

After recording, please return to:  
Shop World 406, LLC  
5841 Autumnwood Dr.  
Billings, MT 59106-9707

**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS  
FOR  
SHOP WORLD 406**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS is made this \_\_\_\_ day of \_\_\_\_\_, 2023, by Shop World 406, LLC, a Montana limited liability company (“Declarant”).

**R E C I T A L S**

- A. Declarant is the owner of the real property situated in Yellowstone County, Montana, described as follows (“Property”):

That part of the E½SW¼ of Section 7, Township 1 South, Range 25 East, of the Principal Montana Meridian, Yellowstone County, Montana, described as Certificate of Survey No. \_\_\_\_\_, recorded on the \_\_\_\_ day of \_\_\_\_\_, 2023, in the office of the Clerk and Recorder of Yellowstone County, Montana, under Document No. \_\_\_\_\_ (“Plat”).

- B. Declarant proposes that the Property be developed, sold, improved and maintained pursuant to a common set of standards and plan of development, and desires to place covenants, restrictions and conditions upon all lots comprising the Property (“Lots”) for the benefit of the owners of all the Lots. The development shall be known as “Shop World 406”.

NOW, THEREFORE, the undersigned hereby declares that Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each owner thereof.

**ARTICLE I  
DEFINITIONS**

**1.1.** “**ARC**” shall mean the Architectural Review Committee for the Property, whose function is to review and approve the plans, specifications, designs and locations of structures and other Improvements to be constructed or erected on any Lot and to grant variances according to these Covenants.

**1.2.** “**Association**” shall mean the Shop World 406 Owners’ Association, Inc., a Montana nonprofit corporation, and its successors and assigns.

**1.3. "Board of Directors" or "Board"** shall mean the duly elected and qualified members of the Board of Directors of the Association.

**1.4 "Building"** shall mean any structure on the Property with a roof and walls.

**1.5. "Covenants"** shall mean this Declaration of Covenants, Conditions, Restrictions and Easements, as it may from time to time be amended or supplemented.

**1.6. "Declarant"** shall mean Shop World 406, LLC, and its successors and assigns if the rights, obligations and duties of such Declarant under these Covenants have been expressly assigned to such successors or assigns in writing and shall not mean a buyer or successor Owner of any Lot sold or conveyed by Declarant unless accompanied by said express written assignment.

**1.7. "Declarant Control Period"** shall mean the period beginning on the date these Covenants are first recorded in the office of the Clerk and Recorder of Yellowstone County, Montana, and ending on the date on which 80% of all Lots have been sold by Declarant. At the end of the Declarant Control Period, Declarant shall record in the office of the Clerk and Recorder of Yellowstone County, Montana written notice of the termination of the Declarant Control Period.

**1.8. "Guidelines"** shall mean design guidelines which may from time to time be adopted and published by the ARC to set forth procedures for review of plans and standards and criteria which the ARC expects to follow in reviewing proposed construction within the Property.

**1.9. "Improvement" or "Improvements"** shall mean and include (i) the construction, improvement or alteration of any Building, outbuilding, road, driveways, walkway, parking area, fence, screening walls and barriers, retaining walls, stairs, railings, artifacts, water lines, wells, sewers, electrical and gas distribution facilities, (ii) any hedges, windbreaks, plantings (except those in specific confined gardens or planters), grasses, lawns, planted trees and shrubs, and landscaping of every type and kind, (iii) any poles, signs, advertising, loading areas and all other structures and installations of every type and kind, whether above or below the land surface, (iv) any grading, leveling, parking area, or reconfiguration of the natural or physical characteristics of a Lot, and (v) any formation of a condominium on any Lot. The foregoing Improvements shall not include interior remodeling or redecoration of a Building or structure on a Lot, provided that such remodeling or redecoration does not affect the exterior appearance of any such Building or structure.

**1.10. "Lot"** shall mean a fractional part of the Property as depicted or subdivided as a lot, tract or other parcel on surveys or subdivision plats recorded from time to time in the office of the Clerk and Recorder of Yellowstone County, Montana. The Lots comprising the Property at the time of the recording of this Declaration are depicted on Plat, as described in the Recitals set forth above.

**1.11. "Member"** shall mean a member of the Association.

**1.12. "Occupant"** shall mean a lessee or licensee of an Owner, or any other person or entity other than an Owner in lawful possession of a Lot with the permission of the Owner.

**1.13. "Owner"** shall mean any person or entity which is the record owner of fee simple title of any Lot or any individually owned Improvement unit on a Lot, including buyers under a contract for deed, but excluding any entity or person who holds such interest as security for the

payment of an obligation, other than a contract seller, Mortgagee, or other security holder in actual possession of a Lot or Improvement thereon.

