

After Recording Return To:

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**DECLARATION OF CONDOMINIUM UNDER UNIT OWNERSHIP ACT
PERTAINING TO THE BABS CONDOMINIUM**

TEVIRRA INVESTMENT ASSOCIATES II, LLC, a Montana limited liability company (“Tevirra” or “Declarant”) as Declarant does hereby make and submit for approval by the agent in the Department of Revenue in Missoula, Montana, and to the County Clerk and Recorder of Missoula County, Montana, for filing the following Declaration, under the Unit Ownership Act of the State of Montana, Montana Code Annotated § 70-23-101, *et seq.*, covering the land and improvements described herein:

1. SUBMISSION TO CONDOMINIUM OWNERSHIP.

The purpose of this Declaration is to submit the land herein described and the improvements existing thereon to the condominium form of ownership and use in the manner provided by Chapter 23, Title 70, Montana Code Annotated, herein referred to as the “Unit Ownership Act.” The real property included within the condominium project, which project

shall be named the BABS CONDOMINIUM project, is located at 120 South Fourth Street West, in the City of Missoula, Missoula County, Montana, is currently owned by the undersigned Declarant and is more particularly described on Exhibit “A” attached hereto and by this reference incorporated herein (the “Property”).

2. DESCRIPTION OF PROJECT.

The Babs Condominium project consists of the Property together with the following currently existing improvements:

A. One (1) individually constructed four story residential apartment building with full basement (the “Babs Building”) currently containing a total of fourteen (14) apartment units.

B. Adjoining parking area on the north side of the Babs Building currently containing approximately five uncovered parking spaces.

The Babs Building has a footprint of approximately 3,428 square feet and contains approximately 13,125 gross square feet comprised of approximately 2,396 square feet of interior general common area and approximately 10,729 net useable square feet of residential condominium space. The site contains approximately 9,099 gross square feet, comprised of the Babs Building footprint as well as approximately 5, 152 square feet of exterior general common area (which includes the parking of approximately 2,275 square feet) and approximately 519 square feet of limited common element parking spaces, all as shown on the site plan and floor plans filed herewith as Exhibits “B-1” through “B-6.” The Babs Building, Property and all improvements are to be converted to a condominium form of ownership as set forth herein, and will hereinafter be referred to as the “Condominium Building” or the “Project.” The site plan

and floor plans, certified by Jeff A. Anderson Architecture, Inc., registered architect, in cooperation with Jennifer L. Clary of Encompass Design, Inc., accurately depict the fourteen (14) condominium Unit project site and the condominium Units and the Condominium Building layout, as located on the Property, with the square footages, design and dimensions of each Unit. The site plan and floor plans for the project are filed herewith as Exhibits “B-1” through “B-6,” respectively. The principal construction materials are shown on Exhibits “C-1” and “C-2.”

The approximately 10,729 gross square feet of total net usable residential condominium Unit space in the Babs Building are divided into fourteen (14) condominium Units (herein referred to individually as a “Unit” or collectively as “Units”), varying in size from approximately 331 useable square feet to approximately 1,375 useable square feet, all as shown on Exhibits “B-2” through “B-6,” and in the Unit area calculations attached as Exhibit “D.” There will also be general common elements as described below for the use and benefit of all Unit owners as well as limited common elements described below reserved for the use of a certain Unit or number of Units to the exclusion of the other Units.

3. CONDOMINIUM UNITS.

A. Description.

The Condominium Building contains a total of fourteen (14) condominium Units as shown on Exhibits “B-2” through “B-6,” and as described on Exhibit “C.” The Units are designated as follows, with the following respective square footages:

UNIT	SIZE
1	1,198 sq. ft.
2	1,350 sq. ft.
3	1,375 sq. ft.
4	661 sq. ft.
5	668 sq. ft.
6	622 sq. ft.
7	626 sq. ft.
8	661 sq. ft.
9	668 sq. ft.
10	622 sq. ft.
11	626 sq. ft.
12	687 sq. ft.
13	634 sq. ft.
14	331 sq. ft.
TOTAL	10,729 sq. ft.

Each Unit, together with its appurtenant undivided interest in the general common elements and any interest reserved to such Unit for the use of any limited common element, shall be inseparable and may be conveyed, devised or encumbered as a condominium in accordance with this Declaration, the applicable Bylaws and the Unit Ownership Act.

B. Unit Boundaries.

Each Unit shall include the part of the Condominium Building containing the Unit that lies within the boundaries of the Unit, which boundaries are as follows:

- a) *Upper and Lower Boundaries:* The upper and lower boundaries of the Unit shall be the following boundaries extended to an intersection with the perimetrical boundaries.
 - i) *Upper Boundary:* The upper boundary of each Unit shall be the underside plane of the plaster ceiling of each Unit, as shown on Exhibit “C-2.”
 - ii) *Lower Boundary:* The lower boundary of the basement Units shall be the plane of the top of the concrete floor slab, as shown on Exhibit “C-2.” The lower boundary of all other Units shall be the plane of the top of the Unit’s floor (not including any floor coverings such as tile, linoleum or carpet), as shown on Exhibit “C-2.”

- b) *Perimetrical Boundaries:* The perimetrical boundaries of the Unit shall be the following boundaries extended to an intersection with the upper and lower boundaries.
 - i) *Exterior Building Walls:* The plane formed by the interior surface of the exterior walls, except that the windows in the exterior walls shall be general common elements, not part of a Unit ownership, as shown on Exhibit “C-2.”

 - ii) *Interior Building Walls:* The vertical planes of the interior surface of the walls between the Units and hallways, extended to an intersection with other perimetrical boundaries, except that the doors and any windows in the interior walls shall be general common elements, not part of a Unit ownership, as shown on Exhibit “C-2.”

The owners of the respective Units own the undecorated and/or unfinished surfaces of the perimeter walls, floors and ceilings surrounding each such Unit owner’s respective Unit. The Unit owner shall not be deemed to own pipes, wires, conduits or other public utility lines, if any, running through said respective Units, which are utilized for, or serve more than one (1) Unit, except to the extent of such Unit owner’s undivided ownership interest in such property as general common elements as heretofore and hereinafter provided. However, the Unit owner

shall be the owner of such utility services to the extent (and from the point where) they enter and serve the Unit exclusively, and to the extent they are located within the exterior boundaries of the Unit. Said owner shall be deemed to own the interior walls and partitions which are contained in said owner's respective Unit, (except where the same are structural or bearing walls, which shall be common elements) and also shall be deemed to own the finished surfaces of the perimeter walls, floors and ceilings, including sheetrock, plaster, paint, wallpaper, floor coverings or other furnished surfaces.

Each Unit owner shall be entitled to the exclusive ownership and possession of such Unit owner's Unit.

