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Page: 1 of 42

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★★ See attached assr #'s. See 0016620 with plat

Re-recording to add information regarding date and file number of plat on page 6.

**Declaration of Protective Covenants,
Conditions and Restrictions
For
Starling Planned Unit Development**



**Declaration of
Protective Covenants, Conditions and Restrictions
for
Starling Planned Unit Development**

This Declaration of Covenants, Conditions and Restrictions for Starling Planned Unit Development (“**Declaration**”) is made this 20th day of October, 2022, by Starling Development, LLC, a Montana limited liability company (the “**Declarant**”).

WHEREAS, Declarant is the owner of real property situated in the City of Kalispell, Flathead County, Montana, more particularly described in **Exhibit A**, attached hereto and incorporated herein, and hereinafter referred to as “**Property**” or “**Starling PUD**” or “**Starling Community**”;

WHEREAS, Declarant intends to develop, sell, and convey the Property;

WHEREAS, the purposes of this Declaration are to preserve and maintain the natural, scenic, recreational, economic, wildlife, and wetland values of the Property for the benefit of all Persons owning a Lot therein; to establish a means to provide for and maintain the Property and Improvements thereon as a pleasant and desirable environment for all Persons owning a Lot therein; to permit the Association to maintain, replace, repair, and improve those portions of the Property it is required or permitted to maintain, replace, repair, and improve; to provide for the collection and enforcement of Assessments and for enforcement of the Governing Documents; to provide for the addition and annexation of additional land to the Starling Community by the Declarant, as well as any development and improvements constructed (or to be constructed) thereon; and such other purposes as set forth in the Declaration, Bylaws, and Design Manual.

WHEREAS, the Property is part of a planned unit development, and Declarant reserves the right to develop the Property, and any land added and annexed into the Property, in any manner consistent with the subdivision regulations and zoning ordinances of the City of Kalispell, Flathead County, Montana, and any approved deviations thereto, and to expand the Property by annexing additional land as permitted by this Declaration. The Property will be developed in multiple phases;

NOW THEREFORE, Declarant, for itself and its successors and assigns, hereby declares that the Property, and any lands subsequently annexed to the Property and subjected to this Declaration, shall at all times be owned, held, conveyed, mortgaged, encumbered, leased, used, occupied, improved, sold, and conveyed subject to the declarations, limitations, covenants, conditions, restrictions, easements, and all provisions contained in the Declaration, all of which are imposed as equitable servitudes pursuant to a general plan for the development of Starling Community and the surrounding property owned by Declarant and for the purpose of enhancing and protecting the value and attractiveness of Starling Community, and every part of it, in accordance with the plan for development of Starling Community. All of the declarations, limitations, covenants, conditions, restrictions, easements, and provisions of the Declaration shall constitute covenants running with the land and are binding upon, and inure to the benefit of,



Declarant, the Starling Community Association, Inc., and all persons having or acquiring any right, title, or interest in or to any part of the Property, and to their respective heirs, devisees, personal representatives, successors and assigns and any occupants and users of the Property;

This Declaration shall apply to all of the Property, and any land subsequently added and annexed into the Property, and to all improvements placed or constructed thereon and shall be in existence unless amended or terminated as set forth in this Declaration or by operation of law.

Said declarations, limitations, covenants, conditions, restrictions, easements, and provisions shall be as follows:

Article 1 DEFINITIONS

Capitalized terms shall be defined as set forth below:

1.1 **Act:** means the Montana Nonprofit Corporation Act, § 35-2-113 *et seq.*, MCA, as amended.

1.2 **Accessory Dwelling Unit(s) or ADU(s):** means a dwelling unit subordinate to the principal dwelling building/structure and further has the meaning given to it in the Design Manual. Construction on an ADU shall not begin unless it is contemporaneous to or after construction of the principal dwelling building/structure.

1.3 **Accessory Structure:** means a detached subordinate building/structure situated on the same Lot with the principal building/structure and used in a manner that is incidental to and customary to the primary use of the principal building/structure. Construction on an Accessory Structure shall not begin unless it is contemporaneous to or after construction of the principal building/structure.

1.4 **Affirmative Vote of a Majority:** means and shall be achieved on any particular matter if (and only if) all of the following occur: **(i)** before the Transfer Date, the Declarant votes in favor of such matter, and **(ii)** the Association receives the affirmative vote of at least a majority of votes cast at a meeting or by written ballot (as described in more detail in the Bylaws).

1.5 **Affirmative Vote of a SuperMajority:** means and shall be achieved on any particular matter if the following occurs: **(i)** before the Transfer Date, the Declarant votes in favor of such matter, and **(ii)** the Association receives the affirmative vote of at least 75% of the votes cast at a meeting or by written ballot (as described in more detail in the Bylaws).

1.6 **Annexable Area:** means the land described in **Exhibit B**. Unless and until a portion or all of the Annexable Area is included as part of the Property pursuant to **Section 7.1(b)**, such portion or all of the Annexable Area is not deemed to be part of the Property and is not subject to the Governing Documents or governed by the Association.



1.7 **Areas of Common Responsibility:** means the Roads, public sidewalks, Common Areas, Parks, Open Spaces, Trails, storm water ponds and related facilities, mail delivery sites, and other areas, as shown on any Plat for any phase within the Starling Community, that are either owned by or required to be maintained by the Association, or which are permitted to be and are actually maintained by the Association.

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

1.9 **Assessments:** means, collectively, General Assessments, Special Assessments, Default Assessments, and Community Transfer Assessments, as more particularly described in **Article 3**.

1.10 **Association:** means Starling Community Association, Inc., a Montana nonprofit corporation, and any successor or assign.

1.11 **Association Expenses:** means an amount for reserves and all actual or estimated costs, expenses, and liabilities incurred, or anticipated to be incurred, by or on behalf of the Association for: **(i)** regulating, operating, administering, and managing the Property and the Association and expenses for the benefit of the Association as a whole; **(ii)** acquiring, leasing, operating, managing, paying taxes on, maintaining, repairing, replacing, and improving the Area of Common Responsibility within the Property or required to be maintained by the City of Kalispell; **(iii)** procuring and maintaining insurance for the Association; **(iv)** levying, collecting, and enforcing the Assessments and other amounts owed to the Association; **(v)** administering and enforcing the Governing Documents; **(vi)** incurring professional fees to assist the Board in performing any rights, privileges, powers, duties, or responsibilities; **(vii)** performing any and all rights, privileges, powers, duties, or responsibilities expressly or impliedly permitted by the Act, the Declaration, the Bylaws, or other Governing Documents; and **(viii)** any other costs or expenses reasonable or necessary to perform the rights, powers, privileges, duties, and responsibilities of the Association or Board or to further the intent and purposes of the Governing Documents.

1.12 **Board of Directors or Board:** means the body responsible for the operation and administration of the Association, as set forth in the Declaration and as more particularly described in the Bylaws, and who shall have such privileges, powers, and rights as are set forth in the Declaration and Bylaws.

1.13 **Bylaws:** means the Bylaws of the Starling Community Association, Inc., as the same may be amended, restated, or replaced from time to time.

1.14 **Common Area:** means each common area as shown on any Plat. Rules and Regulations regarding the use of Common Areas may be established pursuant to **Section 1.38**.

1.15 **Construction Activity:** means any site preparation for initial construction on a Lot and the construction, reconstruction, repair, or replacement of any Improvement on a Lot. "Construction Activity" does not include the construction, reconstruction, repair, or replacement of the interior of any Improvement on a Lot.



1.16 **Contract Purchaser:** means a Person buying a Lot or a portion of any Lot pursuant to a contract for deed, Montana Trust Indenture, mortgage, or other similar instrument.

1.17 **Declarant:** means Starling Development, LLC, a Montana limited liability company, and any assignee who is designated as the Declarant pursuant to **Section 7.4**.

1.18 **Declarant's Special Rights:** has the meaning given to it in **Article 7**.

1.19 **Declaration:** means the Declaration of Protective Covenants, Conditions and Restrictions for Starling Planned Unit Development, and includes all amendments, restatements, or supplements hereafter recorded in the Public Record.

1.20 **Design Manual:** means the Starling Community Design Manual created to govern and regulate all Construction Activity and Improvements. Before performing any Construction Activity, Owners are responsible for obtaining from the Association the most current Design Manual and for complying with the Governing Documents in regard to such Construction Activity. Notwithstanding anything to the contrary stated in the Declaration, Construction Activity performed by Declarant or Declarant's Affiliates shall not be subject to the Design Manual or to review by the DRP.

1.21 **Design Review Panel or DRP:** means the Starling Community Design Review Committee, as set forth in more detail in Article 8 of this Declaration and the Design Manual.

1.22 **Good Standing:** means that a Member is current on the payment of such Member's Assessments owed to the Association and that any Notice of Violation sent to the Owner has been cured to the Board's satisfaction.

1.23 **Governing Documents:** means the Declaration, Bylaws, Articles, Rules and Regulations, Design Manual, and resolutions of the Board, all as amended, added to, deleted from, restated, or supplemented from time to time.

1.24 **Improvement:** means all dwellings, buildings, ADUs, Accessory Structures, exterior stairs, patios, decks, sidewalks, pathways, driveways, parking areas, landscaping required pursuant to the Design Manual (including without limitation and when applicable to a particular Lot under the Design Manual, plantings, hedges, trees and shrubs, and sprinkler systems), windbreaks, fences, screening walls and barriers, retaining walls, monuments, exterior lighting, solar panels, ponds, water tanks, drainage and drainage facilities, culverts, satellite dishes, and all other structures constructed or installed on the exterior of a Lot. "Improvement" does not mean any type of improvement to the interior of any Improvement on a Lot.

1.25 **Invitee:** means any family member, guest, tenant or lessee, agent, representative, contractor, or other invitee of an Owner.

1.26 **Lot:** means each parcel of property within the Property that is capable of being owned in fee simple by an Owner, including without limitation each single-family lot, each duplex unit, each condominium unit, and each commercial unit. The term "Lot" does not include an Accessory Dwelling Unit.



1.27 **Manager:** means the Board of Directors, a management entity, or other person or group of persons retained or appointed by the Board for the purpose of conducting the day-to-day regulation, operation, administration, and management of the Property and the Association.

1.28 **Member:** means each Owner of any Lot within the Property. Each Member agrees to abide by and be bound to the Governing Documents.

1.29 **Open Space:** means those open spaces set aside for the use of the Owners and the public, as shown on any Plat. Rules and Regulations regarding the use of Open Spaces may be established pursuant to **Section 1.38**.

1.30 **Owner:** means one or more Persons, including, without limitation, the Declarant, who hold record title to any Lot or any portion of any Lot, including contract purchasers, regardless of how such ownership was obtained (i.e., by purchase, transfer, foreclosure, tax deed, will, gift, etc.), but excluding (i) the Association, and (ii) those having an interest merely as security for the performance of an obligation. A tenant or lessee who is leasing a Lot is not an Owner.

1.31 **Parks:** means those parks set aside for the use of the Owners and public, as shown on any plat. Rules and Regulations regarding the use of Parks may be established pursuant to **Section 1.38**.