**1.14 "Plat"** shall mean Certificate of Survey No. \_\_\_\_\_, recorded on the \_\_\_ day of \_\_\_\_\_, 2023, in the office of the Clerk and Recorder of Yellowstone County, Montana, under Document No. \_\_\_\_\_ .

**1.15. "Property"** shall mean and refer to all of the real property, whether known or designated as a lot, tract or parcel, within the exterior boundary of the Plat, and any amendments, modifications, or changes hereafter made with respect to said Plat.

**1.16. "Storm Water System"** shall mean that system constructed to control the storm water runoff for the Property, including the stormwater detention ponds and any pump station and treatment device.

## **ARTICLE II SUBJECT PROPERTY AND PERSONS BOUND BY COVENANTS AND RESTRICTIONS**

**2.1.** The undersigned hereby declares that all the Property is, and shall be, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred in whole or in part, subject to these Covenants. All of the covenants, conditions and restrictions set forth herein are declared and agreed to be in furtherance of a general plan for the subdivision, improvement, maintenance and sale of the Property and are established for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and every part thereof and to provide every practical and legal means to safeguard and protect the interests of all Owners and the stability of the development. All of the covenants, conditions and restrictions shall run with all of the Property for all purposes and shall be binding upon and inure to the benefit of the undersigned and all Owners, Occupants, and their successors in interest as set forth in these Covenants.

**2.2.** All persons, corporations, partnerships, companies, associations, trusts and other entities who shall acquire any interest in and to the Property or any part thereof shall be taken and held to agree and covenant with the other Owners of the Lots and with their successors and assigns to conform to and observe the covenants and restrictions set forth in these Covenants as to the use thereof and the construction of any Improvement thereon.

## **ARTICLE III UTILITY EASEMENTS**

**3.1. Utility and Drainage Easements.** Easements for the installation and maintenance of utilities, septic systems and drainage, if necessary, are granted by all Owners. Public and subdivision roads will be used for access to each Lot. Easements and rights-of-way are hereby expressly reserved for the creation, construction, and maintenance of the Storm Water System and Lot drainage and for utilities, such as gas, telephone, cable, and electricity.

**3.2. Cistern and Drain Fields.** Each Lot shall be served by a cistern and drain field. Easements for the installation and maintenance of a drain field for each Lot are granted by all Owners where necessary to comply with sanitary rules and regulations.

**3.3 Appurtenance.** The easements created herein and those shown on the Plat shall be appurtenant to the Lots, shall run with the land, and shall be binding on all Owners and Occupants.

**ARTICLE IV  
PROTECTIVE AND RESTRICTIVE COVENANTS**

**4.1. Property Use.** Each Lot shall be utilized only lawful personal, business, professional or commercial purposes permitted by the Yellowstone County zoning ordinances for the Property and shall be subject to the following restrictions:

(a) No modular homes, manufactured homes, or mobile homes shall be allowed on the Property.

(b) Previously used structures or Buildings may not be moved onto the Property as part of any development. However, new structures or Buildings which are premanufactured and designed for transportation to use on-site will be allowed following approval by the ARC.

(c) No person may reside on the Property in any type of camper, recreational vehicle, van, travel trailer or any other non-permanent housing structure.

(d) No Lot shall be used for any unlawful or offensive activity or for any purpose or business that is considered dangerous to surrounding Lots or which constitutes a nuisance or is noxious or offensive by reason of emission of dust, odor, gas, smoke, fumes, vibration, radiation, light pollution, electro-mechanical disturbance, or unreasonable noise louder than that produced by a typical contractor's shop.

(e) The following activities or types of businesses are deemed offensive for purposes of these Covenants and are expressly prohibited:

- (1) Any establishment manufacturing, selling, exhibiting or distributing pornographic materials, marijuana (including medical marijuana), or drug-related paraphernalia.
- (2) Animal breeding kennels. This prohibition does not prohibit a pet day care or animal grooming facility.
- (3) Gun and archery ranges and the discharge of firearms.
- (4) Massage parlors, excluding therapeutic massage.
- (5) An establishment permitting exotic dancing, including semi-nude and nude clubs.
- (6) Heliport or heliport facility.
- (7) Welding.
- (8) Tire sales or repair shops.
- (9) Commercial auto or auto body repair or restoration. An Owner or Occupant may repair or restore such Owner's or Occupant's vehicle but only inside of a closed Building. No vehicles may be stored on or outside an Improvement, except as provided in subsection 4.1(s). No vehicle salvage is allowed on the Property.
- (10) The production or storage of any hazardous material or substance unless in compliance with manufacturer's instructions and all local, state, and federal laws and regulations. No disposal of a hazardous material or substance is permitted on any Lot, Improvement or the

common areas. No stockpiling of hazardous or flammable products is allowed.

