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Shelley Vance-Gallatin Co MT MISC

**COMMUNITY DECLARATION  
FOR  
BAXTER MEADOWS MASTER COMMUNITY**

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**COMMUNITY DECLARATION  
FOR  
BAXTER MEADOWS MASTER COMMUNITY**

THIS COMMUNITY DECLARATION FOR BAXTER MEADOWS MASTER COMMUNITY, (“Community Declaration”) is made on the date hereinafter set forth by Baxter Meadows West, LLC, a Montana limited liability company, with an address of 3985 Valley Commons Drive, Bozeman, MT 59718 (“Declarant”).

**RECITALS**

A. Declarant expects to and may become the owner of portions of certain real estate in Bozeman (the “City”) and/or in the County of Gallatin, State of Montana, which is generally shown by the illustration contained in *Exhibit A* attached hereto and by reference made a part hereof (the “Project Area”).

B. As Declarant becomes the owner of portions of the Project Area, or afterwards, Declarant anticipates that those portions may be made subject to this Community Declaration, and thereafter be part of the “Real Property” as that term is used in this Community Declaration and as described in *Exhibit B* of this Community Declaration, as *Exhibit B* may be amended and supplemented from time to time.

C. Declarant may also add, with the consent of the owners or any applicable owner’s association, the properties described in *Exhibit C* to this Community Declaration.

D. Declarant desires to create a Master Planned Community on the Real Property under the initial name of ‘Baxter Meadows Master Planned Community,’ in which portions of the Real Property will be designated for separate ownership, with allowed diverse mixed uses, including residential uses, office uses, retail uses, light industrial and related uses, commercial uses, employment uses, education uses and public and private open space uses.

E. Declarant, by this Community Declaration, desires:

(i) to allow for and encourage the purposes of the development, including residential uses, office uses, retail uses, light industrial and related uses, commercial uses, employment uses, education uses and public and private open space uses;

(ii) to allow for and encourage diversity of residential housing and mixed uses within the Community;

(iii) to further promote the welfare of the community and its residents, occupants, tenants and guests;

(iv) to provide for the maintenance, repair, improvement and replacement of the Common Elements and to provide services as set forth in this Community Declaration and various budgets of the Community Association;

(v) to provide for the implementation of the powers and duties of the Board as set forth in this Community Declaration and the other Governing Documents of the Community; and

(vi) to implement the purposes of the Community Association as provided for in this Community Declaration and as provided for in any of the other Governing Documents of the Community.

G. Declarant desires to provide for the development of the Project Area to achieve these stated general purposes, and to allow the Community to undertake and continue these stated purposes as integral and fundamental aspects of the Community.

H. Declarant has caused the "Baxter Meadows Master Community Association," a Montana nonprofit corporation, to be incorporated under the laws of the State of Montana, as a master owners' association, for the purpose of exercising the functions set forth in this Community Declaration.

Now, therefore, Declarant declares as follows:

**ARTICLE 1**  
**SUBMISSION/DEFINED TERMS**

Section 1.1 Submission of Real Property to the Community Declaration \_\_\_\_\_. The Declarant hereby submits the property described in *Exhibit B*, and such additional property as may be subsequently added (the " **Real Property**") to the terms and conditions of this Community Declaration. This Community is not subject to M.C.A. 70-23-101.

Section 1.2 Purpose and Intent . Declarant declares that this Community Declaration is made for the purposes set forth in the recitals of this Community Declaration. Declarant intends that this Community Declaration establish a general plan for the development of the Community. This Community Declaration is intended to and provides a flexible and reasonable procedure for the future expansion of the Community and provides for its overall development, administration, maintenance and preservation. An integral part of the development plan is the creation and operation of the Community Association to own, operate and maintain various Common Elements and community improvements, and to administer and enforce this Community Declaration and the other Governing Documents referenced in this Community Declaration.

Section 1.3 Binding Effect. Declarant hereby declares that all of the Real Property shall be held, sold, and conveyed subject to the easements, restrictions, covenants and conditions of this Community Declaration except such portions of the Real Property as are a part of or are

subsequently dedicated as right-of-way, public street, road or highway or dedicated as and used as a public park. Portions of Real Property once subject to this Community Declaration that become exempt upon dedication as a right-of-way, public street, road or highway, or dedicated as and used as a public park, shall, upon vacation of all or any part of the dedication, then again be subject to this Community Declaration, to the extent of such vacation. Declarant declares that this Community Declaration shall run with the Real Property and shall be binding on all parties having any right, title or interest in the Real Property or any part thereof, their heirs, legal representatives, successors, and assigns and shall inure to the benefit of each Owner thereof.

Section 1.4 Name and Type. The type of Community is a Master, Planned Community. The Community may be located both in the City and/or in Gallatin County, State of Montana. The name of the Community is 'Baxter Meadows Master Community.

Section 1.5 Governing Documents. The Community's Governing Documents consist of the following, as they may be amended: (a) Articles; (b) Bylaws; (c) Community Declaration; (d) plats, maps (as those terms are defined in this Community Declaration) and deeds, as appropriate; (e) Supplemental Declarations; (f) Rules and Regulations; and (g) Board Resolutions.

Portions of the Real Property within the Community may be subject to additional covenants, restrictions and easements, which a Sub Association may administer. In such case, if there is a conflict between or among the Governing Documents and any such additional covenants or restrictions, or the governing documents or policies of any such Sub Association, the Governing Documents shall control.

Nothing in this Section shall preclude any Supplemental Declaration or other recorded covenants applicable to any portion of the Community from containing additional restrictions or provisions which are more restrictive than the provisions of this Community Declaration and, in such case, the more restrictive shall control.

Section 1.6 Defined Terms. Each capitalized term in this Community Declaration or in the plats or maps shall have the meaning specified unless otherwise defined in this Community Declaration or in a plat or map, or unless the context requires otherwise, all as set forth below:

1. **"Allocated Interests"** shall mean the applicable Assessment liability and also the votes in the Community Association allocated in this Community Declaration, as allowed for in the Act.
2. **"Alternate Delegate"** shall mean the person selected by the Owners in a Delegate District to represent the Delegate District and cast votes in the instance where the elected Delegate has resigned or has become ineligible to serve as the Delegate.
3. **"Articles"** shall mean the Articles of Incorporation for the Baxter Meadows Community Association, Inc., as may be amended from time to time.



4. **"Assessment(s)"** shall mean a Community Wide Services Assessment, a Residential Services and/or Recreational Assessment, the Assessment, the Commercial Services Assessment, the Working Fund and any other assessment as allowed or provided for by this Community Declaration or the Act.
5. **"Board"** or **" Executive Board"** shall mean the body designated in this Community Declaration to act on behalf of the Community Association.
6. **"Builder"** shall mean a home builder, general contractor or other party, which may also be an Owner, other than the Declarant, who acquires one or more Units without Improvements of a home, office building or commercial building constructed thereon for the purpose of constructing the initial Improvements upon the Unit or for the purpose of reselling or renting to a third party or third parties, or who purchases one or more parcels of land in the Community for further subdivision, development, and/or resale in the ordinary course of its business.
7. **"Bylaws"** shall mean the Bylaws adopted by the Community Association, as may be amended from time to time.
8. **"City"** means City of Bozeman, Montana.
9. **"Commercial Services Assessment(s) "** shall mean an Assessment for expenditures made or liabilities incurred by or on behalf of the Community Association for any special or unique services offered to, requested by a Commercial Unit Owner or group of Commercial Unit Owners, or as otherwise made available by the Community Association, including operational expenses, maintenance, repair, replacement and improvement, together with an allocation for reserves, and including late charges, attorney fees, fines, collection costs, and interest charged by the Community Association.
10. **"Commercial Units"** shall mean and include each separately owned Unit that may be used for commercial purposes.
11. **"Common Land and Facilities "** shall mean the Real Property within this Community owned by or leased by the Community Association, including easements, if any, other than a Unit, which Real Property may be designated in recorded plats, maps and/or deeds.
12. **"Community"** means the Master Planned Community created by this Community Declaration.
13. **"Community Association"** or **" Association"** shall mean the Baxter Meadows Master Community Association, Inc., a Montana nonprofit corporation.
14. **"Community Declaration"** shall mean this Community Declaration for Baxter Meadows Master Community, as amended and supplemented from time to time.
15. **"Community Manager"** shall mean any one (1) or more persons or companies engaged or employed by the Community Association to perform any of the duties, powers or functions of the Community Association.
16. **"Community Wide Services Assessment(s) "** shall mean an assessment for common expenses, incurred by or on behalf of the Community Association for the annual costs of

operating the Community Association, together with an allocation for reserves, and including the late charges, attorney fees, fines, collection costs and interest charged by the Community Association.

17. **"Declarant"** shall mean the Declarant named in this Community Declaration, and any successor and/or assignee designated by written notice or assignment executed by the then Declarant and executed by the transferee and recorded to the extent any rights or powers reserved to Declarant are transferred or assigned to that party.
18. **"Delegate"** shall mean the natural persons selected by Members within a Delegate District to represent a Delegate District and to cast votes on behalf of Members within a Delegate District as provided in this Community Declaration.
19. **"Delegate District"** shall mean a geographical area which may constitute any portion or portions of the Real Property and from which all Members in that geographic area shall elect a single Delegate to represent their collective voting power. Parts of a Delegate District need not be contiguous.
20. **"Design Review Board" (DRB)** shall be the committee appointed by the Declarant, as allowed for in this Declaration, subject to the terms of this Declaration.
21. **"Development Rights"** or **"Special Declarant Rights"** shall mean those rights set forth in this Community Declaration and those rights set forth in the Act.
22. **"Dwelling Unit"** shall mean and include any portion of the Improvements on a Unit improved to allow separate occupancy for primarily residential use.
23. **"Governing Documents"** shall mean those documents listed in the applicable section of this Community Declaration, as they may be amended from time to time.
24. **"Improvement(s)"** shall mean structures or improvements of any kind installed upon a Unit.
25. **"Limited Common Elements"** shall mean those portions of the Common Elements, if any, designated by Declarant for the exclusive use of one (1) or more but fewer than all of the Units.
26. **"Member"** shall mean the person, or if more than one, all persons collectively, who constitute the Owner of a Unit, as more fully provided for in the Articles and Bylaws.
27. **"Membership"** shall mean the rights and obligations associated with being a Member.
28. **"Operating Fund"** shall mean the account into which the Board shall deposit monies paid to the Community Association from the Working Fund and any portions of the Community Wide Services Assessment as determined by the Board.
29. **"Sub Association"** shall mean any unit owners' association organized and established or authorized pursuant to this Community Declaration and a Supplemental Declaration, the membership of which is composed of Owners of Units within that portion of the Real Property covered by a Supplemental Declaration

30. **“Sub Association Assessment(s)”** shall mean an Assessment for expenditures made or liabilities incurred by or on behalf of Sub Association, as provided for in this Community Declaration, and also as an option in lieu of a separate assessment by a Sub Association, including late charges, attorney fees, fines, collection fees and interest charged by the Community Association.
31. **“Sub Association Service Assessment(s)”** shall mean expenditures made or liabilities incurred by or on behalf of the Community Association for services only to a particular Sub Association of the Community, such as for a or a Limited Common Element, together with an allocation for reserves, and including late charges, attorney fees, fines, collection fees and interest charged by the Community Association.
32. **“Period of Declarant Control”** shall mean the period of time commencing on the date of recordation of this Community Declaration and expiring on the earlier of twenty (20) years thereafter, or sixty (60) days after conveyance or creation of seventy-five percent (75%) of the Units that may be created by Owners other than Declarant, or six (6) years after the last conveyance of a Unit by the Declarant in the ordinary course of business; provided, however, that if the Period of Declarant Control has not terminated pursuant to the foregoing provisions, the Period of Declarant Control shall in any case terminate on the date upon which all property in the Project Area has become a part of the Community and the last Unit within the Community has been conveyed by the Declarant. Should it choose to do so, Declarant may relinquish declarant control sooner than required under this provision and such relinquishment shall be in writing.
33. **“Project Area”** shall initially mean all of the real estate generally described, shown and depicted by the illustration contained in *Exhibit A* attached hereto. The Project Area shall also include any additional lands as may later become subject to Declarant’s rights of annexation, as allowed for in this Community Declaration.
34. **“Real Property”** (or “real estate”) shall mean the property described in *Exhibit B*, and such additional property as subsequently may be added, pursuant to the expansion rights reserved in this Community Declaration, together with all easements, rights, and appurtenances thereto and the buildings and Improvements erected or to be erected thereon. Easements and licenses to which the Common Interest Community is initially subject to are to be set forth, as applicable, in *Exhibit B*.
35. **“Recreational Facilities”** shall mean one (1) or more recreational improvements on a portion or portions of the Common Elements, which, if limited to use by less than all Members, shall be deemed a Limited Common Element.
36. **“Residential Services and/or Recreational Assessment(s)”** shall mean an Assessment for expenditures made or liabilities incurred by or on behalf of the Community Association for operating, maintaining, repairing, replacing and improving Recreational Facilities, together with an allocation for reserves, and including late charges, attorney fees, collection fees, fines and interest charged by the Community Association.



37. **“Residential Units”** shall mean and include any Unit or lot primarily intended or zoned for residential uses, including, Units where any residential condominium units have the right to be created or have been created; Units where apartments have the right to be created or have been created; and Units where a single family home or other property for individual occupancy has the right to be created or has been created.
38. **“Rules and Regulations”** means all rules, regulations, procedures and any Renovation and Remodeling Criteria, as the same may be adopted and amended from time to time by the Board, pursuant to this Community Declaration.
39. **“Special Residential Services Assessment(s)”** shall mean an Assessment for expenditures made or liabilities incurred by or on behalf of the Community Association for any special or unique services offered to, or requested by a Unit Owner or otherwise made available by the Community Association, including operational expenses, maintenance, repair, replacement and improvement, together with an allocation for reserves, and including late charges, attorney fees, collection fees, fines and interest charged by the Community Association.
40. **“Supplemental Declaration”** shall mean a written recorded instrument containing covenants, conditions, restrictions, reservations, easements or equitable servitudes, or any combination thereof, which affects any portion, but not all, of the Real Property, which has been approved, in writing, by the Declarant, or if this approval right is assigned by Declarant, then is approved by Declarant's assignee.
41. **“Unit”** shall mean a physical portion of the Community, designated for separate ownership, shown as a condominium unit, or lot or described as a separate parcel or separately deeded; or assessment or voting equivalent, as appropriate and applicable in the context. The definition “Unit” is not the same as the definition of “Unit” in M.C.A. 70-23-102(14).
42. **“Unit Owner”** or **“Owner”** shall mean any person or entity that owns a Unit.
43. **“Units That May Be Created”** shall mean the grand total of eight thousand (8,000) Units, consisting of up to:
- (i) three thousand (3,000) individually owned Residential Units;
  - (ii) one thousand (1,000) unit equivalents (for Residential Units used as a part of residential building or buildings devoted to apartments or multifamily rental use), on the basis of one (1) unit equivalent for every five (5) Dwelling Units, with the maximum number of rental Dwelling Units of five thousand (5,000) divided by 5 = 1,000;
  - (iii) three thousand (3,000) unit equivalents, based on use for commercial, industrial, office or for public or private recreation use, on the basis of one (1) unit equivalent for every 2,000 square foot increment of the maximum allowed square footage of twelve million (6,000,000) divided by 2,000 square feet = 3,000;



- (iv) one thousand (1,000) for Units or unit equivalents, allocated to any one of the above uses or to other uses.

The grand total, above provided, shall be the maximum number of Units that may be subject to this Community Declaration if all of the Project Area becomes a part of the Community. The aforesaid number of Units That May Be Created is not, however, a representation or guaranty by Declarant as to the actual number of Units that will ultimately be included in or constructed as part of the Community.

- 44. **“Working Fund”** shall mean an Assessment for the Association’s operating capital, as allowed for in this Community Declaration.

## ARTICLE 2

### THE COMMUNITY ASSOCIATION OPERATIONS

#### Section 2.1 General Purposes and Powers of the Community Association.

- (a) The Community Association, acting through the Board, shall:
  - (i) perform functions and manage the Community as provided for in the Governing Documents, to meet the purposes of this Community Declaration, and
  - (ii) manage any other Sub Associations as may subsequently be created within the Community, as and if provided for in the Supplemental Declaration for that Sub Association, all as allowed for in this Community Declaration.
  
- (b) The Community Association shall also have all power necessary or desirable to effectuate its purposes as an owners’ association as provided for in this Community Declaration.

Section 2.2 Deemed Assent, Ratification and Approval . All Owners, occupants and residents in the Community shall be deemed to have assented to, ratified and approved the general purposes of this Community Declaration and the power, authority, management responsibility and designation of the Community Association, acting through the Board as allowed for in this Community Declaration.

Section 2.3 Duty of the Board to Exercise Judgment and be Reasonable/Rights of Owners. In furtherance of the purposes of this Community Declaration, the Owners shall have the right and benefit of the administration of the Community by the Board, with the Board required to exercise judgment and reasonableness on behalf of the Community Association and Owners.



Section 2.4 Community Manager. The Board may, by written resolution, delegate authority to a Community Manager, provided no delegation shall relieve the Board of final responsibility.

Section 2.5 Election of the Board of the Community Association. The Board shall be elected by Delegates representing Delegate Districts within the Community, provided, however, that the Declarant shall have the sole right to appoint all or certain of the members of the Board as allowed for in this Community Declaration. Delegates shall be elected by Owners within each Delegate District, acting in their capacity as Members of the Community Association.

Section 2.6 Declarant's Right to Appoint During Period of Declarant Control.

(a) During the Period of Declarant Control, the Declarant's appointment rights are subject to the following:

(i) From and after the date of recordation of this Community Declaration until the date that is sixty (60) days after the date of conveyance by Declarant or creation by Declarant and others of twenty-five percent (25%) of the Units that May Be Created are conveyed to Owners other than Declarant, or are created, Declarant may appoint and remove all members of the Board.

(ii) From and after the date which is sixty (60) days after the date of conveyance by Declarant or creation by Declarant and others of twenty-five percent (25%) of the Units That May Be Created are conveyed to Owners other than Declarant, or are created, until the date that is sixty (60) days after the date of conveyance by Declarant or creation by Declarant and others of fifty percent (50%) of the Units That May Be Created are conveyed to Owners other than Declarant, or are created, the Owners other than Declarant (acting through their Delegates) shall have the right to elect a number of the members of the Board equal to the greater of one (1) or twenty-five percent (25%) (rounded to the nearest whole number) of the total number of the members of the Board, and the Declarant may continue to appoint and remove all other members of the Board.

(iii) From and after the date which is sixty (60) days after the date of conveyance by Declarant or creation by Declarant and others of fifty percent (50%) of the Units That May Be Created are conveyed to Owners other than Declarant until the date of termination of the Period of Declarant Control, the Owners other than the Declarant (acting through their Delegates) shall have the right to elect a number of the members of the Board equal to one (1) or thirty-three percent (33%) (rounded to the nearest whole number) of the total number of members of the Board, and



the Declarant may continue to appoint and remove all other members of the Board. From and after termination of the Period of Declarant Control, the Owners (acting through their Delegates), including Declarant (if Declarant is then an Owner), shall elect a Board of at least three (3) members, at least a majority of whom must be Owners other than Declarant or designated representatives of Owners other than Declarant.

- (b) The Declarant may voluntarily surrender any or all of the foregoing rights to appoint and remove officers and members of the Board before termination of the Period of Declarant Control. In that event, the Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

Section 2.7 Duty to Provide Audit or Financial Review \_\_\_\_\_. The Community Association shall provide for an annual independent audit or financial review of the accounts of the Community Association. Copies of the audit or review shall be made available to any Owner, on request, for a reasonable fee for the cost of copying the audit.

Section 2.8 Operating Fund. The Board shall establish a fund (the "Operating Fund") into which shall be deposited monies for maintenance, repair, replacement and improvement of the Common Elements.

Section 2.9 Establishment of Other Funds. The Community Association may establish other funds as and when needed and nothing herein shall limit, preclude or impair the authority of the Community Association to establish other funds for specified purposes authorized by this Community Declaration. If the Community Association establishes any additional funds, the Board shall designate an appropriate title for the fund to distinguish it from the other funds maintained by the Community Association.

Section 2.10 Authority for Disbursements. The Board shall have the authority to make or to authorize an agent to make disbursements of any monies in the Operating Fund or other funds that may be established pursuant to this Community Declaration.

Section 2.11 Power to Provide Special or Community Services \_\_\_\_\_. The Community Association shall have the power to provide services or offer community events to one (1) or more, but less than all, Owners. Any such service or services may also be provided pursuant to an agreement in writing, or through one or more Supplemental Declarations. Any such Supplemental Declaration or agreement may provide for payment to the Community Association

by such Owner or Owners of the costs and expenses that the Community Association incurs in providing such services, including a fair share of the overhead expenses of the Community Association. In addition, any such Supplemental Declaration or agreement shall contain provisions assuring that the obligation to pay for such services shall be binding upon any heirs, personal representatives, successors and assigns of the Owner , and that the payment for such services shall be secured by a lien on the Unit of such Owners and may be collected in the same manner as an Assessment, or, if the written agreement so provides, in installments as part of the Community Wide Services Assessment.

Section 2.12 Power to Operate and Charge for Facilities and Services. The Community Association shall have the power to acquire, create, own and operate any and all such facilities and services as it deems appropriate, and to establish charges for the use of facilities and services. The charges may include admission, rental or other fees and charges for any use of property, facilities or services of the Community Association. Such charges or fees shall be as determined from time to time by the Board.

Section 2.13 Bulk Service Agreements. The Community Association shall have the power and authority to enter into bulk service agreements for such terms and rates as it deems appropriate in order to provide the Owners with any of the following services: cable television, community satellite television, electronic entertainment, information or communication services, or any other service the Community Association believes to be in the best interests of the Owners. If such a bulk service agreement is executed, the costs shall be allocated as a part of the Community Wide Services Assessment.

