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STATE OF MONTANA LAKE COUNTY  
RECORDED: 02/08/2024 1:13 KOT: COVENANTS  
KENDRA STEELE CLERK AND RECORDER  
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TO: \_\_\_\_\_

**SECOND AMENDED RESTATED DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR FAIRWAY PROPERTIES II, PHASES I, II AND III;  
MISSION BAY PHASES I, II, III, IV, V, VI, VII, VIII AND IX;  
BROWN'S LAKEVIEW TRACTS, LOTS 5 - 14 INCLUSIVE; AND MISSION BAY  
VILLAGE, PHASES I, II AND III**

This Second Amended Restated Declaration of Covenants, Conditions, and Restrictions is made this 16<sup>th</sup> day of January, 2023 by Mission Bay Homeowners Association, Inc., a Montana non-profit corporation of 312 Montana Landing, Polson, MT 59860, provides as follows:

**RECITALS**

1. The real property subject to these Second Amended Restated Declaration of Covenants, Conditions, and Restrictions is located in Lake County, Montana, and described as Fairway Properties II Phases I, II and III; Mission Bay Phases I, II, III, IV, V, VI, VII, VIII, and IX; Brown's Lakeview Tracts, Lots 5-14 inclusive; and Mission Bay Village, Phases I, II and III, according to the respective maps or plats thereof on file and of record in the office of the Clerk and Recorder of Lake County, Montana, (hereinafter collectively referred to as "Mission Bay" or the "Real Property") was subject to Declaration of Covenants, Conditions and Restrictions, most recently restated and amended as follows (hereinafter collectively referred to as the "First Amended Restated Declaration"):
  - a. The First Amended Restated Declaration of Covenants, Conditions and Restrictions recorded September 9, 2010, as Document No. 509198;
  - b. The First Amendment to the First Amended Restated Declaration of Covenants, Conditions and Restrictions recorded January 16, 2015, as Document No. 539418;
  - c. The Second Amendment to the First Amended Restated Declaration of Covenants, Conditions and Restrictions initially recorded October 17, 2018 as Document No. 565882 and re-recorded on October 30, 2018 as Document No. 566129
  - d. The Second Amendment (sic) to the First Amended Restated Declaration of Covenants, Conditions and Restrictions recorded September 3, 2020, as Document No. 580602;
  - e. The Second Amendment to the First Amendment (sic) to the First Amended Restated Declaration of Covenants, Conditions and Restrictions recorded September 3, 2020, as Document No. 580603; and
  - f. The First Amendment to the Second Amendment to the First Amendment (sic) to the First Amended Restated Declaration of Covenants, Conditions and Restrictions recorded May 25, 2021, as Document No. 588736.
2. The interest of original Declarant, Northwest Holdings, L.L.C., was assigned to Patricia A. DiStefano and Katherine M. Gayvert through a series of assignments, the most recent of which was recorded February 20, 2020, under Document No. 575489, records of Lake County, Montana.
3. Pursuant to the Article 11, Section 4 of the First Amended Restated Declaration, the First Amended Restated Declaration may be amended as follows:  
The Declarant reserves the sole right to amend, modify, make additions to or deletions from this First Amended Restated Declaration it alone deems appropriate.

This right of the Declarant to make such amendments shall continue for so long as Declarant is a Member in the Association. After that time the right to amend shall pass to the Association to be exercised only upon a concurrence of two-thirds (2/3rds) of the Lot Owners of Real Property in Mission Bay (See Article III: Membership and Voting Rights). In no event may those provisions of this First Amended Restated Declaration required by a preliminary plat approval letter from the city of Polson to Declarant dated July 21, 1997, specifically items 13, 14, 16, 19, 22 and 29 of the letter be amended or deleted except with the express written consent of the city of Polson, its successors or assigns.

4. Patricia A. DiStefano and Katherine M. Gayvert no longer own any real property in Mission Bay and therefore, the right to amend has passed to the Association, which may amend the First Amended Restated Declaration pursuant to a vote of two-thirds (2/3rds) of the Lot Owners of Real Property in Mission Bay.
5. On the 1<sup>st</sup> day of January, 2021 the Association held a vote of the Lot Owners of Real Property in Mission Bay and more than two-thirds (2/3rds) of the Lot Owners approved the amendment and replacement of the First Amended Restated Declaration with these, the Second Amended Restated Declaration.
6. The Association and its Members desire to amend the First Amended Restated Declaration to address the change in control arising from the Declarants' sale of all of their interests in Real Property in Mission Bay and for the express purpose of enhancing and protecting the value, desirability, and attractiveness of the Real Property as a desirable residential development, and the Association and Lot Owners desire that the First Amended Restated Declaration be superseded and replaced with this Second Amended Restated Declaration.
7. The Association consulted the City of Polson and was told that these Amended Restated Declaration of Covenants, Conditions, and Restrictions do not affect the provisions required by the preliminary plat approval letter. As a result, the consent of the City of Polson is not required.
8. NOW THEREFORE, the Association hereby declares that all the Real Property identified in this Second Amended Restated Declaration shall be held, sold, and conveyed subject to the following restrictions, covenants, conditions, and easements, all of which are to enhance and protect the value, desirability, and attractiveness of the Real Property as a desirable residential development. These restrictions, covenants, conditions, and easements shall run with the Real Property. They shall be binding upon all parties having or acquiring any right, title, or interest in the described Real Property, or any part thereof, and shall inure to the benefit of and be binding upon each successor in interest to the Owner thereof.

#### ARTICLE I: DEFINITIONS

Section 1. Association. "Association" shall mean and refer to Mission Bay Homeowners Association, Inc., a Montana non-profit corporation, as the same may exist from time to time of record with the office of the Secretary of State, Helena, Montana, and its successors or assigns.

Section 2. Beach Area. "Beach Area" shall mean and refer to that portion of the Common Area described as "Park Area on Flathead Lake" in condition 19 of the preliminary plat approval letter from the city of Polson to Declarant Date July 21, 1997, and further described as "Common Area" located immediately to the east of golf hole #5 on the preliminary plat of Mission Bay.

Section 3. Common Area "Common Area" shall mean all that area shown on the preliminary plat of Mission Bay and the various phases thereof and upon the subdivision plats for Fairway Properties II Phases I, II and III; Brown's Lakeview Tracts, Lots 5-14 inclusive; and Mission Bay Village, Phases I, II and III; and the various phases thereof or as may be shown on any other plat of any subdivision or property coming within the jurisdiction of this Second Amended Restated Declaration.

Section 4. Townhome. "Townhome" shall mean a single-family dwelling unit constructed to be attached by a common wall to one or more other dwelling units but separated by a property line.

Section 5. Lot. "Lot" shall mean and refer to any plot of land shown upon the recorded plat map of the Real Property subject to this Second Amended Restated Declaration with the exception of the Common Areas, Beach Area, and streets and all roads dedicated or private. In the event other than a Lot, as shown on the recorded plat map, is utilized as a building site, as hereinafter authorized, such building site shall be considered a Lot.

Section 6. Member. "Member" shall mean and refer to every person or entity who is a Member of the Association as described in Article III.

Section 7. Owner. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of any Lot which is a part of the Real Property, including buyers under a contract for deed, but excluding those having such interest merely as security for the performance of an obligation.

Section 8. Real Property. "Real Property" shall mean and refer to that certain Real Property described as Fairway Properties II Phases I, II and III; Mission Bay Phases I, II, III, IV, V, VI, VII, VIII, and IX; Brown's Lakeview Tracts, Lots 5-14 inclusive; and Mission Bay Village, Phases I, II and III and such other Real Property as is now or may hereafter be brought within the jurisdiction of this Second Amended Restated Declaration and the Association.

## ARTICLE II: REPLACEMENT OF PRIOR COVENANTS

Section 1. Substitution of Prior Covenants. The terms and provisions hereafter set forth are intended to supersede and replace the terms and provisions in the First Amended Restated Declaration, subsequent amendments thereto and all preceding declaration and amended regarding the Real Property. From and after the date of this Second Amended Restated Declaration, the covenants, conditions, and restrictions, as set out in this Second Amended Restated Declaration, shall control.

## ARTICLE III: MEMBERSHIP &amp; VOTING RIGHTS

Section 1. Membership. Every person or entity who is a record Owner of any Lot, including buyers under a contract for deed, shall be a Member of the Association. The foregoing is not intended to include persons or entities that hold an interest merely as security for the performance of an obligation. Acceptance of Title to any Lot, whether by deed or other form of conveyance, shall be deemed a consent to membership in the Association. Membership shall be appurtenant to and may not be separated from Ownership of the Lot. Ownership of such Lot shall be the sole qualification for membership. The Association, if it acquires an interest in a Lot, which would otherwise qualify it for membership, shall not be considered a Member for voting or assessment purposes.

Section 2. Voting Rights. As to this Second Amended Restated Declaration the Owners of Lots shall be entitled to one vote for each Lot in which they hold an ownership interest. When more than one person or entity owns an interest in any Lot, the vote for such Lot shall be exercised as such persons or entities determine, but in no event may more than one vote per Lot be cast, except as previously stated. A vote may be cast in person, by proxy or by mail-in-ballot.

## ARTICLE IV: HOMEOWNERS ASSOCIATION

Section 1. Homeowners Association. The Association shall administer the terms and provisions of this Second Amended Restated Declaration and take such action as may be reasonable or necessary to carry out the functions of a Homeowners' Association. The Association shall be governed at set forth in the Bylaws of the Mission Bay Homeowner's Association, Inc. and amendments thereto.

Section 2. Sub-Associations. The intent of designating the Sub-Associations is to provide autonomy for Owners of the Lots within a Sub-Association to determine (by majority vote) the nature and extent of common exterior maintenance to be performed on the Lots within the area comprising the Sub Association. This will provide flexibility should a Sub-Association choose to reduce the amount of common exterior maintenance and correspondingly reduce the common assessments for such maintenance or to increase the amount of common exterior maintenance which would increase the common assessments for such maintenance. The Sub-Associations shall be organized as Committees of the Association's Board of Directors, pursuant to the Bylaws, and shall be comprised of two Directors and an odd number of additional individuals chosen by a majority vote of the Owners in the Sub-Association area. The Sub-Association shall coordinate with the Association (and its manager or president) concerning the nature of common exterior maintenance to be performed and changes to exterior maintenance or improvements must have prior written approval of the MBDRC pursuant to the applicable provisions of Article IX, Section 2. Conflicts that cannot be resolved within the Sub-Association must be brought to the Board of Directors by two or more chosen representatives from the Sub-Association. An elected Board Member will be designated by the Board to represent the Sub-Associations. The Association shall

be responsible for retaining and compensating the necessary service providers to accomplish such maintenance and to allocating among the Lots in each Sub-Association their common assessments for such maintenance. The Association shall remain responsible for maintenance of the Common Areas and streets within all Sub-Association areas.

