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Declaration of Covenants, Conditions and Restrictions For Silvertip Subdivision, P.U.D. Madison County, Montana

DRAFT 4/21/14

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Declaration of Covenants, Conditions and Restrictions for Silvertip Subdivision, P.U.D., Madison County, Montana

This Declaration of Covenants, Conditions and Restrictions for Silvertip Subdivision, P.U.D. ("**Declaration**") is made this _____ day of _____, 2014, by MB MT Acquisition, LLC, a Delaware limited liability company] (the "**Declarant**"). All capitalized terms used herein are defined in **Article 2** below.

Article 1
Declaration – Purposes

1.1 **General Purposes.**

(a) Declarant owns the real property located in Madison County, Montana hereinafter defined and referred to as the Property and intends to develop said Property as a residential community.

(b) The Property is part of a larger development known as the Moonlight Basin Community and is part of the Moonlight Basin Community Association, a Montana nonprofit corporation (the "**Master Association**"). The Moonlight Basin Community is a master planned community which may include approximately 1,651 potential residential units (as such term is described in the Overall Development Plan) on approximately 8,000 acres of land, as well as ski area, golf and other recreational facilities. As of the recording of this Declaration, there are currently approximately 348 existing, improved Sites that would be deemed potential residential units. The Property is a portion of the Moonlight Basin Community. Due to its magnitude, the process of development of the Moonlight Basin Community reasonably could be expected to continue for many years.

(c) Silvertip Home Owners' Association, a Montana nonprofit corporation (the "**Association**"), will be formed to hold, manage, and maintain certain property for the common benefit of the Members, Licensees, and Invitees within the Property; to administer and enforce the covenants, conditions, restrictions, reservations and easements created hereby; to collect and enforce the Assessments, charges, and liens imposed pursuant hereto; and for all other purposes set forth in this Declaration, the Articles and Bylaws and the other Governing Documents. This Declaration defines certain rights and obligations of Members, Licensees, Invitees within the Property with respect to the Association and with respect to the Functions undertaken and the Facilities held or maintained by the Association.

(d) By this Declaration, Declarant intends to establish a means to provide for and maintain areas within the Property as a pleasant and desirable environment for all Persons residing or visiting therein. The Silvertip Subdivision, P.U.D. is in a unique mountain setting which has a high natural, scenic, recreational, economic and wildlife value. This Master Declaration is adopted to preserve and maintain the foregoing values of the Property for the benefit of all Persons residing or visiting therein.

(e) Declarant reserves the right to develop the Property and the remainder of the Moonlight Basin Community in accordance with the Overall Development Plan or as otherwise permitted under law and subject to any annexation or withdrawal of real property as permitted herein, regardless of whether said property was originally subject to or ever becomes subject to the Overall Development Plan or the Property.

1.2 **Declaration.** To further the general purposes herein expressed, Declarant, with respect to the property described in **Exhibit A** attached hereto and incorporated herein by reference, for itself, its successors and assigns, hereby declares that the property described in **Exhibit A** attached hereto and any property subsequently added, annexed or subjected to this Declaration (collectively, the "**Property**") or to which this Declaration relates, shall, at all times, be owned, held, used, occupied, sold and conveyed subject to the provisions of this Declaration and to the covenants, conditions, restrictions, reservations, easements, Assessments, equitable servitudes, charges and liens herein contained which shall run with and touch and concern the Property and burden and benefit all portions of the Property, the Declarant the Association, and all other parties having any right, title or interest in the Property or any portion thereof, and their respective heirs, devisees, personal representatives, successors and assigns and any occupants and users of the Property. It is Declarant's intention that this Declaration be deemed a Supplemental Declaration pursuant to **Section** _____ of the Master Declaration and all the provisions contained within the Master Declaration apply to the Property subject to the provisions of this Declaration and the conflicts provisions set forth in **Section 3.12**. In addition to the foregoing, other specific covenants, conditions, restrictions, reservations and easements exist herein, burdening and benefiting the Property and certain other real property and Persons, all as expressly set forth below. Each Member, Licensee, Invitee or other Person who obtains any interest in the Property or uses the Property, by accepting or using such interest or using the Property agrees to abide by the provisions of the Governing Documents and to cooperate with the Association and the Declarant in their efforts to enforce such provisions.

Article 2
Definitions

The words and terms used herein shall be deemed to have the definitions and meanings as set forth in Article 2 of the Master Declaration or as otherwise defined herein.

2.1 **Affirmative Vote of a Majority.** The Affirmative Vote of a Majority means and shall be achieved on any particular matter if (and only if) all of the following: **(a)** there is a majority vote of the Members in favor of such matter and **(b)** the affirmative vote of the Declarant. For the purpose of determining the vote of the Members under **clause (a)** quorum must first be achieved, as defined in the Bylaws, and then the total votes of a majority of the Members present at such meeting in person or by Written Ballot and entitled to vote on such matter shall be deemed the vote of the Membership. At the end of the Declarant Control Period, the vote of the Declarant as provided under **clause (b)** shall not be required to achieve an Affirmative Vote of a Majority.

2.2 **Articles of Incorporation or Articles.** Articles of Incorporation or Articles means the Articles of Incorporation of the Association as filed with the Montana Secretary of State and any amendments and restatements thereto as from time to time.

2.3 **Assessments.** Assessments mean, collectively, the categories of assessments as established herein, being Base Assessments, Default Assessments, Special Assessments, or any other assessments as may be established by the Board, with the Affirmative Vote of a Majority.

2.4 **Association.** Association means the sub-association incorporated as the Silvertip Home Owners' Association, a Montana nonprofit corporation operating pursuant to the Act, or its successors or assigns.

2.5 **Association Expenses.** Association Expenses means allocations to reserves for and all costs, expenses and liabilities incurred by or on behalf of the Association, including, but not limited to, costs, expenses and liabilities for **(a)** acquiring, leasing, renting, designing, constructing, managing, operating, maintaining, repairing, replacing and improving Facilities; **(b)** administering and enforcing the covenants, conditions, restrictions, reservations and easements created by this Declaration, and Governing Documents; **(c)** levying, collecting and enforcing the Assessments, charges and liens, imposed pursuant to this Declaration and Governing Documents; **(d)** regulating and managing the Property; **(e)** performing any and all Functions permitted by this Declaration or any Governing Document; **(f)** operating the Association; and **(g)** any other cost or expense legally incurred by the Association.

2.6 **Board of Directors or Board.** Board of Directors or Board means the body responsible for administration of the Association, selected as provided in the Bylaws.

2.7 **Bylaws.** Bylaws means the Bylaws of the Association adopted by the Association and any amendments and restatements thereto as from time to time.