1.32 **Person:** means any natural person, corporation, partnership, limited liability company, association, trust, or any other legal entity.

1.33 **Plat:** means the Plat filed on December 8, 2022 as Document No. 2022 000 30095 in the Public Record, and any subsequent plats or amended plats regarding the Property filed by the Declarant in the Public Record.

1.34 **Property:** means the real property described in **Exhibit A**, and any Improvements thereon. **Exhibit A-1** delineates Phases 1-3 within the Property. On or before the Transfer Date, Declarant reserves the right, but does not have the obligation, to expand the Property by annexing any or all of the Annexable Area into the Property and subjecting any or all of the Annexable Area to the Declaration, as set forth in more detail in **Section 7.1**. After the Annexable Area, or portion thereof, has been annexed into the Property, such annexed real property shall be included in the term "Property" and such annexed property shall be subject to the Governing Documents as if it had been included in the Property at the time the Declaration was originally recorded in the Public Record.

1.35 **Public Record:** means the office of the Clerk and Recorder of Flathead County where land records are recorded or filed.

1.36 **Quorum:** has the meaning given to it in the Bylaws.

1.37 **Roads:** means the interior streets, alleys, and woonerfs within the Property. "Roads" does not include a driveway providing access to an Owner's Lot.



1.38 **Rules and Regulations:** means any rules and regulations adopted as follows: (i) before the Transfer Date, the Declarant; (ii) before the Transfer Date, the Board and the written consent of the Declarant; or (iii) after the Transfer Date, the Affirmative Vote of a Majority. Rules and Regulations may be established for any reason authorized in the Declaration or Bylaws, including without limitation to: (i) prevent or reduce fire hazard; (ii) prevent disorder and disturbances of the peace; (iii) regulate pedestrian and vehicular traffic; (iv) regulate animals, home offices, leases, the environment, and environmental practices; (v) regulate signs; (vi) regulate the use of all Areas of Common Responsibility to assure fullest enjoyment of use by the Persons entitled to enjoy and use the same; (vii) regulate all builders/constructors and all Construction Activities; (viii) promote the general health, safety, and welfare of persons within the Property; (ix) protect and preserve property and property rights; (x) establish a process to hear grievances; (xi) establish fines and other remedies for violation of the Governing Documents; and (xii) for any other purpose permitted by the Declaration and Bylaws. All Rules and Regulations shall be posted on the Association’s website. A Rule and Regulation becomes effective when it is approved as set forth above in this **Section 1.38** and posted on the Association’s website, or such later date set forth in the Rule and Regulation. Rules and Regulations are not required to be filed in the Public Record.

1.39 **Trails:** means those trails within the Property as established by the Declarant and thereafter the Board, for use by Owners and members of the general public. Rules and Regulations regarding the use of Trails may be established pursuant to **Section 1.38**.

1.40 **Transfer Date:** means the date the Declarant turns the Association over to the Members and shall be the earlier of: (i) December 31, 2052; (ii) when the Declarant determines, in an instrument recorded in the Public Record, that one hundred percent (100%) of the real property that may be annexed into the Property has been annexed and all Lots to be included in the Property and any Annexable Area have been sold to a Person other than Declarant; or (iii) when the Declarant elects, in an instrument recorded in the Public Record, to turn the Association over to the Members.

1.41 **Zoning Regulations:** means the Kalispell Zoning Ordinance, Ordinance No. 1677, and any amendments thereto.

1.42 Other definitions may be found throughout this Declaration, the Bylaws, or the Design Manual and those definitions are binding upon all Owners. Any term not specifically defined shall be deemed to have its common and ordinary meaning.

Article 2
STARLING COMMUNITY ASSOCIATION

2.1 **The Association.** An association is hereby established known as the “Starling Community Association” (“**Association**”).

2.2 **Membership.** Upon becoming an Owner of a Lot within the Property, each Owner shall automatically be a Member of the Association and shall remain a Member for the period of the Owner’s ownership of the Lot. Membership shall be appurtenant to and may not be separated from ownership of a Lot. If more than one Lot is owned, the Owner(s) thereof shall



have one membership for each separate Lot owned. For purposes of determining membership, a Person shall be deemed to be a Member upon the recording of a deed to that Owner, or upon the recording of a Notice of Purchaser's Interest or an Abstract of a Contract for Deed showing a contract purchase by the Owner. The legal title retained by the vendor selling under contract shall not qualify such vendor for membership. Foreclosure of a mortgage, trust indenture, or the termination or foreclosure of a contract for deed wherein title is vested in the mortgagee, beneficiary, or original seller on a contract, or repossession for any reason of a Lot sold under a contract, shall terminate the vendee's membership, whereupon all rights to such membership shall vest in the legal owner.

2.3 Member Contact Information. An Owner shall be responsible for providing a written instrument to the Secretary advising the Secretary of their acquisition of a Lot within the Property. Such written instrument shall also provide the name of the Person authorized to receive notices and to vote on all matters coming before the Association and of such Person's mailing address, telephone number, and email address, and of any changes in ownership or contact information.

2.4 Joint Ownership. Multiple owners of a single Lot are jointly and severally obligated to perform the responsibilities of an Owner. However, multiple Owners shall have only one such membership or voting interest between them. If more than one Owner seeks to exercise the vote, the Association will count only the vote cast by the Person listed in the written instrument required by **Section 2.3**; and if no such written instrument has been provided, the voting privilege shall be suspended until the multiple interest owners provide a written instrument to the Secretary providing the name of the Person authorized to vote on behalf of the multiple owners. The Association shall not have any obligation to confirm, as among such multiple owners, which of the Persons has the right to exercise a vote.

2.5 Non-Natural Person Ownership. The membership rights of an Owner that is not a natural person may be exercised by any officer, director, partner, trustee, member, or manager, or by an individual designated in a written instrument to the Secretary describing and certifying the authority of such Person. If more than one Person described in this **Section** seeks to exercise the vote, the Association will count only the vote cast by the Person listed in the written instrument required by **Section 2.3**; and if no such written instrument has been provided, the voting privilege shall be suspended until a written instrument is provided to the Secretary providing the name of the Person authorized to vote on behalf of the non-natural Person Owner. The Association shall not have any obligation to confirm which of the Persons has the right to exercise a vote.

2.6 Voting. On all matters to be decided by the Members of the Association, each Lot whose Owner(s) are in Good Standing at the time the vote is taken shall be entitled to one vote for such Lot; *provided, however*, the Owner of a residential apartment building or commercial suite building (i.e., buildings containing units that are not separated into separate fee simple units) shall be entitled to one vote for each residential apartment or commercial suite within the building. The vote(s) for such Lot shall be exercised by the Person designated pursuant to **Section 2.3**. Except as otherwise required by the Declaration, the Bylaws, or Montana law, the Affirmative Vote of a Majority voting at a meeting or by written ballot (as described in more



detail in the Bylaws), shall be sufficient to act on matters brought before the Association. Voting is further addressed in the Bylaws.

2.7 Meetings of the Association. The Bylaws contain provisions regarding Association meetings, notice of meetings, Quorum, voting, actions taken without meetings, etc.

2.8 Board of Directors. The Bylaws contain provisions regarding the Board, including but not limited to appointment or election of directors, number, qualifications, term, resignation, removal, vacancies, officers, meetings, Quorum, voting, actions taken without meetings, indemnification, etc.

2.9 Rights and Powers of Association. The Association shall have and may exercise any power, right, privilege, duty, or responsibility given to it expressly by the Declaration and Bylaws or reasonably implied from or reasonably necessary to effectuate any such power, right, privilege, duty, or responsibility. Except where specifically reserved to the Members of the Association in the Declaration, Bylaws, or by Montana law, all powers, rights, privileges, duties, and responsibilities of the Association may be exercised by the Board without a vote of the Members. The powers, rights, privileges, duties, and responsibilities include without limitation:

(a) To acquire (by gift, purchase, lease, trade, or any other method), own, regulate, operate, manage, maintain, repair, replace, improve, rent, sell, develop, encumber, dispose of, and otherwise deal in and with real and personal property of every kind and character, tangible and intangible; *provided, however*, the Association may not convey any real property owned by the Association without the Affirmative Vote of a SuperMajority.

(b) To pay real estate taxes and assessments on property owned by the Association and all other taxes, duties, charges, fees and payments required to be made to any governmental or quasi-governmental entity which shall be imposed, assessed or levied upon the Association.

(c) To grant easements, leases, licenses, and concessions through or over real property owned by the Association, so long as the same do not unreasonably interfere with the use and enjoyment of an Owner's Lot, Road, Parks, Open Spaces, or Common Areas.

(d) To provide for the care, operation, management, long and short-term maintenance, repair, replacement, and improvement of the Areas of Common Responsibility, including without limitation snow removal, control of noxious weeds, landscaping, irrigation, lighting, signage, paving, striping, etc.. subject to other provisions of the Declaration The Board may cause additional Improvements to be constructed or placed upon the real property owned by the Association.

(e) To hold meetings of the Association and of the Board in accord with the Bylaws.

(f) To enforce the Governing Documents in any manner permitted under the Governing Documents or Montana law.



(g) Subject to Section 1.38, to adopt, amend, and enforce Rules and Regulations for the Property.

(h) After the Transfer Date, to amend the Design Manual applicable to the Property by an Affirmative Vote of the Majority. Before the Transfer Date the Declarant may unilaterally amend the Design Manual.

(i) To maintain the records of the Association in accordance with applicable Montana law and the Bylaws.

(j) To make expenditures, incur liabilities, enter into contracts and agreements, and provide services as are reasonable or necessary to affect the business of the Association or to effect any power, right, privilege, duty, or responsibility of the Board or Association.

(k) To obtain and pay for legal, accounting, and other professional and expert services as are reasonable or necessary to affect the business of the Association or to understand, assess, or affect any power, right, privilege, duty, or responsibility of the Association.

(l) To enter the exterior or a Lot for: **(i)** emergency and safety reasons and to protect persons or property; **(ii)** to perform maintenance, repairs, or replacements in accordance with the Governing Documents; and **(iii)** to inspect for the purpose of ensuring compliance with the Governing Documents. The right to enter may be exercised by two or more members of the Board or the Board's managers or contractors, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner of the applicable Lot. The rights set forth in this provision shall not obligate the Board or the Association to exercise any such rights or to undertake any of the actions set forth in this provision.

(m) Subject to **Article 3**, to prepare, adopt, and amend budgets for revenues, expenditures, and reserves.

(n) Subject to **Article 3**, to levy and collect Assessments from Members.

(o) To pay the expenses of the Association.

(p) To purchase insurance policies to: **(i)** protect the real and personal property of the Association against casualty or loss; **(ii)** to protect the Association, officers, directors, and Manager (when acting in their official capacity) from liability; and **(iii)** for any other purpose deemed advisable by the Board; and to provide for the use and disposition of any insurance proceeds in the event of loss or damage.

(q) To provide for the indemnification of the Association's officers, directors, Manager, and other agents of the Association as required or permitted in the Act.



