

RETURN AFTER RECORDING:  
Home 40, LLC  
1668 Buckrake Avenue  
Bozeman, MT 59718

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Charlotte Mills - Gallatin County, MT MISC

**DECLARATION OF PROTECTIVE COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR HOME 40 SUBDIVISION**

**THIS DECLARATION** is made this 28<sup>th</sup> day of ~~September~~ 2018, by Home 40, LLC, a Montana limited liability company, hereinafter referred to as "Declarant".

**WHEREAS**, Declarant is the owner of real property situated in Gallatin County, Montana, more particularly described on Exhibit "A" attached hereto and incorporated herein ("Property");

**WHEREAS**, Declarant intends to develop, sell and convey the above-described real property, hereinafter referred to as the "Home 40";

**WHEREAS**, Declarant desires to subject all of said real property, together with the Lots contained therein to the covenants, conditions, restrictions and reservations herein set forth and referred to as "Covenants";

**NOW THEREFORE**, Declarant does hereby establish, dedicate, declare, publish and impose upon the Property the following Protective Covenants, Conditions and Restrictions which shall run with the land, and shall be binding upon and be for the benefit of all persons claiming such Property, their grantors, legal representatives, heirs, successors and assigns, and shall be for the purpose of maintaining a uniform and stable value, character, architectural design use, and development of the Property. Such Covenants shall apply to the entire Property, including but not limited to all Lots, Open Space and improvements placed or erected thereon, unless otherwise specifically excepted herein. The Covenants shall inure to and pass with each and every parcel, tract, Lot or division.

Said Covenants shall be as follows:

**ARTICLE I – HOME 40**

It is the Declarant's intent that the Home 40 Community enhance, preserve and protect the environment and natural beauty of the Property upon which it is located. The Declarant, the

Association and the Owners shall be environmentally conscience with respect to the development of the Lots, such that the Improvements to be built within the Home 40 community are designed to preserve the scenic beauty of Home 40 while incorporating environmentally sustainable building and design practices that emphasize water conservation and energy efficiency while minimizing the impact on the natural habitat as well as the quality of the ground and surface waters.

All proposed water features to be situated on the Property shall only be provided if the Declarant successfully obtains all necessary governmental approvals and permits.

## **ARTICLE II- DEFINITIONS**

Section 1. "Articles of Incorporation" shall mean the Articles of Incorporation for the Home 40 Owners' Association, Inc., a Montana non-profit corporation, filed with the Montana Secretary of State.

Section 2. "Architectural Guidelines" shall mean those architectural guidelines contained in Article VII of these Covenants

Section 3. "Association" or "Homeowners' Association" shall mean the Home 40 Owners' Association, Inc., its successors and assigns. The Association shall be incorporated as a Montana nonprofit corporation, with its Members as the Lot Owners.

Section 4. "Bylaws" shall mean the Bylaws for Home 40 Owners' Association, Inc.

Section 5. "Community Center" shall mean the building provided for use by the Lot Owners and the Association, subject to rules and regulations adopted by the Board of Directors.

Section 6. "Contract Purchaser" shall mean a person buying a Lot pursuant to a contract for deed, trust indenture or mortgage.

Section 7. "Covenants" shall mean this Declaration of Protective Covenants, Conditions and Restrictions for the Home 40 Subdivision, and as it may, from time to time, be amended or supplemented.

Section 8. "Declarant" shall mean Home 40, LLC, a Montana limited liability company, and its successors and assigns, located at 1668 Buckrake Avenue, Bozeman, MT 59718.

Section 9. "Declaration" shall mean this Declaration of Protective Covenants, Conditions and Restrictions for Home 40 Subdivision, and as it may, from time to time, be amended or supplemented.

Section 10. "Directors" or "Board of Directors" shall mean the Board of Directors of the Association.

Section 11. "Domestic Irrigation and Water Restrictions" shall mean those domestic irrigation

and water restrictions specified in Exhibit B, attached hereto and incorporated by reference herein.

Section 12. “Fire Department” or “FPAHJ” shall mean the Hyalite Rural Fire Department.

Section 13. “Gallatin County Regulations” shall mean any and all rules and regulations adopted by Gallatin County that governs the Property and the Lots, including, but not limited to land use regulations, Subdivision Regulations and Zoning Regulations.

Section 14. “Home 40 Architectural Committee” shall mean the Committee appointed by the Board of Directors of the Home 40 Owners’ Association, whose function is to review and approve or disapprove plans, specifications, designs, landscaping, sites, and locations of improvements to be constructed within Home 40.

Section 15. “Improvement(s)” or “Structure(s)” shall include, but is not limited to, all buildings, single family residences, residences, outbuildings, stairs, decks, bridges, roads, trails, pathways, driveways, parking areas, fences, screening walls and barriers, hedges, windbreaks, plantings, trees, shrubs, retaining walls, yard and lawn ornaments of artwork, tree houses, solar panels, water lines, sewer lines, electrical, gas, telephone and internet transmission lines, cable television, television and radio transmission facilities, dishes, towers, poles, signs, and all other buildings, installations and landscaping of every type and kind, whether above or below the land or Lot surface. Any of the above definitions may also appear individually in this Declaration, but shall be considered an Improvement or Structure for purposes of this Declaration.

Section 16. “Lot(s)” or “Property(ies)” shall mean and refer to all real property herein described and platted into Lots as Home 40 according to the official plat, and any amendments thereto, thereof on file and of record in the office of the County Clerk and Recorder, Gallatin County, Montana. Lots shall mean any real property platted into Lots in any future phases of Home 40.

Section 17. “Lot Owner(s)” or “Owner(s)” shall mean and refer to any person or entity, whether one or more persons or entities, owning a fee simple title to or interest in a Lot or a Contract Purchaser, whether one or more persons or entities, owning or purchasing a Lot, but excluding those having a mortgage or an interest merely as security for the performance of an obligation; provided, however, that prior to the first conveyance of a Lot for value, the terms “Lot Owner” or “Owner” shall mean the “Declarant” or its successors or assigns. The term “Contract Purchaser” shall mean a person buying a Lot pursuant to a Contract for Deed. The term “person” shall include any person, persons or entities.

Section 18. “Member” shall mean any Lot Owner or Owner.

Section 19. “Open Space” means those areas set aside for the use of the Lot Owners and any other allowed persons, and shall include roads, trails, proposed ponds, proposed waterways, common areas, easements, parks, parkland, water conveyance facilities/irrigation ditches, mail boxes, benches and playground equipment.

Section 20. "Open Space Management and Vegetation Plan" shall mean the management plan for the Open Space described as parcels O.S.1, O.S.2, O.S.3, O.S.4 and O.S.5. The Open Space Management and Vegetation Plan may be obtained by providing a written request to the Association.

Section 21. "Subdivision" shall mean the Home 40 Subdivision.

Section 22. "Zoning District" shall mean the Hyalite Zoning District.

Section 23. "Zoning Regulations" shall mean and refer to the Zoning Regulations of the Hyalite Zoning District and any and all amendments thereto.

Section 24. Other definitions may be found throughout these Covenants and those definitions are binding upon all Owners. Any term not specifically defined shall be deemed to have a common and ordinary meaning.

### **ARTICLE III – HOME 40 OWNERS' ASSOCIATION**

Section 1. Association.

An association is hereby established known as "Home 40 Owners' Association," (hereinafter referred to as the "Association"), for the purpose of enforcing these Covenants and operating the Association for the benefit of all Members therein. The initial address of the Association shall be 1668 Buckrake Avenue, Bozeman, MT 59718. The address of the Association may be changed by the Board of Directors upon notice to the Members.

Section 2. Members.

Every Owner, Lot Owner or Contract Purchaser of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separate from the ownership of any Lot. Each Owner shall be responsible for advising the Association of their acquisition of ownership, of their mailing address, and of any changes of ownership or mailing address. Each Member, Owner, Lot Owner or Contract Purchaser agrees to abide by and be bound by these Covenants, the Articles of Incorporation and Bylaws for the Association, and any resolutions adopted by the Board or the Association.

For the purpose of determining membership, at any meeting a person or entity shall be deemed to be a Member upon the recording of a duly executed deed to that Owner, or upon the recording of a Notice of Purchaser's Interest or an Abstract of Contract for Deed showing a contract purchase by an Owner. The legal title retained by the original seller selling under a contract for deed shall not qualify the original seller for membership.

Foreclosure of a mortgage, trust indenture or the termination or foreclosure of a contract for deed wherein title is vested in the mortgage, beneficiary or original seller on a contract, or repossession for any reason of a Lot sold under a contract shall terminate the vendee's membership, whereupon all rights to such membership shall vest in the legal owner.

Section 3. Vote.

A Member shall be entitled to one vote for each Lot owned. Multiple owners of a single Lot shall have one such membership or voting interest between them. If more than one Lot is owned, the Owner or Owners thereof shall have one membership or voting interest for each separate Lot owned.

Section 4. Annual Meeting and Special Meetings of the Association.

The annual meeting of the Association shall be set at a time and place determined and noticed by the Board of Directors. 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 25% of the Owners. Special meetings shall require not less than 10 days written notice of the meeting date, time and location, and a description of the matter to be called before the Association. Notice of annual and special meetings shall be mailed to Owners at the address for each Owner. The presence of Members, in person or by written proxy, representing 55% of the total votes of the membership shall constitute a quorum.

At the annual meeting, the Members shall review and approve a budget for the next year, shall elect Board of Directors to fill any expired term or vacant position, and shall conduct such other business as shall be reasonable or necessary to carry out the purpose of the Association.

Section 5. Board of Directors.

The Members shall have the authority to set the number of Board of Directors, which number shall not be less than three nor more than seven. However, until at least 85% of all Lots existing or to be platted in future phases of Home 40 have been sold, there shall be three Directors, and Declarant shall have the right to appoint the Board of Directors, who shall not be required to be Lot Owners or Members of the Association. Upon the sale of 85% of the Lots, the Board of Directors shall call a meeting within 30 days of such occurrence to transition and turn over the Board of Directors and Association to the Members.

The Board of Directors shall serve for a term to be set by a simple majority of the membership, which shall not be for less than one year. Each Director shall serve until replaced by his or her successor. Any vacancy on the Board of Directors occurring before the next annual meeting of the Members shall be filled by the remaining Directors.

All Director meetings shall require the presence of Directors entitled to cast a minimum of 55% of all votes of the Directors. The presence of Directors entitled to cast 55% of all votes of the Directors shall constitute a quorum. The Directors shall act by majority vote.

Section 6. Board of Director's Duties and Responsibilities.