2.8 **Change in Control Date.** Change in Control Date means the date upon which Declarant control terminates which shall be sixty (60) days after conveyance of seventy-five (75%) percent of the maximum number of Residential Sites permitted by the Plat to a Person other than Declarant. As of the date of this Declaration, twenty (20) Residential Sites are permitted under the current Plat.

2.9 **Declarant.** Declarant means **MB MT Acquisition LLC, a Delaware limited liability company** and any Person that is designated by a written instrument as a successor or assignee of Declarant under this Declaration recorded in the Public Record, or who succeeds as Declarant pursuant to the terms of **Article 6**.

2.10 **Declarant Control Period.** Declarant Control Period means the period commencing on the date on which Declarant forms the Association and ending on the Change in Control Date.

2.11 **Design Guidelines.** Design Guidelines mean any instruments adopted by the DRB for the regulation and management of the Property or any portion thereof with respect to

any matter that the DRB is authorized to review or for which the DRB is authorized to establish standards, as the same may be amended from time to time.

2.12 **Facility.** Facility means any real estate or Improvement within the Property **(a)** that is owned by the Association, **(b)** that is owned by a Person other than the Association, but in which the Association has rights of use or possession pursuant to a lease, license, easement or other agreement, or **(c)** that is part of the Property designated by Declarant as a Facility or indication of similar use restriction herein or on a Plat, for the use or benefit of one or more Member or Invitee.

2.13 **Function.** Function means any activity, function or service listed in this Declaration which is required to be or may be undertaken or performed by the Association as well as any activity, function or service otherwise undertaken or performed by the Association.

2.14 **Good Standing.** Good Standing means that a Member is current on the payment of their Assessments or any assessments owed to the Master Association, is not deemed by the Board to be in violation of the Governing Documents, and is current on any other payments deemed due and owing to the Association or Master Association.

2.15 **Governing Documents.** Governing Documents collectively means this Declaration, Bylaws, Articles, Rules and Regulations, Design Guidelines, and resolutions of the Board, all as amended from time to time.

2.16 **Master Articles.** Master Articles of Incorporation or Master Articles means the Articles of Incorporation of the Association as filed with the Montana Secretary of State and any amendments and restatements thereto as from time to time.

2.17 **Master Association.** Master Association means the association incorporated as the Moonlight Basin Community Association, a Montana nonprofit corporation operating pursuant to the Act, or its successors or assigns.

2.18 **Master Bylaws.** Master Bylaws means the Master Bylaws of the Master Association adopted by the Master Association and any amendments and restatements thereto as from time to time

2.19 **Master Declaration.** Master Declaration means the instrument recorded on _____ at Document #_____ and all amendments, restatements or supplements thereto hereafter recorded in the Public Record.

2.20 **Member.** Member means a Person holding a membership in the Association pursuant to **Article 4** of this Declaration.

2.21 **Membership.** Membership means a membership in the Association that is appurtenant to the ownership of a Residential Site.

2.22 **Owner.** Owner means the record holder of legal title to the fee simple interest in a Residential Site within the Property, but excluding **(a)** contract purchasers or holders only of beneficial title unless the record holder has designated in a writing delivered to the Association that such contract purchaser or beneficial title holder is, until further notice, to be deemed to stand in place of the record holder, **(b)** the Association, **(c)** the Master Association, **(d)** those having an interest merely as security for the performance of an obligation, unless and until a foreclosure or other effective transfer has been completed and all redemption periods have expired. The term Owner shall include Declarant to the extent it is the record owner of fee simple title to a Site.

2.23 **Plat.** Plat means the _____ recorded on _____in Book 4 of Plats, Page _____ in the Public Record.

2.24 **Property.** Property has the meaning given to it in **Section 1.2**.

2.25 **Rules and Regulations.** Rules and Regulations mean any instruments adopted by the Association for the regulation and management of the Property or any portion thereof, as the same may be amended from time to time.

2.26 **Special Declarant Rights.** Special Declarant Rights means the rights set forth in **Section Error! Reference source not found.** of the Master Declaration.

2.27 **Staff.** Staff means the employees or agents of the Association.

Article 3
Certain Functions and Rights of Association

3.1 **General.** Certain of the functions described in this **Article 3** are expressly made mandatory performance obligations of the Association. All other Functions described below are voluntary Functions that the Association may, but is not obligated to, elect to provide. For any voluntary Functions, the Association may elect which Functions to perform based on the budget as adopted by the Association.

3.2 **Mandatory Property Maintenance Function; Additional Discretionary Property Management Function.** The Association shall have the obligation, right, and authority to provide for the care, operation, management, maintenance, repair and replacement of all Facilities. The Association shall also have the obligation, right, and authority to provide for the care, operation, management, maintenance, repair and replacement of all Declarant (and thereafter Association) installed landscaping on Residential Sites, as well as the obligation to snow plow all driveways providing access to Residential Sites. Moreover, the Association may provide for the care and maintenance of other areas of the Property if the Board, in its sole and exclusive discretion, deems such care and maintenance to be necessary or desirable for access to the boundary of or full utilization of any Residential Site or any Improvements within the Property. Such Function may include, without limitation, removal of snow from and application of sand and salt to Enumerated Transportation Systems and operation, management, maintenance, repair, and replacement of Improvements. The Board shall be the sole judge as to

the appropriate maintenance, operation, and management of the Facilities and, to the extent that such services are provided by the Association, other areas of the Property.

3.3 **Recreation Function.** The Declarant or Association may construct Facilities or Improvements on Site A (Common) for the use of the Members and their Invitees which may include but not be limited to: ski, snowshoe, foot and bicycle trails and related facilities, picnic and cooking facilities. The Association may charge reasonable fees for the use of such Facilities and Improvements.

3.4 **Other Functions.** The Association may undertake and perform other functions as the Board deems reasonable or necessary to carry out the provisions of this Declaration.

3.5 **Right to Make Rules and Regulations.** The Association is authorized to and has the power to adopt, amend and enforce Rules and Regulations in the same manner and process as the Master Association as set forth in **Article ___** of the Master Declaration.

3.6 **Taxes.** The Association shall pay all ad valorem real estate taxes, special improvement and other assessments (ordinary and extraordinary), ad valorem personal property taxes, and all other taxes, duties, charges, fees and payments required to be made to any governmental or quasi-governmental entity which shall be imposed, assessed or levied upon, or arise in connection with Association Facilities or Functions.