4. COMMON ELEMENTS.

A. General Common Elements.

Each Unit owner shall be the owner of an undivided pro-rata interest in the general common elements, as such general common elements are shown on Exhibits "B1" through "B-6" and Exhibit "C-2," in the respective percentages shown on Exhibit "D." The general common elements include all those elements which are located outside the boundaries of the Units and which are for use by all the Unit owners. The general common elements involved in this project include: the land encompassing the Property; trees, shrubs, other landscaping, irrigation system, exterior signage and lighting; any exterior fencing; the exterior walkways, sidewalks, steps, curbs, gutters, curb cuts and other access routes to and exits from the Condominium Building and the Property; the asphalt parking area with two (2) general common parking spaces (excluding only the three (3) limited common element parking spaces); the common entryways,

hallways, and stairways in the Condominium Building (excepting only the stairway to Unit 4-1 which shall be part of such Unit); mailboxes; the exterior “Babs” neon sign; common access, entrance and exit areas; roof (including asphalt roof), roof overhangs, roof eaves, soffits, shingles, dormers, cornice trim, fascia, columns, trusses, gutters, chimneys, flues, roof drains and other structural members supporting the roofs; the common entry porch including overhangs, roofs, posts and concrete slabs; foundations; concrete slabs; foundation walls; footings; sub-floors; exterior walls (from the interior surface of such exterior wall), brick veneer, sills, clad walls, windows, doors and interior structural walls common to two (2) or more Units; all cables, conduits, electrical, water, heat ventilation, air conditioning, sewer, telephone, gas, television, data lines, and other public utility lines, ducts and connections (“Utility Services”) serving more than one (1) Unit (the Utility Services shall not be general common elements but shall be owned by a Unit owner after the utility lines cross the exterior boundary into a Unit); other central services, if any, serving more than one (1) Unit owner including the Owner’s Association area in the basement; utility, mechanical and other rooms or enclosures (including the basement mechanical area) housing such central services, if any, serving more than one (1) Unit owner; garbage cans, dumpsters, other trash receptacles and enclosures therefor, including any concrete slabs; and other elements necessary for the safety, maintenance and existence of more than one (1) Unit or the entire condominium project. This list is not exclusive, and the Association of Unit owners may add or delete elements pursuant to the method of amendment as described herein. Each Unit owner’s undivided pro-rata interest in the general common elements as shown on Exhibit “D” was calculated based on the proportion the net usable square footage of each Unit

bears to the total net usable square footage of all Units in the project.

The Board of Directors (the “Board”) of the Babs Condominium Association (the “Association”) may impose such rules and regulations as the Board deems reasonably necessary from time to time to regulate and control the use and safety of the general common elements. The Board has the power to levy assessments upon all the Unit owners to pay for all general common element expenses including administration, maintenance, repair or replacement as hereinafter set forth.

B. Limited Common Elements.

Limited common elements mean all those common elements which are reserved for the use of one (1) Unit or fewer than all of the condominium Units to the exclusion of the other Units. The limited common elements involved in this condominium project are three (3) of five (5) uncovered parking spaces, which are more particularly described below.

Uncovered Parking Spaces. The project includes five (5) open, uncovered parking spaces, two of which are general common elements and three of which are limited common elements, all as shown on Exhibit “B-1.” Each such limited common parking space shall be a limited common element reserved for the exclusive use of the individual Unit owner in the Condominium Building to which it is assigned, to the exclusion of the other Unit owners. These limited common parking spaces are shown by diagonal lines and are color-coded on Exhibit “B-1,” and are labeled as “LCAEXT.” One (1) open parking space each has been assigned to each of Unit numbers 3, 2 and 1 in the Building, with the parking space number corresponding to the Unit number and the color-coding, to be reserved for the use of that particular corresponding Unit to the exclusion of all the other Units. The two general parking spaces will be assigned for use by the Board as provided in Section 7B(7) below.

Each Unit owner shall be entitled to the right to use any limited common elements appertaining to such owner’s Unit. The limited common elements shall be subject to the right of

the Board to levy assessments against Unit owners to the extent of such Unit owners' right to use the respective limited common elements, to provide for the expense of administration, maintenance, repair or replacement, and to adopt reasonable rules and regulations governing their use, as hereinafter set forth or as set forth in the Bylaws.

5. EASEMENTS.

A. Common Element Easements.

A nonexclusive right of ingress and egress and support through the general common elements are appurtenant to each Unit and all the general common elements are subject to such rights.

B. Easement for Utilities.

Each Unit may have its common element air space/interstitial space penetrated by electrical wires and lines, gas lines, mechanical equipment including air handling ducts, hot and cold water and steam lines, waste water lines and vents and other utility and mechanical lines, pipes or equipment. These lines, where they serve only one Unit shall be appurtenant to such Unit, but where they serve more than one Unit shall be part of the general common elements as set forth in Section 4B, above. Such items shall be installed and maintained so that they shall not unreasonably interfere with the use of the Unit's air space/interstitial space by the owners of the same and shall wherever possible be located in any air space/interstitial space available between the Units, or within a sub-floor or wall. A non-exclusive easement shall exist through, over and across each Unit for structural support of the Unit and for the use, inspection, installation, maintenance, replacement and repair of such utility lines and mechanical equipment for the use

of all of the Unit owners or the Unit owners being serviced by the air space/interstitial space being penetrated by such lines and/or equipment. An easement for ingress and egress for the purpose of such inspection, installation, maintenance, replacement or repair of such easement rights shall only be exercised under the direction and approval and with the authority of the Board unless an emergency exists in which event any action may reasonably be taken which is justified under the circumstances to minimize damage which would otherwise occur as a consequence of such emergency. There shall be easements to, through and over those portions of the land, structures, Building, improvements and walls (including interior Unit walls) contained therein for the continuing maintenance and repair of all utilities in the Condominium. There shall exist easements of support with respect to any Unit interior wall which supports a common element. The foregoing easements are all reserved to the Declarant for so long as the Declarant is a Unit owner or has a representative on the Board, and are reserved permanently to the Association and the owners of the Units.

The Board shall coordinate and adopt reasonable rules and regulations governing the use of such non-exclusive easements with respect to such things as access routes, times of use and signage.

C. Grant of Easements by Association.

The Association, acting through its lawfully constituted Board shall be empowered and obligated to grant such easements, licenses, rights-of-entry and rights-of-way over, under and across the Property for utility purposes, access purposes or other lawful purposes as may be reasonably necessary for the benefit of the Condominium project, which grants shall not

unreasonably interfere with the beneficial use and occupancy of the Units.

D. Easements for Maintenance, Repair, and Replacement.

The Association and all public or private utilities shall have such easements over, under, across and through the condominium Property, including all Units and common elements, as may be necessary to fulfill any responsibilities of maintenance, repair, or replacements which they or any of them are required or permitted to perform under the Declaration, Bylaws or other condominium documents or by law. These easements include, without any implication of limitation, the right of the Association to obtain access at all times to meters, controls, valves, pipes, conduits, utility services and other common elements located within or to which access may be gained through any Unit or its appurtenant limited common elements.