The Board of Directors shall have the power and responsibility of acting on behalf of the

Association and its Members as shall be reasonably necessary to carry out the purposes of the Association, including but not limited to take such actions as shall be necessary or reasonable to care for, protect and maintain the easements, proposed ponds, proposed waterways, Open Space, Community Center, trails, boundary fence, if any, common areas, community signs or identification; to establish irrigation schedules for all Lots, specifying days and times during which specific Lots may irrigate; to adopt rules and regulations for the use of the proposed ponds, proposed waterways, Open Space, Community Center, trails, boundary fence, if any, common areas, to enforce these Covenants; to set and collect assessments; to set annual and/or special meetings; and to act in any other matters set forth herein or which may serve the Subdivision, including the formation of special improvement districts, either public or private, for such improvements as the Association shall approve. Neither the Board nor any Director, officer or Committee member acting in good faith shall be liable to any Owner or Member of the Association as a result of any decision or determination made by the Board, a Director, officer or Committee Member.

The Board of Directors shall have the authority to hire additional professional officers, management personnel or companies, consultants, accounting services, legal services or any other personnel which they deem necessary for the smooth, efficient, and professional functioning of the Association. They may include, but not be limited to, a manager, Secretary, Treasurer, professional consultants, accountants, attorneys and maintenance personnel. The Board of Directors shall also have the authority to make contractual arrangements with outside entities, including but not limited to attorneys, accountants, engineers, environmental consultants, maintenance contractors, and building contractors to provide for the smooth, efficient, and professional functioning of the Association.

Section 7. Annual Meeting of the Board of Directors.

The annual meeting of the Board of Directors shall be held immediately after the annual meeting of the Members. At the annual meeting, the Board of Directors shall elect officers of the Association, including a President, Vice-President and Secretary-Treasurer (the Secretary/Treasurer position may be divided into two separate positions), from among the Board of Directors, except that the Secretary-Treasurer may be a Member(s) who is not on the Board of Directors. The Officers of the Association shall follow the directions of the majority vote of the Board of Directors.

Section 8. Officers.

The duties of each of the offices shall be as follows:

a. President. The President shall preside over all meetings of the Association. The President shall call the membership together whenever necessary. The President shall be the general administrative and executive officer of the Association, and shall perform such duties as may be specified, and exercise such powers as may be delegated to the office of President by the Board of Directors.

b. Vice-President. The Vice-President shall exercise the powers of the President

in the absence of the President.

c. Secretary-Treasurer. The Secretary shall give notice of all meetings of the Association, and shall keep a record of the proceedings of the meetings of the Association. The Secretary shall be authorized to sign on behalf of the Association, all records, documents and instruments when such are authorized to be signed by the Association.

The Treasurer shall keep and maintain adequate and correct accounts of the accounts, properties, and business of the Association, including accounts of its assets, liabilities, receipts, disbursements, gains and losses of the Association. The Treasurer shall prepare and report such periodic accountings as shall be required by the Association.

Section 9. Vacancy

A vacancy in any office of the Association shall be filled by appointment by the Board of Directors until the next annual meeting or the successor is duly appointed or elected.

**ARTICLE IV - ANNUAL AND SPECIAL ASSESSMENTS**

Section 1. Assessments.

Each Owner, whether or not it shall be so expressed in any deed or contract, is deemed to have agreed to these Covenants, and to pay to the Association:

- a. Annual assessments or changes; and,
- b. Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the property and Lot, and shall be a continuing lien upon the property or Lot against which each such assessment is made. Each assessment, together with the interest, costs and reasonable attorney's fees, shall be the personal obligation of the Owner of such Property or Lot at the time when the assessments are due.

Section 2. Purpose of Assessments.

The assessments levied by the Association shall be used to promote the recreation, health, safety, convenience and welfare of the Owners, for the improvement, repair, replacement and maintenance of roadways, easements, trails, Open Space, proposed ponds, proposed waterways, common areas, the Community Center, mail boxes, community signs or identification, benches, playground, central fire suppression system, water conveyance facilities/irrigation ditches, and any landscaping located in the Subdivision that is the responsibility of the Association, insurance, general maintenance, creation of reserves, management and administration of trails, Open Space, proposed ponds, proposed waterways, the Community Center, the benches, the taxes or fees for Open Space, trails, proposed ponds, proposed waterways or the Community

Center, and weed control in the Open Space, trails or common areas, and Community Center sewer system and for any other purposes, expressed or implied, in these Covenants. It is the intent of the Declarant that the completion of any road replacement and maintenance required for the Property take place through the creation of a Rural Improvement District ("RID") and that the cost thereof be assessed to the Lot Owners by the RID. The Community Center will be connected to the public water system, and will have its own septic system and storm water retention pond. The central fire suppression system shall include a connection to the domestic water supply system, one 30,000 gallon storage tank, a pump station, a draft hydrant and a pressurized hydrant.

Section 3. Amount and Approval of Assessments.

The maximum assessment per Lot which may be made by the Association in every calendar year shall not substantially exceed the projected and budgeted actual and reasonable costs to be incurred by the Association during the coming year in carrying out the purposes herein set forth, and may include a reasonable reserve for contingencies. The amount of the annual assessments shall be fixed by the Board of Directors of the Association in the following manner:

At each annual meeting of the Members of the Association, the Board of Directors shall present a proposed budget of the estimated expenses for the Association for the coming year to the Members for review, discussion, amendment, comment and approval. The Members shall approve or amend the proposed budget by a majority vote of the Members present or voting by proxy. After the annual meeting, the Board of Directors shall set the amount of the assessments and the date(s) due for the coming year to cover the budget approved in the manner herein set forth.

Section 4. Special Assessments for Capital Improvements.

In addition to the annual assessments authorized above, the Association may levy special assessments for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, or other capital improvements on the properties, Open Space, proposed ponds, proposed waterways and Community Center, including fixtures and personal property related thereto, provided that any such assessment shall have the approval of two-thirds (2/3) or more of all of the votes of the Members who are present, in person or by proxy, at a meeting duly called for that purpose. Special assessments may be levied to be paid over one or more years. Assessments for normal maintenance and repairs shall not require two-thirds (2/3) vote.

Section 5. Uniform Rate of Assessment.

Annual assessments shall be fixed by the Board of Directors at a uniform rate for each Lot, except the Board of Directors may fix a different uniform rate for improved and unimproved Lots. The assessments may be collected on a monthly, quarterly or annual basis, or any other regular basis as shall be determined by the Board of Directors of the Association. Special assessments shall be fixed at the same rate for each Lot affected by the special assessments.

Section 6. Date of Commencement of Annual Assessments; Due Dates.

Except as herein provided, the annual and special assessments provided for herein shall be due on the date determined by the Board of Directors. The Board of Directors shall fix the amount of the annual assessments against each Lot at least thirty days in advance of the due date of each annual assessment, and at least ninety days in advance of a special assessment. Written notice of the annual and special assessments shall be mailed or personally delivered to every member subject thereto, at their last known mailing address.

Section 7. Effect of Nonpayment of Assessments; Remedies of the Association.

Any assessment not paid within thirty days after the due date shall bear interest from the due date at the rate of ten percent (10%) per annum. The Association may bring an action at law against the Owners obligated to pay the same or foreclosure the lien against the property or Lot, restrict the Owner's right to vote and/or utilize the Open Space, Community Center or trails. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Open Space or by abandonment of their Lot.

Upon delivery of the notice of assessment to the Owner, the assessment shall be a lien upon the Owner's Lot until paid. The Association may record a notice of the lien with the Clerk and Recorder of Gallatin County, Montana. In the event of non-payment within thirty days after the recording of the notice of lien, the Association may foreclose the lien in the manner set forth under Montana law for the foreclosure of liens against real property. The Association is entitled to collect during an action for delinquent assessments any and all reasonable attorney fees and costs accrued prior to and in association with the collection of delinquent assessments.

Section 8. Sale or Transfer of a Lot.

The sale, transfer or encumbrance of any Lot shall not affect the assessment lien if recorded in the records of Gallatin County, Montana, or the personal liability of the Owner responsible for the assessment. No sale or transfer to a third party with actual or constructive knowledge of an assessment shall relieve such new owner from the liability for and responsibility to pay any outstanding assessments, or from any assessments thereafter becoming due, or from the recorded lien thereof. A person or entity purchasing a Lot shall be responsible for checking with the Association for any outstanding assessments against said Lot before the closing upon the purchase.

Section 9. Declarant's Obligation to Pay Assessments; and Commencement Date for Declarant's Payment of Assessments.

Declarant, or any successor Declarant, shall not be obligated to pay any assessments on Lots owned by Declarant, or any successor Declarant, until such time as, at least, 85% of all Lots existing or to be platted in future phases of the Subdivision have been sold.

## ARTICLE V- OPEN SPACE

### Section 1. Open Space.

The Open Space, including but not limited to, the parklands, trails, proposed ponds, proposed waterways within the Subdivision, as designated on the final plat, and any amended plat, shall be preserved in perpetuity for use by the Association and shall be maintained and owned by the Association. The Association shall be responsible for the maintenance payment of fees, liability insurance and taxes for these areas, and shall have the right and obligation to provide for the protection, management, development, operation, and maintenance of the Open Space, including, but not limited to, the trails, proposed ponds, and proposed waterways.

### Section 2. Assessments for Open Space.

The Board of Directors shall establish assessments for the payment of taxes, insurance, management fees, and maintenance of all Open Space, proposed ponds, proposed waterways and trails under the control and authority of the Association. The assessments levied by the Board of Directors for the maintenance, upkeep, repair, management and operation of the Open Space, proposed ponds, proposed waterways and trails, like all other assessments, become a lien on each Lot within the Subdivision. The Board of Directors, may, in its discretion, adjust the assessments to meet the changing needs of the community and the areas serving the community; however, such annual assessments for Open Space shall not be increased by more than 15% above the prior year's annual assessments.

### Section 3. Open Space Management and Vegetation Plan.

The Subdivision is designed to meet the goals and objectives of, and comply with the Hyalite Zoning District Plan by preserving a substantial amount of Open Space, by maintaining wildlife corridors, by creating ponds and new wildlife habitat, by enhancing existing watercourses and related vegetation, and by providing trail connectivity through the Subdivision and into the adjacent neighborhoods.

The Open Space Management and Vegetation Plan is intended to provide a guideline for the protection, management, development, operation, and maintenance of the Open Space, trails, proposed ponds, and proposed waterways situated within the Subdivision, and a copy may be obtained by providing a written request to the Association.

### Section 4. Purpose of the Open Space Management and Vegetation Plan.

- a. The Subdivision contains approximately 45.53 acres of Open Space, which includes 0.61 acres of parkland, that is dedicated for the use by the Owners. This Open Space provides an important open space amenity to the Owners and the Home 40 community. In order to maintain the health of the Open Space, enhance the Lots within the Subdivision, and ensure fire protection measures are maintained, the Open Space must be properly used and maintained.