(f) No Lot shall be used for or maintained as a dumping ground of rubbish, trash, garbage or waste. The Owner of any Lot shall at all times keep the Lot and Improvements, in a safe, clean, wholesome condition and comply in all respects with all government, health, fire, and police requirements and regulations; and the Owner will remove at its own expense any rubbish of any character whatsoever which may accumulate on a Lot. Any scrap or waste disposed of on the Property must be done in accordance with Yellowstone County regulations, as well as state and federal environmental regulations. In the event an Owner fails to comply with any or all of such specifications or requirements, then the Association, ARC or their agents shall have the right, privilege, and license to enter upon Lot and make any and all corrections or improvements that may be necessary to meet the standards set forth herein and to charge such Owner the expenses incurred in enforcing these Covenants.

(g) Any Improvement erected or placed on any Lot must first be approved by the ARC as set forth in Article VI below, and shall be completed as to exterior appearance, including finished painting, within 6 months from the date of commencement of construction. No outhouses or external bathrooms may be maintained or remain on any Lot after the 6 month construction period.

(h) All foundations, including without limitation concrete footers and walls, mono slab, or columns, shall be presented to and approved by the ARC prior to excavation and installation in accordance with Article VI below.

(i) All signs placed on a Lot shall comply with any applicable federal, state and local laws, ordinances and regulations and the Sign Policy set forth in Article V below.

(j) The sidewall of any Improvement on any Lot shall not exceed 24 feet in height.

(k) All construction shall comply with all applicable building regulations and codes enacted by government authorities with jurisdiction over the Property, and all Improvements, except fences, shall be setback at least 10-feet from each side, rear and front Lot boundary line.

(l) All structures on every Lot shall utilize new, colored metal siding in a color scheme approved by the ARC to achieve color uniformity in the subdivision. Accent brick or stone may also be used as approved by the ARC. Roofing material shall be new, high quality colored metal. No asphalt shingles, hot mop, tar and gravel, tin, galvanized metal, or sod roofs will be allowed. Any fencing, except the exterior boundary chain link fence shall be the responsibility of the Owner and shall be commercially installed high quality 6-foot high chain link fencing with 90% black privacy slats. Fences shall be maintained in good condition and repair.

(m) Each Owner shall provide exterior maintenance upon any and all structures on a Lot, including painting and repair, and shall maintain the grounds of the Lot to preclude weeds (noxious and other weeds), underbrush, and other unsightly or unnatural growth and conditions. Lots must be mowed so that growth, except for maintained landscaping, shall not exceed 6-inches in height. Each Lot shall be maintained in a clean, attractive and weed-free manner and shall be in compliance with the Yellowstone County Weed Plan pertaining to the Property. No Owner or

Occupant shall permit refuse piles or other unsightly objects to accumulate or remain on the Owner's Lot.

(n) No Lot shall be subdivided, split, altered or reduced in size in any way or manner.

(o) Site grading shall be designed to provide for storm water detention and to avoid alteration of detention characteristics of Lots. No excavation for stone, gravel, or earth shall be permitted unless such excavation is made in connection with Improvements as part of a project approved by the ARC. All required permitting from the State of Montana, Yellowstone County or any other applicable agencies shall be obtained prior to excavation.

(p) No unlicensed, unregistered, or inoperable vehicle, equipment, motorcycle, camper, travel trailer, recreational vehicle, or all-terrain vehicle shall be kept on any Lot except inside of a closed shop building.

(q) No appliances, building materials (except during construction), or vehicle parts shall be stored outside of a closed Building.

(r) All vehicles of any kind, including without limitation all-terrain vehicles and motorcycles, shall stay on established roads and driveways unless such use is necessary for Lot maintenance or repair.

(s) No vehicle, trailer, equipment, or supplies shall remain in a driveway, roadway established within the Property, or outside of a Building for more than 3 days.

(t) All pets must be kept on a leash or in an enclosed Building. No buried (invisible) electric fencing is allowed. Each Owner or Occupant shall properly dispose of any pet waste. No animal shall be tied outside on the Property unless the Owner is present. Aggressive animals, regardless of size or breed, are not allowed on the Property. Habitually barking dogs are not allowed on the Property.

(u) No rabbits, fowl, or livestock of any kind shall be allowed on the Property.

(v) No person or animal shall stay more than 2 consecutive nights or live on the Property.