(r) To borrow funds to pay for any expenditure or outlay permitted by the Declaration; to execute all instruments evidencing such indebtedness as may be reasonable, necessary, or advisable; and to assign its right to future income, including without limitation the right to receive Assessments, as security for any borrowed funds.

(s) To deal with agencies, officers, boards, commissions, departments, and other governmental bodies on a local, state, and federal basis to carry out the powers, rights, and privileges of the Association.

(t) To institute, defend, intervene, or settle litigation, arbitration, mediation, or other administrative proceeding (collectively, “lawsuit” or “proceeding”) on matters affecting the Property or the Governing Documents, and to take such action it deems reasonable or necessary to enforce the Governing Documents; *provided, however*, after the Transfer Date the Board may not institute a lawsuit without the Affirmative Vote of a Majority except for lawsuits to enforce General Assessments, Special Assessments, and Community Transfer Assessments (and Default Assessments related to enforcing General Assessments, Special Assessments, and Community Transfer Assessments).

(u) To appoint a Manager to generally supervise and control the day-to-day business of the Association and to delegate certain powers, duties, and responsibilities to such Manager.

(v) Subject to other provisions of the Declaration and Bylaws, to exercise all other powers that may be exercised by a Montana nonprofit corporation under the Act or that are reasonable or necessary to protect the health, safety, and welfare of the Owners.

Article 3 Assessments

3.1 Personal Obligation for Assessments and Other Amounts.

(a) Each Owner, whether it shall be so expressed in any deed or contract, is deemed to have agreed to the protective and restrictive covenants contained herein, and to pay to the Association all Assessments levied by the Association. Each Owner, by accepting a deed or recording a notice of purchaser’s interest or a contract for deed for any Lot within the Property, is deemed to covenant and agree to pay the Assessments levied by the Association.

(b) No Owner may exempt himself from liability for any Assessments or any other obligation under the Governing Documents by non-use of or abandonment of such Owner’s Lot, the Areas of Common Responsibility, or any other reason. The obligation to pay Assessments is a separate and independent covenant on the part of each Member in relation to a Lot.

(c) Notwithstanding anything stated in this Declaration to the contrary, neither the Declarant nor an Affiliate of the Declarant shall be required to pay Assessments on any Lot owned by the Declarant or its Affiliate unless the principal building/structure on such Lot is substantially completed and is being occupied for its intended purpose. “Affiliate” means a



member of Declarant and/or an entity in which one or more members of the Declarant has an interest.

3.2 **Waiver of Homestead.** By purchasing a Lot, each Owner agrees that any filed Homestead Exemption does **NOT** apply to any Assessments owed to the Association.

3.3 **Types of Assessments.** The Association, by and through the Board, may levy any and all of the following types of Assessments:

(a) **General Assessments.** General Assessments include assessments to pay for the Association Expenses, and shall include an amount for reserves. In determining the amount to include for reserves, the Board shall take into account any buildings or structures to be added by the Association or reserve projects to be completed by the Association, and the number and nature of depreciable assets owned or partially or fully maintained by the Association, the expected life of each asset and their expected repair, replacement, and improvement cost; *provided, however*, the use of the reserves is not limited to these items. General Assessments shall be fixed by the Board and shall be assessed equally to the Owner of each Lot; *provided however*, if a Lot contains one or more residential apartment buildings or one or more commercial suite buildings, then a General Assessment shall be assessed to the Owner for each residential apartment or commercial suite in such buildings. General Assessments shall be paid quarterly, on January 1, April 1, July 1, and October 1 of each year.

(b) **Special Assessments.** Special Assessments may be levied from time to time to cover unexpected budget shortfalls, such as unforeseen repairs due to natural disasters or negligence; *provided however*, the reserves may also be used to cover unexpected budget shortfalls rather than levying a Special Assessment. Special Assessments may only be levied upon the Affirmative Vote of a Majority. Special Assessments shall be assessed equally to the Owner of each Lot; *provided however*, if a Lot contains one or more residential apartment buildings or one or more commercial suite buildings, then a Special Assessment shall be assessed to the Owner for each residential apartment or commercial suite in such buildings. Special Assessments shall be payable in such manner and at such times as determined by the Board, but no less than thirty (30) days after notice of the Special Assessment is provided to the Owners, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

(c) **Default Assessments.** Default Assessments mean: (i) any fine or penalty imposed upon an Owner because of a violation of any provision of the Governing Documents; (ii) any cost or expense incurred by the Association as a result of an Owner's or an Owner's Invitee's violation of any provision of the Governing Document; (iii) any cost or expense incurred by the Association as a result of damage caused by the intentional or negligent act or omission of an Owner or the Owner's Invitee, and (iv) interest charged to the Owner. Default Assessments should be liberally construed. Default Assessments shall be payable in such manner and at such times as determined by the Board, but no less than thirty (30) days after notice of the Default Assessments is provided to the Owner.



(d) **Community Transfer Assessments.** Within ten (10) days after a Transfer of a Lot within the Starling Community, every Transferee shall pay to the Association a Community Transfer Assessment in an amount equal to \$300.00 per principal dwelling building structure, ADU, residential apartment within an apartment building, commercial building/structure, and commercial suite within a commercial building. If more than one (1) Person purchases a Lot as tenants in common or as joint tenants, then together those Persons collectively owe the Community Transfer Assessment, although each Person shall be jointly and severally liable for the entire Community Transfer Fee.

(1) **Definitions.** For the purposes of this **Section 3.3(d)**, the following terms are defined as set forth below.

(a) **“Person”** does not include a Person who holds title to a Lot merely as security for a mortgage, or a successive Personal Representative or a successive Trustee, or the Association.

(b) **“Transfer.”** Transfer means a conveyance of a fee simple interest in a Lot, whether for consideration, as a gift, pursuant to a will, as a result of foreclosure, pursuant to a court order, pursuant to a tax lien, or any other Transfer of the Lot wherein title to the Lot is transferred to a new Person. “Transfer” does not include a conveyance to a Declarant’s Affiliate unless the Declarant’s Affiliate intends at the time of the Transfer to occupy the Lot for its intended purpose.

(c) **“Transferee.”** Transferee (i.e., “Buyer”) means and includes all parties to whom any interest passes by a Transfer, and each party included in the term “Transferee” shall have joint and several liability for all obligation of the Transferee under this **Section 3.3(d)**.

(d) **“Transferor.”** Transferor (i.e., “Seller”) means and includes all parties from whom any interest passed by a Transfer, and each party included in the term “Transferor” shall have joint and several liability for all obligations of the Transferor under this **Section 3.3(d)**.

(2) **Reports.** With payment of the Community Transfer Fee, the Transferee shall make a written report to the Board on a form prescribed by the Board, fully describing the Transfer, the names of the parties thereto, and such other information as the Board may reasonably require.

3.4 **Approving the Budget.** With the notice of the annual meeting of the Association, the Board shall present to the Members a proposed budget of the estimated income and expenses for the Association for the coming fiscal year. So long as the General Assessments are not increased more than 15% over the amount of each such General Assessments for the preceding year, the Board is not required to obtain Member approval to adopt the budget. If there is an increase in General Assessments over 15% from the preceding year, the Members shall approve, amend, or reject the proposed budget at the annual meeting of the Association. If no budget is



approved by either the Board or the Members, respectively, then the budget last approved shall remain in effect until a new budget is approved.

3.5 Effect of Non-Payment of Assessments; Lien and Remedies of the Association.

(a) Any Assessment not paid within thirty (30) days after the due date shall be delinquent and shall incur a fine equal to 10% of the delinquent Assessment. Any Assessment that is still not paid on each anniversary date of the due date shall incur an additional fine equal to 10% of the delinquent Assessment.

(b) In the event an Assessment becomes delinquent, the Association may take any or all of the following actions: (i) record a lien in the Public Record against the Owner's Lot, setting forth the name of the Owner, the legal description of the Lot, and the Assessments owed to the Association, and charge a fee and actual expenses for the recording of the lien; (ii) subject to **Section 2.9(t)**, bring an action at law to collect all Assessments owed and/or foreclose the lien against the Lot; (iii) apply any deposits held by the Association to the amount due; (iv) suspend the Owner's voting privileges; and (v) exercise any other remedy permitted under the Declaration or at law or equity. Each Assessment may be recovered by suit for a money judgment by the Association without foreclosing or waiving any lien securing the same or may be recovered in any foreclosure, or both. The remedies expressed herein are cumulative and not exclusive, and the Association may take any action permitted under this Declaration or Montana law to collect the Assessments owed to the Association.

(c) The recording of this Declaration constitutes record notice and perfection of a lien of the Association on all Lots. No further recordation or filing of any lien is required. The Board may, in its discretion, record the lien in the Public Record. The priority of the Association's lien shall be determined pursuant to **Section 3.6** and shall not be dependent upon the recording or filing date of any lien recorded in the Public Record. The Board, acting on behalf of the Association, shall have the power to bid (which may be a bid on credit, up to and including the amount secured by the lien) for the Lot at a foreclosure sale, and to acquire and hold, lease, mortgage, and convey the same. During the period a Lot is owned by the Association following foreclosure, (i) no right to vote shall be exercised on behalf of the Lot, (ii) no Assessment shall be assessed or levied on the Lot, and (iii) each other Lot shall be charged, in addition to its usual General Assessments and Special Assessments, its equal pro rata share of the General Assessments and Special Assessments that would have been charged to or payable by such Lot had it not been acquired by the Association.

3.6 Priority and Non-subordination of the Lien. The lien under this **Article 3** shall be superior to all other liens, except for tax and assessment liens and a first mortgage or trust indenture of record if such first mortgage or trust indenture is recorded in the Public Record prior to the Association's lien being recorded in the Public Record.

3.7 Liability of Members, Purchasers and Encumbrancers. The amount of any Assessment payable under this **Article 3** shall be a joint and several obligation to the Association of such Owner and such Owner's heirs, estates, devisees, personal representatives, successors, and assigns, and any Person acquiring fee simple title to a Lot (except the Association) shall be



jointly and severally liable with the former owner of the Lot for all such amounts which had accrued and were payable at the time of the acquisition of the title or interest by such Person, without prejudice to such Person's right to recover any such amounts paid from the former Owner.

3.8 **Verification of Assessments Due.** Upon written request, the Association shall furnish to an Owner or such Owner's title or mortgage company written verification of the amount of such Assessments owing and whether the Owner has paid such Assessments.

3.9 **Condominium or Townhome Assessment.** Owners who own units subject to a condominium or townhome declaration and/or bylaws may also be required to pay additional assessments to a condominium or townhome association. Payment of condominium or townhome assessments does not alleviate or offset the Assessments owed pursuant to this Declaration.

Article 4 PROPERTY USE AND RESTRICTIONS

4.1 **City Required Covenants.** The covenants contained in **Exhibit C** are included as a condition of preliminary and/or final plat approval and are required by the City of Kalispell.

4.2 **Permitted Uses of Lots.** The uses permitted under this Declaration on each Lot in Phases 1 and 2 are set forth in **Exhibit D**; the uses permitted under this Declaration on each Lot in Phase 3 are set forth in **Exhibit E**. If additional property is annexed into the Property, additional exhibits will be added to the Declaration to provide for the uses permitted on each Lot within such annexed property.