E. Encroachments Easement.

If any portion of the general common elements or limited common elements encroaches upon a Unit or Units, a valid easement for the encroachment and for the maintenance of the same, so long as it stands, shall and does exist. If any portion of a Unit encroaches upon the general common elements, or limited common elements, or upon an adjoining Unit or Units, a valid easement for the encroachment and for the maintenance of the same, so long as it stands, shall and does exist. Such encroachments and easements shall not be considered or determined to be encumbrances either on the general common elements, the limited common elements, or on the Units for the purpose of marketability of title.

6. FUTURE DEVELOPMENT.

It is not currently anticipated that the condominium project will be expanded or that

additional property and improvements be committed to Unit ownership, but the right to effectuate such expansion is reserved to the Board and the Unit owners as provided by the applicable amendment provisions in Section 13.

7. USE AND RESTRICTIONS.

A. Use.

The permitted use for the Units is general residential and multi-family residential as is consistent with the applicable zoning and other use restrictions and for no other purposes whatsoever, consistent with the other restrictions contained herein and any applicable rules and regulations adopted by the Board to govern the use of the condominium project.

B. Restrictions.

- (1) *Leasing.* A Unit may only be leased in a fashion and for a use consistent with the restrictions set forth in this Declaration, and in compliance with the terms of this Declaration, the Bylaws and applicable Association, local, state and federal laws, rules, regulations, codes and ordinances. Declarant specifically reserves, for itself and its assigns, the right to hold Unit 14 for the benefit of (or convey fee ownership to) the University of Montana, the University of Montana Foundation or any entity affiliated therewith for the purpose of providing/leasing such Unit rent free as housing for a University of Montana student(s) or faculty member and/or his or her family as part of a scholarship, grant, financial aid, employment incentive or similar assistance/benefit program (the "UM Unit"). See Sections 9A and 9E below which exclude the UM Unit from voting rights and common expense assessments.

All lessees/tenants must comply with and be subject to all terms, conditions, restrictions, rules and regulations of the condominium project.

A time share form of ownership, or any comparable form of lease, occupancy rights or ownership which has the affect of dividing ownership or occupancy of a Unit into separate time periods is prohibited.

- (2) *Alterations and Modifications.* No Unit owner shall make any alteration or modification of any general common element. The owner of a Unit may make modifications to such Unit or to the limited common elements appurtenant only to such Unit, so long as such modification or alteration does not affect the structural integrity, safety or aesthetic continuity of the Condominium Building. No exterior modification outside the exterior boundaries of a Unit may be made without the written consent of the Association.
- (3) *Activities/Businesses.* No immoral or unlawful activity shall be carried on in any Unit or upon the general or limited common elements nor shall anything be done which may be or become an annoyance or a nuisance to the Unit owners. For the purpose of this Declaration, “immoral” activity shall be defined as Greed, Sloth, Wrath, Envy and Pride. In furtherance of the preservation of the historical nature and character of the Babs, Lust and Gluttony are specifically authorized, and the Board shall adopt no rule proscribing such activity. No unreasonably noisy or odoriferous activity shall occur in or on any Unit or the general or limited common elements at any time and disputes among Unit owners, arising as a result of this provision that cannot be amicably resolved, shall be arbitrated by the Association. A decision by the Association is final. The Board may adopt and enforce rules about minimizing noise within the project.

No Unit owner shall do or permit anything to be done or keep or permit to be kept in such owner’s Unit or on the general or limited common elements anything that will increase the rate of insurance on the condominium project without the written approval of the Association, and each Unit owner shall pay to the Association the increased cost of insurance premiums resulting from any such activity or the maintenance of any such condition even if approved.

In addition, no commercial, industrial, retail or other fee for service business shall be conducted on, in or upon a Unit, limited common element or general common element, including any type of day care, group home, foster care or similar business operation. Provided, “home based” businesses and hobbies approved by the Association shall be permitted, but only to the extent permitted by any applicable municipal, state and/or federal zoning and use laws, rules, regulations, ordinances and restrictions, and only to the extent such businesses are not generally open to the public and such business is generally conducted by telephone or computer. The Association has the authority to place additional conditions and limitations on “home offices” from time to time.

- (4) *Pets.* Domestic dogs and cats, and Grizzlies under 800 pounds, may be maintained by any Unit Owner in any Unit or any limited or general common elements. No other animals, specifically including Bears of all species other than Grizzlies, Bengals, Bobcats, Eagles, Hornets and Wildcats, shall be maintained by any Unit owner in any Unit or any limited or general common elements. Northern Arizona Lumberjacks and Portland State Vikings are allowed so long as they are (i) housebroken, and (ii) neutered or spayed. All permitted pets and their owners shall be subject to the noise, odor and nuisance restrictions of subparagraph (3). No pet shall be housed outdoors. No pet shall be allowed outside of a Unit or on the Property (including on any general or limited common element) unleashed or unattended by its owner except as permitted by applicable rules or regulations. All pet owners will promptly clean any mess left by a pet on the Property. Any Unit owner who causes any impermissible animal to be brought or kept upon the Property shall indemnify and hold harmless the Association from any loss, damage or liability which the Association may sustain as the result of the presence of such animal on the premises. The Association may, without liability to the owner thereof, remove or cause to be removed any impermissible animal from any Unit or the Property. In the event of any violation of this Section, the Board may assess fines for such violation in accordance with this Declaration and the Bylaws and in accordance with duly adopted rules and regulations of the Association. The Board may adopt and enforce rules and regulations expanding the type or types of permitted animals and defining the number of pets allowed in Units.
- (5) *Aesthetics.* Neither the general common elements nor the limited common elements shall be used by any Unit owner or occupant for storage of supplies, materials, personal property or trash or refuse of any kind, except as provided in duly adopted rules and regulations of the Association. No unsightly conditions shall be created or maintained within any general or limited common element area. All cooking facilities and equipment (including barbeques and smokers) are expressly prohibited in any general or limited common elements appurtenant thereto except as expressly permitted by the Board in areas designated for such purposes, and in accordance with any rules and regulations adopted in connection therewith. Trash and recycle receptacles shall be maintained in areas designated therefor at all times and shall not be permitted to remain elsewhere on the common elements except for such short periods of time

as may be reasonably necessary to permit periodic collection of trash. In general, no activity shall be carried on nor condition maintained by a Unit owner, either in such owner's Unit or upon the general or limited common elements, which is detrimental to the appearance of the condominium project.

- (6) *Advertising.* No signs or other advertising devices of any kind shall be displayed which are visible from the exterior of a Unit or on the general or limited common elements, including "For Sale" or "For Lease" signs, without written permission from the Association, provided, however, that the "Babs" neon signage on the front of the building shall be permitted and shall be maintained by the Board as a general common element. No signs advertising any type of business activity shall be permitted at any time. It shall be the responsibility of each Unit owner to provide that all approved signs shall comply in all respects with all applicable state, county and local sign laws, rules, regulations and ordinances.