## ARTICLE V: PROPERTY RIGHTS

Section 1. Member's Easements of Enjoyment. Every Member shall have a right and easement of enjoyment in and to the Common Areas, and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- a) The lake access and all Common Area shown on the preliminary plat of Fairway Properties II Phases I, II and III; Mission Bay Phases I, II, III, IV, V, VI, VII, VIII, and IX; Brown's Lakeview Tracts, Lots 5-14 inclusive; and Mission Bay Village, Phases I, II and III or any other subdivision plat coming within the jurisdiction of this Second Amended Restated Declaration, shall remain in private ownership for the exclusive use of the Members of the Homeowners Association and their guests;
- b) The right of the Association to provide reasonable restrictions on the use of the Common Area for the overall benefit of its Members;
- c) The right of the Association to charge reasonable fees for maintenance and snow removal and other fees for the use of the Common Areas. Common Areas shall not be maintained, nor any alteration made to the Common Areas by the Owners of any Lot;
- d) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Real Property, and the rights of such mortgagees in said Real Property shall be subordinate to the rights of the Homeowners hereunder;
- e) To the extent permitted or authorized by the city of Polson, the right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed upon under the Bylaws of the Association;
- f) The right of the Association to grant easements under any Common Area to any public agency, authority, or utility without charge;
- g) The right of the Association to run utility service lines or connections, including a water or sewer system that serves any portion of the Real Property under or through any Common Area; and
- h) Certain Lots are subject to drainage swale easements as depicted on the plats. No Lot shall be developed or landscaped in such a manner as to interfere with the purpose of the drainage swale easement.

Section 2. Assignment of Use. Any Member may assign, in accordance with this Second Amended Restated Declaration, their right of enjoyment to the Common Areas and facilities to their family members, invitees or others who reside on the Real Property.

Section 3. Encroachment Easement. If any part of a dwelling located upon a Lot and configured as a "Townhome" shall at this time or a subsequent time unintentionally encroach (whether due to construction, settling, shifting, or otherwise) upon another Lot, the Owner of the encroaching dwelling shall and does have a perpetual easement for such encroachment and for maintenance of the same.

Section 4. Maintenance Easement. The Owner of each Townhome unit has an easement over that portion of the adjacent Lot on which the connecting Townhome is located to make repairs to the Owner's Townhome. For general building maintenance, landscaping, and lawn care, the Association, its agents, subcontractors, and employees may utilize the easement herein provided for.

Section 5. Common Walls. The dwellings located on some Lots are designed in a "Townhome" configuration, so as two or more dwellings will share a common wall and design. The Owner of each Lot shall own, in fee simple, that portion of the common wall lying within the boundaries of his Lot. Each Owner having a common wall is granted a mutual, reciprocal easement for the replacement of said common wall. No Owner shall commit or omit any act the result of which is infringement of the adjoining Lot Owner's rights in the common wall absent written agreement between such Owners.

## ARTICLE VI: SERVICES PROVIDED BY THE ASSOCIATION

Section 1. Common Areas. The Association shall mow, water or otherwise maintain the Common Areas (as identified in the preliminary plat of Mission Bay subdivision and as subsequently identified or amended in recorded plats of the Phases of Mission Bay subdivision) as is reasonably necessary. The Association shall be responsible for the maintenance of all private roads within the subdivisions subject to the jurisdiction of this Second Amended Restated Declaration. Neither the city of Polson nor other public agencies are responsible for maintenance of the private roads until such time as the private roads are designed and constructed to the then existing public road standards and are accepted by the city of Polson as dedicated public streets.

Section 2. City Park. The City of Polson provides water for a park area identified on the preliminary plat of Mission Bay. The park area is adjacent to Lot 19 of Fairway Properties II, Phase I. Unless the City assumes responsibility for ongoing maintenance of the park, the Association shall provide for the ongoing maintenance of the park.

Section 3. Exterior/Lawn Maintenance. Upon completion of any Townhome units, all exterior maintenance such as painting, repair of walls, roofs, lawns and shrubs (excepting flower

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beds and deck planter boxes) shall be done exclusively by the Association, acting through the applicable Sub-Association, as provided in Article IV, Section 2.

Section 4. Additional Services. The Association may provide additional services as it sees fit. The Association may provide such services for all or a portion of the Real Property within its jurisdiction or with which it may contract and levy assessments on such portion of its Members or others as derive benefits from services concerned.

Section 5. Fees. The Association shall establish a fee schedule for providing these services, which fees shall be considered as assessments, as set forth above. Such schedule may include the assessment of:

- a. Charges for availability of a service even though it is not used by the Owner of a Lot.
- b. Charges for use based on a flat rate.
- c. Additional charges for excess use.
- d. Such other charges as may be required to maintain the private roads within the Real Property.

## ARTICLE VII: RULES AND REGULATIONS

Section 1. Association to Establish Rules. The Association, through its Board of Directors, may promulgate such rules and regulations as it deems necessary and appropriate for the use of the Common Areas, Beach Area and private roads as identified on the plat of the Real Property.

Section 2. Rules for Maintenance and Repairs. The Association, through its Board of Directors, may also promulgate reasonable rules and regulations for the maintenance, repair or improvement of the Real Property. Such rules must be uniformly and evenly applied, but may differ between Townhomes and single-family residential homes.

## ARTICLE VIII: ASSESSMENTS

Section 1. Assessments. The general assessments levied by the Association shall be used for such purposes as are deemed desirable by the Association including but not limited to expenditures for construction, reconstruction, repair or replacement of any capital improvement; maintenance, repair and upkeep of drainage facilities; maintenance, upkeep, real property taxes, hazard and liability insurance, and related expenses in regard to any Common Area, Beach Area, the City Park, administrative costs of the Association incurred in its day to day activities and any costs or expenses, including attorneys fees, incurred in enforcing the conditions, restrictions or charges set forth in this Second Amended Restated Declaration.

Section 2. Rate of Assessments. Assessments for services may be based on either a flat rate or on usage. As to charges for private roads, exterior maintenance, lawn care or similar charges, the Association shall assess those service costs to the Real Property Owners who benefit directly from the services. The cost of maintenance, snow removal and other service costs associated with a Sub-Association shall be prorated among the Owners of Lots in the Sub-Association, but should not be assessed against other Lot Owners. The same concept of user benefit assessment should be applied to exterior maintenance of Townhomes, lawn care and similar services where applicable. All other assessments, including those for capital improvements on systems utilized to provide services, shall be fixed at a uniform rate per Lot. If allowed to do so by the governing authority and the Board of Directors, owners of two or more adjoining Lots may amend the recorded Plats to reduce the number of Lots by eliminating or relocating interior or adjoining boundary lines; however, assessments will continue to be based upon the original number of Lots on the subdivision Plat(s) prior to such amendment.

Section 3. Special Assessments. Upon determination by the Board of Directors of the Association, assessments may be levied for special or particular purposes. Special assessments may include related administration costs and such other costs or charges as are reasonably required. Special assessments shall be fixed, established and collected in the amount and manner as the Association might determine but in any event they shall be separately treated from other assessments provided for by this Article. Funds utilized for special assessments shall be accounted for separately.

Section 4. Commencement of Assessments. The Association is authorized to commence initial assessments as herein authorized at such time as it determines appropriate. Written notice of assessments shall be sent to every Lot owner. The due dates shall be established by the Association. If Assessments are not paid by such due date then interest shall begin to accrue on them at an interest rate of Prime rate plus 5%.

Section 5. Certificate of Payment. The Association shall upon demand furnish a written statement signed by an officer of the Association setting forth the status of any assessments relative to a specific Lot. The statement shall, as applicable, identify any delinquent assessments, the amount owed, the amount of any current assessments or accruing assessments or indicate that all assessments are current and paid. A reasonable charge may be made by the Association for the issuance of the statement. Such statement shall be conclusive evidence of payment of any assessment therein stated to have been paid. In addition, the Secretary of the Association shall maintain a roster of the individual Lots and the assessments due thereon.

Section 6. Nonpayment of Assessments. Any assessments or installment payments on assessments which are not paid when due shall be delinquent. The Association may bring an action at law to collect the amount of the delinquent assessment together with all interest, costs, and reasonable attorney's fees incurred in such action, or may take action to perfect and foreclose the lien for assessments.

Section 7. Obligation of Payment. All Lots are subject to the assessments set forth in this Second Amended Restated Declaration. Each Lot owner hereby covenants and agrees to pay to the Association the amount of all assessments; as such assessments are fixed, established and billed. The Association shall bill the Property Owner for the amount of any assessment and that Property owner shall be responsible for any accruing assessments until and unless such Property owner has provided to the Association's Secretary a true and correct copy of a recorded deed or other document of conveyance transferring title of a Lot to another Owner.

Section 8. Creation of Lien. All assessments both current and delinquent, together with interest and cost of collection as herein provided for, shall be a charge upon the land and shall constitute a lien upon the Lot against which assessments are made. Such lien shall be deemed perfected upon filing with the County Clerk and Recorder of Lake County an account of the assessments due together with a correct description of the Real Property to be charged with such lien and shall continue until all unpaid assessments, interest and costs of collection shall have been fully paid. The priority of such lien shall be determined as of the time of filing with the Clerk and Recorder, and it shall be deemed subordinate to all previously recorded or filed interests. Conveyance of title to any Lot shall not be effective to avoid the obligation for payment of any sums then due and owing whether or not reduced to the status of a lien. The Association may establish such procedures for collection of obligations and perfecting of liens for payment of assessments as it deems necessary and appropriate.

Section 9. Property Subject to Assessment. All Lots shall be subject to assessments by the Association as herein provided except those Lots acquired by the Association.

Section 10. Association Accounts. All Mission Bay financial assets shall be held in accounts at a federally approved and insured financial institution selected by a simple majority vote of the Board of Directors.

#### ARTICLE IX: PROTECTIVE COVENANTS

The following protective covenants are designed to provide a uniform plan for the development of the Real Property. They shall constitute a covenant running with the land for each Lot within the Real Property.

Section 1. Design Review Committee. The Association shall maintain a Design Review Committee ("MBDRC") to serve the functions as described in this Article and shall establish Design Guidelines specifically for the Real Property subject to the jurisdiction of this Second Amended Restated Declaration. Separate Design Guidelines shall be established for the construction of Townhomes and for single family residential dwellings and from phase to phase. Members of the MBDRC shall be appointed and serve as set forth in the Bylaws of the Association.

The Design Guidelines by which the MBDRC will review any proposed plans for the construction of improvements or exterior modifications on any Lot shall be made available to the purchaser of any Lot. It is the obligation of the Owner of any Lot to obtain current versions of the Design Guidelines prior to preparation of plans or specifications for construction of improvements or exterior modifications and prior to submission of materials for review by the MBDRC. The MBDRC will evaluate proposed plans for construction of improvements or exterior modifications based upon the most recent Design Guidelines for review as may be in effect as of the time the plans are submitted for review and is not obligated to use the Design Guidelines in effect at the time the Lot was purchased. While the Design Guidelines must be reasonably designed to enhance and protect the nature of the Real Property in the area, purchasers of Lots need to be aware that the MBDRC may from time to time adopt more stringent Design Guidelines than what existed at the time a Lot was purchased.

The MBDRC may require payment of fees, application, review of proposed plans, review of complaints or protests alleging violation of this Second Amended Restated Declaration as to matters within the jurisdiction of the MBDRC. The fees as set by the MBDRC shall be in an amount sufficient to reasonably compensate the MBDRC for its administrative costs and expenses likely to be incurred in connection with its activities. The MBDRC may require payment of the fee in advance as a condition of making its review or determination. Unless waived by the MBDRC, failure to pay any fee required for MBDRC review or action shall be interpreted as the matter was not present for review and no action of the MBDRC is required.

Section 2. Design Review Committee Approval. Approval or disapproval by the MBDRC shall be in writing. In the event the Committee fails to act within thirty (30) days after the proposed plans and specifications of any structure and required fees are submitted, no specific approval shall be required for such structure and the pertinent provisions of this Second Amended Restated Declaration shall be deemed to have been fully complied with.