Section 2.14 Right to Notice and Comment. Under circumstances as set forth in this Community Declaration, where the Community Declaration require that an action be taken after 'Notice and Comment,' and at any other time the Board determines, the Owners have the right to receive notice of the proposed action and the right to comment orally or in writing.

Section 2.15 Indemnification. To the full extent permitted by law, each officer and director of the Community Association shall be and is hereby indemnified by the Community Association against all expenses and liabilities, including attorney fees, reasonably incurred by or imposed upon such officer or director in any proceeding to which he or she may be a party, or in which he or she may become involved, by reason of being or having been an officer or director of the Community Association, or any settlements thereof, whether or not he or she is an officer or director of the Community Association at the time such expenses are incurred. This indemnification shall not apply in cases where an officer or director is adjudged guilty of willful misfeasance or malfeasance in the performance of his or her duties. In the event of a settlement, the indemnification provided for in this Community Declaration shall apply only when the Board approves such settlement and reimbursement as being in the best interests of the Community Association.

Section 2.16 Education and Training. As a Common Expense, the Community Association may provide education and training opportunities, including providing funding and permitting facilities use for such purposes. The Community Association may provide education and training activities as a tool for fostering Owner, resident and occupant awareness of governance, operations and concerns of the Community and of the Community Association. Appropriate educational topics include dispute or conflict resolution, issues involving the Governing Documents, and education or topics benefitting or contributing to operation or governance of the Community. The Community Association shall also fund, as a Common Expense, and support the education and training required for officers and directors.

### ARTICLE 3

#### MEMBERSHIP, DELEGATE DISTRICTS, VOTING AND ASSESSMENT ALLOCATIONS

Section 3.1 Membership. Every person who is a record Owner of a fee interest in any Unit which is subject to this Community Declaration shall be a Member of the Community Association. There shall be one (1) Membership in the Community Association for each Unit within the Community. The person or persons who constitute the Owner shall automatically be the holder of the Membership appurtenant to the Owner's Unit, and the Membership shall automatically pass with fee simple title to the Unit. Membership shall be appurtenant to and may not be separated from ownership of any Unit. Ownership of a Unit shall be the sole qualification for Membership. Where more than one (1) person holds an interest in any Unit, all those persons shall be Members. No Owner, whether one (1) or more persons, shall have more than one (1) Membership per Unit owned, but all persons owning each Unit shall be entitled to rights of Membership and use of enjoyment appurtenant to ownership. The Articles of Incorporation and Bylaws of the Community Association may set forth classifications of Membership.

Section 3.2 Establishment of and Modification of Delegate Districts. The Community shall be divided into Delegate Districts based on Sub Associations created or as otherwise determined by Declarant, and each Delegate District shall elect one (1) Delegate to the Community Association to exercise voting power of all of the Members in a Delegate District. The initial Delegate District(s) is/are established in this Community Declaration. Subsequent Delegate Districts shall be established by Supplemental Declarations. So long as it has the right to subject additional property to this Community Declaration, Declarant may unilaterally amend this Community Declaration or any Supplemental Declaration to re-designate Delegate District boundaries. However, two (2) or more existing Districts shall not be combined without the consent of Owners of a majority of the Units in the affected Districts.

Section 3.3 Voting Rights of Members.

- (a) Generally. Each Member shall:
- (i) have the right to cast votes for the election of the Delegate to the Community Association (to exercise the voting power of the Delegate District in which the Member's Unit is located); and
  - (ii) have such other voting rights as provided for in this Community Declaration. Except as expressly provided in this Section and in this Community Declaration, no other voting rights are created by this Community Declaration.
- (b) Delegates. The Delegate from the Delegate District shall be elected by Members holding a majority of the voting power in a Delegate District present or in person or by proxy at a duly constituted meeting of a Delegate District.
- (c) Bylaws. Unless otherwise addressed in this Community Declaration or the Articles of Incorporation, the Bylaws shall provide the manner, time, place, conduct and voting procedures for Member meetings for the purpose of electing a Delegate or other purposes in any Delegate District.
- (d) No Fractionalized Voting. Vote(s) allocated to any Unit must be cast as a block and without dividing or fractionalizing such vote or votes.
- (e) Declarant Control. During the Period of Declarant Control, the Declarant shall have the right to appoint members of the Board as allowed by this Community Declaration and as allowed for by the Act.

Section 3.4 Voting Allocations.

- (a) Residential Use - Individually owned Units. If a Unit is used for single family, duplex, triplex, townhouse, or other multifamily residential dwellings and the Unit is individually owned, the vote attributable to a Unit shall be one (1) vote for each Dwelling Unit.
- (b) Residential Use - Apartments and Rentals. If a Unit is used as a part of residential building or buildings devoted to apartments or multifamily rental use, the vote attributable to such Unit shall be one (1) vote for every five (5) Dwelling Units.
- (c) Commercial, Office and Other Uses. If a Unit is used for commercial, retail, light industrial, office or for public or private recreation use, regardless of the size of the Unit, the vote attributable to such Unit shall be one (1) vote for each 2,000 square foot increment of floor area within the building(s) or Improvements on that Unit. The calculation of floor area of a building or of the Improvements shall be the gross floor area of all floor(s) of the building(s) measured from the exterior of the structure, including any basement area, but excluding floor areas not comprising a full 2,000 square feet increment, shall not receive a proration or fractional vote. The Board may require as built plans to be filed with the Community Association and may promulgate written standards for fairly and uniformly calculating the floor area for purposes of this Section.

(d) Allocations Prior to Use and Other Units or Other Uses. For all Units not allocated votes above, based on use, including any Unit comprised entirely of vacant land, regardless of zoning classification or anticipated use, the vote attributable to such Unit shall be one (1) vote per Unit.

Section 3.5 Proxies Of Members. Votes allocated to a Unit may be cast pursuant to a proxy duly executed by an Owner. If a Unit is owned by more than one (1) person, any one (1) co-Owner of the Unit may vote the vote of that Unit or register a protest to the casting of the vote of that Unit by the other co-Owners of the Unit through a duly executed proxy. An Owner may not revoke a proxy given pursuant to this Section except by actual notice of revocation to the person presiding over a meeting of the Community Association. Owners within Sub Associations or any designated subareas or parcels may, and are encouraged to, appoint a single Delegate or entity to hold and exercise proxies for all such Owners.

Section 3.6 Voting Rights of Delegates. Each Delegate shall have one (1) vote for each vote that could be cast by Members voting to elect a Delegate for such Delegate District. A Delegate may cast votes with respect to a Unit within such Delegate District only during such periods as the Owner of such Unit is entitled to cast votes for the election of a Delegate as provided in this Community Declaration or in any Supplemental Declaration as applicable.

Section 3.7 Manner of Voting by Delegates. Each Delegate may cast the votes that he or she represents in such manner as the Delegate, in his or her sole discretion, deems appropriate, acting on behalf of all the Members owning Units in the Delegate District; provided, however, that in the event that at least a majority in interest of the Owners in any Delegate District present in person or by proxy at a duly constituted meeting of such Delegate District shall determine at such meeting to instruct their Delegate as to the manner in which he or she is to vote on any issue, then the Delegate representing such Delegate District shall cast all of the voting power in such Delegate District in the same proportion, as nearly as possible without counting fractional votes, as the Owners of such Delegate District shall have cast their votes "for" or "against" such issue in person or by proxy. A Delegate shall have the authority, in his or her sole discretion, to call a special meeting of the Members of the Delegate's Delegate District in the manner provided in the Bylaws, for the purpose of obtaining instructions as to the manner in which to vote on any issue to be voted on by the Delegates. When a Delegate is voting without the instruction from the Members represented by such Delegate, then all of the votes may be cast as a block or unit, or the Delegate may apportion some of such votes in favor of a given proposition and some of such votes in opposition to such proposition. It will be presumed for all purposes of Community Association business that any Delegate casting votes will have acted with the authority and consent of all the Members of the Delegate District of such Delegate. All agreements and determinations lawfully made by the Community

Association in accordance with the voting procedures established herein, and in the Bylaws, shall be binding on all Members, and their successors and assigns.

Section 3.8 Delegates as Advisory Committee. The Delegates may act as an advisory committee to the Board and may give the Board advice (which shall not be binding on the Board), as follows or on the following matters:

- (a) Special events and community programs;
- (b) Community Wide Services Assessments and the services funded through the Community Wide Services Assessment;
- (c) By Delegate Districts involved with any of the following; provided, however that as to each of the following, the Board may require that only those Delegates with Districts that are subject to any one of these Assessments may be involved in an advisory capacity to the Board:
  - (i) Residential Services and/or Recreational Assessments;
  - (ii) Sub Association Assessments;
  - (iii) Special Residential Services Assessments;
  - (iv) Commercial Services Assessments;
  - (v) Sub Association Assessments of the Community Association;
- (d) Other operations or aspects of the Community as requested by the Board, and
- (e) Other operations or aspects of the Community as requested by a majority of Delegates and approved by the Board.

Section 3.9 Assessment Allocations. Assessments are allocated as follows:

- (a) Community Wide Services Assessments. Community Wide Services Assessment allocations are based on the percentage number obtained by dividing the vote or votes allocated to a Unit by the total number of votes allocated to all Units within the Community, as votes are allocated as specified in this Community Declaration.
- (b) Residential Services and/or Recreational Assessments. Residential Services and/or Recreational Expenses shall be allocated to all Residential Units, based on an equal assessment on each Dwelling Unit, except as may otherwise be provided for in this Community Declaration or in a Supplemental Declaration or an amendment to this Community Declaration.
- (c) Sub Associations Assessments. Sub Associations Assessments shall be allocated and assessed based on an equal assessment on each Dwelling Unit for Residential Units,



or voting allocation as to Commercial Units, as appropriate, if applicable, against only those Units that are subject to that Sub Association Assessment, whether by virtue of the terms of this Community Declaration, by virtue of a recorded Supplemental Declaration or by virtue of an amendment to this Community Declaration.

(d) Special Residential Services Assessments. Special Residential Services Assessments shall be allocated and assessed based on an equal assessment on each Dwelling Unit for either all Residential Units or those Residential Units to be assessed.

(e) Commercial Services Assessments. Commercial Services Assessments shall be allocated and assessed based on an equal assessment on each Commercial Unit, by vote, or for a group of Commercial votes, as allowed for in the Section enabling this particular assessment.

(f) Sub Associations. The liability for Community Wide Services Assessments and/or Residential Services and/or Recreational Assessments attributable to all Units in a Sub Association may be assessed against the Sub Association, if any; or in the absence of an operating Sub Association for Units included in the Community, then to the Owner. Sub Associations shall allocate the Community Wide Services Assessments and/or Residential Services and/or Recreational Assessments and assess the Units in the Sub Association pursuant to the allocations set forth in the Sub Association's Declaration, the Sub Association's Articles of Incorporation, the Sub Association's Bylaws or other governing documents.

(g) Working Fund Assessments. Working Fund Assessments shall be allocated as provided in this Community Declaration.

(h) Other Assessments. Other Assessments provided for in this Community Declaration shall be allocated as provided for in this Community Declaration.

Section 3.10 Re-Allocations. When Units are added to or withdrawn from the Community, pursuant to the provisions of this Community Declaration and the Act, the formulas set forth above shall be used to reallocate the Allocated Interests.

## ARTICLE 4

### UNIT DESCRIPTIONS/Common ELEMENTS/EASEMENTS

Section 4.1 Identification of Unit Descriptions. The identification of each Unit is to be shown on an applicable plat, maps or deed for properties included in the Community. Every contract for sale, deed, lease, Security Interest, will or other legal instrument may legally describe a Unit by any identifying number established by a plat or map, with reference to the plat or map, and the Community Declaration, followed by the name of the Community. Reference to

the Community Declaration, plat or map in any instrument shall be deemed to include any supplement(s) or amendment(s) to the Community Declaration, map or plat, without specific references thereto.

Section 4.2 Common Elements. The Declarant is not obligated to construct any particular type or kind or area of Common Elements. The Declarant may construct Common Elements for office or other use by the Community Association, for recreational use by all or some portion of the Owners (provided those with a right to use shall have an obligation to fund the ongoing maintenance, repair, replacement and improvement of any recreational facilities limited to use by less than all Owners and provided that if rights to use are limited to less than all Owners, that Common Element shall then be a Limited Common Element) and such other facilities as Declarant may determine.

Section 4.3 Duty to Accept Common Elements and Facilities Transferred by Declarant. The Community Association shall accept any Common Elements or property, including any Improvements thereon, and personal property transferred to the Community Association by Declarant and equipment related thereto, together with the responsibility to perform any and all functions associated therewith, provided that such property and functions are not inconsistent with the terms of this Community Declaration. Any property or interest in property transferred to the Community Association by Declarant shall, except to the extent otherwise specifically approved by resolution of the Board, be transferred to the Community Association free and clear of all liens (other than the lien of property taxes and Assessments not then due and payable), but shall be subject to the terms of this Community Declaration and any Supplemental Declaration applicable thereto. The improvements on the Common Elements may be changed from time to time by the Board. Portions of the Common Elements may be designated by Declarant as a part of a Unit or as a Limited Common Element to a Unit. Portions of Units not yet conveyed by Declarant to a third party owner may become Common Elements or Limited Common Elements, pursuant to rights reserved elsewhere in this Community Declaration.

Section 4.4 Utility, Map and Plat Easements. Easements for utilities and other purposes over and across the Units and Common Elements may be as shown upon a recorded plat, map or separate document and as may be established pursuant to the provisions of this Community Declaration, or granted by authority reserved in any recorded document.

Section 4.5 Owners' Easements of Enjoyment. Every Owner shall have a right and easement for access to his or her Unit and of enjoyment in and to any Common Elements and such easement shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:



- (a) this Community Declaration and the other Governing Documents;
- (b) any restriction contained in any deeds of Common Elements to the Community Association;
- (c) the right of the Community Association to regulate use and enjoyment;
- (d) the right of the Community Association to promulgate and publish Rules and Regulations, subject to limitations included in this Community Declaration, which Owners shall strictly comply with;
- (e) the right of the Community Association to suspend rights to use recreational facilities for any period during which any Residential Services and/or Recreational Assessment against such Owner's Unit remains unpaid;
- (f) the right of the Board to impose reasonable membership requirements and charge reasonable membership admission or other fees for the use of any recreational facility situated upon the Common Elements and the right of the Board to permit use of any recreational facilities situated on the Common Elements by persons other than Owners, their families, lessees and guests upon payment of use fees established by the Board;
- (g) the right of the Community Association to allow public use of Common Elements or recreational amenities, with or without a fee or charge;
- (h) the right, power and authority of the Community Association to grant any dedication, transfer or conveyance or grant of any similar interest affecting the Common Elements, to the extent permitted by the Act;
- (i) the right of the Community Association to close or limit the use of the Common Elements while maintaining, repairing and making replacements in the Common Elements or as determined by the Board;
- (j) the Development and Special Declarant Rights of the Declarant reserved in this Community Declaration; and
- (k) the rights of Builders reserved in this Community Declaration.

Section 4.6 Rights Regarding Recreational Facilities. Regardless of any general rights to use and enjoyment (a) only Owners of a Residential Unit or the tenant, lessee or occupant of a Dwelling Unit in a Residential Unit used as an apartment or for multi-family rental use, shall have a right to use any Recreational Facilities, unless otherwise provided in a Supplemental Declaration; (b) these Owners, tenants, lessees and occupants of Residential Units shall only have a right to use Recreational Facilities after they have occupied their Units.

Section 4.7 Delegation of Use. Any Owner may delegate their right of enjoyment to the Common Elements and facilities to the members of such Owner's family or their guests, or contract purchasers who reside at such Owner's Unit or at the Dwelling Units that are a part of that Unit and shall be deemed to have delegated that authority to the Owner's tenants.

Section 4.8 Liability of Owners for Damage. Each Owner shall be liable to the Community Association for any damage to Common Elements or for any expense or liability incurred by the Community Association which may be sustained by reason of negligence or willful misconduct of such Owner or a guest of the Owner, and for any violation by such Owner or guest of this Community Declaration or any Rule or Regulation. The Community Association shall have the power to levy and collect an Assessment against a Member to cover the costs and expenses incurred by the Community Association on account of any such damage or any such violation of this Community Declaration or of the Rules and Regulations, including interest, additional management or administrative fees and attorneys' fees, or for any increase in insurance premiums directly attributable to any such damage or violation.

Section 4.9 Power to Grant Easements. The Community Association shall have the power to grant access, utility, drainage, water facility and any other easements in, on, over or under the Common Elements for any lawful purpose, including without limitation, the provision of emergency services, utilities (including, without limitation, water, sanitary sewer, storm sewer, gas and other energy services), telephone, cable television, fiber optic and other telecommunication services, and other uses or services to some or all of the Members.

Section 4.10 Safety and Security. Each Owner and occupant, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in the Community. The Association may, but shall not be obligated to, maintain or support certain activities within the Community designed to enhance the level of safety or security which each person provides for himself or herself and his or her property. Neither the Community Association nor Declarant shall in any way be considered insurers or guarantors of safety or security within the Community, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. Each Owner acknowledges, understands and shall be responsible for informing its tenants and all occupants that the Community Association, its Board and committees, and Declarant are not insurers or guarantors of security or safety and that each person within the Community assumes all risks of personal injury and loss or damage to property, including Units and the contents of Dwelling Units, resulting from acts of third parties.

## ARTICLE 5

### COMMUNITY ASSOCIATION MAINTENANCE RESPONSIBILITIES

Section 5.1 Association Responsibility. The Association is responsible for permanent care and maintenance of all Common Land and Facilities, and subdivision streets within the Community. These responsibilities include maintenance of vegetation, playground areas, playground equipment, sidewalks, common open space, center areas, public parking facilities, paths and trails, boulevards and medians, alleys, all storm water facilities and recreational areas



and all liability insurance and applicable taxes. The Association is responsible for maintenance of the Common Land and Facilities listed above and the storm water detention basins, storm water facilities, the stream/ditch in the Public Linear Park as well as the sidewalks adjacent to each of these areas. The Association is also responsible for costs of irrigation including the cost of water and irrigation system maintenance.

The Unit Owners dependent on the sewage lift station shall be responsible for financing the costs of its operation and maintenance, which will be the responsibility of the City of Bozeman. The Declarant shall agree in writing to a surcharge to cover the costs of operating and maintaining the lift station. At such time as the Association takes ownership and control of all Common Land and Facilities, it shall cover its proportionate share of the operation and maintenance costs of lift station.

Section 5.2 Flexible Authority of the Board for Community Association Maintenance.  
The Board shall determine the specifications, scope, extent, nature and parameters of the Community Association's maintenance, repair, replacement and improvement responsibilities.

Section 5.3 Generally Designated Areas of Maintenance\_\_\_\_\_ The Community Association may be responsible for:

- (a) Designated landscaping and other flora, sign =age, structures, entry sign-age, and similar improvements situated upon the Common Elements or in public rights of way or public easement areas.
- (b) Designated recreational facilities, if any, which may include swimming pools and other facilities.
- (c) The improvement, upkeep and maintenance, repair and reconstruction of landscaped areas in designated parks, parkways, dedicated public right of ways, alleys, or public easements, or for the payment of expenses which may be incurred by virtue of agreement with or requirement of any local governmental authority.
- (d) Such portions of property included within the Real Property as may be dictated by local government, this Community Declaration or any Supplemental Declaration or in any contract or agreement for maintenance thereof entered into by the Community Association, or as expressly delegated by a Sub Association and accepted by the Community Association.
- (e) Real property within any portion of the Community, in addition to that designated by any Supplemental Declaration, either by agreement with the Sub Association or because, in the opinion of the Board, the level and quality of service then being provided is not adequate. All costs of maintenance pursuant to this paragraph may be assessed as a Sub Association Assessment of the Community Association or sub-Assessment only against the Units within the Sub Association, or if there is no Sub Association, then to that Unit, to which the services are provided. The provision of services in accordance with this Section shall not constitute discrimination within a class.



(f) Any property and facilities owned by the Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Community Association, such property and facilities to be identified by written notice from the Declarant to the Community Association and to be maintained by the Community Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Community Association.

(g) Other property which it does not own, including, without limitation, conservation easements held by nonprofit entities, and other property dedicated to public use, if the Board determines that such maintenance is necessary or desirable.

(h) Such other maintenance and repair as set forth below or elsewhere in this Community Declaration.

(i) Common Land and Facility Maintenance Guarantee. In the event the Association or any successor organization established to own and maintain commonly owned open spaces, recreational areas, facilities, private streets, and parking lots, shall at any time fail to maintain the Common Land and Facilities in reasonable order and condition in accordance with the approved plan, the City Commission may cause written notice to be served upon such organization or upon the owners of property in the development. The written notice shall set forth the manner in which the Common Land and Facilities have failed to be maintained in reasonable condition. In addition, the notice shall include the demand that the deficiencies noted be cured within thirty days thereafter and shall state the date and place of a hearing to be held within fourteen days of the notice. At the time of hearing, the City Commission may modify the terms of the original notice as to deficiencies and may extend the time within which the same may be cured. If the deficiencies set forth in the original notice or modifications are not cured within the time set, the City may enter upon such common facilities and maintain the same for a period of one year, in order to preserve the taxable values of properties within the development and to prevent the common facilities from becoming a public nuisance. Such entry and maintenance shall not vest in the public any right to use the common facilities not dedicated to public use. Before the one year period expires, the Commission shall, upon its own initiative or upon written request of the organization theretofore responsible for maintenance, call a public hearing and give notice of such hearing to the organization responsible for maintenance or the property owners of the development. At the hearing, the organization responsible for maintenance and or the residents of the development may show cause why maintenance by the City should not be continued for a succeeding year. If the City commission determines that it is not necessary for the City to continue such maintenance, the City shall cease such maintenance at the time established by the City Commission. Otherwise, the City shall continue maintenance for the next succeeding year subject to a similar hearing and determination at the end of each year thereafter.