- (7) *Rules and Regulations/Parking/Basement Common Area.* It is intended that the Board may make rules and regulations from time to time to reflect the needs and desires of the majority of the Unit owners in the condominium project. Reasonable regulations consistent with the Act, this Declaration and the Bylaws concerning the use of the general and limited common elements may be adopted and amended from time to time by the Board. Copies of all such rules, regulations and amendments thereto shall be furnished to all Unit owners. Without in any way limiting the authority of the Board to adopt other rules and regulations, the Board is specifically authorized to adopt reasonable rules and regulations governing the use of the two (2) general common element parking spaces shown on Exhibit "B-1" by the Unit owners and their families, friends, guests, invitees and other permitted users to whom the parking spaces are available. As part of any parking rules and regulations, the Board may provide that the two (2) general common element parking spaces be numbered and/or designated for use by the Unit owners. The Board may also require that the three (3) limited common element parking spaces assigned to individual Units in Section 4B be numbered and/or designated for use only by those Units to which they are assigned.

In addition, the rules and regulations may regulate the types and size of vehicles that may be parked in the general and limited common element parking spaces and anywhere else on the Property (e.g. a prohibition on parking trailers, mobile homes, recreational vehicles, boats, ATVs, etc.). In addition, in no event will any inoperable, unclaimed or uninsured

vehicle be parked, stored or allowed to remain anywhere on the Property.

The Board is also specifically authorized to adopt reasonable rules and regulations governing the use of the basement general common element shown and designated in Exhibit "B-2" as "Owner's Association" space.

- (8) *Right to Access of Association.* The Association or its duly authorized agent shall have access to each Unit and any limited common elements appurtenant thereto from time to time, during reasonable hours, upon reasonable notice (agreed to be at least twenty-four (24) hours' notice) to the Unit owner thereof, as may be necessary for the maintenance, repair or replacement of any of the common elements. The Association or its agent shall also have access to each Unit and any limited common elements appurtenant thereto at all times without notice as may be necessary to make emergency repairs to prevent damages to the common elements or to another Unit. It shall be the responsibility of each Unit owner to provide the Association means of access to such owner's Unit and any limited common elements appurtenant thereto during all periods of absence, and in the event of the failure of such Unit owner to provide means of access, the Association may gain access in such manner as may be reasonable under the circumstances and shall not be liable to such Unit owner for any necessary damage to such owner's Unit and any limited common elements appurtenant thereto caused thereby or for repair or replacement of any doors or windows damaged in gaining such access.

Damage to the interior or any part of a Unit resulting from maintenance, repair, emergency repair or replacement of any of the general or limited common elements or as a result of an emergency repair within another Unit at the instance of the Association shall be designated common expenses by the Association and assessed accordance with such designation and shall be repaired by the Association.

8. PROCESS.

Service of process in the cases provided in Montana Code Annotated § 70-23-901 shall be made upon W. Timothy Seibly (the Declarant's representative) at 702 Polaris Way, Missoula, Montana 59803, until another designation is filed of record in Missoula County.

9. THE ASSOCIATION.

A. Membership.

Any owner of a Unit in the condominium (except the owners of the UM Unit as outlined below) shall automatically, upon becoming the owner of said Unit, be a member of the BABS CONDOMINIUM ASSOCIATION, herein referred to as the “Association”, and shall remain a member of said Association until such time such membership in said Association shall cease in accordance with this Declaration or Montana law. The membership shall be limited to Unit owners. For these purposes a Unit “owner” is the person owning a Unit in fee simple absolute either individually or as a co-owner in a real estate tenancy relationship recognized under Montana law. For purposes of voting, unless the contract specifies otherwise the contract seller of a Unit shall be considered the owner and in the case of a lease of a Unit, unless the lease expressly provides otherwise, the landlord/lessor shall be considered the owner to the extent permitted by applicable law. **Since the UM Unit will be held for the benefit of or conveyed to the University of Montana, the University of Montana Foundation or an entity affiliated therewith to assist the University with its educational mission, the owner of the UM Unit will not be a member of the Association, and notwithstanding anything to the contrary herein, the owner of the UM Unit will not vote with respect to Association matters.** Only in the event the UM Unit is no longer owned and used for this purpose will such Unit have its proportionate voting power. In such event, this Declaration will be amended to provide for such UM Unit’s proportionate voting rights.

B. Function.

It shall be the function of the Association to:

- (1) Adopt Bylaws for the governance of the Association.
- (2) Make provisions for the general management and/or repairs and maintenance of the condominium project.
- (3) Levy assessments as provided for in the Declaration, Bylaws and Unit Ownership Act.
- (4) Adopt and implement a policy for the affairs of the condominium project.
- (5) Enter into contracts to hire personnel for the management of the affairs of the Association and the maintenance and repair of the common areas. After the Declarant no longer owns any Units, the Association shall hire and maintain a qualified management company or appoint/hire an Association Member to manage the affairs and arrange for the maintenance and upkeep of the Common Elements.
- (6) Perform such other functions and duties as are expressly set forth elsewhere in this Declaration, the Bylaws or the Unit Ownership Act.

C. Vote.

On all matters to be decided by the Association, each owner of a Unit (unless excluded by this Declaration, i.e. the UM Unit) shall have a vote equal to such owner's undivided percentage of interest in the general common elements as set forth in Exhibit "D." The vote for any Unit co-owned by two (2) or more owners may be exercised by any one (1) owner, and such Unit's undivided percentage of interest in the common elements may not be divided and voted separately by any of the co-owners. Any Unit owner who is not an individual (e.g. a corporation, partnership, LLC, LLP or other limited liability entity), shall appoint an individual to represent such owner's interest as a member of the Association, for purposes of voting and otherwise.

An owner of a condominium Unit, upon becoming an owner, shall be a member of the Association and remain a member for the period of such owner's Unit ownership. Meetings of

the Association shall only be conducted when a quorum is present, as defined in the Association Bylaws. Except as otherwise provided in the Unit Ownership Act, this Declaration or the Bylaws, a majority of the aggregate undivided ownership interest present at any meeting or by proxy shall be sufficient to act on a matter brought before the Association.

D. Failure to Comply - Attorney's Fees.

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

E. Payment of Assessments.

All assessments levied by the Association in the manner provided below shall be due twenty (20) days from the date of mailing such assessments and may be payable in installments, monthly, quarterly or semi-annually, at the option of the Board. The amount of the common expenses assessed against each condominium Unit and the amount of limited expenses, if any, assessed against each condominium Unit shall, in addition to constituting a lien against the Unit, be the personal and individual debt of the owner thereof. No owner of a Unit may exempt such owner from liability for these contributions toward the common expenses by waiver of the use of

enjoyment of any of the common elements or by abandonment of such owner's Unit.

