

DECLARATION OF UNIT OWNERSHIP
FOR SKYLINE COURT

Billings Townhouses, LLP, a Montana limited liability partnership, of Billings, Montana, herein referred to as “Developer,” does hereby make and submit for filing the following Declaration under the Unit Ownership Act of the State of Montana, Section 70-23-101, et seq., Montana Code Annotated.

1. **Submission to Unit Ownership.** The purpose of this Declaration is to submit the real property herein described and the improvements constructed thereon to the condominium form of ownership and use as provided by Title 70, Chapter 23, Montana Code Annotated, herein referred to as the “Montana Unit Ownership Act”. The definition of terms in this Declaration and the Bylaws of the Skyline Court Homeowners Association (“the Association”) shall be those definitions used in the Montana Unit Ownership Act. The real property included within the project, which shall be named “Skyline Court,” is located in Yellowstone County, Montana, is owned by Developer and is more particularly described as follows:

Lots 13, 14, 15, 16, 17, 18, 19, 20, and 21, Block 269, of the First Addition to the City of Billings (also referred to as Block 59, Foster’s Addition to the City of Billings), in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County.

The provisions of this Declaration and the Bylaws of the Association shall be covenants running with the land and shall be binding on the Developer and all subsequent unit owners, their agents, employees, tenants, guests, invitees, successors, and assigns, for so long as the real property described herein is subject to the provisions of the Montana Unit Ownership Act.

2. **Construction of Project.** Developer hereby reserves the right to construct up to twenty-two (22) townhomes and common area improvements upon said property without the consent of any unit owner, mortgagee, or trustee or beneficiary of any trust indenture. Developer may proceed with construction subject to the following conditions:

(a). Prior to conveyance of each completed townhome, Developer shall execute and record an amendment to this Declaration; the amendment shall include floor plans for the newly constructed townhomes, and a site plan showing the location of said townhome, if different than the plans attached to this Declaration, and the date the construction of the townhome was completed.

(b). From and after the recording date of such amendment, the following consequences shall ensue:

(1) The owners of each newly constructed townhome shall have non-exclusive rights to use general common areas to the same extent as the owners of all other completed townhomes.

(2) The owners of each newly completed townhome shall be assessed in accordance with their ownership interest in the common elements. However, no new townhome shall be assessed for, nor shall it have any obligation for debts or deficits of the Association in existence at the effective date of the townhomes first occupancy.

(3) Each townhome shall be treated as a part of the project, developed as a whole from the beginning, except to the extent otherwise provided herein. From and after the date of the amendment, the new townhome shall be treated as though they had been developed, held, occupied and used by the owners as part of a single, undivided project.

(c) The newly constructed townhomes shall be similar in materials, style and quality in construction to the existing buildings.

Developer hereby reserves the right to construct up to twenty-two (22) additional townhomes and common area improvements upon the adjacent property to the East, more particularly described as Lots 12, 11, 10, 9, 8, 7, 6, 5, and if acquired by developer, 4 of Block 269 of the First Addition to the City of Billings, (also referred to as Block 59, Foster's Addition to the City of Billings), according to the official plat on file in the office of the Clerk and Recorder of Yellowstone County, without the consent of any unit owner, mortgagee or trustee or beneficiary of any trust indenture. The developer may proceed with the construction subject to the same conditions set forth above, including the right to amend this declaration as set forth in (a) above, and including the consequences set forth in (b) above, and provided the newly constructed townhomes shall be similar in material, style and quality of construction to the existing buildings.

To facilitate construction of the project, Developer hereby:

- (1) Reserves an easement over and upon common elements for the purpose of access for constructing additional townhomes and common elements.
- (2) Reserves solely to Developer the right to grant utility easements reasonably necessary to the ongoing development of the project, without approval any unit owner.
- (3) Reserves the right to use water and power provided to the above-described property

or any townhome for construction purposes, provided the Developer shall reimburse the supplying unit owners for the reasonable cost of such water and power.

- (4) Reserves the right to amend this Declaration, without approval of any unit owner, to create additional general or limited common elements, to change the location on the lot of any building, to add a more complete description of newly constructed townhomes, and to record additional plats and plans to supplement or modify those included herein. Each unit owner, and each holder of a mortgage or trust indenture on a townhome, by acceptance of a deed to the townhome or by recordation of a mortgage or trust indenture on the townhome, shall be deemed to consent to the amendment to this Declaration and to grant unto Thomas E. Towe, his successors and assigns, a limited irrevocable power-of-attorney to amend this Declaration in accordance with this plan of construction.

