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True North Partners, LLC
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Eric Semerad - Gallatin County, MT MISC



DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, AND RESTRICTIONS FOR THE RIVERWOOD SUBDIVISIONS

This Declaration of Protective Covenants, Conditions, and Restrictions for the Riverwood Subdivisions (“Covenants”) is made this 2nd day of June, 2020, by True North Partners, LLC, a Montana limited liability company (“Declarant”).

These Covenants impose upon the Property (as defined in Article I below) mutually beneficial restrictions for the benefit of the Owners of each portion of the Property and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Property.

All of the Property described in **Exhibit A** of these Covenants and any additional property subjected to these Covenants by Supplemental Covenants (as defined in Article I below) shall be held, sold, used 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 title to the real property subjected to these Covenants. These Covenants shall be binding on all parties having any right, title, or interest in the Property or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I
Definitions

The terms in these Covenants and the Exhibits to these Covenants shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below:

- 1.1 *Annual Meeting.* The Annual Meeting of the Association shall be set forth in the Bylaws of the Association. Any special meetings may be called by the President, or in the absence of the President, by the Vice-President. In addition, a special meeting shall be held upon call of the Board Members or fifty percent (50%) of the Owners. Special meetings shall require forty-eight (48) hours’ notice, in writing. Notice of the annual and special meetings shall be mailed to Owners at the address for each Owner as provided pursuant to Article III of these Covenants. The presence of Members, in person or by written proxy, representing fifty-one percent (51%) of the total votes of the membership shall constitute a quorum.

- 1.2 *Articles of Incorporation or Articles.* The Articles of Incorporation of the Association, as filed with the State of Montana, as they may be amended from time to time.
- 1.3 *Base Assessment.* Assessments levied in accordance with Article 10.2 of these Covenants.
- 1.4 *Board of Directors or Board.* The body responsible for administration of the Association, selected as provided in the Bylaws and serving as the Board of Directors under Montana corporate law.
- 1.5 *Builder.* Any person which purchases one or more Lots for the purpose of constructing improvements for later sale to consumers in the ordinary course of such person's business and who is approved and designated in writing by the Declarant as a "Builder" under these Covenants.
- 1.6 *Bylaws.* The Bylaws of the Association, as amended from time to time.
- 1.7 *Class "A".* Class "A" Members shall be all Owners including the Declarant. Class "A" Members shall have one equal vote for each Lot in which they hold the interest required for membership under Article 3.2 of these Covenants. There shall be only one vote per Lot. If there is more than one Owner of a Lot, the vote for such Lot shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to any meeting. Absent such advice, the Lot's vote shall be suspended if more than one person seeks to exercise it.
- 1.8 *Class "B".* The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under these Covenants and the Bylaws, are specified elsewhere in the Covenants and the Bylaws. The Class "B" Member may appoint all of the Members of the Board of Directors during the Class "B" Control Period, as specified in the Bylaws. The Class "B" Member shall be entitled to two (2) votes per each Lot owned.
- The Class "B" membership shall terminate and become converted to Class "A" membership upon the earlier of:
- (i) Ten years after the date of recording of this document; or
 - (ii) When the Declarant determines in an instrument recorded in the records of the Gallatin County Clerk and Recorder's office in Gallatin County, Bozeman, Montana that at least 90% of the potential Lots established by the overall phased plan have been sold ("Turnover Date").
- 1.9 *Class "B" Control Period.* The period of time during which the Class "B" Member is entitled to appoint the Members of the Board of Directors as provided in the Bylaws.
- 1.10 *Common Area.* Open spaces, trail systems, park lands as depicted on the final Subdivision plat of the Property, the Subdivision Roads and any other areas which by the terms of these Covenants, any written notice from the Declarant to the Association, or other applicable covenants, contract, or agreement with Gallatin County, Montana, relating to such areas become the responsibility of the Association.
- 1.11 *Common Expenses.* The actual and estimated expenses incurred in connection with the Common Areas, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to these Covenants, the Bylaws, and the Articles of Incorporation.

Common Expenses shall not include any expenses incurred during the Class "B" Control Period for initial development, original construction, installation or infrastructure, original capital improvements, or other original construction costs unless approved by a majority of the total Class "A" vote of the Association.

- 1.12 *Community-Wide Standard.* The standard of conduct, maintenance, or other activity generally prevailing throughout the Property. Such standard shall be more specifically determined from time to time by the Design Review Committee.
- 1.13 *Declarant.* True North Partners, LLC, or any successor, successor-in-title, or assign who is designated as the Declarant by True North Partners, LLC in a written instrument recorded in the records of the Gallatin County Clerk and Recorder. Persons and /or entities other than the Declarant, or any successor, successor-in-title, or assign of the Declarant, may, with the consent of the Declarant, submit property to the terms of these Covenants.
- 1.14 *Design Review Committee ("DRC").* The Committee appointed by the Board of Directors of the Association, consisting of three (3) Members, preferably with at least one (1) of such Members having professional qualifications such as an architect or landscape architect.
- 1.15 *Directors.* Directors shall mean the Board of Directors of the Property Owners Association and shall initially consist of the Declarant.
- 1.16 *True North Partners, LLC.* True North Partners, LLC and its respective successors and assigns.
- 1.17 *Lot.* A residential parcel in the Property as depicted on a final Subdivision plat or certificate of survey recorded in the records of the Gallatin County Clerk and Recorder's office in Gallatin County, Bozeman, Montana.
- 1.18 *Homeowner's Association or Association.* Riverwood Homeowners' Association, Inc., a Montana non-profit corporation, its successors or assigns.
- 1.19 *Member.* A person owning or purchasing a Lot within the Subdivision or a property or Lot subsequently annexed into the Subdivision pursuant to Article IX. Each Member agrees to abide and be bound by these Covenants, the Articles of Incorporation and the Bylaws and Resolutions of the Association.
- 1.20 *Mortgage.* A Mortgage, a deed of trust, a deed to secure debt, or any other form of security deed.
- 1.21 *Mortgagee.* A beneficiary or holder of a Mortgage.
- 1.22 *Mortgagor.* Any person who gives a Mortgage.
- 1.23 *Owner.* One or more persons including the Declarant who hold record title to any Lot, and the Declarant with respect to its entitlements or the rights it holds to any Lot but excluding in all cases any party holding an interest merely as security for the performance of an obligation.
- 1.24 *Person.* A natural person, a corporation, a partnership, a trustee, or any other legal entity.
- 1.25 *Property.* The real property described in Exhibit A attached hereto, as supplemented from time to time in accordance with Article IX of these Covenants.

- 1.26 *Subdivision.* The entirety of the Property as depicted on a final subdivision plat and recorded in the records of the Gallatin County Clerk and Recorder's office in Gallatin County, Bozeman, Montana.
- 1.27 *Subdivision Roads.* Street or roadways (excluding driveways), within the Property as depicted on a final Subdivision plat recorded in the records of Gallatin County Clerk and Recorder's office in Gallatin County, Bozeman, Montana.
- 1.28 *Special Assessment.* Assessments levied in accordance with Article 10.4 of these Covenants.
- 1.29 *Supplemental Covenants.* An amendment or supplement to these Covenants filed pursuant to Article IX which subjects additional property to these Covenants and/or imposes, expressly or by reference, additional restrictions and obligations on all of any portion of the Property.
- 1.30 *Turnover Date.* Shall have the meaning as defined within the Class "B" definition in Article 1.8 above.
- 1.31 *Use Guidelines and Restrictions.* Guidelines and restrictions prepared by the Declarant, and implemented and managed by the Board, under the provisions of Article XIII of these Covenants.

ARTICLE II Property Rights

- 2.1 *Common Area.* Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with title to every Lot, subject to the following:
 - (i) These Covenants and any other applicable covenants;
 - (ii) Any restrictions or limitations contained in any recorded instrument affecting the relevant Common Area;
 - (iii) Dedication as a public right-of-way for use by the public;
 - (iv) The right of the Board to adopt rules regulating the use and enjoyment of the Common Area;
 - (v) The right of the Board to suspend the right of an Owner to use facilities within the Common Area (a) for any period during which any charge against such Owner's Lot remains delinquent, and (b) for a period not to exceed thirty (30) days for a single violation, or for a longer period in the case of any continuing violation, of the Covenants, the Bylaws, or rules of the Association after notice and a hearing pursuant to the Bylaws.
 - (vi) The right of the Association, acting through the Board, to Mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;
 - (vii) The rights and obligations of the Association, acting through its Board, to perform its functions and responsibilities, if any, in any water augmentation system.

ARTICLE III
Membership and Voting Rights

- 3.1 *The Association shall be governed by the Board of Directors.* The Board of Directors shall consist of three (3) Directors who shall be appointed by Declarant. At the first Annual Meeting of the Members after the "Turnover Date" as described in the Bylaws, Members of the Association shall elect Owners to serve on the Board of Directors by a simple majority vote.
- 3.2 *Membership.* Every Owner shall be a Member of the Association. No Owner, whether one or more persons, shall have more than one membership per Lot owned.
- 3.3 *Voting.*
- (i) The Association shall have two classes of membership, Class "A" and Class "B".
 - (ii) Upon and after the Turnover Date, each Class "B" Member shall be deemed to be a Class "A" Member entitled to one (1) vote for each Lot. At such time, the Declarant shall call a Special Meeting, as provided in the Bylaws, to advise the membership of the termination of the Class "B" status ("Turnover Meeting").