PROVIDED, HOWEVER, THE UM UNIT HELD FOR THE BENEFIT OF (OR CONVEYED TO) THE UNIVERSITY OF MONTANA, THE UNIVERSITY OF MONTANA FOUNDATION OR ANY ENTITY AFFILIATED THEREWITH, SHALL NOT BE SUBJECT TO THE ASSESSMENTS OR A LIEN FOR ASSESSMENTS FOR COMMON EXPENSES IMPOSED OR LEVIED BY THE ASSOCIATION AS PROVIDED IN THIS SECTION 9. SUCH UNIT'S SHARE OF SUCH COMMON AREA EXPENSES SHALL BE BORNE PROPORTIONATELY BY ALL THE OTHER UNITS IN THE BABS CONDOMINIUM PROJECT. THIS SHALL NOT RELIEVE THE UM UNIT FROM THE OBLIGATION TO PAY THE REAL ESTATE TAXES AND ASSESSMENTS LEVIED AGAINST THE UNIT AS PROVIDED IN SUBSECTION F(2) BELOW. ONLY IN THE EVENT THE UM UNIT IS NO LONGER OWNED AND USED FOR SUCH EDUCATIONAL PURPOSES WILL SUCH UNIT BE SUBJECT TO THE GENERAL COMMON EXPENSE ASSESSMENTS AND LIENS. IN SUCH EVENT, THIS DECLARATION WILL BE AMENDED TO PROVIDE FOR PROPORTIONATE ASSESSMENTS TO BE LEVIED AGAINST THE UM UNIT.

All assessments which are not paid within thirty (30) days from the date they are due and payable become delinquent and are subject to interest and penalty charges. The Association or manager shall have the responsibility of taking prompt action to collect any unpaid assessments which become delinquent. In the event of delinquency in the payment of the assessment, the Unit owner shall be obligated to pay interest at the rate of ten percent (10%) per annum on the

amount of the assessment from the due date thereof until paid, together with such reasonable late charges as may be assessed by the Board from time to time. Suit to recover a money judgment for unpaid common expenses and limited expenses may be maintainable without foreclosing or waiving the lien securing the same, and the prevailing party shall be entitled to recover its attorney fees.

F. Levying Assessments When Made - Purposes.

The Association shall levy assessments upon the Unit owners in the following manner and for the following reasons:

- (1) Assessments and common expense budget shall be made a part of the regular, annual business meeting of the Association as provided in the Bylaws of the Association, or assessments can be made for special purposes at any other regular or special meeting thereof. All assessments shall be fixed by resolution of the Board. Notice of the assessment, whether regular or special, the amount thereof, and the purpose for which it is made, including an annual budget for expenditures and operation, for regular annual assessments, shall be served on all Unit owners affected, by delivering a copy of the same to the owners affected, by delivering a copy of the same to the owner personally or by mailing a copy of the notice to the said owners at such owner's addresses of record at least ten (10) days prior to the date for such meeting.
- (2) Assessments shall be made for the repair, upkeep, replacement, insurance, general maintenance, management and administration of general common elements, fees, costs and expenses of the manager (if any), taxes and assessments for common areas, utilities, reserves for contingent liabilities and other related items and reasonable assessments for the general common elements, including those declared general common expenses under the Unit Ownership Act. Provided, however, notwithstanding the foregoing, it is the intention of the Declarant that all real estate taxes and assessments on the Property be paid by the Unit owners, rather than by the Association using its assessment powers. The Declarant and the Association will request and work cooperatively with the Missoula County Treasurer and/or Assessor to have each Unit separately assessed and billed for taxes and assessments, including each said Unit's proportionate share

of the taxes and assessments allocated to and levied against the condominium projects' limited and general common elements.

- (3) Assessments may also be made, at the option of the Board, for the payment of limited common element expenses such that the Unit owners are chargeable only for the expenses relating to the limited common elements reserved for their respective Units. Unit owners shall share in the payment for limited expenses for the repair, maintenance and replacement of limited common elements of their respective Units in accordance with the percentage the Unit or Units have in the limited common element for which the assessment is being made. If only one Unit is associated with the limited common elements involved, then the entire cost of such repair, maintenance or replacement shall be borne by that Unit. In addition, an assessment may be made against a Unit owner for the amount of any damage caused by the Unit owner to any general common element or another Unit (or such Unit's limited common element), to the extent not covered by insurance.
- (4) Assessments may also be made for any purpose contemplated by this Declaration and for any purpose set out in the Unit Ownership Act.
- (5) Common expenses and profits, if any, shall be distributed among and charged to, the Unit owners according to the percentage of undivided interest of each in the general common elements as set forth in Exhibit "D."
- (6) In a voluntary conveyance of a Unit, the grantee of the Unit shall be jointly and severally liable with the grantor for all unpaid assessments by the Association against the grantor for such grantor's share of the common expenses up to the effective date of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, any such grantee shall be entitled to a statement from the manager or Board of the Association setting forth the amount of said unpaid assessments against the grantor due the Association and such grantee shall be entitled to rely on such statement and shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid assessments made by the Association against the grantor in excess of the amount set forth in such statement.
- (7) At the time the Association holds its first meeting, or at any duly noticed meeting thereafter during the first year of the Association's operation, an initial reserve account may be established into which initial assessments

shall then be deposited. Such assessments shall be in an amount determined by the Board but shall not exceed a sum that is equal to two times the monthly assessment fee established for that year by the Board multiplied by the number of Units in the condominium project and shall be assessed against each Unit owner in the manner set forth in this Section 9.

G. Initial Board of Directors.

The undersigned Declarant hereby appoints the following persons to serve as the initial or interim Board of Directors until the first meeting of the Association to-wit:

<u>Name</u>	<u>Address</u>
W. Timothy Seibly	720 Polaris Way Missoula, MT 59803
Jolene R. Seibly	720 Polaris Way Missoula, MT 59803

H. Maintenance by Association.

The Association shall maintain and keep in good repair and in a clean and sanitary condition the general common elements. The Association shall do no act nor any work that will impair the structural soundness or integrity of the Condominium Building or impair any easement.

The Association shall also, to the extent not done so by the appropriate Unit owner(s) under Section 10B, below, keep all areas and limited common elements appurtenant to the Units in a clean and sanitary condition and in good repair. The right of the Association to repair, alter, and remodel is coupled with the obligation to replace any finishing or other materials removed with similar type, kinds and quality of materials. No acts or alteration, repairing or remodeling

by the Association shall impair in any way the structural integrity of the Units or the structural and aesthetic integrity of limited common elements or general common elements.

10. CHANGES, REPAIRS AND LIENS.

A. Alterations by Unit Owners.

Notwithstanding any rights to remodel the Units, structural bearing walls may not be moved or altered by any Unit owner. No change in the boundaries of Units shall encroach upon the boundaries of the common elements except by amendment to this Declaration.