3.7 **Right to Acquire, Dispose and Improve Facilities.** The Association may acquire, by gift, purchase, lease, trade or any other method, own, operate, build, manage, maintain, rent, sell, develop, encumber, abandon, dispose and otherwise deal in and with real and personal property of every kind and character, tangible and intangible, wherever located, and interests of every sort therein; except that the Association may not convey a Facility that is owned by the Association without the Affirmative Vote of a Majority. The Association may cause additional Improvements to be made as part of the Facilities, including the construction of any capital asset, in whole or in part, for the benefit of some or all of the Members and their Invitees, subject to the restrictions set forth herein. The Association may grant easements, leases, licenses and concessions through or over the Facilities, including, but not limited to, easements (including conservation easements), rights-of-way, leases, licenses and concessions to suppliers of utilities (inclusive of Antennas) serving the Property or property in the Moonlight Basin Community for the purpose of accommodating minor encroachments onto the Facilities or other purposes that do not unreasonably interfere with the use and enjoyment of the Facilities.

3.8 **Governmental or Non-Profit Entity Successor.** Any Facility or any Function may be turned over to a governmental entity, quasi-governmental entity, or non-profit organization (including but not limited to the Master Association) which is tax-exempt under the provisions of the Internal Revenue Code, which is willing to accept and assume the same upon such terms and conditions as the Association shall deem to be appropriate with the Affirmative Vote of a Majority.

3.9 **Records.** The Association shall maintain its records in accordance with applicable law and the Bylaws.

3.10 **Rights of Association.** The Association shall have and may exercise any right or privilege given to it expressly by the Governing Documents or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents or by law, all rights and powers of the Association may be exercised by the Board without a vote of the Members. The powers and rights of the Association include, but are not limited to the right to:

(a) adopt and amend the Bylaws by a majority vote of the Board, with such consents as are required pursuant to the Bylaws.

(b) make capital expenditures, incur liabilities, to enter into contracts and agreements, and to provide services and functions as are necessary to effect the business of the Association, including, but not limited to hiring and discharging managing agents and other employees, agents, and independent contractors.

(c) perform any Function. In addition, the Association may perform any Function by, through or under contractual agreements, licenses, or other arrangements with any governmental, quasi-governmental, private entity or any non-profit organization, as may be necessary or desirable.

(d) adopt and amend budgets for revenues, expenditures and reserves and levy and collect Assessments from Members.

(e) pay the expenses of the Association, and to provide for the use and disposition of the insurance proceeds in the event of loss or damage.

(f) purchase insurance policies, to protect the property of the Association against casualty, loss and to protect the Association, officers, directors, and Staff (when acting in their official capacity) from liability. The extent and specific nature of coverage shall be determined by the Board in accordance with **Section 11.1**.

(g) provide for the indemnification of the Association's officers, directors and Staff through insurance policies maintained by the Association.

(h) borrow funds in order to pay for any expenditure or outlay authorized by the Governing Documents, including, but not limited to, funds borrowed from Declarant or an affiliate thereof, and to execute all such instruments evidencing such indebtedness as may be necessary or advisable; and assign its right to future income, including the right to receive regular or special assessments, as security for any borrowed funds; provided, however, that the Association shall not use reserve funds or pledge its Facilities as collateral for any borrowed funds without the Affirmative Vote of a Majority.

(i) obtain and pay for legal, accounting and other professional and expert services.

(j) deal with agencies, officers, boards, commissions, departments, and other governmental bodies on a local, state and federal basis to carry out the powers, duties and responsibilities herein.

(k) institute, defend or intervene in litigation, arbitration, mediation, or an administrative proceeding in its own name on behalf of itself on matters affecting the Property or take such action as it deems necessary to enforce the Governing Documents, subject to **Section 3.11**.

(l) in its discretion, appoint Persons to generally supervise and control the business of this Association and delegate certain powers, duties and responsibilities to such Persons.

(m) exercise all the powers that may be exercised by a Montana nonprofit corporation under the Act.

3.11 **Conduct of Association Litigation:**

(a) In recognition of the expenses and disruption associated with litigation, prior to commencing an adversarial judicial or administrative proceeding in the name of the Association, the Association shall obtain the Affirmative Vote of a Majority. This Section shall not apply to: **(i)** actions brought by the Association to enforce the Governing Documents; **(ii)** the collection of Assessments (including, without limitation, the foreclosure of liens or any other action pursuant to **Section 5.6(d)**); **(iii)** proceedings involving challenges to ad valorem taxation or condemnation; **(iv)** the defense of claims filed against the Association or the assertion of ancillary claims or counterclaims in proceedings instituted against it; or **(v)** actions brought by the Association against any contractor, vendor, or supplier of goods or services arising out of a contract with the Association or any agent.

(b) No action requiring the approval of an Affirmative Vote of a Majority to be instituted under this **Section 3.11(b)** shall be conducted utilizing legal counsel who are compensated on a contingency fee or similar means of compensation in which litigation costs and attorney's fees are not paid on a current basis or are paid out of the settlement or judgment amount recovered by the Association in such action.

(c) Neither the Association nor any Member shall institute an action against any Person which arises out of an alleged defect in the design or construction of Property until: **(i)** Declarant and the Person who physically constructed the portion of the Property in which the alleged defect exists have been notified and given a reasonable time and opportunity in which to inspect, assess, correct, or redesign any alleged defect (provided, however, that the terms of this Section shall not create an obligation of any Person to effect a repair of an alleged defect); **(ii)** the Association or Member has pursued their remedies under any express warranty covering all or any portion of the alleged defect; and **(iii)** all proposed parties to the action have been

given a reasonable opportunity to mediate any dispute or disagreement relating to the alleged defect, and have either participated or refused to participate in such mediation. The provisions of this Section ____ do not act as a bar to the Declarant bringing an action against a Person independently of the Association.

3.12 **Conflicts among Governing Documents.** In the event that there is any conflict or inconsistency between the provisions of Montana law, this Declaration, the Articles, the Bylaws and the Rules and Regulations, the provisions of Montana law, the Declaration, the Articles, the Bylaws and the Rules and Regulations (in that order) shall prevail. In the event there is a conflict between the Master Declaration and this Declaration, this Declaration shall control. For the purposes of this Section, in the event that this Declaration expressly provides for less restrictive uses of property, then such express less-restrictive provision in this Declaration shall be deemed to control as to the parcels subject to this Declaration.

Article 4
Membership and Voting

4.1 Regular Membership; Appurtenant Rights.

(a) Owners. Every Owner shall be a Member of the Association. There shall be only one Membership attributable to fee simple ownership of each Residential Site within the Property.

(b) Memberships Appurtenant. Membership in the Association shall be limited to Owners, as set forth herein.

(i) Each such Membership of an Owner and the benefits and burdens relating to that Membership shall be appurtenant to the fee simple title to each Residential Site held by an Owner. The Owner shall automatically be the holder of the Membership appurtenant to that Residential Site as set forth herein and title to and ownership of the Membership shall automatically pass with fee simple title no matter how such title or interest is acquired whether by tax sale, foreclosure, deed in lieu of foreclosure regardless of the existence of a right of redemption or reversion. Membership as an Owner may not be transferred separately from the fee simple title in a Residential Site.