ARTICLE IV
Rights and Obligations of the Association

- 4.1 *Common Area.* The Association, subject to the rights of the Owners set forth in these Covenants, shall do and perform each and every one of the following for the benefit of the Owners and for the maintenance and improvement of the Subdivision:
- (i) The Association shall accept title to all Common Areas.
 - (ii) The Association shall manage and control the Common Area and all improvements thereon (including, without limitation, furnishings, equipment, and common landscaped areas), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof and consistent with the Community-Wide Standard. All common open space areas identified in the final plat of the Subdivision are included in the park land systems. These lands are available for the enjoyment and use of the residents, guests, and public visiting the Property.
- The Association may contract and pay for, or otherwise provide for the services of architects, engineers, attorney and certified public accountants or such other professional or nonprofessional services as the Board may deem necessary.
- 4.2 *Association Enforcement.* The Association via the Board of Directors shall have the following enforcement powers:
- (i) The Association may impose sanctions for violations of these Covenants, the Bylaws, or rules in accordance with procedures set forth in the Bylaws, including, without limitation, reasonable monetary fines and suspension of the right to vote and to use any facilities within the Common Area or elsewhere on the Property.
 - (ii) The Association may exercise self-help to cure violations and may suspend any services it provides to the Lot of any Owner who is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association.

- (iii) In the event a Member is delinquent in the payment of dues or assessments, or has failed to cure any default of its obligation under these Covenants, for a period of thirty (30) days after written notice thereof, the Board may file a lien against the Owner's Lot for any amounts due under these Covenants pursuant to Montana law.
 - (iv) The Board may seek relief in any court for violations or to abate nuisances.
 - (v) The Association, by contract or other agreement, may enforce county regulations, if applicable.
- 4.3 *Implied Rights.* The Association may exercise any other right or privilege given to it expressly by these Covenants or the Bylaws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege.
- 4.4 *Governmental Interests.* For so long as the Declarant owns any Property, the Declarant may designate any sites it owns within the Property for fire, police, water and sewer facilities, parks, and other facilities.

The Association's Board shall have the rights, obligations, and duties, subject to these Covenants, to contract and pay for, or otherwise provide for fire, police and such other protection services as the Board deems necessary, and to pay and discharge any and all liens placed upon any Common Area due to any work done or performed by the Association in fulfillment of any of its obligations and duties of maintenance, repair, operation, or administration.

If at any time, or from time to time, all or any portion of Common Area, or any interest therein, be taken for any public or quasi-public use, under any statute, by right of eminent domain, the entire award in condemnation shall be paid to the Association and deposited into either the operating fund or the development fund as the Association may, in its sole discretion, determine. No Owner shall be entitled to participate as a part, or otherwise, in any proceeding relating to such condemnation. Such right of participation being herein reserved exclusively to the Association which shall, in its name alone, represent all interests of all Owners.

- 4.5 *Indemnification.* The Association shall indemnify every officer, director, and committee member against all expenses, including without limitation, attorney's fees reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member. The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director and committee member harmless from any and all liability to others on account of any such contract, commitment or action. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a common expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available. In the sole discretion of the Board, the Association may agree to extend the indemnification provided in this paragraph

to other associated agents or employees not otherwise covered by this indemnification, when appropriate.

ARTICLE V
Maintenance

- 5.1 *Association's Maintenance of the Common Area and Roads.* The Association shall maintain and keep in good repair the Common Area, which shall include, but need not be limited to:
- (i) All landscaping and parks, structures, and improvements, including, without limitation, any Subdivision Roads, bike and pedestrian pathways/trails situated upon the Common Area;
 - (ii) Landscaping within public rights-of-way within the Common Area, and landscaping and other flora within any utility easement within the Common Area (subject to the terms of any easement agreement relating thereto);
 - (iii) Such portions of any additional property included within the Common Area as may be dictated by these Covenants or any Supplemental Covenants; and
 - (iv) The Association is responsible for the cost of improvement, maintenance, repair and replacement of the Subdivision Roads and the open space (both of which fall within the Common Area as defined in Article II) with an easement for public use.
 - (v) Fire Protection Facilities, located on Lot 3 of Minor Subdivision No. 502.
- 5.2 *Association's Maintenance of Well Program.* The Association shall be responsible for identifying and maintaining a well monitoring program (total annual usage in gallons) for each well. The data collected from the monitoring well program shall be provided annually to the Montana Department of National Resources and the Gallatin Planning Department no later than December 31 of each year. See Design Review Guidelines for maximum water usage for residential lots. All existing surface water rights and/or shares in any canal or ditch companies are reserved to the declarant unless and until otherwise transferred.
- 5.3 *Common Area.* The Common Area shall not be reduced by amendment of these Covenants or any other means except with the prior written approval of the Declarant. Such Common Areas shall be improved and maintained by the Association, with an easement for public use. In the event the Association does by contract or agreement transfer any maintenance responsibilities, the transfer may obligate the Association to pay for such maintenance in such manner as the Board determines is reasonable.
- 5.4 *Common Expenses.* All Common Area costs associated with maintenance, repair and replacement of the Common Area shall be a common expense to be allocated among residential Lots as part of the Base Assessment, without prejudice to the right of the Association to seek reimbursement from the Owners of, or other persons responsible for, certain portions of the Common Area pursuant to these Covenants, a covenant to share costs, other recorded covenants, or agreements with the Owners thereof. All costs associated with maintenance, repair and replacement of any Common Area that exclusively benefits specific Lots shall be assessed solely against such Lots notwithstanding that the Association may be responsible for performing such maintenance hereunder.
- 5.5 *Fire Protection System.* Fire Protection System Maintenance Fees, including but not limited to: power, operation, annual testing fees, landscaping, weed management, and any other expenses necessary to ensure reliable use and operation by the Fire Protection

Authority Having Jurisdiction (FPAHJ), shall be a common expense to be allocated among residential Lots as part of the Base Assessment. For the Fire Protection System located in the easement on Lot 3 of Minor Subdivision No. 502, any reimbursement, as a result of any agreement to “buy-in” from other subdivisions shall go to Declarant, True North Partners, LLC, its successors or assigns, that paid for the fire protection system improvements required for the Subdivision. The Declarant may approve or disapprove the use of future buy-in fees and/or terms of agreement, from either on-site subdivision of lots and/or any off-site subdivision(s). Any upgrades and/or modifications to the existing fire protection systems may be allowed, such that the system provides equivalent or greater fire protection than the current system, and that no additional construction improvement costs shall be assessed to lots within the Subdivision, unless required through further subdivision, or change in use of lots, which may necessitate fire protection system upgrades, as required by the FPAHJ and/or subdivision regulations. Future buy-in fees shall be paid directly to the Declarant, in perpetuity, or until such time the Declarant indicates otherwise to the Association, in writing.

5.6 *Storm Drainage Management Plan.*

- (i) The Association shall be responsible for adequate maintenance and operation of all storm drainage facilities (including roadside ditches, ponds, swales, culverts, etc.) located within the “storm drainage” easements and “utility” easements as shown on the final subdivision plat and/or individual storm drainage easements designated for the benefit and use of the Subdivision. Each Owner shall be responsible for adequate maintenance and operation of all storm facilities (including ponds, swales, culverts, etc.) that are only serving the individual needs of their respective Lot.
- (ii) All trash and debris shall be removed from storm drainage facilities by no later than May 1st of each year. The Association shall ensure that yearly maintenance is conducted to remove sediment or debris as needed from the storm water swales, ponds, and culverts so that the aforementioned facilities function properly.
- (iii) The control of noxious weeds by the Association on those areas for which the Association is responsible, including storm drainage easements, roadside ditches, etc. shall comply with the Weed Management and Revegetation Plan as approved by the Gallatin County Weed Control District.
- (iv) The Association is responsible for maintenance of the Subdivision access approaches and any corresponding access approach drainage culverts shall also be cleared of trash and debris, along with any other conditions specified as part of each approach permit.
- (v) Landscaped lawn areas that are used as retention facilities shall be maintained at a height of 2 ½” – 3 ½” and shall be irrigated/watered, fertilized, controlled for noxious weeds, and otherwise properly cared for. If an Owner fails to properly maintain its lawn area and/or natural grass area, the Association may cause the lawn and/or natural grasses to be maintained at the Owner’s expense.

5.7 *Owner’s Responsibility.* Each Owner shall maintain his or her Lot and all structures, parking areas, and other improvements comprising the Lot in a manner consistent with the Community-Wide Standard and all applicable covenants, unless, in the case of a Lot, such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to any Supplemental Covenants or other declaration of covenants applicable to such Lot.