B. Maintenance by Unit Owner.

An owner shall maintain and keep in good repair the interior of such owner's Unit. Subject to the Association's right to provide for such maintenance and repair and to levy assessments therefor, an owner of a Unit shall maintain and keep in good repair all limited common elements appurtenant to such Unit, in proportion to the percentage of such owner's undivided interest in the limited common element. An owner shall do no act, nor any work, that will impair the structural soundness or integrity of any of the Condominium Building or impair any easement. An owner shall also keep all areas and limited common elements appurtenant to such owner's Unit in a neat, clean and sanitary condition.

C. Exterior Alterations.

No owner may change, alter or remodel the exterior of such owner's Unit or any portion of the Condominium Building outside the exterior boundaries of such owner's Unit without the prior written approval of the Board. All alterations to the general common and limited common elements of the condominium shall be effectuated in harmony with the aesthetics of such general

and limited common elements. When terms such as “aesthetic harmony,” “aesthetic continuity,” or “aesthetic integrity” are used in this Declaration, the meaning and intent is to require alternations, modifications, or construction that are consistent with and reasonably compatible with the architectural design, schemes, elements, colors, and materials historically used in the Babs Building, and specifically as used by Declarant as part of the Declarant’s improvement of the Babs Building in connection with its conversion to a condominium form of ownership pursuant to this Declaration. Any final decision as to compliance with these aesthetic harmony/integrity/continuity requirements shall be made by Declarant for so long as Declarant is an owner of a Unit or is entitled to appoint a representative to the Board. Thereafter any such decision by the Board shall be final.

D. Maintenance by Association.

The Association shall take all necessary steps to provide for the maintenance, repair, upkeep and replacement of all parts of the common elements including all utility services and other central services that service all Units. To the extent the Unit owners fail to do so, the Association shall also take all necessary steps to provide for the maintenance, repair, upkeep and replacement of the limited common elements and recover the costs and expenses thereof using the Association levy and assessment powers against the owners of the Units for whom the use of the limited common elements are reserved. The Board of Directors of the Association shall regularly inspect the Property and proceed with any necessary maintenance or repairs. Failure by the Board to make regular inspections and/or proceed with any necessary maintenance or repairs shall give any Unit owner(s) the right to order such work done and bill the Association

therefor after reasonable notice to the Association of such intent by the said owner(s) and giving the Association a reasonable time to perform such work. Any owner or representative of the same, upon written request, shall have the right to join in the regular inspection made by the Board and suggest needed repairs and maintenance necessary to preserve the value of the condominium project.

E. Liens for Alterations.

Each Unit owner shall indemnify and hold harmless each of the other Unit owners and the Association against a construction or other lien against such Unit owner's Unit or against such Unit owner's undivided interest in the general common elements or limited common elements for construction performed or for labor, materials, services or other products incorporated in the owner's Unit or limited common elements at such owner's request.

F. Liens and Foreclosure.

All sums assessed but unpaid for the share of general common expenses and limited common expenses chargeable to any condominium Unit shall constitute a lien on such Unit superior to all other liens and encumbrances, except only for tax and special assessment liens on the Unit in favor of any assessing authority, and all sums unpaid on a prior mortgage, trust indenture of record or other prior security instrument. To evidence such lien, the Board shall prepare a written notice of lien assessment setting forth the amount of such unpaid indebtedness, the amount of accrued interest and late charges thereon, the name of the owner of the condominium Unit and a description of the condominium Unit. Such notice shall be signed and verified by one of the officers of the Association or by the manager, or manager's authorized

agent, and shall be recorded in the office of the Clerk and Recorder of Missoula County, Montana. Such lien shall attach from the date of recording such notice. Such lien may be enforced by the foreclosure of the defaulting owner's condominium Unit by the Association in the manner provided in the Unit Ownership Act and as provided by the foreclosure of a mortgage on real property upon the recording of a notice of claim thereof. In any such foreclosure, the Unit owner shall be required to pay a reasonable rental for the Unit and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same to the extent permitted by applicable law. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosure or waiving the lien securing the same to the extent permitted by applicable law. In any such proceeding the owner may be required to pay the costs, expenses and attorney's fees incurred in filing a lien, and in the event of foreclosure proceedings, additional costs, expenses and attorney's fees incurred.

G. Bidding at Foreclosure.

Any other Unit owner as well as the Board of the Association on behalf of the other Unit owners shall have the power to bid on the condominium Unit at a foreclosure or other legal sale and to acquire and hold, lease, mortgage and vote the votes appurtenant to, convey or otherwise deal with the same. Any lienholder holding a lien on a condominium Unit may pay, but shall not be required to pay, any unpaid general common expenses, or limited common expenses payable with respect to any such Unit, and upon such payment, such lienholder shall have a lien on said Unit for the amounts paid of the same rank as the lien of the lienholder's encumbrance without the necessity of having to file a notice or claim of such lien. If requested, the Association will

assign the lien to such lienholder.

H. Foreclosure - Mortgagee.

When a lienholder or other purchaser of a Unit obtains title to the Unit as a result of foreclosure of a prior mortgage or trust indenture, such acquirer of title, its successors and assigns, shall be liable for the share of common expenses or assessments by the Association chargeable to such Unit which became due prior to the acquisition of title to such Unit by such acquirer to the extent permitted by applicable law. If the lienholder or other purchaser by reason of decree of foreclosure or otherwise is found not to be liable for such expenses or assessment, such unpaid share of common or limited expenses or assessments shall be deemed to be common and limited expenses collectable from all of the Units including such acquirer, his successors and assigns. This shall not be deemed a waiver of the right of the lienholder, other purchaser or the Association to collect such unpaid share of the expenses directly from the delinquent Unit owner.

11. INSURANCE.

A. Personal Property.

Each Unit owner shall be responsible to insure all furniture, fixtures, interior improvements, equipment and all other items of personal property owned by such Unit owner and located within such Unit owner's Unit or within any appurtenant limited common element, against all risk of loss or damage, including fire, flood and other hazards required by the Association. Copies of all policies or other proof of coverage shall be provided to the Association.

All insurance policies upon property located outside the exterior boundaries of the Units

in the condominium Property (including coverage for any personal property except as provided below) shall be purchased by the Association and shall be insured by a reputable and highly rated insurance company authorized to do business in Montana, except that a Unit owner shall be responsible to insure any of its personal property stored in any limited common area as provided above. The named insured shall be the Association individually 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 if such election is made by the Board, and all policies and endorsements thereon shall be deposited with the Insurance Trustee.

B. Copies to Mortgagees and Landowners.

One copy of each insurance policy and of all endorsements thereon shall be furnished by the Association to each Unit owner and to each mortgagee of a Unit owner on request.