4.3 **Home Occupations.** Home occupations and home offices are allowed on Lots used for residential purposes so long as (i) the home occupation or home office is incidental to the primary use as a residence, (ii) the home occupation or home office is entirely inside the dwelling on the Lot, including any storage of materials; (iii) no non-resident employees or excessive traffic or noise are permitted; and (iv) the home occupation or home office is in compliance with the Zoning Regulations. Rules and Regulations regulating home occupations and home offices may be established pursuant to **Section 1.38**.

4.4 **Leasing.**

(a) *Long-Term Leasing.* "Long-Term Lease" means a lease for thirty (30) days or more. An Owner may lease the Owner's principal residential building/structure, ADU, residential apartment, commercial building/structure, or commercial suite under a Long-Term Lease subject to the following:

(i) all Owners shall comply with City of Kalispell Zoning Regulations, ordinances, codes and/or regulations regarding leasing;

(ii) all Owners shall comply with the Design Manual regarding leasing;



(iii) all Owners shall comply with Rules and Regulations regarding leasing;

(iv) an Owner shall have a written lease with the Owner's tenants that complies with Montana law and local ordinances;

(v) an Owner shall provide a copy of the Governing Documents to the tenant(s) prior to the beginning of the lease term;

(vi) an Owner shall provide the Association with each tenant's name, telephone number, and email address; and

(vii) an Owner shall be responsible to the Association for the actions or omissions of their tenants and their invitees, including without limitation any damage caused by tenants and their invitees and any violation of the Governing Documents.

(b) *Short-Term Leasing.* A "Short-Term Lease" means a lease for less than thirty (30) days.

(1) An Owner may not lease an ADU, or any portion therein, for a Short-Term Lease. Also, pursuant to Kalispell, Montana City Code 27.20.082(2)(C), rental periods of less than thirty (30) days are not permitted in ADUs.

(2) An Owner may only lease a principal residential building/structure, residential apartment, commercial building/structure, or commercial suite, or any portion therein, for a Short-Term Lease if approved for such use by the Declarant before the Transfer Date, and thereafter the Board. The Declarant or Board may approve a principal residential building/structure, residential apartment, commercial building/structure, or commercial suite, or any portion therein, for Short-Term Lease, subject to the following:

(i) An Owner desiring to obtain approval for a Short-Term Lease shall submit an application on a form approved by the Declarant or Board, as applicable, providing the information requested by the Declarant or Board.

(ii) Approval of a Short-Term Lease is on a case-by-case and first come first serve basis, and on conditions established by the Declarant or Board, as applicable. The Declarant or Board, as applicable, has discretion to grant or deny an application in order to limit the number of Short-Term Leases in the Starling Community and to preserve the intent that the Lots in Starling Community be predominantly Owner-occupied or occupied under a Long-Term Lease. This Declaration is not intended to give an Owner the right to use the Owner's Lot, or any portion therein, for a Short-Term Lease unless and until a Short-Term Lease is approved, and no Owner has the right to have the Owner's application approved.



(iii) all Owners shall comply with City of Kalispell Zoning Regulations, ordinances, codes and/or regulations regarding leasing;

(iv) all Owners shall comply with the Design Manual regarding leasing;

(v) all Owners shall comply with Rules and Regulations regarding leasing;

(vi) an Owner shall have a written lease with the Owner's tenants that complies with Montana law and local ordinances;

(vii) an Owner shall provide a copy of the Governing Documents to the tenant(s) prior to the beginning of the lease term; and

(viii) an Owner shall be responsible to the Association for the actions or omissions of their tenants and their invitees, including without limitation any damage caused by tenants and their invitees and any violation of the Governing Documents.

(ix) Once a principal residential building/structure, residential apartment, commercial building/structure, or commercial suite, or any portion therein has been approved to have a Short-Term Lease, the right to have a Short-Term Lease shall transfer with the Lot; *provided, however*, the Declarant or Board, as applicable, may revoke the right to have a Short-Term Lease if there are three (3) or more violations of the Governing Documents in any twelve (12) month period, regardless of whether the Lot has been transferred to a successive Owner during such twelve (12) month period.

(c) *Accessory Structures.* No Owner may lease an Accessory Structure for any period of time.

4.5 **Pets.** No livestock, poultry, or other animals, except domestic dogs, cats, or small in-house pets and birds (collectively "**Permitted Pets**") are permitted to be kept on any Lot. A maximum of two (2) Permitted Pets may be kept, provided they are confined to the Lot of their Owner. Permitted Pets may not be kept, raised, or bred for any commercial purposes. Permitted Pets shall not be allowed to roam free in the Starling PUD and shall be restrained or leashed at all times. Permitted Pets shall not be allowed to become a nuisance or annoyance to neighboring Owners, nor allowed to bark continuously or uncontrolled at any time. All Permitted Pets shall be strictly controlled by the Owners to prevent any interference or harassment of birds or wildlife. Owners are responsible for damage caused by any Permitted Pet, and Owners shall immediately clean up after their pets on any part of the Starling PUD.

If any animals are caught or identified chasing or otherwise harassing birds, wildlife, or people, or have become a nuisance or annoyance to neighboring Owners, the Association or any Owner shall have the authority to have such animals(s) impounded in accordance with the City of Kalispell animal control regulations.



Rules and Regulations regarding Permitted Pets may be established pursuant to **Section 1.38**.

Any Owner who causes any animal to be brought or kept in Starling Community shall defend, indemnify, and hold harmless the Association from any loss, damage, or liability that the Association may sustain as the result of the presence of such animal in the Starling Community.

4.6 Automobiles and Parking. “Automobile” means a two, three, or four door passenger vehicle, sports utility vehicle, or pick-up truck with or without a canopy cover or topper, or a moped or motorcycle, which is primarily used for transporting a small number of people over public highways. Except as otherwise provided in this Declaration, no Person shall park Automobiles on or along any Roads, except in areas specifically designated for parking. In addition to any other remedy available, the Board shall have the right to remove, or cause to be removed, any Automobile in violation of this **Section**, without notice and at the expense of the owner of the Automobile. The Association and the Board shall not be liable for any damages incurred by the Automobile because of the removal in compliance with this **Section**, or for any damage to the Automobile caused by the removal. Parking within the Starling PUD is further subject to the adoption of Rules and Regulations pursuant to **Section 1.38**.

4.7 Recreational Vehicles and Parking. “Recreational Vehicle” means snowmobiles, boats, trailers, all-terrain recreational vehicles, motor homes, mobile homes, campers, recreational vehicles, commercial type trucks, or other similar vehicles or equipment. No Owner shall park, store, or maintain any Recreational Vehicle in or on the exterior portions of a Lot (including driveways) or on the Property. The temporary parking of Recreational Vehicles for periods of short duration, but not exceed four (4) hours within a forty-eight (48) hour period, as an incident to loading and unloading thereof, shall not be deemed a violation of this **Section**. In addition to any other remedy available, the Board shall have the right to remove, or cause to be removed, any Recreational Vehicle in violation of this **Section**, without notice and at the expense of the owner of such Recreational Vehicle. The Association and the Board shall not be liable for any damages incurred by the Recreational Vehicle because of the removal in compliance with this **Section**, or for any damage to the Recreational Vehicle caused by the removal.

4.8 Satellite Dishes and Signs. Except as otherwise provided in this **Section**, Owners shall not cause or permit anything to be placed, hung, or displayed on the windows or placed outside of a dwelling (such as flags, air conditioning units, awnings, etc.), except as follows:

(a) One satellite dish per Lot may be installed on the exterior of a structure; *provided, however*, satellite dishes are subject to Rules and Regulations adopted pursuant to **Section 1.38** regarding the size and location of such satellite dishes, and condominium or townhome associations may enact more stringent restrictions regarding the location of such satellite dishes.

(b) Industry standard size “for sale,” “open house,” “for rent”, or “garage sale” signs are permitted on a lot for temporarily listing Lots for sale, for open house, or for rent. All such signs shall be promptly removed when the Lot is sold or leased or the garage sale



completed. Notwithstanding anything stated in this **Section** to the contrary, during the time the Property is being developed and Lots are being sold, the Declarant may erect “for sale” signs.

(c) Political signs are permitted on a Lot; *provided, however*, political signs are subject to Rules and Regulations adopted pursuant to **Section 1.38** regarding the size of political signs and the time period during which political signs are permitted.

(d) Owners of commercial Lots may install signs in compliance with the City of Kalispell Zoning Regulations or other City of Kalispell ordinances.

(e) A sign may be placed at the entrance(s) to the neighborhood to identify the neighborhood. If required by the City of Kalispell, any neighborhood and identification signs must obtain sign permit approval through the Kalispell Planning Department.

In addition to any other remedy available, the Board shall have the right to immediately remove any item that is in violation of the Declaration or Rules and Regulations.

4.9 Utility Lines. City water and sewer lines, power, natural gas, cable television, Internet, and telephone primary service lines are provided to each Lot. However, each Owner of a Lot is responsible for the costs of connecting from the main utility lines to the Owner’s Improvements on the Owner’s Lot, including any additions to the main utility lines that may be required by location of the Improvements on the Lot. All utility lines shall be underground. Private utilities are the responsibility of the Owner.

4.10 Mailboxes. Individual mailboxes and newspaper tubes are not allowed. Community mailboxes and newspaper deliver areas will be clustered at strategic locations approved by the Postmaster to simplify mail and newspaper delivery, and such boxes shall be maintained by the Association.

4.11 Garbage.

(a) All garbage, trash, junk, rubbish, parts, lumber, metals, debris, non-working or immobile vehicles, and other waste, shall be regularly removed from the exterior of a Lot and shall not be allowed to accumulate or to become airborne and carried off the Lot, including during any period of construction, occupancy, or remodeling.

(b) All garbage and trash requirements of the City of Kalispell shall be observed.

(c) All garbage, trash, or other debris and waste that is stored outside shall be kept in a City-approved container. Except on garbage pick-up day, garbage containers shall be kept in the garage or other enclosure directly adjacent to a structure or fence.

(d) No incinerator or other device for burning of garbage shall be installed or used.



(e) There shall be no dumping of any sort on other areas of the Starling Community.

(f) If an Owner violates this **Section**, the Association, after twenty-four (24) hours' written notice by mail, email, or personal delivery, may cause the garbage to be controlled or collected and removed; and, in addition to any other remedy allowed in this Declaration or at law, may assess the Owner for all costs related thereto as a Default Assessment.

4.12 **Lot Maintenance.** Each Owner is required to maintain the Owner's Lot, whether developed or undeveloped, in a neat, orderly, and safe fashion, including during any construction, occupancy, or remodeling. All garbage, trash, debris, and waste shall be removed from the Lot in a timely manner and shall be disposed of properly. Rules and Regulations may be established regarding the removal of garbage, trash, debris, and waste as set forth in **Section 1.38**.