(ii) By virtue of becoming an Owner, each such Person shall be deemed to consent to becoming a Member of the Association, and no such Person shall be entitled to opt out, resign, or withdraw from being a Member, regardless of whether any Person uses or does not use any Facility or is the beneficiary of any Function of the Association. The obligations of each Owner under this Declaration are mandatory, including, but not limited to, the payment of ongoing Assessments, and all obligations of each Owner set forth herein, regardless of when specific obligations arise or become payable during the term of any Owner's ownership of a Residential Site, are deemed to be an obligation incurred and a commitment made as of the date of such Person becoming an Owner.

(c) Membership in Master Association. Every Owner shall be a Member of the Master Association in accordance with the Master Declaration.

4.2 **Joint Ownership; Joint and Several Liability.** If an Owner's interest in a Residential Site, is held by more than one Person (in tenancy in common, as joint tenants, or otherwise), the Membership appurtenant to such Residential Site shall be shared by all such Persons in the same proportionate interest and by the same type of ownership as the Residential Site, subject to reasonable Board regulation and restrictions on voting, notices, and Assessment obligations as set forth in the Bylaws or otherwise. All such Persons shall be jointly and severally obligated to perform the responsibilities of the specific Owner, as the case may be. The membership rights of an Owner that is not a natural person may be exercised by any officer, director, partner, trustee, member or manager, or by an individual designated from time to time in a written instrument describing and certifying the authority of such Person provided to the Secretary of the Association. In a multiple interest owner situation, if more than one Person seeks to exercise the vote, the voting privilege shall be suspended. Neither the Association nor Declarant shall have any obligation to confirm, as among such multiple interest owners which of the Persons has the right to vote. In the case where there are multiple owners of a Residential Site, the liability of each Owner in relation to the Governing Documents is joint and several.

4.3 **Evidence of Membership and Registration of Mailing Address.** Any Person on becoming a Member shall furnish to the Association a copy of the recorded instrument vesting that Person with the interest required to make him a Member of the Association. Each such Member at the same time shall give a single name and address to which notices to such Member may be sent, as well as, an e-mail and telephone number by which that person can be contacted. In the event of any change in the facts reported in the original written notice, including any change of ownership, the Member shall give a new written notice to the Association containing all the information required to be contained in the original notice. As against any Member, and any Person claiming by, through, or under such member, the Association may, but shall not be obligated to, rely, for any and all purposes, on the information reflected in the most recent written notice furnished with respect to such Member. The Association shall keep and preserve the most recent written notice received by the Association with respect to such Member. In no event will the Association have any obligation to investigate into the address or contact information of any Member.

4.4 **Voting**. On all matters, unless excluded by this Declaration, to be decided by the Association, each Owner shall have one vote per Residential Site owned. When more than one person owns any Residential Site, all such persons shall be Members. The vote for such Residential Site shall be exercised as the Owners among themselves determine, but in no event shall more than the allocated one vote per Residential Site be cast with respect to any Residential Site. Voting is further addressed in the Bylaws.

4.5 **Election of Directors.** Directors shall be elected as set forth in Article 4 of the Bylaws.

Article 5
Assessments, Association Expenses, Other Amounts, Lien for Sums Due Association; Enforcement

5.1 **Personal Obligation for Assessments and Other Amounts.** Each Member in relation to such Member's Residential Site shall be deemed to covenant and agree to pay to the Association and be liable for all Assessments, charges, fines, penalties or other amounts, to be levied, fixed, established and collected as set forth in the Governing Documents that become due while he is a Member as to each Residential Site, such obligation being appurtenant to each Residential Site. Each Residential Site's allocation of Assessment obligations and such Member's obligation as to Assessments shall be set forth in this **Article 5**.

(a) Failure of the Board to set assessment rates or to deliver or mail each Member an assessment notice shall not be deemed a waiver, modification, or a release of any Member from the obligation to pay these Assessments or the effectiveness of the lien in relation to the Assessments. In such event, each Member shall continue to pay their respective Assessments on the same basis as during the last year for which an Assessment was made, if any, until a new budget becomes effective and new Assessments are levied pursuant thereto. Any such budget may include as an expense item any shortfall in amounts previously collected.

(b) No Member may exempt himself from liability for any Assessments or any other obligation under the Governing Documents by non-use of or abandonment of his Residential Site or any other reason. The obligation to pay Assessments is a separate and independent covenant on the part of each Member in relation to a Residential Site created as of the acceptance of any interest in a Residential Site. No diminution or abatement of Assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or Improvements, or from any other action the Association or Board takes.

(c) Declarant is not obligated to pay Assessments on any Residential Site it owns until it is conveyed to a third party. So long as Declarant owns Sites, Declarant may, but is not obligated to, voluntarily subsidize the Association's budget by contribution, advance, loan, or in any manner the Declarant, in its sole discretion chooses. Any such voluntary subsidy shall be conspicuously disclosed as a line item in the budget and shall be made known to the Membership. Such voluntary subsidy in any year shall under no circumstance obligate the Declarant to continue to provide a subsidy in future years, unless otherwise provided in a written agreement between the Association and the Declarant.

5.2 **Verification of Assessments Due.** Upon written request, the Association shall furnish to a Member or his title or mortgage company written or oral verification of the amount of such Assessments owing and whether the Member has paid such Assessment. The Association may require the advance payment of a reasonable processing fee for the issuance of such verification.

5.3 **Purpose of Assessments and Other Amounts.** The Assessments levied and any charge, fine, penalty or other amount collected by the Association shall be used exclusively to pay expenses and other obligations the Association may incur in performing any actions permitted or required under the Governing Documents, including, but not limited to, operating expenses (inclusive of the overall general administration of the Association), the costs of constructing or purchasing Facilities and performing Functions, the cost of all insurance premiums and applicable deductibles for insurance required under this Declaration, repayment of debt and debt service, providing security for third party obligations as provided in the Governing Documents, and all other Association Expenses. The Association may invest any funds allocated to reserves in a reasonable and prudent manner, provided, however, that nothing herein shall subject the Association to the duties of a trustee or limitations on categories of investments that a fiduciary may make, including, without limitation any obligation to diversification, and the other obligations of set forth in the Montana Uniform Prudent Investor Act §72-34-601 *et seq*. and all similar and replacement acts. Unless expressly required by a Governing Document, the Association will not refund or credit to any Member any excess funds (including reserves or community transfer assessments) collected by the Association.