All such insurance coverage by the Association shall be without prejudice to the right of each Unit owner to insure such Unit owner's own Unit for such Unit owner's own benefit.

C. Coverage.

- (1) *Casualty*: All buildings and improvements upon the Property shall be insured to any amount equal to the full insurable replacement value and all personal property included in the common elements for the use of all Unit owners shall be fully insured, with all such insurance to be based on current replacement value, as determined annually by the Board in consultation with the insurer or its insurance agent, but subject to such deductible clauses as are required in order to obtain coverage at reasonable costs, and which coverage shall be increased by the Board as may be necessary from time to time to provide that the insurance proceeds will be sufficient to cover replacement, repairs or reconstruction. Such coverage shall afford protection against:

- (a) Loss or damage by fire and other hazards covered by a standard extended coverage endorsement; and
- (b) Specifically such other risks including flood loss as from time to time shall customarily be covered with respect to buildings similar in construction, location and use as the buildings on the land; and
- (c) Errors and omissions insurance for the directors, officers and managers, if the Association so desires, in amounts to be determined by the Board.
- (d) The policies shall state whether the following items are included within the coverage in order that the Unit Owners may insure themselves if the items are not insured by the Association:

air-handling equipment for space cooling and heating, interior fixtures such as electrical and plumbing fixtures, floor coverings, inside paint and other wall finishing.

- (2) *Public Liability:* In such amounts and with such coverage as shall be required by the Board of Directors in consultation with the insurer or its agents from time to time to provide insurance coverage that is adequate and customary for buildings and uses similar to the condominium with cross-liability endorsement to cover liabilities of the Unit owners as a group to a Unit owner.

Each owner shall obtain and continuously maintain public liability/premises liability coverage with coverage, limits and deductibles that are approved from time to time by the Board. The owners will provide the Board with proof of such coverage upon request.

- (3) *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 any federal and state laws.

D. Premiums.

Premiums upon insurance policies purchased by the Association shall be paid by the Association as a common expense, except that the amount of increase in the premium occasioned

by improper use, misuse, occupancy or abandonment of a Unit or its appurtenances or of the common elements by a particular Unit owner shall be assessed against the such Unit owner. Not less than ten (10) days prior to the date when a premium is due, evidence of such payment shall be furnished by the Association to each lienholder listed in the roster of lienholders.

E. Insurance Trustee.

All insurance policies purchased by the Association shall be for the benefit of the Association and the Unit owners and their mortgagees as their interests may appear. Upon such election being made by the Board of Directors of the Association in its discretion, the Board shall provide that all proceeds covering property losses shall be paid to such bank (or title or trust company or other qualified company) in Missoula 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. 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 Board (or the Insurance Trustee if appointed) shall be to receive such proceeds as are paid and hold the same in trust for the purposes elsewhere stated in this instrument and for the benefit of the Unit owners and their mortgagees in the following shares, but which shares need not be set forth in the records of the Insurance Trustee:

- (1) *Unit Owners:* An undivided share for each Unit owner, such share being the same as the undivided share in the common elements appurtenant to such Unit.
- (2) *Mortgagees:* In the event a mortgagee endorsement has been issued as to a Unit, the share of the Unit owner shall be held in Trust for the mortgagee and the Unit owner as their interests may appear, provided however, that no mortgagee shall have any right to determine or participate in the

determination as to whether any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds except distributions thereof made to a Unit owner and mortgagee pursuant to the provisions of this Declaration.

F. Distribution of Proceeds.

Proceeds of insurance policies received by the Board or the Insurance Trustee shall be distributed to or for the benefit of the beneficial owners in the following manner:

- (1) *Miscellaneous:* Expenses of administration, Insurance Trustee and construction or remodeling supervision shall be considered as part of the cost of construction, replacement or repair.
- (2) *Reconstruction or Repair:* Any balance remaining shall be used for reconstruction and repair as hereafter provided.
- (3) If there is no reconstruction or repair the first proceeds for distribution after paying the Insurance Trustee shall be made to the first lienholders for such Units before distribution to the Unit owners. If the Unit or Units are destroyed and partially rebuilt, distribution shall be made to Unit owners or the Insurance Trustee as their interests appear based on the reconstruction of the Units.
- (4) After distribution of the insurance proceeds as set forth in subparagraphs (1), (2) and (3) above, any remaining proceeds shall be distributed to the Units owner(s) as such owner(s)' interest shall appear.
- (5) *Certificate:* In making distribution to Unit owners and their lienholders, the Insurance Trustee may rely upon a certificate of the Association made by its representative or manager as to the names of the Unit owners and their respective shares of the distribution.

G. Association as Agent.

The Association is irrevocably appointed agent for each Unit owner and for each holder of a mortgage or other lien upon a Unit and for each owner of any other interest in the condominium property to adjust all claims arising under insurance policies purchased by the

Association and to execute and deliver releases upon the payment of claims.

H. Notice to Lienholder.

The Association shall notify the holder of any first lien on any of the Units of the occurrence of any loss in excess of \$10,000.00 within thirty (30) days of such loss, if such lienholder has requested such a notice in writing.

I. Reconstruction.

- (1) *Repair after Casualty:* If any part of the condominium property shall be damaged by casualty, whether or not it shall be reconstructed or repaired, shall be determined in the following manner:
 - (a) *Minor Damage:* If a Unit or Units are found by the Board to be tenantable after the casualty, the damaged property shall be repaired.
 - (b) If a Unit or Units are found by the Board to be not tenantable after the casualty, the damaged property, based on a Board resolution may be reconstructed or rebuilt. If the Board decides not to rebuild, the Property shall be subject to the applicable provisions of the Unit Ownership Act.
 - (c) In the event the Association elects not to rebuild as herein provided and as set forth in Montana Code Annotated § 70-23-803, the insurance proceeds shall be used to satisfy any outstanding liens or encumbrances on the Property, and then disbursed as provided in Montana Code Annotated § 70-23-805.
 - (d) *Certificate:* The Insurance Trustee may rely upon a certificate of the Association made by its authorized officer or manager to determine whether or not the damaged property is to be reconstructed or rebuilt.
- (2) *Plans and Specifications:* Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original improvements (subject to any updated building code requirements), or if not, then according to plans and specifications approved by not less than seventy-five percent (75%) of the Unit owners

based on percentages of undivided interest in the general common elements, including the owners of all Units the plans for which are to be altered. Any such reconstruction not in accordance with the original plans and specifications must be set forth in an amendment to the Declaration, which amendment shall be prepared and filed of record in accordance with the provisions of such amended filing, more particularly set forth herein.