- b. The Open Space Management and Vegetation Plan is intended as a guide with respect to the general principles of land management, and shall be for the use of the Association in establishing robust and enriching Open Space that enhances the landscape and provides measures for optimum fire protection for the Open Space and Structures located within the Subdivision.
- c. The requirements necessary to manage the Open Space will continue to evolve over time, such that the Open Space Management and Vegetation Plan does not purport to anticipate all future needs for the Open Space. Instead, it establishes a system for management that permits flexibility and responsiveness to changing conditions and needs, and a means to revise procedures and resolve problems if they arise. The use and management of the Open Space shall comply with the Hyalite Zoning District Plan.

Section 5. Administration and Applicability.

- a. The Open Space Management and Vegetation Plan may be administered and implemented by the Board of Directors through the hiring by the Board of Directors of a manager, if the Board of Directors deems hiring a manager necessary.
- b. All Open Space within the Subdivision shall be operated pursuant to the provisions of this Article V, with the following exceptions:
  - i. Open Space specifically dedicated to fire protection; or
  - ii. Open Space used by any fire or sheriff's department, ambulance or other agencies requiring such use as a result of an emergency.

Section 6. Description of Open Space; and Use of Open Space.

- a. The Open Space shall include parcels O.S.1, O.S.2, O.S.3, O.S.4 and O.S.5 and the parcels specified as parkland, that have been dedicated to the Owners of Lots within Subdivision.
- b. The Open Space is for the intended use of the Owners and their guests. Open Space may contain trails, playgrounds, picnic areas, and similar uses. The use of motorized vehicles for recreational use, construction access, or Lot access shall be prohibited within the Open Space, with the exception of any construction within the parcels specified as parkland which may contain Structures for the benefit of the Home 40 community. Motorized vehicles may be used for maintenance operations such as mowing, weed spraying, trail maintenance, pond or stream access, for emergencies, such as fire protection, or for similar uses.

Section 7. Water Rights.

Water rights within the Hoy ditch that are appurtenant to the Subdivision shall be retained by Home 40, LLC until such time that 85% of the Lots within the Subdivision are purchased by third parties. Once 85% of the Lots within the Subdivision have been purchased by third parties, Home 40, LLC shall transfer, without warranty all of its right, title and interest in and to the water and water supplies reflected by or arising out of Water Right No. 41H 15358-00 and Water Right No. 41H 15849-00.

Section 8. Reporting and Evaluation of the Open Space Management and Vegetation Plan. The Board of Directors, or manager, if any, shall prepare and present a brief annual report to the Association assessing the overall health of the Open Spaces and identifying any problems or issues that require attention. The Board of Directors shall use this report to make needed changes to the management protocols for the Open Space and establish a budget for maintenance of the Open Space.

Section 9. Recreational Amenities.

So long as it is allowed under the Zoning Regulations, the Association may place certain recreational amenities, including, but not limited to, benches in any portion of the Open Space designated for such amenities that may be approved by majority vote of the Members voting at any regular or special meeting called in accordance with the Bylaws and these Covenants. No buildings are allowed to be placed or constructed in the Open Space.

Section 10. Trails.

Trails may be located so as to provide opportunities for proposed waterways and pond viewing and enjoyment. Ancillary facilities such as benches, picnic tables, or overlook locations may be located and constructed along trails. The trail network shall connect to the existing public trail within Hyalite View Estates Subdivision and shall be constructed to Class II Trail Standards and Specification as provided in the Gallatin County Trail Report & Plan.

Section 11. Mechanized Vehicles Prohibited.

No motorcycles, ATV's, snowmobiles, boats or similar means of transportation are permitted in or on the Open Space, proposed ponds, proposed waterways and trails. Motorized vehicles or equipment are allowed in or on the Open Space and trails exclusively for agricultural purposes, snow removal and landscape maintenance.

Section 12. Landscaping of Open Space.

Landscaping and plantings shall feature native species, but may incorporate non-native and ornamental species of trees and shrubs that will minimize maintenance and water consumption, or that will contribute to wildlife depredation problems. Terrain modification may occur where needed to enhance opportunities for human activities, especially in conjunction with the trails, to improve vegetative screening, to enhance watercourse development, and to minimize maintenance. Temporary fencing around shrubs and trees may be utilized to prevent or minimize

destruction by animals or people during the time necessary to ensure the protection and survival of any plantings.

Section 13. Noxious Weeds.

Noxious weeds shall be controlled on all common and Open Space areas. The preferred method is by introduction of desirable plant species that eliminate weed. Interim measures permitted include herbicide applications, mowing and biological control. All herbicide applications shall be conducted according to applicable regulations. Noxious weeds in all Open Space areas shall be controlled and maintained through a Rural Improvement District created for the Subdivision.

Section 14. Wildlife.

No feeding of wildlife other than birds shall be allowed in or on trails or Open Space. The killing, hunting or taking of any wildlife species by any means within Open Space is prohibited except for the catching and release of fish, and the control of specific animals known to be causing unacceptable damage to property or persons (i.e. beavers damming the watercourses or porcupines identified as girdling planted trees). In such cases, the Board of Directors shall contact appropriate professional consultants to trap and relocate such animals.

Section 15. Domestic Pets.

Domestic pets shall not be allowed at any time in or on the Open Space, trails or other common areas unless on a leash. Pet owners shall be required to clean up after any pets they take on the trails and Open Space. At no time shall any domestic pet be permitted to chase or harass wildlife in or on the trails or Open Space, or other common areas.

Section 16. Prohibited Uses.

No use of fireworks, firearms, hunting and/or loud music or having loud parties in the Open Space is permitted.

Section 17. Fencing of Open Space.

No fences shall be permitted in the Open Space, unless otherwise provided herein. The boundary of the Property, including the Open Space, may be fenced upon the request by neighboring property owners. Temporary fences for the protection of plantings, as identified above, may be permitted.

Section 18. Signage.

Signs shall be permitted to identify trail routes, direct human activity or provide interpretive information. Directory signs should be combined with landscaping features, be made of natural appearing materials, and must comply with these Covenants, Gallatin County Regulations, and Zoning Regulations.

Section 19. Nuisance.

No Owner, guest or invitee may use or occupy the Open Space, trails, proposed ponds, proposed waterways or common areas in such a manner as to disturb or interfere with the peaceful use, occupancy or enjoyment of any other Owner, guest or invitee of the Subdivision. Violations shall be enforced by the Board as provided for in these Covenants, including, but not limited to the levying of a fine and seeking compensation from such Owner, guest or invitee.

Section 20. Permitted Users of the Open Space. Permitted users of the Open Space shall be all Members, Owners, Lot Owners and their invitees and guests, as well as users permitted by the Declarant, including, but not limited to, the members of the Hyalite View Estates Owners' Association and their invitees and guests.

**ARTICLE VI - ARCHITECTURAL REVIEW COMMITTEE AND  
ARCHITECTURAL REVIEW PROCESS**

Section 1. Architectural Review Committee

The Home 40 Architectural Review Committee (hereinafter the "Architectural Committee") shall consist of three (3) Members appointed by the Board of Directors, one of whom shall be designated as the Chairperson. It is suggested that at least one of the Members of the Architectural Committee have professional qualifications in the area of architecture, landscape architecture, or construction.

Section 2. Scope of Responsibilities

The Architectural Committee has the right to exercise control over all construction of any Improvement within the Subdivision. It will also review all Owner's alterations and modifications to existing Structures, including, but not limited to, exterior walls, exterior painting, renovations, and landscaping.

No residence or Structure, Improvement, wall, garage, outbuilding or other Structure shall be made, erected, altered or permitted to remain upon the Lot until written plans and specifications showing the site plans, floor plans, design, nature, kind, color, dimensions, shape, elevations, material, use and location of the same shall have been submitted and approved, in writing, by a majority of the Architectural Committee as to the plans and specifications compliance with these Covenants.

All documents submitted for review must be dated and labeled with the specific project title, owner, architect, contractor, and address, and must be accompanied by the fees required for review.

Section 3. Standards for Architectural Review.

It shall be the Owner's responsibility to ensure that all proposed construction of any Improvement shall comply with the Building Code, National Plumbing Code, the National Electrical Code, and 2020 Community Plan, these Covenants, and any amendments thereto.

All plans must be harmonious with the overall plan for the Subdivision. All plans and specifications must be suitable to the Lot, the adjacent Lots, the adjacent properties, and the neighborhood. All Improvements must be compatible with the surrounding properties and Lots so as to not impair or degrade Subdivision or its aesthetic values.

The Owner shall reference and follow all guidelines and design requirements of the Subdivision Fire Protection Plan when designing any Improvement. The Subdivision Fire Protection Plan is included in Article XI herein.

Section 4. Review Fee.

A review fee will be required at the time of submission of all of the documents and sample materials. The Owner shall submit the documents and the required fee to the Architectural Committee chairperson or other designated member of the Architectural Committee. The purpose of the design review fee shall be to defray the Association's cost of review of all proposed site plans and specifications submitted to them. The fee, which shall be set by the Board of Directors, and may be modified from time to time, shall initially be \$500.00.

Section 5. Documents Required for Review.

Three copies of the following documents in engineering scale of 1/8" = 1'0" should be submitted to the Architectural Committee chairperson:

a. Site plans including:

Lot lines and setback lines with dimensions; Building/Improvement footprints with entries, porches, balconies and decks delineated; Location, dimensions and materials for driveways; Elevation of first floor; Height of foundation from the top of the curb; Landscaping requirements and concepts; Location, height and material for retaining walls or garden walls; Water, electric, natural gas, telephone, storm water components, and sewer system; and Exterior light locations and type.

b. Complete plan submittal, including floor plans, exterior elevations of all sides, roof design, specifications, and any construction details, as follows:

i. Floor Plans showing: Foundation plan dimensioned; Exterior walls shown and dimensioned; Room use and dimension; Wall, window and door openings dimensioned; All overhangs of floors and roofs as dashed lines; Overall dimensions; and Total enclosed square footage.

ii. Elevations including: A description of the material for the front street elevation; Porches, balconies, doors and windows; Principal materials rendered and

specified; Height of each floor, eaves, and roof peak dimensioned from the first floor; Overall height from ground level; Roof pitch; Major building sections; Typical walls from ground to ridge; and Typical porch section from ground to roof.

- iii. Roof Plan: Elevations of the Roof; and description of roof materials.
- iv. Landscape Plan: Listing of all trees and plants to be installed and their respective locations.
- v. Samples (1 set) of all exterior materials in their respective color proposals in an adequate size to evaluate.

Section 6. Review Procedures.

The Owner will be notified in writing by the Architectural Committee within thirty (30) business days after receipt of all documents and items required for submittal in Article VI, Section 5 that the design has been approved, approved with stipulations, or disapproved. The Architectural Committee's thirty (30) business day review period will not commence until all documents and items specified in Article VI, Section 5 have been submitted to the Architectural Committee.