Section 3. Land Use and Building Type. No Lot shall be used except for residential purposes, and no business, trade or manufacture shall be conducted thereon, except as provided in Section 4, below.

- a. New Dwellings. No building shall be erected, altered, placed, or permitted to remain on any Lot other than one attached or detached single-family dwelling not to exceed the specific height restrictions established by the MBDRC, and a private garage for no less than two (2) cars and accessory buildings, as permitted herein. No structure such as the residential dwelling, accessory buildings, fences, kennels, garages, antennas, signs, mailboxes and newspaper holders or any other structure may be located upon any Lot unless the plans and specifications for such structures have been reviewed and approved by the MBDRC. The MBDRC shall also have jurisdiction to determine and approve proposed grades of lawn, landscaping plans including seeding and planting and all other and similar items relating to the development and improvement of any Lot. All structures shall be constructed of new materials. However, suitable used

materials such as used brick or beams may be utilized provided that advance approval has been obtained from the MBDRC as herein provided. No old structures, whether intended for use in whole or in part as the main dwelling house or as a garage or other structure shall be moved upon any Lot. No mobile homes, either double or single wide, or other pre-manufactured homes constructed primarily away from the Lot on which they would be situated shall be permitted. The MBDRC of the Association is authorized in its discretion to approve exceptions to this Section so that structures intended to serve the residents of the adjoining dwelling house may be constructed. No such additional structure shall be utilized as an additional dwelling house or for purposes other than to serve the residents of the dwelling house.

b. Remodeling or Alteration. No remodeling or other alteration of any existing structure which alteration or remodeling or the results thereof, will be visible from the exterior of the structure shall be undertaken, commenced or completed without the plans for such remodeling or alteration having first been approved by the MBDRC.

Section 4. Residential Use. All Lots, shall be known and described as residential Lots and no business, trade, or commercial activity of any kind or description shall be conducted thereon, other than home occupations, which are permitted if such activities take place solely within the dwelling house located on the premises, so long as such use does not increase the flow of vehicular traffic on the Real Property; so long as such use does not result in noise, disturbance, or in any way negatively impact the residential nature of the Real Property and so long as such use does not change or conflict with the residential nature of the Real Property. This restriction shall not be deemed to prohibit the rental of a residential dwelling for residential purposes and for periods of time no less than 30 days, as otherwise permitted pursuant to Article IX, Section 25.

Section 5. Setback Requirements. No structure shall be placed within the described setback area on said Lots. Any waiver or alteration of a setback requirement as to any Lot shall not be deemed to have waived the setback requirement set forth herein, nor shall it set a precedent that in any way obligates the MBDRC to make subsequent waivers or make adjustments to setback requirements for other Lots. The setback requirements for Fairway Properties II Phases I, II and III; Mission Bay Phases I, II, III, IV, V, VI, VII, VIII, and IX; and Mission Bay Village, Phases I, II and III are different than those for Brown's Lakeview Tracts Lots 5 through 14, inclusive. Such setback requirements are as follows:

a. Mission Bay Phases I, II, III, IV, V, VI, VII, VIII and IX and Fairway Properties II Phases I, II and III. The building setbacks for all structures from golf course fairways are identified on the preliminary plat of Mission Bay subdivision. No building, residence or other structure shall be located closer to the golf course than is permitted by the setback lines identified on the preliminary plat. For Lots upon which Townhomes are to be constructed, side Lot setbacks are waived as to common walls. Side yard setbacks for that portion of any Townhome unit not attached to a connecting structure shall be no less than 5 feet. Townhome Lots shall have a minimum front yard

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setback of 20 feet and a rear yard setback of no less than 15 feet. Single family residential Lots not affected by fairway setbacks as set forth above shall have a minimum front setback of 30 feet, side yard setbacks a minimum of 10 feet and rear yard setbacks no less than 15 feet. Any setback requirement may be waived or altered by the MBDRC.

- b. Brown's Lakeview Tracts Lots 5 through 14, inclusive. Rear, side-yard and front building setbacks for all structures located on that portion of the Real Property, known as Brown's Lakeview Tracts Lots 5 through 14 shall be as identified on Exhibit "A" attached hereto and by this reference made a part hereof as though fully set forth at this place.
- c. Mission Bay Village, Phases I, II and III. The setbacks for Mission Bay Village shall be established and controlled by the zoning applicable to Mission Bay Village and by this Section.

## Section 6. Exterior Maintenance.

- a. Single Family Residences. The Owner of each Lot upon which a single family residential structure may or is located shall provide exterior maintenance upon such Lot and structures, if any, to include painting and repairing the structures; maintaining the lawn and grounds including avoiding overgrowth on or around utilities, or fire hydrants, trimming to preclude weeds, underbrush, and other unsightly growths; and not permitting refuse piles or other unsightly objects to accumulate or remain on the grounds. In providing such exterior maintenance, the Owner shall maintain the exterior color, design and appearance, including landscaping, as originally approved by the MBDRC. In the event any Owner shall fail or neglect to provide such exterior maintenance, the Association shall notify such Owner in writing specifying the failure or neglect. Such notice shall demand that the Owner remedy the failure or neglect, within twenty (20) days if related to maintenance of the single family structure or within five (5) days if related to matters other than maintenance of the single family structure (e.g., lot, lawn, weeds, or refuse). If the Owner shall fail or refuse to provide such exterior maintenance within the time frames prescribed above, the Association may then enter such Lot and provide required maintenance at the expense of the Owner. The full amount, plus an administrative fee of \$25, shall be due and payable within thirty (30) days after the Owner is billed therefore and shall become a special assessment upon that Lot. The Association may exercise all rights to collect that assessment. Such entry on the Lot by the Association shall not be deemed a trespass.
- b. Townhome Lots. All maintenance of the exterior of the Townhome structure and the Lot upon which it is located shall be performed by the Association, its employees, agents and authorized Independent Contractors acting through the applicable Sub-Association, as provided in Article IV, Section 2, The Owner may, at their election, maintain flower boxes or deck planters as they deem appropriate or desirable.

Section 7. Utilities. All utility lines shall be underground. The Owner of each Lot shall pay all initial connecting costs for cable television, internet and telephone service, together with all subsequent charges for all utilities.

Section 8. Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. No permanent building of any kind shall be erected, placed or permitted to remain on such easements.

Section 9. Boundary Control Monuments. Survey monuments are placed on the corners of each Lot. It shall be the responsibility of the Owner of each Lot to provide for immediate professional replacement of any survey monuments that are removed or become lost or obliterated from their Lot.

Section 10. Garbage. rubbish, trash, garbage or other waste be allowed to accumulate except in sanitary containers which shall be emptied on at least a weekly basis by a local garbage collection firm or by the property owner at the transfer station. This provision does not prohibit temporary storage of gravel, topsoil or building materials on Lots if such items are to be used in further construction. All garbage shall be stored in containers of metal, plastic, or other suitable material which have sufficiently tight-fitting covers to prevent the escape of noxious odors and to prevent entrance by pets. On garbage collection days, garbage containers may be placed in a location convenient for collection. Garbage containers shall be stored indoors or screened from public view on all four sides through the use of walls, fences or plantings which are attached to the house and approved by the MBDRC. Provided, on garbage collection day garbage containers may be placed in a location convenient for pickup. Compost piles are prohibited, unless located inside the dwelling house and odorless.

Section 11. Burning of Trash. There shall be no burning of leaves or trash.

Section 12. Animals and Pets. No animals or fowl, domestic or wild, except for dogs, cats, birds and other small domestic animals, which are subject to the prior, written approval of the Association, shall be allowed on any Lot. In no event may more than two permitted dogs or cats be allowed on any Lot (for example no more than two dogs, two cats, one dog and one cat, may be allowed on any Lot). In no event may more than ten birds be allowed on any Lot. These animals will be kept within the Lot of their Owner unless leashed and under the immediate control of their Owner. Such animals shall not be permitted to become a nuisance or annoyance to the neighborhood. All animals kept on any Lot shall be properly fed, watered, and sheltered from the elements in such a manner as shall be consistent with their good health. Pet food should be fed indoors or within approved kennel areas only. This will reduce the conflicts with wild animals. Each Owner or person responsible shall treat and care for such animals in a humane and merciful fashion, so that other persons in the area shall not be required to tolerate or condone inhumane treatment of the animals. All animals kept on the Real Property must be kept within an approved fenced enclosure, approved kennel or within the dwelling house, except when accompanied by their owner, as provided above. No kennels are permitted, other than kennels approved by the

MBDRC as to construction, materials and location. All animals shall be kept in a humane manner but not chained. Animal manure shall be removed from the Real Property, immediately following deposit, so as not to become obnoxious, offensive, or a nuisance to surrounding residents. All carcasses of dead animals shall be removed immediately. No commercial sales of any animals shall be permitted. Violations of these requirements regarding animals shall be considered a complete breach of these protective and restrictive covenants, giving rise to such remedies as are allowed by law for the breach of any other covenants contained herein.

Section 13. Vehicles. There shall be no repairing of vehicles in the streets or designated parking areas. Vehicle maintenance or repairs being conducted on any Lot and not occurring inside of a garage, shall be limited to 24 hours. Each Lot shall contain a sufficient area for two off-street parking spaces, excluding the garage. There shall be no parking of vehicles on the street fronting any Lot. There shall be no overnight parking on any street. Guest parking is permitted only on driveways and the designated parking areas on Lot 104 (the Community Center Lot). No motor homes, trailers, trucks exceeding one ton capacity, pickups carrying campers, campers, boats, boat trailers, or unsightly vehicles shall be parked or allowed to remain on any of the Lots or the adjoining streets. However, two exceptions are allowed: (i) such vehicles are allowed if they are stored in a garage or Accessory Building; and (ii) motor homes, camper trailers, and pickups carrying campers and boats may be parked in a Lot's driveway for a period not to exceed 72 hours, to allow for loading, unloading and cleaning. Vehicle Parking restrictions provided by this Restated Declaration will be strictly enforced, including but not limited to ticketing and towing of vehicles in violation. Snowmobiles, trail bikes, chainsaws and other noisy vehicles and equipment may not be used on any of the Real Property within the subdivisions without permission of the Association. This provision is not intended to preclude the entry of construction, maintenance, delivery, moving, or other such service vehicles while they are being utilized in connection with services for the Real Property.

Section 14. Signs. No advertising signs, billboards, or unsightly objects shall be erected, placed, or permitted to remain on any Lot with the following exceptions:

- a. One sign up to 10 square feet in size identifying the contractor of a building under construction;
- b. One sign up to 10 square feet in size identifying the architecture of a building under construction;
- c. A sign not to exceed 2 square feet in surface area identifying the owner or occupant of the residential structure located on a Lot so long as the sign permanently affixed to the structure;
- d. Signs not to exceed eight square feet may be used to advocate for or against the election or appointment of a candidate for public office or the passage of a ballot issue, but only

for 30 days immediately preceding the election and must be located on the Lot of the person erecting the sign;

- e. Signs as might be required by law (e.g., signs indicating handicapped parking); and
- f. Such other signs as may be permitted or approved by the MBDRC.

Section 15. Damaged Property. Any dwelling damaged by fire or other casualty must be removed from the premises and repairs commenced within one hundred twenty (120) days unless an extension of time for such removal and repair is granted by the MBDRC. Any damaged dwelling not so removed and repaired may be removed at the Owner's expense and the MBDRC may pursue any and all legal and equitable remedies to enforce compliance and to recover any expenses incurred in connection herewith. Any cost incurred by the Association under this Section shall become a special assessment upon the Lot of the Owner. The Association may exercise all rights to collect that assessment.

