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Approved 4/6/2021 CWJ 0347100

**AMENDED AND RESTATED DECLARATION
FOR
THE WOODLANDS CONDOMINIUM**



DECLARATION FOR THE WOODLANDS CONDOMINIUM

This DECLARATION (as supplemented, amended or restated from time to time, the "Declaration") is hereby made and entered into this 5th day of May, 2020, by Lund Development, LLC, a Montana limited liability company (the "Declarant," as further defined in Article III of this Declaration), whereby lands and property hereinafter described are submitted and subject to the Montana Unit Ownership Act pursuant to Chapter 23, Title 70, MCA (2019), as amended.

ARTICLE I - TITLE AND NATURE

The Project shall be known by the name The Woodlands Condominium. A Certificate of Name is attached hereto as Exhibit G. The Project is established in accordance with the Unit Ownership Act. The Project shall initially contain 36 individual Units for residential use, as set forth herein, and each Unit is capable of individual utilization on account of having its own entrance from and exit to a Common Element. Each Unit Owner shall have an exclusive right to such Unit Owner's Unit. Each Unit Owner shall have an undivided and inseparable interest in the Common Elements and the right to share with other Unit Owners the General Common Elements of the Project as set forth in this Declaration.

ARTICLE II - PURPOSE AND OWNERSHIP

2.1 The purpose of this Declaration is to divide the Property into 36 individual residential Units by submitting the Property and the improvements existing and to be constructed on the Property to the condominium form of ownership and use in the manner provided by the Unit Ownership Act. Declarant currently intends to develop the Property as part of a larger, integrated community known as The Woodlands. The Property, and additional property that may be annexed into the Property in accordance with this Declaration, may be developed in multiple phases, which may include additional Units, though Declarant has no obligation to develop additional phases or Units.

2.2 The Property is located in Flathead County, Montana. The Property that is subject to this Declaration is owned by Declarant as of the date of this Declaration.

ARTICLE III - DEFINITIONS

Unless the context expressly provides otherwise, the following definitions shall pertain throughout this Declaration and in the interpretation thereof:

3.1 **Annexed Property:** has the meaning given in Section 10.5.

3.2 **Annexable Area:** means the land depicted on Exhibit F attached hereto and any other property within The Woodlands. Unless and until such Annexable Area is included as part of the Property in accordance with this Declaration, such Annexable Area is not part of the Property.

3.3 **Articles:** means the Articles of Incorporation of the Association, as the same may be amended, restated or replaced from time to time.



Property, and additional property that may be annexed into the Property in accordance with this Declaration, may be developed in multiple phases, which may include additional Units, though Declarant has no obligation to develop additional phases or Units.

2.2 The Property is located in Flathead County, Montana. The Property, except for the Units already conveyed to Owners, is owned by Declarant.

ARTICLE III - DEFINITIONS

Unless the context expressly provides otherwise, the following definitions shall pertain throughout this Declaration and in the interpretation thereof:

3.1 Annexed Property: has the meaning given in Section 10.5:

3.2 Annexable Area: means the land depicted on Exhibit F attached hereto and any other property within The Woodlands. Unless and until such Annexable Area is included as part of the Property in accordance with this Declaration, such Annexable Area is not part of the Property.

3.3 Articles: means the Articles of Incorporation of the Association, as the same may be amended, restated or replaced from time to time.

3.4 Association: means all of the Unit Owners acting as a group and in accordance with duly adopted Bylaws and this Declaration, also referred to as The Woodlands Condominium Owners' Association, a Montana nonprofit corporation, and any successor thereto.

3.5 Board: means the Board of Directors of the Association as more particularly defined in the Bylaws.

3.6 Building: means the structures containing the Units. The Buildings are more particularly described in Section 5.4.

3.7 Bylaws: means the Bylaws of the Association, as the same may be amended, restated or replaced from time to time by the Declarant, during the Declarant Control Period, and otherwise pursuant their terms.