1. The cost of maintenance by the City shall be a lien against the common facilities of the development and the private properties within the development. The City Commission shall have the right to make Assessments against properties in the development on the same basis that the organization

responsible for maintenance of the facilities could make such Assessments. Any unpaid Assessment shall be a lien against the property responsible for the same, enforceable the same as a mortgage against such property. The City may further foreclose its lien on the common facility by certifying the same to the County Treasurer for collection as in the case of collection of general property taxes.

2. Should the property owners association request that the City assume permanent responsibility for maintenance of facilities, all facilities shall be brought to City standards prior to the City assuming responsibility. The assumption of responsibility must be by action of the City Commission and all costs to bring facilities to City standards shall be the responsibility of the property owners association. The City may create special financing mechanisms so that those properties within the area affected by the property owners association continue to bear the costs of maintenance.

Section 5.4 Additional Services. Any group of Units, acting either through their Delegate or through a Sub Association, if any, may request that the Community Association provide a higher level of service than that which the Community Association generally provides, or may request that the Community Association provide special services. The cost of such services, which may include a reasonable administrative charge in such amount as the Board deems appropriate (provided, any such administrative charge shall apply at a uniform rate for all Units receiving the same service), shall be assessed against the Units as a part of one of the Assessments, as determined by the Community Association.

Section 5.5 Sub Association's Responsibility. The Owners of Units within each Sub Association, if any, may be responsible for paying, through Sub Association Assessments to their Sub Association or through a separate Assessment to the Community Association, the costs of operating, costs of utilities, and costs of maintaining and insuring certain portions of the Real Property within their neighborhood. This may include, without limitation, the costs of maintaining any Sub Association sign-age, entry features, right-of-way and open space between the Sub Association and adjacent public roads and private streets within the Sub Association, regardless of ownership and regardless of the fact that such maintenance may be performed by the Community Association; *provided, however*, all Sub Associations which are similarly situated shall be treated the same. Any Sub Association having any responsibility for maintenance of property within such Sub Association shall perform such maintenance responsibility in a manner consistent with first class, community-wide standards. If it fails to do so, the Community Association may perform such responsibilities and assess the costs against all Units within such Sub Association; as a Sub Association Assessment of the Community Association.



**ARTICLE 6**  
**COVENANT FOR ASSESSMENTS**

Section 6.1 Creation of Community Association Lien and Personal Obligation to Pay . Each Unit shall be deemed to covenant and agree and each Owner shall be deemed to covenant and agree to pay all Assessments as imposed by the Community Association or as may be imposed by a Sub Association for payment to the Community Association. Any such Sub Association shall allocate the Assessments of the Community Association to the Units in the Sub Association as set forth in this Community Declaration. Assessments provided for in this Community Declaration, including fees, charges, late charges, attorney fees, collection fees, fines and interest charged by the Community Association shall be the personal obligation of the Owner of such Unit at the time when the Assessment or other charges becomes due; provided, however, that where a Sub Association has expressly assumed those obligations pursuant to the governing documents for that Sub Association (as allowed for with the approval of the Declarant, as provided for in this Community Declaration), and in that event, so long as the Sub Association has that obligation, only that Sub Association shall have the personal obligation to pay.

Section 6.2 Continuing Lien. The personal obligation to pay any past due sums due the Community Association shall not pass to a buyer from an Owner, unless the sums due are expressly assumed by the buyer. All Assessments and such other Assessments as imposed by the Community Association, including fees, charges, late charges, attorney fees, collection fees, fines and interest charged by the Community Association, shall be a charge on each Unit and shall be a continuing lien upon the Unit against which each such Assessment or charge is made.

Section 6.3 No Exemptions, Offsets or Reductions . No Owner may become exempt from liability for payment of any Assessment to the Community Association by waiver of the use or enjoyment of the Common Elements or by abandonment of the Unit against which the Assessment is made. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted for any reason including, without limitation, any claim that the Community Association or the Board or any other entity is not properly exercising its duties and powers under this Community Declaration.

Section 6.4 Capitalization of the Association/Working Funds \_\_\_\_\_. The Association requires that every Owner of each Unit (other than Declarant or a Builder), upon close of escrow or transfer of title, make a non-refundable payment to the Association in an amount equal to two months' Assessments which sums shall comprise the Working Fund to be used by the Association as operating capital. The contribution by the Owners of each Unit (other than Declarant or a Builder) shall be collected and transferred to the Association at the time of closing of each sale and the sums collected shall be for the use and benefit of the Association, through



the Association's Working Fund. Contribution and payment of each Owner's portion of the Working Fund to the Association shall not relieve an Owner from making regular payments of any other Assessments as the same become due. Upon the Transfer of a Unit, an Owner may be entitled to a credit from their Buyer collected at closing.

Section 6.5 Transfer Fees. The Association may collect a transfer fee upon the close of escrow or transfer of title.

Section 6.6 Assessment Allocations. Each of the Assessments provided for in this Article shall be allocated as provided for under Section 3.9 of this Community Declaration.

Section 6.7 Community Wide Services Assessments. The Community Association may levy a Community Wide Services Assessment against Units, effective upon creation of such Unit, allocated as provided for above in this Community Declaration. Until the Community Association levies a Community Wide Services Assessment, the Declarant may, at its election and discretion, subsidize or assist in the payment of costs and expenses of the Community Association; provided that the Declarant shall not have any obligation whatsoever to subsidize or otherwise contribute to a Operating Fund or other contingency reserve to be used to cover future costs and expenses. After any Community Wide Services Assessment has been levied by the Community Association, Community Wide Services Assessments shall be levied no less frequently than annually by the Community Association. Where the obligation to pay a Community Wide Services Assessment first arises after the commencement of the year or other period for which the Community Wide Services Assessment was levied, the Community Wide Services Assessment shall be prorated, as of the date when said obligation first arose, in proportion to the amount of the Assessment year or other period remaining after said date.

(a) The Budget Process. Once begun, the Community Wide Services Assessment may be levied on an annual basis and must be levied based upon the Community Association's advance budget of the cash requirements for this Assessment. The budget for the Community Wide Services Assessment may be submitted to the Delegates for ratification pursuant to the Act and as set forth in the Bylaws. If so submitted, the budget may be vetoed by votes of Delegates representing a majority of the votes in the Community Association. If not so vetoed, the budget proposed shall be deemed ratified.

(b) Due Dates. Community Wide Services Assessments shall be due and payable in monthly, quarterly, or annual installments, or in any other manner, as determined by the Board. Community Wide Services Assessments may begin on the first day of the month in which conveyance of the first Unit to a Unit Owner (other than Declarant or a Builder) occurs. The omission or failure of the Board to levy the Assessment for any period shall not be deemed a waiver, modification or release of the Unit Owners from their obligation to pay.

Section 6.8 Residential Services and/or Recreational Assessments. The Community Association may levy a Residential Services and/or Recreational Assessment against Residential Units, effective upon creation of such Unit as provided by this Community Declaration, or upon the recreational facility initially opening for use allocated as provided for above in this Community Declaration. Until the Community Association levies a Residential Services and/or Recreational Assessment, the Declarant may, at its election and discretion, subsidize or assist in the payment of costs and expenses of the Community Association; provided that the Declarant shall not have any obligation whatsoever to subsidize or otherwise contribute to a Operating Fund or other contingency reserve to be used to cover future costs and expenses. After any Residential Services and/or Recreational Assessment has been levied by the Community Association, Residential Services and/or Recreational Assessments shall be levied no less frequently than annually by the Community Association. Where the obligation to pay a Residential Services and/or Recreational Assessment first arises after the commencement of the year or other period for which the Residential Services and/or Recreational Assessment was levied, that Assessment shall be prorated, as of the date when said obligation first arose, in proportion to the amount of the Assessment year or other period remaining after said date.

(a) The Budget Process. Once begun, the Residential Services and/or Recreational Assessment may be levied on an annual basis upon the Community Association's advance budget of the cash requirements for this Assessment. The budget for the Residential Services and/or Recreational Assessments shall be submitted to only those Delegates representing Residential Unit Owners for ratification pursuant as set forth in the Bylaws. If so submitted, the budget may be vetoed by a majority of the votes of only those Delegates representing Residential Unit Owners. If not so vetoed, the budget proposed shall be deemed ratified.

(b) Due Dates. Residential Services and/or Recreational Assessments shall be due and payable in monthly, quarterly, or annual installments, or in any other manner, as determined by the Board. Residential Services and/or Recreational Assessments may begin on the first day of the month in which conveyance of the first Unit to a Unit Owner (other than Declarant or a Builder) occurs. The omission or failure of the Board to levy the Assessment for any period shall not be deemed a waiver, modification or release of the Unit Owners from their obligation to pay.

Section 6.9 Sub Association Assessments. The Community Association may levy a Sub Association Assessment against Units subject to this Assessment, allocated as provided for above in this Community Declaration. After any Sub Association Assessment has been levied by the Community Association, Sub Association Assessments shall be levied no less frequently than annually by the Community Association. Where the obligation to pay a Sub Association Assessment first arises after the commencement of the year or other period for which the Sub Association Assessment was levied, that Assessment shall be prorated, as of the date when said obligation first arose, in proportion to the amount of the Assessment year or other period remaining after said date.



(a) The Budget Process. Once begun, the Sub Association Assessment may be levied on an annual basis against Units subject to this Assessment, and must be levied based upon the Community Association's advance budget of the cash requirements for this Assessment. The budget for the Sub Association Assessment shall be submitted only to those Delegates representing Owners with rights to use a Limited Common Element, or with such other Sub Association allowed for in this Community Declaration or a Supplemental Declaration, for ratification pursuant as set forth in the Bylaws. If so submitted, the budget may be vetoed by a majority of the votes of only those Delegates representing Owners with rights to use a Limited Common Element, or with such other Sub Association as allowed for in this Community Declaration or a Supplemental Declaration. If not so vetoed, the budget proposed shall be deemed ratified.

(b) Due Dates. Sub Association Service Assessments shall be due and payable in monthly, quarterly, or annual installments, or in any other manner, as determined by the Board. Sub Association Service Assessments may begin on the first day of the month in which conveyance of the first Unit to a Unit Owner (other than Declarant or a Builder) occurs. The omission or failure of the Board to levy the Assessment for any period shall not be deemed a waiver, modification or release of the Unit Owners from their obligation to pay.

Section 6.10 Special Residential Services Assessments. The Community Association may levy a Special Residential Services Assessment against Residential Units, effective upon creation of such Unit as provided by this Community Declaration, for any special or unique services offered to or requested by a Unit Owner or otherwise made available by the Community Association, allocated as provided for above in this Community Declaration. Until the Community Association levies a Special Residential Services Assessment, the Declarant may, at its election and discretion, subsidize or assist in the payment of costs and expenses of the Community Association for any special or unique services offered to or requested by a Unit Owner or otherwise made available by the Community Association; provided that the Declarant shall not have any obligation whatsoever to subsidize or otherwise contribute to a Operating Fund or other contingency reserve to be used to cover future costs and expenses. After any Special Residential Services Assessment has been levied by the Community Association, Special Residential Services Assessments shall be levied as needed or determined by the Board. Special Residential Services Assessment may be levied on a selective basis by the Community Association, without a requirement for advance budgeting and budget approval, or may be levied as an annual Assessment with advanced budgeting as provided for below. In all events, Special Residential Services Assessments shall be levied as needed or determined by the Board. To the extent this Assessment is levied annually by the Community Association, then the budgeting provisions below shall apply. Where the obligation to pay a Special Residential Services Assessment first arises after the commencement of the year or other period for which the Assessment was levied, that Assessment shall be prorated, as of the date when said obligation first arose, in proportion to the amount of the Assessment year or other period remaining after said date.

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(a) The Budget Process. If to be imposed on an annual and recurring basis, the Special Residential Services Assessment may be levied annually based upon the Community Association's advance budget of the cash requirements for this Assessment. The budget may be submitted only to those Delegates representing Residential Unit Owners subject to an annual and recurring Special Residential Services Assessment for ratification pursuant as set forth in the Bylaws. If so submitted, the budget may be vetoed by a majority of the votes of only those Delegates representing those Residential Unit Owners. If not so vetoed, the budget proposed shall be deemed ratified.

(b) Due Dates. Special Residential Services Assessments shall be due and payable in monthly, quarterly, or annual installments, or in any other manner, as determined by the Board.

Section 6.11 Commercial Services Assessments. The Community Association may levy a Commercial Services Assessment against Commercial Units or against Commercial Units by Delegate District, for any special or unique services offered to or requested by a Commercial Unit Owner or group of Commercial Unit Owners, or as otherwise made available by the Community Association, allocated as provided for above in this Community Declaration. After any Commercial Services Assessment has been levied by the Community Association, Commercial Services Assessments shall be levied as needed or determined by the Board, subject to the Delegates ratification, as provided for below. Commercial Services Assessment may be levied on a selective basis by the Community Association, without a requirement for advance budgeting and budget approval, or may be levied as an annual Assessment with advanced budgeting as provided for below. In all events, Commercial Services Assessments shall be levied as needed or determined by the Board. To the extent this Assessment is levied annually by the Community Association, then the budgeting provisions below shall apply. Where the obligation to pay a Commercial Services Assessment first arises after the commencement of the year or other period for which the Assessment was levied, that Assessment shall be prorated, as of the date when said obligation first arose, in proportion to the amount of the Assessment year or other period remaining after said date.

(a) The Budget Process. If to be imposed on an annual and recurring basis, the Commercial Services Assessment may be levied on an annual basis against all Commercial Units or to just those Commercial Units in any given Delegate District, and in compliance with the Community Association's advance budget of the cash requirements for this Assessment. The budget may be submitted only to those Delegates representing Commercial Unit Owners subject to an annual and recurring Commercial Services Assessment for ratification pursuant. If so submitted, the budget may be vetoed by a majority of the votes of only those Delegates representing those Unit Owners. If not so vetoed, the budget proposed shall be deemed ratified.

(b) Due Dates. Commercial Services Assessments shall be due and payable in monthly, quarterly, or annual installments, or in any other manner, as determined by the Board.

Section 6.12 Sub Association Assessments of the Community Association. The Community Association may levy a Sub Association Assessment of the Community Association against Units, effective upon creation of such Unit, as provided for in this Community Declaration and also as an option in lieu of a separate assessment by a Sub Association, allocated

as provided for in this Community Declaration. After any Sub Association Assessment of the Community Association has been levied by the Community Association in lieu of an Assessment by a Sub Association, that Sub Association Assessment of the Community Association shall be levied on an annual basis with advanced budgeting as provided for below. Otherwise, any other Sub Association Assessment of the Community Association may be levied as needed or determined by the Board, as allowed for in this Community Declaration, without a requirement for advance budgeting and budget approval.

(a) The Budget Process. If to be imposed on an annual and recurring basis, in lieu of an assessment by a Sub Association, a Sub Association Assessment of the Community Association may be levied based upon the Community Association's advance budget of the cash requirements for this Assessment. The budget may be submitted only to those Delegates representing Unit Owners subject to an annual and recurring Sub Association Assessment of the Community Association for ratification pursuant as set forth in the Bylaws. If so submitted, the budget may be vetoed by a majority of the votes of only those Delegates representing those Unit Owners. If not so vetoed, the budget proposed shall be deemed ratified.

(b) Due Dates. Sub Association Assessments of the Community Association shall be due and payable in monthly, quarterly, or annual installments, or in any other manner, as determined by the Board.

Section 6.13 Other Assessments. The Community Association shall also have the authority to assess Units, pursuant to and as allocated, under other provisions of this Declaration or as allowed by Court Order or law.

Section 6.14 Statements of Account. The Community Association shall furnish to an Owner or such Owner's designee (including, without limitation, a prospective purchaser from or lender of such Owner), upon written request, delivered personally or by certified mail, first class, postage prepaid, return receipt, to the Community Association's registered agent, a written statement setting forth the amount of unpaid Assessments currently levied against such Owner's Unit. The statement shall be furnished within fourteen (14) calendar days after receipt of the request and shall be binding on the Community Association, the Board and every Owner. The Community Association shall have the right to charge a reasonable fee for the issuance of such certificates.

Section 6.15 Effect of Non-Payment of Assessments. Any Assessment, charge or fee provided for in this Community Declaration, or any monthly or other installment thereof, which is not fully paid within ten (10) days after the due date thereof, as established by the Board, shall bear interest at the rate of interest as may be determined, from time to time, by the Board, and the Community Association may assess a reasonable late charge thereon as determined by the Board. Further, the Community Association may bring an action at law or in equity, or both,



against the person(s) personally obligated to pay such overdue Assessments, charges or fees, or monthly or other installments thereof, and may also proceed to foreclose its lien. An action at law or in equity by the Community Association against an Owner to recover a money judgment for unpaid Assessments, charges or fees, or monthly or other installments thereof, may be commenced and pursued by the Community Association without foreclosing, or in any way waiving, the Community Association's lien therefor. Foreclosure or attempted foreclosure by the Community Association of its lien shall not be deemed to estop or otherwise preclude the Community Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent Assessment, charges or fees, or monthly or other installments thereof, which are not fully paid when due. The Community Association shall have the power and right to bid on or purchase any Unit at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, vote the Community Association votes appurtenant to ownership thereof, convey or otherwise deal with the same. The rights of the Community Association shall be expressly subordinate to the rights of any holder of a first lien security interest as set forth in its deed of trust or mortgage (including any assignment of rents), to the extent permitted.

**Section 6.16 Lien Priority.** The lien of the Community Association for all Assessments allowed for in this Community Declaration is prior to all other liens and encumbrances on a Unit except: (a) liens and encumbrances recorded before the recordation of the Community Declaration; (b) a first lien security interest on the Unit (except as otherwise expressly provided by state statute for any limited lien priority allowed to the Community Association); and (c) liens for real property taxes and other governmental assessments or charges against the Unit. This Section does not affect the priority of mechanics' or materialmen's liens. The lien of the Community Association under this Article is not subject to the provision of any homestead exemption as allowed under state or federal law. Transfer of any Unit shall not affect the lien for said Assessments or charges except that Transfer of any Unit pursuant to foreclosure of any first lien security interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the lien of Assessment charges as provided by applicable state law. No such sale, Transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Unit from continuing liability for any Assessment charges thereafter becoming due, nor from the lien thereof.

## ARTICLE 7

### GENERAL RESTRICTIONS

**Section 7.1 Purposes, Plan of Development; Applicability; Effect** . Declarant has created the Community as a mixed use, Master Planned Community, in furtherance of its and every other Owner's collective interests. The Real Property is subject to land development constraints and requirements, Rules and Regulations and provisions of this Community Declaration governing land use, individual conduct, and uses of or actions upon the Real Property as provided in this Community Declaration. This Community Declaration establishes affirmative and negative covenants, easements, and restrictions.



Section 7.2 Changes in Circumstances Anticipated. Declarant has promulgated a general plan of development for the purposes stated in the recitals of this Community Declaration; provided, however, that in all cases and events such general plan for development shall be subject to the Community Association's ability to respond to changes in circumstances, conditions, needs, and desires within the Community, except as expressly provided for in this Community Declaration.

Section 7.3 Owner Acknowledgment. Each Owner is subject to this Community Declaration and the covenants and restrictions contained in this Community Declaration. By acceptance of a deed, or other instrument establishing title or ownership, each Owner acknowledges that such Owner has been given notice of this Community Declaration; that use of a Unit is limited by the provisions of the Governing Documents; that the Board may, from time to time, adopt and amend definitions of words, phrases and terms used in this Community Declaration and other Governing Documents; that the use, enjoyment and marketability of the Units can be affected by this Community Declaration; and that the restrictions and Rules and Regulations may change from time to time; provided, however, no action by the Board may invalidate a specific provision of this Community Declaration.

Section 7.4 Use Covenants and Restrictions Based on Zoning. Units within the Community shall be used for purposes as allowed by zoning, planned unit development or other local governmental determination. Use of Residential Units for primary residential use shall not be unreasonably regulated or governed by the Community Association. Use of Commercial Units for primary commercial uses shall not be unreasonably regulated or governed by the Community Association.

Section 7.5 Units to be Maintained. Owners of a Unit are responsible for the maintenance, repair and replacement of the properties located within their Unit boundaries except as such maintenance, repair and replacement are expressly the obligation of any applicable Sub Association for that Unit. Each Unit and the Improvements on a Unit, shall, at all times, be kept in a clean, sightly, and wholesome condition.

Section 7.6 Architectural Review by the DRB/Required Approval.

1. Requirements. No structures, including residences, outbuildings, accessory buildings, tennis courts, swimming pools, antennas (except as otherwise permitted in this Declaration), flag poles, fences, walls, exterior lighting, landscaping, or any other Improvements shall be constructed, erected, relocated, removed or installed on a Unit or on any lot, nor shall any painting, alteration or change to the exterior of the Improvements, the exterior of a residence, to a Unit or to any lot or to any structure or any attachment to the exterior of a residence (including paint, awnings, patios, decks, or shutters) be commenced unless: complete plans and specifications shall have been first submitted to and approved in writing by the Design Review Board ("Committee") as may be outlined in the Rules and Regulations.

2. Applications. The DRB may require that applications of Owners and their plans and specifications show exterior design, height, materials, color, location of the structure or addition to the structure or proposed improvement (plotted horizontally and vertically), location and size of driveways, walls, windbreaks and grading plan, as well as such other materials and information as may be required by the DRB.