Section 16. Access and Roadways. No Owner shall use part of any Lot to provide access to any adjacent land. No roadway shall be used or constructed on any Lot for any purpose except one driveway for access to the dwelling facilities. No Owner of any Lot nor their guests or invitees shall utilize the emergency access between the Mission Bay subdivision and Bay View Drive except in the case of an emergency. Golf carts are exempt from this rule as it is a normal route to the golf proshop. The Association shall enforce the wrongful use of the emergency access and shall impose and levy fines against any Lot Owner for wrongfully using the emergency access. Each Lot Owner, as to the wrongful use of the emergency access, is responsible for the conduct of their guests and invitees including any tenants or renters of the Lot Owner's property. The Association may, either together with or as a separate action, suspend the Lot Owners privileges to utilize the beach access, or other Common Areas or any other service or facility of the subdivision as an additional penalty.

Section 17. Sanitary Restrictions. The Owners of every Lot shall comply with all governing laws and regulations relating to water supply, sanitation, sewage disposal, and air pollution.

Section 18. Accessory Buildings. As to the Lots upon which Townhomes are constructed, no accessory or outbuildings shall be erected, placed or maintained thereon. For non-Townhome Lots, the only accessory building or outbuilding permitted is one free standing or detached storage facility, the materials, size, color, appearance and location of which shall be first approved by the MBDRC. Upon Brown's Lakeview Tracts Lots 5 through 14, one free-standing accessory building, which may include storage space for a single recreational vehicle, shall be permitted, subject to the condition that the garage door shall not face the street and that the materials, size, color, appearance and location of which shall be first approved by the MBDRC.

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Section 19. Imperiling of Insurance. Nothing shall be done within a Townhome or the Lot on which it is located which would result in an increase in the premiums for insurance maintained for a Lot or which might cause cancellation of such insurance for the Owner of the other Townhome or Lot.

Section 20. Construction Liens. No labor performed or materials furnished with the consent or at the request of an Owner, their agent, contractor or subcontractor shall create any right to file a construction lien against the Real Property of the Association or any other Owner, who does not request or consent to the same. Each contracting or consenting Owner shall indemnify, defend and hold harmless the Association and each of the other Owners from and against liability arising from the claim of any lien holder for labor performed or materials furnished at the request of the contracting or consenting Owner. At the written request of any Owner, the Association shall enforce such indemnity by collecting from the contracting or consenting Owner the amount necessary to discharge any such lien and all costs incidental thereto including attorney's fees and expenses. Said expenses may be added to such Owner's regular assessments.

Section 21. Alteration. The dwellings located on some Lots were designed in a "Townhome" configuration, so that two or more dwellings will share a common wall and design. To enhance this design and to protect the structural integrity of the units, no Owner of a Townhome, or the Association shall make any change, modification, alteration or addition to the design, structure or color scheme of the dwelling's exterior without first obtaining the prior written consent of the MBDRC pursuant to this Article.

Section 22. Insurance. As to any Lots upon which Townhomes are located, each Owner of such Lots shall provide to the Association proof of special form insurance covering the dwelling located upon their Lot for not less than the full insurable replacement value thereof. Such insurance shall be maintained with an insurance company or companies of the Owner's choice, but having no less than an A- Rating by A.M. Best Company. Further, such insurance shall name the Association as loss payee, the purpose for which is to assure that the dwelling is replaced as contemplated by this Article. This shall not impair the ability of an Owner to identify other persons or entities as additional co-loss payees, including, without limitation, lending institutions obtaining a lien interest in an Owner's Lot. In the event a distribution of insurance proceeds exceeds that needed to repair or replace the damaged dwelling as required by this Second Amended Restated Declaration, the Association shall have no further claim to such proceeds.

Section 23. Duty to Inspect Premises and to Notify of Defect. Each Owner of a Townhome shall have the duty to make reasonable inspections of their dwelling from time to time to determine if the same contain any obvious defects which result from structural or drainage problems occurring on the adjacent Lot to which the unit is connected. In the event of discovery of such a defect the Owner shall have the duty to give immediate written notice of the defect or condition to the adjoining property Owner and to the Association.

Section 24. Duty to Repair Defects. In the event a defect as described in Section 23 above or any other damage or defect may affect the dwelling located on the Lot of any other Owner, the Owner whose dwelling or Lot has the defect shall repair the same in a workmanlike fashion within a reasonable time following its discovery. Upon the failure of such Owner to so repair defects that are such Owner's responsibility, the Association shall have the duty to enter into and upon the Owner's Lot, including the dwelling, and effect such repair, the cost of which shall be paid by such Owner by assessment or otherwise.

Section 25. Rentals. No residence or any portion thereof may be rented for less than a thirty day minimum period. This restriction is intended to prohibit overnight, daily and weekly rentals.

#### ARTICLE X: BEACH/PARK AREA AND COMMUNITY CENTER

Section 1. Beach Area. Neither the Owners of any Lot nor their guests or invitees shall:

- a. Construct boat docks or ramps;
- b. Use any motorized water craft from the Beach Area;
- c. Use the area except between the hours of 7:00 a.m. to 11:00 p.m.; or
- d. The north boundary of the Beach Area shall be fenced. The developer shall post the Beach Area with no trespassing signs. After the initial posting by the developer, the Association shall maintain the no trespassing signs and the fence protecting the area for the exclusive use by the Lot Owners, their guests and invitees. The Association shall incorporate into its landscaping and maintenance a vegetative screen along the north boundary of the Beach Area. The vegetative screen shall be comprised of trees or bushes which shall be in addition to the fence described above.

Section 2. Community Center. The Mission Bay Community Center (hereinafter "Community Center"), located at 312 Montana Landing, Polson, Montana (also known as Lot 104, Mission Bay Phase VII), and the Mission Bay Community Entrance (hereinafter "Entrance Parcel") located at the northwest corner of the intersection of Hawk Drive and Highway 35 (also known as Tract A of COS 6153 in Section 2, Township 22 North, Range 20 West, Lake County, MT) are jointly owned by the Mission Bay Homeowners Association, Inc. and the Mission Bay Preserve Homeowners Association. The purpose, use, rights and responsibilities pertaining to the Community Center and Entrance Parcel are as set out in this Section. The Community Center and the Entrance Parcel are excluded and exempt from the provisions and requirements of Article IX, Sections 1 thru 6, 13, 14, and 21 thru 25 of this Restated Declaration. The Community Center, the Entrance Parcel and the improvements located thereon shall not be considered common elements under this Declaration or the Declaration for Mission Bay Preserve.

- a. Purpose – Joint Use. Except as otherwise provided in this Section, the Community Center and the Entrance Parcel are intended for the use, benefit and enjoyment of the Owners of Real Property subject of this Restated Declaration and the Owners of real property located in Mission Bay Preserve. The use of the Community Center and Entrance Parcel are restricted by the terms and provisions of this Section.
- b. Administration. The day-to-day operation of the Community Center and Entrance Parcel shall be administered by the Community Center Committee (hereinafter the “CC Committee”) established by this Section for the use, benefit and enjoyment of the Owners of Real Property subject of this Restated Declaration and the Owners of real property located in Mission Bay Preserve. The CC Committee shall be a joint committee comprised of five individuals, three of whom shall be members of the Board of Directors appointed by the Directors of the Mission Bay Homeowners Association, Inc. and two of whom shall be members of board of directors of the Mission Bay Preserve Homeowners Association appointed by the directors of the Mission Bay Preserve Homeowners Association, Inc. All actions of the CC Committee shall be taken by majority vote of its members. From its five members, the CC Committee shall elect a chairperson, vice chairperson and secretary. The CC Committee shall meet on no less than a quarterly basis, at such reasonable times as may be set by the chairperson. All meetings of the CC Committee shall take place at the Community Center and shall be open to Owners of Real Property subject to this Declaration and owners of real property subject to the Mission Bay Preserve Declaration. All meeting minutes shall be posted to the community websites within ten (10) business days of the meeting date. The CC Committee shall implement the annual budget approved by the respective boards of directors of the Association and the Mission Bay Preserve Homeowners Association, Inc. Expenditures and projects outside of the approved annual budget, upon approval of the CC Committee, shall be submitted to the respective boards of directors for review and approval. The CC Committee shall, with the assistance of the managers and accountants for the Association and the Mission Bay Preserve Homeowners Association, Inc., prepare the annual budget for the Community Center and Entrance Parcel and submit it to the respective boards of directors for review and approval.
- c. Rules and Regulations. The CC Committee shall establish such rules and regulations for the Community Center and Entrance Parcel as it deems necessary and appropriate to promote the use, benefit and enjoyment of the members of the Association and the Mission Bay Preserve Homeowners Association, Inc., subject to the approval of the respective boards of directors.
- d. Entitlements. Subject to the rules and regulations as may from time to time be established by the CC Committee, the Owners, (including their guests and invitees) of Lots included among the Real Property and the owners of lots in Mission Bay Preserve shall be entitled to use the Community Center and Entrance Parcel.

- e. Assessments. The CC Committee shall determine the amount of assessments to be charged to the owners of each Lot in the Real Property subject of this Declaration and the lots subject of the Declaration of Covenants, Conditions and Restrictions for Mission Bay Preserve Subdivision (Mission Bay Preserve Declaration) for the administration, insurance, operation, maintenance and improvement of the Community Center and Entrance Parcel. Such assessments, upon approval by the respective boards of directors of the Association and the Mission Bay Preserve Homeowners Association, Inc., shall be included in their respective assessments. As an exception to the provisions of Section 2, Rate of Assessments, set forth in Article VIII of this Restated Declaration, the assessments levied by the Association pursuant to this Section, shall not be prorated or discounted. The CC Committee may restrict access to the Community Center and Entrance Parcel for those Owners who are not current in paying the assessments provided herein.
- f. Community Center Hours. The operating hours for the Community Center shall be restricted to those hours between 6:00 a.m. to 10:00 p.m.
- g. Storm Water Drainage. The CC Committee shall be solely responsible for maintenance of the storm water drainage system, including an oil filtration trap, for all storm water originating from the Community Center.

#### ARTICLE XI: GENERAL PROVISIONS

Section 1. Duration. The covenants, conditions, charges and restrictions of this Second Amended Restated Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Association or the Owner of any Lot subject to this Second Amended Restated Declaration, their respective legal representatives, heirs, successors, or assigns in perpetuity.