Any liens arising as a result of Developer's ownership of and construction of additional units shall not attach to the interest of existing unit owners or those of the first mortgagors of existing units.

3. **Description of Project.** The project will consist of four (4) buildings. All buildings are three stories in height and contain either five (5) or six (6) residential units. The buildings are of structural insulated panel and load bearing wood frame construction with masonry veneer exterior walls, metal stud interior walls, and single ply membrane roofs. The site plan showing the location of the buildings on the property and the location of the units in each building is set forth in Exhibit A. The floor plans for each unit, the dimensions of each unit, and the unit designation for each unit, are shown on the attached Exhibits "B", "C", "D", "E", and "F", and by this reference are included herein.

4. **Description of Unit.** Each unit consists of the area bounded by the interior surfaces of the exterior walls of the unit (within the building), the center of the common wall separating the units, the bottom of the concrete first floor, and the exterior surface of the roof and/or roof deck. Utility lines and pipes which serve only one (1) unit shall be a part of a unit from the interior of the unit to the point where they join lines or pipes serving other units. Any air conditioner or furnace serving a unit shall be part of the unit, even though it may be located on the roof of the building.

5. **Unit Ownership.** Each unit owner shall be a fee simple owner of such unit and of an undivided interest in the common elements, subject to the provisions of this Declaration and the Bylaws of the Association. The undivided interest of each unit owner in the common elements shall be exactly equal so that the owner of each unit shall own an undivided interest in the common elements equal to a fraction, the numerator of which is 1 and the denominator of which is 22.

Each unit, an appurtenant undivided interest in the common elements, membership in the

Association, and the assessment account for that unit shall together comprise one (1) unit, shall be inseparable, and may be conveyed, devised, or encumbered only as a unit. Any conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of a unit owner's interest in the common elements shall be void unless the unit to which that interest is attached is also included in the transfer.

6. **Common Elements.** The general common elements include the exterior surfaces of the building, the land described in section 1 above, the common sewer and water lines serving all units in the buildings, other common utilities serving all units in the buildings, the exterior lights, drive approaches, driveways, sidewalks, alley paving, landscaped areas outside the units, and all other elements of the project necessary and convenient to its existence, maintenance, and safety, and subject to common use by all unit owners.

The limited common elements shall include any common electrical, gas, sewer and water, cable television, and other service lines which serve more than one (1) unit, but less than all of the units.

7. **Use of Units.** Units are intended for use as residential dwellings. They may be used for residential uses, home offices, and such other uses as permitted by zoning ordinances.

8. **Maintenance of Units and Common Elements.**

(a) Except as otherwise provided in subsection 8(b) below, every unit owner shall be responsible for all maintenance of and repairs to the roof, roof deck and interior of that owner's unit, except for repairs covered by insurance purchased by the Association, responsible for replacement of all broken glass in that unit, and responsible for payment of janitorial services to the unit. Each unit owner shall be responsible for all damages to his own unit, to the other units, and to the common elements, including any damage resulting from that unit owner's failure to effect any needed maintenance and repair. Each unit owner shall be responsible for obtaining fire and other casualty insurance on that unit owner's personal property and on the roof, roof deck, parapet walls and interior of the unit, and liability insurance, to the extent deemed necessary by that unit owner. Each unit owner shall be responsible for paying all taxes and assessments on its unit and for payment of all utilities provided to the unit, except water and sewer. All fixtures and equipment within a unit, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the exterior walls of a unit, shall be maintained, replaced and kept in repair by the unit owner, except in the event of damage covered by insurance purchased by the Association. Each unit owner shall be responsible for all maintenance and repair to the heating and air conditioning systems, serving that owner's unit.

(b) The Association shall be responsible for any maintenance, repair and replacement of

the common and limited common elements, if any. The Association shall maintain and repair the exterior surfaces of the building, except replacement of glass, roofing and roof decks, and shall be responsible for maintenance and repair of all sidewalks, drive approaches, driveways and alley paving. The Association shall pay for water and sewer provided to all units and to common elements. The Association shall be responsible for maintaining common water and sanitary sewer lines. The Association may employ personnel necessary for the maintenance, upkeep and repair of the common elements as is deemed necessary. The Association shall use a reasonably high standard of care in providing such maintenance, management and repair, so that the common elements will reflect a high pride of ownership.