- (3) *Responsibility*: The Association Board shall have responsibility for reconstruction or repair after casualty, and the Board shall work with the Insurance Trustee to carry out the provisions of this Section in compliance with the terms of this Declaration.
- (4) *Assessments*: If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction or repair for which the Association is responsible, or if at any time during such reconstruction or repair, or upon completion of such reconstruction or repair, the funds for the payment of the costs thereof are insufficient, assessments shall be made against all Unit owners in sufficient amounts to provide funds to cover the payment of such costs. Such assessments shall be in proportion to the owner's percentage of undivided interest in the general common elements. The Association will promptly notify all Unit owners when the Association determines that the proceeds of insurance will be insufficient to defray the costs of construction and repair.
- (5) *Construction Funds*: The funds for payment of costs of reconstruction or repair after casualty, which shall consist of proceeds of insurance held by the Insurance Trustee and funds, if any, collected by the Association from assessments against Unit owners, shall be disbursed in the sound discretion of the Insurance Trustee and according to the contract of reconstruction or repair, which contract must have the approval of the Board.
- (6) *Surplus*: It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from the insurance proceeds. If there is a balance in a construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be paid to the Association for the use and benefit of the Unit owners.
- (7) *Reversion*: If a determination has been made in accordance with this Declaration to not rebuild the Units, and after payment of all insurance proceeds to Unit owners in accordance with the terms and conditions herein, the real property on which the condominium was erected will

revert to the common ownership of all such Unit owners as provided in Montana Code Annotated § 70-23-804. The percentage of common ownership of each Unit owner shall be in proportion to such owners' percentages of undivided interest in the general common elements at the time of the damage or destruction.

12. REMOVAL OR PARTITION - SUBDIVISION.

The condominium Property may only be removed from condominium ownership, and may only be partitioned or sold, upon compliance with each of the following conditions hereof:

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

B. The plan of removal, partition, subdivision, abandonment, termination or sale must be approved by the Unit owners and any lienholders as provided in the Unit Ownership Act. If approval for any of the forgoing is not required by the Unit Ownership Act, then approval shall be required from at least seventy-five percent (75%) of the Unit owners based on percentages of interest in the general common elements and all lienholders in the condominium project. Upon obtaining such approval, the Board shall be empowered to implement and carry out the plan of removal, partition, subdivision, abandonment, termination or sale.

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

D. The common elements of the Condominium shall not be abandoned, partitioned, subdivided, encumbered, or sold or transferred without compliance with all of the above requirements.

E. Any such removal, partition, division, subdivision or other plan under this Section 12 must be done in compliance with all applicable Montana laws, rules and regulations.

F. This section shall not apply to the sale of individual Units, and shall not be considered a right of first refusal.

13. UNITS SUBJECT TO DECLARATION, BYLAWS, RULES AND REGULATIONS/AMENDMENTS.

All present and future owners of Units shall be subject to, and shall comply with the provisions of this Declaration, the Bylaws filed and recorded herewith and rules and regulations adopted pursuant thereto, as these instruments may be amended from time to time (the "Condo Instruments"). This Declaration may be amended by a vote of seventy-five percent (75%) of the Unit owners computed on the basis of their common element interests, at a regular or special meeting of the Association called for that purpose. Any amendments shall be filed of record with the Missoula County Clerk and Recorder. The undersigned Declarant hereby reserves the right at any time for so long as the Declarant is a Unit owner, on behalf of itself and on behalf of the Association, to amend the Condo Instruments without approval of any Unit owner or mortgagee for the purposes of correcting architectural, survey or other technical or compliance errors unless the amendment would materially alter or change the rights of a Unit owner or mortgagee, in which event Unit owner and mortgagee consent shall be required as provided above. Provided, the value of the vote of any Unit owner and the corresponding proportion of common expenses assessed against such Unit owner shall not be modified without the written consent of such Unit owner and such owner's mortgagee, nor shall the percentage of value assigned to any Unit be modified without like consent, except as provided in this Declaration or

in the Bylaws or pursuant to the Unit Ownership Act.

Notwithstanding the procedure set forth above, the undersigned Declarant may amend the Condo Instruments, or any other project document, prior to any sale or lease of a Unit or interest thereof.

Each Unit owner hereby appoints the undersigned Declarant and the Board as his, her or its attorney-in-fact, and grants the Declarant and the Board all necessary authority so that the Declarant or the Board may file any amendment approved by the process described herein.

The acceptance of a deed or other conveyance to a Unit in the BABS CONDOMINIUM shall constitute an acceptance of the provisions of the Condo Instruments by such owner. These provisions shall be covenants running with the land and shall bind any person having any interest in such Units as though the provisions were recited and fully stipulated in each deed or conveyance thereof.

14. MISCELLANEOUS.

A. Remedies.

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

B. Severability.

The provisions hereof shall be deemed independent and severable and the invalidity or partial invalidity or unenforceability of any one or more provision shall not affect the validity or enforceability of any other provision hereof. *For Example: the humorous language in Section*

7B(4) authorizing a large omnivore and excluding the mascots of other Big Sky Conference teams cannot be used by a Unit owner and the owner's crafty counsel to procure placement of a pet possum in the Babs Condominium.

C. Expenditures.

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

D. Benefit.

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

E. Right to Examine Books.

Every Unit owner shall have the right to examine the books and records of the Association and of any manager for the condominium project by giving a written notice requesting such examination. Upon receipt of such notice the party receiving the notice shall schedule a mutually agreeable date and time during normal business hours for the examination which date shall be not more than twenty (20) days following the receipt of the notice requesting the examination.

F. Notices.

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

To the Association: The Babs Condominium Association
 c/o Tevirra Investment Associates II, LLC
 720 Polaris Way
 Missoula, MT 59803
 Attn: W. Timothy Seibly

To the Unit Owner: Address as shown on the records of the Association

The Association or Unit Owners may change their address for the purposes of delivery of such writings by delivering written notice of such change to the Unit owner in the manner above provided at least ten (10) days prior to the effective date of such change.

H. All exhibits attached hereto are by reference herein made a part of this Declaration as if set forth in full in this document.

I. The Declarant expressly makes no warranties or representations concerning the Property, or the project, the Units, Declaration or Bylaws except as expressly set forth therein and herein. All verbal representations, statements or warranties are deemed to have been incorporated and merged herein and may not be relied upon by any Owner or other party.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be made and executed according to the provisions of the Montana Unit Ownership Act, Montana Code Annotated § 70-23-101, *et seq.*

DATED effective as of the ____ day of April, 2008.

DECLARANT:

TEVIRRA INVESTMENT ASSOCIATES II, LLC
a Montana limited liability company

By: Tevirra Investment Associates II, LLC
a Washington limited liability company
Its: Managing Director

By: Tevirra Holdings, LLC
a Montana limited liability company
Its: Managing Director

By: Tevirra, LLC
a Montana limited liability company
Its: Managing Director

By _____
W. Timothy Seibly, Managing Director

EXHIBIT “A”

Real Property Legal Description

The West 65' of Lots 6, 7, 8, 9 and 10 of Knowles Addition No. 2, a platted subdivision in the City of Missoula, Missoula County, Montana, according to the official recorded plat thereof.