



As-built floor plan

DATE: 11/11/2015
PROJECT: 15-001
DRAWN BY: JLD

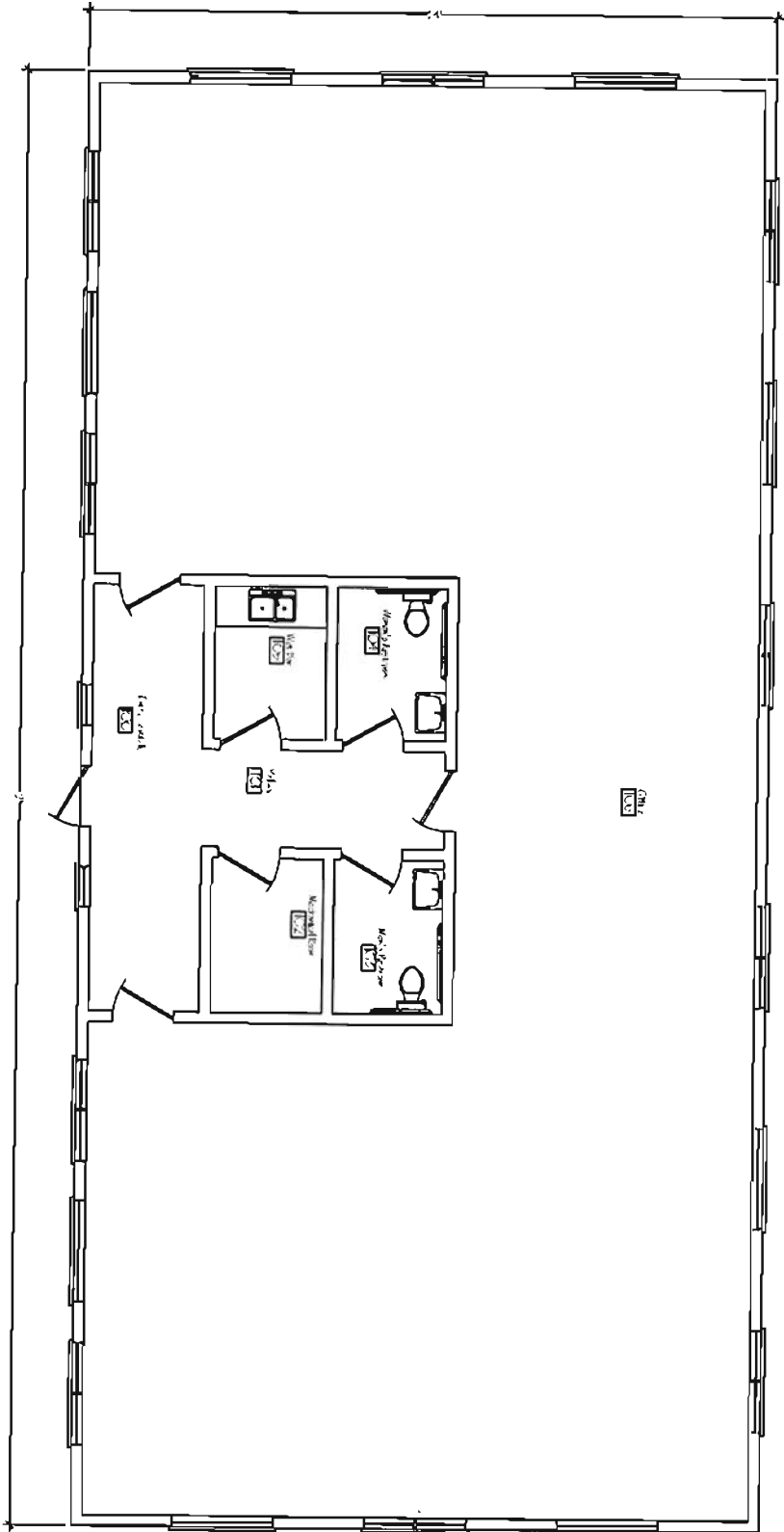
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Montana Land Investments
Point at De Mar
Building E, As Built Floor Plan

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Building E,
As-Built Floor Plan



As-Built Floor Plan

1:1000

Genesis Design and Drafting, LLC

1000 1st Ave. SW
 Helena, MT 59601
 Phone: 406-442-1000
 Fax: 406-442-1001
 Email: info@genesisdd.com

Montana Land Investments
 Port at Del Mar
 Building E, As-Built Floor Plan

NOT TO SCALE

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DATE: 10/15/2014

BY: [Signature]

After recording return to:

Montana Land Investments, LLC
1106 West Park, Box 422
Livingston, MT 59048

350481 Fee: \$154.00 Roll: R 273 Page(s): 22
Park County Recorded 7/22/2008 At 10:02 AM
, Clk & Rcdr By *[Signature]* Return To:
MONTANA LAND INVERSTMENTS, LLC 1106 WEST PARK
BOX 432 LIVINGSTON, MT 59047

DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THE POINT AT DEL MAR PROFESSIONAL CONDOMINIUMS

THIS DECLARATION of Covenants, Conditions and Restrictions (“Covenants”) regulating and controlling the use and development of the property as hereinafter described is made, published, adopted, imposed and declared on the property herein described by MONTANA LAND INVESTMENTS, LLC, a Montana Limited Liability Company of 1106 West Park, Box 422, Livingston, MT 59047, hereinafter referred to as “Declarant”, the Owner of the lots and lands within The Point at Del Mar Professional Condominiums, described as Lot 1, Lot 2, and the Condominium Lot on SD Plat 545, hereinafter referred to as the “Property”, or the “Development”.

The Point at Del Mar Professional Condominiums is a Development located within the City of Livingston, and is subject to the Livingston City Ordinances, including Zoning Ordinances. The Development consists of a commercial area with commercial uses as are allowed under the Zoning Regulations and under these Covenants, Conditions and Restrictions.

NOW THEREFORE, Declarant hereby declares that all of the Property shall be owned, held, sold, conveyed, encumbered, leased, used, occupied and developed subject to the following

Covenants, Conditions and Restrictions (“Covenants”). The Covenants are established for the purpose of protecting the value and desirability of the Property, the aesthetic nature of the Property and promoting the quality, appearance and compatibility of design of the buildings, lawns, landscaping and other improvements located thereon and for the orderly development of the Property and the administration thereof. The Covenants shall run with the Property and be binding on all parties having a right, title or interest in the described Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner of any part thereof.

ARTICLE I

DEFINITIONS

Section 1:

“Declaration” shall mean the condominium declaration for the Point at Del Mar Professional Condominiums, filed contemporaneously with these Covenants. In the event of any conflict between the terms of the Declaration and these Covenants, the terms of the Declaration shall prevail.

Section 2:

“Architectural Design” shall mean the structures and landscape design standards set forth in the Architectural guidelines for dwellings, buildings, landscaping and other structures within the Development.

Section 3:

“Del Mar Architectural Review Committee (“DMARC”) shall mean the committee appointed by the Declarant or Board of Directors of the Association consisting of one or more persons responsible for the review of the architectural design of all dwellings, buildings, landscaping and other structures and improvements in the Development pursuant to the Architectural Guidelines, these Covenants, the City of Livingston Zoning Regulations and the Covenants.