9. **Common Expenses.** All the following Association expenses shall be charged to the unit owners as a common expense, according to each unit owner's percentage of undivided interest in the common elements:

- (5) Administrative expenses of the Association;
- (6) The cost of maintenance, repair and replacement of the general common elements, including but not limited to, snow removal from the sidewalks and alley serving units in the buildings, the cost of maintaining landscaping, sprinkler systems, designated exterior lighting, drive approaches, driveways, all sidewalks and alley paving, and the cost of maintenance and repair of the exterior surfaces of the building, and the cost of maintenance, repair and replacement of units for which the Association is responsible;
 - i. All bills for water and sewer service to the units and general common elements and for electricity to the general common elements;
 - ii. The cost of keeping common electrical, water and sewer lines and secondary service lines in good repair and condition;

All insurance premiums for all insurance purchased by the Association, as required or authorized by these Declarations and the Bylaws of the Association;

- i. All real property taxes and assessments attributable to the general common elements;
- ii. Capital expenses for capital improvement approved by all unit owners, and the cost of maintenance and repairs to these improvements;
3. Income taxes payable by the Association and corporation fees payable to the Montana Secretary of State;

- iv. Any other common expenses described in this Declaration or the By-laws of the Association.

Expenses for maintenance or repairs due to the misuse or neglect of a unit owner shall be charged to such unit owner and shall be payable solely by that owner.

10. **Limited Expenses.** Limited expenses shall include all expenses attributable to the limited common elements and shall be charged to the unit owners who are served by such limited common elements, in proportion to the benefit received by such unit owners from such limited common elements, and shall include but are not limited to, taxes and assessments, utilities, maintenance, repair, and replacements attributable to the limited common elements.

11. **Membership in the Association.** Each unit owner shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a unit. Each unit owner shall be entitled to one (1) vote in the Association for each unit owned. When more than one person holds an interest in any unit, all such persons shall be members. The vote for such unit shall be exercised as the owners determine, provided that in no event shall more than one (1) vote be cast with respect to any unit.

If the unit owners have a dispute they cannot resolve, they shall present the disputed matter to a mediator. If mediation does not succeed, they shall then submit the matter to binding arbitration in accordance with Montana's Uniform Arbitration Act, Section 27-5-111, *et seq.*, Montana Code Annotated. Any arbitration proceeding shall be brought in Montana, shall be governed by Montana law, and, to the extent not otherwise agreed upon, shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

12. **Covenants to Pay Maintenance Assessments.** Assessments shall be made by the Association for all common expenses and limited expenses. Assessments will begin at the time Developer closes the sale of the first unit in the project. Thereafter, the obligation to pay assessments for a unit shall start upon completion of that unit. The Developer, for each completed unit owned by it, and each unit owner, by acceptance of a deed, whether or not it shall be expressed in said deed, is deemed to covenant and agree to pay the Skyline Court Homeowners' Association all regular and special assessments made by the Association for common expenses and to waive any right said owner may have, under the laws of the United States or the State of Montana, to claim a homestead exemption for said assessments. Assessments shall not include costs attributable to units under construction, and units not yet built.

13. **Remedies for Nonpayment of Assessments.** All sums assessed by the Association but unpaid for the share of common expenses and limited expenses chargeable to any unit plus any other properly assessed charges assessed by the Association, together with interest, collection costs, costs of suit and reasonable attorney's fees, shall constitute a lien on such unit, and if filed of record,

may be foreclosed as provided by law. Such lien shall not take priority over any sums unpaid on a first mortgage or trust indenture of record prior to the recording of the lien for unpaid assessments. Each assessment, together with interest, collection costs, costs of suit, and reasonable attorney's fees, shall also be the personal obligation of the owner of the unit against which the assessment was made at the time the assessment fell due and a suit to recover a money judgment for unpaid assessments shall be maintainable by the Association against such owner without foreclosing or waiving the lien securing the same, at the option of the Association without in any way waiving its rights to later file a lien or foreclose as provided herein. In addition to the foregoing remedies, the Association may shut off the water to any unit of any owner who fails to pay an assessment within fifteen (15) days after the due date and may continue to withhold water to the unit until such time as all assessments, together with accrued interest, are brought current. However, the Association shall not shut off the water to any unit unless, at least ten (10) days prior to shutting off the water, it notifies the unit owner of its intent to shut off the water, by letter sent certified mail addressed to the most recent address provided by the unit owner to the Association. All costs of collection of delinquent assessments, including but not limited to, court costs, costs of filing liens, and attorney's fees, shall be the sole obligation of the non-paying unit owner, shall be deemed a common expense chargeable only to the non-paying unit owner, and may be added to the next regular assessment for that unit.