4.13 **Improvements Maintenance.** Each Owner is required to maintain any structure (buildings, residences, garages, driveways, sidewalks, fences, walls, etc.) on the Owner's Lot in a neat, orderly, and safe fashion. This includes without limitation repainting, re-staining, re-siding, reroofing, and other maintenance and upkeep. Each Owner shall also maintain any landscaping required under the Design Manual and promptly replace any such landscaping that has been damaged, destroyed, or died.

4.14 **Alleys and Woonerfs.** Each Owner shall maintain the alley and/or woonerf right-of-way adjacent to the Owner's Lot. Such maintenance shall include without limitation picking up and appropriately disposing of garbage and debris and mowing and trimming the alley and/or woonerf right-of-way. If an Owner fails to maintain their alley and/or woonerf right-of-way, the Association, after twenty-four (24) hours' written notice by mail, email, or personal delivery, may cause the right-of-way to be maintained; and, in addition to any other remedy allowed in this Declaration or at law, may assess the Owner for all costs related thereto as a Default Assessment.

4.15 **Noise.** Each Owner is responsible for maintaining the peace and calm of the neighborhood. Each Owner, whether present at the time of a disturbance or not, is responsible for the conduct of themselves and their guests, invitees, licensees, and lessees, on an Owner's Lot and anywhere within the Starling Community. It is a violation of the Declaration to allow noise to emit beyond a Lot boundary at a level that disturbs another Owner. Sound systems, both interior and exterior, shall be used in a manner that minimizes sound, noise, and base reverberation to another Owner and to the neighborhood.

4.16 **Fireworks.** No fireworks of any kind shall be discharged anywhere within the Property or on any Lot.

4.17 **Peaceful Possession.** The Lots and Areas of Common Responsibility shall not be used for any purpose that interferes with the peaceful possession and proper use of other Lots and Areas of Common Responsibility by other Owners.

4.18 **No waste.** No waste is permitted on the Areas of Common Responsibility.



4.19 **No Noxious or Offensive Activity.** No noxious or offensive activity or odors shall take place on any Lot or within the Areas of Common Responsibility, nor shall anything be done thereon which may, or may become, an annoyance to the neighborhood. As used herein, the term “noxious or offensive activity” shall not include any activities of Declarant or its respective contractors or subcontractors which are reasonably necessary to the development of and construction on the Property so long as such activities do not violate the Governing Documents or the statutes or ordinances any governmental or quasi-governmental entity having jurisdiction with respect thereto.

4.20 **Wildlife Habitat.** It is recognized by Declarant, the Association, and the Owners that birds and wildlife live in or migrate through the Property during various times of the year. The following limitations on use and development are intended to protect, preserve and maintain the existing bird and wildlife habitat in the Property and to minimize the adverse effects of development on the bird and wildlife habitat:

(a) Hunting, capturing, trapping, or killing of birds or wildlife within the Property is prohibited. Skunks, gophers, and rodents may be trapped by the Board or Manager or their designee, but poison may not be used.

(b) No feeding or domestication of any birds or wildlife shall be permitted. No salt licks, bird feeders, or other foods shall be placed upon any Lot or in the Area of Common Responsibility. Items such as bird feed, horse feed, grains, garbage and dog food shall be stored inside a structure on a Lot.

(c) Owners and Owners’ Invitees should avoid areas of birds or wildlife concentration. Loud, offensive, or other behavior that harasses or frightens birds or wildlife is strictly prohibited.

4.21 **Lights.** All exterior lighting shall be subject to approval by the DRP to ensure that it is in compliance with the Design Manual.

4.22 **No Unsightliness.** No unsightliness shall be permitted on the exterior of a Lot. Without limiting the generality of the foregoing:

(a) No unsightly equipment, objects, or conditions shall be kept on the exterior of Lot.

(b) Clothes, towels, bedding, and other similar items shall not hung outside.

4.23 **Snow Removal.** The Association shall be responsible for removing snow from the alleys, woonerfs, and public sidewalks located in Common Areas, Parks, and Open Spaces. The Board may cause the Association to remove snow from any other part or portion of the Common Areas, Parks, Open Spaces, or Trails. Public sidewalks located within the boundaries of a Lot and private sidewalks leading up to a structure on a Lot shall be the responsibility of the Owner; *provided, however*, the Board may cause the Association to remove snow from all public sidewalks located within the boundaries of the Lots and charge such expense as an Association Expense.



4.24 **Sidewalks.** As set forth in more detail in the Design Manual, Lot Owners shall be responsible for installing, repairing, and replacing public sidewalks located within the boundaries of each Owner’s Lot.

4.25 **Noxious Weeds.** Each Owner shall be responsible for controlling noxious weeds on an Owner’s Lot. The Association shall be responsible for controlling noxious weeds in the Areas of Common Responsibility. If an Owner violates this **Section**, the Association, after twenty-four (24) hours’ written notice by mail, email, or personal delivery, may cause the noxious weeds to be controlled; and, in addition to any other remedy allowed in this Declaration or at law, may assess the Owner for all costs related thereto as a Default Assessment.

4.26 **Fencing.** No fencing shall be permitted along or adjacent to Stillwater Road.

4.27 **State, County, and Local Laws and Regulations.** All land use regulations and all other State of Montana, County of Flathead, and City of Kalispell laws, regulations, and ordinances are enforceable by the Board, and all Owners of said Lots shall be bound by such land use regulations and laws, regulations, and ordinances. To the extent that the Governing Documents are more stringent or restrictive than the land use regulations and laws, regulations, and ordinances, then the Governing Documents shall control.

4.28 **Other Condominium/Townhome Declarations.** Owners who own units in a condominium or townhome may be subject to a condominium or townhome declaration and/or bylaws. The additional covenants, conditions, restrictions, and requirements of any such condominium or townhome declaration does not, in any way, relieve the Owner from compliance with the Association’s Governing Documents. In the event of any conflict between the Association’s Governing Documents and the governing documents for such condominium or townhome, the Association’s Governing Documents shall control.

4.29 **Declarant’s Exemption.** Notwithstanding any other provision of this Declaration, nothing contained in this **Article 4** shall apply to the activities of Declarant or Declarant’s Affiliates, unless the principal building/structure on such Lot is substantially completed and is being occupied for its intended purpose. Further, Declarant and Declarant’s Affiliate’s Construction Activity and Improvements and Declarant’s exercise of any Declarant’s Special Rights are exempt from review by the Board and/or DRP before the Transfer Date.

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**Article 5
AREAS OF COMMON RESPONSIBILITY**

5.1 **Maintenance of Areas of Common Responsibility.** Except as set forth in **Section 4.23** and **Section 4.24** and city streets, the Areas of Common Responsibility shall be maintained by the Association in perpetuity. Maintenance of private alleys and woonerfs shall include both short term and long term maintenance, including without limitation snow removal, landscaping, sidewalks, street repairs, overlays, and rebuilds of the alleys and woonerfs.

5.2 **Control and Management.** Except as set forth in **Section 4.23** and **Section 4.24** and city streets maintained by the City of Kalispell, the Association, by and through the Board, shall have the exclusive right to control, operate, maintain, improve, and repair the Areas of Common Responsibility.

**Article 6
EASEMENTS**

6.1 **Easements Shown on Plat.** The Declarant herein grants unto each and every person, firm, or corporation, whether public or private, providing, or offering to provide telephone, telegraph, electric power, gas, cable television, water or sewer service to the public, the right to the joint use of an easement for the construction, maintenance, repair, and removal of their lines and other facilities, in, over, under and across each area designated on any Plat for the Property as “Utility Easement,” to have and to hold forever.

6.2 **Easements Reserved to Association.** The Association, acting through its Board, shall be empowered and obligated to grant such easements, licenses, rights-of-entry and rights-of-way over, under, and across the Property for utility purposes, access purposes, or other lawful purposes, as may be necessary for the benefit of the Property or the Annexable Area; *provided, however,* before the Transfer Date the Board shall obtain the written consent of the Declarant prior to entering into any easements, licenses, rights-of-entry and rights-of-way.

**Article 7
DECLARANT’S RIGHTS**

7.1 **Annexation.**

(a) Until the Transfer Date, Declarant reserves the right from time to time to expand Starling Community by annexing any or all of the Annexable Area described in **Exhibit B** to the Property and subjecting the same to the Declaration. However, the Declarant shall not be obligated or required to annex such additional lands to Starling Community and the Declarant may annex a portion or all thereof at Declarant’s discretion.

(b) The manner of subjecting a portion or all of the Annexable Area to the Declaration shall be accomplished by filing in the Public Record an amendment or supplement for each such annexation containing the following:



1. An amended Exhibit A providing the amended legal description for the Property.

2. An amended Exhibit C providing any additional covenants required by City of Kalispell, Flathead County, Montana.

3. Such other amendments and exhibits as the Declarant deems necessary or desirable to incorporate the annexed land into the Property and the Starling Community.

(c) The Declarant shall have the irrevocable right before the Transfer Date to execute, file, and record any amendment or supplement permitted under **Section 7.1**, and such other documents reasonable or necessary to accomplish such annexation. The Owners, the Association, lien holders, mortgagees, and others acquiring any interest in a Lot herein consent to the Declarant amending or supplementing the Declaration (and Bylaws, if required), and their consent is implied to such amendments or supplements by their acceptance or acquisition of any interest or lien in a Lot; and if the signature of any Owner or any Person having an interest in a Lot is required by any governmental agency, Declarant is appointed the Owner's and Person's agent to execute and record such amendments or supplements.

(d) Upon the execution and recording or any such amendment or supplement, such annexed land shall thereafter be deemed part of the Property and Owners, lien holders, mortgagees, and others acquiring any interest in a Lot, shall be bound and subject to all provisions of the Governing Documents.

(e) The amendment or supplement shall be effective at the time it is recorded in the Public Record.

7.2 Declarant's Easements.

(a) Until the Transfer Date, Declarant hereby reserves for itself and its assignees, for the benefit of itself and its agents, representatives, successors, assigns, contractors, and subcontractors, a non-exclusive easement through, over, over, under, and across, the Areas of Common Responsibility as may be reasonable or necessary to **(i)** discharge Declarant's obligations under this Declaration; and **(ii)** exercise any of the Declarant's Special Rights.

(b) Declarant hereby reserves for itself and its assignees, for the benefit of itself and its agents, representatives, successors, assigns, contractors, and subcontractors, a non-exclusive easement through, over, under, and across the Areas of Common Responsibility and utility easements for ingress and egress for the purpose of inspecting, installing, maintaining, repairing, replacing, relocating, tapping into, tying into, extending, enlarging, and using hot and cold water lines, waste water lines, electrical lines, gas lines, internet lines, cable television systems, master television antenna systems, Roads, ponds, wetlands, drainage systems, and any other utilities, to further develop the Property and the Annexable Area, whether or not any or all of such land is made subject to this Declaration. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Areas of Common Responsibility as a result of vehicular traffic connected with development of such Annexable Area. Declarant further agrees that if the easement is exercised for permanent access to all or a portion of such



Annexable Area and such Annexable property or any portion thereof is not made subject to this Declaration, the Declarant, its successors or assigns, shall enter into a reasonable agreement with the Association to share the cost of maintenance of any access roadway serving such Annexable Area.