Section 4:

“Association” means The Point at Del Mar Professional Condominiums Owners Association, being all the unit owners acting as a group in accordance with the Declaration and the Association’s duly adopted Bylaws.

Section 5:

“Board” shall mean the Board of Directors of the Association, elected or appointed pursuant to the Bylaws of the Association that the non-profit corporation establishes to administer and enforce the terms and conditions of these Covenants.

Section 6:

“Building Footprint” shall mean that portion of each Lot within the set backs and within which the structures are allowed to be located. Structures may include commercial buildings, condominiums, townhouses, decks, porches and garages. Improvements, such as utilities, parking, landscaping and site access may be located outside of the Building Footprint. Building Footprints delineated on the preliminary development plan submittal are conceptual in terms of approval. Final approval is contingent upon individual site plan review by the Declarant, the Association, and by the City of Livingston Building Department, during the building permit stage.

Section 7:

“Bylaws” shall mean the Bylaws for the operation of the Association adopted by the Members of the Association, or by its Board of Directors, and as amended from time to time.

Section 8:

“Common Easement(s)” shall mean the easement(s) reserved herein, or on the plat or by other recorded document, unto the Declarant and/or the Association, utility companies or the City of Livingston in, above, or under the Lots, common areas, and common parking areas for the construction, installation, repair and maintenance of common facilities and landscaping for the benefit

of the Development and the Owners Association, including, but not limited to, easements for common landscaping, lighting, walkways, sidewalks, boulevards, parking, drainage areas, water and sewer facilities, fire protection facilities, utilities and lines, communication systems, irrigation sprinkler systems, storm water facilities, mail boxes, signage, and other improvements, equipment, or amenities installed or services rendered to the Lot and Unit Owners or the Associations for the common use and enjoyment of all Lot and Unit Owners, residents, their guests, invitees and the licensees.

Section 9:

“Common Areas” shall mean the common easements, walkways, sidewalks, streets, access, parking and landscaping areas, drainage easements retention/detention storm water facilities, common lighting, and other common areas within the Development delineated on the plat or described in these Covenants in which an easement, right or ownership is reserved unto the Developer for installation and in either Association for the purposes of repairs, replacement or maintenance thereof.

Section 10:

“Common Elements” shall mean common easements, facilities, improvements, street lighting, signage and equipment in the Development placed or installed in, on or under the common areas, including storm water facilities, irrigation systems, sidewalks, pathways, curbs, gutters or other infrastructure designated or reserved for the use, benefit or enjoyment of the Association, Lot and Unit Owners, guests, residents, invitees, and licensees, or for the functionality of the Development and which are to be maintained, replaced and repaired by the Association.

Section 11:

“Common Services” shall mean services provided by the Association, public entities, or other authorized provider, to the Association, Lot and Unit Owners and residents of the Lots, and to the common areas and common elements for the purposes set forth herein, and such other and further services provided as shall benefit the owners and residents of the Lots, Units and Association within the Development and the common areas and common elements within the Development.

Section 12:

“Declarant” or “Developer” shall mean the developer of the Property, Montana Land Investments, LLC, or its successors and assigns. The original developer may assign its rights to develop the Property or any part thereof to another person or entity, which Assignee shall have the rights and duties of Declarant set forth herein, with respect to such Property.

Section 13:

“Architectural Guidelines” shall mean those guidelines that shall be established and adopted by the Declarant and/or the Board of Directors of the Association to establish the architectural and landscape design standards for buildings, structures, improvements and landscaping and to control the development of condominium units and commercial units on the Lots within the Property.

The Architectural Guidelines shall contain minimum standards for the architectural design and construction of all structures within the Property, the landscaping/fencing of all Lots within the Property, and other guidelines as the Declarant or the Board, in its judgment, deems appropriate. The Architectural Guidelines may vary from phase to phase within the Development and may vary from the type of structure.

Section 14:

“Storm Water Retention/Detention Facilities” shall mean ground level depressions or subsurface pipe structures designed to limit the storm water runoff from the development. Storm water drainage plans, including storm water retention/detention facilities, shall be designed in accordance with the City of Livingston design standards.

Section 15:

“Development” shall mean any alterations and improvement of the natural land surface and subsurface, including streets, sidewalks, lighting, common areas, common open space, common elements and facilities, condominiums, commercial buildings, structures, water system, sewer system,

landscaping and other improvements placed on the Property to accommodate the use of the Lots or service the Development.

Section 16:

“Lot or Lots” shall mean and refer to any of the Lots which are shown upon the recorded Development plat of the Property filed by the Declarant in the Office of the Park County Clerk and Recorder.

Section 17:

“Owner” or “Unit Owner” shall mean and refer to the record Owner of a Lot or a Unit, whether one or more persons or entities, including contract buyers and owners of a beneficial interest, but excluding those having such interest merely as security under a Mortgage, Deed of Trust, or Contract for Deed, for the performance of an obligation on a loan.

Section 18:

“Plat” shall mean the final subdivision plat of The Point at Del Mar Professional Condominiums development plan filed of record with the Clerk and Recorder of Park County, Montana.

Section 19:

“Unit” shall mean a single building, or portion of a building, on a Lot, which may be separately owned, or separately rented, including a condominium unit in a building, and intended for independent commercial use. By way of illustration, a single commercial building on a single Lot would be one (1) Unit. An office building on a Lot with four condominium office suites would be four (4) Units. A duplex with two separate commercial units would be two (2) Units.

Section 20:

“Structure” shall mean anything built or placed on, or above, ground level excluding ground level features such as streets, off street parking areas, driveways, sidewalks, pathways or low profile patio or entrance slabs contiguous to structures.

ARTICLE II

PROPERTY RIGHTS

Section 1 – Owners’ Easements of Enjoyment:

Each Owner of a Lot or Unit, his or her guests, invitees, and licensees, shall have a right and easement of enjoyment in and to the common areas and common elements located in the Development which shall be appurtenant to and shall pass with title to every Lot and Unit, subject to the following provisions:

(a) The right of the Association to charge Owners reasonable assessments for the repair, maintenance and replacement of the common areas and common elements.

(b) The right of the Association to establish and publish rules and regulations, including speed limits, for the use of the common streets, common open space, common areas and common elements, and to impose reasonable sanctions for violations of published rules and regulations.

(c) An easement is reserved unto the Declarant in the Development over, under and in the utility easements, common areas, and common elements for the installation of the streets, sewer and water system, storm drainage system, landscaping and other common elements. An easement is reserved unto the Association for the maintenance, repair and replacement of the common elements, common facilities in, on and under the common areas.

(d) In the event a Lot or Unit Owner improves a parking lot, installs landscaping or storm drainage facilities in, on or under a lot or common area, as required by the City or the Association and later on an adjacent Lot or Unit Owner constructs a building and benefits from the first Lot Owner’s improvements, such as parking, storm drainage or landscaping, the second Lot Owner shall reimburse the first Lot Owner for his prorated share of such benefit.

ARTICLE III

ASSOCIATIONS, MEMBERSHIP AND VOTING RIGHTS

Section 1 – Association, Management, Operation and Administration:

The Association shall be managed, operated and administered by a Board of Directors. The Bylaws for the Association are recorded of even date herewith, and the contents of such Bylaws are incorporated herein. The Board shall administer the Bylaws for the Association, and in accordance with the terms of the Declaration and these Covenants..