5.4 **Types of Assessments.** The Association may and shall levy all of the Assessments set forth below:

(a) Base Assessment. The Board shall establish and levy an annual base assessment (**"Base Assessment"**) in the amount that the Board estimates will be sufficient to raise the funds needed to perform the duties of the Association during each fiscal year. Annual Base Assessments shall be paid in installments, billed monthly or quarterly, at the option of the Board. The Board may not impose an annual Base Assessment upon any Residential Site which is more than twenty percent (20%) greater than the annual Base Assessment for the immediate preceding fiscal year.

(b) Default Assessment. Notwithstanding anything to the contrary contained herein, if any expense of the Association is caused by **(a)** the negligence or misconduct of a Member or a Member's family member, employee, agent, Licensee or Invitee, or **(b)** a violation of any covenant or condition of a Governing Document, by a Member or a Member's family member, employee, agent, Licensee or Invitee, the Association may, if it deems necessary or advisable, levy an assessment against such Member. Any such assessment levied by the Association, and each fine, penalty, fee, or other charge imposed upon a Member for the Member's violation of any covenant or condition of any Governing Document, are each referred to herein as a "**Default Assessment**."

(c) Special Assessment. The Board at any time may levy a special assessment in order to raise funds for unexpected operating or other costs, insufficient operating or reserve funds, or such other purposes as the Board in its discretion considers appropriate. The Board may not levy special assessments which in the aggregate exceed five percent (5%) of the total budget of the Association for that fiscal year, without the Affirmative Vote of a Majority.

5.5 **Time for Payments; Effect of Non-payment of Sums Due Association: Lien and Remedies of the Association.**

(a) Notices of assessment levies shall be sent to the addresses on file with the Board for Owners, or in the absence of an address on-file with the Board, the publicly available address for such Persons on file with the Madison County Treasurer. Such notices shall set forth the assessment amount, the legal description for the Residential Site, the due date and where to send payment. Payment of each Assessment shall become due and payable as set forth by the Board in the notice of assessment.

(b) Any Assessment, charge, fine, penalty, or other amount not paid within sixty (60) days after the due date shall be delinquent, shall incur a late payment penalty in an amount to be set by the Board from time to time, not to exceed the maximum permitted by applicable law, and shall bear interest at a rate of fifteen percent (15%) per annum, or the maximum amount allowed under Montana's usury laws, from the date due and payable until paid and the Member shall be obligated to pay all lien fees, legal fees and recording fees (as applicable).

(c) The Association has a lien on each Residential Site for any Assessment levied against the Residential Site or in relation to activities conducted on such Residential Site and amounts due hereunder from the Owner in relation to such Residential Site.

(d) In the event an Owner fails to pay sums due the Association within sixty (60) days of the due date, the Association may **(i)** bring an action at law to collect the lien or foreclose the lien against the real property in the same manner as a mortgage on real property, **(ii)** although not necessary in order to foreclose the lien, record notice of the Association's lien against the property being assessed, **(iii)** institute an action for a money judgment, **(iv)** exercise any other remedy at law or equity. Each Assessment or other charge, together with interest and penalties thereon and all costs and expenses incurred by the Association to collect such Assessment, charge, fine, penalty or other amount, including reasonable attorneys' fees and disbursements, may be recovered by suit for a money judgment by the Association without foreclosing or waving any lien securing the same or may be recovered in any foreclosure.

(e) The recording of this Declaration constitutes record notice and perfection of a lien of the Association on all Residential Sites. No further recordation or filing of any claim of any lien is required. The Association may, in its discretion, record or file an additional notice of that lien in the Public Record at the election of the Association. The priority of the lien of the Association shall be determined pursuant to **Section 5.6** and shall not be dependent upon the recording or filing date of any notice of lien recorded or filed in the Public Record, and shall be binding upon the Owner and their successors. The Association, acting on behalf of the Members, shall have the power to bid (which may be a bid on credit, up to and including the amount secured by the lien) for the Residential Site at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. During the period a Residential Site is owned by the Association following foreclosure, no right to vote shall be exercised on behalf of the Site and no Assessment shall be assessed or levied on the Residential Site. The Board may authorize the

execution and recordation of a deed conveying title to the Residential Site which deed shall be binding upon the Owner and their successors, and all other parties.

5.6 **Priority and Non-subordination of the Lien.** The lien under this **Article 5** is prior to all other liens and encumbrances on a unit except: **(a)** liens and encumbrances recorded before the recordation of the Declaration, except to the extent subordinated pursuant to the form attached as **Exhibit B** or otherwise; **(b)** subject to the other provisions of this Section, a first mortgage or security interest granted to a bona fide, arms' length, third party lender on the Residential Site recorded before the date on which the Assessment or amount sought to be enforced became delinquent; and **(c)** to the extent provided by applicable law, liens for real estate taxes and other governmental assessments or charges against the Site. The lien is also prior to all mortgages and security interests described in **Section 5.6(b)** to the extent of the Assessments for common expenses based on the periodic budget adopted by the Association that would have become due in the absence of acceleration during the six (6) months immediately preceding institution of an action to enforce the lien, unless federal regulations or written federal underwriting policies adopted by Federal Mortgage Underwriters require a shorter period or allow a longer period for the measurement of the amount of the super-priority of the Association's lien, in which case the period for measurement of the amount of the Association's super-priority lien shall be such shorter or longer period. If federal or state regulations or written federal underwriting policies adopted by Federal Mortgage Underwriters either require a shorter period or allow for a longer period of priority for the lien of an association such as the Association, the period during which the lien is prior to all mortgages and security interests described in **Section 5.6(b)** shall be determined in accordance with those federal regulations or written federal underwriting policies, granting priority to the maximum period allowed.

5.7 **Liability of Members, Purchasers and Encumbrancers.** The amount of any Assessment, charge, fine or penalty payable by any Member shall be a joint and several obligation to the Association of such Member and such Member's heirs, devisees, personal representatives, successors and assigns. A Person acquiring fee simple title to a Residential Site shall be jointly and severally liable with the former owner of the Residential Site for all such amounts which had accrued and were payable at the time of the acquisition of the title or interest by such Person, without prejudice to such Person's right to recover any such amounts paid from the former Owner. The provisions of this **Section 5.7**, however, are subject to the priority provisions of **Section 5.6**.

5.8 **Allocation of Association Expenses.** Except as otherwise provided in the Governing Documents, Assessments and Association Expenses shall be allocated in accordance with this **Article 5**.

5.9 **Assessment Obligation to Master Association.** Each Owner is obligated to pay assessments to the Master Association as applicable in accordance with the Master Declaration.

Article 6
Certain Rights of Declarant and Association

6.1 Declarant's Easements and Related Rights.

(a) Declarant hereby reserves to itself for itself and for the benefit of its Business Lessees, Licensees, Invitees, successors and assigns a non-exclusive, perpetual easement on, over, upon, across, above, under and through the Facilities as may be reasonable necessary to **(i)** discharge Declarant's obligations under this Declaration; **(ii)** exercise any Special Declarant Right pursuant to **Section 6.6** below; **(iii)** make Improvements within the Property on property owned by the Declarant or Facilities of the Association; and **(iv)** maintain, repair, access, replace, construct, use, operate utilities where they are located within the Property as of the date of this Declaration or any relocated facilities.