(c) Until the Transfer Date, Declarant hereby reserves for itself and its assignees the right to establish easements within the Property consistent with developing the Starling Community and any phase thereof.

7.3 Other Declarant's Special Rights. Notwithstanding any other provision expressly or impliedly to the contrary in the Declaration or Bylaws, the Declarant hereby reserves for itself and its assignees the following rights:

(a) Until the primary building/structure on a Lot is substantially completed and is being occupied for its intended purpose, the Declarant shall not be required to pay any Assessments for a Lot.

(b) Until the Transfer Date, the right to appoint the Board of Directors.

(c) Until the Transfer Date, the right to complete any Improvements on the Property.

(d) Until the Transfer Date, the right to construct and maintain sales offices, trailers, booths, Improvements, or other structures used for sales or promotional purposes, management offices, and models on the Property, and the right to construct and maintain signs advertising the Property and the Lots contained therein. The number, size, and location of any such sales structures and signage, management offices, or models or the relocation thereof shall be determined by Declarant.

(e) Until the Transfer Date, the right to exercise any development right, including, without limitation, the right to add Annexable Area to the Property pursuant to **Section 7.1** and to make that Annexable Area subject to this Declaration; the right to change the uses for such Annexable Area; the right to subdivide or combine Lots within the Annexable Area, and the right to record declarations and governing documents of any sub-associations.

(f) Until the Transfer Date, the right to maintain construction equipment on the Property that is necessary for the development of the Property.

(g) Until the Transfer Date, the right to merge and consolidate the Association with a property owners association of the same form of ownership.

(h) Until the Transfer Date, the right to not be subjected to the Design Manual.

(i) Any other right set forth within the Declaration and/or the Bylaws as reserved to the Declarant and/or its successors or assigns.



7.4 Transfers of Declarant's Special Rights.

(a) The Declarant's Special Rights may be transferred or assigned by the Declarant in whole or in part. Any such transfer or assignment shall only be effective if it is in a written instrument signed by Declarant and recorded in the Public Record.

(b) Upon transfer or assignment of the Declarant's Special Rights, the liability of an assignor is as follows:

(a) An assignor is not relieved of any obligation or liability arising before the transfer.

(b) An assignor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from and after the date of such transfer.

(c) Upon transfer or assignment of the Declarant's Special Rights, the assignee is subject to all obligations and liabilities imposed on the Declarant by this Declaration arising from and after the date of such transfer or assignment.

7.5 **Rights of Declarant after the Transfer Date.** After the Transfer Date, Declarant will still have the following rights and duties: **(i)** if still an Owner, Declarant will continue to have all of the rights and duties given to Members under the Governing Documents; and **(ii)** any right or duty of the Declarant that has not been expressly limited as existing only before the Transfer Date.

7.6 **Amendments to Article 7.** The Declarant's Rights set forth in **Article 7** are irrevocable, shall be deemed covenants running with the Property, and may not be amended without the Declarant's written consent.

Article 8 DESIGN GUIDELINES

8.1 **General Review and Approval.** Any Construction Activity to the exterior of Lot, including without limitation the exterior of any structure on a Lot, may not be commenced or maintained except upon the prior written approval of the DRP, as set forth in more detail in the Design Manual. Except as set forth in **Section 8.8**, the DRP has the express authority to review, accept, condition, modify, or deny all plans for any Construction Activity requested by an Owner to ensure that the Construction Activity complies with the Governing Documents and is compatible with, and inappropriate for, the Property and Lot.

8.2 **Compliance With Governing Documents.** Owner acknowledges that, in connection with any Construction Activities performed by or at the request of an Owner, such Owner must comply with the applicable provisions of Governing Documents, which documents may include, among other things, the following: **(i)** procedures and fees for making application for design review approval, including, without limitation, the documents and materials to be submitted and the process utilized to approve or disapprove any submission; **(ii)** deposits that may be required before a Construction Activity is commenced; **(iii)** time limitations for the



completion, within specified periods after approval, of the Improvements for which approval is required under such documents; (iv) conditions to any consent or approval that that the DRP deems necessary or appropriate, including, without limitation, fines for failure to comply; (v) the nature, kind, shape, height, color, materials and location of Improvements, parking, landscaping, open space, signage, skylining, setbacks, utilities, storm water management, grading, erosion control, fencing, interaction with wildlife, fault and landslide areas, air contaminants, water quality, heat, lighting and glare, noise, vibration, electrical disturbances, fire and other hazards, permitted uses within specific areas, the scale of development, maximum floor area and other dimensional limitations, impervious surface, density, construction standards and any other matter regulated pursuant to the Declaration or the Design Manual.

8.3 **Association Use of Consultants.** The DRP, upon approval by the Board, or Board shall have the authority to retain the services of one or more independent consulting architects, landscape architects, engineers, contractors and experts to advise and assist the DRP in performing the review functions prescribed in this **Article** and in carrying out provisions of the Declaration and Design Manual. Such consultants may be retained to advise the Board and/or DRP on a single or number of projects or on a continuing basis.

8.4 **Fees and Deposits.** The Board and/or DRP, upon approval by the Board, shall have the authority to require reasonable fees to be paid with the filing of applications to offset expenses. In addition, the Board and/or DRP, upon approval by the Board, shall have the authority to set and require Owners to post reasonable deposits prior to commencing Construction Activities for the purpose of assuring that Construction Activities will be completed within the time specified and in compliance with approved plans and applicable requirements.

8.5 **Revocation or Suspension of Approvals.** The Board or DRP shall have the authority to revoke or suspend the review and/or approval and/or order the suspension or cessation of any Construction Activity for violation(s) of the Governing Documents or for failure to construct the Improvements in accordance with the approved plans. In addition, the Board shall have the authority to record a notice of such non-compliance in the Public Record.

8.6 **Certificate of Substantial Completion.** If requested by the Board or DRP, an Owner, upon final completion of such Owner's Construction Activity, shall request in writing from the DRP a certificate of substantial completion. In the event of denial, the DRP shall state its reasons in writing and provide the Owner a reasonable time to address the reasons for denial (*e.g.*, complete the Construction Activity in accordance with DRP approval) and reapply for a certificate of substantial completion. The Board and/or DRP shall not be required to release any deposits held pursuant to this **Article** until a certificate of substantial completion has been issued.

8.7 **Adoption of Design Manual and Rules and Regulations.** Notwithstanding anything stated to the contrary, before the Transfer Date the Declarant may adopt, amend, add to, or delete any provision of the Design Manual or related Rules and Regulations, including without limitation provisions regarding the procedure and fees for making application for design review approval; establishing design guidelines; establishing deposits that may be required prior to the commencement of any Construction Activity; and for any other purpose that will assist the DRP in the DRP's review of applications to perform Construction Activities. Until the Transfer Date the Declarant shall have the exclusive right to construe and interpret the pertinent



provisions of any such Design Manual. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Declarant's construction or interpretation of the Design Manual and the provisions of this **Article** shall be final, conclusive, and binding as to all Persons and property benefitted or bound by the provisions hereto. The Declarant may delegate any or all of its rights hereunder to the Board or Association prior to the Transfer Date. After the Transfer Date, the Design Manual and any related Rules and Regulations may only be adopted, amended, added to, or provisions deleted, by an Affirmative Vote of the Majority.

8.8 **Variances.** Until the Transfer Date the Declarant, and thereafter the Board, may, in their sole and absolute discretion, approve, conditionally approve, or deny a variance from the Design Manual when **(i)** there is a valid justification, **(ii)** where the variance does not have a negative impact on the Lots or the Property as a whole, **(iii)** where the variance is reasonable in relation to the overall character and nature of the area; and **(iv)** based on design merit. The Owner shall apply in writing for a variance addressing the above criteria and the precise variance from the Design Manual that is being requested. The Declarant or Board's decision shall be stated in writing. The decision to grant a variance shall not be deemed a waiver of any provision of the Declaration and the Declarant or Board shall not be deemed required to grant a similar variance under other similar circumstances. No variance shall be granted in violation of any local land use regulations unless explicitly authorized by the appropriate review agency or agencies. The Declarant may delegate any or all of its rights hereunder to the Board prior to the Transfer Date. Neither the Declarant nor the Board is obligated to approve a variance.

8.9 **Conflict of Interest.** If a director on the Board submits a project to the DRP for review, that director shall recuse himself from as a voting member of the Board and not participate in the review and discussion of the submitted Construction Activity if the same comes before the Board.

8.10 **Approvals and Consents.** Any approval or disapproval by the DRP shall be in writing and in the case of a denial shall state the reasons for such denial. Decisions of the DRP are final unless an Owner appeals in writing to the Board to reconsider the DRP's decision. A appeal must be made in writing within ten (10) business days after notice of the DRP's decision and be delivered by personal delivery, mail, or email to the Board. The request will be considered by the Board at its next regularly scheduled meeting. The Board will in writing affirm or modify the DRP's decision, and the Board's decision is final.

8.11 **Liability.** The standards and procedures established by this **Article** and the Design Manual are intended to enhance the overall aesthetics of the Property. None of the Declarant, Association, the Board, or the DRP, nor any of their respective officers, directors, employees, members, or agents, shall be responsible or liable for ensuring the structural integrity or soundness of approved Improvement, nor for ensuring compliance with building codes and other governmental or quasi-governmental entity requirements, nor for ensuring the appropriateness of soils, drainage, and general site and geotechnical work. A consent or approval or certificate of substantial completion issued on behalf of the Association means only that DRP or Board, as applicable, believes that the Construction Activity for which the consent, approval or certificate was requested complies with the Declaration and Design Manual. No such consent or approval shall be interpreted to mean that the Construction Activity covered thereby **(i)** complies with laws, rules, regulations, ordinances or other requirements of any governmental or



quasi-governmental authority, or any applicable covenants, conditions or resolutions, (ii) is free from defects, errors or omissions, (iii) is structurally sound, or (iv) lies within the boundaries of a Lot, and by submitting materials to the DRP for its review, the applicant shall be deemed to have waived all claims against the Association, Board, and DRP based on the foregoing disclaimed matters. None of the Declarant, Association, the Board, DRP, nor their respective officers, directors, employees, members, or agents of the foregoing, shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved or disapproved Construction Activity.

Article 9 ENFORCEMENT AND REMEDIES

9.1 **Strict Compliance.** Each Owner and the Owner's Invitees shall strictly comply with all provisions of the Governing Documents.

9.2 **Remedies for Non-Compliance.** Notwithstanding any specific remedy listed in any provision of the Governing Documents, the failure to comply with any of the provisions of the Governing Documents shall, in addition to such specific remedy, be grounds for any or all of the following: (i) the imposition of fines and other Default Assessments; (ii) the filing and foreclosure of a lien to recover the amounts owed to the Association; (iii) subject to **Section 2.9(t)**, an action to recover damages or for injunctive relief or both; (iv) suspension of a Member's right to vote; and (v) any other remedies of the Association as set forth in the Governing Documents or permitted under Montana law. Any action against an offending Owner may be maintained by the Association (through the Board) or by an aggrieved Owner.