Section 2 – Association Membership:

Every Owner of a Lot or a Unit shall be a Member of the Association. Membership is mandatory and appurtenant to, and may not be separated from, ownership of a Lot or a Unit.

Section 3 – Voting Rights:

Each Owner of a Lot or Unit in the Association shall have one vote per membership interest as defined in the Bylaws of the Association.

Section 4 – Purpose of Association:

The purpose of the Association is to govern, promote, manage, administer, maintain and operate the Property and the common areas, common elements, common easements, common equipment, common facilities, and common services through its Board of Directors who shall also have the authority to enforce the Declaration, these Covenants, and the Bylaws of the Association, and perform the powers, duties and responsibilities (express or implied) imposed upon the Association by the Declaration, these Covenants, the Bylaws for the Association, regulations of the State of Montana, and ordinances of the City of Livingston, and for the purpose of establishing a budget and assessing the Owners for the costs, fees and expenses of the Association. The Board of Directors shall have the powers and duties necessary to enforce and carry out the Association's functions as set forth in the Declaration, these Covenants, Montana law; and as set forth in the Articles of Incorporation, Bylaws and Rules and Regulations of the Association, and any amendments thereto.

Section 5 – Association’s Power to Assess:

The Association, through its Board of Directors, shall have the authority to assess and levy such charges and assessments, as provided in the Declaration and these Covenants, to the Members for the costs of governing, management, administration, operating and maintaining the common areas, common easements, common elements, common services and other common expenses and amenities as are reasonably necessary to carry out its responsibilities and duties, including expenses for administering and enforcement of these Covenants, including prosecuting and defending claims and lawsuits and the cost and fees of hiring professional assistance such as architects, accountants and attorneys. The Bylaws may elaborate the purpose and use of assessments and methods of procedurally establishing and collecting assessments.

Section 6 – Special Powers and Duties of the Declarant and Board of Directors of the Association:

The Declarant, or the Board of Directors of the Association, by a majority vote, may approve boundary line adjustments or changes in the location of roads, sidewalks, and utility easements, subject to any required approval of regulatory authorities, including the City of Livingston, and subject to compliance with the Declaration, these Covenants, and applicable laws and regulations.

In addition to the powers and duties set forth in these Covenants or by Montana law, the Board shall have such powers and duties as are set forth in the Bylaws which are recorded of even date herewith, and are incorporated herein.

ARTICLE IV

OBLIGATION AND LIEN FOR ASSESSMENTS

Section 1 – Creation of the Lien and Personal Obligation of Assessments:

Each Owner of any Lot or a Unit by acceptance of a deed, contract for deed, or other instrument of conveyance, consents to the creation of a lien against the Owner’s real property to the extent of non-payment of any assessment for maintenance or otherwise levied by the Association, in accordance with the Declaration and Bylaws.

ARTICLE V

ADDITIONAL COVENANTS

Section 1 – Mandatory City of Livingston Covenants:

Notwithstanding anything to the contrary in the Declaration, these Covenants, or the Bylaws, the governing body of the City of Livingston, City Commissioners, has imposed, through the preliminary plat approval, the following mandatory covenants, none of which shall be amended, modified or changed without the express written approval of the Commissioners, including the following covenants:

- (a) All structures shall be constructed by each Lot owner in compliance with the then-current applicable International Building Code and International Residential Code.
- (b) The Association shall be responsible for the control of noxious weeds within the Common Areas.
- (c) Membership in the Association shall be mandatory for each owner of a Lot and Unit, who shall be required to pay assessments to the Association for taxes, insurance, maintenance, repair and replacement of Common Areas and Common Easements.
- (d) The Association shall be responsible for the administration, operation and maintenance of all interior Common Areas and Common Elements.
- (e) Pets shall be controlled and maintained on a leash or under the good control of each owner and not allowed to roam freely within the Development and the Owner shall comply with the City of Livingston Ordinances in regard to pets.

Section 2 – Lawn Care and Weed Control:

The Declarant shall be responsible for the installation of the lawns and basic landscaping on the Common Areas in Phase 1 of the Development. The Association shall be responsible for the care and maintenance of the grounds after installation by the Declarant. Unimproved Lots shall be kept free of weeds and mowed on a regular basis. If a Lot must be cleared of weeds and if the Owner fails to do so after notice from the Association, the weeds may be cleared and controlled by the

Association and the cost and expense associated with such weed maintenance shall be assessed to the Lot Owner and such assessment may become a lien if not paid within thirty (30) days of the mailing of such assessment.

The control of noxious weeds by the Association on those areas for which the Association is responsible and the control by individual Owners on their respective Lots shall be as set forth and specified under the Montana Noxious Weed Control Act, § 7-22-2101, et seq., MCA and the rules and regulations of the Park County Weed Control District Development Noxious Weed Planning Requirements as the same exist from time to time.

Section 3 – Noxious, Offensive, or Hazardous Activities, Lighting and Sound:

No Noxious, offensive or hazardous activities shall be permitted upon any portion of the Property nor shall anything be done or placed upon any portion of the property which is, or may become, a nuisance to others.

All Development lighting provided shall conform to the Livingston zone code. Details and specifications, including bulb type and size, and locations shall be set forth in the Architectural Guidelines.

In addition to current City standards, all outdoor lighting, residential, commercial or otherwise, shall be free of glare and shall be fully shielded or shall be indirect lighting. No direct lighting shall be emitted beyond a property's lot line. No ranch lights or unshielded lights shall be permitted. No mercury vapor lights shall be permitted. Alley lights shall be fully shielded lights. For the purposes of this paragraph, the following definitions shall apply:

- (a) Fully shielded lights: Outdoor light fixtures shielded or constructed so that no light rays are emitted by the installed fixture at angles above the horizontal plane;
- (b) Indirect light: Direct light that has been reflected or scattered off of other surfaces;
- (c) Glare: Light emitting from a luminaire with an intensity great enough to reduce a viewer's ability to see, and in extreme cases, causing momentary blindness; and

- (d) Outdoor lighting: The nighttime illumination of an outside area or object by any man-made device located outdoors that produces light by any means.

No sound shall be allowed on any Lot or other portion of the Property which is unreasonably loud or annoying, including, but not limited to, speakers, loud parties, barking dogs, horns, whistles, bells or any activity which disturbs the peace and quiet of the neighborhood except as shall be necessary for construction of the buildings and improvements and maintenance of the Lots.

Section 4 – Preservation of Common Areas and Facilities:

The Owners of all Lots and Units, and their guests, invitees, licensees or employees, shall at all times conduct their use and activities in a manner that will preserve the peace, quiet, and integrity of the Development, its common areas, and its facilities.

Section 5 – Lot Owner’s Responsibility for Taxes, Insurance, Security and Interior Maintenance:

Each Owner is responsible for all real estate taxes and assessments on his Lot or Unit, and for all maintenance, repairs, replacement, security and insurance for fire, all risk, theft, perils and liability insurance on their Unit structures and improvements, all as is more specifically set forth in the Declaration.

Section 6 – Exterior Maintenance – Common Walls and Roofs – Easements.