The Architectural Committee may request additional plans, specifications, and samples in order to complete their review. In the event of such request, the review time period shall toll and shall not again commence running until after such additional plans, specifications, and samples have been submitted to the Architectural Committee.

An application may be withdrawn by an Owner without prejudice, provided the request for withdrawal is made in writing to the Architectural Committee. No fees will be refunded due to such withdrawal.

If the Architectural Committee does not contact the Owner within thirty (30) business days of the review commencement date, the application shall not be deemed "approved," and the Owner shall be entitled to file a written request with the Board of Directors that the application be reviewed by the Architectural Committee within five (5) business days of the date of the Owner's written request.

If an application is approved with stipulations or is disapproved, the reasons for the approval with stipulations or disapproval will be clarified for the Owner by the Architectural Committee, in writing and/or with drawings.

If an application has been denied, or the approval is subject to stipulations that the Owner feels are unacceptable, the Owner may request a hearing before the Architectural Committee to justify the Owner's position. The Architectural Committee will consider the arguments and facts presented by the Owner and notify the Owner of its final decision within ten (10) business days of the hearing. If the Owner disagrees with the Architectural Committee's final

decision, the Owner may appeal such decision to the Board of Directors and the Board of Directors shall hold a hearing, during which the Owner and the Architectural Committee may be heard. The Board of Directors shall consider all arguments and facts presented and shall render a final decision within ten (10) business days of such hearing.

**Section 7.**      Action Upon Architectural Committee's Approval.

Approval by the Architectural Committee does not relieve an Owner of the Owner's obligation to obtain any government, state and county approvals necessary to construct the Improvement, including, but not limited to, a Gallatin County land use permit, and a Gallatin County Wastewater Treatment System Permit (septic permit). If such approvals are required and are not obtained by the Owner, the Architectural Committee and/or the applicable government, state and county agency may take whatever actions are necessary against the Owner to force compliance.

Upon approval by the Architectural Committee, the Owner must obtain a land use permit from Gallatin County prior to commencing any construction. With the Owner's application for a land use permit, the Owner shall also submit the Architectural Committee's approval letter or approval stamp on the Owner's plans, and a Gallatin County Wastewater Treatment System Permit as a prerequisite for Gallatin County reviewing and issuing such land use permit. Upon receipt of the Architectural Committee's approval letter, septic permit and the land use permit, the Owner may commence construction in strict accordance and adherence with the plans and specifications submitted to and approved of by the Architectural Committee. Any deviation from said plans and specifications which, in the judgment of the Architectural Committee, is a deviation of substance from the plans and specifications approved of by the Architectural Committee, the Architectural Guidelines contained herein, or any other provision of these Covenants, and/or is a detriment to the appearance of the Improvement or to the surrounding or neighboring areas or Lots, shall be promptly corrected by the Owner, at the Owner's expense, to conform with the plans and specifications submitted by the Owner and approved of by the Architectural Committee, or such deviation may be corrected by the Association at the Owner's expense as provided in these Covenants.

**Section 8.**      Variances.

All variance requests pertaining to the Architectural Committee approvals must be made in writing to the Architectural Committee, and must be accompanied by written verification that the requested variance does not violate the Zoning Regulations, the Gallatin County regulations, and that such a variance has not already been requested by the Owner from the Hyalite Zoning District and/or Gallatin County. Any variance granted shall be considered unique and will not set any precedent for future decisions.

The Architectural Committee may, upon application, grant a variance from the Architectural Guidelines, provided that the spirit of these Covenants is complied with, the requested variance does not violate the zoning regulations or any Gallatin County regulations, and written notice of the nature of the variance has been mailed or personally delivered to all other Lot owners in the Subdivision at least ten days before the variance is considered, in order to give

the other Owners a chance to comment and provide input to the Architectural Committee. The Architectural Committee shall have the duty and power to make the final decision on the granting of the variance, without any liability being incurred by the Architectural Committee or damages being assessed against the Architectural Committee, due to any decision of the Architectural Committee.

Section 9. Eighteen Months for Completion.

Any Improvements to be constructed or erected in accordance with the approval given herein, including all landscaping, must be diligently continued and completed within eighteen months from the date of approval, unless otherwise extended in writing by the Architectural Committee. If construction of any Improvement is not commenced within one year after approval, a new approval must be obtained, including payment of review fees.

If any Improvement is commenced within one year, but is not completed in accordance with the plans and specifications within eighteen (18), the Board of Directors of the Association, at their option, may take such action as may be necessary, in their judgment, to improve the appearance of the Improvement so as to make the property harmonious with other Lots and properties, and to comply with these Covenants, including completion of the exterior, removing the uncompleted Structure, or any combination thereof. The amount of any expenditures made in so doing shall be the responsibility and obligation of the Owner. A lien on the Lot may be recorded and shall be enforceable by an action at law. In lieu thereof, the Association may take such action as is available by law or equity, including, but not limited to, an injunction, or seeking damages, and shall be entitled to reimbursement of the Association's costs and attorney fees as may be awarded by the Court.

Section 10. Inspection and Compliance with Approved Plans.

The Architectural Committee shall inspect all work in progress and any completed Improvement, and give notice of any noncompliance as set forth below.

During construction or upon completion of any Improvement, if the Architectural Committee finds that such work was not done in strict compliance with all approved plans and specifications submitted or required to be submitted for its prior approval, it shall notify the Owner and the Board of Directors of such noncompliance, and shall require the Owner to remedy the same. If upon the expiration of seven (7) business days from the date of the notification, the Owner has failed to commence to remedy such noncompliance, the Board of Directors shall determine the nature and extent of the noncompliance, the estimated cost of correction and any fine the Board of Directors so elects to assess for such noncompliance or pursuant to a fine schedule adopted by the Board of Directors. The Board of Directors shall notify the Owner in writing of the Board of Director's estimated cost of correction action, which may include removal, and any associated fine. The Owner shall then have five (5) business days to pay any assessed fine and to commence such corrective action. Any corrective action must be completed within thirty (30) days of the Board of Directors providing the Owner written notice of the cost of corrective action.

If the Owner does not comply with the Board of Director's determination within the five (5) business day period referenced above, the Board of Directors, at its' option, may stop the Owner's construction of the Improvement, remove the noncomplying Improvement, or remedy the noncompliance, and the Owner shall reimburse the Association upon demand for any and all expenses incurred as a result of the Owner's noncompliance. If such expenses are not promptly paid by the Owner to the Association, the Board of Directors may levy an assessment against the Owner and/or file a lien against the Owner's Lot upon which the Improvement was/is situated, for reimbursement of the Association's expenses, and the same shall be enforced and/or foreclosed upon in the manner provided for by law.

Section 11.      Limitation of Responsibilities and Liability.

The primary goal of the Architectural Committee is to review the Owner's submitted application, plans, specifications, materials and samples in order to determine if the proposed Improvement conforms with the Architectural Guidelines. The Architectural Committee does not assume responsibility for the following.

- a.      The structural adequacy, capacity or safety features or the proposed Improvement.
- b.      Soil erosion, ground water levels, non-compatible or unstable soil conditions.
- c.      Compliance with any or all building codes, safety requirements, and governmental laws, regulations or ordinances.

Neither the Declarant, the Association, the Board of Directors, the Architectural Committee, nor the individual Members thereof, may be held liable to any person or Owner for any damages for any action taken pursuant to these Covenants, including, but limited to, damages which may result from correction, amendment, changes or rejection of plans and specifications, the issuance of approvals, or any delays associated with such action on the part of the Board of Directors or the Architectural Committee.

Section 12.      Construction Site Maintenance and Clean-up.

Construction materials shall not at any time prior to, or during construction, be placed or stored in the street or located anywhere else that would impede, obstruct or interfere with pedestrians or motor vehicle traffic within the sidewalk and/or street rights-of-way. All construction materials shall be removed from the entire Lot within thirty (30) days of substantial completion of construction.

Construction sites shall be kept clean, neat, and well organized at all times. All construction debris shall be the responsibility of the Owner and the Owner's contractor, and shall be kept clean and properly stored on a daily basis. If construction debris blows onto another Owner's Lot, it is the responsibility of the Owner and the Owner's contractor to clean it up immediately. Street cleanliness is of particular concern. Any construction debris, especially

dirt, gravel, rocks, and concrete, that falls or is left in the street shall be removed immediately from the street, and be brought back to a broom clean condition. The Association shall strictly enforce this provision, and reserves the right to fine negligent parties up to \$500.00 for each infraction, to complete any clean up the Board of Directors determines to be necessary, and/or to assess the Lot Owner for all clean-up costs.

## **ARTICLE VII – ARCHITECTURAL AND LANDSCAPE GUIDELINES**

The Architectural Guidelines which follow are intended to compliment the Zoning Regulations which govern this Subdivision and to clarify the intention for the design of Improvements in the Subdivision. Specifically, these guidelines set forth design criteria which address the design of Improvements and location. The intent to these guidelines is to define a minimum level of quality and consistency of Improvement design, which shall be consistent with and maximize the quality of the overall Subdivision. Unique design elements of the Improvements will be respected and individual expression is encouraged, provided they are harmonious with the overall plan of the Subdivision and the neighboring Lots.

### **I. ARCHITECTURAL GUIDELINES.**

#### **Section 1. Purpose.**

These Architectural Guidelines allow for flexibility while maintaining architectural continuity, and are intended to compliment the Zoning Regulations. The primary goal is to ensure that the proposed Improvement design, including landscaping, maintains or exceeds the general level of quality, size, appearance, and marketability as is commensurate to the higher quality residential lots and homes adjacent to it, including, but not limited to those, found in Hyalite View Estates Subdivision, and higher quality homes in general. Gallatin County will have no power to issue a land use permit for any Improvement which has not been approved of by the Architectural Committee.

#### **Section 2. Design Criteria and General Regulations.**

The intent of the following Architectural Guidelines are to provide a continuity to the built environment of the Subdivision, while encouraging unique approaches to the Architectural Guidelines provided herein. Using scale, proportion, and orientation, colors and materials, all Improvements in Home 40 will celebrate the surrounding land forms and concentrate on preserving view sheds and blending into the landscape throughout the Subdivision. These guidelines specifically require homes designed by a licensed architect that are sensitive to the environmental conditions and prohibit tract style design types, inadequate site planning solutions, unorthodox design solutions or other approaches that damage property values and/or aesthetic values in the Subdivision as determined by the Architectural Committee. It is the intention of the Covenants to ensure that all homes shall be of quality workmanship and materials compatible with the other homes in the Subdivision. All initial or subsequent improvements to Lots in the Subdivision shall be subject to the following architectural and landscaping guidelines. All plans must be approved by the Committee as provided herein, prior to application to the Gallatin County for a building permit. No construction of, or

alteration to, any Improvement shall be commenced on any Lot prior to receiving the written approval of the Architectural Committee and a Land Use Permit from Gallatin County.