9.3 **Remedies Cumulative.** Each remedy provided under Montana law or the Governing Documents is cumulative and not exclusive.

9.4 **Written Notice of Non-Compliance.** Except as otherwise stated in the Declaration for non-payment of Assessments, removal of signs, or removal of Automobiles or Recreational Vehicles, before a fine, action, or suspension of Membership Rights, the Board shall provide the Owner with at least ten (10) days' written notice of the alleged violation. Such written notice to the Owner shall be given either by personal delivery, U.S. Mail, or email, to the address or email address on record with the Association. Such notice shall be deemed given (i) if by personal delivery, on the date it is delivered; (ii) if by mail, three (3) days after being mailed; or (iii) if by email, twenty-four (24) hours after it is sent. The Owner may respond in writing within ten (10) days after notice is given as to why a violation has not occurred. If a response is not timely provided, a violation will be deemed to have occurred. If a response is timely provided, the Board will consider the Owner's written response as promptly as possible and will notify the Owner in writing as to the Board's decision.

9.5 **Discretion.** Subject to **Section 2.9(t)**, the Association, through the Board, shall have the right but not the obligation to enforce any provisions of any of the Governing Documents. Subject to **Section 2.9(t)**, the decision to have the Association pursue an enforcement action in any particular case shall be left to the Board's sole and absolute discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. The Board's decision to not pursue enforcement action shall not be deemed a waiver of the right of the Association to enforce



Article 11
TERM AND AMENDMENT

11.1 **Termination of Declaration.** The Declaration, and any amendments or supplements thereto, shall be binding for a term of forty (40) years from the date it is recorded in the Public Record. After the initial forty (40) year period, the Declaration shall be automatically extended for successive periods of ten (10) years unless the Owners of ninety (90) percent of the Lots vote at a meeting or by written ballot to terminate the Declaration; *provided, however*, this Declaration may not be terminated without the consent of the governing body for the City of Kalispell, Montana.

11.2 **Amendment.** Within the Declaration, Articles of Incorporation, or Bylaws, “amend” or “amended” or “amendment” broadly means the right to amend, supplement, restate, modify, change, add to, or delete provisions of the Declaration.

(a) **By Declarant.** In addition to the Declarant’s rights to amend or supplement the Declaration pursuant to other provisions of the Declaration, before the Transfer Date the Declarant, in its sole and absolute discretion, may amend any provision of the Declaration without the consent or approval of the Owners; *provided, however*, any covenant required as a condition of approval by the City of Kalispell shall not be altered or amended without the agreement of the governing body for the City of Kalispell, Montana.

(b) **By Members Before the Transfer Date.** Except as otherwise stated in the Declaration, before the Transfer Date the Members may amend the Declaration by: (i) obtaining an Affirmative Vote of a SuperMajority; (ii) obtaining the written consent of the Declarant; and (iii) obtaining the consent of the governing body for the City of Kalispell, Montana if the amendment amends any covenant required as a condition of approval by the City of Kalispell.

(c) **By Members After the Transfer Date.** Except as otherwise stated in the Declaration, after the Transfer Date the Members may amend the Declaration by: (i) obtaining an Affirmative Vote of a SuperMajority; (ii) obtaining the written consent of the Declarant if the amendment amends any provision expressly requiring the consent of the Declarant; and (iii) obtaining the consent of the governing body for the City of Kalispell, Montana if the amendment amends any covenant required as a condition of approval by the City of Kalispell.

(d) **Recording of Amendment.** Any amendment adopted pursuant to this **Article** is not effective until it is recorded in the Public Record.

Article 12
Interpretation

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



12.2 **Interpretation of the Declaration.** Before the Transfer Date the Declarant shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Declarant's construction or interpretation of the provisions hereof shall be final, conclusive, and binding as to all Persons and property benefitted or bound by the Declaration and the provisions hereof.

12.3 **Conflicts Hierarchy.** In the event that there is any conflict between any mandatory provision of Montana law, this Declaration, the Articles, the Bylaws, Design Manual, and the Rules and Regulations, the conflict shall be resolved in the following order: Montana law (mandatory provisions only), this Declaration, the Articles, the Bylaws, the Design Manual, and the Rules and Regulations, and Montana law (non-mandatory provisions). If a conflict exists between a Governing Document and any subsequent amendment of such Governing Document, the most recent amendment shall control.

Article 13 MISCELLANEOUS

13.1 **Limited Liability.** None of Declarant, the Association, the Board, the Manager, an agent, or employee of any of the same shall be liable to any Person for any action or for any failure to act with respect to any matter related to the Governing Documents if the action taken or failure to act was in good faith and without malice. Such parties shall additionally be entitled to indemnification by the Association to the extent required under applicable law or any Governing Document.

13.2 **Successors and Assigns.** Except as otherwise provided herein, this Declaration shall inure to the benefit of Declarant, the Association, and each Owner and shall be binding upon Declarant, the Association, each Owner, and their respective heirs, devisees, personal representatives, successors and assigns.

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

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

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

13.6 **No Waiver.** Failure to enforce any provisions of the Governing Documents shall not operate as a waiver of any such provision or of any other provision of the Governing Documents. The Association expressly reserves the right to enforce, against each and every Owner, each provision of the Governing Documents.



13.7 **Service of Process.** The name and address of the person to receive service of process for the Starling Community Association, Inc. shall be the registered agent on file with the Montana Secretary of State at the time of such service of process.

13.8 **Warranties.** The Declarant expressly makes no warranties or representations concerning the Property, the Lots the Declaration, the Articles, the Bylaws, the Rules and Regulations, the Design Manual, or deeds of conveyance except as specifically set forth therein.

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EXHIBIT A
Legal Description of Property

A tract of land situated, lying and being in the SE¹/₄NE ¹/₄ and the NE¹/₄SE¹/₄ of Section 35, Township 29 North, Range 22 West, P.M.M., City of Kalispell, Flathead County, Montana, and more particularly described as follows to wit:

Tract 2 of Certificate of Survey No. 21978 (records of Flathead County, Montana) and containing 20.840 acres; subject to and together with a 20 foot communication systems easement, a 40 foot road and utility easement, a 60 foot declared county road, a 30 foot utility easement, all as shown on the Plat of Starling, Phases 1-3; subject to and together with all appurtenant easements of records. [Plat Reference ____]. 20220105

The above-described tract of land is known as Starling, Phases 1-3.



EXHIBIT B
Annexable Area

A TRACT OF LAND, SITUATED, LYING AND BEING IN THE SOUTH HALF OF THE NORTH HALF AND IN THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 35, TOWNSHIP 29 NORTH, RANGE 22 WEST, P.M.M., FLATHEAD COUNTY, MONTANA, AND MORE PARTICULARLY DESCRIBED AS TRACT 1 OF CERTIFICATE OF SURVEY 21978.

A TRACT OF LAND, SITUATED, LYING AND BEING IN THE SOUTHEAST QUARTER OF SECTION 35, TOWNSHIP 29 NORTH, RANGE 22 WEST, P.M.M., FLATHEAD COUNTY, MONTANA, AND MORE PARTICULARLY DESCRIBED AS TRACT 4 OF COS 21456.

A TRACT OF LAND, SITUATED, LYING AND BEING IN THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SECTION 35, TOWNSHIP 29 NORTH, RANGE 22 WEST, P.M.M., FLATHEAD COUNTY, MONTANA, AND MORE PARTICULARLY DESCRIBED AS TRACT 5 OF COS 21456.

A TRACT OF LAND, SITUATED, LYING AND BEING IN THE SOUTHWEST QUARTER OF SECTION 35, TOWNSHIP 29 NORTH, RANGE 22 WEST, P.M.M., FLATHEAD COUNTY, MONTANA, AND MORE PARTICULARLY DESCRIBED AS TRACT 3A OF COS 21678.



EXHIBIT C
City Required Covenants

In addition to other provisions of the Governing Documents, all Owners of Lots, and all Improvements constructed on any Lot, shall comply with the deviations from Zoning Regulations and conditions of approval required by the City of Kalispell, set forth in this Exhibit C.

A. Deviations from Zoning Regulations allowed per Starling Phases 1-8 PUD (City of Kalispell Resolution No. 6054).

1. **Use.** Sections 27.09.010 and 27.09.0303 – Phase 3 uses may include any permitted uses allowed under B-1 zoning. Accessory Dwelling Units are allowed on Lots 14, 20, 21, 27, 28, and 34 in Phase 2 and future phases subject to review. ADUs would be subject to general zoning requirements as well as a requirement that (a) any Lot with an ADU be a minimum width of 50 feet with a minimum depth of 100 feet; (b) they meet the setbacks for principal structure; and (c) that the parking for the ADU would be one additional parking space rather than two. The proposal would allow the ADU to be attached or detached from the principal structure.

2. **Lot Area.** Section 27.09.040(1) – The minimum lot size in the RA-1 is 6000 square feet minimum lot size. This deviation would allow a minimum lot size of 4000 square feet for single-family lots and a minimum lot size of 2350 square feet per unit for parent lots with townhomes/sublots.

3. **Lot Width.** Section 27.09.040(2) – The minimum lot width in the RA-1 zone is 50 feet. This deviation would allow a minimum width of 40 feet.

4. **Setbacks.** Section 27.09.040(3) – General setbacks in the RA-1 are 15 feet in the front, 5 feet on the side, 10 feet in the rear, 15 feet on the side corner, and 20 feet to the garage from a street right-of-way. This deviation would allow for a side setback of 3 feet.

5. **Permitted Lot Coverage.** Section 27.09.040(5) – The maximum lot coverage in the RA-1 zone is 45%. This deviation would allow a maximum lot coverage of 60%.

B. Deviations from Kalispell Subdivision Regulations allowed per Staling Phases 1-8 PUD (City of Kalispell Resolution No. 6054).

1. **Road Sections.** Section 28.3.14 – This deviation would allow three alternative road sections: (a) 80 foot urban collector with 16-foot landscape boulevards; (b) 30 foot wide alleys; and (c) the 32 foot wide woonerf.

2. **House Orientation.** Section 28.3.14(F)(1) – This deviation allows homes to face Stillwater Road provided that access is provided only from the alley behind the homes.



3. **Alley as Primary Access.** Section 28.3.11(B) and (C) – This deviation allows homes along Stillwater Road to be accessed only from an alley.

C. Conditions of Approval per City of Kalispell Resolution No. 6054

1. All water rights associated with the Property and are reserved to the Declarant, who shall transfer all water rights to the City of Kalispell.

2. Any Lot adjacent to an alley shall access the building/structure on the Lot from the alley rather than the city streets.

3. No individual accesses to Stillwater Road are allowed.

4. The recommendation in the Geotech report shall be followed, including providing additional specific Geotech reports related to buildings and other site improvements for the Lot, which are to be reviewed and accepted by the City of Kalispell prior to construction.

5. Each Owner waives the right to protest the creation of a park maintenance district. This district shall only be activated in the event that the property owners' association defaults on their park and open space amenity conditions. The assessments levied within the maintenance district shall be determined by the Public Works Department with approvals by the Kalispell City Council.