The Lot or Unit Owners shall be responsible for proper exterior maintenance, repairs and cleanliness of their own buildings, structures, planting areas, decks and patio areas including roof, paint, siding, garages, window trim, driveway, drainage, weeds, debris and landscaping including lawns and trees. No outdoor storage of personal property is permitted on the Property. If there is a common roof over the structures or a common wall between structures, the owners of the structures thereof shall be jointly responsible for the repair, maintenance and replacement of the common roofs and common walls. If there is a structural wall on the Lot line, the owner of the wall shall have the responsibility and right to maintain the wall. The Owner of a structure on a lot line shall also have an easement on the adjoining property as is reasonable and necessary to maintain, repair or replace the

structure and for any roof encroachment. An easement is reserved to each Lot and Unit Owner, and the Association to repair, maintain and replace structures and improvements for which the Owner or Association has the ownership of or responsibility therefore. If a Lot owner or Unit Owner fails to satisfactorily maintain and repair the exterior of their structure (including paint) and patio areas, then, after thirty (30) days notice to the Lot Owner to correct the deficiencies, the Association may, at its discretion, provide maintenance, cleaning and repairs as are reasonable to bring the exterior into compliance with the standard of maintenance and repair of the other Lots and improvements in the Development, and the Board shall separately assess the Lot Owner(s) for the costs therefore, which costs shall be the personal obligation of the Lot or Unit Owner and a lien on the Lot.

Section 7 – Permitted Uses:

The Property is for the purpose of non-industrial commercial activities. A list of commercial uses on the Property that will be presumed to be acceptable is attached hereto as Exhibit “A”. Other proposed commercial uses will be reviewed by the Board and approved/disapproved on a case-by-case basis, except for those activities designated as non-permitted uses in Article V, Section 8 hereof.

Section 8 – Non-Permitted Uses:

The following commercial uses are hereby expressly prohibited: bars (unless the bar is part of a restaurant facility), gambling, and adult entertainment/adult bookstores. This Covenant may only be amended by the affirmative vote of at least ninety percent (90%) of the Lot Owners.

Section 9 – On-Site Burning:

In an effort to protect and preserve the Property and the investments of the Property Owners, on-site burning is prohibited. This prohibition includes, but is not limited to the burning of trash, debris, garbage, waste of any type or nature, grass clippings, leaves and the like, in containers or in open areas.

Section 10 – Junk Vehicles, Equipment or Other Miscellaneous Debris:

No junk vehicles, equipment or other miscellaneous garbage or debris shall be allowed to accumulate on any Lot within the Property.

Section 11 – Discharge of Firearms:

The discharge of firearms for any purpose within the Property is prohibited.

Section 12 – Satellite Dishes:

No satellite dish with a diameter in excess of 36” shall be installed on a Lot or building.

ARTICLE VI

GENERAL PROVISIONS

Section 1 – Access; Certain Additional Improvements:

The Association is granted and shall have the irrevocable right and easement for access to each Lot during reasonable hours as may be necessary for the maintenance, repair or replacement of the Common Area facilities and easements, for inspection to insure compliance with these Covenants, for making repairs necessary to prevent damage to the common facilities or easements or to a Lot, and for exterior maintenance or repairs to the improvements or landscaping.

The Declarant and Association reserve full rights to conduct landscaping activities in, on and under the Common Areas, and the right (but not the obligation) to construct or implement additional improvements (including, without limitation, fencing, signs, outdoor lighting and facility maintenance sheds) on the Common Areas. After any such improvements are installed, the Association shall maintain the same.

Section 2 – Creation of Volunteer Committees and Architectural Review Committee:

(a) Volunteer Committees:

The Board of each Association, by a majority vote, shall be authorized, in its discretion, to create such volunteer committees as the Board, in its judgment, deems appropriate and in the best interest of the Property Owners. The Members of the committee shall serve at the pleasure and direction of the Board and shall have such authority and duties as shall be prescribed by the Board.

(b) DMARC:

The Board of the Association, by a majority vote, shall appoint an Architectural Review Committee known as the Del Mar Architectural Review Committee (DMARC), which Committee shall be composed of three (3) or more persons (who need not be Members) who shall have the authority and be responsible for the review and approval of the construction of all structures, landscaping and improvements pursuant to the Architectural Guidelines, the Declaration, and these Covenants. The Board's appointment of individuals to the DMARC shall be subject to the approval of the Declarant as long as the Declarant owns ten percent (10%) or more of the Units within the boundaries of the Development.

The DMARC shall act by a majority vote. It shall be the responsibility of the DMARC to review all plans and specifications for the construction of all structures and improvements on the Lots to ensure that all structures and improvements are to be constructed in accordance with the Declaration, these Covenants, and the Architectural Guidelines. The DMARC shall approve, disapprove, or conditionally approve of plans within ten (10) working days after submittal.

The Board of the Association and the DMARC shall have concurrent rights to enforce the Architectural Guidelines. The DMARC shall have the right and the flexibility to grant deviations from said Architectural Guidelines when, by a majority vote of all Members of the Committee, a deviation is deemed appropriate. Any deviation must be approved by the Board of Directors of the Association, and, if required, by the City of Livingston through the building permit process, or other required approval process. No structure, improvement, or fence of any type or nature shall be placed, constructed, remodeled, commenced or remain on a Lot without first presenting building plans and specifications and landscape plans to the DMARC and receiving written approval from the DMARC. The approval by the DMARC means that the applicant's plans

comply with the Declaration, these Covenants, and the Architectural Guidelines. The DMARC shall affix a stamp of approval to the final approved set of plans. The DMARC may impose conditions to be fulfilled prior to the final issuance of a written approval. If the conditions require the plans to be modified, the detail of the modification shall be submitted to the DMARC for final written approval and the approval stamp of the DMARC. The DMARC shall act expeditiously when a request for a written approval is submitted. The Board, in its judgment, may levy a reasonable fee to be paid with all requests for approvals, which fee shall be used to offset the costs involved. Notwithstanding anything herein to the contrary, the Declarant may appoint the majority of the DMARC until 90% of the Units within the boundaries of the Development are sold to third parties. All structures and improvements constructed on the property by Declarant shall be conclusively presumed to be in compliance with the Architectural Guidelines.

The Board may amend the Architectural Guidelines by a majority vote. The City of Livingston must approve any amendment that relates to any City Code or Zoning Ordinance. The Declarant, acting as the Board, shall appoint the initial review committee within a reasonable time after the recording of these Covenants and the Declaration, in order to promote orderly development and construction on the Property. A Lot Owner may appeal a decision by the DMARC to the Board. The decision of the DMARC may be changed, amended or modified only if the Board finds the DMARC decision to be arbitrary, unreasonable, or not in accordance with the Declaration, these Covenants, or the Design Review Guidelines.

Any deviation from the plans and specifications must be approved by the DMARC before construction thereof. The DMARC reserves the right to inspect the construction of buildings to insure compliance. However, the Owner and the

contractors bear the duty and responsibility to construct the structures and improvements in accordance with the plans and specifications.

(c) **CITY OF LIVINGSTON BUILDING PERMIT REQUIRED:**

In addition to obtaining a written approval from the DMARC, the Owners must also make application for a building permit from the City of Livingston and receive a signed building permit before construction of any improvements on a Lot.

The DMARC's written approval of the plans and a stamp of approval on the final plans must be attached to all City of Livingston building permit applications.

Section 3 – Landscaping:

The Association is responsible for installing and maintaining basic landscaping features (grass, shrubs, etc.) upon the common elements. In the event a Unit Owner(s) wishes to enhance the landscaping features in and around a Unit, such enhancements must first be reviewed and approved by the DMARC.