3. Acknowledgment of Owners. Owners acknowledge, accept and agree to the following:

4. Owners will not commence construction or installation of an improvement until they have submitted improvement plans and specifications and received written approval from the DRB;

5. Owners shall immediately comply with any request by the Association for additional information relating to an improvement prior to the DRB's approval of a request and/or prior to the completion of an improvement. Failure to comply with such a request by an Owner shall result in the withdrawal of DRB approval, if previously granted;

6. DRB approval does not constitute approval of the local building or zoning department, drainage design or structural soundness;

7. Owners shall notify the DRB of completion of the improvement's installation or construction within five days of such completion;

8. Upon completion of an improvement, Owners authorize the DRB or its representative(s) to enter onto the Lot for exterior inspection;

9. Failure of an Owner to notify the DRB of completion of an approved improvement, or refusal to allow inspection, shall result in the withdrawal of the DRB's approval;

10. If the improvement as built does not conform to the improvement as approved by the DRB, the DRB's approval will be deemed withdrawn, and upon written request of the DRB, Owners shall, at their own expense and cost, promptly bring the improvement into compliance with the submitted and approved plans and specifications;

11. In the event of withdrawal of DRB approval for any reason(s) cited in this Section, and upon written request from the DRB, the Owner, at his or her expense and cost, shall promptly restore the Lot to substantially the same condition as it existed prior to commencement of the improvement's installation or construction, and such withdrawal will be deemed to toll the statute of limitations as it pertains to the improvement until such time as the improvement is brought into compliance.

12. Architectural Criteria. The DRB shall exercise its reasonable judgment to the end that all attachments, improvements, construction, landscaping and alterations to improvements on a Lot or landscaping of a Lot shall comply with the requirements set forth in this Declaration. The approval or consent of the DRB on matters properly coming before it shall not be unreasonably withheld, and actions taken shall not be arbitrary or capricious. Approval shall be based upon, but not limited to, aesthetics, harmonious compliment to the Community and such other factors as the DRB may determine, including conformity with the specifications



and purposes generally set out in this Declaration. Upon its review of such plans, specifications and submittals, the DRB may require that the applicant(s) reimburse the Board for actual expense incurred by it in its review and approval process.

13. Establishment of the DRB. The DRB shall consist of a minimum of three members appointed by the Declarant, until Declarant no longer owns any Unit or until December 31, 2030, whichever occurs latest. Then, after the latest occurrence, the Board of Directors of the Association shall appoint the members of the DRB. In the event a DRB is not established, the Board shall perform all duties of the DRB as provided in this Article and the Governing Documents of the Association. Once appointments by the Board of the Association are made, the Board shall have the authority to remove any members of the DRB at their sole discretion.

14. Architectural Guidelines. The DRB may propose architectural guidelines, for the Community as a whole, or for any portions, from time to time, which guidelines may be approved by the Board of Directors (after the expiration of the Declarant's rights to appoint the members of the DRB) and included in or with any Rules and Regulations of the Association.

15. Reply and Communication. The DRB shall reply to all submittals of plans made in accordance herewith in writing within 60 days after receipt. In the event the DRB fails to take any action on submitted plans and specifications within 60 days after the DRB has received the plans and specifications, approval shall be deemed to be granted; provided, however, nothing in this Section shall authorize anyone to construct or maintain any structure or improvement that is otherwise in violation of this Declaration, the Rules and Regulations or any architectural guidelines adopted by the Board. All communications and submittals shall be addressed to the DRB in care of the Association.

16. Conditions of Approval. In the discretion of the Board or the DRB, an Owner may be required to enter into a written agreement establishing the approval of the application in recordable form acknowledged by such Owner on behalf of himself or herself and all successors-in-interest. As a condition of approval for a requested architectural change, modification, addition or alteration, an Owner, on behalf of himself or herself and his or her successors-in-interest, affirms and shall assume, unless otherwise agreed in writing, all responsibilities for maintenance, repair, replacement and insurance to and on such change, modification, addition or alteration.

17. Commencement and Completion of Construction. All improvements approved by the DRB must be commenced within two years from the date of approval. If not commenced within such time, then such approval shall be deemed revoked by the DRB, unless the DRB gives a written extension for commencing the work. Additionally, except with written DRB approval otherwise, and except for delays caused by strikes, fires, national emergencies, critical materials shortages or other intervening forces beyond the control of the Owner, all work approved by the DRB shall be completed within two years of commencement.

18. Variances. The DRB may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Declaration in order to overcome practical difficulties and unnecessary hardships arising by reason of the application of the conditions and restrictions contained in this Declaration or in architectural guidelines.

19. Right to Appeal. Once the DRB is appointed by the Board of Directors of the Association, and if the Board of Directors is not acting as the DRB, an Owner whose plans have been disapproved or conditionally approved may appeal any decision of the DRB to the Board of Directors. The Board of Directors shall review the decision of the DRB pursuant to the criteria set forth in this Section above and/or the architectural guidelines. Any decision of the DRB may be overruled and reversed by a majority of the directors by a written decision setting forth the reasons for the reversal when the directors conclude that the DRB's decision was inconsistent with the criteria set forth in this Article and the guidelines.

20. Waivers. The approval or consent of the DRB, or appointed representative thereof, to any application for architectural approval shall not be deemed to constitute a waiver of any right to hold or deny approval or consent by the DRB as to any application or other matters subsequently or additionally submitted for approval or consent.

21. Liability. The DRB and the members thereof, as well as any representative of the Board designated to act on its behalf, shall not be liable in damages to any person submitting requests for approval or for any approval, or failure to approve or disapprove in regard to any matter within its jurisdiction under these covenants. Neither the Board nor the DRB shall bear any responsibility for ensuring the design, quality, structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes, zoning regulations and other governmental requirements.

22. Records. The Association shall maintain written records of all applications submitted to it and of all actions taken by it with respect thereto. Such records shall be open and available for inspection by any interested party during reasonable hours of the business day according to any policy adopted by the Board.

23. Enforcement. Enforcement of these covenants, restrictions, charges and other provisions, as amended, may be by any proceeding at law or in equity against any person or persons violating or attempting to violate any such provision. The Association shall have the right, but not the obligation, to institute, maintain and prosecute any such proceedings. In any action instituted or maintained under this Section, the Association may be entitled to recover its costs and reasonable attorney fees incurred pursuant thereto, as well as any and all other sums awarded by the court. Failure of the Association to enforce any covenant or restriction contained in this Section shall in no event be deemed a waiver of the right to do so thereafter. In addition, or in the alternative, the Association shall have all other enforcement rights as set forth in this Declaration.

Section 7.7 Landscaping Requirements of Owners/Restrictions and Maintenance Covenants. All portions of a Unit not improved with a residence, building, driveway, walkways, patios or decks (referred to as the unimproved area or landscaped areas of a Unit) shall be landscaped by the Owner thereof or a Builder, other than the Declarant. Any portions of a Unit that are not landscaped by a Builder must be fully landscaped by the Unit Owner, no later than one (1) year after the date of close of escrow. Any landscape plan must be approved by the DRB. The landscaping of each Unit, having once been installed, shall be maintained by the Owner, or the applicable owner association or Sub Association, in a neat, attractive, sightly and

well-kept condition, which shall include lawns mowed, hedges, shrubs, and trees pruned and trimmed, adequate watering, replacement of dead, diseased or unsightly materials, and removal of weeds and debris.

Section 7.8 Subdivision of Units.

(a) The Owner of a Residential Unit shall have the right to subdivide his or her Unit (including, without limitation, by creating a condominium project upon such Unit or consolidating Units into one Unit) provided that the Owner: (i) obtains written approval from Declarant or the Board; (ii) complies with all applicable laws, regulations, ordinances, statutes and orders of all governmental authorities having jurisdiction. Following any subdivision of a Residential Unit, including the creation of such a condominium project or consolidation of Units, the Owner of each Unit resulting or remaining from such subdivision shall be a Member of the Community Association.

(b) The right of the Owner of a Commercial Unit to subdivide is not restricted.

Section 7.9 Restrictions on Subordinate Covenants, Maps and Planned Unit Developments on Residential Units. Until expiration of the Period of Declarant Control, the prior written consent of Declarant, or its assignee (if this restriction and approval right is assigned in writing), shall be required by any Owner or with regard to any Residential Unit:

(a) before junior or subordinate covenants may be filed of record against all or any portion of a Unit, and

(b) before any planned unit development, map, plat or re-subdivision may be filed of record against all or any portion of a Unit.

In the event an Owner records covenants against all or any part of a Residential Unit without the written consent required by the provisions of this Section, or in the event an Owner records any planned unit development, map, plat or re-subdivision against all or any part of any Unit without the written consent required by the provisions of this Section, the instruments recorded shall be voidable and shall be deemed void by the Declarant (or its assignee) upon Declarant (or its assignee) recording a notice to that effect. Notwithstanding the foregoing, however, Builders, and any mortgagees of Builders acquiring title to any lots by foreclosure or deed in lieu of foreclosure, shall have the right to re-subdivide or otherwise modify any subdivision plat in order to make minor lot line modifications, provided such modifications do not increase or decrease the size of any lot by more than ten percent (10%).

Section 7.10 Use of Common Elements. There shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements without the prior written approval of the Community Association. Nothing shall be altered on, constructed in, or removed from the Common Elements without the prior written approval of the Community Association.

Section 7.11 Restriction on Timesharing, Vacation Clubs and Similar Programs . Use or ownership of any Unit for operation of a timesharing, fraction-sharing, vacation club or similar program, where the right to exclusive use of a Dwelling Unit rotates among participants in the program on a fixed or floating time schedule over a period of years and all similar ownership or use programs, schemes or clubs is prohibited. Declarant and its assignees may operate any such program with respect to any Unit owned by the Declarant or its assignee.

Section 7.12 Right of Owners Regarding Rules and Regulations . In furtherance of the purposes of this Community Declaration, and subject to the Board's duty to exercise judgment and reasonableness on behalf of the Community Association and Members, the Board may adopt, amend or repeal, Rules and Regulations concerning and governing the Community or any portion thereof. The Board may establish and enforce penalties for the infraction thereof.

Section 7.13 Construction Use. It is expressly permissible for Declarant and Builders to perform construction and such other reasonable activities, and to maintain upon portions of the Community such facilities as deemed reasonably necessary or incidental to the construction and sale of Units in the development of the Community, specifically including, without limiting the generality of the foregoing, the maintenance of temporary business offices, storage areas, trash bins, construction yards and equipment, signs, model units, temporary sales offices, parking areas and lighting facilities.

Section 7.14 Reasonable Rights to Develop. None of the covenants and restrictions in this Community Declaration may unreasonably impede Declarant's or a Builder's right to develop the Real Property. Additionally, the Board may not adopt any Rule or Regulation that unreasonably impedes Declarant's or a Participation Builder's right to develop the Real Property, the exercise of any Development Rights, Special Declarant Rights or Additional Reserved Rights in accordance with this Community Declaration and/or the development rights of any Builder.

## ARTICLE 8

### INSURANCE/CONDEMNATION

Section 8.1 Community Association Hazard Insurance on the Common Elements . The Community Association shall obtain adequate hazard insurance covering loss, damage or destruction by fire or other casualty to the Common Elements and the other property of the Community Association. If obtainable, the Community Association shall also obtain the following insurance and any additional endorsements deemed advisable by the Board .

- (a) Community Association Liability Insurance. The Community Association shall obtain an adequate comprehensive policy of public liability and property damage liability insurance covering all of the Common Elements, in such limits as the Board may from time to time determine, but not in any amount less than Two Million Dollars (\$2,000,000) per injury, per person, and per occurrence, and in all cases covering all claims for bodily injury or property damage. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Community Association, and activities in connection with the ownership, operation, maintenance and other uses of the Community. All liability insurance shall name the Community Association as the insured.
- (b) Community Association Fidelity Insurance. The Community Association shall obtain adequate fidelity coverage or fidelity bonds to protect against dishonest acts on the parts of its officers, directors, trustees and employees and on the part of all others who handle or are responsible for handling the funds of the Community Association, including persons who serve the Community Association with or without compensation. The fidelity coverage or bonds should be in an amount sufficient to cover 3 months of budgeting operating expenses that will be in the control of the Community Association, its officers, directors, trustees and employees.
- (c) Community Association Worker's Compensation and Employer's Liability Insurance. The Community Association shall obtain worker's compensation and employer's liability insurance and all other similar insurance with respect to its employees in the amounts and forms as may now or hereafter be required by law.
- (d) Community Association Officers' and Directors' Personal Liability Insurance. The Community Association shall obtain a broad or expansive form of an officers' and directors' personal liability insurance to protect the officers and directors from personal liability in relation to their duties and responsibilities in acting as officers and directors on behalf of the Community Association.
- (e) Other Insurance of the Community Association \_\_\_\_\_. The Community Association may obtain insurance against such other risks, of similar or dissimilar nature, as it shall deem appropriate with respect to the Community Association responsibilities and duties.
- (f) Community Association Insurance and General Terms. The Community Association shall obtain and maintain in full force and effect to the extent reasonably available, and at all times, the insurance coverage set forth herein, which insurance coverage shall be provided by financially responsible and able companies duly authorized to do business in the State of Montana. Commencing not later than the time of the first conveyance of a Unit to a person other than a Declarant or a Builder, the Community Association shall maintain, to the extent reasonably available, policies for the above insurance with the following terms or provisions:

- (i) All policies of insurance shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of an Owner and shall provide that such policies may not be canceled or modified without at least twenty (20) days prior written notice to all of the Owners and the Community Association.
- (ii) All liability insurance shall be carried in blanket form naming the Community Association, the Board, the Community Manager, the officers of the Community Association, the Declarant, their successors and assigns and Owners as insureds.
- (iii) Prior to obtaining any policy of casualty insurance or renewal thereof, pursuant to the provisions hereof, the Board may obtain an appraisal from a duly qualified Real Property or insurance appraiser, which appraiser shall reasonably estimate the full replacement value of the Common Elements, without deduction for depreciation, review any increases in the cost of living, and/or consider other factors, for the purpose of determining the amount of the insurance to be affected pursuant to the provisions hereof. In no event shall any casualty insurance policy contain a co-insurance clause for less than one hundred percent (100%) of the full insurable replacement cost.

Section 8.2 Community Association Insurance Premium . Except as assessed in proportion to risk, if permitted under the terms of this Community Declaration, insurance premiums for the above provided insurance shall be a part of the Community Wide Services Assessment.

Section 8.3 Community Manager Insurance . The Community Manager, if not an employee, shall be insured for the benefit of the Community Association, and shall maintain and submit evidence of such coverage to the Community Association.

Section 8.4 Waiver of Claims Against Community Association . As to all policies of insurance maintained by or for the benefit of the Community Association and Owners, the Community Association and the Owners hereby waive and release all claims against one another, the Board and Declarant, to the extent of the insurance proceeds available, whether or not the insurance damage or injury is caused by the negligence of or breach of any agreement by and of said persons.

Section 8.5 Adjustments by the Community Association. Any loss covered by an insurance policy described above shall be adjusted by the Community Association, and the insurance proceeds for that loss shall be payable to the Community Association. The Community Association shall hold any insurance proceeds in trust for the Community Association and Owners.

Section 8.6 Condemnation and Hazard Insurance Allocations and Distributions. In the event of a distribution of condemnation proceeds or hazard insurance proceeds to the Owners, the distribution shall be as the parties with interests and rights are determined or allocated by record.

## ARTICLE 9

### DEVELOPMENT RIGHTS

Section 9.1 Development Rights and Special Declarant Rights. The Declarant reserves, for twenty (20) years after the recording of this Community Declaration, the following Development Rights and Special Declarant Rights:

- (a) The right to subject all or any portion of the Project Area to all or any portion of this Community Declaration;
- (b) The right to add Units and designate uses, designate Delegate Districts or re-designate Delegate Districts;
- (c) The right to subject portions of the Real Property owned by the Declarant to additional covenants, conditions, terms and restrictions, as Declarant may determine;
- (d) The right to relocate boundaries between adjoining Units owned by Declarant, enlarge Units owned by Declarant, enlarge or reduce the Common Elements, enlarge or reduce or diminish the size of Units owned by Declarant, reduce or diminish the size of areas of the Common Elements, subdivide Units or complete or make improvements on Units owned by Declarant, as the same may be indicated on maps or plats filed of record or filed with the Community Declaration;
- (e) The right, but not the obligation, to construct additional Improvements on Common Elements, at any time from time to time in accordance with this Community Declaration for the improvement and enhancement of the Common Elements and for the benefit of the Community Association and the Owners;
- (f) The right of the Declarant to add or annex to this Community Declaration, the properties described in *Exhibit C*;
- (g) The right to designate, create or construct additional Units, Common Elements and Limited Common Elements, and to convert Units into Common Elements;
- (h) The right to amend the use restrictions included in this Community Declaration, together with the right to add new use restrictions;

- (i) The right to exercise any development rights reserved;
- (j) The right to appoint or remove any officer of the Community Association or any Director during the Declarant control period;
- (k) The right to withdraw Units owned by Declarant, or by a Builder (at the request of Declarant from such Builder), from the Community and the terms of this Community Declaration, except for Units within or a part of a building, once a Unit in that building has been conveyed. Such withdrawal may be accomplished by the execution, acknowledgment and recordation of a notice of withdrawal. The notice of withdrawal (i) shall be executed and acknowledged by the Owner or Owners of the property to be withdrawn; (ii) shall, if not then owned by Declarant, contain the executed and acknowledged written consent of Declarant for so long as Declarant owns any property in the Project Area and has the power to annex additional property to the Community; (iii) shall contain an adequate legal description of the property to be withdrawn; (iv) shall contain a reference to the Supplemental Declaration for the portion of the Real Property to be withdrawn, which reference shall state the date thereof and the date of recordation thereof; and (v) shall contain a statement and declaration that the property sought to be withdrawn is withdrawn from the Community and from the effect of this Community Declaration;
- (l) The right to amend the Community Declaration, maps or plats in connection with the exercise of any development right;
- (m) The right to make amendments to the Community Declaration, Bylaws or Articles of Incorporation to meet or comply with any requirement of FHA or VA;
- (n) The right, for itself and for the Builders, to maintain signs, sales offices, mobile offices, temporary buildings, parking lots, management offices and models in Units of the Declarant or of a Builder or on the Common Elements;
- (o) The right, for itself and for the Builders, to maintain signs and advertising on the Community to advertise the Community or other communities developed or managed by, or affiliated with the Declarant;
- (p) The right to establish, from time to time, by dedication or otherwise, public streets and utility and other easements for purposes including but not limited to public access, access, paths, walkways, drainage, recreation areas, parking areas, ducts, shafts, flues, conduit installation areas, and to create other reservations, exceptions and exclusions;
- (q) Declarant expressly reserves the right to itself, and to Builder's, to perform warranty work, repairs and construction work and to store materials in secure areas, in Units and in Common Elements, and the future right to control such work and repairs, and the right of access thereto, until completion. All work may be performed without the consent or approval of any Owner or holder of a security interest. Declarant expressly reserves such easement through the Real Property as may be reasonably necessary for exercising reserved rights in this Community Declaration;



- (r) The right to exercise any additional reserved right created by any other provision of this Community Declaration;
- (s) Any rights created or reserved under this Article for the benefit of Declarant, for the express benefit of a Builder, may be transferred to any person by an instrument describing the rights transferred recorded in the real property records of the appropriate county. Such instrument shall be executed by the transferor and the transferee.
- (t) The consent of Owners or holders of security interests shall not be required for exercise of any reserved rights and Declarant or its assignees may proceed without limitation at its sole option. Declarant or its assignees may exercise any reserved rights on all or any portion of the property in whatever order determined. Declarant or its assignees shall not be obligated to exercise any reserved rights or to expand the Community beyond the number of Units initially submitted;
- (u) Recording of amendments to the Community Declaration and the map or plat pursuant to reserved rights in this Community Declaration shall automatically effectuate the terms and provisions of that amendment. Further, such amendment shall automatically: (i) vest in each existing Owner the reallocated Allocated Interests appurtenant to their Unit; and (ii) vest in each existing security interest a perfected security interest in the reallocated Allocated Interests appurtenant to the encumbered Unit. Further, upon the recording of an amendment to the Community Declaration, the definitions used in this Community Declaration shall automatically be extended to encompass and to refer to the Community as expanded and to any additional Improvements, and the same shall be added to and become a part of the Community for all purposes. All conveyances of Units after such amendment is recorded shall be effective to transfer rights in all Common Elements, whether or not reference is made to any Amendment of the Community Declaration plat or map. Reference to the Community Declaration plat or map in any instrument shall be deemed to include all Amendments to the Community Declaration, plat and map without specific reference thereto;
- (v) The rights reserved to Declarant, for itself, and for Builders, their successors and assigns, shall expire as set forth above, unless (i) reinstated or extended by the Community Association, subject to whatever terms, conditions, and limitations the Board may impose on the subsequent exercise of the expansion rights by Declarant, (ii) extended as allowed by law, or (iii) terminated by written instrument executed by the Declarant, recorded in the real property records of the appropriate county; and
- (w) Additions of Units to the Community may be made by persons other than the Declarant, or its successors and assigns or Owners, upon approval of the Community Association pursuant to a majority vote of the Board. Such approval shall be evidenced by a certified copy of such resolution of approval and a supplement or amendment to this Community Declaration, recorded in the real property records of the appropriate county.

Section 9.2 Development of the Community Supplemental Declarations. Before or after portions of the Real Property are conveyed by Declarant or a Builder to Owners other than Declarant or a Builder, a Supplemental Declaration for such portions may be recorded which may supplement the covenants, conditions and restrictions contained in this Community Declaration, as provided for above. Upon recordation of a Supplemental Declaration, the property covered thereby shall be subject to all of the covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes and other provisions set forth in this Community Declaration, in addition to the Supplemental Declaration.