3.8 Common Elements: means both General Common Elements and Limited Common Elements. For the avoidance of doubt, the Common Elements do not include the Units or any portion thereof.

3.8.1 General Common Elements: means all those elements within the Project which are for the use of all Unit Owners and their guests and invitees. The Declarant or the Association (with consent of the Declarant during the Declarant Control Period) may add or delete General Common Elements by amendments to this Declaration and/or by the method set forth in the Unit Ownership Act. The General Common Elements include, but are not limited to, the following to the extent not within a Unit and not otherwise designated as a Limited Common Element.



3.8.1.1. the land on which the Buildings are located, except any portion thereof included in a Unit or made a Limited Common Element by this Declaration or amendment hereto;

3.8.1.2. the foundations, columns, girders, beams, supports, mainwalls, roofs and other structural components of the Buildings, stairs, fire escapes, elevators, entrances and exits of Buildings, and the siding and other exterior surfaces of the Buildings;

3.8.1.3. the outside recreational areas, parking spaces, roads, sidewalks and paths;

3.8.1.4. installations of central services existing for common use of all Units or all Units within a Building such as power, light, gas, television, telephone, hot and cold water, sewer, heating, refrigeration, air conditioning, waste collection and disposal and other utilities and connections to the extent serving all Units;

3.8.1.5. public utility lines, water, sewer, electrical, gas, telephone and television lines, propane tanks and similar infrastructure and facilities to the extent serving all Units or all Units within a Building;

3.8.1.6. the tanks, pumps, motors, fans, compressors, ducts and in general all apparatus and installations existing for common use of all Units or of all Units within a Building;

3.8.1.7. any facilities and improvements constructed on the Property (or for the benefit of the Property) for operation and maintenance of the Project or use by all Unit Owners; and

3.8.1.8. landscaping, landscape and development lighting, road and driveway lighting, security lighting, Project signage and signage lighting (if installed), street signage, retaining walls, plans and other materials and improvements separate from and outside of the Units, and other elements necessary for or convenient to the safety, maintenance and existence of the Project.

3.8.2 Limited Common Elements: means those Common Elements within the Project designated in this Declaration, site plan, or floor plans or by agreement of the Unit Owners which are reserved for the use of a certain Unit or Building or number of Units or Buildings to the exclusion of the other Units or Buildings. Specifically, as to any given Unit or Building, Limited Common Elements shall include, but not be limited to, the following common elements which are outside the boundaries of the Unit and which are appurtenant to, affixed to or provide service or access to the Building containing the Unit:

3.8.2.1. Parking Garage Spaces and Storage Rooms. No Parking Garage Space or Storage Room shall be construed as reserved and allocated to any Unit until it is specifically conveyed by deed of conveyance or assignment by the Declarant and recorded with the Flathead County Clerk and Recorder. Subsequent to Declarant's allocation of Parking Garage Spaces and Storage Rooms to various Units as Limited Common Elements, the Unit Owner to whose Unit said Limited Common Element(s) is appurtenant shall be entitled to



convey usage rights of such Limited Common Element to any other Unit Owner to be appurtenant to said transferee Unit Owner's Unit. Said transfer shall be pursuant to a deed of conveyance or assignment form approved by the Board, which shall keep detailed records of Limited Common Element ownership and use rights. The foregoing shall only apply to Parking Garage Spaces and Storage Rooms and no other Limited Common Element. In no event shall a Unit Owner be entitled to transfer the usage rights of any such Limited Common Element to anyone other than a Unit Owner to be appurtenant to the Unit of said Unit Owner;

3.8.2.2. any other improvement, facility or item described in the definition of General Common Elements to the extent Declarant, during the Declarant Control Period, and thereafter the Board reasonably determines that such improvements, facility or item should be equitably treated as a Limited Common Element for purposes of this Declaration and such determination may specify that any such Limited Common Element is appurtenant to only a subset of Units or Buildings as determined to be reasonable and equitable by Declarant or the Board, as applicable.