Section 4 – Fences:

The location, type and material of fencing allowed shall be set forth in the Architectural Guidelines. Any allowed fencing shall be constructed in conformance with the Architectural Guidelines and have written approval of the DMARC.

Section 5 – Building Codes:

All structures shall be constructed by the Lot Owner and their contractors in compliance with the most current edition of the International Building Code and International Residential Code. Spark arrester screens shall be placed on all fireplace and wood stove chimneys. Smoke detectors shall be installed on each level of all Units. The DMARC may inspect but shall not be responsible for inspections or insuring that all structures are constructed in accordance with the Codes. The Owners and their Contractors shall be solely responsible for Code construction. However, the DMARC may require the Owner to provide reasonable documentation or evidence that a structure is built in accordance with the Codes.

Section 6 – Design of Condominiums and Commercial Buildings:

The Architectural Guidelines establish the general design of the condominiums and the commercial buildings. The DMARC reserves the right to approve or disapprove the building design of any building or Unit. The Development appearance is intended to incorporate modern commercial design, with western accents. The DMARC has the authority to act to ensure that this intention is carried out as near as is reasonably possible.

Section 7 – Water User Facilities:

The Livingston Ditch crosses the northwesterly portion of the Development property. The Ditch is in active use, and the Declarant and its successors hereby acknowledge the right of the owners of the Livingston Ditch to use and maintain the Ditch. Therefore, this Development will be designed not to impede the flow of irrigation water to downstream properties.

Section 8 – Storm Water Maintenance Plan:

The storm drainage control facilities for the Development consist of overland flow of storm runoff into detention areas located throughout the site. Some of the detention areas are ground level ponds, and some are below ground level pipe systems. The final grades for the Development have been designed so that storm runoff will flow unrestricted to the detention areas from the streets, buildings, driveways, and landscaping. The purpose of the detention areas is to reduce the peak runoff from the development, and to remove settleable solids, silt, oils, grease and other pollutants. Some of the detention area outlets will discharge settled storm runoff directly to the drainage ditch.

The Association will be responsible for maintenance of the storm drainage detention areas and outlet structures within the development. The outlet structure of each detention area shall be checked periodically, and cleaned if any accumulation of sediment is found. The outlet pipes shall also be checked for sediment and cleaned on a routine basis. Any significant accumulation of sediment in the detention areas themselves shall be removed to retain capacity. No fill or other materials shall be placed or stored in the detention areas, as this would reduce their storage capacity.

ARTICLE VII

ENFORCEMENT, DURATION AND AMENDMENT

Section 1 – Enforcement.

The Association, through its Board of Directors, or Declarant shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, assessments and charges now or hereafter imposed by the provisions of the Declaration, these Covenants, the Bylaws, or State/local law and regulations, including legal actions for restraining orders, injunctions, damages, costs and reasonable attorney's fees incurred in such enforcement. Failure by the Association or the Declarant to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. If the Declarant or the Association refuses to enforce a covenant or other requirement, a group of five (5) or more Lot or Unit Owners may enforce the covenant by legal proceedings. In the event the Association, Declarant or group of Owners shall elect to enforce any restriction, condition, covenant or reservation contained herein, the prevailing party shall be entitled to receive attorney's fees and costs from the non-prevailing party, as determined by the Court.

Section 2 – Duration of Restrictions:

All of the covenants, conditions, and restrictions set forth in these Covenants shall continue and remain in full force and effect in perpetuity against said property, Lots and the Owners thereof, subject to the right of amendment or modification provided for in these Covenants.

Section 3 – Amendment:

Except as specifically prohibited in these Covenants, by law or public regulation, this Declaration may be amended during the first ten (10) years after these Covenants are recorded with the Clerk and Recorder of Park County, Montana, as follows: (a) by the Declarant until 80% of the Lots are sold; or (b) by at least seventy-five percent (75%) of the votes of the Lot and Unit Owners; and after ten (10) years by the vote of not less than sixty percent (60%) of the votes of all the Lot and Unit Owners. Any amendment by Declarant, or amendment by the required percentage of the Lot and Unit

Owners, shall be recorded, along with an executed Certificate by Declarant or by the Chair/President and the Secretary of the Association certifying that the amendment was adopted in accordance with these Covenants, in the Office of the Clerk and Recorder of Park County, Montana. Any covenant which is included herein as a condition of the preliminary plat approval and required by the City of Livingston shall not be amended or revoked without the mutual consent of the Owners, in accordance with the amendment procedures in the Covenants, and the approval of the Livingston City Commission.

Section 4 – Violation Constitutes Nuisance:

Every act or omission, whereby any restriction, condition or covenant in these Covenants set forth, if violated in whole or in part, is declared to be and shall constitute a nuisance and may be abated by the Association, Declarant, or their successors-in-interest pursuant to Montana law and these Covenants; and such remedies shall be deemed cumulative and not exclusive.

Section 5 – Construction and Validity of Restrictions:

All of said Covenants, conditions and restrictions contained in these Covenants shall be construed together, but if it shall at any time be held that any one of said conditions, covenants or reservations, or any part thereof, is invalid, or for any reason becomes unenforceable, no other condition, covenant or reservation, or any part thereof, shall be thereby affected or impaired; and the Declarant, the Association, the Lot or Unit Owners and their heirs, successors and assigns, shall be bound by each Article, Section, subsection, paragraph, sentence, clause and phrase of this Declaration irrespective of the fact that any Article, section, subsection, paragraph, sentence, clause or phrase be declared invalid or inoperative or for any reason becomes unenforceable.

Section 6 – No Waiver:

The failure of the Declarant, Association or Lot or Unit Owners to enforce, to insist, in one or more instances, upon the compliance or performance of any of the terms, covenant, conditions or restrictions of this Declaration in a timely manner or at all, to exercise any right or option herein contained, or to serve any notice or to institute any action, shall not be construed as a waiver or

relinquishment, for the future of such term, covenant, condition or restriction; or any other such term, covenant, condition or restriction and all others shall remain in full force and effect. The receipt and acceptance by the Board, or its agent of the payment of any assessment from an Owner, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver by the Board of any provision hereof shall be deemed to have been made unless expressed in writing and duly signed by or on behalf of the Board. No failure to enforce a covenant shall be deemed a waiver of the right to enforce any other covenant.

Section 7 – Binding:

These Covenants, Conditions and Restrictions shall be binding upon the heirs, successors and assigns of the Declarant, Association, and Lot and Unit Owners.

DATED AND ADOPTED this 21 day of July, 2008.

DECLARANT: MONTANA LAND INVESTMENTS, LLC

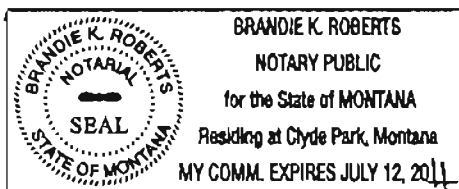
By *W. Russell Currie*
W. RUSSELL CURRIE
Member/ duly authorized Agent

STATE OF MONTANA)
) : ss.
County of Park)

On this 21st day of July, 2008, before me, a Notary Public for the State of Montana, personally appeared W. Russell Currie, known to me to be the Member/duly authorized Agent of Montana Land Investments, LLC, and acknowledged to me that he executed the same on behalf of said Limited Liability Company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal as of the day and year first above written.