All Lots in the Subdivision are subject to the Zoning Regulations and Gallatin County regulations. In addition to these Covenants, the Zoning Regulations and Gallatin County regulations, building design and construction may be subject to other County, State and Federal regulations. The Owner shall be responsible to ensure conformance with all applicable regulations.

Section 3. Single Family Residence Lots and Density.

The Lots in the Subdivision shall be used exclusively for the construction of single family residences. No more than one single family residence with an attached garage, and one detached garage or accessory building may be constructed on each Lot. No living quarters are permitted in any detached garage or accessory building.

Section 4. Building Area.

Each Lot shall have a designated building area that is defined by the setbacks on the face of the final plat for each phase of the Subdivision. The building setbacks are defined as 30 feet from the front lot line, 40 feet from the rear lot line, and 15 feet from the side lot lines. In addition to the building areas, the locations of the retention ponds and drainfields are designated per the Certificate of Subdivision Plat Approval, which may not be built upon. All construction of Improvements, except landscaping, shall occur outside the retention pond and drainfield locations, and within the designated setbacks of each Lot.

Section 5. Construction Access and Traffic to the Subdivision. All construction access and traffic shall access the Subdivision by Fowler Lane. No construction traffic shall utilize any roads within the Hyalite View Estates Subdivision. Should any contractor of an Owner or any construction traffic traveling to the Owner's Lot utilize a road within Hyalite View Estates Subdivision to access the Subdivision, the Association may have the Architectural Committee revoke the Owner's approval for the construction of the Owner's improvement or Structure.

Section 6. Improvement Types.

All Improvements built within Home 40 shall be "custom-built" on site. Prefabricated, modular, panelized, factory built and/or kit homes of any type are prohibited within the Subdivision.

Section 7. Improvement Height.

The height of any Improvement shall be limited to a maximum of 32 feet. Improvements shall be measured from the highest ridge to the average grade of the Structure's footprint.

With approval from the Architectural Committee, a chimney, cupola, and other architecture feature may exceed the given height limitations by no more than 2 feet.

Section 8. Size of Residential Improvements.

a. Minimum.

Any residential Improvement constructed on a Lot shall have minimum living space, exclusive of garages, decks, and porches, of 2,000 square feet.

b. Maximum.

Any residential Improvement constructed on a Lot shall not exceed a maximum living space, exclusive of garages, decks, and porches, of 6,000 square feet.

Section 9. Accessory Buildings.

One accessory building shall be allowed, which shall not exceed 24 feet in height. No accessory building may be erected in any required front yard or setback. Detached garages shall be erected no closer than ten feet of any principal residence. Buildings within 50 feet from any primary residence, whether existing or proposed, shall have fire suppression sprinklers. No other separate accessory use shall be erected within ten feet of any principal residence. The exterior design, style and colors of any accessory building on a Lot shall conform to the design, style and colors of the principal residence, and must receive prior approval of the Architectural Committee. All accessory buildings, including, but not limited to, garages and storage buildings, shall be architecturally compatible with the principal residence. No accessory building may be used as a guest residence or have any living quarters contained within the accessory building.

Section 10. Setback Requirements.

All Improvements shall have a minimum of a 50 foot setback from the irrigation ditches/water conveyance facilities found on the east boundary of the Subdivision and northwest of Lot 1 of the Subdivision. Unless otherwise specified, the front setback for each Lot shall be 30 feet from the front Lot line, the side setback for each Lot shall be 15 feet from each side Lot line, and the rear setback for each Lot shall be 40 feet from the rear Lot line.

Section 11. Exterior Walls and Facades.

The character of the exterior of the Improvement should be kept simple in order to harmonize and compliment the surrounding environment of the Lot. Natural materials and subdued colors should pre-dominate the main body of the Improvement. Exterior trim can be more colorful and contrast the main body.

A. Materials.

The exterior siding of all residences and Improvements shall consist of natural stone, rock, brick, stucco, or wood which is painted or stained. New building materials that maintain the aesthetic character of the Subdivision may be considered by the Architectural Committee. No vinyl siding, cement block, panel siding similar to T1-11 siding, plywood sheet siding, or unfinished

reflective siding is permitted. Any use of sheet or panel metal siding must be approved by the Architectural Committee, and shall run in a horizontal or diagonal directions, and shall be lapped. All facades of a residence or Improvement shall be made of the same materials and similarly detailed.

**B. Colors.**

The color palette of the body of the Improvement shall be traditional colors, including earth tones, neutral, natural wood, or muted primary colors, that harmonize and compliment the neighboring Improvements and Lots. Trim may be more colorful and contrasting in order to add visual interest. Color of homes will be determined on a case by case basis by the Architectural Committee. All exterior wood shall be painted or stained.

**C. Windows and Doors.**

Windows are key architectural element that creates interest and contrast, such that it is recommended that a significant number of windows are utilized in the design of the improvement. All windows will be double or triple glazing. Low E coatings are permitted, but no mirror glazing is allowed. The Architectural Committee will require that the following aspects be carefully addressed in the window design:

- i. Consistency of types and shapes; and
- ii. Special shapes for future windows in appropriate areas.

**Section 12. Foundation Design.**

All Improvement foundations shall be constructed to at least 6" above the finished grade adjacent to the Structure. Basements may be constructed in areas of suitable ground water depths, but flood prevention building techniques must be used including sump pumps and approved foundation sealing.

Exposed concrete shall be limited to a maximum of 8 inches from the bottom of the siding to the finish grade. Exposures of more than 8 inches shall be covered by shrubs, masonry veneer, texture concrete surface such as exposed aggregate or synthetic stucco. No board formed concrete is permitted.

**Section 13. Roofs.**

Roofs are a major element in the design of an Improvement and therefore will be emphasized by the Architectural Committee. Roof designs should complement the mountain foothills with the goal of bringing continuity to the Subdivision. Consideration should be given to the prevention of excess snow build-up, ice damming and snow shedding.

**A. Designs.**

Designs of roofs used in a creative and aesthetically pleasing combinations as well as steep pitches of the indigenous buildings found around the Gallatin Valley are recommended. Secondary roofs forms are also highly recommended in roof designs for the Subdivision, as they are useful in giving proper scale to larger roof masses.

**B. Pitches.**

The minimum roof pitch shall be 6:12 for major components of any roof, however, it is not the intent of the Architectural Committee that roof pitch control the design of any Structure. Should a lower or higher roof pitch be desired by an Owner, the Owner may seek a variance from the Architectural Committee so long as such pitch is appropriate for the design of the improvement and does not compromise the integrity of the Subdivision. Secondary roof forms may have varying roof pitches.

**C. Secondary Roof Structures.**

Dormers, skylights, chimneys, and solar collectors are considered secondary roof structures. Dormers and other secondary roof structures are encouraged to give scale to the main roof and also create habitable space within the roof. When designing the location of the skylights, consideration should be given to both the interior and exterior of the Improvement. Locations should also be coordinated with window and door locations. Skylights shall be flat and not bubbled, and located away from valleys, ridges, and other areas where drifting snow and ice may hinder the performance and safety of the Improvement. Any use of solar panels or collectors must first be approved by the Architectural Committee. Any approved solar panels or collectors shall be inconspicuously located, and shall be integrated into the overall roof design, parallel with the slope of the roof or wall of the Improvement, and are not to be on any roof parallel to the street.

**D. Entry Definition, Overhangs and Fascia.**

Caution should be used when designing entry definition, overhangs and fascia to minimize snow shedding towards walkways, driveways, porches, decks, balconies, or any other place a person may be injured by sliding ice. Entrances should be expressed with a gable or shed roof and protected with adequate overhangs. Fascia materials shall be built-up. All eaves and soffits shall be designed so as not to allow embers to be caught or trapped in the event of a fire.

**E. Materials.**

Roof materials shall be constructed of fire resistant materials carrying a class A rating. The following are the only acceptable roof materials: Class A synthetic shakes or shingles; Class A wood or Cedar shakes; Natural and synthetic slate tiles; Asphalt shingles; Standing ridge metal roofing; or other similar materials allowed by the Architectural Committee.

**F. Gutters Down Spouts and Flashing.**

Gutters and down spouts are allowed but they must be of a color and finish that matches the Improvement or trim. The down spouts must be a part of the initial design of the Improvement

reviewed by the Committee. Unpainted gutters down spouts and flashing shall not be allowed.

**G. Roof Equipment.**

All roof mounted equipment shall be integrated into the overall roof design and screened. All sewer, bath fan, hot water heater, wood or gas stove, or other roof venting stacks shall be painted a color as similar as possible to the roof material color.

**H. Chimneys.**

Chimneys may exit the sides of residences or Improvements as well as the roof of the residence or Improvement. It is strongly encouraged that chimneys emerge from the highest roof volume. When part of an exterior wall, chimneys may be used as an accent form to break up the mass of the wall. Prefabricated metal flues shall be concealed within a chimney. Chimney caps may extend no more than 16" above the chimney top. Chimneys shall be of a material that compliments the other exterior finishes, and may include brick, natural stone, stucco, or wood framing when the finished wood material is the same as the siding.

**Section 14. Decks, Balconies, and Porches.**

Decks, balconies and porches, are to be used to accentuate the architecture of the Improvement and create interest and variations in the Improvement. Articulation of indoor, outdoor shared space with thought of the transition between the two is encouraged. Multiple elevations and combinations of covered decks, projecting balconies and bay windows shall be encouraged.

**Section 15. Garages.**

Each single family residence is required to have a minimum of an attached or detached 2 car garage. If the garage is unattached, the Owner is encouraged to design a walking space between the residence and the garage. The unattached garage must adhere to the same Architectural Guidelines as the residential improvement, must compliment the residential improvement and be proposed to the Committee for review at the same time as the residential improvement. If the garage is attached, the Owner is encouraged to design the garage in such a manner that it limits the amount of the garage wall from facing the street fronting the Lot. There will be no long term storage of cars or other vehicles outside the garage.

**Section 16. Fire Protection Sprinkler Systems.** In every residential Structure or detached Structure within 50 feet of a residential Structure, a fire protection sprinkler system shall be installed. The fire protection sprinkler system shall be connected to the domestic water supply, and the system shall be engineered by a licensed P.E., installed and fully operational and in compliance with the current edition of the applicable NFPA standard.

**Section 17. Energy Considerations.**

All Improvements shall be designed so that the primary source of heat is natural gas or electricity. The use of wood, wood bi-products or coal burning appliances as the major heat

source is prohibited. All wood burning devices except fireplaces shall be fitted with catalytic converters.

Section 18. Exterior Lighting.