Section 2. Enforcement. Any Owner of a Lot or the Association shall have the option and right to enforce by any proceeding at law or in equity all restrictions, conditions, covenants, reservations, and charges now or hereafter imposed by the provisions of this Second Amended Restated Declaration, along with any Design Guidelines, Rules and Regulations enacted by the Association. Each Owner may submit to the Association any complaint regarding alleged violation of this Second Amended Restated Declaration or the Design Guidelines, Rules and Regulations enacted by the Association by any Owner. Upon receipt of such complaint to Association shall conduct a reasonable investigation of the alleged violation. If the Association, in its sole discretion, deems that the complaint has merit it may elect to seek enforcement of this Second Amended Restated Declaration or the Design Guidelines, Rules and Regulations enacted by the Association pursuant to this Section. In any event the decision of the Association as to the merits of the complaint or its decision to pursue or not pursue enforcement shall not limit or restrict in any way any individual Owner's pursuit of enforcement of this Second Amended Restated

Declaration, the Design Guidelines, or the Rules and Regulations enacted by the Association. The method of enforcement may include legal action seeking an injunction or prohibit any violation, to recover damages, or both. In addition to the means of Enforcement provided elsewhere herein, the Association shall have the right to assess fines against an Owner in the event of a violation of this Second Amended Restated Declaration, or any Design Guidelines, Rules and Regulations enacted by the Association, provided each such violator shall be given written notice of the alleged violation and the opportunity for hearing before the Board of Directors upon request made within fifteen (15) days of the notice. The amount of such fine shall not exceed \$250.00 per occurrence, and each reoccurrence of the alleged violation for each day during which such violation continues shall be deemed a separate offense. Such fines shall be collectible as any other assessment, as provided in this Second Amended Restated Declaration, such that the Association shall have a lien against the violator's Lot for such purpose. Failure by any Owner or the Association to enforce any such provisions shall in no event be deemed a waiver of the right to do so thereafter. Should any lawsuit or other legal proceeding be instituted against an Owner who is alleged to have violated one or more of the provisions of this Second Amended Restated Declaration or the Design Guidelines, Rules and Regulations enacted by the Association, the prevailing party in such proceeding shall be entitled to reimbursement for the costs of such proceeding, including reasonable attorney's fees. Each Owner grants a license to the Association, its officers, employees and agents to go onto each such Owner's Lot, but not into any dwelling, for the purpose of enforcing this Second Amended Restated Declaration and the Design Guidelines, Rules and Regulations enacted by the Association. Should the Association, its officers, employees or agents exercise such license, they shall not be liable in civil or criminal trespass.

Section 3. Severability. Invalidation of any of the terms, covenant, conditions or restriction as established by this Second Amended Restated Declaration or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 4. Amendment. The Association shall have the sole right to amend, modify, make additions to or deletions from this Second Amended Restated Declaration it alone deems appropriate, subject to the consent of the City of Polson as set forth below. The Association may make such amendments at any duly called, noticed and held regular meeting of the Members at which a quorum is present by either: 1) a vote of two thirds (2/3) of the Lot Owners entitled to vote and present in person or by proxy at such meeting; or 2) a majority of the Lot Owners entitled to vote, whichever is less. In no event may the provisions of this Second Amended Restated Declaration required by a preliminary plat approval letter from the city of Polson to Declarant dated July 21, 1997 (specifically items 13, 14, 16, 19, 22 and 29 of the letter) be amended or deleted except with the express written consent of the City of Polson, its successors or assigns.

Section 5. Notices. Any notice called for or made under this Second Amended Restated Declaration shall be either delivered personally to the recipient, deposited in the United States Mail with the postage prepaid thereon addressed to the recipient at their address as it appears upon the Association's membership rolls, or sent electronically at the e-mail address of the recipient, if he

or she has agreed to receive notices electronically pursuant to the Association's Bylaws, at the e-mail address as it appears upon the Association's membership rolls.

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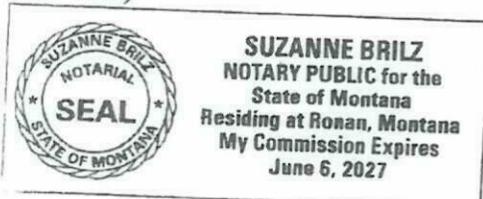
IN WITNESS WHEREOF, the Association has executed the foregoing Declaration on the day and year first above written.

MISSION BAY HOMEOWNERS ASSOCIATION,  
a Montana nonprofit corporation

By: Allen Bone  
Allen Bone, President

This instrument was acknowledged on the 16 day of January, <sup>2024</sup> <sub>2023</sub>, by  
Allen Bone, as President of Mission Bay Homeowners Association, a Montana nonprofit  
corporation.

(Notarial Seal)



Notary Public for the State of Montana

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# **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**Mission Bay Homeowners Association**

**2022**

## **RECITALS**

page 1

8. The Restated Declaration, addressed the authority if amended as follows:

Moved to Article VIII Section 4      Amendment. These Covenants, Conditions and Restrictions may be amended at any duly called, noticed and held regular meeting of the Members at which a quorum is present by: 1) a vote of two thirds majority of the total voting power of Members of the Association present in person or by proxy or at such meeting and entitled to vote thereat; or 2) a majority of the voting power ( one vote for each Lot in the subdivision), whichever is less.

9. The Association shall have the sole right to amend, modify, make additions to or deletions from it, subject to the consent of the City of Polson, if the amendment, modification, addition or deletion affects a provision required by the preliminary plat approval letter as referenced above.

10. **DELETED**

11. Mission Bay Homeowners Association desires to amend the Restated Declaration for express purpose of enhancing and protecting the value, desirability, and attractiveness of the Real Property as a desirable residential development, and that the Restated Declaration be superseded and replaced with this First Amended Declaration.

12. NOW THEREFORE, Mission Bay Homeowners Association hereby declares that all Real Property identified in this First Amended Restated Declaration shall be held, sold, and conveyed subject to the following restrictions, covenants, conditions, and easements, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Real Property as a desirable residential development. These restriction, covenants, conditions and easements shall run with the Real Property and shall be binding upon all parties having or acquiring any right, title or interest in the described Real Property, or any part thereof, and shall inure to the benefit of and be binding upon each successor in interest to the Owner thereof.

## **ARTICLE I: DEFINITIONS**

Section 1. Association. "Association" shall mean and refer to Mission Bay Homeowners Association, Inc. , a Montana Non-Profit Corporation, as the same may exist from time to time of record with the office of the Secretary of State, Helena, Montana, and it successors or assigns.

Section 2, "Beach Area. "Beach Area shall mean and refer to that portion of common area described as " Park Area on Flathead Lake " in condition 19 of the preliminary plat approval letter from the City of Polson, and further described as " Common Area " located to the east of golf hole #5 on the preliminary plat of Mission Bay.

Section 3. Common Area. " Common Area " shall mean all that area shown on the preliminary plat of Mission Bay and various phases thereof and upon the subdivision plats for the Fairway Properties II, Brown Lakeview Tracts Lot 5-14 and Mission Bay Village, and various phases thereof or as, maybe shown on any plat or subdivision or property coming within the jurisdiction of this First Amended Restated Declaration.

**Section 4. ~~DELETED~~**

Section 4. Townhome. "Townhome" shall mean a single-family dwelling unit constructed so as to be attached by a common wall to one or more other dwelling units but separated by a property line.

Section 5. Lot. "Lot" shall mean and refer to any plot of land shown upon the recorded plat map of the Real Property subject to this First Amended Restated Declaration with exception if the Common Area, Beach Area, and Streets and all roads dedicated or private. In the event other than a Lot as shown on the recorded plat map is utilized as a building site, as hereinafter authorized, such building site shall be considered as a Lot.

Section 6. Member. "Member" shall mean and refer to every person or entity who is a Member of the Association as described in Article III.

Section 7. Owner. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of any Lot which is a part of the Real Property, including buyers under a contract for deed, but excluding those having such interest merely as security for the performance of an obligation.

Section 8. Real Property. "Real Property" shall mean and refer to that certain Real Property described as Fairway Properties II, Mission Bay Phases I, II, III, IV, V, VI, VII, VIII, and IX, Browns Lakeview Tracts Lot 5-14; and Mission Bay Village and such other Real Property as is now or may hereafter be brought within the jurisdiction of this First Amended Restated Declaration and the Association.

**Section 9. Membership Meetings**, Twice during the calendar year, regular meetings of the Association shall be held with notice.

**Section 10. Association Board of Directors ( BOD )**. A committee comprised of Seven Elected Members and no less than five who are responsible for the policy decisions. Meetings of the BOD shall include prior notice stating the agenda and will be held monthly. Such meetings are open to the members with the exception of Executive Sessions.

**Section 11. Quorum.** A simple majority of members shall constitute a quorum for the transaction of business.

**Section 12. Executive Session.** All board meetings shall be open to the Members with the exception of "Executive Session" when declared by the Board of Directors chairperson. "Executive Session" and the exclusion of Members from attendance, shall be previously announced in regularly noticed Meetings agenda items and limited to employee personnel matters or pending litigation where confidentiality is necessary to protect the Associations interests. "Executive Session" shall be Opened and Closed by the Board's chairperson and the minutes shall reflect "Executive Session"

## ARTICLE II: REPLACEMENT OF PRIOR COVENANTS

**Section 1. Substitution of Prior Covenants.** The terms and provisions hereafter set forth are intended to supersede and replace the terms and provisions in the Fairway Properties II and Mission Bay Declaration, as subsequently amended, and the preceding Mission Bay Declaration, and Fairway Properties II Declaration as amended.

## ARTICLE III: MEMBERSHIP & VOTING

**Section 1. Membership.** Every person or entity that is a recorded Owner of any lot, including buyers under contract for deed, shall be a Member of the Association. The foregoing is not intended to include persons or entities that hold an interest merely as security for the performance of an obligation. Acceptance of title to any Lot whether by deed or other form of conveyance shall be deemed a consent of membership in the Association. Membership shall be appurtenant to and may not be separated from Ownership of the Lot. The Association if it acquires an interest in a Lot, which would otherwise qualify it for membership, shall not be considered a member either for voting or assessment purposes.

Section 2. Voting Rights. As to this First Amended Declaration, the Owners of Lots shall be entitled to one vote for each Lot in which they hold an ownership interest. When more than one person or entity owns an interest in any Lot, the vote for such Lot shall be exercised as such persons or entities determine, but in no event may more than one vote per Lot be cast, except as previously stated.   
*The vote may be cast in person, by proxy or a mail in ballot.*

## ARTICLE IV: HOMEOWNERS ASSOCIATION

Section 1. Homeowners Association. The Association shall administer the terms and provisions of this First Amended Restated Declaration and take such action as may be reasonable or necessary to carry out the functions of a homeowner's association.

Section 2. Sub-Associations. The intent of designating the Sub-Association is to provide autonomy for Owners of the Lots within a Sub-Association to determine ( by majority vote ) the nature and extent of common exterior maintenance to be performed on the Lots within the area comprising the Sub-Association.

This will provide flexibility should a Sub-Association choose to reduce the amount of common exterior maintenance and correspondingly reduce the common assessments for such maintenance or to increase the amount of common exterior maintenance which would increase the common assessment for such maintenance.   
*All changes involving exterior maintenance or improvements must have prior approval of the Mission Bay Design Review Committee prior to any change order work starting to refer to Article IX Section 21.* Conflicts that cannot be resolved within the Sub-Association must be brought to the Board of Directors by two or more chosen representatives from the Sub-Association. An elected board member will be designated by the board to represent the Sub-Associations. The Sub-Association shall coordinate with the Association and its manager (or president) concerning the nature of common exterior maintenance to be performed. The Association shall be responsible to retain and compensate the

necessary service providers to accomplish such maintenance, and to allocate among the Lots in each Sub-Division their common assessments for such maintenance. The Association shall remain responsible for maintenance of common area and streets with all Sub-Association areas.