(SEAL)



Brandie K. Roberts
[Printed Name] Brandie K. Roberts
Notary Public for the State of Montana.
Residing at Livingston, Montana.
My Commission expires July 12, 2011

EXHIBIT "A"

LIST OF PERMITTED USES

Retail stores
Churches
Business and Professional Offices
Restaurants
Schools
Clinics
Fire Station
Self Service Laundry
Veterinarian Clinics
Healthcare Facilities
Barber Shop and Beauty Parlors
Wholesale Businesses
Mortuary
Government Offices
Banks
Dry Cleaning and Laundries; pick up and delivery stations
Laboratories; Testing and Research
Post Offices
Print Shops
Computer/Technology Sales/Service

~~After recording, return to:
Stephen E. Woodruff, Esq.
P.O. Box 523
Livingston, MT 59047~~

Montana Land Investments LLC.
1106 W. Park St.
Livingston, MT 59047

BYLAWS OF THE ASSOCIATION OF UNIT OWNERS

OF

**THE POINT AT DEL MAR PROFESSIONAL CONDOMINIUMS
OWNERS ASSOCIATION, INC.**

ARTICLE 1. PURPOSE AND APPLICATION

These Articles are the Bylaws of the Association of Unit owners of THE POINT AT DEL MAR PROFESSIONAL CONDOMINIUMS OWNERS ASSOCIATION, INC., of 1106 West Park, Box 422, Livingston, MT 59047 (the "Condominium"), and shall govern and control the administration of the Condominium. These Bylaws are a part of the Declaration for the THE POINT AT DEL MAR PROFESSIONAL CONDOMINIUMS, which Declaration is recorded of even date herewith and is made a part hereof by reference (herein, the "Declaration"). All Unit Owners, present and future, shall have the rights and responsibilities described in these Bylaws and shall be subject to the provisions of the Declaration.

The acquisition of an ownership interest in a unit in the Condominium signifies that the Owner accepts, ratifies and agrees to comply with these Bylaws.

ARTICLE 2. MEMBERSHIP

Persons owning a Unit in the Condominium or owning a unit in any real estate tenancy relationship recognized by the State of Montana shall be a member of the Association of Unit Owners ("Association"). Membership begins concurrently with the acquisition of an ownership interest and terminates at the time such ownership interest is terminated; provided, however, that such termination shall not relieve any owner of liability for obligations incurred

while a Member of the Association or impair any owner's legal remedies, arising from unit ownership.

ARTICLE 3. OBLIGATIONS OF MEMBERS

Each Unit Owner shall be obligated to comply with the Bylaws, the Declaration, all Covenants affecting the Condominium, and all local, State and Federal laws. Such obligations shall include, but not be limited to, the paying of assessments by the Association. Failure of any owner to abide by these Bylaws, all rules made pursuant thereto, the Declaration, the Covenants, or local/State/Federal laws, shall be grounds for appropriate legal action by the Association of Unit Owners or by an aggrieved Unit Owner against such non-complying owner.

ARTICLE 4. MEETINGS OF ASSOCIATION AND VOTING

Regular and Special meetings of the Association shall be held in accordance with the following provisions:

Section 1. Regular Meetings. There shall be a regular meeting of the Association annually on the first Saturday in May of each year, commencing in the year the Condominium regime is established, or on such other date properly announced by the Association. Any first lienholder shall have the right to have a representative attend any regular meeting. The first meeting of the Association shall take place not more than one year following the date of recording these Bylaws.

Section 2. Special Meetings. The Association may at any time hold special meetings, which may be called on the initiative of the Chair of the Association, a signed request of the Manager, or a petition signed by Owners of twenty-five percent (25%) of the aggregate interest of the Condominium. Notice of any special meeting must specify the reason for such meeting and the matters to be raised. Only matters set forth in the petition or request may be brought before such meeting unless Owners of seventy-five percent (75%) of the aggregate interest of the Condominium agree otherwise.

Section 3. Notice. Notice of all meetings, regular or special, shall be mailed by the Association's Secretary to every Unit Owner and to such first lienholders of record who have requested that notice of meetings be provided to them at their address of record at least ten (10) days prior to the time for holding such meeting. Such notices shall specify the date, time and place of the meeting and shall make provision to allow for the voting of each Unit Owner's interest by proxy at the discretion of the owner. The mailing of a notice in the manner provided in this paragraph or the personal delivery of such notice by the Secretary of the Association shall be considered as notice served. In addition, if any Unit Owner notifies the Association of the Owner's consent to notice by electronic mail, then electronic mail notice so given by the Association to such Unit Owner shall be considered as notice served.

Section 4. Quorum. No meeting, regular or special, shall be convened to conduct business unless a quorum is present in person or by proxy. A quorum shall consist of more than fifty percent (50%) of the total aggregate interest of the Condominium at any time. During any meeting that a quorum is not present, such meeting shall be adjourned forthwith.

ARTICLE 5. VOTING INTEREST

Each Unit Owner at an Association meeting shall have a voting interest equal to his percentage of interest in the general common elements as set forth in the Condominium Declaration.

Such percentage factor shall be the voting interest of each Unit Owner on all matters affecting the general business of the Condominium, on all matters affecting the common elements, assessments for the common elements, and on all matters upon which the Association agreed to have voting. Voting may be performed either in person or by proxy at the discretion of the Unit Owner.

Whenever a quorum is present at a meeting of the Association or the Board of Directors, those present may do any and all acts they are empowered to do unless specific provisions of these Bylaws, the Declaration, or the laws of the State of Montana direct otherwise.

ARTICLE 6. BOARD OF DIRECTORS

Section 1. Number and qualification. The affairs of the Condominium shall be governed by a Board of Directors. Until such time as Units representing eight percent (80%) in common interest have been sold by the Developer, the Board of Directors shall consist of such persons as shall have been designated by the Developer. The “Developer” is MONTANA LAND INVESTMENTS, LLC. Thereafter, the Board of Directors shall be composed of three (3) persons, all of whom shall be one of the following: Owners or spouses of Owners of Units in the Condominium; Officers or Directors of Corporate Owners of Units; Trustees of Trust Owners of Units; Members or Managers of LLC Owners of Units; or Partners of Partnership Owners of Units.

Section 2. Powers and duties. The Board of Directors shall have the powers and duties necessary or appropriate for the administration of the affairs of the Condominium, except such powers and duties as by law or by the Declaration or by these Bylaws may not be delegated to the Board of Directors by the Unit Owners. The powers and duties to be exercised by the Board of Directors shall include, but shall not be limited to, the following:

- (a) To make provisions for the operation, care, upkeep and maintenance of the common elements;

- (b) To determine the amounts required for operation, maintenance and other affairs of the Condominium;
- (c) To levy and collect assessments; to provide for the collection of unpaid assessments; to file written notice of assessment liens; to file actions for the collection of unpaid assessments and for the foreclosure of assessment liens;
- (d) To employ and dismiss personnel, as necessary for the efficient maintenance and operation of the Condominium;
- (e) To adopt and amend rules and regulations governing the details of the operation and use of the Condominium property;
- (f) To open bank accounts on behalf of the Condominium and designate the signatories required therefor;
- (g) To purchase, lease, or otherwise acquire in the name of the Association or its designee, on behalf of all Unit Owners, apartment units offered for sale or lease or surrendered by their owners to the Association;
- (h) To purchase apartment units at foreclosure or other judicial sales in the name of the Association or its designee, on behalf of all Unit Owners;
- (i) To sell, lease, mortgage, vote the votes appurtenant to (other than for the election of members of the Board of Directors), or otherwise deal with apartment units acquired by the Association, on behalf of all Unit Owners;
- (j) To organize corporations to act as designees of the Board of Directors in acquiring title to or leasing of apartment units on behalf of all Unit Owners;
- (k) To lease professional offices, garages, maids' rooms, and laundry rooms, and grant licenses for vending machines;
- (l) To obtain insurance for the Condominium property; to pay the premiums on said insurance; and to adjust all claims under said insurance pursuant to the provisions hereof or the Declaration;
- (m) To make repairs, additions, and improvements to, or alterations of, the Condominium property, and repairs to and restoration of the property in accordance with the other provisions of these Bylaws or the Declaration, after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings; and
- (n) To grant easements, licenses, rights of entry, and rights of way over, under, and across the Condominium premises.