Supplemental Declarations must meet or include the following criteria:

- (a) The Supplemental Declaration must be executed and acknowledged by Declarant, by a Builder or by the owner or owners of that portion of the Real Property covered by the Supplemental Declaration;
- (b) If the property described in the Supplemental Declaration is not then owned by Declarant and provided that the Period of Declarant Control has not expired, the Supplemental Declaration must contain the executed and acknowledged written consent of Declarant;
- (c) The Supplemental Declaration must include a reference to this Community Declaration, which reference shall state the date of recordation and the book and page numbers or reception number for this Community Declaration;
- (d) The Supplemental Declaration must contain an adequate legal description of the property subject thereto;
- (e) A statement that this Community Declaration shall apply to the added land as set forth therein;
- (f) Initial use designations, if any, of the Units;
- (g) Designation of any Local or Limited Common Elements, with allocated use rights and Sub Association Service Assessments, if applicable;
- (h) A designation of the Delegate District in which the added land is located or re-designation of any other Delegate Districts; and
- (i) If desired by the party executing the Supplemental Declaration, written approval of the VA or HUD, as determined and obtained by that party, for only the portion of the Real Property subject or to be subject to that party's Supplemental Declaration, but only to the extent VA or HUD regulations require such approval. No consent of the Community Association, the Board, other Owners or any other person shall be required.

A deed by which Declarant conveys a parcel of property to another person may constitute a Supplemental Declaration if it meets the foregoing requirements. Supplemental Declarations may impose, on the portion of the Real Property affected thereby, covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes and other provisions in addition to those set forth in this Community Declaration, taking into account the unique and particular aspects of the proposed development of the property covered thereby. A Supplemental

Declaration shall create a Common Interest Community; and, if so, shall provide for a Sub Association within the property described in the Supplemental Declaration and for the right of the Sub Association to assess such Owners.

Section 9.3 No Annexation Required; Contraction of Project Area; Withdrawal of Annexed Property. Notwithstanding any other provision of this Community Declaration to the contrary, nothing in this Community Declaration shall be construed to obligate the Project Area, or any portion thereof, to be made subject to this Community Declaration. Declarant expressly reserves the right, in its sole discretion, to determine not to make the Project Area, or any portion thereof, subject to this Community Declaration. Further, as provided in this Community Declaration, Declarant also has certain withdrawal rights.

Section 9.4 Declarant's Rights to Complete Development of Project Area. No provision of this Community Declaration shall be construed to prevent or limit Declarant's rights, and Declarant expressly reserves the right to complete the development of property within the boundaries of the Project Area and to construct or alter Improvements on any property owned by Declarant within the Project Area.

## ARTICLE 10

### GENERAL PROVISIONS

#### Section 10.1 Compliance and Enforcement.

- (a) Every Owner and occupant of a Unit shall comply with the Governing Documents, and each Owner shall have the right to enforce applicable covenants in this Community Declaration.
- (b) The Association, acting through the Board, may enforce all applicable provisions of this Community Declaration and may impose sanctions for violation of the Governing Documents. Such sanctions may include, without limitation:
- (i) imposing reasonable monetary fines, after notice and opportunity for a hearing, which fine shall constitute a lien upon the violator's Unit.
  - (ii) suspending the right to vote;
  - (iii) suspending any person's right to use any recreational facilities; provided, however, nothing herein shall authorize the Board to limit ingress or egress from a Unit;
  - (iv) suspending any services provided by the Association to an Owner or the Owner's Unit if the Owner is more than thirty (30) days delinquent in paying any Assessment or other charge owed to the Association;
  - (v) exercising self-help or taking action to abate any violation of the Governing Documents in a non-emergency situation;

(vi) requiring an owner, at its expense, to remove any structure or Improvement on such Owner's Unit in violation of the Governing Documents and to restore the Unit to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;

(vii) without liability to any person, precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of the Article entitled "Residential Renovation and Remodeling Design Review" and the Renovation and Remodeling Criteria from continuing or performing any further activities in the Community; and

(viii) levying specific Assessments to cover costs incurred by the Association to bring a Unit into compliance with the Governing Documents.

(c) In addition, the Association, acting through the Board, may take the following enforcement procedures to ensure compliance with the Governing Documents:

(i) exercising self-help in any emergency situation (specifically including, but not limited to, the towing of vehicles that are in violation of any parking rules and regulations); or

(ii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

(d) In addition to any other enforcement rights, if an Owner fails to properly perform his or her maintenance responsibility, or otherwise fails to comply with the Governing Documents, the Community Association may record a notice of violation or perform such maintenance responsibilities and assess all costs incurred by the Community Association against the Unit and the Owner as an Assessment. If a Sub Association fails to perform its maintenance responsibilities, the Community Association may perform such maintenance and assess the costs against all Units within such Sub Association. The Community Association shall provide the Owner or Sub Association reasonable notice and an opportunity to cure the problem prior to taking such enforcement action.

(e) All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, the prevailing party shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs, reasonably incurred in such action.

(f) The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

- (i) the Association's position is not strong enough to justify taking any or further action;
- (ii) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;
- (iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Community Association's resources; or
- (iv) that it is not in the Community Association's best interests, based upon hardship, expense or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed as a waiver of the Community Association's right to enforce such provisions at a later time under other circumstances or preclude the Community Association from enforcing any other covenant, restriction or rule.

Section 10.2 Joint Right to Enforce Junior or Subordinate Covenants \_\_\_\_\_. The Community Association, after first giving written notice to any governing Sub Association or applicable or appropriate committee, if any, shall have the right to enforce, by any proceeding at law or in equity, all subordinate or junior restrictions, conditions, covenants, reservations, rules, regulations and architectural guidelines, now or hereafter imposed by the provisions of any subordinate or junior covenants, protective covenants, declaration, rules, regulations or guidelines on all or any portion of a Unit in this Community (including covenants for the payment of Assessments established in such subordinate or junior declaration if expressly permitted or delegated). Further, the Community Association shall be entitled to enjoin any violation thereof, to cause any such violation to be remedied, or to recover damages resulting from such violation. In addition, violation of any such condition, covenant, restriction, reservation, rule, regulation or guideline shall give to the Community Association the right to enter upon the portion of the Unit wherein said violation or breach exists and to summarily abate and remove, at the expense of the violator, any structure, thing or condition that may be or exist thereon contrary to the intent and meaning of the applicable provisions of such subordinate or junior governing documents. No such entry by the Community Association or its agents shall be deemed a trespass, and the Community Association and its agents shall not be subject to liability for such entry and any action taken to remedy or remove such a violation. The cost of any abatement, remedy or removal hereunder shall be a binding personal obligation on the violator. Further, the Community Association shall have the right, power and authority to establish and enforce penalties or monetary charges for violations of any subordinate or junior declaration, rules, regulations and architectural guidelines, and such penalties and/or monetary fines shall be a binding personal obligation of any violators. In any legal or equitable proceeding for the enforcement of such provisions, whether an action for damage, declaratory relief or injunctive relief, or any other action, the party prevailing in such action shall be entitled to recover from the losing party all of its costs, including court costs, administrative fees and reasonable attorneys' fees. The prevailing party shall be entitled to said attorneys' fees even though said proceeding may be settled prior to judgment. All remedies provided herein or at law or in equity shall be

cumulative and are nonexclusive. Failure by the Community Association to enforce any covenant or restriction contained in any subordinate or junior governing documents shall in no event be deemed a waiver of the right to do so thereafter.

Section 10.3 Violations Constitute a Nuisance. Any violation of any provision, covenant, condition, restriction or equitable servitude contained in this Community Declaration, whether by act or omission, is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by any person entitled to enforce the provisions of this Community Declaration.

Section 10.4 Remedies Cumulative. Each remedy provided under this Community Declaration is cumulative and nonexclusive.

Section 10.5 Severability. Each of the provisions of this Community Declaration shall be deemed independent and severable. If any provision of this Community Declaration or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Community Declaration which can be given effect without the invalid provisions or applications.

Section 10.6 Term of Community Declaration. The covenants and restrictions of this Community Declaration shall run with and bind the land in perpetuity.

Section 10.7 Amendment of Community Declaration, Map or Plat by Declarant. Until the first Unit has been conveyed by a Builder or by Declarant to a Unit Owner other than the Declarant or a Builder, by deed recorded in the real property records of the appropriate county, any of the provisions, covenants, conditions, restrictions and equitable servitudes contained in this Community Declaration, the Exhibits of this Community Declaration, or the map or the plat may be amended by Declarant by the recordation of a written instrument, executed by Declarant, setting forth such amendment. Thereafter, if Declarant shall determine that any amendments shall be necessary in order to make non-material changes, such as for the correction of a technical, clerical or typographical error or clarification of a statement or for any changes to property not yet part of the Community, then, subject to the following sentence of this Section, Declarant shall have the right and power to make and execute any such amendments without obtaining the approval of any Owners. Each such amendment of this Community Declaration shall be made, if at all, by Declarant prior to the expiration of forty (40) years from the date this Community Declaration is recorded. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant to make or consent to an amendment under this section on behalf of each Owner and holder of a security interest. Each deed, security interest, other evidence of obligation or other instrument affecting a Unit and the acceptance

thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power of Declarant to make, execute and record an amendment under this Section.

Section 10.8 Amendment of Community Declaration by Owners. Except as otherwise expressly provided in this Community Declaration, and subject to provisions elsewhere contained in this Community Declaration requiring the consent of Declarant or others, any provision, covenant, condition, restriction or equitable servitude contained in this Community Declaration may be amended, repealed, added to, and/or changed by the addition of new or different covenants, conditions or restrictions at any time and from time to time upon approval of:

- (a) at least fifty-one percent (51%) of the votes directly from the Residential Units; and
- (b) at least fifty-one percent (51%) of the votes directly from the Commercial Units; and
- (c) at least fifty-one percent (51%) of the votes directly from any other class of Unit, as such classes may subsequently be established by Declarant, and with the written consent of the Community Association.

The Delegates shall not be empowered to vote on any such amendment, as the right to amend is exclusively reserved to the Owners, as above provided. An amendment or repeal shall be effective upon the recordation in the real property records of all counties of which the Community is a part, which may include the City and the County of Gallatin, State of Montana, of a certificate, setting forth the amendment in full and certifying that the amendment has been approved as set forth above, and containing the written consent and approval of the Community Association.

Section 10.9 Amendment Required by Mortgage Agencies. Prior to forty (40) years after recording of this Community Declaration, any provision, covenant, condition, restriction or equitable servitude contained in this Community Declaration which FHA, VA, FHLMC, GNMA, FNMA or any similar entity authorized to insure, guarantee, make or purchase mortgage loans requires to be amended or repealed shall be amended or repealed by Declarant or the Community Association. Any such amendment or repeal shall be effective upon the recordation in the real property records of all counties of which the Community is a part, which may include the City and the County of Gallatin, State of Montana, of a certificate, setting forth the amendment or repeal in full.

Section 10.10 Required Consent of Declarant to Amendment. Notwithstanding any other provision in this Community Declaration to the contrary, any proposed amendment or repeal of any provision of this Community Declaration reserving development rights or for the benefit of the Declarant, or the assignees, shall not be effective unless Declarant, and its

assignees, if any, have given written consent to such amendment or repeal, which consent may be evidenced by the execution by Declarant or its assignees of any certificate of amendment or repeal. The foregoing requirement for consent to any amendment or repeal shall terminate upon the expiration of the Period of Declarant Control.

Section 10.11 Validity of Amendments. Any action to challenge the validity of an amendment of this Community Declaration must be brought within one year after the amendment is recorded in the real property records of all counties of which the Community is a part, which may include the County of Gallatin, State of Montana.

Section 10.12 Interpretation. The provisions of this Community Declaration shall be liberally construed to effectuate their purposes of creating a uniform plan for the development of the Units and of promoting and effectuating the fundamental concepts as set forth in the recitals of this Community Declaration. This Community Declaration shall be construed and governed under the laws of the State of Montana.

Section 10.13 No Representations or Warranties. No representations or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant or its agents or employees in connection with any portion of the Community, its or their physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in writing.

Section 10.14 Singular Includes the Plural. Unless the context otherwise requires, the singular shall include the plural, and the plural shall include the singular, and each gender referral shall be deemed to include the masculine, feminine and neuter.

Section 10.15 Captions. All captions and titles used in this Community Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any paragraph, section or article hereof.

Section 10.16 Liberal Interpretation. The provisions of this Community Declaration shall be liberally construed as a whole to effectuate the purposes of this Community Declaration.

Section 10.17 Governing Law. This Community Declaration shall be construed and governed under the laws of the State of Montana.



IN WITNESS WHEREOF, the Declarant has caused this Community Declaration to be executed by its duly authorized agent this 19<sup>th</sup> day of September, 2005.

Baxter Meadows West, LLC,  
a Montana limited liability company

Thomas L. Clinton

Thomas L. Clinton

Gerald R. Williams

Gerald R. Williams

STATE OF MONTANA )

) ss.

COUNTY OF Gallatin )

The foregoing Community Declaration was acknowledged before me this 19<sup>th</sup> day of September, 2005, by THOMAS L. CLINTON AND GERALD R. WILLIAMS, as Managing Members of Baxter Meadows West, LLC, a Montana limited liability company.

Witness my hand and official seal.

Terri Bullo  
Terri Bullo

Notary Public for the State of Montana

Residing at Bozeman

My Commission expires: July 31, 2007

Master Declaration, FINAL .wpd



***EXHIBIT A***

**PROPERTY WHICH ONCE OWNED BY DECLARANT MAY BE ADDED TO THE  
COMMUNITY DECLARATION**

All of those lands situated in Tracts 2A and 4A of Certificate of Survey No. 2202A, located in the NE 1/4 of Section 3, Township 2 South, Range 5 East and the S ½ of Section 34, Township 1 South, Range 5 East, P.M.M., Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the County Clerk and Recorder of Gallatin County, Montana.

**EXHIBIT B**

**INITIAL REAL PROPERTY**

1. Legal description:

All of those lands situated in Tracts 2A and 4A of Certificate of Survey No. 2202A, located in the NE 1/4 of Section 3, Township 2 South, Range 5 East and the S 1/2 of Section 34, Township 1 South, Range 5 East, P.M.M., Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the County Clerk and Recorder of Gallatin County, Montana.

2. The above Real Property is also subject to the following documents of record:

- a. Notice Regarding Baxter Meadows Master Community
- b. Other documents and written instruments of record.



***EXHIBIT C***

**ADDITIONAL PROPERTIES THAT MAY BE ADDED**

**Any lands adjacent to and contiguous with that land area described within Exhibit "A" above.**



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Shelley Vance-Gallatin Co MT MISC 601.00

**BYLAWS OF THE  
BAXTER MEADOWS MASTER COMMUNITY  
ASSOCIATION**

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**BYLAWS  
OF THE  
BAXTER MEADOWS MASTER COMMUNITY ASSOCIATION**

**ARTICLE 1  
INTRODUCTION, PURPOSES AND DEFINITIONS**

Section 1.1 Introduction. These are the Bylaws of the Baxter Meadows Master Community Association (the "**Community Association**"), which Community Association operates under Montana law.

Section 1.2 Purposes. The purposes for which the Community Association was formed are to preserve and enhance the value of the properties of Owners and to operate, govern, manage, supervise and care for the Master Planned Community and the Common Elements of the "Community," situated in Gallatin County, Montana, as the Community was created pursuant to the Community Declaration for Baxter Meadows (the "**Community Declaration**"), plats and/or deeds.

Section 1.3 Definitions. Terms used herein shall have the meanings set forth in the Community Declaration unless expressly defined herein.

**ARTICLE 2  
MEMBERSHIP**

Section 2.1 Membership. Members of the Community Association include Delegates elected on behalf of Owners subject to the Community Declaration. Each Owner shall be allocated votes pursuant to the Community Declaration. Voting rights and other rights of the Owners are vested in Delegates, as provided for in the Community Declaration, these Bylaws and as allowed for under Montana law. Members, as that term is used in Montana nonprofit law, shall be the Delegates, as applicable, elected as provided in the Community Declaration and these Bylaws. Wherever in the Montana nonprofit law reference is made to Members (as, for example, in statutory provisions requiring an annual meeting of members, permitting removal of directors by members or relating to voting on amendments to these Articles of Incorporation) the Members referred to shall be such Delegates. The Members may be of such classes of membership as established by the Community Declaration, as the Declaration may be amended or supplemented.

Section 2.2 Memberships Appurtenant. Each membership shall be appurtenant to the fee simple title of an Owner. The person or persons who constitute the Owner of fee simple title shall automatically be the holder of the membership appurtenant and the membership shall automatically pass with fee simple title. No Owner shall be entitled to resign from the Community Association. Membership shall not be assignable separate and apart from fee simple title except that an Owner may assign some or all of their rights as an Owner to a tenant or holder of a security interest and may arrange for a tenant to perform some or all of such Owner's obligations, but no such delegation or assignment shall relieve an Owner from the responsibility for fulfillment of the obligations of an

Owner under the Community Declaration. The rights acquired by any such tenant or holder of a Security Interest shall be extinguished automatically upon termination of the tenancy or interest. The assignment of rights by an Owner pursuant to this Section shall not be subject to any present or future statutory time limit for the duration of proxy rights.

Section 2.3 Voting Rights of Members. The Real Property shall be divided into Delegate Districts, and each Delegate District shall elect one Delegate and one Alternate Delegate to exercise the voting power of all the Owners in such Delegate District as is more particularly provided in the Community Declaration. Supplemental Declarations may define the Delegate District for Owners. The boundaries of Delegate Districts may be redefined as provided in the Community Declaration. Each Owner shall have the right to cast votes for the election of the Delegate to exercise the voting power of the Delegate District in which the Owner's Unit is located. Each Owner and Delegate shall be entitled to votes as provided for in the Community Declaration, except that no votes allocated to a Unit owned by the Community Association or a Sub Association may be cast. The Delegate from a Delegate District shall be elected by Owners holding a majority of the voting power in such Delegate District present in person, or by proxy, at a duly constituted meeting of such Delegate District. During the Period of Declarant Control, the Declarant or persons appointed by the Declarant shall have the right to appoint members of the Executive Board. In the event a Unit is resubdivided into two or more Units in accordance with the terms and conditions contained in the Community Declaration, each Unit existing after such resubdivision shall be entitled to one membership.

Section 2.4 Voting by Joint Owners. If there is more than one person who constitutes an Owner, each such person shall be entitled to attend any meeting of Owners but the voting power attributable shall not be increased. In all cases in which more than one person constitutes an Owner, including instances of husband and wife, then, unless written notice to the contrary, signed by any one of such persons, is given to the Board prior to the meeting, any one such person shall be entitled to cast, in person or by proxy, the vote attributable, and it shall be presumed that they are in agreement with respect to the manner that such vote is cast. If, however, more than one person constituting such Owner attends a meeting in person or by proxy, and seeks to cast the vote attributable, then the act of those persons owning a majority in interest shall be entitled to cast the vote attributable.

Section 2.5 Resolution of Voting Disputes. In the event of any dispute as to the entitlement of any Owner to vote or as to the results of any vote of Owners at a meeting, the Board shall act as arbitrators and the decision of a disinterested majority of the Board shall, when rendered in writing, be final and binding as an arbitration award and may be acted upon in accordance with Montana law; provided, however, that the Board shall have no authority or jurisdiction to determine matters relating to the entitlement of Declarant to vote or relating to the manner of exercise by Declarant of its voting rights.

Section 2.6 Suspension of Voting and Owner Rights. During any period in which a Owner shall be in default in the payment of any Assessment levied by the Community Association, the voting rights and right to use any recreational facilities of the Community by such Owner shall

be deemed suspended by the Executive Board (as hereafter defined), without notice or hearing, until such Assessments have been paid. Such rights of a Owner may also be suspended, after notice or hearing, during any period of violation of any other provision of the Community Declaration, Articles of Incorporation (“Articles”) or Bylaws.

### ARTICLE 3 MEETINGS OF OWNERS

Section 3.1 Place of Meetings of Owners by Delegate District. Meetings of the Owners in a Delegate District shall be held in the Community, or in the greater Bozeman, Montana area, as designated by the Executive Board or the President or an officer or agent, in the notice of the meeting.

Section 3.2 Annual Meetings of Owners by Delegate District. The annual meetings in each Delegate District shall be held as the annual meeting of a Sub Association, if the Sub Association comprises all of a Delegate District. Otherwise, an annual meeting of the Owners within a Delegate District shall be held to elect a Delegate from the Delegate District and to transact such other business as may properly come before the meeting. At these meetings, a Delegate shall be elected by the Board of the Sub Association, or if the Delegate District includes property not within one Sub Association or outside of a Sub Association, then by ballot of those Owners, in accordance with the provisions of these bylaws, the Community Declaration and Articles.

Section 3.3 Special Meetings of Owners by Delegate District. Special meetings of the Owners in any Delegate District may be called by the Delegate representing the Delegate District, the Board or by Owners holding not less than ten percent (10%) of the total votes of all Owners in the Delegate District. No business shall be transacted at any special meeting except as indicated in the notice thereof.

Section 3.4 Record Date for Owner Meetings. For the purpose of determining Owners entitle to notice of, or to vote at any meeting of Owners in any Delegate District or in order to make a determination of such Owners for any other proper purpose, the Board may fix, in advance, a date as the record date for any such determination of Owners. The record date shall be not more than fifty (50) days prior to the meeting of Owners or the event requiring a determination of Owners.

Section 3.5 Notice of Meetings of Owners by Delegate District. Written notice of each meeting of Owners, by Delegate District, shall be given by, or at the direction of, the Secretary or person authorized to call the meeting at least ten (10) days before, but not more than fifty (50) days before such meeting, to each Owner entitled to vote. Notice may be provided by telephone, facsimile, e-mail, or by first class mail, postage pre-paid. Such notice shall specify the place, day and hour of the meeting and, in the case of a special meeting, the purpose of the meeting. No matters shall be heard nor action adopted at a special meeting except as stated or allowed in the notice.