(w) Each Owner shall provide space on such Owner's Lot for temporary parking for such Owner and the Owner's Occupants, invitees, customers, and visitors. Except during construction, parking along the streets in the subdivision is limited to 2 hours a day. There shall be no parking that blocks the entrance to any Lot without such Lot Owner's permission or which blocks access for emergency services.

(x) All rubbish must be stored inside an Improvement except on garbage collection days and then only in containers approved by Yellowstone County or as otherwise in compliance with Yellowstone County garbage collection requirements. Each Owner shall be responsible for garbage collection fees and assessments attributable to the Owner's Lot.

(y) No radio, stereo, amplifiers or broadcast or loudspeaker units of any kind shall be placed on or outside, or be directed to the outside, of any Building without the prior written permission of the Board.

(z) No Owner may take any action or store any matter within or adjacent to an Improvement which might increase the probability of fire as a result of such act or the storage of such items. There shall be no setting off fireworks or explosives of any kind anywhere on the Property or within an Improvement. There shall be no open burning. Owners shall have an operational and certified 10-pound dry chemical fire extinguisher on their Lot or in their Improvement.

(aa) The maximum speed limit on the Property is 20 mph at all times. There shall be no racing, speeding or driving off paved road areas by any type of vehicle, including without limitation all-terrain vehicles or motorcycles. Violators will be responsible for the repair of all damage, including grading and seeding.

(bb) There shall be no mining; drilling for oil or natural gas; or extraction of gravel, sand or other earth materials, except for the removal of such earth as is reasonably required for approved construction.

(cc) All driveways and approaches from internal streets must comply with ARC requirements.

(dd) All Buildings shall have a minimum of 2 security cameras, one forward facing on the front of the Building and the other placed on the Building at a location selected by the Owner.

(ee) All materials, parts, equipment and similar items must be placed in a Building or storage facilities. Such items may be stored outside temporarily, but only if kept in a neat and orderly fashion and screened with fencing built in compliance with subsection 4.1(l) above and setback requirements, as applicable.

## ARTICLE V SIGN POLICY AND LIGHTING

**5.1. Intent.** It is the intent and purpose of this Sign Policy to give each Owner an equal opportunity to have a sign that will help people find the Owner's business by regulating and controlling the size, location, type, quality of materials, height, maintenance and construction of all signs and sign structures located within the subdivision. Approval of all signs shall be in the ARC's sole and absolute discretion.

**5.2. Permitted Signs.** All signs located on or throughout the Property are subject to any Yellowstone County sign requirements and permits and the ARC Guidelines established for the Property. The design, placement, and size for each sign must be submitted by the Owner to ARC for approval prior to construction. The following signs shall be allowed on the Property:

(a) Freestanding signs. Only the Declarant or Association may place a subdivision monument sign on the Property. Declarant and the Association shall have the sole discretion as to the placement of the monument signs. Other signs with the name of the subdivision may be placed on the Property, in Declarant's sole discretion during the Declarant Control Period and in the Board's sole discretion thereafter. No other Owner may place anything on the monument and subdivision identification signs.

- (b) Lot and building signs.
  - (1) Attached signs may not exceed 2 square feet per lineal foot of street frontage, to a maximum of 250 square feet.
  - (2) Freestanding signs are subject to the limitations set by Yellowstone County.

**5.3. Prohibited Signs.** All signs not expressly permitted under this Article V are prohibited on the Property. Unless permitted on a temporary basis by the ARC, prohibited signs include, but are not limited to:

- (a) Portable signs.
- (b) Roof signs.
- (c) Revolving signs.
- (d) Flashing, blinking, or animated signs.
- (e) Signs located in public easements or rights-of-way.

**5.4. Temporary Signs.** Temporary and special event signs, such as banners, tethered balloons and inflatable signs, shall be allowed only by written permission from ARC and must comply with all applicable local, state and federal governmental regulations.

**5.5. Sign Coordination.** The purpose of this Sign Policy is to coordinate graphics and signs with the overall exterior building design to achieve a consistent and cohesive look throughout the Property. Coordination shall be achieved by:

- (a) Using the same type of cabinet supports or method of mounting for signs of the same type; using the same type of construction for components, such as sign copy, cabinet and supports; using other types of integrating techniques, such as common color elements, determined appropriate by the ARC.
- (b) Using the same form of illumination for all signs, or by using varied forms of illuminations determined compatible by the ARC.