In addition to any other enforcement rights, the Association shall have the power and authority, without liability to any Owner for trespass, damage, or otherwise, to enter upon a Lot for the purpose of maintaining and repairing any Lot if for any reason an Owner fails to maintain and repair their Lot as required by the Covenants, or maintenance and repair are done in a manner inconsistent with the Community-Wide Standard, or for the purposes of removing any improvement upon such area in violation of these Covenants, assess all costs incurred by the Association against the Lot and the Owner, and shall have the option to bill the Lot Owner for costs incurred within thirty (30) days of the Association's receipt of an invoice for maintenance or repair of that Lot, or by adding such cost to the next annual assessment due from the non-conforming Owner.

The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when the Association determines in its sole discretion that entry is required due to an emergency situation.

- 5.8 *Standards of Performance.* Unless otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants. The Association, and/or an Owner shall not be liable for any damage or injury occurring on, or arising out of the condition of, property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

ARTICLE VI Insurance and Casualty Losses

- 6.1 *Association Insurance.* The Association, acting through its Board or its duly authorized agent, shall obtain appropriate insurance coverage for all Association real and personal property.

The Association also shall obtain an appropriate commercial liability insurance policy on the Common Area and in connection with the Association's responsibility over the areas of common responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf.

Except as otherwise provided by the Bylaws, premiums for all insurance shall be Common Expenses and shall be included in the Base Assessment.

The Association shall also obtain, as a common expense, worker's compensation insurance if and to the extent required by law, directors' and officers' liability coverage, if reasonably available, flood insurance, if advisable, and such other insurance coverage as reasonably determined by the Board.

The Association also may obtain, as a common expense, a fidelity bond or bonds, if generally available at reasonable cost, covering all persons responsible for handling Association funds. The Board shall determine the amount of fidelity coverage in its best business judgment but, if reasonably available, shall secure coverage equal to not less than one-sixth of the annual Base Assessments on all platted Lots plus reserves on hand.

- 6.2 *Owners Insurance.* By virtue of taking title to a Lot, each Owner covenants and agrees with all other Owners and with the Association to carry blanket "risks of direct physical

loss" property and liability insurance on any structures located on its platted Lot(s) providing full replacement cost coverage less a reasonable deductible.

Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising a Lot, the Owner thereof shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article XI of these Covenants. Alternatively, the Owner shall clear the Lot of all debris and ruins and maintain the Lot in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

- 6.3 *Damage and Destruction.* Immediately after damage or destruction to all or any part of the Property covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Any damage to or destruction of the Common Area shall be repaired or reconstructed unless at least seventy-five percent (75%) of the total Class "A" votes in the Association and the Declarant (as long as the Declarant owns any of the Property or has any right to annex additional property into these Covenants) decide within sixty (60) days after the loss not to repair or reconstruct.

If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed sixty (60) additional days. No Mortgagee of a Lot shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or constructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association, as applicable, in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

- 6.4 *Disbursement of Proceeds.* Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association and placed in a capital improvements account.
- 6.5 *Repair and Reconstruction.* If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board shall, without a vote of the Members, levy Special Assessments to cover the costs of repair or reconstruction against those Owners of the affected Lots.

**ARTICLE VII
No Partition**

Except as permitted in these Covenants, there shall be no judicial partition of the Common Area. No person shall seek any judicial partition unless the Property or such portion thereof have been removed from the provisions of these Covenants. This Article shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to these Covenants.

The Declarant may partition, annex, divide or subdivide any Lots or open space the Declarant owns, and vacate or adjust any Lot line with respect to any platted Lots or open space the Declarant owns, without the consent of the Association or any Owner. Owners other than the Declarant may not partition, divide or subdivide their platted Lots, or vacate or adjust any Lot line, without the prior written approval of the Declarant until 90% of the Lots have been conveyed to Owners other than the Declarant and Builders and, thereafter, the Association.

**ARTICLE VIII
Condemnation**

If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the direction of a majority of the Class "A" votes present at a meeting duly held pursuant to the requirements of the Bylaws for such a meeting, and the written consent of the Declarant, as long as the Declarant owns any of the Property or has any right to annex additional property into these Covenants) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

- A. If the taking involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within sixty (60) days after such taking the Declarant, so long as the Declarant owns 10% of the Property or has any right to annex additional property into these Covenants, and at least 75% of the total Class "A" vote of the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board.
- B. If the taking does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

**ARTICLE IX
Annexation and Withdrawal of Property**

- 9.1 *Annexation Without Approval of Membership.* Prior to the Turnover Date, the Declarant may from time to time unilaterally subject all or any portion of any other property to the provisions of these Covenants. The Declarant may transfer or assign this right to annex property, provided that the transferee or assignee is the developer of at least a portion of the Property and that such transfer is memorialized in a written instrument executed by the Declarant and recorded in the records of the Gallatin County Clerk and Recorder's office in Gallatin County, Bozeman, Montana.

Annexation shall be accomplished by recording Supplemental Covenants in the records of the Gallatin County Clerk and Recorder's office in Gallatin County, Bozeman, Montana, annexing such property into Exhibit A to these Covenants. Supplemental Covenants annexing property into Exhibit A to these Covenants shall not require the consent of the Class "A" Members, but it shall require the consent of the Owner of such property, if other than the Declarant. Any other person and/or entity with a property interest in any real property submitted to these Covenants shall not be a Declarant unless designated as the Declarant in an instrument signed by the preceding Declarant and recorded in the records of the Gallatin County Clerk and Recorder's office in Gallatin County, Bozeman, Montana. Any annexation shall be effective upon the recording of a Supplemental Covenants in the records of the Gallatin County Clerk and Recorder's office in Gallatin County, Bozeman, Montana, unless otherwise provided herein.

- 9.2 *Annexation With Approval of Membership.* The Association may annex real property pursuant to the provisions of these Covenants with the consent of the Owner of such property, the affirmative vote of a majority of the Class "A" votes of the Association represented at a meeting duly called for such purpose, and the consent of the Declarant (so long as the Declarant owns property subject to these Covenants or which may become subject to these Covenants in accordance with Article 9.1). Annexation shall be accomplished by recording a Supplemental Covenants in the records of the Gallatin County Clerk and Recorder's office in Gallatin County, Bozeman, Montana, annexing such property into Exhibit A to these Covenants. Any such Supplemental Covenants shall be signed by the President and the Secretary of the Association, and by the Owner of the annexed property. Any such annexation shall be effective upon filing unless otherwise provided therein.
- 9.3 *Withdrawal of Property.* The Declarant reserves the right to amend these Covenants so long as it has a right to annex additional property pursuant this Article IX, without prior notice and without the consent of any person, for the purpose of removing property then owned by the Declarant, its affiliates, or the Association from the coverage of these Covenants, to the extent originally included in error or as a result of any changes in the Declarant's plans for the Property. Common Areas designated as open space on any final plat for the Property, as approved by Gallatin County, Montana and recorded in the records of Gallatin County Clerk and Recorder's office in Gallatin County, Bozeman, Montana, may be withdrawn only if restricted as permanent open area upon which future inconsistent development would not be permitted.
- 9.4 *Additional Covenants and Easements.* The Declarant may unilaterally subject any portion of the Property submitted to these Covenants initially or by Supplemental Covenants to additional covenants and easements, including without limitation, covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association. Such additional covenants and easements shall be set forth in a Supplemental Covenants filed either concurrent with or after the annexation of the subject property and shall require the written consent of the Owners(s) of such property, if other than the Declarant.
- 9.5 *Amendment.* This Article shall not be amended without the prior written consent of Declarant so long as the Declarant owns any of the Property or has any right to annex additional property into these Covenants.

ARTICLE X
Assessments

- 10.1 *Creation of Assessments.* There are hereby created assessments for Association expenses as the Board may specifically authorize from time to time. There shall be two types of assessments: (a) Base Assessments to fund Common Expenses for the general benefit of all Lots; and (b) Special Assessments as described in Article 10.4. Each Owner, by accepting a deed or recording a notice of purchaser's interest for a contract for deed for any portion of the Property, is deemed to covenant and agree to pay these assessments. The Association shall send notice of the assessments and bill each Owner.

All assessments, together with interest at fifteen percent (15%) per annum (or, if such 15% interest violates Montana law, the maximum amount permitted under Montana law) as computed from the date the delinquency first occurs, late charges, costs, and reasonable attorney's fees (unless any of the foregoing are waived by the Association), shall be a charge and continuing lien upon each Lot against which the assessment is made until paid, as more particularly provided in Article 10.5. Each such assessment, together with interest, late charges, costs, and reasonable attorney's fees (unless waived), also shall be the personal obligation of the person who was the Owner of such Lot at the time the assessment arose. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

Assessments shall be paid in such manner and on such dates as the Board may establish. If the Board so elects, assessments may be paid in one or more installments. Unless the Board otherwise provides, the Base Assessments shall be due and payable in advance on the first day of each month. If any Owner is delinquent in payment on any assessments or other charges levied on his or her Lot, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.