The above powers and duties are exercisable at the sole option of the Board of Directors, unless performance of such duties is required by the Declaration, these Bylaws, by law, or is otherwise required in conjunction with the ongoing operation of the Condominium in accordance with said Declaration, Bylaws, or law.

Section 3. Manager. The Board of Directors may employ for the Condominium a Manager at a compensation established by the Board of Directors, to perform such services and duties as the Board of Directors shall authorize, including, but not limited to, the duties listed in subdivisions (a), (c), (d), (k), (l), (m) and (n) of Section 2 of this Article 6. The Board of Directors may delegate to the Manager all of the powers granted to the Board of Directors by these Bylaws, other than the powers set forth in subdivisions (b), (e), (f), (g), (h), (i), and (j) of Section 2 of this Article 6.

The initial Condominium Manager is ALPINE SPRINGS CONSTRUCTION, LLC. The Association has entered into a two (2) year Management Contract with ALPINE SPRINGS CONSTRUCTION, LLC, the term of which commences upon the filing of these Bylaws and the Declaration for the Condominium in the Park County Clerk and Recorder's Office, and shall terminate as therein provided. All Unit Owners and prospective Unit Owners shall be entitled to review the Management Contract, copies of which may be obtained by request to the Association.

Section 4. Election and term of office. The Board of Directors shall be elected annually at the annual meeting of the Unit Owners and shall hold office for one (1) year, or until their respective successors shall have been elected by the Unit Owners.

Section 5. Removal of members of Board of Directors. At any regular or special meeting of Unit Owners, any one or more of the members of the Board of Directors may be removed with or without cause by the Owners of a majority of the aggregate interests of the Condominium, and a successor may then be elected to fill the vacancy thus created.

Section 6. Organization meeting. The first meeting of the members of the Board of Directors shall be immediately following the annual meeting of the Unit Owners, or within ten (10) days thereafter, at such time and place as the members of the Board of Directors shall agree. No notice shall be necessary to the newly elected members of the Board of Directors in order legally to constitute such meeting, providing a majority of the whole Board of Directors shall be present thereat.

Section 7. Regular meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the members of the Board of Directors. Notice of regular meetings of the Board of Directors shall be given to each member of the Board of Directors by mail, fax, or electronic mail, at least three (3) business days prior to the day named for such meeting.

Section 8. Special meetings. Special meetings for the Board of Directors may be called by the President on three (3) business days' notice to each member of the Board of Directors,

given by mail, fax, or electronic mail, which notice shall state the time, place, and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary, in like manner, and on like notice, on the written request of at least two (2) members of the Board of Directors.

Section 9. Attendance at meeting by electronic means. The Board may permit any or all Directors to participate in a Regular or Special Meeting by, or to conduct the Meeting through the use of any means of communication by which all Directors participating may simultaneously hear each other during the Meeting. A Director participating in a Meeting by this means is considered to be present in person at the Meeting.

Section 10. Waiver of notice. Any member of the Board of Directors may, at any time, waive notice of any meeting of the Board of Directors in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member of the Board of Directors at any meeting of the Board shall constitute a waiver of notice by him of the time and place thereof. If all the members of the Board of Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 11. Action without meeting. Any action required or permitted to be taken by the Board of Directors may be taken without a meeting if the action is taken by all members of the Board. The action must be evidenced by one or more written consents describing the action taken, be signed by each Director, and be included in the Minutes filed with the corporate records reflecting the action taken.

Section 12. Quorum of Board of Directors. At all meetings of the Board of Directors, a majority of the members thereof shall constitute a quorum for the transaction of business, and the votes of a majority of the members of the Board of Directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. If there shall be less than a quorum present at any meeting of the Board of Directors, a majority of those present may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

Section 13. Compensation. No member of the Board of Directors shall receive any compensation from the Condominium for acting as such.

Section 14. Liability of the Board of Directors. The members of the Board of Directors shall not be liable to the Unit Owners for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct or bad faith. The Unit Owners shall indemnify and hold harmless each member of the Board of Directors against all contractual liability to others arising out of contracts made by the Board of Directors on behalf of the Condominium unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration or of these Bylaws. It is intended that the members of the Board of Directors shall have no personal liability with respect to any contract made by them on behalf of the Condominium. It is also intended that the liability of any Unit Owners arising

out of any contract made by the Board of Directors or out of the indemnity in favor of the members of the Board of Directors shall be limited to such proportion of the total liability thereunder as his interest in the common elements bears to the interests of all the Unit Owners in the common elements. Every agreement made by the Board of Directors or by the Manager on behalf of the Condominium shall provide that the members of the Board of Directors, or the Manager, as the case may be, are acting only as agents for the Unit Owners and shall have no personal liability thereunder (except as Unit Owners), and that each Unit Owner's liability thereunder shall be limited to such proportion of the total liability thereunder as his interest in the common elements bears to the interests of all Unit Owners in the common elements.

ARTICLE 7. OFFICERS

Section 1. Designation. The principal officers of the Condominium shall be the President, the Vice President, Secretary, and Treasurer, all of whom shall be elected by the Board of Directors. The President and Vice President must be members of the Board of Directors. The offices of Secretary and Treasurer may be held by the same person.

Section 2. Election of officers. Officers shall be elected annually by the Board of Directors at the organization meeting of each new Board of Directors, and shall hold office at the pleasure of the Board of Directors.

Section 3. President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the Unit Owners and of the Board of Directors. He shall have all of the general powers and duties which are incident to the office of President of a corporation organized under the Business Corporation Law of the State of Montana, and shall also perform such other duties as shall from time to time be imposed upon him by the Board of Directors.

Section 4. Vice President. The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. The Vice President shall also perform such other duties as shall from time to time be imposed upon him by the Board of Directors or the President.

Section 5. Secretary. The Secretary shall keep the Minutes of all meetings of the Association and of the Board of Directors. He shall have charge of such books and papers as the Board of Directors may direct, and he shall, in general, perform all the duties incident to the office of Secretary of a corporation organized under the Business Corporation Law of the State of Montana.

Section 6. Treasurer. The Treasurer shall have the responsibility for Condominium funds and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, and for the preparation of all required financial

statements and, in general, shall perform all of the duties incident to the office of Treasurer of a corporation organized under the Business Corporation Law of the State of Montana.