**5.6 Lighting.** To deter theft and break-ins, each building shall have a minimum of 2 outside lights, one on the front face of the Building and the other on the back of the Building. The Architectural Review Committee may set limits on the vertical height for overhead lights for driveways, parking areas, storage areas and similar spaces. All outdoor lighting on the Property shall be fully shielded (no light shall be emitted by the fixture shall be projected above the horizontal plane of the fixture outside of the boundary of the Lot line) and be downward facing.

## ARTICLE VI ARCHITECTURAL REVIEW COMMITTEE

**6.1. Members.** The Architectural Review Committee shall be comprised of at least 3 members, but not more than 5 members, and shall have exclusive jurisdiction over the approval of all Improvements on the Property. During the Declarant Control Period, Declarant reserves the right to act as the sole member of the ARC or to appoint all members of the ARC, who shall serve at Declarant's discretion. At the end of the Declarant Control Period, the Board shall appoint the members of the ARC, who shall serve and may be removed in the Board's discretion.



**6.2. Review of Plans for Improvements.** No construction, reconstruction, alteration, landscaping or placement of any Improvements shall be commenced on any Lot until a site plan and specifications showing the nature, kind, design, location, materials and color of any Improvements shall have been submitted to and approved by the ARC. In considering applications, the ARC shall have complete discretion to make all decisions concerning approval of plans for any Improvement and will regard compatibility with site characteristics as the primary and foremost design objective. The ARC reserves the right to refuse approval of any Improvements that are found to be contrary to the best uses of the Property or the provisions hereof. Approval by the ARC shall not be unreasonably withheld and shall be final. The provisions of this Article VI shall not be applicable to any Lots owned by Declarant but shall be immediately applicable to any Lot sold and conveyed by Declarant to a third party, including without limitation sales by contract for deed.

**6.3. Guidelines.** The ARC may publish Guidelines from time to time which set forth the procedures and criteria for review of Improvements to be made to or constructed or installed on any Lot. Failure to follow procedures or criteria set forth in the current published Guidelines shall form an adequate basis for rejection of the submitted site plan and specifications or other documents; provided, however, that this requirement shall not be construed as preventing the ARC, at its option, from waiving, granting a variance to, or amending the Guidelines at any time or with respect to any application.

**6.4. Approval or Disapproval by ARC.** The ARC shall approve or disapprove in writing any application for Improvements within 30 days after the detailed site plan and specifications have been submitted to it. In the event the ARC fails to approve, disapprove or request more information for such design, location, construction, and materials within the 30-day period, the submission shall be deemed approved. Any plans, specifications and proposals so approved, either expressly in writing or deemed approved shall then permit the Owner to commence construction in accordance with the plan, but any deviation from the plan which in the judgment of ARC is a substantial detriment to the appearance of the structure or of the surrounding area shall be stopped and corrected to conform with the plan as submitted. The ARC retains the right to petition the court for an order enjoining any construction on a Lot which does not comply with these Covenants or which has deviated from plans approved by the ARC. Any structure to be erected in accordance with approval so given must be commenced and completed within 6 months of approval, or new approval must be obtained. If any structure is begun and is not completed within 6 months of the commencement of construction, and in the judgment of the ARC is of offensive or unsightly appearance, then the ARC may take such action as may be necessary in its judgment to improve the appearance so as to make the Lot harmonious with the other Lots, including without limitation (i) razing or removal of the incomplete structure; (ii) completion of the exterior of the structure, installation of screening or covering of the structure; or (iii) any combination thereof or similar operations, and the amount of any expenditures made in so doing shall be a lien on the Lot and may be enforceable by an action at law. The ARC may act by a majority of its members and any authorization or approval made by the ARC must be signed by a majority of the members thereof.

**6.5. Restoration of Lot.** Upon completion of the construction on any Lot, the Owner shall to the greatest extent possible restore the Lot to the conditions which existed prior to such construction (taking into account such construction) or in accordance with an approved landscaping plan. The Owner must complete the restoration within 30 days following completion of construction on the Lot; provided that the 30-day period shall be extended by number of days that local weather conditions or product availability make such restoration impractical or unfeasible. In the event restoration is not completed within the 30-day period, Declarant or the ARC may complete the restoration at the expense of the Owner, and all such expenses shall become a lien on the Lot and may be enforceable by an action at law.

**6.6. No Waiver of Future Approvals.** Approval of proposals, plans, specifications, or drawings for any work done or proposed or in connection with any other matter requiring approval by the ARC shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposal, plan, specification, drawing, or any other matters subsequently or additionally submitted for approval.