6. Each Owner waives the right to protect the creation of a stormwater maintenance district. This district shall only be activated in the event that the property owner(s) default on maintenance of the approved stormwater facilities. The assessments levied within the maintenance district shall be determined by the Public Works Department with approvals by the Kalispell City Council.

Note: Buyers of property within the Starling Community should ensure that they have obtained and reviewed all sheets of the Plat and all documents recorded and filed in conjunction with the Plat and buyers of Lots within Starling Community are encouraged to contact the Kalispell Planning Department and become informed of any limitations on the use of the Lot prior to closing.



EXHIBIT D

Table of Uses for Starling Planned Unit Development- Phases 1 and 2

A. Phases 1 and 2 are zoned RA-1, with a Planned Unit Development overlay known as Starling PUD.

B. The uses set forth in the Table below are permitted under this Declaration in Phases 1 and 2, but each Owner is responsible for contacting the City of Kalispell to confirm whether the Owner’s intended use is also permitted under the Zoning Regulations, the Starling PUD overlay, or any amendment to the Starling PUD overlay.

C. All uses allowed under this Declaration must also comply with other provisions set forth in the Governing Documents.

D. The uses listed are deliberately broad and some are given special definitions in the Zoning Regulations. The intent of this method is to provide general guidance for uses while allowing the unique needs and circumstances of each proposal to be specifically addressed through the DRP design review process. Some uses are the subject of special regulations contained in the Zoning Regulations.

E. Accessory Dwelling Units (“ADU” or “ADUs”) are allowed on specific Lots in Phase 2. Rental periods of less than 30 days are not permitted for the ADUs. If an ADU is permitted on a Lot, an ADU may be attached or detached to a single-family residence.

F. This table may not be amended without the written consent of the Declarant.

Accessory Dwelling Units (attached or detached), but only in Phase 2 - Lots 14, 20, 21, 27, 28, & 34
Daycare- home (12 or fewer)
Dwellings- single family
Dwellings- townhouse (2 attached units)
Dwellings- townhouse (3 or more attached units)
Home occupations



EXHIBIT E

Table of Uses for Starling Planned Unit Development- Phase 3

A. Phase 3 is zoned RA-1, with a Planned Unit Development overlay known as Starling PUD that also permits some B-1 uses in Phase 3 of Starling Community only.

B. Pursuant to the Starling PUD overlay, at the time of recording this Declaration the Lot in Phase 3 has been approved by the City of Kalispell for mixed use with up to 36 live/work apartments. Should an Owner desire to construct something other than what has been approved by the City of Kalispell for the Lot in Phase 3, the uses set forth in the Tables below are permitted under this Declaration in Phase 3, but the Owner is responsible for contacting the City of Kalispell to confirm whether the Owner’s intended use would also be permitted under the Zoning Regulations, the Starling PUD overlay, or any amendment to the Starling PUD overlay.

C. All uses allowed under this Declaration must also comply with other provisions set forth in the Governing Documents.

D. The uses listed are deliberately broad and some are given special definitions in the Zoning Regulations. The intent of this method is to provide general guidance for uses while allowing the unique needs and circumstances of each proposal to be specifically addressed through the review process. Some uses are the subject of special regulations contained in the Zoning Regulations.

E. These tables may not be amended without the written consent of the Declarant.

Permitted Under the Declaration in Phase 3
Bed and Breakfast
Daycare- home (12 or fewer)
Daycare- center (13 or more)
Dwellings- single family
Dwelling- duplex
Dwellings- townhouse (2 attached units)
Dwellings- townhouse (3 or more attached units)
Dwelling- multifamily
Home occupations
Community Center
Parks
Schools- K-12 (private)
Schools- K-12 (public)
Schools- post secondary (private)
Schools- post secondary (public)
Schools- Commercial



Daycare- home (12 or fewer)
Dwellings- single family
Dwelling- duplex
Dwellings- townhouse (2 attached units)
Home occupations
Parks
Schools- K-12 (public)
Schools- post secondary (public)
Schools- Commercial
Bakery
Banks and financial institutions
Barber and beauty services
Laundromats and dry cleaners
Office- Professional / Governmental
Pack and Ship
Photographic Studio
Repair Shops (closing, electronic)
Restaurants (no outdoor intercoms, less than 4000 SF)
Retail, limited (enterprises no larger than 4000 SF, and office supply)
Veterinary clinic- small animals
Print and Copy Shop



	0509613	
	0509535	0509611
	0509613	0509610
	0509613	0509544
	0509543	0509565
	0016620	0509581
	0509542	0509612
	0509588	0509566
	0509595	0509547
	0509582	0509562
	0509589	0509569
	0509613	0509548
	0509590	0509557
	0509592	0509561
	0509593	0509558
	0509594	0509578
	0509591	0509613
	0509586	0509613
	0509584	0509613
	0509585	0509613
	0509583	0509570
	0509587	0509573
	0509596	0509574
	0509602	0509577
	0509597	0509613
	0509598	0509613
	0509599	0509613
	0509604	0509560
	0509605	0509545
	0509606	0509549
	0509613	0509555
	0509640	0509559
	0509607	0509563
	0509601	0509564
	0509603	0509546
	0509613	0509567
	0509536	0509568
	0509537	0509571
	0509538	0509572
	0509539	0509575
	0509541	0509576
	0509540	0509579
	0509608	0509580
	0509609	0016620



After recording, please return to:
Kilday & Stratton, Inc.
2880 Technology Blvd. West, Ste. 271
Bozeman, MT 59718

tg

see attached ass'r #'s



**First Amendment to
Declaration of Protective Covenants, Conditions and Restrictions
For
Starling Planned Unit Development**

Reference is made to that certain Declaration of Protective Covenants, Conditions and Restrictions for Starling Planned Unit Development ("Declaration"), recorded December 8, 2022, as Document No. 202200030096, and re-recorded on February 16, 2023, as Document No. 202300002414, in the records of the Office of the Clerk and Recorder for Flathead County, Montana.

WHEREAS, pursuant to the Declaration, Section 1.18, the Declarant is Starling Development, LLC ("Declarant");

WHEREAS, pursuant to the Declaration, Section 11.2(a), before the Transfer Date, the Declarant may amend any provision of the Declaration, in its sole and absolute discretion, so long as the provision is not required as a condition of approval by the City of Kalispell;

WHEREAS, the Transfer Date has still not occurred;

WHEREAS, the provision being amended, as set forth below, is not a provision that is required as a condition of approval by the City of Kalispell

NOW THEREFORE, pursuant to the Declarant's right to amend the Declaration before the Transfer Date, the Declarant does hereby amend the Declaration by recording this First Amendment to Declaration of Protective Covenants, Conditions and Restriction for Starling Planned Unit Development ("First Amendment"), to wit:

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Amendment

Section 4.4(b) of the Declaration shall be deleted in its entirety and replaced with the following Section 4.4(b):

Section 4.4(b) *Short-Term Leasing*. A “Short-Term Lease” means a lease for less than thirty (30) days.

(1) An Owner may not lease an ADU, or any portion therein, for a Short-Term Lease. Also, pursuant to Kalispell, Montana City Code 27.20.082(2)(C), rental periods of less than thirty (30) days are not permitted in ADUs.

(2) An Owner may only lease a principal residential building/structure, residential apartment, commercial building/structure, or commercial suite, or any portion therein, for a Short-Term Lease if approved for such use by the Declarant before the Transfer Date, and thereafter the Board. The Declarant or Board may approve a principal residential building/structure, residential apartment, commercial building/structure, or commercial suite, or any portion therein, for Short-Term Lease, subject to the following:

(i) An Owner desiring to obtain approval for a Short-Term Lease shall submit an application on a form approved by the Declarant or Board, as applicable, providing the information requested by the Declarant or Board.

(ii) Approval of a Short-Term Lease is on a case-by-case and first come first serve basis, and on conditions established by the Declarant or Board, as applicable. The Declarant or Board, as applicable, has discretion to grant or deny an application in order to limit the number of Short-Term Leases in the Starling Community and to preserve the intent that the Lots in Starling Community be predominantly Owner-occupied or occupied under a Long-Term Lease. This Declaration is not intended to give an Owner the right to use the Owner’s Lot, or any portion therein, for a Short-Term Lease unless and until a Short-Term Lease is approved, and no Owner has the right to have the Owner’s application approved.

(iii) all Owners shall comply with City of Kalispell Zoning Regulations, ordinances, codes and/or regulations regarding leasing;

(iv) all Owners shall comply with the Design Manual regarding leasing;

(v) all Owners shall comply with Rules and Regulations regarding leasing;



(vi) an Owner shall have a written lease with the Owner's tenants that complies with Montana law and local ordinances;

(vii) an Owner shall provide a copy of the Governing Documents to the tenant(s) prior to the beginning of the lease term; and

(viii) an Owner shall be responsible to the Association for the actions or omissions of their tenants and their invitees, including without limitation any damage caused by tenants and their invitees and any violation of the Governing Documents.

(ix) Approval of a Short-Term Lease does not run with the land, is non-transferable and non-assignable, and cannot be assigned, transferred, sold, or conveyed by an Owner of a Lot to a successive owner; EXCEPT THAT an Owner who Transfers a Lot to an entity or trust may transfer or assign the approval to the entity or trust so long as the Owner holds more than a 50% interest in the entity or is a trustee of the trust, or vice-versa.

(x) The Declarant or Board, as applicable, may revoke the right to have a Short-Term Lease if there are three (3) or more violations of the Governing Documents in any twelve (12) month period.

Pursuant to the Declaration, Section 11.2(d), this First Amendment shall be effective on the date this First Amendment is recorded in the Office of the Clerk and Recorder for Flathead County, Montana.

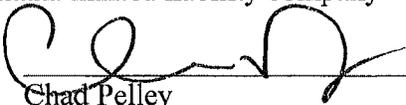
All other matters set forth in the Declaration, not expressly amended or supplemented by this First Amendment, shall remain as originally stated in said Declaration.

IN WITNESS WHEREOF, the Declarant has caused this First Amendment to Declaration of Protective Covenants, Conditions and Restrictions for Starling Planned Unit Development to be made and executed according to the provisions of the Declaration of Protective Covenants, Conditions and Restrictions for Starling Planned Unit Development and the Declarant's rights thereunder.

DATED the 25 day of October, 2023.

DECLARANT

STARLING DEVELOPMENT, LLC,
a Montana limited liability company

By: 
Chad Pelley

Its: Manager



EXHIBIT A
Legal Description of Property

A tract of land situated, lying and being in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 35, Township 29 North, Range 22 West, P.M.M., City of Kalispell, Flathead County, Montana, and more particularly described as follows to wit:

Tract 2 of Certificate of Survey No. 21978 (records of Flathead County, Montana) and containing 20.840 acres; subject to and together with a 20 foot communication systems easement, a 40 foot road and utility easement, a 60 foot declared county road, a 30 foot utility easement, all as shown on the Plat of Starling, Phases 1-3; subject to and together with all appurtenant easements of records. [Plat Reference 20220105].

The above-described tract of land is known as Starling, Phases 1-3.