## ARTICLE V: PROPERTY RIGHTS

Section 1. Members' Easements of Enjoyment. Every member shall have a right and easement of enjoyment in and to the Common Areas and such easement shall remain responsible shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- a.) The lake access and all Common Areas shown on the preliminary plat of Mission Bay, Phases I, II, III, IV, V, VI, VII, VIII, AND IX, Fairway Properties II, Brown Lakeview Tracts Lots 5-14, Mission Bay Village or any other subdivision plat coming within the jurisdiction of this First Amended Restated Declaration, shall remain in private ownership for the exclusive use of the Members of the Homeowners Association and their guests.
- b.) The right of the Association to provide reasonable restrictions on use of the Common Area for the overall benefit of its members.
- c.) The right of the Association to charge reasonable fees for maintenance and snow removal and other fees for the use of the Common Area. The Common Areas shall not be maintained, nor any alteration made to the Common Areas by the Owners of any Lot.
- d.) The right of the Association, in accordance with its Articles and Bylaw, to borrow money for the purpose of improving the Real Property, and the rights of such mortgagees in said Real Property shall be subordinated to the rights of the Homeowners hereunder.
- e.) To the extent permitted or authorized by the City of Polson the right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purpose and

subject to such condition as may be agreed upon under the Bylaws of the Association.

- f.) The right of the Association to grant easements under any Common Area to any public, authority, or utility without charge.
- g.) The right of the Association to run utility service lines or connections including a water or sewer system that serves any portion of the Real Property under or through any Common Area; and
- h.) Certain Lots are subject to drainage swale easements as depicted on the plats. No Lot shall be developed or landscaped in such a manner as to interfere with the purpose of the drainage swale easement.

Section 2. Assignment of Use. Any Member may assign in accordance with this First Amended Restated Declaration, his right or enjoyment to the Common Areas and facilities to the members of his family, or others who reside on the Real Property.

Section 3. Encroachment Easement. If any part of a dwelling located upon a Lot or configured as a "Townhome" shall at this time or a subsequent time unintentionally encroach ( weather due to construction, settling, shifting or otherwise ) upon another Lot, the Owner of the encroaching dwelling shall and does have a perpetual easement for such encroachment and for maintenance of the same.

Section 4. Maintenance Easement. The Owner of each Townhome unit has an easement over that portion of the adjacent Lot on which the connecting Townhome is located, to make repairs to the Owner's Townhome. For purposes of general building maintenance, landscaping and lawn care, the Association, its agents, subcontractors and employees may utilize the easement herein provided for.

Section 5. Common Walls. The dwelling located on some lots are designed in a "Townhome" configuration, so as two or more dwellings will share a common wall and design. The Owner of each Lot shall own, in fee simple, that portion of the common wall lying within the boundaries of his Lot. Each Owner having a common wall is granted a mutual reciprocal easement

for replacement of said common wall. No Owner shall commit or omit any act the result of which is infringement of the adjoining Lot Owner's rights in the common wall absent written agreement between such Owners.

## ARTICLE VI: SERVICES BY ASSOCIATION

Section 1. Common Areas. The Association shall mow, water, or otherwise maintain the Common Areas ( as identified in the preliminary plat of Mission Bay subdivision and as subsequently identified or amended in recorded plats of the Phases of Mission Bay subdivision ) as is reasonably necessary. The Association shall be responsible for the maintenance of all private roads within the subdivisions subject to the jurisdiction of this First Amended Restated Declaration. Neither the City of Polson nor other public agencies are responsible for maintenance of the private roads until such time as the roads are designed and constructed to the then existing public road standards and are accepted by the City of Polson as dedicated public streets.

Section 2. City Park. The Association has entered into an agreement with the City of Polson to provide maintenance of the park area as identified on the preliminary plat of Mission Bay. The park area is adjacent to Lot 19 of Fairway Properties II, Phase I. If the City ceases such ongoing maintenance, the Association shall thereafter provide for the ongoing maintenance of the park.

Section 3. Exterior/Lawn Maintenance. Upon completion of any Townhome units, all exterior maintenance such as painting, repair of walls, roof, lawns and shrubs ( excepting flower beds and deck planter boxes ) shall be done exclusively by the Association, acting through the applicable Sub-Association, as provided in Article IV, Section 2.

Section 4. Additional Services. The Association may provide such services for all or a portion of the Real Property within its jurisdiction, or it

may contract and levy assessments on such portion of its Members that derive benefits from these services.

Section 5. Fees. The Association shall establish a fee schedule for providing these services, which fees shall be considered as assessments, as set forth above. Such schedule may include the assessment of:

- a.) Charges for availability of a service even though it is not used by the owner of a Lot.
- b.) Charges for use based on a flat rate.
- c.) Additional charges for excess use.
- d.) Such other charges as may be required to maintain the private roads with the Real Property.

## ARTICLE VII; RULES AND REGULATIONS

### Section 1. Association to Establish Rules. ( Amended 1/16/15 )

The Association may promulgate such rules and regulations as it deems necessary and appropriate for the use of the Common Areas, Beach Areas and private roads as identified on the plat of the Real Property.

Section 2. Rules for Maintenance and Repairs. The **Board of Directors** may also promulgate reasonable rules and regulation for the maintenance, repair or improvement of the Real Property. Such rules must be uniformly and evenly applied but may differ between Townhomes and single-family residential homes.

## ARTICLE VIII: ASSESSMENTS

**Section 1. Assessments.** The general assessments levied by the Association shall be used for such purposes as are deemed desirable by the Association including but not limited to expenditures for Construction, repair, or replacement of any capital improvement; maintenance, repair and upkeep of drainage facilities; maintenance upkeep, real property taxes, hazard and liability insurance, and related expenses in regard to any Common Area, Beach Area, the City Park, administrative costs of the Association incurred in its day to day activities and any cost or expenses, including attorney's fees, incurred in enforcing the conditions, restrictions or charges set forth in this First Amended Declaration.

**Section 2. Levied Assessments.** All Mission Bay financial assets shall be held in a Federally approved Bank or Savings and Loan account selected by a simple majority vote of the Board of Directors.

**Section 3. Rate of Assessments.** Assessments for services may be based on either a flat rate or on usage. As to charges for private roads, exterior maintenance, lawn care or similar charges, the association shall assess those service cost of the Real Property Owners who benefit directly from the services. The cost to maintenance, snow removal and other service cost associated with a Sub-Association shall be prorated among the Owners of Lots in the Sub-Association, but should not be assessed against other Lot Owners. The same concept of user benefit assessment should be applied to exterior maintenance of Townhomes, lawn care and similar services. All other assessments, including for capital improvements on systems utilized to provide services, shall be fixed at a uniform rate per lot. Amended 10/17/18 If allowed by the governing( Board of Directors ) authority to do so , owners of two or more adjoining Lots may amend the recorded Plats to reduce the number of Lots by eliminating or relocating interior or adjoining boundary lines; however assessments will continue to be based upon the original number of Lots on the subdivision Plat(s) prior to such amendment.

**Proposed language add**

**Section 4. Special Assessments.** Upon determination by the Board of Directors of the Association, **and approved by the members**, assessments may be levied for special or particular purposes. **Members approval of Special Assessments shall require: 1) a vote of two thirds majority of the total voting power of Members of the Association present in person, electronically or by proxy at any duly called, noticed and held regular meeting at which a Quorum ( as defined by Article I, Section 11 ) is present; or 2) a majority of the voting power ( one vote for each Lot in the subdivision ), whichever is less.** Without limiting the special or particular purpose for which special assessments may be levied, it is specifically provided that special assessments may be levied for the one-time purpose. Special assessments may include related administration cost or charges as are reasonably required. Special assessments shall be fixed, established and collected in the amount and manner as the Association might determine but, in any event, they shall be separately treated from other assessments provided by this Article. Funds utilized for special assessments shall be accounted for separately.

**Section 5. Commencement of Assessments.** The Association is authorized to commence initial assessments as herein authorized at such time as it determines appropriate. Written notice of assessments shall be sent to every Lot Owner. The due dates shall be established by the Association. If Assessments are not paid by such due date then interest shall begin to accrue from the due date at an interest rate of Prime rate plus 5%.

**Section 6. Certificate of Payment.** The Association shall upon demand furnish a written statement signed by an officer of the Association setting forth the status of any assessments relative to a specific Lot. The statement shall, as applicable, identify any delinquent assessments, the amount owed, the amount of any current assessments or accruing assessments are current and paid. A reasonable charge may be made by

the Association for the issuance of the statement. Such statement shall be conclusive evidence of payment if any assessment therein stated to have been paid. In addition, the Secretary of the Association shall maintain a roster of the individual Lots and the assessments due thereon.

**Section 6. Nonpayment of Assessments.** Any assessments or installment payments on assessments which are not paid when due shall be delinquent. The Association may bring an action at law to collect the amount of the delinquent assessment together with all interest, costs, and reasonable attorney's fees incurred in such action, or may take action to perfect and foreclose the lien for assessments.

**Section 7. Obligation of Payment.** All Lots are subject to the assessments set forth in this First Amended Restated Declaration. Each Lot Owner hereby covenants and agrees to pay the Association the amount of all assessments; as such assessments are fixed, established and billed. The Association shall bill the Property Owner for the amount of any assessment and that Property Owner shall be responsible for any accruing assessments until and unless such Property Owner has provided to the Association's Secretary a true and correct copy of a recorded deed or other document of conveyance transferring title of a Lot to another Owner.

**Section 8. Creation of Lien.** All assessments both current and delinquent, together with interest and cost of collection as herein provided for, shall be a charge upon the land and shall constitute a lien upon the Lot against which assessments are made. Such lien shall be deemed perfected upon filing with the County Clerk and Recorder of Lake County an account of the assessments due together with a correct description of the Real Property to be charged with such lien and shall continue until all unpaid assessments, interest and costs of collection shall have been fully paid. The priority of such lien shall be determined as of the time of filing with the Clerk and Recorder, and it shall be deemed subordinate to all previously recorded or filed interests. Conveyance of title to any Lot shall not be effective to avoid the obligation for payment of any sums then due and

owning whether or not reduced to the status of a lien. The Association may establish such procedures for collection of obligations and perfecting of liens for payment of assessments as it deems necessary and appropriate.

**Section 9. Property Subject to Assessment.** All Lots shall be subject to assessments by the Association as herein provided except those Lots acquired by the Association.

## ARTICLE IX: PROTECTIVE COVENANTS

The following protective covenants are designed to provide a uniform plan for the development of the Real Property. They shall constitute a covenant running with the land for each Lot within the Real Property.

**Section 1. Design Review Committee.** The Association shall maintain a Design Review Committee ( MBDRC ) to serve the functions as described in this Article and shall establish Design Guidelines specifically for the Real Property subject to the jurisdiction of this First Amended Restated Declaration. Separate Design Guidelines shall be established for the construction of Townhomes and for Single Family residential dwellings and from phase to phase. Members of the MBDRC shall be appointed and serve as set for the in the Bylaws of the Association.

The Design Guidelines by which the MBDRC will review any proposed plans for the construction of improvement or exterior modification on any Lot shall be made available to the purchaser of any Lot. It is the obligation of the Owner of any Lot to obtain current versions of the Design Guidelines prior to preparation of plans or specifications for construction of improvement or exterior modifications and prior to submission of materials for review by the MBDRC. The MBDRC will evaluate proposed plans for the construction of improvements or exterior modifications based upon the most recent Design Guidelines. While Design Guidelines must be

reasonably designed to enhance and protect the nature of The Real Property in the area, purchasers of Lots need to be aware that the MBDRC may from time to time adopts more stringent Design Guidelines than what existed at the time a Lot was purchased.

The MBDRC may require payment of fees, application, review of proposed plans, review complaints or protests alleging violation of this First Amended Restated Declaration as to matter within the jurisdiction of the MBDRC. The fees as set by the MBDRC shall be in an amount sufficient to reasonable compensate the MBDRC for its administrative cost and expenses likely to be incurred in connection with the plans. The MBDRC may require payment of the fee in advance as a condition of making its review or determination. Unless waived by the MBDRC, failure to pay any fee required by the MBDRC review or action shall be interpreted as the matter was not present for review and no action of the MBDRC is required.