Section 3.6 Proxies of Owners. A Owner entitled to vote in any Delegate District may vote in person or by proxy in writing executed by the Owner or his duly authorized attorney-in-fact and filed with the Secretary of the meeting prior to the time the proxy is exercised. The filing of a proxy by a Owner may include, without limitation, the transmission of the same by telegram, teletype, facsimile, e-mail or other electronic transmission to the Secretary of the meeting provided that such transmitted proxy shall set forth or be transmitted with written evidence from which it can be determined that the Owner transmitted or authorized the transmission of the proxy. Any proxy may be revoked, prior to the time the proxy is exercised, by a Owner in person at a meeting or by revocation in writing filed with the Secretary. A proxy shall automatically cease upon the conveyance by an Owner of their Unit. No proxy shall be valid after eleven (11) months after the date of its execution unless otherwise provided in the proxy and no proxy shall be valid in any event for more than three years after its date of execution. Any form of proxy furnished or solicited by the Community Association and any form of written ballot furnished by the Community Association shall afford an opportunity thereon for Owners to specify a choice between approval and disapproval of each matter or group of related matters which is known at the time and form of proxy or written ballot is prepared, may come before the meeting and shall provide, subject to reasonably specified conditions that if a Owner specifies a choice with respect to any such matter, the vote shall be cast in accordance therewith.

Section 3.7 Quorum at Owners' Meetings. Except as may be otherwise provided in the Community Declaration, the Articles of Incorporation or these Bylaws, and except as hereinafter provided with respect to the calling of another meeting, the presence, in person or by proxy, of Owners entitled to cast at least ten percent(10%) of the votes of all Owners in any Delegate District shall constitute a quorum at any meeting of such Delegate District. Owners present in person or by proxy at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of Owners so as to leave less than a quorum. If the required quorum is not present in person or by proxy, then Owners entitled to cast at least five percent (5%) of the votes of all Owners within such Delegate District, shall, except as may be otherwise provided in the Community Declaration, the Articles of Incorporation or these Bylaws, constitute a quorum at such meeting.

Section 3.8 Adjournments of Owners' Meetings. Owners present in person or by proxy at any meeting of a Delegate District may adjourn the meeting from time to time, whether or not a quorum shall be present in person or by proxy, without notice other than announcement at the meeting, for a total period or periods of not to exceed 30 days after the date set for the original meeting. At any adjourned meeting which is held without notice other than announcement at the meeting, the quorum requirement shall not be reduced or changed, but if the originally required quorum is present in person or by proxy, any business may be transacted which might have been transacted at the meeting as originally called.

Section 3.9 Vote Required at Owners' Meetings. At any meeting of a Delegate District if a quorum is present, a majority of the votes present in person or by proxy and entitled to be cast on a matter shall be necessary for the adoption of the matter, unless a greater proportion is required by law, the Community Declaration, the Articles of Incorporation or these Bylaws.

Section 3.10 Order of Business. The order of business at any meeting of Owners of a Delegate District shall be as follows: (a) roll call to determine the voting power represented at the meeting; (b) proof of notice of meeting or waiver of notice; (c) reading of minutes of preceding meeting; (d) report of the Delegate of the Delegate District; (e) election of a Delegate (at annual meetings or special meetings held for such purpose); and (f) other business if noticed, is provided for in these Bylaws.

Section 3.11 Certification of Election After Meeting. Promptly after any meeting of Owners to elect a Delegate in a Delegate District, the Secretary or their agent shall certify in writing to the Board the name and address of the Delegate elected, the Delegate District which the Delegate represents and the time and place of the meeting at which the Delegate was elected.

Section 3.12 Action by Written Ballot. Any action that may be taken at any annual, regular, or special meeting of the Owners of a Delegate District may be taken without a meeting by written ballot delivered to every Owner entitled to vote on the matter. The procedure for actions by written ballot shall be governed by Montana law.

#### **ARTICLE 4 DELEGATES**

Section 4.1 Delegates. A "Delegate" is defined in the Community Declaration as the natural person selected by Owners within a Delegate District to represent such Delegate District and to cast votes on behalf of Owners within such Delegate District.

Section 4.2 Voting Rights of Delegates. Each Delegate shall have one vote for each vote which could be cast by Owners voting to elect a Delegate for such Delegate District as provided in the Community Declaration or in any Supplemental Declaration. Each Delegate may cast the votes which he or she represents in such manner as the Delegate, in his or her sole discretion, deems appropriate, acting on behalf of all the Owners in the Delegate District; provided, however, that in the event that at least a majority in interest of the Owners in any Delegate District present in person or by proxy at a duly constituted meeting of such Delegate District shall determine at such meeting to instruct their Delegate as to the manner in which he or she is to vote on any issue, then the Delegate representing such Delegate District shall cast all of the voting power in such Delegate District in the same proportion, as nearly as possible without counting fractional votes, as the Owners in such Delegate District shall have cast their votes "for" and "against" such issue in person or by proxy. A Delegate shall have the authority, in his or her sole discretion, to call a special meeting of the Owners of the Delegate's Delegate District in the manner provided for in these Bylaws, for the purpose of obtaining instructions as to the manner in which to vote on any issue to be voted on by the Delegates. When a Delegate is voting without the instruction from the Owners represented by such Delegate, then all of the votes may be cast as a unit or block, or the Delegate may apportion some of such votes in favor of a given proposition and some of such votes in opposition to such proposition. It will be presumed that any Delegate casting votes will have acted with the authority and consent of all the Owners of the Delegate District of such Delegate.

Section 4.3 Qualifications of Delegates. A Delegate must be a resident of a dwelling unit within the Delegate District, an occupant of a Commercial Unit, within the Delegate District, or an Owner, or, if any Owner is not a natural person, must be an authorized agent of the Owner. If a Delegate conveys or transfers title to his or her Unit or ceases to reside or occupy within the Delegate District, or if a Delegate who is an authorized agent of an Owner which is not a natural person ceases to be such authorized agent, or if the entity of which a Delegate is an agent transfers title, such Delegate's term shall immediately terminate and the Alternate Delegate shall take such Delegate's place. A Delegate may be reelected, and there shall be no limit on the number of terms a Delegate may serve.

Section 4.4 Term of Office of Delegates. Each Delegate shall be elected to a two year term of office, and shall continue in office until a successor is elected, unless such Delegate resigns, is removed, or becomes disqualified to be a Delegate.

Section 4.5 Removal of Delegates. At any duly called meeting of Owners of a Delegate District, the notice of which indicates such purpose, the Delegate representing that Delegate District may be removed, with or without cause, by a vote of a majority of the votes of Owners present at such meeting in person or by proxy, and a successor may then and there be elected to fill the vacancy thus created.

Section 4.6 Resignation of Delegates. Any Delegate may resign at any time by giving written notice to the President, to the Secretary or to the Board stating the effective date of such resignation. Acceptance of such resignation shall not be necessary to make the resignation effective.

Section 4.7 Vacancies. Any vacancy occurring in the office of a Delegate shall, unless filled after removal of a Delegate, be filled at a special meeting, called for such purpose, of Owners of the Delegate District represented by such Delegate. A Delegate elected to fill a vacancy shall be elected for the unexpired term of his or her predecessor in office.

## ARTICLE 5 MEETINGS OF DELEGATES

Section 5.1 Place of Delegate Meetings. Meetings of Delegates shall be held at the principal office of the Community Association, if any, or at such other place, within or convenient to the Community as may be fixed by the Board and specified in the notice of the meeting.

Section 5.2 Annual Meetings of Delegates. An annual meeting of the Delegates shall be held during each of the Community Association's fiscal years, at such time of the year and date as determined by the Executive Board and set forth in the notice sent to the Delegates.

Section 5.3 Special Meetings of Delegates. Special meetings of the Delegates may be called by the President, by a majority of the members of the Board or by a petition signed by Delegates comprising twenty percent (20%) of the votes in the Community Association.

Section 5.4 Budget Meetings of Delegates. Meetings of Delegates to consider proposed budgets shall be called in accordance with the Community Declaration. The budget process allows for a veto, by certain delegates, of a proposed budget adopted by the Executive Board, as provided for in the Community Declaration. In the event any proposed budget is rejected, the budget last ratified is continued until such time as a subsequent budget proposed by the Executive Board is ratified.

Section 5.5 Notice of Meetings of Delegates. Written notice of each meeting of Delegates shall be given by, or at the direction of, the Secretary or person authorized to call the meeting at least ten (10) days before, but not more than fifty (50) days before such meeting, to each Delegate entitled to vote. Notice may be provided by telephone, facsimile, e-mail, or by first class mail, postage pre-paid. Such notice shall specify the place, day and hour of the meeting and, in the case of a special meeting, the purpose of the meeting. No matters shall be heard nor action adopted at a special meeting except as stated or allowed in the notice. The notice of an annual meeting shall include the names of any known candidate for Delegate and shall identify any other matter which it is known may come before the meeting. The notice of a special meeting in any Delegate District shall state the purpose or purposes for which the meeting is called. The notice of any annual or special meeting in any Delegate District shall state any matter an Owner within such Delegate District intends to raise at the meeting if requested to do so by a person entitled to call a special meeting in such Delegate District at least ten (10) days before notice of the meeting is given.

Section 5.6 Record Date for Meetings of Delegates. For the purpose of determining Delegates entitled to notice of, or to vote at, any meeting of Delegates, or in order to make a determination of such Delegates for any other purpose, the Board may fix, in advance, a date as the record date for any such determination of Delegates. The record date shall not be more than fifty (50) days prior to the meeting of Delegates or such other event requiring a determination of Delegates.

Section 5.7 Proxies of Delegates. For the purposes of determining a quorum with respect to a particular proposal and for the purposes of casting a vote for or against that particular proposal, a Delegate may execute, in writing, a proxy to be held by another Delegate. The proxy shall specify either a yes, no or abstain vote on each particular issue for which the proxy was executed. Proxies which do not specify a yes, no or abstain vote shall not be counted for the purpose of having a quorum present or as a vote on the particular proposal before the Delegates.

Section 5.8 Quorum at Delegates' Meetings. Except as may be otherwise provided in the Community Declaration, the Articles of Incorporation, or these Bylaws, the presence in person or by proxy of Delegates entitled to cast at least forty percent (40%) of the votes of all Delegates shall constitute a quorum at any meeting of Delegates. Delegates present at a duly organized meeting of Delegates may continue to transact business until adjournment, notwithstanding the withdrawal of Delegates so as to leave less than a quorum. If the required quorum is not present at any meeting of Delegates, another meeting may be called, subject to the notice requirements set forth in this Article, and the presence of Delegates entitled to cast at least twenty percent (20%) of the votes of all Delegates shall, except as may be otherwise provided in the Community Declaration, the Articles of Incorporation or these Bylaws, constitute a quorum.

Section 5.9 Attendance of Delegates by Telecommunication. If a Delegate so requests in a written notice given to the Secretary of a meeting at least seven (7) days prior to the meeting and if the Board agrees, in its sole discretion, to permit the same, such Delegate may participate in such meeting, or such meeting may be conducted through the use of any means of communication by which such Delegate may hear each other person present during such meeting. A Delegate participating in a meeting by the foregoing means shall be deemed to be present in person at such meeting.

Section 5.10 Adjournments of Delegates' Meetings. Delegates present at any meeting of Delegates may adjourn the meeting from time to time, whether or not a quorum shall be present, without notice other than an announcement at the meeting, for a total period or periods of not to exceed thirty (30) days after the date set for the original meeting. At any adjourned meeting which is held without notice other than announcement at the meeting, the quorum requirement shall not be reduced or changed, but if the originally required quorum is present, any business may be transacted which might have been transacted at the meeting as originally called.

Section 5.11 Vote Required at Delegates' Meetings. At any meeting of Delegates, if a quorum is present, a majority of the votes present in person and entitled to be cast on a matter shall be necessary for the adoption of the matter, unless a greater proportion is required by law the Community Declaration, the Articles of Incorporation or these Bylaws.

Section 5.12 Cumulative Voting by Delegates Not Permitted. Cumulative voting by Delegates in the election of Board members shall not be permitted.

Section 5.13 Order of Business. The order of business at all meetings of Delegates shall be as follows: (a) roll call to determine the voting power represented at the meeting; (b) proof of notice of meeting or waiver of notice; (c) reading of minutes of preceding meeting; (d) reports of officers; (e) reports of committees; (f) election of members of the Executive Board (at annual meetings or special meetings held for such purpose); (g) ratification of budgets (if required and noticed and as applicable under the Community Declaration); (h) unfinished business; and (i) new business.

Section 5.14 Officers of Meetings of Delegates. The President shall act as chairman and the Secretary shall act as secretary of any meeting of Delegates. In the absence of the President, then Vice President, the Secretary or the Treasurer, in that order, shall act as chairman of the meeting. In the absence of the Secretary, then the Assistant Secretary, the Treasurer or any Assistant Treasurer, in that order, shall act as Secretary of the meeting.

Section 5.15 Waiver of Notice by Delegates. A waiver of notice of any meeting of Delegates, signed by a Delegate, whether before or after the date or time stated in the notice as the date or time when the meeting will occur or has occurred, shall be equivalent to the giving of notice of the meeting to such Delegate. Attendance of a Delegate at a meeting shall constitute waiver of notice of such meeting unless the Delegate at the beginning of the meeting objects to holding the meeting or transacting business at the meeting because of lack of notice or defective notice. Additionally, attendance of a Delegate at the meeting shall constitute a waiver of objection to



consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the Delegate objects to considering the matter when it is presented.

Section 5.16 Action of Delegates Without a Meeting. Any action required to be taken or which may be taken at a meeting of Delegates, may be taken without a meeting if a consent, in writing, setting forth the action so taken, shall be signed by all of the Delegates, and otherwise in accordance with the applicable requirements of Montana law.

Section 5.17 Action by Delegates Written Ballot. Any action that may be taken at any annual, regular, or special meeting of the Delegates may be taken without a meeting by written ballot delivered to every Delegate entitled to vote on the matter. The procedure for actions by written ballot shall be governed by Montana law.

Section 5.18 Owners' Right to Attend Meetings of Delegates. Any Owner shall be entitled to attend any meeting of Delegates.

Section 5.19 Compensation of Delegates. No Delegate shall receive any compensation from the Community Association for acting as such unless approved by a majority of the votes of the Delegates, regular or special meeting of the Delegates. Any Delegate may be reimbursed for expenses incurred on behalf of the Community Association. Nothing herein shall prohibit the Community Association from compensating a Delegate, or any entity with which a Delegate is affiliated, for services or supplies furnished to the Community Association in a capacity other than as a Delegate pursuant to a contract or agreement with the Community Association.

**ARTICLE 6  
EXECUTIVE BOARD**

Section 6.1 Number and Potential Classes.

(a) The affairs of the Community and the Community Association shall be governed by an Executive Board which shall initially consist of three (3) members, elected or appointed as provided in the Community Declaration and these Bylaws.

(b) From and after the date of recordation of the Community Declaration until the date which is sixty (60) days after the date of conveyance of twenty-five percent (25%) of the Units That May Be Created to Owners other than the Declarant, the Declarant, or persons appointed by the Declarant, may appoint and remove all officers and members of the Board.

(c) From and after the date which is sixty (60) days after the date of conveyance by Declarant of twenty-five percent (25%) of the Units That May Be Created to Owners other than Declarant until the date which is sixty (60) days after the date of conveyance by Declarant of fifty percent (50%) of the Units That May Be Created to Owners other than Declarant, the number of members of the Board shall be increased to four (4), and the

Owners other than Declarant (acting through their Delegates) shall have the right to elect one (1) of the members of the Board (equal to the greater of one or twenty-five percent (25%), rounded to the nearest whole number) of the total number of the members of the Board, and the Declarant, or persons appointed by Declarant, may appoint and remove all other members of the Board.

(d) From and after the date which is sixty (60) days after the date of conveyance by Declarant of fifty percent (50%) of the Units That May Be Created to Owners other than Declarant until the date of termination of the Period of Declarant Control, the number of members of the Board shall be increased to five (5), and the Owners other than Declarant (acting through their Delegates) shall have the right to elect two (2) of the members of the Board (equal to the greater of one or thirty-three percent (33%), rounded to the nearest whole number) of the total number of the members of the Board, and the Declarant, or persons appointed by the Declarant, may appoint and remove all other members of the Board.

(e) From and after the date of termination of the Period of Declarant control, the Board shall remain at five (5) members, and the Owners, including Declarant (if Declarant is then an Owner), shall elect at least three (3) members, at least a majority of whom must be Owners other than the Declarant.

(f) However, if prior to the termination date of the Period of Declarant Control, the Community Association approves an extension of the Declarant's ability to appoint and remove no more than a majority of the Executive Board, by vote of a majority of the votes entitled to be cast by Delegates, in person or by proxy, other than by the Declarant, at a duly convened meeting of the Delegates, as allowed for in these Bylaws, then the Declarant's rights of appointment may be extended. Any such approval by the Community Association may contain conditions and limitations. Such extension of Declarant's appointment and removal power, together with any conditions and limitations approved as provided in this paragraph, shall be included in an amendment to the Community Declaration.

(g) The Declarant may voluntarily surrender any or all of the foregoing rights to appoint and remove officers and members of the Board before termination of the Period of Declarant Control, but in that event, the Declarant may require, for the duration of the Period of Declarant Control, that specified actions, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

(h) As Owners are elected to the Board by the Delegates, the Declarant or the Owners may establish such classes of membership of the Owners and of the Executive Board so as to reasonably allow for representation of the various neighborhoods included within the Community. In the event of those classifications, the Delegates may then elect only specified members of the Executive Board.

Section 6.2 Qualifications of Members of the Executive Board. Members of the Executive Board shall be natural persons who are eighteen (18) years of age or older. Except as appointed by Declarant, they must be an Owner or, if the Owner is a partnership, corporation or other entity not a natural person, must be an authorized agent of such partnership, corporation or

other entity. If a member of the Executive Board conveys or transfers title to his Unit, or a member of the Executive Board who is an authorized agent or a partnership, corporation or other entity ceases to be such authorized agent, or if the partnership, corporation or other entity transfers title to its Unit, such member's term shall immediately terminate and a new member shall be selected as promptly as possible. There shall be no limit on the number of terms that may be served.

Section 6.3 Nominations for the Executive Board. Except for appointees by Declarant, nomination for election to the Board shall be made by a nominating committee. Nominations may also be made from the floor at the annual meetings of Delegates. The nominating committee shall consist of a chairman, who shall be a member of the Board, and two or more Delegates. The nominating committee shall be appointed by the Board prior to each annual meeting of the Delegates to serve from the close of such annual meetings until the close of the next annual meetings and such appointment shall be announced at each annual meeting. The nominating committee shall make as many nominations for election to the Board as it shall in its discretion determine, but not less than the number of vacancies that are to be filled.

Section 6.4 Term of Office for Directors. The terms of office of Directors shall be three (3) years or until such time as a successor is elected, and the terms of at least one-third (1/3) of the Directors shall expire annually.

Section 6.5 Removal of Directors. The Delegates, by a vote of at least two-thirds (2/3) of the votes at any meeting of the Delegates at which a quorum is present, may remove a Director, other than a Director elected or appointed by class (if any classes are designated by the Declarant) and other than directors appointed by Declarant. Directors appointed by the Declarant may not be removed by the Delegates under this section of the Bylaws. Directors sought to be removed shall have the right to be present at such meeting and shall be given the opportunity to speak to the Delegates prior to a vote to remove being taken. Upon removal, the Delegates, by majority vote, shall then elect such new members of the Executive Board to replace those Directors which were removed.

Section 6.6 Vacancies on the Executive Board. Vacancies in the Executive Board, unless filled by Declarant pursuant to its appointment powers, that are caused by any other reason (other than removal) shall be filled by appointment. Each person so appointed shall be a Director who shall serve for the remainder of the unexpired term.

Section 6.7 Compensation. No Director shall receive any compensation from the Community Association for acting as such unless approved by a majority of the votes in the Community Association at a regular or special meeting of the Community Association. Any Director may be reimbursed for expenses incurred on behalf of the Community Association upon approval of a majority of the other Directors. Nothing herein shall prohibit the Community Association from compensating a Director, or any entity with which a Director is affiliated, for services or supplies furnished to the Community Association in a capacity other than as a Director pursuant to a contract or agreement with the Community Association, provided that such Director's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board of Directors, excluding the interested Director.

Section 6.8 Resignation of Board Members/Directors. Any member of the Executive Board may resign at any time by giving written notice to the President, to the Secretary or to the Board stating the effective date of such resignation. Acceptance of such resignation shall not be necessary to make the resignation effective.

## ARTICLE 7 MEETINGS OF THE EXECUTIVE BOARD

Section 7.1 Location of Meetings and Open Meetings of the Board. All meetings of the Executive Board shall be at the principal office of the Community Association, if any, or at such other place, within or reasonably convenient to the Community. All meetings shall be open to attendance by Owners, as provided by applicable Montana law.

Section 7.2 Annual Meeting of the Executive Board. Annual meetings of the Executive Board shall be held on the same date as, or within ten (10) days following, the annual meeting of Delegates. The business to be conducted at the annual meeting of the Executive Board shall consist of the appointment of officers and the transaction of such other business as may properly come before the meeting. No prior notice of the annual meeting of the Board shall be necessary if the meeting is held on the same day and at the same time and place of the annual meeting of the Board is announced at the annual meeting of Delegates.

Section 7.3 Regular Meetings of the Board. Regular meetings of the Executive Board shall be held at least twice per year at such place and hour as may be fixed by the Board, without notice. The Board may set a schedule of additional regular meetings by resolution, and no further notice is necessary to constitute regular meetings, except as may be required by law.