No Owner may exempt himself from liability for assessments, by non-use of Common Area, abandonment of his or her Lot, or any other means. The obligation to pay assessments is a separate independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

- 10.2 *Computation of Base Assessment.* At least sixty (60) days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses during the coming year, including without limitation, a capital contribution to establish a reserve fund in accordance with a budget separately prepared.

The Base Assessment shall be allocated and levied against all the Lots in the Association and shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including without limitation, reserves and administrative overhead. In determining the level of assessments, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board shall take into account the number of Lots subject to assessment under Article 10.1 on the first day of the fiscal year for which the budget is prepared and the number of Lots reasonably anticipated to become subject to assessment during the fiscal year.

Prior to the Turnover Date, the Declarant may, but shall not be obligated to, subsidize the Association budget by contribution, advance, loan, or in any other manner Declarant, in its sole discretion, chooses. Any such payment shall be conspicuously disclosed as a line item in the common expense budget and shall be made known to the Members. Such payment in any years shall under no circumstances obligate the Declarant to continue payment in the future years, unless otherwise provided in a written agreement between the Association and the Declarant.

The Board shall send a copy of the budget and notice of the amount of the Base Assessment for the upcoming year to be delivered to the Association at least forty-five (45) days prior to the beginning of the fiscal year for which it is to be effective. Such budget and assessment shall become effective unless disapproved at a meeting by at least seventy-five percent (75%) of the total Class "A" votes in the Association, and the Declarant (prior to Turnover Date or has any right to annex additional property into these Covenants). There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Class "A" Members as provided for special meetings in the Bylaws, which petition must be presented to the Board within ten (10) days after delivery of the notice of assessments.

If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any years, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year.

- 10.3 *Reserve Budget and Capital Contribution.* The Board shall annually prepare reserve budgets which take into account the number and nature of depreciable assets owned or provided for the use of the Association, the expected life of each asset, and their expected repair or replacement cost. The Board shall establish a capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect to both amount and timing by annual Base Assessments, over the budget period.
- 10.4 *Special Assessments; Common Expenses.* In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Except as otherwise specifically provided in these Covenants, such Special Assessment shall be levied against the entire membership if such Special Assessment is for Common Expenses. Except as otherwise specifically provided in these Covenants, any Special Assessment for Common Expenses shall require the affirmative vote or written consent of a majority of the Class "A" votes present at a meeting duly held pursuant to the Bylaws, and the Declarant (as long as the Declarant owns at least 10% of the property or has any right to annex additional property into these Covenants). Special Assessments shall be payable in such manner and at such times as determined by the Board and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.
- 10.5 *Liens for Assessments.* The Association shall have a lien against each Lot to secure payment of delinquent assessments, as well as interest, late charges (subject to the limitations of Montana law), and costs of collection (including without limitation, attorney's fees). Such lien shall be superior to all other liens, except the liens of all taxes, bonds, assessments, and other levies which by law would be superior. Such lien, when assessments are delinquent, may be enforced by suit, judgment, and judicial or non-judicial foreclosure.

The Association may bid for the Lot at the foreclosure sale and acquire, hold, lease, Mortgage, and convey the Lot. While a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on the Lot's behalf; (b) no assessment shall be levied on the Lot; and (c) each other Lot shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged such Lot had it not been acquired by the Association. The Association may sue for unpaid assessments and costs without foreclosing or waiving the lien securing the same.

The sale and transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments. A Mortgagee or other purchaser of a Lot who obtains title pursuant to foreclosure of such first Mortgage shall not be personally liable for assessments on such Lot due prior to such acquisition of title, but the prior title holder shall remain personally liable for such assessments and any related interest, charges and costs identified in Article 10.2 above. Any assessments unpaid as the result of a foreclosure shall be deemed to be Common Expenses collectible from all Owners subject to assessment under Article 10.4, including, without limitation, such acquirer, its successors and assigns.

- 10.6 *Date of Commencement of Assessments.* The obligation to pay assessments shall commence as to each Lot on the first day following sale or transfer of the Lot from the Declarant to any Owner other than the Declarant or (where specifically so designated by the Declarant under Article 10.8) any Builder.
- 10.7 *Failure to Assess.* Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owners from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time the Association may retroactively assess any shortfalls in collections.
- 10.8 *Exempt Property.* The Declarant is not obligated to pay Base Assessments or Special Assessments on any Lot owned by Declarant. The Declarant may likewise designate, in a written notice to the Board, any Builder as exempt from the obligation to pay Base Assessments or Special Assessments in connection with specific Lots owned by such Builder, in which case the designated Builder shall not be obligated to pay Base Assessments or Special Assessments in connection with such specified Lots, until sold as Lots to third parties, or such prior date established in the relevant designation. The Common Area and open space shall be exempt from payment of Base Assessments and Special Assessments.

ARTICLE XI Gallatin County Required Covenants

- 11.1. The property Owners are responsible for the control of State and County declared noxious weeds set forth and specified by the Montana Noxious Weed Control Act (MCA 7-22-2101 through 7-22-2153) and the rules and regulations of the Gallatin County Weed Control District.
- 11.2. Lot Owners and tenants of the Subdivision are informed that adjacent uses may be agricultural. Lot Owners accept and are aware that standard agricultural and farming practices can result in dust, animal odors, flies, smoke and machinery noise. Standard agricultural practices feature the use of heavy equipment, chemical sprays and the use of machinery early in the morning and sometimes late into the evening.

- 11.3. All new residential structures must be sprinkled in accordance with Gallatin County Subdivision Regulations, Appendix I: Fire Protection Packages, 1.13 a through d, as follows:

Fire protection sprinkler/fire alarm project tracking process may be required by the Fire Protection Authority Having Jurisdiction (FPAHJ), where a structure has a fire protection sprinkler system installed as a part of a Subdivision fire protection plan. The tracking process may be administered by the FPAHJ. The tracking process requirements are as follows:

- (i) The property Owner shall provide 14-day written notice of intent to build a structure with a fire protection sprinkler system, and where applicable, a fire alarm system, engineered by a PE. A plans review fee will be paid by the subdivider/Owner to the FPAHJ. A fee schedule shall be determined by the FPAHJ. In lieu of a plans review fee and at the discretion of the FPAHJ, the FPAHJ may require a third-party review (selected by the FPAHJ) of the plans at the expense of the subdivider/property Owner.
- (ii) The property Owner shall provide written certification by a PE that the fire protection sprinkler system and, where applicable, the fire alarm system, are installed and fully operational prior to enclosure with sheet rock or interior wall covering installation. The FPAHJ shall be permitted to witness the testing with a minimum of 48 hours advanced notice.
- (iii) The subdivider or property Owner shall provide written certification, to the FPAHJ, by a PE and the subdivider or property Owner that all fire protection requirements have been met prior to final occupancy. The FPAHJ shall be permitted to witness the checklist inspections required in this section. The subdivider or property Owner shall provide the FPAHJ with 48 hours' notice of the checklist inspections.

Occupancy shall be permitted only when all fire protection requirements have been met as determined by the FPAHJ.

- 11.4. Site plans of all Lots must be submitted for review and approval by the Central Valley Fire District.
- 11.5. An open space fuel management plan shall be submitted and approved by the Central Valley Fire District.
- 11.6. A Homeowner's Association shall be established.
- 11.7. The Homeowner's Association shall be responsible for the maintenance and snow removal of the access road, including the secondary emergency access.
- 11.8. The Homeowner's Association shall be responsible for the maintenance of the parkland within the Subdivision.
- 11.9. The property Owners, in accordance with state law, shall maintain all fences bordering agricultural land.
- 11.10. Pets shall be controlled by the homeowner, and not allowed to roam at large.

- 11.11. No water may be removed from any irrigation ditch, canal, or other water conveyance facility without a water right, permit, or written water lease agreement with the appropriate water users and/or water conveyance facility's authorized representatives.
- 11.12. Unless there is written consent from the appropriate water users and/or water conveyance facility's authorized representatives, post development storm water, snowmelt runoff, water from dewatering practices, or other water originating from within the boundaries of the Subdivision shall not discharge into or otherwise be directed into any irrigation ditch, canal, pipeline, or other water conveyance facility.
- 11.13. The property Owners shall remove any trash or debris that originated from within Subdivision and has accumulated in the water conveyance facilities passing through the property by no later than May 1st of each year. If the Owner fails to remove the trash or debris as described above, the water users and/or water conveyance facility's authorized representatives may cause the trash or debris to be removed and bill the Owners of the Subdivision for such efforts. Until such time that the Lots are conveyed, such requirements shall be the responsibility of the developer.
- 11.14. Lot Owners are hereby notified of the water users, water conveyance facility's authorized representatives, and/or their designee's right to access the property to maintain and repair the water conveyance facility (this includes, but is not limited to, placement of excavated material, removal of vegetation and debris along the water conveyance facility); to install, repair, and or adjust head gates and other diversion structures; and to carry out other normal means of repair and maintenance related to the ditch.
- 11.15. The Owners shall not undertake any activity that would result in the interference or obstruction in the transmission of water in the water conveyance facility. Before any maintenance, improvements, or modifications are performed on any water conveyance facility, written permission must be obtained from the water users and/or water conveyance facility's authorized representatives prior to commencing such work. Upon completion of maintenance, improvements, or modifications to any water conveyance facility, the person responsible for such work shall provide written notice to the water users and/or water conveyance facility's authorized representatives and allow them an opportunity to inspect such work.
- 11.16. Lot purchasers are hereby notified that Montana law provides specific protections in regard to liability and nuisance claims for agricultural operations and irrigators. Those specific protections include, but are not limited to Section 85-7-2211, MCA; Section 85-7-2212, MCA; and Section 27-30-101, MCA.
- 11.17. Development activity, including but not limited to erection or placement of structures, placement of fill, topographic reconfiguration, etc. shall be prohibited within the 100-year floodplain.
- 11.18. All structures are recommended to be designed and constructed so the lowest-floor elevation with the structure is a minimum of two feet above the 100-year flood elevation.
- 11.19. Any covenant which is included herein as a condition of preliminary plat approval and required by the County Commission may not be amended or revoked without the mutual consent of the Owners in accordance with the amendment procedures in these covenants and the governing body of Gallatin County. A copy of the covenants shall be submitted to the Belgrade Planning Office. A copy of preliminary approval document, and the certificate of a licensed title abstractor shall be submitted to the Gallatin County Attorney's Office. Both submittals shall be 30 days prior to scheduling a hearing for final plat