(b) Declarant hereby reserves to itself for itself and for the benefit of its Business Lessees, Licensees, Invitees, successors and assigns, the right from time to time to establish and use non-exclusive, perpetual utility and other easements, leases, permits or licenses on, over, upon, across, above, under and through the Facilities for uses for the Association, including, without limitation, in relation to any Improvements; and to create other reservations, exceptions and exclusions for the Association, in order to serve all persons residing, visiting or doing business within the Property; provided that any such easement, lease, permit or license does not unreasonably impair the use of the Facilities for their intended purpose or unreasonably impair construction within any Residential Site.

6.2 **Rights and Obligations of Members.** Subject to the provisions of this Declaration and the power of the Association to regulate the use of, and convey or encumber the Facilities as set forth in the Governing Documents, each Member, Licensee and Invitee shall have a non-exclusive easement over, upon, across and with respect to any Facilities as appropriate and necessary for: access, ingress and egress to any Residential Site and to use the Facilities and Sites A, B and C and for all other purposes, subject to Section 3.14 above and Article 7 below.

6.3 **Association Easements.**

(a) Declarant hereby grants to the Association, Invitees, successors and assigns, a non-exclusive, perpetual easement on, over, upon, across, above, under and through the Property and each portion thereof to **(i)** exercise any right held by the Association under this Declaration or any other Governing Document, and **(ii)** perform any obligation imposed upon the Association by this Declaration, including but not limited to all maintenance functions (landscaping and snowplowing) as set forth in Section 3.2 above or any other Governing Document. Notwithstanding the foregoing, the Association shall not enter upon any Residential Site without reasonable prior notice to the Owner of the Residential Site, except in cases of emergency.

(b) Declarant hereby grants to the Association, its Licensees, Invitees, successors and assigns, a non-exclusive, perpetual blanket easement upon, across, above and under all property within the Property for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving the Property or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, as well as storm drainage and any other services such as, but not limited to, a master television Antenna system, cable television system, or security system which the Association may install or may have installed to serve the Property, provided, however, that use of such easements shall not unreasonably impair the use of the Facilities for their intended purpose or unreasonably impair construction within a Residential Site. It shall be expressly permissible for the Association or its designee, as the case may be, to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of wires, conduits, cables and other equipment related to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Association shall have the right to grant such license or easement.

6.4 **Plat, Access and Service Easements.**

(a) The Property shall be subject to all easements as shown on the Plat and to any other easements of record or of use. In addition, the Property is subject to all easements created by this Declaration. Each Owner by accepting a deed to a Residential Site, agrees for themselves and their Licensees, Invitees and successors and assigns, to be subject to such easements and the Rules and Regulations from time to time in effect governing the use of such easement areas.

(b) Declarant hereby grants a non-exclusive perpetual easement across and over Mountain Loop Road and Cowboy Heaven Road (or as thereafter named, as depicted on the attached **Exhibit C_** and incorporated herein by reference) for ingress and egress to all Owners of a Residential Site and for their Licensees, Invitees, and successors and assigns, subject to such Rules and Regulations from time to time in effect governing the use of such roads.

6.5 **Enjoyment of Facilities.** The use and enjoyment of Facilities shall be in accordance with **Section** _____ of the Master Declaration subject to any additional Rules and Regulations adopted by the Association.

6.6 **Special Declarant Rights.** Declarant hereby reserves for itself and its successors and assigns the same rights for this Property as those enumerated in Section 6.6, 6.7 and 6.8 of the Master Declaration (collectively the "**Special Declarant Rights**"):

6.7 **Right to Develop.** The completion of construction and the sale or other disposal of Residential Sites by Declarant is essential to the development of the Property as a community. Accordingly, nothing in this Declaration or the other Governing Documents shall be construed to prevent Declarant, its contractors or subcontractors, from exercising, in their sole discretion, any Special Declarant Right and utilizing any easement, right or privilege granted by this Declaration or otherwise doing upon the Facilities or portions of the Property owned by Declarant whatever is necessary or advisable in connection with the development and sale of Residential Sites or amenities in relation to the Property and the Moonlight Basin Community.

Article 7
Restrictions Applicable to Property

7.1 **Land Use Restrictions.** In addition to the restrictions found in this Article, all or any portion of the Property shall be further restricted in its use, density or design according to the Master Declaration (unless in conflict with the land use restrictions found in this Article, in which case the land use restrictions in this Article apply), Overall Development Plan; Rules and Regulations; Design Guidelines; subdivision regulations, designations and agreements; wildlife agreements, wildfire mitigation guidelines and conservation guidelines entered into by Declarant or Association in connection with the development of the Property; zoning regulations adopted by governmental authorities; and similar matters. Each Member, Licensee and Invitee shall comply with all of the terms, provisions, covenants, conditions, restrictions, easements and reservations to be complied with under this Declaration, including those referenced above, and those imposed by the land use restrictions in this Article.

7.2 **Residential Sites 1-20 .** Shall be used for residential purposes only. Structures on said Residential Sites may be rented for periods greater or less than thirty (30) days.

7.3 **Site A (Common) .** Shall be owned by the Declarant during the Declarant Control Period and thereafter the Association. Site A shall be used for road and driveway easements to provide access to Residential Sites 1-20 for the benefit of all Members and their Invitees. Site A may also be used for: the construction of Facilities for the benefit of the Members; it may also be used for the installation of utilities (including but not limited to water, sewer, telephone, fiber optics and such other utilities , playgrounds, parks, tennis courts, swimming pool, swimming pool building, skiing, ski trails and access, playing fields, basketball courts, water wells, pipelines, maintenance and storage buildings, comfort stations and shelters, together with such easements as the Declarant or Association may hereinafter designate, but in

no event shall such construction, improvements, or easements, be inconsistent with this Declaration or detract from the use and development of the remainder of the Property.

7.4 **Sites B and C (Common) .** Shall be owned by the Declarant during the Declarant Control Period and thereafter the Association. Shall be used to maintain an open space buffer between the main roads Peaks View Drive and Cowboy Heaven Road and Residential Sites 1-20. Sites B and C may also be used for passive recreational activities for the benefit of the Members such as picnic areas and hiking trails. Sites B and C will be maintained by the Association for tree health and noxious weeds, but the Association will not be precluded from cutting trees for fire mitigation.