All exterior residential lighting must be free of glare and shall be fully shielded or shall be indirect lighting. All exterior residential lighting on all Lots must be incandescent and limited to a maximum of 60-watt incandescent bulbs, and shall be of such focus and intensity so as to not cause disturbance to adjacent Lots. No direct lighting shall shine beyond the Lot line of any parcel. No exposed bulbs, mercury vapor or high-pressure sodium lights are permitted. LED lights are permitted, however the lighting focus and intensity shall be limited to that of an incandescent bulb listed above.

Decorative fixtures, or recessed or canned lighting is encouraged for porches, main entrances and other exterior applications to achieve softer, non-glare, lighting effects. All residential lighting shall comply with the Zoning Regulations and Gallatin County lighting requirements.

Recessed or can lighting is encouraged for porches and main entrances for softer lighting effects. Clear glass fixtures (i.e. coach lantern style) are prohibited. Honey glass or amber glass panels are encouraged as an alternate.

Obtrusive flood lighting and front yard landscape/pathway lighting, and clear glass or exposed bulb (non-cutoff) fixtures are prohibited. Yard and walkway lighting shall be compatible with the scale and architectural design of the main residence.

All exterior lighting and exterior lighting changes shall be approved by the Committee.

Street lights are required to be placed in a designated area near each Lot's driveway entrance. This street light shall be provided to the Owner by the Declarant and/or successors and assigns. The Owner shall be responsible for paying for the street light and having the street light installed at Owner's expense.

For the purposes of this paragraph, the following definitions shall apply:

Fully Shielded lights: Outdoor residential light fixtures shielded or constructed so that no light rays are emitted by the installed fixture at angles above the horizontal plane as certified by photometric testing.

Indirect Light: Direct light that has been reflected or has scattered off of other surfaces.

Glare: Light emitting from a luminaire with an intensity great enough to reduce a viewer's ability to see.

Section 19. Parking/Driveways.

All parking shall be off-street. A minimum of two off-street parking spaces shall be provided for each Lot. All Lots shall be limited to one driveway access. Driveways shall be designed pursuant

to Article XI, Section 1(c).

Section 20. Signage.

Signs shall be limited to identification signs, real estate sale signs and street signs, no larger than six square feet, the design and location of which must be approved of by the Committee. The Declarant shall be permitted to erect a larger sign for the promotion and sale of Lots at his discretion.

Section 21. Zoning.

All zoning, land use regulations and all other laws, rules and regulations of any government or agency under whose jurisdiction the property and Lots lies are considered to be part of these Covenants and enforceable hereunder; and all of the Owners of said Lots and properties shall be bound by such laws, rules and regulations.

In the event there is a conflict between the Covenants and the applicable zoning, the most restrictive provision of either the Covenants or the zoning shall control.

Section 22. Easements.

There are reserved, as shown in the plat and as may otherwise be reserved by the Declarant, easements for the purposes of constructing, operating, maintaining, enlarging, reducing, removing, laying or relaying lines and related facilities and equipment for utilities, including, but not limited to, those providing gas, communication and electrical power. Landscaping elements and other items allowed by the Covenants and approved of by the Committee may be placed along as long as the intended use of such easements is not prevented.

**II. LANDSCAPE DESIGN GUIDELINES**

Section 1. Driveways.

All driveways and parking areas shall be surfaced with concrete and or asphalt, and in no case be located closer than five (5) feet to adjacent Lot lines. Alternative hard surfacing material may also be approved by the Architectural Committee on a case by case basis. No Lot Owner shall fill or obstruct the natural flow of any borrow ditch, drainage swale, or culverts.

Section 2. Fences.

No above ground interior Lot line/boundary fencing shall be permitted. Temporary fences for the protection of plantings, as identified above, may be permitted.

Section 3. Antennas and Satellite Dishes.

No external television, radio antennas, or large satellite dishes shall be permitted. Smaller

satellite dishes of the latest technology (not exceeding two feet in diameter) will be allowed. All satellite dishes shall be inconspicuously located, and screened from neighboring and street views.

Section 4. Utilities.

All utilities, including but not limited to natural gas, electricity, telephone, the Subdivision community water systems for potable water and irrigation water, sewer system, storm water retention ponds, and cable television, shall be located underground. Potable water and irrigation water shall be provided by the Subdivision community water systems. The Owner shall pay for and be responsible for all hook-up fees and utility fees related to any utilities servicing the Owner's Lot.

Section 5. Landscaping and Irrigation.

Each Lot Owner shall submit a Landscape Plan, including plant and tree listings and their respective locations, and an irrigation plan to the Architectural Committee for review and approval. Each Lot owner will be required to meet minimum landscape requirements consistent with the overall plan for the Subdivision. Landscaping will be required for the area around the residence and Improvements. Under no circumstances will water features be allowed on any Lot. Landscape, grading and irrigation plans shall be submitted and approved by the Committee concurrently with the plans for the residence. The Association shall have the authority to control and establish the irrigation schedule for all Lots, such that the Association shall provide each Owner a schedule of days and hours of the day during which the Owner may irrigate the Owner's Lot.

Owners are required to maintain the landscaping on their Lots in a manner that does not detract from the appearance and value of the adjoining Lots or the aesthetics of the Subdivision. Landscape maintenance will be enforced by the Association as provided in these Covenants.

Section 6. Trees.

All Lot owners shall plant a minimum of 10 trees and 20 shrubs to enhance the aesthetic features of their Lot. Trees are encouraged to be planted in clusters rather than at regular intervals around the Lots. Shrubs and flowers may be used to provide a transition from the tree clusters to the lawn surfaces.

All trees must be planted a minimum of 8 feet from the Lot line when adjacent to a neighbor, and are not encouraged to be planted in the utility easements. It is the responsibility of the Owner to contact the appropriate utility companies before digging.

When selecting trees, it is the responsibility of the Lot Owner to check the appropriateness of that species with specific site conditions. Deciduous trees are encouraged to be placed on the southern and western side of the home during the winter months. Deciduous trees must be planted a minimum of 20 feet from the eaves. Planting beds and any bedding around tree base

areas shall be mulch or earth tone stone (not white).

Section 7. Weeds.

The Association has been provided weed control plan approved of by Gallatin County, which both the Association and the Owners shall comply with the terms and conditions of such plan. Both improved and unimproved Lots shall be kept free of weeds. The Owner of each Lot shall control the weeds and all noxious plants on the Owner's Lot; provided, however, that the Owner shall not use spray or killing materials in such a way as to be harmful to humans or animals or to the neighboring or common area vegetation.

In the event an Owner does not control the weeds and noxious plants on their Lot, the Association, after ten days written notice to a Lot Owner to control the same, may cause the weeds or noxious plants to be controlled, and may assess the Lot Owner for the costs thereof, as set forth in these Covenants.

**ARTICLE VIII – MAINTENANCE**

Section 1. Each Owner, at Owner's expense, shall be responsible for the maintenance and repair of the Owner's Lot, including, but not limited to, the driveway, parking area, walkways and landscaping.

Section 2. The Association shall be responsible for the maintenance, repair and replacement of the Open Space, trails proposed waterways, proposed ponds, the Community Center, and any other common areas, including, but not limited to the stormwater ponds, proposed pond system, culverts, out fall and roadside ditch. The Association shall maintain, repair and provide snow removal and maintenance of all common roadways, excepting driveways, and common areas. Should any maintenance, repairs or replacement of the Open Space, trails proposed waterways, proposed ponds, the Community Center, or any other common areas be the result of damages caused by a Lot Owner, guest or invitee, said Lot Owner shall be responsible for the costs incurred by the Association for any maintenance, repairs or replacements resulting from such damage, and, if the Lot Owner fails to promptly pay for such costs after receiving written notice thereof, may be assessed for such costs or may have a lien place against the Owner's Lot by the Association to secure repayment of the costs.

**ARTICLE IX – MISCELLANEOUS**

Section 1. Aggregation or Division of Lots.

There shall be no further division of any Lot. An Owner may aggregate two or more Lots so long as the Owner obtains prior written approval of the Board and Gallatin County for the aggregation and files, at the Owner's expense, any necessary amended plat or other documentation as required by Gallatin County to aggregate the Lots. Once aggregated, the Lots shall be treated as a single family Lot such that only one main residence and one accessory building may be constructed on the Lot, however, the Association may still collect assessments for two Lots.

**Section 2.** Proposed Ponds and Waterways.

The Owner of a Lot shall at all times conduct its use and activities in a manner that will preserve the integrity of the proposed waterways within the Open Space, including, but not limited to, the prevention of any degradation of water quality, any reduction or increase in the flow of said proposed waterways, any damage to the stream bed or banks of the proposed waterways or proposed ponds. The Owner shall not conduct or permit – the discharge of any liquid, solid, gas or refuse of any kind into the proposed waterways and ponds. The Board shall adopt rules and regulations for the use of the proposed ponds, such that the proposed ponds may only be used in a manner consistent with said rules and regulations. The irrigation pond(s) shall only be used for the pond(s) intended functional purpose. Owners, guests and invitees shall follow all posted signage and rules pertaining to the use, preservation, and enjoyment of the proposed ponds and waterways.

**Section 3.** Rental of Residences.

Should an Owner rent the Owner's residence to any third party, the Owner shall provide the tenant a copy of these Covenants and any rules and regulations adopted by the Board, and said Tenant shall comply with the terms of these Covenants and all rules and regulations. The Owner shall be responsible for the tenant's compliance with the terms of these Covenants and all rules and regulations and shall be liable for the tenant's violation of the terms of these Covenants and any rule or regulation, and fines or damages related to the tenant's violation.

**Section 4.** Nuisance.

No Owner, guest or invitee may use or occupy a Lot in such a manner as to disturb or interfere with the peaceful use, occupancy or enjoyment of any other Owner, guest or invitee of the Subdivision. Violations shall be enforced by the Board as provided for in these Covenants, including, but not limited to the levying of a fine and seeking compensation from such Owner, guest or invitee.

**Section 5.** Home Occupations.

Home occupations or professions may be conducted upon the Lot or within the residence by the Owner or occupant of the residence, provided that there are no employees on the premises, and there is no advertising of any product, work for sale, or service provided to the public upon such Lot or in the residence. No advertising or directory signs relating to the home occupation shall be allowed. No child care centers shall be allowed. All such home occupations or professions must comply with the requirements of the Zoning Regulations or Gallatin County regulations regarding such activities, and all required licenses must be obtained prior to commencing such activities.

**Section 6.** Community Center.

The Board shall adopt rules and regulations for the use of the Community Center, including

establishing fees for certain usage of the Community Center by the Members. The Association shall be responsible for the maintenance, insurance, repair and operation of the Community Center and the maintenance, insurance and repair of any contents therein, the cost of which shall be assessed to the Owners. Any Owner, guest or invitee of an Owner who damages the Community Center and/or the contents therein shall be responsible to the Association for the costs related to such damage.

Section 7. Rate Structure for Water Use; and Penalty for Excessive Water Use.