3.9 Common Expenses: means expenses of construction (not including initial construction by Declarant as part of the initial development of the Project), administration, operation, maintenance, repair or replacement of General Common Elements, and, unless otherwise determined by the Board, Limited Common Elements to the extent the Association is responsible for construction (not including initial construction by Declarant as part of the initial development of the Project), administration, operation, maintenance, repair or replacement thereof, and all other expenses for the benefit of the Association as a whole, all expenses declared common by the Unit Ownership Act (but specifically excluding Limited Expenses) and any reserve established by the Board to the extent relating to the General Common Elements, the Limited Common Elements for which the Association is responsible or otherwise for the benefit of the Association as a whole.

3.10 Condominium Documents: means this Declaration, the Articles, the Bylaws, any Rules and Regulations and any and all other documents necessary for the formation of the Project, including, but not limited to, any surveys, plats, or plans.

3.11 Declarant: means Lund Development, LLC, a Montana limited liability company, and its successors and assigns. Both successors and assigns shall always be deemed to be included within the term "Declarant" whenever, however and wherever such term is used in the Condominium Documents. No party other than Lund Development, LLC shall exercise the rights and privileges of the Declarant unless such party receives from the then-existing Declarant and records in the office of the Clerk and Recorder of Flathead County, Montana a written instrument assigning such rights.

3.12 Declarant Control Period: means the period of time commencing with the recording of this Declaration with the office of the Clerk and Recorder of Flathead County, Montana, and ending on the earlier of (i) when Declarant determines, in an instrument recorded with the office of the Clerk and Recorder of Flathead County, Montana, that more than 95% of the Units (including any Units which may ultimately be annexed into and become a part of the Project, including, without limitation, in any subsequent phase of the Project) have been sold or conveyed to persons or entities other than Declarant or its affiliates, and (ii) any earlier date on



which Declarant records an instrument with the office of the Clerk and Recorder of Flathead County, Montana specifying that the Declarant Control Period has ended.

3.13 Declarant Powers: has the meaning given in Section 4.2.

3.14 Declaration: has the meaning given in the first paragraph hereof.

3.15 Insurance Trustee: has the meaning given in Section 13.4.

3.16 Limited Expenses: means the expenses attributable to the construction (not including initial construction by Declarant as part of the initial development of the Project), administration, operation, maintenance, repair and replacement of Limited Common Elements; *provided, however,* that, unless otherwise determined by the Board (with the consent of Declarant during the Declarant Control Period), such costs shall be Common Expenses to the extent the Association is responsible for the construction (not including initial construction by Declarant as part of the initial development of the Project), administration, operation, maintenance, repair and replacement of such Limited Common Elements. Until the end of the Declarant Control Period, Limited Expenses will be the responsibility of the Declarant.

3.17 Maintenance Manual: means the maintenance manual provided to the Association by the general contractor for the Project.

3.18 Manager: means the Board, a manager, a management corporation or any other person or group of persons retained or appointed by the Board, or by the Association, for the purpose of conducting the day-to-day operations of the Project.

3.19 Other Projects: means other developments or phases of The Woodlands community.

3.20 Parking Garage Space: means the designated numbered parking area on the first floor of a Building which is designated as a Limited Common Element and reserved for the use of a certain Unit to the exclusion of all other Units.

3.21 Percentage of Interest: means each Unit Owner's undivided interest in the Common Elements and such Unit Owner's pro rata liability to the Association. The Percentage of Interest with respect to each Unit contemplated to be constructed in the initial phase of the Project is specified on Exhibit E attached hereto.

3.22 Plans: has the meaning given in Section 5.1.2.

3.23 Project: means the Property and all buildings, improvements and structures thereon and all easements, rights and appurtenances belonging thereto, which are herewith submitted to the Unit Ownership Act.

3.24 Property: means the real property located in Flathead County, Montana and described on Exhibit A attached hereto, along with any property subsequently annexed or otherwise subjected to this Declaration.