approval. The Attorney's Office shall approve the covenants and certificate prior to final plat approval.

Gallatin County Weed Department – Covenant Statement for Subdivisions with Owners Associations (Separate from County Required Covenants)

- 11.20. The control of Noxious Weeds by the Owners Association on those areas for which the Owners Association is responsible and the control of Noxious Weeds by individual owners on their respective lots shall be as required by the Montana Noxious Weeds Control Act (§ 7-22-2101, MCA through § 7-22-2153, MCA as amended) and the rules, regulations and management Plans of the Gallatin County Weed District. Both unimproved and improved lots shall be managed for Noxious Weeds. In the event a Landowner does not control the Noxious Weeds for 10 days' notice from the Owners Association, the Owners Association may cause the Noxious Weeds to be controlled. The cost and expense associated with such weed management shall be assessed to the lot and such assessment may become a lien if not paid within thirty (30) days of the mailing of such assessment. The Owners Association is responsible for control of state and county declared Noxious Weeds in the subdivision parks, open spaces, community areas, trails and roadways. Nothing herein shall require or obligate the Gallatin County Weed District to undertake any management or enforcement on behalf of the Owners Association or Landowners that is not otherwise required by law or the Gallatin County Weed District Management Plan.

General Fire Protection Requirements – Covenant Statement for Plats Approved in Central Valley Fire Protection District (Separate from County Required Covenants)

- 11.21 Design and construction of the subdivision and all buildings within the subdivision must conform to the current adopted edition of the International Fire Code and appendices and the Gallatin County Subdivision Fire Protection Requirements and appendices.
- 11.22 Any fire protection covenant required as a condition of final plat approval, whether explicitly stated in the conditions or left to the discretion of the Central Valley Fire District, shall be maintained in perpetuity and may not be amended or revoked without the consent of the Central Valley Fire District.
- 11.23 Prior to the construction of any structure, the property owners or their designee shall review and approve all proposed building projects. Any project that is not in complete compliance with the fire protection covenants shall not be approved.
- 11.24 The Central Valley Fire District shall be made party to these covenants for the purposes of enforcement of the fire covenants. Compliance with and enforcement of the fire protection covenants and requirements is primarily the responsibility of the property owners and their Association. Should it become necessary for the Central Valley Fire District to take steps to enforce these covenants, including filing a court action, Central Valley Fire District shall be entitled to recover the reasonable expenses of such action, including court costs and attorney fees.

Specific Fire Protection Requirements:

- 11.25 A Central Valley Fire District *approved* fire water fill site capable of supplying water for the purpose of fighting fire shall be installed and maintained, or alternately, a letter of agreement to use an approved source within 5,000 feet shall be submitted to Central Valley Fire District for review and permitting as appropriate. The fill site or the agreement shall be in place and approved *prior* to the construction of any structures within the subdivision.

- 11.26 Each residence shall install and maintain operable, an NFPA 13D residential sprinkler system. The system shall be approved by the Central Valley Fire District and acceptance testing completed *prior* to occupancy. It shall be the responsibility of the individual property owner or their designee to contact the Central Valley Fire District for final inspections and testing.
- 11.27 All addresses shall be visible from the street side of the structure or posted at the entrance of the property.
- 11.28 Where applicable, Gallatin County Wild/and Urban Interface fire protection measures shall be enforced.

ARTICLE XII Design Guidelines

- 12.1 *General.* No structure shall be placed, erected, or installed upon any Lot, and no improvements (including, without limitation, staking, clearing, excavation, grading and other site work, exterior alteration of existing improvements, and planting or removal of landscaping materials) shall take place except in compliance with this Article and the signed approval of the DRC.

Any Owner may remodel, paint or redecorate the interior of structures on his or her Lot without approval. No DRC approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.

All dwellings constructed on any portion of the Property shall be designed by and built in accordance with the plans and specifications approved by the DRC.

This Article shall not apply to the activities of the Declarant, to any Builder specifically designated by the Declarant as exempt from this Article in a written notice to the Board, nor to improvements to the Common Area by or on behalf of the Association.

This Article may not be amended without Declarant's written consent so long as the Declarant owns any of the Property or has any right to annex additional property into these Covenants.

- 12.2 *Design Review.* Responsibility for administration of the design guidelines, as defined below and review of all applications for construction and modifications under this Article shall be handled by the DRC. The Members of the DRC need not be Members of the Association or representatives of Members, and may include an architect, engineer or similar professional, whose compensation, if any, shall be established from time to time by the Board. The Board may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review.
- 12.3 *Design Review Committee.* The DRC shall consist of at least three, but not more than five, persons and shall have exclusive jurisdiction over all original construction and remodeling on any portion of the Property. Until the Turnover Date, the Declarant retains the right to appoint all Members of the DRC who shall serve at the Declarant's discretion. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration of such right, the Board shall appoint the Members of the DRC, who shall serve and may be removed in the Board's discretion.

- 12.4 *Guidelines and Procedures.* The Declarant has prepared separate initial design guidelines and application and review procedures for the residential development of even date herewith (collectively, the “Design Guidelines”) which shall apply to all construction activities within the Property. The Design Guidelines may contain general provisions applicable to all of the Property, as well as specific provisions which vary from one portion of the Property to another depending upon the location, unique characteristics, and intended use.

To the extent the Design Guidelines conflict with the terms of these Covenants, the terms of these Covenants shall govern.

The DRC shall have sole and full authority to amend the Design Guidelines from time to time. Any amendments to the Design Guidelines shall apply to the construction of and modifications to permanent structures commenced after the date of such amendment only and shall not apply to modifications to or removal of permanent structures previously approved once the approved construction or modification has commenced. The term “permanent structures” shall not include landscaping or temporary structures, which shall be maintained consistently with the standards set forth in the Design Guidelines as applicable from time to time.

The DRC shall make the Design Guidelines available to Owners and Builders who seek to engage in development or construction within the Property and all such persons shall conduct their activities in accordance with such Design Guidelines. It shall be each Owner’s obligation to confirm with the DRC that the Owner has been provided with the current version of the Design Guidelines. In the Declarant’s discretion, such Design Guidelines may be recorded in the records of the Gallatin County Clerk and Recorder’s office in Gallatin County, Bozeman, Montana, in which event the recorded version, as it may unilaterally be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

Plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed structures and improvements shall be submitted to the DRC Committee for review and approval (or disapproval). Information concerning irrigation systems, drainage, lighting, and other features of proposed construction shall be submitted as applicable. In reviewing each submission, the committee may consider the quality of workmanship and design, harmony of external design with existing structures, and location in relation to surrounding structures, topography, and finish grade elevation, among other things. Additionally, all landscaping, including without limitation, the planting of new trees and other vegetation and the removal of existing trees and vegetation must receive DRC approval.

In the event that (i) the DRC fails to approve or to disapprove any application within sixty (60) days after submission of all information and materials reasonably requested by the DRC; (ii) the Owners, after the expiration of such sixty (60) days, requests in writing that the DRC approve or to disapprove such application; and (iii) thirty (30) additional days have elapsed after such written request without the DRC approving or disapproving the application, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted in writing by the DRC pursuant to Articles 12.6.

The DRC shall have complete and unfettered discretion to make all decisions regarding approval of plans for construction and remodeling. All decisions of the DRC, after the exhaustion of any appeal process provided under the Design Guidelines, are final.