The Board shall create and adopt a rate structure for the community water system for domestic potable water, and a rate structure for the community water system for the irrigation of lawns and gardens. Said rates shall be sufficient to generate revenues in each instance that are adequate to pay the total annual operation and maintenance expenses associated with each such system, and such additional amounts as the Board deems appropriate for capital reserve and replacement accounts for the systems, provided that, no assessment shall be made of capital reserves and replacement accounts until at least 35 homes are connected to each system. The Board may amend such rate structures from time to time as it considers appropriate to assure sufficient revenues for operation and maintenance and capital reserves and replacements.

In addition, the rate structures for each such system shall encourage the conservation of water supplies by reflecting blocked or tiered rates for monthly water use under each system. The base rates shall reflect a common charge for each gallon of water delivered up to that total monthly amount that the Board considers adequate, in light of available water savings measures and prudent practices, to supply a single family residence with a potable supply, and a separate base rate shall likewise be established for the irrigation of lawns and gardens. Water deliveries on a monthly basis that exceed those amounts set forth in the base rates shall be charged on a per gallon basis at rates that are significantly higher than those reflected in the base rate or lesser-tiered rates. The Board may amend, or otherwise add to and adjust the blocked or tiered rates and the amounts charged for each such block or tier from time to time in order to fulfill the purposes of this section, provided that, until any such amendment, the base rate for the domestic potable system shall consist of a charge for the first 47,500 gallons delivered.

Each Lot shall be equipped with a water meter for the community potable system, and a separate meter for the community irrigation system. All such meters shall be of a type and design approved by the Board, and in all cases, shall be capable of electronic readings.

The Board shall bill each Owner of each Lot for water deliveries at intervals adopted by the Board, but not less often than bimonthly. The Board shall adopt dates at which payments for water deliveries are due, interest charges that the Board deems appropriate for late payments. For any payment that is more than sixty (60) days in arrears, the Board may elect to terminate water deliveries to the Lot by providing the Owner thereof thirty (30) days to make full payment on the delinquent account. In the event that full payment is not made within such thirty (30) day period, the Board may thereafter terminate water deliveries and shall not be liable for any costs or damages incurred by Owner attendant to that termination.

The rate structure shall initially be \$75.00 per month per Lot for both domestic potable water and

irrigation water.

**Section 8.** Domestic Irrigation and Water Restrictions.

Exhibit B contains the domestic irrigation and water restrictions.

**ARTICLE X – GALLATIN COUNTY REQUIRED COVENANTS**

These Gallatin County Required Covenants included in this Article may not be amended or revoked without the mutual consent of the Owners in accordance with the amendment procedures specified in Article XII, Section 1 and without the express written consent of the governing body of Gallatin County.

**Section 1.** Building Code.

- a. All Structures shall be constructed in compliance with Montana State adopted codes for construction, including codes for pertinent Seismic Zone, and current fire codes as adopted by the State of Montana.

**Section 2.** Weed Control.

- a. The control of noxious weeds by the Homeowners' Association on those areas for which the Association is responsible and the control of noxious weeds by individual owners on their respective Lots shall be as set forth and specified under the Montana Noxious Weed Control Act (7-22-2101 through 7-22-2153 MCA) and the rules and regulations of the Gallatin County Weed Control District.

The Property Owner shall be responsible for the control of state and county declared noxious weeds on his or her Property. In the event an Owner does not control the noxious weeds, after 10 days' notice from the Homeowners' Association, the Association may cause the noxious weed to be controlled. The cost and expense associated with such weed management shall be assessed to the Property and such assessment may become a lien if not paid within 30 days of the mailing of such assessment.

**Section 3.** Agriculture.

- a. Property Owners of the Subdivision are informed that nearby uses may be agricultural. Property Owners accept and are aware that standard agricultural and farming practices can result in smoke, dust, animal odors, flies and machinery noise. Standard agricultural practices feature the use of heavy equipment, burning, chemical sprays and the use of machinery early in the morning and sometimes late into the evening.
- b. The maintenance of all Subdivision exterior boundary fences shall be shared equally with adjacent property owners.

Section 4. Domestic Water Use.

- a. The Homeowner's Association of the Home 40 Subdivision must annually publish and make available to the public all domestic water usage data for the preceding year. This data must be annually collected, certified by a licensed professional engineer, and be submitted to the Montana Department of Natural Resources and Conservation and the Montana Department of Environmental Quality no later than December 31 of each year.
- b. Exterior household and accessory building spigots are prohibited.

Section 5. Water Conveyance Facilities.

- a. Unless there is written consent from the appropriate water users and/or water conveyance facility's authorized representatives, stormwater, 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.
- b. The Homeowners' Association shall remove any trash or debris that originated from within the Subdivision and has accumulated in the water conveyance facilities passing through the subdivision by no later than May 1<sup>st</sup> of each year. If the Homeowners' Association 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 Homeowners' Association for such efforts. Until such time that the Homeowners' Association assumes responsibility for the requirements described herein, such requirements shall be the responsibility of the developer/Declarant.
- c. Lot Owners are hereby notified of the water users, water conveyance facility's authorized representatives, and/or their designee's right to access the Home 40 Subdivision 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 headgates and other diversion structures; and to carry out other normal means of repair and maintenance related to the ditch/canal.
- d. To assure non-interference with water conveyance facilities, no livestock grazing shall take place, nor shall any new Structures (other than Structures for the maintenance and operation of the water conveyance facility), fences, landscaping (other than grass), or roads, may be installed or erected within the water conveyance facility non-interference setback, except where agreed to in writing by the water users and/or water conveyance facilities authorized representatives.
- e. Neither the Homeowners' Association nor any Lot Owners shall 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 modification 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.

- f. Lot purchasers are hereby notified that Montana law provides specific protections in regards 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.
- g. Household use of water from the Subdivision community water system shall be for potable uses only. Water for the irrigation of lawns and gardens within individual Lots shall be provided from the Subdivision community irrigation system.

Section 6. Common Facilities and Maintenance.

- a. The Homeowners' Association shall be responsible for the operation and maintenance of all interior Subdivision roads, surface irrigation, trails, common facilities and open space.
- b. Title to the common open space within the Subdivision shall vest in the Homeowners' Association and be maintained and controlled by the Board of Directors of the Association.
- c. Membership in the Homeowners' Association shall be mandatory for each Lot Owner. Each Lot Owner shall be required to pay such fees as the Board of Directors of the Association deem appropriate for real estate taxes, insurance, and the maintenance of the interior Subdivision roads, surface irrigation, trails and common facilities and open space.
- d. The Homeowners' Association shall be responsible for liability insurance in an amount to be determined by the Board of Directors of the Association, which insurance shall name Gallatin County as a loss payee.

Section 7. Lot Access.

- a. All Lots shall be limited to one driveway access.

Section 8. Fire Protection.

- a. Definitions.

- i. Fire Department shall mean any fire service area, rural fire district, municipal fire department or other authorized entity that has authority under Montana law to provide firefighting and emergency response within the specified area of land in which the real property subject to these covenants exists. The Fire Department is specifically made a party to these Fire Protection Covenants for purposes of enforcement and may take any action itself or any action in law or equity to compel the property owners subject to the covenants to enforce these Fire Protection Covenants.
- b. Amendment.

  - i. These Fire Protection Covenants shall remain in full force and effect and may not be amended or revoked without the mutual consent of all property owners, in accordance with the amendment procedures in these covenants, and the Gallatin County Commission shall consult the Fire Department prior to deletion, adoption or amendment of any Fire Protection Covenant.
- c. General Building Codes.

  - i. All Structures shall be constructed in compliance with the most current edition of applicable fire protection standards set by the Fire Department.
- d. Water Supply.

  - i. The Owner shall ensure that any water supply that is provided as a source of fire suppression shall be inspected each year by a professional engineer licensed in the State of Montana who shall certify that the water supply and delivery system holds and can deliver the appropriate amount of water to all fire hydrants in order to meet applicable NFPA standards and fire protection standards set by the Fire Department. Such certification shall be forwarded to the Fire Department within ten business days of its completion. The Owner shall perform all maintenance recommended during the inspection.
- e. Fire Sprinklers.

  - i. All inhabitable Structures or buildings with any residential capacity must be fitted with an automatic fire sprinkler system that is fully operational and compliant with the most current edition of applicable NFPA standards and fire protection standards set by the Fire Department.
  - ii. The Fire Department shall receive from the Owner a stamped set of automatic fire sprinkler system plans from a Montana licensed engineer for review and approval prior to any construction. Applicable inspections, including an inspection prior to enclosure with sheet rock or other interior wall covering, by the Fire Department shall be scheduled with 48 hours' notice, during construction

and after completion.

iii. No building may be occupied prior to the Owner providing the Fire Department with written certification from a Montana licensed engineer that the fire protection sprinkler systems are properly installed, tested and fully operational in compliance with the NFPA standards and fire protection standards set by the Fire Department. The Owner is responsible for maintaining the condition of the automatic fire sprinkler system the same level of performance and protection as the original design.

f. Roof Structures.

i. All Structures shall have a Class A roof covering. The space at the eave ends shall be fire stopped to preclude the entry of flames and embers for roof coverings where the profile allows a space between the roof covering and the roof decking.

ii. Prior to the installation, the Property Owner shall obtain written confirmation from the Fire Department that the proposed roofing materials meet its applicable fire protection standards. Prior to completion of any Structure, the roof of the Structure shall be inspected by the Fire Department. The Property Owner shall be responsible for payment of any fees in connection with such inspection.

g. Defensible Space.

i. Each Owner shall maintain a defensible area of not less than thirty feet (30') around the perimeter of any Structure. Defensible area shall be measured horizontally from the exterior walls of any Structure, not contain combustible ground covering, be maintained and be an irrigated lawn of no more than three inches. The first three feet of the defensible area shall include non-combustible washed rock or a similar product measured horizontally from the exterior walls of any Structure.

h. Addresses and Signs.

i. Addressing meeting the follow standards shall be installed prior to construction:

- Addressing on the residence shall be in contrasting color to the building.
- Each residence shall be denoted by an address sign at the intersection of the driveway and primary access roadway to the residence. The address shall face both travel directions of the primary access roadway to the residence. The street address shall be constructed of four (4) inch letter of reflective material on contrasting reflective metal

background. The street address shall be posted no less than three (3) feet above the ground on a metal post.

- ii. All street signs shall be constructed of non-combustible materials.
- i. Driveways/Parking.
  - i. All travel routes and driveways shall be maintained by the Homeowners Association and property owner to be clear of snow and other debris to provide unobstructed access year-round to all residences.
  - ii. To allow for emergency vehicles to access Structures where the driveway is longer than one hundred fifty (150) feet, the driveway must have an unobstructed width of twenty (20) feet, an unobstructed vertical clearance of thirteen (13) feet and six (6) inches, a grade not to exceed ten (10) percent, and an apparatus turnaround to be approved by the Fire Department.
- j. Any action taken by the Fire Department to enforce fire protection covenants or requirements shall be at the expense of the Property Owner against whom enforcement is sought. Absent a finding of responsibility by an individual Property Owner, the Homeowners' Association shall bear the cost of enforcement.
- k. Spark arrestor screens shall be placed on all fireplace and woodstove chimneys.
- l. Smoke detectors shall be installed on each level of dwelling units.
- m. Open fires shall be prohibited, except for outdoor barbecues.