3.25 Roadways: means the roads located within the Project.

3.26 Rules and Regulations: means the specific rules, regulations and policies that may be adopted by the Board from time to time for governance and management of the Project.

3.27 Storage Room: means the designated numbered storage room on the first floor of a Building which is designated as a Limited Common Element and reserved for the use of a certain Unit to the exclusion of all other Units.

3.28 Units: means the separate condominium units of the Project each of which is a parcel of property including and containing one or more rooms, intended for independent residential use, and with a direct exit leading to Common Elements which lead to a public street whether directly or indirectly by way of an easement or private street or way connecting to a public street, and shall include an appurtenant Parking Garage Space and Storage Room. The boundaries of the Units are further described in Section 5.5.

3.29 Unit Designation: means the combination of letters, numbers and words which identify the designated Units.

3.30 Unit Owner or Owner: means the person owning a Unit in fee simple absolute individually or as co-owner in any real estate tenancy relationship recognized under the laws of the State of Montana. Each Unit has only one owner for any voting purposes described herein.

3.31 Unit Ownership Act: means and refers to the Montana Unit Ownership Act, Section 70-23-101, *et seq.*, MCA (2019), as amended.

ARTICLE IV - RELATIONSHIP TO DECLARANT AND ASSOCIATION

4.1 Membership in Association. The Property is subject to the Condominium Documents. All Unit Owners automatically are members of the Association.

4.2 Declarant Powers. During the Declarant Control Period, Declarant shall have, along with the other rights set forth in this Declaration, the following rights and powers (collectively the "**Declarant Powers**"): (i) control of developing the Project; (ii) the power, authority, rights, and obligations this Declaration gives to Declarant, including, without limitation, all rights to amend or supplement this Declaration as set forth in this Declaration and all consent and approval rights as set forth in this Declaration; (iii) the right to enforce this Declaration and the Rules and Regulations in the same manner as the Association; and (iv) the right to establish easements, reservations, exceptions, and exclusions consistent with the nature, development, theme or purpose of the Project (this final right is further described and detailed in Article VI). Declarant may exercise the Declarant Powers without the consent of the Association or the Unit Owners, and the Declarant Powers belong exclusively to Declarant during the Declarant Control Period, and Declarant will exercise the Declarant Powers in its capacity as Declarant, not for, through, on behalf of the Association.

4.3 Services Provided by Association. The Association shall provide various services to the Unit Owners. Such services shall include, but are not limited to maintenance of the Common Elements after the end of the Declarant Control Period. Charges for these services



are a component of the Association assessments assessed to each Unit Owner. No Unit Owner shall enter into any agreement with a third party for services provided by the Association.

ARTICLE V - REAL ESTATE

5.1 Description. The Property which is by this Declaration submitted and subject to the Unit Ownership Act is described on Exhibit A attached hereto.

5.1.1 The provisions of this Declaration and the Bylaws shall be construed to be covenants running with the land and shall include every Unit and shall be binding upon the Unit Owners (and any other person having an ownership interest in a Unit), their heirs, personal representatives, successors and assigns for as long as this Declaration and the Bylaws are in effect.

5.1.2 The Project consists of the Property and improvements currently existing and to be constructed thereon, including the Buildings, General Common Elements and Limited Common Elements, to be used for residential use and associated use, all as shown on the site plan and floor plans (the "Plans"). The Plans will accurately depict the Units and the Building layouts, as located (or to be located) on the Property, with the square footage, design and dimensions of each Unit. There are currently two Buildings situated on the Property each containing 36 Units, shown on Exhibit C as "Spruce Tower" and "Birch Tower" and a common area building. Two additional Buildings are expected to be constructed as part of the Project, though Declarant has no obligation to construct all or any of such Buildings as a result of this Declaration. There will also be General Common Elements as described herein for the use and benefit of all Unit Owners as well as Limited Common Elements described herein reserved for the use of a certain Unit or Building or number of Units or Buildings to the exclusion of the other Units or Buildings.