- 12.5 *No Waiver of Future Approvals.* Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.
- 12.6 *Variance.* The DRC in its sole and absolute discretion may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to these Covenants; or (c) estop the DRC from denying a variance in other circumstances. For purposes of this Articles, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.
- 12.7 *Limitation of Liability.* Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and the DRC shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board, the DRC, any DRC committee, nor Member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Lot.
- 12.8 *Enforcement.* Any structure or improvement placed or made in violation of this Article shall be deemed to be non-conforming. Upon written request from the Board or the Declarant, Owners shall, at their own cost and expense, remove such structure or improvement and restore the land to substantially the same condition as existed prior to the non-conforming work. Should an Owner fail to remove and restore as required, the Board or its designees shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as existed prior to the violation. All costs, including, without limitation, attorney's fees, together with the interest at the rate of up to fifteen percent (15%) per annum, may be assessed against the Lot so restored and collected as a specific assessment. The DRC may also enforce compliance with the Design Guidelines and these Covenants by suit for specific performance, without the necessity of posting a bond. The prevailing party shall be entitled to an award of its attorney' fees and costs at trial and on appeal.
- 12.9 *Exclusion.* Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines, other than the Declarant, may be excluded by the Board from the Property, subject to the notice and hearing procedures contained in the Bylaws. In such event, neither the Association, its officers, nor directors shall be held liable to any person for exercising the rights granted by this paragraph.
- 12.10 *General.* In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the Board or the DRC.

ARTICLE XIII
Use Guidelines and Restrictions

- 13.1 *Plan of Development; Applicability; Effect.* Declarant has created the Property as a residential development and, in furtherance of its and every other Owner's interests, has established a general plan of development for the Property. The Property is subject to the Design Guidelines as set forth in Article XII.

All provisions of these Covenants and of any rules or regulations promulgated by the Board shall also apply to all occupants, tenants, guests and invitees of any Lot of any Owner other than the Declarant.

Declarant has prepared the initial use guidelines and regulations set forth herein and containing general provisions applicable to the Property, as well as specific provisions which vary within the Property depending upon the location, characteristics, and intended use set forth herein. Based upon these use guidelines and regulations the Board may adopt design rules from time to time that the Board may enforce and amend.

Declarant promulgates the general plan of development for the Property in order to protect and enhance Owners' quality of life and collective interests, the aesthetics and environment within the Property, and the vitality of and sense of community within the Property, all subject to the Board's ability to respond to changes in circumstances, conditions, needs, and desires within the Property.

- 13.2 *Board Power.* Subject to these Covenants, the Board may modify, cancel, limit, create exceptions to or expand the use guidelines and regulations by resolution. Prior to any such resolution, the Board shall conspicuously publish notice of the proposal at least give (5) business days prior to the Board meeting. Owners shall have reasonable opportunity to be heard at a Board meeting prior to action being taken.

The Board shall send a copy of any proposed new rule or amendment to each Owner and the Declarant at least thirty (30) days prior to its effective date. Any new rule or amendment to the use guidelines and regulations adopted by the Board shall become effective unless disapproved in writing within such thirty (30) days by the Declarant, as long as the Declarant owns at least 10% of the Property or has any right to annex additional property into these Covenants or, thereafter, by a majority of the total Class "A" votes present at a meeting duly held pursuant to the Bylaws. The Board shall have no obligation to hold a meeting to consider disapproval except upon petition of the Class "A" Members as required for special meetings in the Bylaws.

The Board shall have all powers necessary and proper subject to its exercise of sound business judgment and reasonableness to affect the duties contained in this Article.

The Board or DRC shall provide, without cost, a copy of the Design Guidelines and any rules or resolutions then in effect to any requesting Member or Mortgagee.

- 13.3 *Members' Power.* The Class "A" Members, at a meeting duly called for such purpose, may adopt, repeal, modify, limit, and expand the Use Guidelines and Restrictions, and the Board's associated rules or resolutions, by a vote of a majority of the Class "A" votes present at a meeting duly held pursuant to the Bylaws, and (prior to the Turnover Date or as long as the Declarant has any right to annex additional property into these Covenants) the affirmative vote or written consent of the Declarant.

- 13.4 *Owners' Acknowledgment.* All Owners are subject to the Use Guidelines and Restrictions and are given notice that (1) their ability to use their privately owned property is limited thereby, and (2) the Board may add, delete, modify, create exceptions to, or amend the Use Guidelines and Restrictions in accordance with these Covenants. Each Owner by acceptance of a deed acknowledges and agrees that the use, enjoyment, and marketability of his or her property can be affected by this provision and that the Use Guidelines and Restrictions and rules may change from time to time.
- 13.5 *Actions Prohibited by the Board.* Neither the Board nor the Association may adopt any rule or take any action which violates any federal, state or local laws or regulations.
- 13.6 *Initial Use Guidelines and Restrictions.* The following use guidelines may be supplemented by the Board under the terms of this Article as follows:

- (i) There will be no more than one "single-family private residence" constructed on each Lot and that dwelling will be used for residential purposes only. See Design Review Guidelines for detached structures which may be allowed per the DRC.
- (ii) No structure shall be constructed as to be less than twenty-five (25) feet from the front lot line, less than twenty (20) ft from the side lot line, or less than thirty (30) feet from the rear lot line.

Other setbacks may apply, including but not limited to: stream setbacks, floodplain, wastewater systems and component setbacks, well setbacks, utility easements, road easements, other easements, etc. See recorded subdivision plat, MDEQ Approvals/Site Plans, and other record documents for other potential building setbacks that may apply.

- (iii) No Lot will be used for a commercial enterprise, including, but not limited to, store, boarding house, lodging house, sanitarium, dog kennels, dog breeding, business, office (except for home based businesses that do not generate excessive noise or traffic) and the like.
- (iv) The leasing of any home from time to time by the Owner thereof is permitted. However, all persons residing in the Subdivision are made subject to all covenants and restrictions, and to all of the restrictions as may be adopted from time to time by the Association.
- (v) All Owners shall be responsible for the maintenance and safety of their Lot. All landscaping and boulevards shall be maintained, watered, trimmed, mowed, controlled for weeds, and replaced as necessary so as not to detract from the general appearance of the Subdivision and the neighboring properties. The boulevards, rights-of-way, and ditches are to be mowed and maintained by the Lot Owners on their Lot and by the Association in Common Areas. Boulevards, rights-of-ways and ditches may not be blocked or filled. Should the Owner be a part-time resident, maintenance contracts shall be entered into with local landscape and maintenance companies.
- (vi) All rubbish, trash, and garbage shall be regularly removed from the Property and shall not be allowed to accumulate thereon. Trash, garbage, and other waste shall not be kept except in sanitary containers. All equipment, garbage cans, wood piles, compost piles, or storage piles shall be screened or concealed from view of other dwellings and commons areas. All garbage shall be stored in animal proof containers or otherwise made unavailable to animals and stored in such a way as

not to be visible from the roadway or the neighbors, except that receptacles may be placed near the roadway on trash collection day. Receptacles must be removed from sight within twenty-four (24) hours of trash collection.

- (vii) If grounds are not maintained, the Owner will be notified to rectify the situation. If maintenance is ignored, arrangements will be made to have the necessary work done and the Owner will be billed the amount paid on the Owner's behalf by the Association in addition to an administrative fee of up to \$1,000.00, as adjusted from time to time by the Board. Non-payment by the Owner will result in a property lien or liens for the amount paid on the Owners' behalf by the Association.
- (viii) Each Lot Owner is required to install and maintain an entry of address plaque on a suitable post, in a manner and style determined by the DRC when the residence is constructed. The identification sign shall be of a standard size, material, and color established by the DRC. Numbers shall be at least three (3) inches high and one-half (1/2) inches wide in stroke. The identification sign shall be clearly visible to emergency vehicles from the adjacent street at all times.
- (ix) Each Owner shall keep their Lot, structures, improvements, landscaping, walkways and driveways in a clean, sanitary, attractive, and marketable condition at all times. No Owner shall permit his or her Lot or structures fall into disrepair. Owners will perform all painting and make all appropriate repairs and replacements as often as necessary.
- (x) Kennels must be placed in an area which is inconspicuous and removed from direct view of neighbors and Subdivision Roads. All kennels must obtain the DRC's approval for size, materials, and location. Chain link material is prohibited and kennel size shall not exceed 100 sq. ft. A dog run shall be permitted provided that the size, construction and location shall have been approved by the DRC. An appropriate fine shall be assessed for any violation as set by the Board, that may be increased from time to time.
- (xi) Installation of not more than two (2) satellite dishes shall be permitted. The dishes shall be standard satellite providers' size, e.g., Dish Network and Direct TV. No large standalone dishes are allowed. Satellite dishes must be installed on the property in a manner least visible from the roadway. No ham radio receiver or transmitter antenna or other similar device shall be installed or attached on the exterior portion of any dwelling, outbuilding, or improvement, or placed on any Lot within the Property.
- (xii) Recreational and play equipment, including, but not limited to, swing-sets, playhouses, tee-pees, trampolines, sports nets, etc. shall be limited to backyard areas, shall be inconspicuous and screened from neighboring and street views and shall be limited in use so as not to be offensive to neighboring Lots or Common Areas.
- (xiii) All holiday-type decorations, including, but not limited to, lights, decorations, and ornaments for structures, lawns, trees, or windows shall not be put up, installed or lighted more than forty (40) days prior to the designated calendar date for the applicable holiday and must be taken down and removed within thirty (30) days after the designated calendar date for the applicable holiday.
- (xiv) Any Supplemental Covenants or additional covenants imposed on the property within any area may impose stricter standards than those contained in this Article and the Association shall have standing and the power to enforce such standards.