14. **Process.** Service of process in cases provided for in Section 70-23-901, Montana Code Annotated, shall be made upon Thomas E. Towe, whose place of business is 2525 6th Ave. North, Billings, Montana 59101. This provision may be amended in the manner provided in Section 70-23-902, Montana Code Annotated. If a unit has more than one owner, only one owner of that unit need consent. A change in any of the following must be approved by all eligible mortgage holders:

- (7) Voting rights;
- (8) Responsibility for maintenance and repairs;
- (9) Reallocation of interest in general or limited common areas or rights to their use other than as set forth in this Declaration;
- (10) Redefinition of any unit boundaries for completed units after conveyance by Developer;
- (11) Conversion of units to common areas, or vice-versa, other than as provided in this Declaration;
- (12) Contraction of the project, or the addition or withdrawal of property to or from the project, other than as provided in this Declaration;
- (13) Restrictions on leasing of units;

- (14) Impositions of restrictions on an owner's right to sell that owner's unit, and;
- (15) Restoration or repair of the project in a manner other than as provided in this Declaration.

15. **Rights and Obligations of Developer.** For each completed unit owned by it, Developer shall have all the rights and duties afforded to any owner under the terms of this Declaration, By-Laws of the Skyline Court Homeowner's Association, and Montana law.

16. **Payments by Developer.** Until all units are built and sold, Developer shall pay the proportioned share of real property taxes attributable to units not yet built, or built but not yet sold by it. Developer shall insure, to the extent it deems necessary, all units under construction and pay the cost of such insurance.

17. **Easements.** There shall exist for the benefit of each unit and as a burden on the other units the following easements:

- (a) Easement through the general and limited common elements for ingress and egress for all persons making use of such common elements in accordance with the terms of this Declaration. Each unit owner shall have an unrestricted right of ingress and egress across the general and limited common elements to its unit for themselves and their guests.
- (b) Easements through the units and general and limited common elements for maintenance, repair and replacement of the units and such common elements. Use of those easements, however, for access to the interior of the units shall be limited to reasonable hours, except that access may be had at any time in case of emergency.
- (c) Every portion of a unit, which contributes to the structural support of the building, shall be burdened with an easement of structural support for the benefit of the general and limited common elements.
- (d) Easements through the units and general and limited common elements for all facilities for the furnishing of utility services within the building, which facilities shall include but not be limited to conduits, ducts, plumbing and wiring; provided that the easements for such facilities through any unit in the building shall be substantially in accordance with the plans of the building.
- (e) Easements for encroachments (and maintenance thereof) of any portion of the general common elements or limited common elements upon a unit or units so long as they stand, and easements for encroachments (and maintenance thereof) of any

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

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

The Association is authorized and empowered to grant such licenses, easements, and rights of way for sewer lines, water lines, gas lines, television cable lines, telephone lines, underground conduits, storm drains, and other public utility purposes over those portions of the common elements upon which no building or other structure has been erected, as may be necessary and appropriate for the orderly maintenance, preservation, and enjoyment of the common elements or the units, or for the preservation of the health, safety, convenience, and welfare of the units owners.

18. **Grant of Easements for Services.** The undersigned hereby grant an easement over and across the common elements for mail service, solid waste services, fire service, police protection, other emergency vehicles, and other publicly owned vehicles being used for official federal, state, or local government purposes.

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

20. **Finishing of Interior of Units.** All costs of interior finishing shall be the sole responsibility of the unit owner. No owner shall make any improvements to the interior of its unit, which will impair the structural integrity of the building, which will structurally change the building, or which will encroach on another unit or the common elements. No owner shall remove any firewall, or open any firewall, unless the removal or opening is permitted by the then applicable building code.

21. **Restrictions on Leasing.** Any lease or rental agreement regarding any unit described in this Declaration shall be in writing and shall subject the tenant to the provisions of this

Declaration, the By-Laws for the Association, and all rules and regulations adopted by the Association. Owner shall be responsible for any violation of the provisions of this Declaration, the By-Laws of the Association or any rules and regulations adopted by the Association by their tenants unless the owner has designated the tenant as the unit owner pursuant to the procedure set forth in §70-23-102(16), MCA.