5.2 Condominium Units. Each Unit shall be inseparable, and may be conveyed, leased, rented, devised or encumbered as a condominium in accordance with this Declaration. The Units include a proportional undivided interest in the Common Elements as provided in Section 8.1.

5.3 Encroachments. If any portion of the General Common Elements or Limited Common Elements encroaches upon a Unit or Units, a valid easement for the encroachment and for the maintenance of the same, so long as it stands, shall and does exist. If any portion of a Unit encroaches upon the General Common Elements or Limited Common Elements, or upon an adjoining Unit or Units, a valid easement for the encroachment and for the maintenance of the same, so long as it stands, shall and does exist. Such encroachments and easements shall not be considered or determined to be encumbrances either on the General Common Elements, the Limited Common Elements, or on the Units for the purpose of marketability of title. In the event a Building or any portion thereof is destroyed and then rebuilt, the Owners agree that minor encroachments of parts of the General Common Elements or Limited Common Elements because of such construction shall be permitted and that an easement for such encroachment and the maintenance and repair of the same shall and does exist.

5.4 Buildings. The Units comprising the condominium will be contained in two Buildings. Each Building contains four stories, with the bottom story consisting primarily of



Parking Garage Spaces and Storage Rooms and the upper three levels consisting of the residential Units.

5.5 Boundaries of Units. Each Unit shall be bounded by the interior surfaces of its perimeter walls, floors, suspended ceilings, and trim. A Unit shall include all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, paint, finished flooring, unfinished flooring of a garage, and any other materials constituting any part of its finished surfaces, including unit access door(s), so described. All other portions of the walls, floors, or ceilings shall be a part of the Common Elements. In addition, each Unit shall include the following: (a) all spaces, interior partitions, windows, window frames, interior doors, door frames, and all other fixtures and improvements within the boundaries of the Unit, and (b) all outlets of utility service lines, including, but not limited to, power, light, gas, hot and cold water, heating, refrigeration, air conditioning, and waste disposal within the boundaries of the Unit, but shall not include any part of such lines or ducts themselves. In interpreting deeds, mortgages, deeds of trust, and other instruments for any purpose whatsoever or in connection with any matter, the existing physical boundaries of the Unit or of a Unit reconstructed in substantial accordance with the original plans hereof shall be conclusively presumed to be the boundaries regardless of settling, rising, or lateral movement of a Building and regardless of variances between boundaries as shown on the plat and those of the actual Building or Buildings.

5.6 Construction Materials. The principal materials of construction of the Buildings are described on Exhibit B attached hereto.

5.7 Roadways. The Roadways are General Common Elements and shall be subject to the regulation of the Association and Declarant.

ARTICLE VI - EASEMENTS

6.1 Common Element Easements. A perpetual, nonexclusive easement and right of ingress and egress and support through the General Common Elements is appurtenant to each Unit and is hereby reserved for the benefit of each Owner and all the General Common Elements are subject to such rights. Every Owner shall have the right to use and enjoy the Limited Common Elements appurtenant to such Owner's Unit. The foregoing easements and rights are subject to the limitations and restrictions set forth in this Declaration and the other Condominium Documents.

6.2 Easement for Utilities Within Units. Each Unit may have its air space penetrated by electrical wires and lines, gas lines, mechanical equipment, including air handling ducts, hot and cold water lines, waste water lines and vents and other utility and mechanical lines (including, but not limited to, power, telephone, television, internet and natural gas), pipes or equipment. These lines, pipes or equipment, where they serve only one Unit shall be appurtenant to such Unit, but where they serve more than one (1) Unit shall be part of the General Common Elements. Such items shall be so installed and maintained so that they shall not unreasonably interfere with the use of the Unit air space by the Owners of the same and shall wherever possible be located in any space available between the actual ceiling and a dropped ceiling, within a crawl space, or within a wall. A non-exclusive easement shall exist through, over and across each Unit for structural support of the Unit and for the use, inspection, installation, maintenance, replacement and repair of such utility lines, pipes and mechanical equipment for