**6.7. Limitation of Liability.** It is not the function of the ARC to determine the adequacy, completeness, or safety of any plans or specifications or whether plans and specifications comply with any applicable building codes or other regulations, or to assure that any construction is done properly and in accordance with the plans and specifications. Neither the Declarant, the Association, Board, nor their respective members, officers, directors, employees or agents shall be responsible or liable for any defects or discrepancies in any plans or specifications submitted, revised, or approved under this Article, nor for any defects or discrepancies in construction pursuant to such plans and specifications. Approval of plans and specifications under this Article shall not be deemed to waive or obviate the Owner's responsibility to comply with applicable building codes or other governmental laws and regulations.

## **ARTICLE VII OWNERS' ASSOCIATION**

**7.1. Membership in Association.** Each Owner of a Lot shall be a member of the Shop World 406 Owners' Association, Inc., a Montana nonprofit corporation. If, after approval by the Board, a Lot becomes subject to the Montana Unit Ownership Act, the condominium association shall be a member of the Association. Each Owner of a Lot and, at the discretion of the Board, each member of a condominium association associated with a Lot shall be liable for Association fixed assessments and the pro rata share of Association expenses. The vote for any Lot owned by more than 1 Owner shall be exercised as such co-Owners may among themselves determine, but in no event shall there be more than 1 vote per Lot. The Association shall be governed and operated in accordance with its Articles of Incorporation and Bylaws, as they may be amended, modified, supplemented, or restated from time to time.

**7.2. Obligations of Association.** The Association shall be responsible for maintaining and repairing the common areas and facilities, including without limitation the storm drainage system, detention ponds and snow removal for common internal roads, and paying all costs thereof and may delegate such maintenance and repair to the ARC or a manager, at the Board's discretion. The Association and its agents are hereby granted an easement to access all common areas for such purposes.

**7.3. Board of Directors.** The Association shall be governed by a Board of Directors. During the Declarant Control Period, the Declarant shall appoint all members of the Board. All actions of the Board shall be controlled by the Bylaws of the Association.

**7.4. Annual Assessment for Common Areas and Facilities.** The Association, through the Board, shall establish and collect annual assessments on a flat rate and a pro rata basis, if necessary, from each Owner to pay for all costs of maintenance and operation of the common areas and facilities, for administrative expenses of the Association, and for other expenses of the Association, including reasonable reserves determined by the Board to be necessary or appropriate. Flat assessments shall be in an equal amount for each Lot and, at the discretion of the Board, for each condominium unit on a Lot. The annual assessment may not be increased in any year by the Board by more than 10% above the assessment for the previous year without a majority vote of the Owners at a meeting duly called for that purpose or by vote sent by electronic communication or U.S. mail.

**7.5. Special Assessments.** In addition to the annual assessments, the Association may levy, in any year, a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any part of the common areas or facilities, provided that any special assessment shall require the assent of 60% of the votes of the Owners at a meeting duly called for that purpose or by vote sent by electronic communication or U.S. mail. Nothing stated herein shall restrict the right of the Association to provide for repayment of the special assessment over a term of months or years subsequent to the date of the special assessment, upon terms and conditions as the Board deems appropriate, including the collection of interest on the deferred balance.

**7.6. Payment of Assessments.** Each Owner and, as applicable, condominium unit owner shall be responsible for the payment of assessment within 30 days after notice of assessment is given by the Board. Assessments paid more than 30 days after the date when due shall bear interest at the rate of 10% per annum from the date due until paid. All payments upon assessments shall be applied first to the interest and then to the earliest assessment due. Interest collected shall become part of the Association's account. In no event, however, shall the interest charged be more than permitted by Montana's usury statutes. All assessments collected by the Association may be comingled in a single fund. The Association shall maintain records showing the amounts of all assessments paid and unpaid. Such records shall be available for inspection by Owners or their representatives during regular business hours upon 3 days' notice given to the Association by the Owner desiring to inspect the records.

**7.7. Covenant to Pay Maintenance Assessments.** Each Owner and, as applicable, condominium unit owner by acceptance of a deed, whether or not it shall be expressed in said deed, is deemed to covenant and agree to pay to the Association all assessments lawfully made by the Association. Owners and their grantees shall be jointly and severally liable for all unpaid assessments due and payable at the time of conveyance of any Lot or individually owned Improvement unit, but without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantee therefore. The Association shall notify third parties, upon their request, of the amount of unpaid assessments on any Lot or individually owned Improvement unit.