Section 9. Wildlife.

- a. The artificial feeding of all big game wildlife shall be prohibited.
- b. All garbage shall be stored in animal-proof containers or be made unavailable to animals.
- c. Owners acknowledge that wildlife damage to landscaping will occur. Owners shall accept that risk and shall not file claims against the Homeowners' Association or any other governing body for such damages.
- d. Fencing along the exterior boundaries of Lots shall be prohibited.
- e. The taking of any wildlife species within the Subdivision is prohibited. In the event of overconcentration of big game animals within the Subdivision, the Homeowners' Association shall cooperate with the Montana Department of Fish,

Wildlife & Parks to mitigate urban wildlife problems, which may include the removal of animals (by hunting).

- f. Pets shall be controlled by each Owner, and not be allowed to roam within the Subdivision.
- g. The planting of wildlife attracting vegetation shall be prohibited.

Section 10. Amendments.

- a. 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.

(Randy J will want these word for word from the conditions – I assume that is what is here)

**ARTICLE XI. ADDITIONAL FIRE PROTECTION COVENANTS**

Section 1. Maintenance of Fire Protection Water Supply Features and Fire Department Use (i.e. open water fill sites, buried water tanks).

Fire protection features must be maintained to their original performance capability in perpetuity by, and at the expense of, the Lot Owners. Performance of all fire protection features shall be certified annually, by the use of field measures, by the FPAHJ or by a PE licensed in Montana. If a PE is to be used, a report shall be submitted, in writing, to the FPAHJ to ensure continued specific capability. The annual certification by the PE shall be at the expense of the Lot Owners. The PE shall be approved by the FPAHJ.

The Fire Department shall have unrestricted use, in perpetuity (at no cost to the Fire Department) of the fire protection features including but not limited to water sources, pumps, and hydrants.

Section 2. Separation Between Buildings on the Same Lot.

The separation between all Structures protected by approved fire sprinkler systems and all detached, non-sprinkler protected Structures, including accessory buildings, shall be a minimum of 50 feet.

Section 3. Driveways to Structures.

To allow for emergency vehicle access to Structures, the Lot Owner shall provide a driveway meeting the following requirements as approved by the FPAHJ: a minimum unobstructed driving surface of 12 feet for driveways less than 300 feet long and a 16 foot driving surface for any driveway over 300 feet long; a vertical clearance of 15 feet; and a four foot zone of reduced vegetation on each side of the driving surface. If a driveway that is less than 16 feet wide is

approved by the FPAHJ, turnouts shall be designed and constructed every 300 feet along the driveway's length. If any term of this Section 3 conflicts with the Article X, Section 7(i)(ii) herein, this provision shall control as being the stricter of the provisions.

For all Improvements or Structures sites on driveways over 300 feet in length, the Lot Owner shall provide a turnaround including but not limited to a drive-through, cul-de-sac or hammerhead turn-a-round.

- a. All gates, bridges, culverts, cattle guards and all related constructs affecting access shall be a minimum of two feet wider on each side of the driveway. The entire driveway shall have a 30-ton minimum rating for two-axle trucks including all bridges, culverts, cattle guards and all other constructs of the driveway.

Section 4. Addressing Posted.

Addressing on the building shall be contrasting on the building and reflective on the street. Number size shall be four-inch (4") minimum height. Sign numbers and the background shall be made of retro-reflective material. Address signs shall meet the requirements of the FPAHJ.

Section 5. Fire Apparatus Access.

Fire apparatus shall be able to park on a roadway, driveway, or fire apparatus parking area within 150 feet of all parts of the exterior of the building. The roadway, driveway, or fire apparatus parking area shall be engineered and constructed to safely support a 30-ton, two-axle fire apparatus.

Section 6. Back-Up-Power Requirements for Water Distribution Systems Providing Fire Protection Water Supply.

Section 7. The Lot Owner shall provide the following fire protection packages:

- a. Installation in every residential Structure and every non-residential Structure within 50 feet of a residential Structure, a fire protection sprinkler system. The Fire sprinkler system shall be connected to a public water supply, and the system shall be engineered by a licensed P.E., installed and fully operation and compliance with the current edition of the applicable NFPA standard.

Section 8. Wildland/Urban Interface Fire Protection Covenants:

- a. Access and Evacuation.

Road right-of-way shall be cleared of construction slash. The required clearance of the right-of-way shall be maintained, in perpetuity, in a fire-resistive state.

b. Maintenance of Fire Protection Water Supply

Fire protection water supplies must be maintained to their original performance capability in perpetuity by the Association. Performance of all fire protection features shall be certified annually by a licensed P.E. and submitted to the FPAHJ to ensure continued specific capability.

c. Maintenance of Fire Protection Features (defensible space, driveway routes, fuel breaks, fuel modification plans, green belts, etc.).

Fire protection features must be maintained to their original performance capability in perpetuity by the Lot Owners.

**ARTICLE XII – TERM, ENFORCEMENT, APPLICABILITY AND CHANGE**

**Section 1.** Binding Effect and Amendment.

The provisions of these Covenants shall be continuous and binding unless terminated. For an initial term of twenty-five (25) years from the date of these Covenants, or until 85% of the Lots in the Subdivision have been sold, these Covenants may be modified, altered or amended only by the Declarant or with the Declarant's consent. After the initial twenty-five (25) year period, or after 85% of the Lots in the Subdivision have been sold, whichever first occurs, the provisions of these Covenants may be changed or amended or additional Covenants added, in whole or in part, upon approval of 75% of the votes of the Members of the Association at a meeting duly noticed and called for that purpose.

Any covenant required as a condition of the approval of the Subdivision shall not be altered or amended without the agreement of Gallatin County. Any change of these Covenants shall be effective upon the filing and recording of such an instrument in the office of the Gallatin County Clerk and Recorder. The President or Vice-President shall execute and record the amendment, change or addition with the Clerk and Recorder of Gallatin County, Montana. Any change in these Covenants shall not affect existing Improvements and uses of the Lots.

**Section 2.** Enforcement.

Enforcement of these Covenants shall be by proceedings either at law or in equity against any person or persons, Owner or Owners, violating, or attempting to violate, any Covenant and any such legal proceedings may be to restrain violation of these Covenants, to recover damages, or both. Furthermore, Gallatin County may be party to and be able to, if it so elects, enforce any provisions in these Covenants that pertains to the maintenance of Open Space, the control of storm water and the maintenance of streets.

Should any lawsuit or other legal proceeding be instituted by the Association, an Owner, or Gallatin County against any person or Lot Owner alleged to have violated one or more of the provisions of these Covenants, the prevailing party shall be entitled to recover the costs of

such proceeding, including reasonable attorney's fees associated with the action, as may be ordered by the court.

Section 3. Non-waiver.

The failure of Declarant, the Association, an Owner, or Gallatin County to enforce any Covenant or restriction contained herein shall not be deemed a waiver, or in any way prejudice the rights to later enforce that Covenant, or any other Covenant thereafter, or to collect damages for any subsequent breach of Covenants.

The waiver of, or approval of a variance of a Covenant provision by the Board of Directors, or non-action of the Association or Declarant in the event of a violation of a Covenant by a particular Owner or Lot, shall not be deemed to delete or waive the Covenant or enforcement thereof as it pertains to other Owners or Lots.

Section 4. Assessments.

Every Owner by paying assessments related thereto shall be responsible for and share in the cost of maintaining the Open Space, trails, Community Center, proposed waterways and proposed ponds and any assessments related thereto.

Section 5. Severability.

Invalidation of any one of these Covenants by statute, judgment or by Court order shall in no way affect any of the other Covenants or provisions, all of which shall remain in full force and effect.

Section 6. Covenants.

In any conveyance of the above described Property or of any Lot thereon, it shall be sufficient to insert a provision in any deed or conveyance to the effect that the Property or Lot is subject to protective or restrictive Covenants without setting forth such restrictions and Covenants verbatim or in substance in said deed nor referring to the recording data. All of the above described Property and Lots shall be subject to the restrictions and Covenants set forth herein, whether or not there is a specific reference to the same in a deed or conveyance.

IN WITNESS WHEREOF, Declarant has hereunto set its hand as of this 28 day of September, 2018.

DECLARANT:

Home 40, LLC

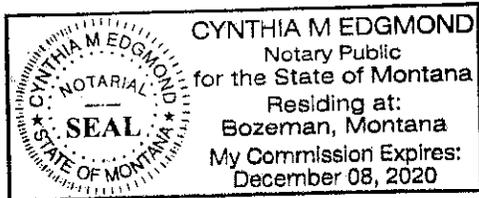
By: [Signature]  
Chad Larson, Manager

STATE OF MONTANA     )  
  : ss  
County of Gallatin     )

On this 28<sup>th</sup> day of September, 2018, before me, a Notary Public for the State of Montana, personally appeared **Chad Larson**, known to me to be the person whose name is subscribed to the above instrument and acknowledged to me that they he is the Manager of Home 40, LLC and executed the same.

SEAL

[Signature]  
Notary Public for the State of Montana



**EXHIBIT A**

**Tract 3A of Certificate of Survey No. 2148A, situated in the SW1/4 of Section 2, Township 3 South, Range 5 East, Principal Meridian, Gallatin County, Montana.**

**EXHIBIT B**

**Domestic Irrigation and Water Restrictions**

1. The Association shall have the authority to control and establish the domestic irrigation schedule for all Lots, such that the Association shall provide each Owner a schedule of days and hours of the day during which the Owner may irrigate the Owner's Lot. The Board of Directors shall monitor domestic irrigation, and may impose any irrigation restrictions as determined necessary and shall enforce all such restrictions.
2. The Subdivision's community irrigation system shall only be operable during the spring, summer and fall months of each year. The Board of Directors shall each year determine the date upon which the Subdivision's community irrigation system shall commence being operable and the date upon which said community irrigation system shall cease being operable.
3. All domestic irrigation shall come from the Subdivision's community irrigation system and facilities which shall be supplied by the Declarant's surface water rights and conveyed by the Hoy Ditch and the Subdivision pond flow through system.
4. All landscape and irrigation plans shall be submitted to the Architectural Committee for review and written approval, and such landscape and irrigation plans shall be designed to implement water-conserving landscape features. Under no circumstances will water features be allowed on any Lot.
5. No Lot Owner may drill a water well on the Owner's Lot or within the Subdivision.