22. **Rights of Action.** The Association and any aggrieved unit owner shall have the right to maintain an action for specific performance, for damages and/or for injunction, against any unit owner or the Association for failure to comply with the provisions of this Declaration, the Bylaws of the Association, or any rules, regulations, or restrictive covenants adopted by the Association, as amended from time to time. The prevailing party in any such action shall be entitled to recover its costs and reasonable attorney's fees from the losing party. The Association and any aggrieved unit owner shall also be entitled to recover from a non-complying owner any costs and reasonable attorney's fees incurred in compelling compliance with the provisions of this Declaration, the Bylaws of the Association, or any rules, regulations, or restrictive covenants adopted by the Association, whether or not a court action is filed.

23. **Eminent Domain.** If the entire building or a portion of the common elements only is acquired by eminent domain and if a separate award is not made to each unit owner, the award shall be allocated to each unit owner in proportion to each unit owner's effective loss as measured by square feet of loss and if no such allocation can reasonably be made, by each unit owner's square footage in the building or each unit owner's percentage of undivided interest in the common elements, as the case may be. In the event that any unit is taken in its entirety or rendered useless as a dwelling, the owner is entitled to his proportionate share of this common elements whether or not any common elements are actually taken. Thereafter, the unit owner shall be divested of his entire property interest in the project attributable to the unit taken and shall have no further property interest in the property, including the common elements. The Directors of the Association shall represent the unit owners in any eminent domain negotiations, legal proceedings, settlements or agreements; each unit owner, by acceptance of a deed, irrevocably appoints the Association as that owner's attorney-in-fact for this purpose.

24. **Notice to Holders, Guarantors, and Mortgagees.** Upon written request from a holder, insurer, or guarantor of a first mortgage on any unit, the Directors of the Association shall provide said holder, insurer, or guarantor with timely written notice of:

- (a) Any proposed action that requires the consent of a specified percentage of eligible mortgage holders;
- (b) Any condemnation loss or any casualty loss which affects a material portion of the project or which affects any unit on which there is a first mortgage held, insured or guaranteed by such holder, insurer or guarantor;

- (c) Any delinquency in the payment of assessments or charges owed by an owner of an unit subject to the mortgage of such eligible holder, insurer, or guarantor, where such delinquency has continued for a period of sixty (60) days;
- (d) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

25. **Amendment.** Prior to completion of construction by Developer, Developer reserves the right to amend this Declaration, and any subsequently recorded Declaration, as provided in Sections 2, 3 and 4, or to comply with any FHA, VA, Freddy MAC, FNMA requirements for guaranteeing or purchasing loans on the units. All units owners and all mortgages on a unit, by acceptance of a deed, mortgage, or trust indenture to any unit, shall be deemed to consent to any such development by Developer and to grant unto Thomas E. Towe, as representative of Developer, an irrevocable power-of-attorney to execute, acknowledge, and record such amendments. No amendment shall be effective prior to completion of the construction of all units, unless approved by Developer. Except for Section 13 above, this Declaration shall be amended only with the written consent of the owners of a seventy-five percent (75%) undivided interest in the common elements. All amendments to the Declaration shall be recorded in the office of the Yellowstone County Clerk and Recorder, Billings, Montana.

26. Developer gives no warranty, express, or implied on any of the units or common area improvements, but will transfer to the initial owners and the Association all manufacturers and dealers' warranties received from the general contractor or subcontractor on appliances, materials, fixtures and equipment, and any warranty given by the general contractors or subcontractors who constructed the buildings and common area improvements. Developer specifically disclaims any liability for incidental or consequential damages to any person, the units and common elements, other components or any other real or personal property resulting from a defect. All implied warranties, including warranties of merchantability, fitness, and habitability, are expressly disclaimed and do not apply.

DATED this ____ day of _____, 2004.

BILLINGS TOWNHOUSES, LLP:

By: _____

Its: _____

STATE OF MONTANA)

County of Yellowstone) : ss.

On this ___ day of _____, 2004, before me, the undersigned, a Notary Public for the State of Montana, personally appeared _____, known to me to be a partner of Billings Townhouses, LLP, a Montana limited liability partnership, executing the within instrument, and acknowledged to me that he executed the within instrument on behalf of said limited liability partnership, having first been authorized so to do.

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

(SEAL)

Print Name: _____
Notary Public for the State of Montana
Residing at _____
My Commission expires: _____ 20____