ARTICLE XIV
Restricted Activities

The following activities are prohibited within the Property, unless expressly authorized by, and then subject to such conditions as may be imposed by the Board:

- A. No commercial vehicles with a load capacity greater than one (1) ton or construction vehicles, including, but not limited to, back hoes, front loaders, dump trucks, etc., shall be stored or parked on an Lot or in any Common Area unless it is for the express purpose of construction on that same Lot. This restriction will not, however, be deemed to prohibit commercial and construction vehicles, in the ordinary course of business, from making deliveries or otherwise providing services to any portion of the Property.
- B. Campers, RVs, boats, snowmobiles and similar vehicles are to be stored in an enclosed garage or off-site. For the purpose of loading, unloading, etc., recreational vehicles will be allowed to remain on the property for short periods of time. Recreational vehicles may be left on a Lot for no longer than three (3) consecutive days and no more than nine (9) total days in one month. In no case are recreational vehicles allowed to be stored or parked on any Lot or any Common Area at any time. Scrap or junk vehicles, or any parts thereof, will not be placed or stored on said property or on any Lot. Owners shall not park more than two (2) automobiles in their driveway or parking space. All automobiles must be licensed and operable.
- C. No snowmobile, motorcycle, all-terrain vehicle, or similar device shall be operated on any Lot or Common Area within the Subdivision for recreational purposes. Motorized vehicles and equipment are allowed in the Common Areas exclusively for snow removal and landscape maintenance under the direction of the Association. Street legal motorcycles are allowed on Subdivision Roads.
- D. The Association shall have the authority to promulgate safety rules and regulations regulating or restricting the types of vehicles which may be operated on Subdivision Roads within the property, including, but not limited to, golf carts, motorcycles, motorbikes and bicycles.
- E. No Owner, guest, or invitee may use or occupy any Common Areas, Lot, or any other part of the property in such a manner as to disturb or interfere with the peaceful use, occupancy, or enjoyment of any other Owners, guest, or invitee.
- F. Hunting, capturing, trapping or killing of wildlife within the Property is prohibited, except in circumstances posing an imminent threat to the safety of persons using the Property. Skunks, gophers, and rodents may be trapped without the use of poison. Feeding and other interaction with wildlife is prohibited except for the use of birdfeeders.
- G. No livestock, poultry, other animals except dogs, cats, or small in-house pets are permitted on the Property. Each Lot shall be restricted to no more than three commonly recognized domesticated pets; provided, however, that those such pets are not kept, bred, or maintained for any commercial purpose. Pets shall not be allowed to become a nuisance or annoyance to neighboring property Owners. Dogs shall not be permitted to bark continuously or create an audible disturbance or nuisance to other persons residing in the area. Repeated continuous barking (more than 30 seconds) will not be tolerated. All dogs, cats, and other pets shall be strictly controlled by their Owners so as not to annoy or interfere with the use of the properties by the other Owners and to prevent any interference or harassment of wild birds or animals in the Subdivision or on surrounding adjacent properties. Dogs and cats

shall be kept on Owner's property, shall not be allowed to roam free, or roam on another Owner's property. While on Common Areas dogs must be at all times under the Owner's command. In Common Areas, boulevards, parks, open spaces, and trails pet Owners are required to immediately clean up after their pets.

- H. Noxious odors or offensive activity shall not take place or be carried on within the Property, Common Areas, or any Lot, nor will anything be done or placed within any Lot or the Common Area that may become a nuisance, or cause an unreasonable embarrassment, disturbance, or annoyance to the other Owners in the enjoyment of the Property. Without limiting the foregoing, no Owners will permit noise, including, but not limited to, barking dogs or excessive volume of stereo amplifiers to emanate from the Owners' Lot, which would unreasonably disturb another Owner's quiet enjoyment of their Lot or of the Common Area. Quiet hours observed shall be 10:00 p.m. to 8:00 a.m.
- I. Unsightliness on any Lot or the Property is prohibited. Unsightliness shall include, without limitation (1) the open storage of any building materials, except during construction of any structure, (2) accumulation of lawn or tree clippings or trimmings, (3) accumulation of construction debris or waste or household refuse or garbage, (4) accumulation of animal waste, (5) storage or accumulation of any other material or equipment on the Lot in a manner that is visible to the public view.
- M. Signs, billboards, posters, or advertising displays or devices of any kind or character shall not be displayed except Subdivision promotional signs and except as allowed herein below. All signs, posters, displays and advertisements are prohibited unless approved by the DRC prior to installation and use. Signs allowed by these requirements include:
- (i) Residence identification signs described in Article 13.6(viii) of these Covenants.
 - (ii) Construction signs which shall be placed on a Lot only during the construction period. The sign shall not be larger than four (4) square feet in size and be of a color that is harmonious with the structure being built and the surrounding areas. The sign must be removed within ten (10) days from issuance of a certificate of occupancy or no longer than one (1) year, whichever occurs first.
 - (iii) Temporary signs, such as real estate signs, are allowed but must not exceed eighteen (18) inches by twenty-four (24) inches. No real estate directional signs are allowed on road intersections/corner Lots. Such signs must be removed within ten (10) days after the sale of the property. No political campaign signs are permitted; notwithstanding the foregoing DRC shall have final approval or disapproval of any sign controversies.
 - (iv) Entryway signs into the Subdivision installed by the developer are intended to be permanent and will be maintained by the Association.
- N. Clothes lines and the like may not be constructed or installed on any Lot.
- O. Any activity which materially disturbs or destroys the vegetation, wildlife, or air quality within the Property or which uses excessive amounts of water or which result in unreasonable levels of sound or light pollution, specifically, without limitation, dawn to dusk arc lights are prohibited.
- P. Firearms shall not be discharged on any Lot, open space or trail, nor is shooting archery equipment allowed.

- Q. No open burning of any kind is allowed. No fireworks of any kind may be brought into, discharged or used on the Property or any Lot.
- R. Obstruction or re-channeling of drainage flows after location and installation of drainage swales, storm sewers, or storm drains is prohibited, except that the Declarant and the Association shall have such right; provided, the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use of any Lot without the Owners' consent.
- S. Conversion of any carport, garage, attic or other unfinished space, other than a basement, to finished space for use as an apartment or other integral part of the living area on any Lot without prior written approval by the DRC is prohibited, nor shall any temporary structure or tent be used as a residence or outbuilding on any Lot.
- T. Notwithstanding anything contained in these Covenants to the contrary, except with respect to any activity or business conducted by the Declarant or its successors, assigns, lessees or designees, the Board may prohibit any activity, business or otherwise, which, in the sole discretion of the Board, constitutes a nuisance, or a hazardous or offensive use, or threatens the security, safety, or quiet enjoyment of other residents of the Property. Any violation of Gallatin County ordinances or other regulations shall be a violation of these covenants and can be enforced by the Association.

ARTICLE XV Status of Documents

Except as set forth herein, all property covered by these Covenants is subject to construction regulation, design review and construction supervision, construction checklists, and such other design and building requirements as are from time to time adopted or amended by the DRC. All such documents and requirements are binding upon the parties subject to these Covenants.

ARTICLE XVI Easements

- 16.1 *Easements for Utilities, etc.* There are hereby reserved unto the Declarant, as long as the Declarant owns any of the Property or has any right to annex additional property into these Covenants, the Association, and the designees of each (which may include, without limitation, Gallatin County, Montana and any utility) access and maintenance easements upon, across, over, and under all of the Property to the extent reasonably necessary for the purpose of replacing, repairing, and maintaining cable television systems, television antenna systems, security and similar systems, roads, walkways, bicycle pathways, ponds, wetlands, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewers, meter boxes, telephone, gas, and electricity, and for the purpose of installing any of the foregoing on property which it owns or within easements designated for such purposes on recorded plats of the Property. The Declarant further hereby reserves for itself and its duly authorized agents, representatives, designees, successors and assigns, a perpetual nonexclusive easement for utilization, tapping into, tying into, extending and enlarging all utilities within the Property, and a perpetual nonexclusive easement hereunder over the Subdivision Roads for the purposes of ingress and egress to and from any improvements constructed or to be constructed by Declarant within the Property. The Declarant further hereby reserves an easement in favor of itself, the Association, and the designees of each upon, across, over, and under all of the property for the creation, use, maintenance of trail systems, including, without limitation, pedestrian, bicycle, and for the creation, use, and maintenance of wildlife resistant landscaping treatments and features. The Declarant further hereby reserves the right to request, and the Board shall grant and

convey upon such request, any third party easements or rights of way in, on, over, or under any open space without payment to the Association. The foregoing easements may traverse the private property of any Owner; provide, however, an easement shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under or through any existing dwelling on a Lot, and any damage to a Lot resulting from the exercise of an easement shall promptly be repaired by, and at the expense of, the person exercising the easement. The exercise of an easement shall not unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