**7.8. Remedies for Non-Payment of Assessments.** All unpaid assessments and other charges set forth herein, together with interest, collection costs, costs of suit and reasonable attorney fees, shall constitute a lien on the Lot or condominium unit on a Lot against which the assessments were made and, if filed of record, may be foreclosed in the same manner as a construction lien. Such lien shall not take priority over any sums unpaid on a first mortgage or trust indenture or record prior to the recording of the lien for assessments. Each assessment, together with interest, collection costs, costs of suit and reasonable attorney fees, shall also be the personal obligation of the Owner of the Lot or condominium unit against which the assessment was made at the time the assessment fell due. Suit to recover a money judgment for unpaid assessments shall be maintainable by the Association against the Owner or, if applicable, condominium unit owner without foreclosing or waiving the lien securing the same. All costs of collection of delinquent assessments, including without limitation, court costs, costs of filing liens, and reasonable attorney fees, shall be the obligation of the defaulting Owner or condominium unit owner and may be added to the next regular assessment for that Lot or condominium unit. No sale or transfer of a Lot or condominium unit shall relieve the acquirer from the liability for past due assessments or from the lien thereof. All rights, remedies, and privileges granted to the Association or the Owners pursuant to the terms hereof shall be deemed to be cumulative.

**7.9. Suspension of Membership.** Membership rights in the Association shall be automatically suspended during any period in which an Owner shall be in default in the payment of any annual or special assessment levied by the Association. Such rights of a Owner may also

be suspended, after notice and hearing, for a period not to exceed thirty (30) days, for violation of any rules and regulations established by the Board.

**7.10. No Liability.** In no event shall the Association or Declarant be liable to any Owner, or the Owner's members, heirs, successors, assigns, employees, agents, invitees or lessees or to any person using any part of the Property for any damages arising out the construction, maintenance, or state of repair of any of the common areas or facilities. The Board may elect to purchase liability insurance insuring the Association and its Owners against liability resulting from the Association's construction, maintenance, use or operation of the common areas or facilities. The cost of such insurance shall be charged as part of the annual assessments levied by the Association.

**7.11. Ability to Hire Manager.** The Board shall have the authority to hire a manager and enter into a management contract providing for the management of the Property and/or the administration of the Association. The Board shall have the ability to establish and pay compensation to such manager in amount deemed reasonable by the Board.

## **ARTICLE VIII ENFORCEMENT**

**8.1. Right to Inspect.** The Declarant (during the Declarant Control Period), ARC and the Association shall each have the right to enter onto any Lot, during reasonable business hours, to inspect the premises if such party has reasonable cause to believe the Owner or condominium unit owner is in violation of the terms and conditions set forth herein, the Guidelines or the Bylaws.

**8.2 Enforcement.** Violation of any restrictions, conditions, covenants or agreements herein contained shall give to the Declarant, ARC, or the Association, acting through its Board, as applicable, the following rights:

(a) Upon written request from the Declarant, the ARC or the Board, the Owner or condominium unit owner in violation of these Covenants or the Guidelines shall, at the Owner or condominium unit owner's cost and expense, remove the Improvement or other condition constituting such violation and shall restore the Lot or condominium unit to substantially the same condition as existed prior to the violation. If an Owner fails to remove and restore as required, the Declarant, ARC or the Board or the respective designee, as applicable, shall have the right to enter upon the Lot on which a violation exists and summarily abate and remove at the expense of the Owner any building, structure, thing, or condition that may be in, on or upon said Lot contrary to the provisions hereof or the Guidelines without being deemed guilty of trespass.

(b) The result of every act or omission whereby any restriction, condition, covenant or agreement herein, the Bylaws or in the Guidelines is violated in whole, or in part, is hereby declared to be and constitute a nuisance, and every remedy allowed by law against a nuisance, either public or private, shall be applicable against every such result.

(c) The right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, charges and remedies now or hereafter imposed or available pursuant to these Covenants, the Bylaws or the Guidelines, which right shall be cumulative and not exclusive.

(d) The right to obtain an injunction, prohibitive or mandatory, to prevent the breach of, or to enforce the observance of, these Covenants, the Bylaws or the Guidelines, it being understood and agreed that pecuniary compensation will not afford adequate relief, or that it would be extremely difficult to ascertain the amount of

compensation which would afford adequate relief, for any violation of these Covenants or the Guidelines.

(e) All legal and equitable rights and remedies available to enforce these Covenants, the Bylaws, the Guidelines and the decisions of the Declarant, the Association, the Board, and the ARC.

(f) All costs incurred by the Declarant, Association, or the ARC in remedying any violation, together with interest at the rate of the lesser of 10% per annum or the maximum interest allowed by Montana law, including attorney and paralegal fees, shall be due and payable by the Owner of the Lot in violation upon demand, and such amounts may be assessed against the violating Lot as a specific assessment by the Association.

**8.3. No Waiver.** Failure by the Declarant, Association, ARC, or any Owner to enforce any covenant or restriction herein contained or set forth in the Bylaws or Guidelines shall in no event be deemed a waiver of the right to do so thereafter.