Section 7.4 Special Meetings of the Board. Special meetings of the Executive Board shall be held when called by the President of the Community Association, or by any two Directors, after not less than three (3) business days' notice to each Director. The notice shall be delivered in a manner whereby confirmation of receipt of the notice is received, and shall state the time, place and purpose of the meeting.

Section 7.5 Notice of Board Meetings. In the case of all meetings of the Executive Board for which notice is required, notice stating the place, day and hour of the meeting shall be delivered not less than three (3) nor more than fifty (50) days before the date of the meeting, by mail, telegraph, telephone, e-mail or personally, by or at the direction of the persons calling the meeting, to each member of the Board. If mailed, such notice shall be deemed to be delivered at 5:00 p.m. on the second business day after it is deposited in the mail. If by facsimile, such notice shall be deemed delivered when received at the facsimile number for each member of the Executive Board as appears on the records of the Community Association. If by telephone, such notice shall be deemed to be delivered when given by telephone to the member of the Executive Board or to any person answering the phone who sounds competent and mature at his home or business phone number as either appears on the records of the Community Association. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board need be specified in the notice or waiver of such meeting.

Section 7.6 Waiver of Notice of Board Meetings. Any Director may waive notice of any meeting in writing. Attendance by a Director at any meeting of the Board shall constitute a waiver of notice. If all the Directors are present at any meeting, no notice shall be required, and any business may be transacted at such meeting.

Section 7.7 Quorum for Board Meetings. At all meetings of the Executive Board, a majority of the Directors shall constitute a quorum for the transaction of business, unless there are less than three Directors, in which case, all Directors must be present to constitute a quorum. The votes of a majority of the Directors present at a meeting at which a quorum is present shall constitute a decision of the Board unless there are less than three (3) Directors, in which case, unanimity of the Directors is required to constitute a decision of the Board. If, at any meeting, there shall be less than a quorum present, a majority of those present may adjourn the meeting.

Section 7.8 Proxies of the Board. For the purposes of determining a quorum with respect to a particular proposal and for the purposes of casting a vote for or against that particular proposal, a Director may execute, in writing a proxy, to be held by another Director. The proxy shall specify either a yes, no or abstain vote on each particular issue for which the proxy was executed.

Section 7.9 Adjournment of Board Meetings. Members of the Board present at any meeting of the Board may adjourn the meeting from time to time, whether or not a quorum shall be present, without notice other than an announcement at the meeting, for a total period or periods not to exceed 30 days after the date set for the original meeting. At any adjourned meeting which is held without notice other than announcement at the meeting, the quorum requirement shall not be reduced or changed, but if the originally required quorum is present, any business may be transacted which may have been transacted at the meeting as originally called.

Section 7.10 Vote Required at Board Meetings. At any meeting of the Board, if a quorum is present, a majority of the votes present in person and entitled to be cast on a matter shall be necessary for the adoption of the matter, unless a greater proportion is required by law, the Community Declaration, the Articles of Incorporation or these Bylaws.

Section 7.11 Consent to Corporate Action of the Board. The Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all of the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Directors. The secretary shall file these consents with the minutes of the meetings of the Executive Board.

Section 7.12 Telephone Communication of Board Members in Lieu of Attendance. A Director may attend a meeting of the Executive Board by using an electronic or telephonic communication method whereby the Director may be heard by the other members and may hear the deliberations of the other members on any matter properly brought before the Executive Board. The Director's vote shall be counted and his or her presence noted as if that Director were present in person on that particular matter.



## ARTICLE 8 POWERS AND DUTIES OF THE EXECUTIVE BOARD

Section 8.1 Powers and Duties. The Executive Board may act in all instances on behalf of the Community Association, except as provided in the Community Declaration, the Articles or these Bylaws. The Executive Board shall have, subject to the limitations contained in the Community Declaration and the Articles, the powers and duties necessary for the administration of the affairs of the Community Association and of the Community, and for the operation and maintenance of the Community as a first class Community, including the following powers and duties:

- (a) Adopt the initial Bylaws;
- (b) Adopt and amend budgets for revenues, expenditures and reserves
- (c) As a part of the adoption of the regular budget the Executive Board shall include an amount which, in its reasonable business judgment, will establish and maintain a reserve fund for the replacement of those improvements that it is obligated to maintain, based upon age, remaining life, quantity and replacement cost;
- (d) Collect Assessments to the extent expressly permitted by the Community Declaration or delegated;
- (e) Hire and discharge an independent managing agent, provided that any agreement for professional management of the Community must provide for the termination by either party with or without cause and without payment of a termination fee or penalty upon thirty (30) days written notice;
- (f) Hire and discharge employees, independent contractors and agents other than managing agents;
- (g) Institute, defend or intervene in litigation or administrative proceedings or seek injunctive relief for violations of the Community Declaration or Bylaws in the Community Association's name, on behalf of the Community Association or two (2) or more Owners on matters affecting the Community;
- (h) Enter into contracts on the Association's behalf and incur liabilities;
- (i) Regulate the use, maintenance, repair, replacement and modifications of Common Elements;
- (j) Cause additional improvements to be made as a part of the Common Elements;
- (k) Acquire, hold, encumber and convey, in the Community Association's name, any right, title or interest to real estate or personal property, but Common Elements may be conveyed or subjected to a security interest only pursuant to state law or the terms of the Community Declaration;

- (l) Grant easements for any period of time, including permanent easements, and grant leases, licenses and concessions, through or over the Common Elements;
- (m) Impose and receive a payment, fee or charge for services provided and/or for the use, rental or operation of the Common Elements;
- (n) Impose a reasonable charge for late payment of assessments and, after notice and hearing, levy reasonable fines or assessments provided for or allowed in the Community Declaration or Bylaws of the Community Association;
- (o) Keep and maintain full and accurate books and records showing all of the receipts, expenses, or disbursements of the Community Association;
- (p) Borrow funds in order to pay for any expenditure or outlay required pursuant to the authority granted by the provisions of the recorded Community Declaration and these Bylaws, and to execute all such instruments evidencing such indebtedness as the Executive Board may deem necessary and give security therefor;
- (q) Impose a reasonable charge for the preparation and recording of amendments to the Community Declaration, liens, or statements of unpaid assessments;
- (r) Provide for the indemnification of the Community Association's Officers and the Executive Board and maintain Directors' and Officers' liability insurance;
- (s) Procure and maintain adequate liability and hazard insurance on property owned by the Community Association and as further set forth in the Community Declaration;
- (t) Cause all Directors, Officers, employees or agents having fiscal responsibilities to be bonded or insured, as it may deem appropriate and in such amounts as it may deem appropriate. Such expense shall be a cost to the Association;
- (u) Declare the office of a member of the Executive Board to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Executive Board;
- (v) Exercise for the Community Association all powers, duties, rights and obligations in or delegated to the Community Association and not reserved to the membership by other provisions of these Bylaws, Articles or the Community Declaration; and
- (w) Exercise any other powers conferred by the Community Declaration or Bylaws.



**ARTICLE 9  
OFFICERS AND THEIR DUTIES**

Section 9.1 Enumeration of Offices. The officers of this Community Association shall be a President, Vice-President, Secretary and Treasurer, and such other Officers as the Executive Board may from time to time create by resolution. The offices of Secretary and Treasurer may be held by the same person.

Section 9.2 Appointment of Officers. The officers shall be appointed by the Executive Board at the Annual Meeting of each new Executive Board. The Officers shall hold office at the pleasure of the Executive Board.

Section 9.3 Special Appointments. The Executive Board may appoint or elect such other officers as the affairs of the Community Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Executive Board may, from time to time, determine.

Section 9.4 Resignation and Removal. Any Officer may resign at any time by giving written notice to the Executive Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein. Acceptance of such resignation shall not be necessary to make it effective. Any Officer may be removed from office with cause by a majority of the Executive Board.

Section 9.5 Vacancies. A vacancy in any office may be filled by appointment by the Executive Board by majority vote of the Board. The Officer appointed to such vacancy shall serve for the remainder of the term of the Officer he replaces.

Section 9.6 Duties. The Duties of the Officers are as follows:

(a) President. The president shall have all of the general powers and duties which are incident to the office of president of a Montana nonprofit corporation. The president may cause to be prepared and may execute amendments, attested by the secretary, to the Community Declaration and these Bylaws on behalf of the Community Association, following authorization or approval of the particular amendment as applicable.

(b) Vice President. The vice president shall take the place of the president and perform the president's duties whenever the president is absent or unable to act. If neither the president nor the vice president is able to act, the Executive Board shall appoint some other Director to act in the place of the president on an interim basis. The vice president shall also perform other duties imposed by the Executive Board or by the president.





(c) Secretary. The secretary, shall have charge to have kept or shall keep the minutes of all meetings of the Owners and proceedings of the Executive board. The secretary shall have charge of the Community Association's books and papers and shall perform all the duties incident to the office of secretary of a nonprofit corporation organized under the laws of the State of Montana. The secretary may cause to be prepared and may attest to execution by the president of amendments to the Community Declaration and the Bylaws on behalf of the Community Association, following authorization or approval of the particular amendment as applicable.

(d) Treasurer. The treasurer shall be responsible for Community Association funds and for keeping full and accurate financial records and books of account showing all receipts and disbursements and for the preparation of all required financial data. This officer shall be responsible for the deposit of all monies and other valuable effects in depositories designated by the Executive Board and shall perform all the duties incident to the office of treasurer of a nonprofit corporation organized under the laws of the State of Montana.

Section 9.7 Delegation. The duties of any officer may be delegated to the manager or another Executive Board member; *provided, however*, the officer shall not be relieved of any responsibility under these Bylaws or under Montana law.

Section 9.8 Agreements, Contracts, Deeds, Checks, Etc. Except as provided in these Bylaws, all agreements, contracts, deeds, leases, checks and other instruments of the Community Association shall be executed by any officer of the Community Association or by any other person or persons designated by the Executive Board.

Section 9.9 Statements of Unpaid Assessments. The treasurer, assistant treasurer, a manager employed by the Community Association, if any, or, in their absence, any officer having access to the books and records of the Community Association may prepare, certify, and execute statements of unpaid assessments in accordance with applicable law.

The Community Association may charge a reasonable fee for preparing statements of unpaid assessments and for collections. The amount of these fees and the time of payment shall be established by resolution of the Executive Board. Any unpaid fees may be assessed as a Common Expense against the Unit for which the certificate or statement is furnished.

Section 9.10 Compensation. Compensation of officers shall be subject to the same limitations as imposed in these Bylaws on compensation of directors.

## ARTICLE 10 COMMITTEES

Section 10.1 Designated Committees. The Community Association may appoint committees as deemed appropriate in carrying out its purposes, subject to the Community Declaration. Committees shall have authority to act only to the extent designated in the Governing Documents or delegated by the Executive Board.

## ARTICLE 11 ENFORCEMENT

Section 11.1 Abatement and Enjoinment of Violations. The violation of any provision of the Governing Documents shall give the Executive Board the right, except in case of an emergency, in addition to any other rights set forth in these Bylaws to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach.

Section 11.2 Fines for Violation. By action of the Executive Board, following notice and hearing, the Executive Board may levy reasonable fines for a violation of the Governing Documents which persist after notice and hearing.

## ARTICLE 12 BOOKS AND RECORDS

Section 12.1 Records. The Community Association or its manager or managing agent, if any, shall keep the following records:

- (a) An account for each Owner, which shall designate the name and address of each Owner, the amount of each common expense assessment, the dates on which each assessment comes due, any other fees payable by the Owner, the amounts paid on the account and the balance due;
- (b) An account for each Owner showing any other fees payable by the Owner;
- (c) The most recent regularly prepared balance sheet and income and expense statement, if any, of the Community Association ;
- (d) The current budgets;
- (e) A record of any unsatisfied judgments against the Community Association and the existence of any pending suits in which the Community Association is a defendant;
- (f) A record of insurance coverage provided for the benefit of Owners and the Community Association;
- (g) Tax returns for state and federal income taxation;



- (h) Minutes of proceedings of meetings of the Owners, Directors, committees of Directors and waivers of notice; and
- (i) A copy of the most current versions of the Community Declaration, Articles, Bylaws, and Resolutions of the Executive Board, along with their exhibits and schedules.

Section 12.2 Examination. The books, records and papers of the Community Association (excepting any confidential and/or privileged book, records or papers) shall at all times, during normal business hours and after reasonable notice, be subject to inspection and copying by any Owner, at their expense, for any proper purpose, as set forth in a Records Policy duly adopted by the Executive Board of the Community Association and subject to applicable law on confidentiality and right to privacy. The Executive Board or the Manager shall determine reasonable fees for copying.

**ARTICLE 13  
INDEMNIFICATION**

Section 13.1 Obligation to Indemnify.

- (a) The Association shall indemnify any person:
  - (i) Who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association);
  - (ii) By reason of the fact that that person is or was a Director, Officer or committee member of the Association;
  - (iii) Provided that the person is or was serving at the request of the Association in such capacity;
  - (iv) But no indemnification shall be made with respect to any claim, issue or matter in any threatened, pending or completed action or suit where such person has been adjudged to be liable for gross negligence or gross misconduct in the performance of his or her duty to the Association, unless a court determines that, despite the adjudication of liability, but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expenses if such court deems proper.
- (b) The Association's obligation for indemnification shall include: (i) actual and reasonable expenses (including expert witness fees, attorneys' fees and costs); (ii) judgments and fines; and (iii) reasonable amounts paid in settlement.

(c) The Association shall indemnify when the person identified in subsection (a) of this Section: (i) acted in good faith; (ii) acted in a manner which such person reasonably believed to be in the best interests of the Association; (iii) with respect to any criminal action or proceeding, had no reasonable cause to believe the conduct was unlawful; and (iv) to the extent that such person has been wholly successful on the merits in defense of any action, suit or proceeding as described above, such person shall be indemnified against actual and reasonable expenses (including expert witness fees, attorneys' fees and costs) incurred in connection with such action, suit or proceeding.

Section 13.2 Determination Required. The Board of Directors shall determine whether the person requesting indemnification has met the applicable standard of conduct set forth above. Such determination shall be made by the Board of Directors:

- (a) By majority vote of a quorum consisting of those members of the Board of Directors who were not parties to such action, suit or proceeding or;
- (b) By independent legal counsel in a written opinion if a majority of those members of the Board of Directors who were not parties to such action, suit or proceeding so directs, or;
- (c) By a vote of the members if a majority of those members of the Board of Directors who were not parties to such action, suit or proceeding so directs.
- (d) Determination of any action, suit or proceeding by judgment, order, settlement or conviction, or upon a plea of *nolo contendere* or its equivalent, shall not of itself create a presumption that the person did not act in good faith and in a manner reasonably believed to be in the best interests of the Association and, with respect to any criminal action or proceeding, had reasonable cause to believe the conduct was unlawful.

Section 13.3 Payment in Advance of Final Disposition. The Association shall pay for or reimburse the reasonable expenses as described above in advance of final disposition of the action, suit or proceeding if the person requesting indemnification provides the Board of Directors with:

- (a) A written affirmation of that person's good faith belief that he or she has met the standard of conduct described above and;
- (b) A written statement that such person shall repay the advance if it is ultimately determined that he or she did not meet the standard of conduct described above.



Section 13.4 No Limitation of Rights. The indemnification provided in this Article shall not be deemed exclusive of nor a limitation upon any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of the Owners or disinterested members of the Board of Directors, or otherwise, nor by any rights which are granted pursuant to Montana law, as those statutes may be amended from time to time.

Section 13.5 Directors and Officers Insurance. The Association shall purchase and maintain insurance on behalf of any person who is or was a member of the Board of Directors, the manager, committee members, or anyone acting at the direction of the Board, covering defense and liability expenses arising out of any action, suit or proceeding asserted against such person by virtue of such person's actions on behalf of the Association or at the direction of the Board, whether or not the Association would have the power to indemnify such person against such liability under provisions of this Article.

**ARTICLE 14  
MISCELLANEOUS**

Section 14.1 Notices to the Community Association. All notices to the Community Association or the Executive Board shall be delivered to the office of the manager, or, if there is no manager, to the office of the Community Association, or to such other address as the Executive Board may designate by written notice to all Owners.

Section 14.2 Waiver. No restriction, condition, obligation or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

**ARTICLE 15  
AMENDMENTS**

Section 15.1 Bylaw Amendments/Vote of the Delegates. These Bylaws may be amended only by the affirmative vote of at least a majority of Delegates at any regular or special meeting of Delegates, provided that a quorum is present at any such meeting. Notice of these Bylaws and any amendments may be recorded.

Section 15.2 Restrictions on Amendments. No amendment of the Bylaws of this Community Association shall be adopted which would affect or impair the validity or priority of any Security Interest covering any Unit, or which would materially change the provisions of the Bylaws with respect to a first lien Security Interest or the interest of an institutional mortgagee of record. Additionally, these Bylaws may not be amended during the Period of Declarant Control without Declarant's prior written consent, which consent Declarant may withhold in its sole discretion.



**CERTIFICATION**

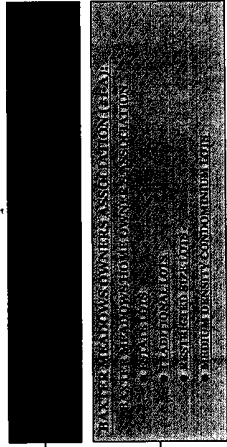
I, the undersigned, do hereby certify that I am the Secretary of the Baxter Meadows Master Community Association, Inc., a Montana nonprofit corporation, and that the foregoing Bylaws constitute the Bylaws of said Community Association as duly adopted by the Executive Board.

Rebekah Williams, Secretary

# PROPOSED OWNER ASSOCIATIONS

## BAXTER MEADOWS MASTER COMMUNITY ASSOCIATION

• RESIDENTIAL •



OWNERS ASSOCIATION #1-A-R:  
• PARK PLACE TOWNHOMES

BAXTER MEADOWS CENTRAL OWNERS ASSOCIATION (#2):  
• RESTRICTED SIZE LOTS

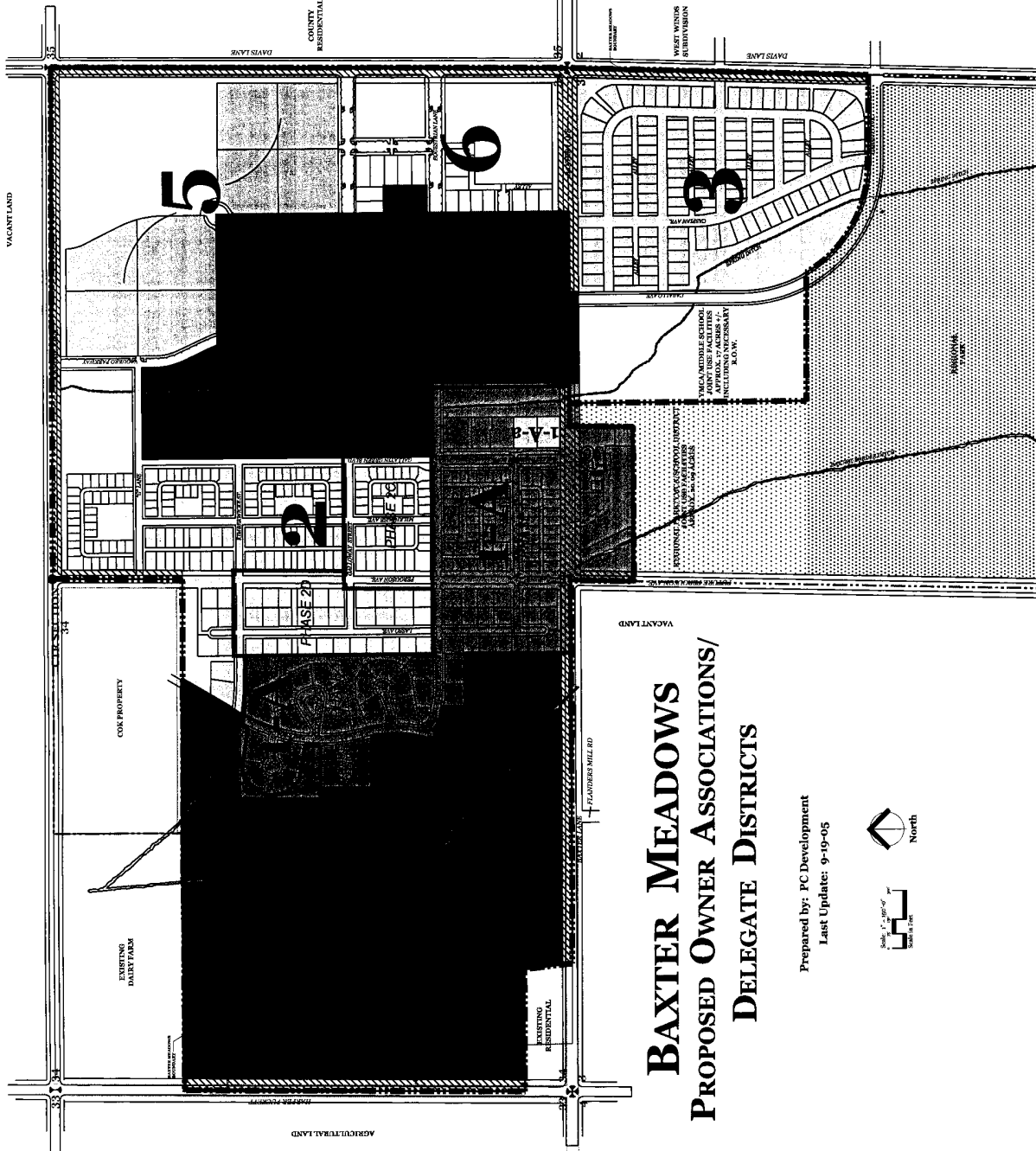
BAXTER MEADOWS SOUTH OWNERS ASSOCIATION (#3):  
• DUPLEX LOTS

OWNERS ASSOCIATION #5:  
• APARTMENT LOTS

• MIXED USE •

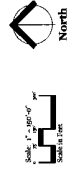
OWNERS ASSOCIATION #6:  
• PURE COMMERCIAL  
• MID-RISE MIXED COMMERCIAL / RESIDENTIAL

\* EACH ASSOCIATION ABOVE IS AN INDIVIDUAL DELEGATE DISTRICT



# BAXTER MEADOWS PROPOSED OWNER ASSOCIATIONS/ DELEGATE DISTRICTS

Prepared by: PC Development  
Last Update: 9-19-05



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Page: 83 of 83  
09/22/2005 12:00P



Shelley Vance-Gallatin Co MT MISC 601.00

INTER-OFFICE ORIGINAL TO:  
CITY OF BOZEMAN  
PLANNING DEPARTMENT  
20 EAST OLIVE STREET

2202826

Page: 1 of 20  
09/22/2006 12:00P



140.00

Shelley Vance-Gallatin Co MT MISC

DESIGN REVIEW GUIDELINES AND REGULATIONS  
OF  
BAXTER MEADOWS MASTER COMMUNITY ASSOCIATION



**DESIGN REVIEW GUIDELINES AND REGULATIONS**  
**OF**  
**BAXTER MEADOWS MASTER COMMUNITY ASSOCIATION**

The integration of buildings, improvements and landscape within Baxter Meadows Master Community Association (BMMCA) is essential to the success and appearance of the community. As provided in section 8.1 of the BMMCA Declaration, any and all construction, alterations or improvements, and front yard landscaping shall be subject to advance approval by the BMMCA Design Review Board (DRB). Any deviation from approved plans shall be re-submitted to the Design Review Board for approval. Site Design Regulations serve to protect and enhance the natural landscape, stream corridors, view sheds and natural habitat.