Section 7. Compensation of Officers. No officer shall receive any compensation from the Condominium for acting as such.

ARTICLE 8. REGULATIONS CONCERNING USE OF CONDOMINIUM PROPERTY

The Association may make and amend, from time to time, reasonable regulations concerning the operation and use of the Condominium property. The proposed regulation or amendment to regulation may be proposed by the Board of Directors or any Unit Owner, and may be considered at any regular or special meeting of the Association, providing that a copy of the proposed regulation or amendment is included in the notice of such meeting. Upon a vote of in excess of fifty percent (50%) of the aggregate interest in the Condominium, the regulation or amendment shall be declared adopted. The Association shall furnish copies of such regulations and amendments thereto to all Unit Owners and residents of the Condominium, upon their request.

ARTICLE 9. ASSESSMENTS

The Association of Unit Owners shall levy assessments upon the Unit Owners for common expenses, as set forth herein and in the Declaration. The assessments shall be fixed by resolution of the Board of Directors at any regular or special meeting thereof. The Board of Directors shall provide notice to all Owners affected thereby by delivering a copy of the same to the Owners personally, or by mailing a copy of the notice to said Owners at their addresses of record. The notice of assessment shall state the date or dates when the assessment is due. The Board of Directors shall prepare an annual budget for expenditures and operation and for regular annual assessments, which shall be served on all Unit Owners affected.

Assessments shall be made for the repair, replacement, insurance, general maintenance, management and administration of Common Elements, fees, costs, and expenses of the Manager, taxes for common areas, if any, utilities, reserves for contingent liabilities, and other related items and assessments for the Unit Owner's percentage share of any improvement districts which may exist or be created, or for any other purpose contemplated by these Bylaws, the Declaration, or any other purpose set out in the Montana Unit Ownership Act. The assessments shall be based upon and computed by using the percentage of interest that each Owner has in relation to the Common Elements, as set forth in the Declaration.

Annual assessments are hereby set at \$_____ per unit per annum, payable in equal monthly installments to the Association. For any units that are owned by the Developer, Montana Land Investments, LLC, in kind work on the maintenance of the common areas may be furnished by Developer or Developer's agent, in lieu of paid assessments, until such time as at

least fifty percent (50%) of the units have been sold by the Developer, at which time Developer shall commence paying assessments in cash. The amount of assessments charged to each unit may be amended in accordance with the procedures set forth herein.

The Board of Directors shall have the authority and obligation to collect unpaid assessments; to file liens for common expenses; and to bring action to recover a judgment for unpaid common expenses; and to foreclose liens, all as provided herein and in the Declaration and Montana Unit Ownership Act.

The Association shall collect an assessment fee upon the sale and any subsequent transfer of any condominium unit to a third party (herein, the “transfer fee”), which amount shall be payable to the Association upon the closing of such sale. The transfer fee is hereby set at \$500. This fee shall be payable by the condominium purchaser upon the initial sale of condominium units from the Developer. Payment of the fee upon subsequent transfers of condominium units may be made by the seller, purchaser, or be split in such percentages as the parties may agree, provided that in each case the Association shall be paid its transfer fee upon closing of the sale. Transfers to such entities as a family trust, partnership, corporation, or limited liability company which is wholly owned and for the benefit of the transferor, shall be exempt from the transfer fee. The transfer fees collected hereunder are intended to be used for long-term capital improvements to the Condominium, but may be otherwise designated and used in the sole discretion of the Board of Directors.

ARTICLE 10. AMENDMENT OF BYLAWS

Except as specifically prohibited in these Bylaws, by law or public regulation, these Bylaws may be amended during the first ten (10) years after these Bylaws are recorded with the Clerk and Recorder of Park County, Montana, as follows: (a) by the Developer until 80% of the Lots are sold, or (b) by at least seventy-five percent (75%) of the votes of the Lot and Unit Owners; and after ten (10) years by the vote of not less than sixty percent (60%) of the votes of all the Lot and Unit Owners. Any amendment by the Developer, or amendment by the required percentage of the Lot and Unit Owners, shall be recorded, along with an executed Certificate by the Developer or by the Chair/President and the Secretary of the Association certifying that the amendment was adopted in accordance with these Bylaws, in the Office of the Clerk and Recorder of Park County, Montana. Any bylaw which is included herein as a condition of the preliminary plat approval and required by the City of Livingston shall not be amended or revoked without the mutual consent of the Owners, in accordance with the amendment procedures in the Bylaws, and the approval of the Livingston City Commission.

ARTICLE 11. THE COVENANTS

The Developer has filed, along with these Bylaws, a Declaration of Covenants, Conditions and Restrictions upon the Condominium. The Covenants govern the acts, powers, duties, and responsibilities of the Association of Unit Owners in certain respects, and in the event these

Bylaws, or any subsequent amendment thereto, and the Covenants are in conflict, the Covenants shall prevail. The definition of terms set forth in the Covenants shall be applicable throughout these Bylaws and the interpretation thereof.

ARTICLE 12. THE DECLARATION OF UNIT OWNERSHIP

The Developer has filed, along with these Bylaws, a Declaration of Unit Ownership whereby the properties known as the Condominium are submitted and subject to §70-23-101, *et seq.*, MCA 2007. The Declaration shall govern the acts, powers, duties, and responsibilities of the Association of Unit Owners, and in the event these Bylaws, or any subsequent amendment thereto, and the Declaration are in conflict, the Declaration shall prevail. The definition of terms set forth in the Declaration shall be applicable throughout these Bylaws and the interpretation thereof.

IN WITNESS WHEREOF, the undersigned, constituting the initial Board of Director of the Association of Unit Owners of THE POINT AT DEL MAR PROFESSIONAL CONDOMINIUMS OWNERS ASSOCIATION, INC., hereby declare and affirms the adoption of the foregoing Bylaws, on the 21 day of July, 2008.

By: W. Paul Curtis

By: Robert M. Curtis

By: Robert M. Curtis

Board Members, Association of Unit Owners of THE POINT AT DEL MAR PROFESSIONAL CONDOMINIUMS OWNERS ASSOCIATION, INC.

ATTESTATION

The undersigned President and Secretary of the Association of Unit Owners of THE POINT AT DEL MAR PROFESSIONAL CONDOMINIUMS OWNERS ASSOCIATION, INC., attest that the foregoing Bylaws were duly adopted as the **BYLAWS OF THE ASSOCIATION OF UNIT OWNERS OF THE POINT AT DEL MAR PROFESSIONAL CONDOMINIUMS OWNERS ASSOCIATION, INC.**, by the Director of the Association on the 21 day of July, 2008.

W. Paul Curtis
Secretary

Robert M. Curtis
President

STATE OF MONTANA)

County of Park) : ss.

This instrument was acknowledged before me on this 21 day of July, 2008, by Robert A. Currie and W. Russell Currie, as President and Secretary, respectively, of the Association of Unit Owners of THE POINT AT DEL MAR PROFESSIONAL CONDOMINIUMS OWNERS ASSOCIATION, INC.

IN WITNESS WHEREOF, I have hereunto set my hand as of the day and year first above written.

Brandie K. Roberts
Brandie K. Roberts

[Printed Name]

NOTARY PUBLIC for the State of MT

Residing at Clyde Park, MT

(SEAL)

My Commission expires: July 12, 2011