- 16.2 *Utility Easements.* The Declarant specifically reserves the right to convey to the local water supplier, electric company, natural gas supplier, and cable television or communications systems supplier easements across the Property for ingress, egress, installation, reading, replacing, repairing, and maintaining utility meters and boxes. However, the exercise of this easement shall not extend to permitting entry into the dwelling on any Lot, nor shall any utilities be installed or relocated on the property, except as approved by the Board or the Declarant.
- 16.3 *Specific Easement.* Should any entity furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Declarant and the Board shall have the right to grant such easement over the Property without conflicting with the terms hereof. The easements provided for in this Article shall in no way adversely affect any other recorded easement on the Property.
- 16.4 *Easements to Serve Additional Property.* The Declarant hereby reserves for itself and its duly authorized agents, representatives, and employees, designees, successors, assigns, licensees, and Mortgagees, an easement over the Subdivision Roads and Common Area for the purposes of enjoyment, use, access, maintenance and development of any property which the Declarant may acquire an interest in that is adjacent to any of the Property. The Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of vehicular traffic connected with development or maintenance of such property. The Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof is not made subject to these Covenants, 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 property.
- 16.5 *Easements on Common Area.* The Common Areas are subject to any and all of the following exceptions, liens, encumbrances and easements:
- (i) Such easements and rights-of-way on, over, or under all or any part thereof as may be reserved to Declarant or granted to any Owner or participating facility for the use thereof in accordance with the provisions of these Covenants and any Supplemental Covenants.
 - (ii) Easements and rights-of-way on, or under all or any part thereof as are hereby reserved to Declarants or which may be granted by Declarant to or for the benefit of the United States of America, the State of Montana, the County of Gallatin, any other political Subdivision or public organization, or any utility corporation, any participating facility, any project, or any Lot, for the purpose of constructing, erecting, operating, and maintaining utilities thereon, therein and thereunder, at the time or at any time in the future.
 - (iii) Roads, streets, walks, driveways, bicycle paths, parkways and park areas.

- (iv) Public and private sewers, storm water drains, land drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, and any and all equipment in connection therewith.
- (v) Obligations imposed directly or indirectly by virtue of any statute, law, ordinance, resolution, or regulation of the United States of America, the State of Montana, or any other political Subdivision or public organization having jurisdiction over such property, or by virtue of any organization or body politic created pursuant to any such statute, law, ordinance or regulation.
- (vi) Any other lien, encumbrance, or defect of title of any kind whatsoever which does not materially and actually prejudice the Owners and guests in their use and enjoyment of such property.

16.6 *Easement for Future Wastewater Mixing Zones and/or Wastewater Buffer Zones.* Declarant hereby reserves for the benefit of itself and any future phase of development occurring within the vicinity of the Subdivision an easement for wastewater mixing and buffer zones. The entirety of all Lots, with the exception of a 100-foot radius well protection zone surrounding individual water supply wells, as approved by the Montana Dept. of Environmental Quality for the Subdivision, shall be encompassed by such easement. Lot Owners are hereby notified that wastewater mixing zones and/or wastewater buffer zones (individual, shared, multi-user, public, community, etc.) may cross all or any portion of any Lot, parks, open space or roads within the Subdivision.

ARTICLE XVII Mortgagee Provisions

An institutional holder, insurer, or guarantor of a first Mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

- A. Any condemnation loss or any casualty loss which affects a material portion of the Common Area or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder.
- B. Any delinquency in the payment of assessments or charges owed by a Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Covenants or Bylaws relating to such Lot or the Owner or occupant which is not cured within sixty (60) days. Notwithstanding this provision, any Eligible Holder is entitled to written notice upon request from the Association of any default in the performance by an Owner of a Lot of any obligation under the Covenants or Bylaws which is not cured within sixty (60) days.
- C. Any lapse, or cancellation without renewal or replacement, or material adverse modification of any insurance policy maintained by the Association.
- D. Any proposed action which would require the consent of a specified percentage of Eligible Holders.

ARTICLE XVIII
Declarant's Rights

Any or all of the special rights and obligations of the Declarant set forth in these Covenants or by the Bylaws may be transferred to other persons, 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 records of Gallatin County Clerk and Recorder's office in Gallatin County, Bozeman, Montana.

So long as construction and initial sales of Lots by the Declarant or Builders shall continue, the Declarant and Builders may maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the construction or sale of such Lots, including, but not limited to, business offices, signs, model units, and sales offices. The Declarant and Builders shall have easements for access to and use of such facilities.

No person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Property without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the records of Gallatin County Clerk and Recorder's office in Gallatin County, Bozeman, Montana.

This Article may not be amended without the written consent of the Declarant. The rights contained in this Article shall terminate upon recording by Declarant of a written statement in the records of Gallatin County Clerk and Recorder's office in Gallatin County, Bozeman, Montana that all sales activity has ceased.

ARTICLE XIX
General Provisions

19.1 *Term.* These Covenants shall run with and bind the Property in perpetuity, and shall inure to the benefit of and shall be enforceable by the Association, its legal representatives, successors and assigns, unless and until an instrument in writing, signed by two-thirds of the then Owners, is recorded in the records of Gallatin County Clerk and Recorder's office in Gallatin County, Bozeman, Montana.

19.2 *Amendment.*

By Declarant.

Declarant may unilaterally amend these Covenants for any purpose, provided the amendment has no material adverse effect on the right of any Owner. Notwithstanding the above, so long as the Declarant owns at least 10% of the Property or has any right to annex additional property into these Covenants, the Declarant may unilaterally amend these Covenants if such amendment is (i) necessary to bring any provision in compliance with any applicable governmental statutes, rule, regulation, or judicial determination, (ii) necessary to enable any reputable title insurance company to use title insurance coverage on the Lots, (iii) required by an institutional or governmental lender or purchaser of Mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on 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 in accordance with its Subdivision plan. However, any such amendment shall not adversely affect the title to any Lot unless the Owner of such Lot shall consent thereto in writing.

By Owners.

Thereafter and otherwise, these Covenants may be amended only by the affirmative vote or written consent, or any combination thereof of seventy percent (70%) of the total Class "A" votes present at a meeting duly held pursuant to the Bylaws, and the consent of the Declarant, as long as the Declarant owns at least 10% of the Property or has any right to annex additional property into these Covenants.

Restriction on Amendment.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. To be effective, any amendment must be recorded in the records of Gallatin County Clerk and Recorder's office in Gallatin County, Bozeman, Montana. If an Owner consents to any amendment to these Covenants or the Bylaws, it will be conclusively presumed that such Owner has the authority so to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment. No amendment may remove, revoke, or modify any right or privilege of the Declarant, or increase the Declarants' obligations, without the written consent of the Declarant or the assignee of such right or privilege.

Without the written consent of the Gallatin County Commissioners or the Montana Department of Environmental Quality ("MDEQ"), no such amendment may remove, revoke, or modify any Article, Clause or Statement in these Covenants that were required as a condition of Subdivision approval by Gallatin County or MDEQ.

- 19.3 *Severability.* Invalidation of any provision of these Covenants, in whole or in part, or any application of a provision of these Covenants by judgment or court order shall in no way affect other provisions or applications.
- 19.4 *Perpetuities.* If any of the covenants, conditions, restrictions, or other provisions of these Covenants shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.
- 19.5 *Compliance.* Every Owner and occupant of any Lot shall comply with these Covenants, the Bylaws, and the rules of the Association adopted from time to time. Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, by the Association or, in a proper case, by and aggrieved Owner(s).

IN WITNESS WHEREOF, Declarant has executed this Declaration of Protective Covenants, Conditions and Restrictions for the Riverwood Subdivisions as of the date first above written.

DECLARANT:

**True North Partners, LLC,
a Montana limited liability company**

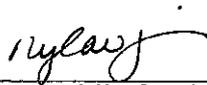


Tracy Poole, Member

STATE OF MONTANA)
 :SS.
COUNTY OF GALLATIN)

This instrument was acknowledged before me on this 2nd day of June, 2020, by **Tracy Poole**, in his capacity as Member of True North Partners, LLC, a Montana limited liability company, Declarant.

(SEAL)



Notary Public for the State of Montana

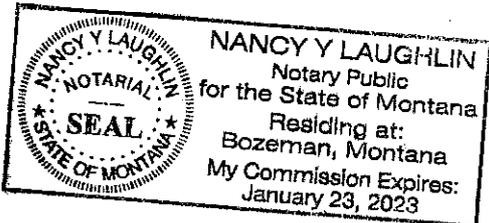


EXHIBIT A
Property Description

Lots 1-12, Lot A, Lot B, Park Space 1 and Park Space 2 of the Final Plat of Riverwood West Subdivision, a tract of land being Lot 5 of Minor Subdivision No. 502, located in a portion of the Northeast One-Quarter of Section 19, Township 1 South, Range 5 East, Principal Meridian Montana, Gallatin County, Montana

Plat Reference: J-671