Section 2. Design Review Committee Approval. Approval or disapproval by the MBDRC shall be in writing. In the event the Committee fails to act within thirty ( 30 ) days after the proposed plans and specifications of any structure and required fees are submitted, no specific approval shall be required for such structure and the pertinent provisions of this First Amended Restated Declaration shall be deemed to have been fully complied with.

Section 3. Land Use and Building Type. No Lot shall be used except for residential purposes, and no business, trade, or manufacture shall be conducted thereon, except as provided in Section 4, below.

(a) New Dwellings. No building shall be erected, altered, placed , or permitted to remain on any Lot other than one attached or detached single-family dwelling not to exceed the specific height restriction established by the MBDRC, and a private garage for no less than two (2) cars and accessory buildings, as permitted herein. No structure such as the residential dwelling, accessory building, fences, kennels, garages, antennas, signs, mailboxes and

newspaper holders or any other structure may be location upon any Lot unless the plans and specification for such structure have been reviewed and approved by the MBDRC. The MBDRC shall also have jurisdiction to determine and approve proposed grades of lawn, landscaping plans including seeding and planting and all other and similar items relating to the development and improvement of any Lot. All structures shall be constructed of new materials. However, suitable used material such as used brick or beams may be unitized provided that advance approval has been obtained from the MBDRC as herein provided. No old structures, whether intended for use in whole or in part as the main dwelling house or as a garage or other structure shall be moved upon any Lot. No mobile homes, either double or single wide, or other pre-manufactured homes constructed primarily away from the Lot on which they would be situated shall be permitted. The MBDRC of the Association is authorized in its discretion to approve exceptions to this section so that structure intended to serve the residents of the adjoining dwelling house may be constructed. No such additional structure shall be utilized as an addition dwelling house or for purposes other than to serve the residents of the dwelling house.

(b) Remodeling or Alteration. No remodeling or other alteration of and existing structure which alteration or remodeling or the result thereof, will be visible from the exterior of the structure shall be undertaken, commenced or completed without the plans for such remodeling or alteration having first been approved by the MBDRC.

Section 4. Residential Use. All Lots, shall be known and described as residential Lots and no business, trade, or commercial activity of any kind or description shall be conducted thereon, other than home occupations, which are permitted if such activities take place solely within the dwellings house located on the premises, so long as such

use does not increase the flow of vehicular traffic on the real property; so long as such use does not result in noise, disturbance, or in any way negatively impact the residential nature of the real property and so long as such use does not change or conflict with the residential nature of the real property. This restriction shall not be deemed to prohibit the rental of a residential dwelling for residential purposes and for periods of time no less than 30 days, as otherwise permitted pursuant to Article IX, Section 25.

Section 5. Setback Requirements. No structure shall be placed within the described setback area on said Lots. Any waiver or alteration of a setback requirement as to any Lots shall not be deemed to have waived the setback requirement set forth herein, nor shall it set a precedent that in any way obligates the MBDRC to make subsequent waiver or make adjustments to setback requirements for other Lots. The setback requirements for Mission Bay Phases I, II, III, IV, V, VI, VII, VIII, AND IX, Fairway Properties II, and Mission Bay Village, if different than those for Brown's Lakeview Tracts Lots 5 through 14. Such setback requirements are as follows:

- a. Mission Bay Phases I, II, III, IV, V, VI, VII, VIII, and IX, and Fairway Properties II. The building setbacks for all structures from golf course fairways are identified on the preliminary plat of Mission Bay Subdivision. No building, residence, or other structure shall be located closer to the golf course than is permitted by the setback lines identified on the preliminary plat. For Lots upon which Townhomes are to be constructed, side Lot setbacks are waived as to common walls. Side yard setbacks for that portion of any Townhome not attached to a connecting structure shall be no less than 5 feet. Townhome Lots shall have a minimum front yard setback of 20 feet and a rear yard setback of no less than 15 feet. Single family residential Lots not affected

by fairway setbacks as set forth above shall have a minimum front setback of 30 feet, side yard setbacks a minimum of 10 feet and a rear yard setback no less than 15 feet. Any setback requirement may be waived or altered by the MBDRC.

- b. Brown's Lakeview Tracts Lots 5 through 14. Rear, side yard, and front building setbacks for all structure located on that portion of the Real Property, known as Brown's Lake Tracts 5 through 14 shall be as identified on Exhibit "A" attached hereto and by this reference made a part hereof as though fully set forth at this place.
- c. Mission Bay Village. The setbacks for Mission Bay Village shall be established and controlled by the zoning applicable to Mission Bay Village and by this section.

## Section 6. Exterior Maintenance.

(a) Single Family Residences. The Owner of each Lot upon which a single-family residential structure may or is located shall provide exterior maintenance upon such Lot and structures, if any, to include painting and repairing the structure; maintaining the lawn and grounds including avoiding overgrowth on or around utilities, or Fire Hydrants, trimming to preclude weeds, underbrush, and other unsightly growths; and not permitting piles or other unsightly objects to accumulate or remain on the grounds. In providing such exterior maintenance, the Owner shall maintain the exterior color, design and appearance, including landscaping, as originally approved by the MBDRC. In the event any Owner shall fail or neglect to provide such exterior maintenance, the Association shall notify such Owner in writing specifying the failure or neglect. Such notice shall demand that the Owner remedy the failure or neglect, within twenty (20) days if related to maintenance of the single-family structure or within three

(3) days if related to matters other than maintenance of the single family structure ( e.g., lot, lawn, weed, or refuse). If the Owner shall fail or refuse to provide such exterior maintenance within twenty (20) day period, the Association may then enter such Lot and provide required maintenance at the expense of the Owner. The full amount shall be due and payable within thirty (30) days after the Owner is billed therefore and shall become a special assessment upon that Lot. The Association may exercise all rights to collect that assessment. Such entry on the Lot by the Association shall not be deemed a trespass.  
( Amended 1/16/15 )

(b) Townhome Lots. All maintenance of the exterior of the Townhome structure and the Lot upon which it is located shall be performed by the Association, its employees, agents, and authorized Independent Contractors acting through the applicable Sub-Association, as provided in Article IV, Section 2. The Owner may, at their election, maintain flower boxes, or deck planters as they deem appropriate or desirable.

Section 7. Utilities. All utility lines shall be underground. The Owner of each Lot shall pay all initial connecting costs for cable television, telephone, and **internet services**, together with all subsequent charges for all utilities.

Section 8. Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. No permanent building of any kind shall be erected, placed, or permitted to remain on such easements.

Section 9. Boundary Control Monuments. Survey monuments **are** placed on the corners of each Lot. It shall be the responsibility of the Lot Owner of each Lot to provide for immediate profession replacement of any survey monuments that are removed or become lost or obliterated from **the** Lot.

Section 10. Garage. No Lot shall be used or maintained as a dumping ground, nor shall any rubbish, trash, garbage or other waste be allowed to accumulate except in sanitary containers which shall be emptied on at least a weekly basis by a local garbage collection firm **or by the property owner at the transfer station**. This provision does not prohibit temporary storage of gravel, topsoil or building materials on Lots if such items are to be used in further construction. All garbage shall be stored in containers of metal, plastic, or other suitable material which have sufficiently tight-fitting covers to prevent the escape of noxious odors and to prevent entrance by pets. On garbage collection days, garbage **containers** may be placed in a location convenient for collection. Garbage **containers** shall be stored indoors or screened from public view on all four sides throughout the use of walls, fences or plantings which are attached to the house and approved by the MBDRC. Provided, on garbage collection day garbage containers may be placed in a location convenient for pickup. Compost piles are prohibited, unless located inside the dwelling house and odorless.

Section 11. Burning of Trash. There shall be no burning of leaves or trash.

Section 12. Animals and Pets. No animals or fowl, domestic or wild, except for dogs, cats, birds and other small domestic animals shall be allowed in any Lot. In no event may more than two permitted dogs or cats be allowed on any Lot ( for example no more than two dogs, two cats, one dog and one cat, may be allowed on any Lot. In no event may more than ten birds be allowed on any Lot. These animals will be kept within the Lot of their Owner unless leashed and under the immediate control of their Owner. Such animals shall not be permitted to become a nuisance or annoyance to the

neighborhood. All animals kept on any Lot shall be properly fed, watered, and sheltered from the elements in such a manner as shall be consistent with their good health. Pet food should be fed indoors or within approved kennels areas only. This will reduce the conflicts with wild animals. Each Owner or person responsible shall treat and care for such animals in a humane and merciful fashion, so that other persons in the area shall not be required to tolerate or condone inhumane treatment of the animals. All animals kept on the Real Property must be kept within an approved fenced enclosure, approved kennel, or within the dwelling house, except when accompanied by their Owner, as provided above. No kennels are permitted, other than kennels approved by the MBDRC as to construction, materials, and location. All animals shall be kept in a humane manner but not chained. Animal manure shall be removed from the Real Property, immediately following deposit, so as not to become obnoxious, offensive, or a nuisance to surrounding residents. All carcasses of dead animals shall be removed immediately. No commercial sales of any animals shall be permitted. Violations of these requirements regarding animals shall be considered a complete breach of these protective and restrictive covenants, giving rise to such remedies as are allowed by law for the breach of any other covenants contained herein.

Section 13. Vehicles. There shall be no repairing of vehicles in the streets or designated parking areas. Vehicle maintenance or repair being conducted on any Lot and not occurring inside of a garage, shall be limited to 24 hours. Each Lot shall contain a sufficient area for two off-street parking spaces, excluding the garage. There shall be no parking of vehicles on the street fronting any Lot. There shall be no overnight parking on any street. Guest parking is

permitted only on driveways and on the designated parking lot areas on Lot 104 ( the Community Center Lot ). No motor homes, trailers, trucks exceeding one ton capacity, pickups carrying campers, campers, boats, boat trailers, or unsightly vehicles shall be parked or allowed to remain on any Lots or the adjoining streets. However, two exceptions are allowed (i) such vehicles are allowed if they are stored in a garage or Accessory Building; and (ii) motor homes, camper trailers, and pickups carrying campers **and boats** may be parked in a Lots driveway for a period not to exceed 72 hours, to allow for loading, and unloading and cleaning. Vehicle parking restrictions provided by this Restated Declaration will be strictly enforce, including but not limited to ticketing and towing of vehicles in violation. Snowmobiles, trail bikes, and other noisy vehicles and equipment may not be used on any of the Real Property within the subdivision without permission of the Association. This provision is not intended to preclude the entry of construction, maintenance, delivery, moving, or other such service vehicles while they are being utilized in connection with services for the Real Property.

Section 14. Signs. No advertising signs, billboards, or unsightly objects shall be erected, placed, or permitted to remain on any Lot with the following exceptions:

- a. One sign up to 10 square feet in size identifying the contractor or of a building under construction.
- b. One sign up to 10 square feet in size identifying the architect of a building under construction.
- c. A sign not to exceed 2 square feet in surface area identifying the owner or occupant of the residential structure located on a Lot so long as the sign is permanently affixed to the structure.

- d. Signs not to exceed eight square feet may be used to advocate for or against the election or appointment of a candidate for public office or passage of a ballot issue, but only for 30 days immediately preceding the election
- e. and must be located on the Lot of the person erecting the sign.
- f. Signs as might be required by law ( e.g. signs indicating handicapped parking and such signs as may be permitted or approved by the MBDRC.