7.5 **Maintenance of Residential Site.** All Residential Sites, except for any portion of the Site then undergoing any Construction Activity, including all Improvements on such Site and all unimproved sites, shall be kept and maintained in a clean, safe, attractive and sightly condition and in good repair. Failure of a Member to maintain their site will result in enforcement by the Association in accordance with **Article 9** below, which may include recording a notice of non-compliance in the Public Record and completion of the maintenance work by the Association and subsequently assessed to the Owner as a Default Assessment.

7.6 **Water and Sanitation.** All Residential Sites shall be connected to community water and sewer service provided by MT Moonlight Basin Water & Sewer LLC or its successors or assigns and all Members shall be obligated to pay the required water and sewer fees for those services. Failure to pay fees to the water and sewer provider may result in services being cut-off.

7.7 **Animals.** The Association shall adopt Rules and Regulations to regulate the keeping of household pets within the Property. Such Rules and Regulations may include designated areas for pet walking, the placement of dog waste bags and trash cans; and leash/control requirements.

7.8 **Parking.** Members and their Invitees shall not park vehicles on or along any road within the Property. The Association shall have the right to remove any vehicle that is parked along any road within the Property at the vehicle owner's expense.

7.9 **Recreational Vehicles.** No motorcycle, motorbike, snowmobile, ATV or "ATV-like" vehicle, golf cart, or motorized vehicle used primarily for recreational purposes shall be operated within or on the Property for any purpose. Recreational vehicles may not be parked on Residential Sites unless within an enclosed garage. Nothing in this provision shall prohibit the Association from adopting Rules and Regulations to regulate the temporary parking of Recreational Vehicles on Residential Sites.

7.10 **Interval Ownership.** No Residential Site shall be subjected to an Interval Ownership Plan.

7.11 **Health, Safety and Welfare.** In the event additional uses, activities and/or facilities are deemed by the Board to be nuisances or to adversely affect the health, safety or welfare of the Members, Licensees, Invitees, or members of the general public or the value of

any part of the Property, the Association may adopt Rules and Regulations restricting or regulating the same.

7.12 **Subdivision and/or Aggregation of Sites.** There shall be no subdivision or aggregation of Residential Sites within the Silvertip Subdivision, P.U.D..

7.13 **Handicapped Rights.** Subject to the review rights of the Association and the DRB and applicable law, each Owner shall have the right to modify his Improvements and the route over the Residential Site (as applicable and necessary) leading to the entrance of his Improvements, at his sole cost and expense, in order to facilitate access by Persons who are blind, visually handicapped, deaf or physically disabled, or to alter conditions which could be hazardous to such Persons.

7.14 **Declarant's Exemption.** Notwithstanding any other provision of this Declaration, nothing contained in this Article or in **Article 8** shall be construed to prevent the exercise by Declarant of any Special Declarant Rights. Further, Declarant's Construction Activity, Declarant's activities of the type listed in **Section** Error! Reference source not found., and Declarant's exercise of any Special Declarant Rights are exempt from review by the DRB during the Declarant Control Period.

7.15 **Violation.** Determination with respect to whether or not a particular activity or occurrence shall constitute a violation of this Article shall be made in accordance with **Article 9**.

Article 8
Design Review Board

The Property is subject to Design Guidelines as adopted by the DRB. A Member must first obtain Association approval prior to submitting an application for Construction Activity to the DRB. As part of its Rules and Regulations, the Association shall adopt a procedure for approval of any Member's applications to the DRB.

Article 9
Enforcement and Remedies

The Association shall have the right (but not the obligation) to enforce the Governing Documents, including the authority to abate any violation and charge the violator for the cost of abatement, or by proceedings either at law or in equity against any Person violating or attempting to violate any of the Governing Documents in the same manner as the Master Association pursuant to **Article** ___ of the Master Declaration.

Article 10
Special Disclosure Matters

In addition to the special disclosure matters as disclosed in **Article** _____ of the Master Declaration, each Member, Licensee, Invitee is hereby advised of the following matters affecting the Property and the use and enjoyment thereof:

10.1 **Master Declaration.** Each Owner of a Residential Site, by virtue of ownership in fee title to a Residential Site shall also be a member of the Master Association and shall be subject to all rights and obligations of the Master Declaration. Such rights and obligations shall include the rights associated with membership and the obligation to pay assessments as outlined in the Master Declaration.

10.2 **Previous Land Use.** The Property was previously utilized as a drain field site for the Treeline Springs, LLC waste water treatment plant, but was abandoned in 2007.

Article 11
Insurance, Casualty and Condemnation

11.1 **Insurance.** The Association shall obtain and continue in effect the same types of insurance as required of the Master Association in Article ___ of the Master Declaration as applicable for the Facilities that the Association maintains.

11.2 **Casualty and Condemnation.** In the event of damage or destruction to any part of the Facilities or condemnation of the Facilities, the Association shall handle these events in the same manner as set forth in **Article** __ of the Master Declaration and any approvals shall require eighty (80%) percent of the Members.

Article 12
Mortgagee Provisions

An institutional holder, insurer, or guarantor of a first mortgage on a Residential Site may apply to be an Eligible Holder and achieve the same rights with the Association in the same manner as set forth in **Article** ___ of the Master Declaration except that notice shall be to the Association's registered agent.

Article 13
Jurisdiction, Annexation and Withdrawal

13.1 **Existing Jurisdiction.** The Property within the existing jurisdiction of the Association and subject to this Declaration and the Governing Documents is described in **Exhibit A** attached to this Declaration and incorporated herein by reference. Property within the jurisdiction of the Association and subject to this Declaration is subject to all provisions of the Governing Documents.

13.2 **Expansion of Jurisdiction by Declarant.**

(a) During the Declarant Control Period, the jurisdiction of the Association and the Property subject to this Declaration may be expanded by annexation of other real property immediately adjacent to the Property at the discretion of Declarant. Such annexation shall be accomplished by recording a supplement to **Exhibit A** in the Public Record describing the property being annexed, stating the authority for expansion, stating that the property is

subject to this Declaration, and signed by Declarant and the owner of the real property being annexed. Such supplement shall not be deemed an amendment to this Declaration.

(b) Any such annexation shall be effective upon the recording of such supplement, unless otherwise provided therein. Upon annexation the owner or owners of the annexed property shall become a Member in the Association, will be subject to the Governing Documents and entitled to the rights and obligations of the members as set forth in the Governing Documents.

(c) Nothing in this Declaration shall be construed to require Declarant or any successor to subject additional property to this Declaration or to develop any of the property whatsoever.