**8.4 Owner Liability.** If, in the reasonable judgment of the Association, the need for maintenance, repair or replacement for any part of the Property is caused by the willful misconduct or negligent act or omission of any Owner, condominium unit owner or Occupant or their respective guests, agents or family members, or by a condition in an Improvement which the Owner, condominium unit owner or Occupant has willfully or negligently allowed to exist, the Association may cause such damage or condition to be repaired or corrected (and enter upon any Improvement necessary to do so), and the cost thereof may be assessed against the Owner, condominium unit owner or Occupant for the damage. The cost or expense shall be a lien on the applicable Lot or condominium unit until such cost or expense is paid and may be foreclosed as set forth in Section 7.8.

## **ARTICLE IX DECLARANT'S RIGHTS**

**9.1. Transfer.** Any or all of the special rights and obligations of the Declarant set forth in these Covenants or in the Bylaws may be transferred to other entities or people, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained in these Covenants or the Bylaws. No such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the public records of Yellowstone County, Montana.

**9.2. Easements.** Easements for installation and maintenance of utilities and drainage facilities and drain ways, along with access thereto, are perpetually reserved by Declarant as shown on the Plat. Declarant and the Association shall have, and Declarant does hereby reserve by perpetual easement, the right to locate, install, erect, construct, expand, maintain, and use, or authorize the location, installation, erection, construction, expansion maintenance, and use of sprinkler lines, drains, septic drain fields, electric lines, telephone lines, and other utilities, and to give or grant a right-of-way easement in any common facilities or the Storm Water System.

**9.3. Conduct of Activities.** So long as development and sales of Lots continue, the Declarant and any person authorized by Declarant may maintain and carry on upon portions of the Property such activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the development or sale of Lots, including, but not limited to, business offices, signs, and sales offices.

**9.4. Declarant Liability.** Declarant shall have no liability for any of its actions or failures to act or for any actions or failures to act of the Association or any other Owner. The

relationship between the Declarant, the Association, and any other Owners shall be deemed to be that of independent contractors, and not that of principal and agent, partnership, or joint venture. In addition, Declarant shall have no liability or obligation under this Declaration to any person or entity except such liabilities and obligations as the Declarant has expressly assumed herein.

**9.5. Amendment and Termination.** This Article may not be amended without the written consent of the Declarant. The rights contained in Sections 9.1 and 9.3 of this Article shall terminate upon the earlier of (i) the end of the Declarant Control Period, or (ii) upon recording by Declarant of a written statement that all sales activity regarding the Property has ceased.

## **ARTICLE X. GENERAL PROVISIONS**

**10.1. Incorporation of Recitals.** The Recitals are hereby incorporated into and made a part of these Covenants.

**10.2. Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

**10.3. Amendment.** These Covenants may be amended as follows:

(a) By Declarant. During the Declarant Control Period, Declarant may unilaterally amend these Covenants for any purpose, provided that the amendment has no material adverse effect on the vested right of any Owner. Notwithstanding the above, so long as Declarant owns any of the Property, the Declarant may unilaterally amend these Covenants if such amendment is (i) necessary to bring any provision in compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots; (iii) required by an institutional or governmental lender or purchaser of mortgage loans to enable such lender or purchaser to make or purchase mortgage loans on any of the Lots; (iv) necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots; (v) otherwise necessary to satisfy the requirements of any governmental agency; or (vi) necessary for Declarant to develop the Property in accordance with Declarant's plans.

(b) By Owners. After termination of the Declarant Control Period, these Covenants may be amended by the affirmative vote or written consent, or any combination thereof, of seventy-five percent (75%) of the Owners of record. Any such amendment shall be recorded in the office of the Clerk and Recorder of Yellowstone County, Montana.

**10.4. Term.** These Covenants shall be binding for a term of thirty (30) years from the date of these Covenants, after which time the Covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the Owners of not less than seventy-five (75%) of the Lots has been recorded in the real estate records of the Yellowstone County Clerk and Recorder, agreeing to revoke or terminate these Covenants.

IN WITNESS WHEREOF, Declarant has executed this Declaration of Restrictions, Covenants and Conditions on the day and year first above written.

“DECLARANT”  
SHOP WORLD 406, LLC,  
a Montana limited liability company

By \_\_\_\_\_  
Its Manager

STATE OF MONTANA        )  
  :SS  
County of Yellowstone    )

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_ 2023, by  
\_\_\_\_\_, in \_\_\_\_\_ capacity as Manager of Shop World 406, LLC.

(SEAL) \_\_\_\_\_