Section 15. Damaged Property. Any dwelling damaged by fire or other casualty must be removed from the premises and repairs commenced with one hundred

twenty ( 120 ) days unless an extension of time for such removal and repairs is granted by the MBDRC. Any damaged dwelling not so removed and repaired may be removed at the Owner's expense and the MBDRC may pursue any and all equitable remedies to enforce compliance and to recover any expenses incurred in connection herewith. Any cost incurred by the Association under this section shall become a special assessment upon the Lot Owner. The Association may exercise all rights to collect that assessment.

Section 16. Access and Roadways. No owner shall use part of any Lot to provide access to any adjacent land. No roadway shall be used or constructed on any Lot for any purpose except one driveway for access to the dwelling facilities. No Lot Owner of any Lot nor their guests or invitees shall utilize the emergence access between the Mission Bay subdivision and Bay View Drive except in the case of an emergency. **Golf Carts are exempt from this rule as it is a normal route to the golf proshop.** The Association shall enforce the wrongful use

of the emergency access and shall impose and levy fines against any Lot Owner for wrongful using the emergency access. Each Lot Owner, as to the wrongful use of the emergency access, is responsible for the conduct of their guest and invitees including any tenants or renters of the Lot Owner's property. The Association may, either together with or as separate action, suspend the Lot Owner's privileges to utilize the beach access, or other Common Areas or any other service or facility of the subdivision as an additional penalty.

**Section 17. Sanitary Restrictions.** The Owners of every Lot shall comply with all governing laws and regulations relating to water, sanitation, sewage disposal, and air pollution.

**Section 18. Accessory Buildings.** As to the Lots upon which Townhomes are constructed, no accessory and outbuildings shall be erected, placed or maintained thereon. For non-Townhome Lots, the only accessory building or outbuilding permitted is one freestanding or detached storage facility, the material, size, color, appearance and location of which shall be first approved by the MBDRC. Upon Brown's Lakeview Tracts Lots 5 through 14, one free-standing accessory building, which may include storage space for a single recreational vehicle, shall be permitted, subject to the condition that the garage door shall face the street and that the materials, size, color, appearance and location of which shall be first approved by the MBDRC.

**Section 19. Imperiling of Insurance.** Nothing shall be done within a Townhome or the Lot on which it is located which would result in an increase in the premiums for insurance maintained for a Lot or which might cause cancellation of such insurance for the Owner of the other Townhome or Lot.

**Section 20. Construction Liens.** No labor performed or material furnished with the consent or at the request of an Owner, his agent, contractor or subcontractor shall create any right to file a construction lien

against the Real Property of the Association or any other Owner, who does not request or consent to the same. Each contracting or consenting Owner

shall indemnify, defend and hold harmless the Association and each of the other Owners from and against liability arising from the claim of any lien holder for labor performed or materials furnished at the request of the contracting or consenting Owner. At the written request of any Owner the Association shall enforce such indemnity by collecting from the Contracting or Consenting Owner the amount necessary to discharge any such liens and all costs incidental thereto including attorney's fees and expenses. Said expenses may be added to such Owner's regular assessments.

Section 21. Alteration. The dwellings located on some Lots were designed in a "Townhome" configuration, so that two or more dwellings will share a common wall and design. To enhance this design and to protect the structural integrity of the units, no Owner of a Townhome, or the Association shall make any change, modification, alteration or addition to the design, structure or color scheme of the dwelling's exterior without first obtaining the prior written consent of the MBDRC pursuant to this Article.

Section 22. Insurance. As to any Lots upon which Townhomes are located, each Owner of such Lots shall provide to the Association proof of **Special Form** insurance covering the dwelling located upon his or her Lot for not less than the full insurable replacement value thereof. Such insurance shall be maintained with an insurance company or companies of the Owner's choice but having no less than an A-Rating by A.M. Best Company. Further, such insurance shall name the Association as loss payee, the purpose for which is to assure that the dwelling is replaced as contemplated by this Article. This shall not impair the ability of an Owner to identify other person or entities as additional co-loss payees, including, without limitation, lending institutions obtaining a lien interest in and Owner's Lot. In the event a distribution of insurance proceeds exceeds that

needed to repair or replace the damaged dwelling as required by this First Amended Related Declaration, the Association shall have no further claim to such proceeds.

**Section 23. Duty to Inspect Premises and to Notify of Defects.** Each Owner of a Townhome shall have the duty to make reasonable inspections of his or her dwelling from time to time to determine if the same contain any obvious defects which result from structural or drainage problems occurring on the adjacent Lot to which the unit is connected. In the event of discovery of such defect the Owner shall have the duty to give immediate written notice of the defect or condition to the adjoining property Owner and to the Association.

**Section 24. Duty to Repair Defects.** In the event a defect as described in Section 23 above or any other damage or defect, may affect the dwelling located on the Lot of any other Owner, the Owner whose dwelling or Lot has the defect shall repair the same in a workmanlike fashion within a reasonable time following its discovery. Upon the failure of such Owner to so repair defects that are such Owner's responsibility, the Association shall have the duty to enter into and upon the Owner's Lot, including the dwelling, and effect such repairs, the cost of which shall be paid by such Owner by assessment or otherwise.

**Section 25. Rentals.** No residence or any portion thereof may be rented for less than a thirty day minimum period. This restriction is intended to prohibit overnight, daily and weekly rentals.

## **ARTICLE X: BEACH/PARK AND COMMUNITY CENTER**

**Section 1. Beach Area.** Neither the Owners of any Lot nor their guests or invitees shall:

- a. Construct boat docks or ramps;
- b. Use any motorized watercraft from the Beach Area;
- c. Use the area except between the hours of 7:00 a.m. to 11:00 p.m.

- d. The north boundary of the Beach Area shall be fenced. The developer shall post the Beach Area with no trespassing signs. After the initial posting by the developer, the Association shall
- e. maintain the no trespassing signs and the fence protecting the area for the exclusive use by the Lot Owners, their guests and invitees. The Association shall incorporate into its landscaping and maintenance of vegetative screen along the north boundary of the Beach Area. The vegetative screen shall be comprised of

trees or bushes which shall be in addition to the fence described above.

This section should be removed through page 28 subsection H and a reference to the Addendum titled community center working agreement should be inserted Section 2. Community Center. Located upon Lot 104, Mission Bay Phase VII is a Community Center, owned by the Mission Bay Homeowners Association, Inc. The purpose, use, rights and responsibilities pertaining to the Community Center are as set out in this Section, Lot 104, Mission Bay Phase VII is excluded and exempt from the provisions of and requirements of Article IX, Section1 thru 6, 13,14, and 21 thru 25 of the Restated Declaration. Neither Lot 104, Mission Bay Phase VII, nor the improvements located thereon shall be considered common elements under this Declaration or the Declaration for Mission Bay Preserve.

- a. Purpose-Joint Use. Except as otherwise provided in this Section, Lot104, Mission Bay Phase VII shall be used as the site for a Community Center, intended for the use, benefit and enjoyment of the Owners of real property subject of this Restated Declaration and the Owners of real property located in Mission Bay Preserve. The use of Lot 104, Mission Bay Phase VII and its improvements are restricted by the terms and provisions of this Section.
- b. This part has been deleted captioned Declarant's Use
- c. Administration. Lot 104, Mission Bay Phase VII and facilities constructed thereon, such property shall be controlled and

- d. administered by the Community Center Committee established by this Section for the use, benefit and enjoyment of the Owners or real property subject of this Restated Declaration and the Owners
- e. of real property located in Mission Bay Preserve. The Community Center Committee shall be a joint committee comprised of five individuals, three of whom shall be appointed by the Mission Bay Homeowners Association, inc. and two of whom shall be appointed by the Mission Bay Preserve Homeowners Association, Inc. All Actions of the Community Center Committee shall be taken by
- f. majority vote of its members. From its five members, the Community Center Committee shall elect a chairperson, vice chairperson and secretary. The Community Center Committee shall meet on no less than a quarterly basis, at such reasonable times as may be set by the Chairperson. All meetings of the Community Center Committee shall take place at the Community Center and shall be open to Owners of real property subject to this Declaration and Owners of real property subject to the Mission Bay Preserve Declaration.
- g. Rules and Regulations. The Community Center Committee shall establish such rules and regulations for the use of Lot 104, Mission Bay Phase VII and facilities constructed thereon, as deems necessary and appropriate.
- h. Entitlements. Subject to the rules and regulations as may from time to time be established by the Community Center Committee, the Owners, ( including their guests and invitees ) of Lots included among the Real Property and the Owners of Lots in Mission Bay Preserve shall be entitled to use the Community Center constructed on Lot 104, Mission Bay Phase VII.
- i. Assessments. The Community Center Committee shall determine the amount of assessments to be charged to the owners of each Lot in the real property subject of this Declaration and the Lots subject of the Declaration of Covenants, Conditions, and Restrictions for

- j. Mission Bay Preserve Subdivision ( Mission Bay Preserve Declaration ) for Lot 104, and the improvements thereon. Such assessments attributable to Lot 104 and its improvements shall be equally allocated on a per lot basis, including both Lots subject to
- k. this Restated Declaration and the Mission Bay Preserve Declaration. Each Association ( Mission Bay Homeowners Association, Inc. and
- l. the Mission Bay Preserve Homeowners Association, Inc. ) shall include such amount in their respective assessments. The amount of assessments as determined by the Community Center Committee shall consist of the costs of construction and

maintenance of the facilities on Lot 104, Mission Bay Phase VII. The cost of construction may include loan payments, or direct reimbursement to parties responsible for the construction of the facilities. Maintenance cost shall include, but not limited to, insurance premiums, operational & administrative expenses. As an exception to the provisions of second 2Rates of Assessments, set forth in Article VIII of this Restated Declaration, the assessments levied b the Association pursuant to this Section, shall not be prorated or discounted. The Community Center Committee may restrict access to Lot 104, Mission Bay Phase VII and the Community Center for those Owners, who are not current in paying the assessments provided herein.

- m. Community Center Hours. The operating hours for the Community Center located on Lot 104, Mission Bay Phase VII shall be restricted to those hours between 6:00 am to 10:00 pm.
- n. Storm Water Drainage. The Community Center Committee shall be solely responsible for the maintenance of the storm water drainage system, including an oil filtration trap, for all storm water originating from Montana Landing Street and Lot 104, Mission Bay Phase VII.

**Section 4 Amendment.** These Covenants, Conditions and Restrictions may be amended at any duly called, noticed and held regular meeting of the Members at which a quorum is present by: 1) a vote of two thirds majority of the total voting power of Members of the Association present in person or by proxy or at such meeting entitled to vote thereat; or 2) a majority of the voting power ( one vote for each Lot in the subdivision ), whichever is less. In no event may those provisions of this First Amended Restated Declaration require a preliminary plat approval letter from the City of Polson dated July 21, 1997, specifically items 13, 14, 16, 19, 22, and 29 of the letters be amended or deleted except with the expressed written consent of the City of Polson, it's successors or assigns.

**Section 5. Notices.** Any such called for or made under this First Amended Restated Declaration shall be either delivered personally to the recipient, deposited in the United States Mail with the postage prepaid thereon addressed to the recipient at his or her address as it appears upon the Association's membership rolls, or sent electronically at pursuant to the Association's Bylaws, at the e-mail address as it appears upon the Association's membership rolls.