13.3 **Withdrawal from Jurisdiction.**

(a) Declarant, during the Declarant Control Period, reserves the right to amend this Declaration without prior notice and without the consent of any Person, for the purpose of removing property then owned by Declarant, its affiliates, or the Association from the coverage of this Declaration, to the extent originally included in error or as a result of any changes in Declarant's plans for the Property provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development of the Property contemplated under the Overall Development Plan. Such withdrawal shall be accomplished by recording in the Public Record a supplement to **Exhibit A** describing the property being withdrawn and shall restate the Property subject to this Declaration, stating the authority for withdrawal, and signed by Declarant or the Association, as the case may be. In the event the property to be withdrawn is a Facility, then the Association must consent to and sign the supplement. Such supplement shall not be deemed an amendment to the Declaration.

(b) Prior to any withdrawal, all applicable Assessments that are owed to the Association must be paid or waived by the Association. Any such withdrawal shall be effective upon the recording of such supplement, unless otherwise provided therein.

(c) This right of withdrawal during the Declarant Control Period is specifically reserved to Declarant.

Article 14
Miscellaneous

14.1 **Duration of Declaration.** The covenants, conditions, restrictions, reservations, easements, assessments, charges and liens set forth in this Declaration shall run with and bind the Property in perpetuity unless terminated in accordance with the terms of this Declaration. In the event this Declaration or any provision hereof is found to be subject to the Rule Against Perpetuities or similar legal doctrine, this Declaration or provision shall be deemed to run for a period of twenty (20) years from the date of recordation of this Declaration, after which it shall be automatically extended for successive ten (10) year periods, unless at least one year prior to the expiration of the initial term or any such ten (10) year period of extended duration, this

Declaration is terminated by a termination agreement that has been authorized and executed by all of the following: **(i)** the Declarant during the Declarant Control Period and **(ii)** at least eighty percent (80%) of the votes of the Members in the Association, which agreement is recorded in the Public Record.

14.2 **Amendment.**

(a) By Declarant. For a period of three (3) years from the date this Declaration is recorded in the Public Record, Declarant may unilaterally amend this Declaration for any purpose, provided the amendment has no material adverse effect on the right of any Owner. Notwithstanding the above, during the Declarant Control Period, Declarant may unilaterally amend this Declaration if such amendment is **(i)** necessary to bring any provision in compliance with any applicable governmental statutes, necessary governmental registrations, rule, regulation, or judicial determination; **(ii)** necessary to enable any reputable title insurance company to issue title insurance coverage on the Sites; **(iii)** required by a Federal Mortgage Underwriter, to enable such Federal Mortgage Underwriter to make or purchase mortgage loans on the Sites; **(iv)** necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Sites; **(v)** otherwise necessary to satisfy the requirements of any governmental or quasi-governmental entity; or **(vi)** necessary to develop in accordance with the Overall Development Plan. However, any such amendment shall not materially adversely affect the rights or materially increase the obligations of any Owner or Interval Owners as to any Site unless the Owner or Interval Owners (or the applicable Interval Owner association or manager) of such Site shall consent thereto in writing.

(b) By Members. Any provision contained in this Declaration may be amended, abandoned, terminated, modified or supplemented at any time by the written consent or certification thereof, duly recorded in the Public Record, by an Affirmative Vote of a Majority. However, any such amendment shall not materially adversely affect the rights or materially increase the obligations of any Owner. Proposed amendments can be drafted and put to a vote of the Members either by the Board or any Member.

14.3 **Effect of Provisions of Declaration.** Each provision of this Declaration, and any agreement, promise, covenants and undertaking to comply with each provision of this Declaration, and any necessary exception or reservation or grant of title, estate, right or interest to effectuate all easements, grants, and conveyances herein and all other provisions of this Declaration shall be deemed incorporated in each deed or other instrument by which any right, title or interest in any real property within the Property is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument.

14.4 **Interpretation of the Declaration.** The Association by and through its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Board's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all Persons and property benefitted or bound by the covenants and the provisions hereof.

14.5 **Attorney's Fees.** In the event suit or action is instituted for a declaration of rights hereunder or to enforce any of the provisions of this Declaration, the parties agree to pay to the prevailing party all reasonable costs, fees, and attorney's fees (as calculated on an hourly fee basis and not a contingency fee basis) and all costs of collection and enforcement, including, but not limited to, any appeals.

14.6 **Limited Liability.** Neither Declarant, the Association, or the Board nor any member, agent or employee of any of the same shall be liable to any party for any action or for any failure to act with respect to any matter if the action taken or failure to act was in good faith and without malice. Such parties shall additionally be entitled to indemnification to the extent required under applicable law or any Governing Document.

14.7 **Successors and Assigns.** Except as otherwise provided herein, this Declaration shall inure to the benefit of Declarant, the Association, and each Member and shall be binding upon Declarant, the Association, each Member and any person or entity holding any interest in or operating on or using the Property, and their respective heirs, devisees, personal representatives, successors and assigns.

14.8 **Severability.** A determination of invalidity of any one or more of the provisions or conditions hereof by judgment, order or decree of a court shall not affect in any manner the other provisions hereof which shall remain in full force and effect.

14.9 **Captions.** The captions and headings in this Declaration are for convenience only and shall not be considered in construing any provisions of this Master Declaration.

14.10 **Gender.** The use of the masculine gender in this Declaration shall be deemed to include the feminine and neuter genders and the use of the singular shall be deemed to include the plural, and *vice versa*, whenever the context so requires.

14.11 **No Waiver.** Failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration.

IN WITNESS WHEREOF Declarant has executed this Declaration on the day and year first written above.

DECLARANT

[_____],
a Delaware limited liability company

[NOTARY BLOCK]

Exhibit A

of
Declaration of Covenants, Conditions and Restrictions
for
Silvertip Subdivision, P.U.D.

LEGAL DESCRIPTION OF THE PROPERTY

DRAFT 04.21.12

Exhibit B

of
Declaration of Covenants, Conditions and Restrictions
for
Silvertip Subdivision, P.U.D.

LENDER'S CERTIFICATE

The undersigned, [NAME OF BANK], holder of the indebtedness secured by [MORTGAGE REFERENCE date and recording #], which mortgage (as amended, replaced, modified or restated, the "Mortgage") covers a portion of the real property covered by that certain Declaration of Covenants, Conditions and Restrictions for Moonlight Basin Community Madison County, Montana (the "Declaration"), recorded with the Clerk and Recorder of Madison County, Montana on _____, 2014 as _____, hereby subordinates its interest in the property subject to the Mortgage to the provisions of such Declaration of Covenants, Conditions and Restrictions, subject to the express terms of **Article 5** of the Declaration, including, but not limited to, the subordination provisions of **Section 5.6(b)** of the Declaration under which the Mortgage is to be deemed a "first mortgage."

[SIGNATURES]

[PERTINENT NOTARY BLOCK]

DRAFT

Exhibit C

of
Declaration of Covenants, Conditions and Restrictions
for
Silvertip Subdivision, P.U.D.

[ROAD MAP]

DRAFT 3-21-22