No structures, including residences, outbuildings, accessory buildings, tennis courts, swimming pools, antennas (except as otherwise permitted in this Declaration), flag poles, fences, walls, exterior lighting, landscaping, or any other Improvements shall be constructed, erected, relocated, removed or installed on a Unit or on any lot, nor shall any painting, alteration or change to the exterior of the Improvements, the exterior of a residence, to a Unit or to any lot front yard or to any structure or any attachment to the exterior of a residence (including paint, awnings, patios, decks, or shutters) be commenced unless: complete plans and specifications shall have been first submitted to and approved in writing by the DRB ("Committee") as may be outlined in the Rules and Regulations. Additional written approval may be required by sub Architectural Review Committee administered by any Sub association.

**I. DESIGN REVIEW PROCESS**

**Section 1. Submission of Plans Before Construction.**

No residence, fence, wall, garage, outbuilding or other structure shall be made, erected, altered or permitted to remain upon the properties until written plans and specifications showing the 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 DRB as to compliance with these Covenants, as well as appropriate City of Bozeman review, permitting and fee payment. All plans submitted to the City of Bozeman Building Division must have the Baxter Meadows Design Review Board stamp of approval.

**Section 2. General Requirements.**

Not less than ninety (90) days prior to the anticipated date of construction commencement, Applicant shall submit **two** copies of the required documents (see Form "A" attached) for each design review to the following:

*Deliver or mail to:*

Baxter Meadows Design Review Board (DRB)  
c/o Intrinsic Architecture, Inc.  
428 E. Mendenhall Street  
Bozeman, Montana 59715

Submittals must be labeled with "Baxter Meadows Design Review Board" and specific project title and address.

Upon DRB review, the owner will be notified within ten (10) business days after the start of the review cycle date that the design has been approved, approved with stipulations or disapproved. Applications which are submitted to the DRB incomplete will be returned and may be subject to a re-submittal fee.

The reasons for approval with stipulation and disapproval will be clarified for the owner in writing and/or with drawings. If the DRB does not contact the owner within ten (10) business days of the review commencement date, the application shall be deemed "disapproved".

An application for withdrawal may be made without prejudice, provided the request for withdrawal is made in writing to the DRB.

All variance requests pertaining to the DRB approvals must be made in writing to the DRB. Any variance granted shall be considered unique and will not set any precedent for future decisions.

If an application has been denied, or the approval is subject to conditions that the owner feels are unacceptable, the owner may request a hearing before the DRB to justify his/her position. The DRB will consider the arguments and facts presented by the owner and notify the owner of its final decision within ten (10) days of the hearing.

**Section 3. Construction Completion.**

If construction of a structure is not commenced within one year after DRB approval, a new DRB application must be submitted. No construction shall be commenced without a valid DRB approval. Any structure to be erected in accordance with an approval so given must be erected and completed within one year from the date of construction commencement. If any structure is commenced and is not completed in accordance with the plans and specifications within one year, the Directors of the Association, at their option, may take such action as may be necessary, in their judgment, to improve the appearance so as to make the property harmonious with other properties and to comply with these Covenants, including completion of the exterior of the combination thereof, or removing the uncompleted structure or similar operations. The amount of any expenditure made in so doing shall be an obligation of the owner. A lien on the property 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, including an injunction, or action for damages.

**Section 4. Inspection Procedure.**

Inspections are required to ensure that construction proceeds in compliance with these covenants and the approved drawings. An inspection is required at each of three stages of construction: framing, siding, and landscaping. The owner shall request an inspection of the improvements by the DRB. Owners are responsible for scheduling an inspection accordingly: 1) when the framing is complete; 2) when siding is at a point, prior to completion, to allow the DRB to see the siding and cladding product(s) installed in their planned locations; and 3) when landscaping components (beds, plants, sod, irrigation, and trees) are installed in their planned locations.

The inspections shall only determine compliance with the covenants and approved plans. If the DRB find the improvements were not completed in strict compliance with the covenants and approved plans, the DRB shall notify the owner of the noncompliance within seven (7) days of the inspection request and shall require remedy of the same. The owner shall have seven (7) days

from the noncompliance notification to remedy the noncompliance or shall submit a work plan delineating the time frame when the noncompliance will be remedied. The DRB may allow up to forty-five (45) days for the noncompliance to be remedied if the submitted work plan provides adequate justification for the requested time.

No occupancy of the project shall take place prior to written DRB approval, as well as payment of all inspection and review fees, and any outstanding costs, unless otherwise allowed. If the noncompliance is not remedied within seven (7) days of notification and the owner does not provide a work plan within said time, or if the noncompliance is not remedied within the time frame provided in the work plan as approved by the DRB, the DRB may, at their option, remedy the noncompliance. The owner shall reimburse the DRB upon demand for all expenses incurred in connection therewith. If the owner does not promptly repay such expenses, the DRB shall levy an assessment and file a lien against such owner and the improvement in question and the land on which the same is situated for reimbursement and the same shall be enforced and/or foreclosed upon in the manner provided for by law.

No occupancy of the project shall take place prior to written DRB approval as well as payment of both inspections and any outstanding costs, unless otherwise allowed.

#### **Section 5.      Liability and Variances.**

Neither the Association, the Declarant, the Directors, the DRB nor the individual members thereof, may be held liable to any person for any damages for any action taken pursuant to these Covenants, including but not 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.

Further, the Committee may, upon application, grant a variance from the Architectural Regulations, provided that the spirit of these Design Guidelines is complied with. The Committee shall have the duty and power to make the final decision on the granting of the variance, without any liability being incurred or damages being assessed due to any decision of the Committee.

Within all section of these Design Guidelines, when a variance is indicated that it may be granted, the variance must be requested and approved by the DRB and/or the Bozeman City Commission, as applicable, depending on whether the variance is from the Covenants or from the current City Zoning Ordinance or both.

#### **Section 6.      Design Review Procedure.**

##### **STEP 1: Construction Design Review.**

In addition to verifying the required setbacks, this review checks the designs for correct interpretation of the Architectural Regulations, checks the construction documents for compliance with the DRB and verifies that the previous DRB recommendations have been incorporated. Conformity to applicable local regulations and building codes, as well as obtaining appropriate permits is the responsibility of the architect and/or builder.

Forms Required:      Acknowledgement Form

## Form A - Construction Design Review Application

Review Fee: Review Fee: \$300 for each single family and duplex unit projects. Previously approved plans are subject to a design review fee of \$200. Incomplete applications which are returned to Applicant may subject to a \$100 re-submittal fee. Fees are based on each individual property.

### Minimum Drawings Required:

- *Site Plan (1/8" = 1'-0" scale or larger) showing:*
  - North arrow.
  - Property lines and setback lines with dimensions.
  - Building footprints with entry area delineated and overhangs shown as dashed lines.
  - Garden walls, fence lines, location, height and material quality of retaining walls.
  - Water, electric and sewer service.
  - Grading plan.
  - Location of streets.
  - Location, dimensions and materials for walks and drives.
  - Limits of construction activity (no construction, traffic or storage of materials will be permitted beyond these limits).
  - Exterior light locations and type.
  - Location of external equipment (electric meter, location of waste bins, etc.)
  
- *Floors Plans (1/4" = 1'-0") showing:*
  - Foundation plan dimensioned.
  - Room use labeled and rooms dimensioned.
  - Wall, window and door openings dimensioned.
  - Exterior walls dimensioned.
  - All overhangs of floors and roofs as dashed lines.
  - Gross square footage.
  
- *Elevations & Sections showing:*
  - Each Elevation at 1/4" = 1'-0" with colors rendered of fronting street elevation.
  
- *Landscape Plan:*
  - Including plant listing (name, planting and mature sizes) and their respective locations.
  
- *Material Samples:*
  - As requested by DRB.
  - Siding and trim sample with actual color applied.

### STEP 2: Construction Commencement.

Construction may not commence without the approval of the City of Bozeman Building Division, necessary permits obtained and fees collected. A copy of Form A - Construction Design Review Application bearing the DRB approval letter must accompany City of Bozeman building permit applications.

The DRB reserves the right to inspect in the field for compliance during any stage of construction. The DRB is empowered to enforce its policy as set forth in the Baxter Meadows Master Community Declaration by any action, in law or equity, to ensure compliance.

## II. Topography and Features

### 1. Response to Character of Land Form:

Development Areas shall be designated upon all new sites in order to assure that each building site responds to the existing topography, tree masses and adjacent properties. All site plans must indicate surface drainage patterns.

### 2. Relationship to Open Space: Estate Homes

Buildings shall be located in a manner that preserves the character of the open space within the community. When an entirely open site is developed, buildings shall be organized in a cluster that diminishes the scale and impact of the building in the landscape. In addition, indigenous landscape materials shall be introduced to minimize the exposure of the building. Manicured lawns shall be separated from the established native vegetation with landscape materials.

### 3. Stream Corridor Protection:

All buildings and improvements shall maintain a minimum setback of 50 feet from the annual high water line of all streams, rivers, creeks and water courses within all development districts of Baxter Meadows. Uses within the stream setback shall be limited to planting of native riparian vegetation, maintenance of existing non-native vegetation, and the control and maintenance of noxious weeds. The removal of existing native vegetation within the stream shed protection area is not permitted.

## III. Improvements

### 1. Driveways & Parking:

Site access, when entered from the street, shall be perpendicular to the street. Parking areas and garage doors shall not be the primary visual element of any residence. Landscaping materials shall be used to diminish the impact of the entry to the garage. All parking shall be within the lot boundary, off public and private rights-of-way. No driveway or access shall be allowed to encroach into the side yard setbacks other than those on shared driveway easements filed of record.

The construction and maintenance of all driveways and culverts shall be responsibility of the owner. Driveways and parking areas shall be crowned and sloped for adequate drainage and safety.

Driveway and parking surfaces shall be constructed of concrete paving units, stone cobbles, asphalt or concrete. Any other material shall be approved by the BMMCA DRB. Materials shall restrict weed growth and maintain a clearly defined edge between the landscaped area and the driveway surface. Materials shall withstand deterioration from winter snow plowing and erosion.

Driveways shall be limited in width to 14 feet minimum and 16 feet maximum at the intersecting street. Drives can be expanded to 24 feet at turn-around areas and parking structures. Maximum driveway grades shall not exceed 1:20 for the first 20 feet from the roadway, and shall not exceed 1:10 slope beyond.

2. Privacy Screens and Retaining Walls:

Privacy screens may be used in conjunction with a hot tub or sunning deck. The screening shall be consistent with the overall design, construction and materials of the existing building. Privacy screens shall not be taller than the edge of the roof eaves, and shall not be longer than 16 feet in uninterrupted length.

Retaining walls shall be an integral part of the overall design of the site and building. Retaining walls shall not be greater than 4 feet in height, or 24 feet in uninterrupted length. Retaining walls can also be used as a screening device to obscure service areas such as the view of a driveway from the main road. Retaining walls shall be constructed of wood, stone, or approved masonry products, and shall blend into the contour of the existing landscape.

Utility boxes and pedestals owned by utility providers shall not be screened or buffered so as to inhibit access and/or function to such above-grade utility systems.

3. Walkways, Paths and Trails:

Walkways, paths and trails introduce places for pedestrians within the built and natural environment. The size and character of such paths shall respond to the surrounding buildings and site in the form of material, scale and configuration. Paving units, stone, textured or exposed aggregate concrete and wood shall be the only acceptable materials. Detailed drawings of paths shall be required as a part of the Final Plan review requirements.

### III. Utilities and Site Details

1. Utilities:

All utilities (natural gas, electric, telephone and television cable) shall be installed underground. No antenna or satellite dish shall be installed on any structure, lot or Unit so that it is visible from any street. 18" satellite dishes shall not be required to be screened from adjacent lots. Larger satellite dishes are not permitted.

Meters shall be placed in a location so as to be accessible to the meter reader and yet not visible from adjoining roadways. All conduit wires servicing the meter shall be beneath the exterior wall sheathing or enclosed. Meters, transformers and other utility boxes shall be concealed with landscaping.

2. Radon:

Radon gas is a hazard found in all soil types throughout the country, and should be anticipated in Baxter Meadows. The owner and architect shall contract an EPA certified installer who shall be responsible for introducing mitigation measures into the design of the building, conducting appropriate tests for radon, and activating the system if necessary.

3. Wood Storage:  
Firewood shall be stored outdoors shall be stacked in an enclosed area, such as a garage, covered porch, or structure designed for the storage of wood, so as to be invisible to neighboring owners and the street frontage. Such structures shall be architecturally compatible with the material and color of the primary structure, and shall be integrated into the design of the building.

4. Garbage and Refuse Disposal:  
Trash, garbage and other waste shall not be kept except in sanitary containers. All equipment, garbage cans, wood piles, compost piles or storage piles shall be screened or concealed from view of other dwellings and Common Areas. Sanitary containers may be placed on the street curb for collection only on collection days.

#### IV. Landscape Controls

1. Definitions:  
Caliper: The diameter of the trunk measured six inches above ground level up to and including four inch caliper size, and measured twelve inches above ground level if the measurement taken at six inches above ground level exceeds four inches. If a tree is of a multi-trunk variety, the caliper of the tree is the average caliper of all of its trunks.

Corner Lot: A lot located adjacent to two public streets where those two streets intersect at a perpendicular angle.

Mulched Bed: An area within a yard with no turf and 3" minimum depth landscape mulch. Landscape mulches include but are not limited to river rock (typ) or landscape bark (i.e. shredded cedar) (typ) etcetera, separated or contained by appropriate edging material (aluminum, metal, or similar).

Yard: A space on the same lot with a principal building, which is open and unoccupied from the ground upward or from the ground downward other than by steps, walks, terraces, driveways, lamp posts and similar structures, and unobstructed by structures.

Yard, Front: A yard extending across the full width of the lot between two side lot lines the depth of which is the least distance between the street right-of-way and the front building line.

Yard, Rear: A yard extending across the full width of the lot between the two side lot lines and between the rear line and a parallel line tangent to the rear of the principal building and the depth of which is the least distance between the rear lot line and the parallel line.

Yard, Side: A yard extending between the front building line and the rear building line, the width of which is the least distance between the side lot line and the nearest part of the principal building.

2. Installation:  
Street Trees: Baxter Meadows Development shall control the installation of street and boulevard trees.



Sodding: Sodding of front yards shall be the responsibility of the builder. On any yards where sodding has not been provided by the builder, the homeowners are responsible for sodding or seeding within one (1) year of property purchase.

Mulched Beds: Front yards will be installed with 4-8 shrubs within a mulched bed and shall be the responsibility of the builder. In addition, each home will have a meandering 18"-24" min. wide mulched bed around its perimeter in the rear and side yards to reduce water and mowing damage to the architectural siding.

Trees:

Trees installed by homeowner are to be planted within property lines. Prior to planting, a utility line locator service must locate utility lines.

Trees must not be planted in front yards where they may conflict with utility lines.

The minimum required installation shall be (3) small shade trees of 1-2" caliper or one 5' high conifer (evergreen). Recommended species include: Ash (Fraxinus), Honeylocust (Gleditsia Triacanthos), Linden (Tilia), Locust (Robinia Pseudoacacia), Maple (Acer), Mountain Ash (Sorbus Aucuparia), Oak (Quercus), Walnut (Juglans Nigra). Installation shall be the responsibility of the builder. The required installation of a shade tree within 18 months of purchasing property in Baxter Meadows may be substituted for one non-canopy tree (evergreen/conifer). The non-canopy tree must have a min. height of 5'. Heights are measured from the top of the root ball to the plants highest point. Trees installed by homeowners may be planted in front, side or rear yards as long as they are not in conflict with the utility lines and are on the owner's property.

Fencing:

Any fences installed at the option of an owner shall be no taller than six feet and shall be constructed of wood only. Panel fencing shall have "dog-eared" panels. All owners shall have a locator service locate utility lines prior to digging. Fencing other than that described above must be approved by the Design Review Board prior to installation.

3. Maintenance: Every homeowner shall be responsible for the care of his or her entire lot excluding only the street right-of-way. Maintenance includes lawn care, irrigation and weed control. Mulched beds shall be weed controlled by a consistent spray regime or manual weeding. Pesticides, herbicides, fertilizers, etc. If used shall be applied in strict accordance with the manufacturer's instructions and all applicable laws and in accordance with USDA and the EPA.

Every homeowner shall be responsible for the care of his or her lot excluding areas maintained by the BMMCA or any Sub Association.

4. Irrigation Installation and Maintenance: The builder shall be responsible for the installation of irrigation systems within the areas described below. Landscaping plans (including the proposed irrigation equipment to be installed) must be provided to the BMMCA DRB for approval prior to installation. On homes that are irrigated from the BMMCA or any Sub Association system, a list of compatible equipment will be required for installation to ensure proper watering.



The builder shall install separately metered irrigation systems which are controlled by each individual owner. At a minimum, builder shall install front yard piping, heads, and a controller with sufficient capacity for the owner to install an irrigation system in the rear yard. Every homeowner shall be responsible for the maintenance of their entire system excluding only the street right of way.

## **II. BUILDING FORM REGULATIONS**

The intent of the following building design regulations are to develop architectural unity within the districts of Baxter Meadows while allowing for the vitality of individual expression.

### **A. Building Height**

#### **1. Residential Buildings:**

Building heights within all residential areas of the BMCPOA shall be limited to a maximum of 38 feet. Building height shall be measured from the highest ridge to the adjacent grade. The maximum building height shall never exceed that stipulated and governed by the City of Bozeman. With the approval of the DRB, chimneys, cupolas and other rooftop architectural features may exceed the given maximum height limitations by no more than 4 feet.

On complex buildings with multiple heights, the building height shall be determined by calculating the highest ridge line of the building, and measuring to the average of the highest and lowest finished grade. The final elevation of the finished surface materials, whether soil, paving, or decking shall be indicated as the finished grade, and shall be shown on the Architect's drawings.

### **B. Roof Form**

The architecture within Baxter Meadows shall complement and respond to the natural qualities of Bozeman. The consistency and compatibility of roof shapes, pitches and materials will contribute significantly to the continuity of the character of Baxter Meadows. The following design regulations have been developed to allow for distinct building forms while addressing the character of the entire community. Exterior walls shall not exceed 40 feet in length without a change of orientation such as the introduction of dormers, projected bays, or recesses greater than 2 feet. When refining roof forms consideration shall also be given to the prevention of excessive snow build-up and snow shedding.

#### **1. Shape and Pitch:**

When examining roof shapes and pitches for buildings within Baxter Meadows, designers should consider the simple shapes and pitches of buildings found within traditional neighborhoods. Gable, hip, and modified hip roofs shall be the only acceptable roof forms. Shed roofs shall not be major roof forms. Mansard roofs, pseudo-mansard roofs, curvilinear roofs, and A-frame roofs shall not be allowed for any roof form.

Variation in orientation of the dominant roof form is essential to the successful design of large buildings. Dominant roof forms shall not exceed 40 feet in length without a change in orientation or introduction of dormers.



Within all Development Areas, roof slopes shall be a minimum of 6:12 and a maximum of 12:12. Secondary roofs may be gable, shed, hip, and modified hip roofs with pitches not less than 4:12 when attached to major building forms. Such roof forms shall be integral to the building or roof form.

Roof protrusions other than chimneys and plumbing vent stacks shall not be located on any roof facing the front or street side of the building.

The BMCPOA DRB **[IS THIS THE CORRECT REFERENCE?? OR SHOULD THIS BE MASTER ASSOCIATION?]** retains the right to waive the minimum or maximum roof pitch requirement when, in its sole judgment, a lower or steep roof pitch is more appropriate for the design of a building, and does not compromise the integrity of the development district. This privilege may be exercised by the DRB without relinquishing its right to enforce the minimum or maximum requirements on other projects.

2. Entry Definition, Overhangs & Fascia:

Snow in the Bozeman area often builds up on roof surfaces and slides off at irregular intervals. Such slides can damage property, decks, balconies and even injure people. No roof without adequate protection from snow slides shall slope toward driveways, sidewalks, porches, decks, balconies or any other areas that may be damaged or cause injury through the shedding of snow or ice from the roof.

Entrances shall be specifically expressed and protected with adequate overhangs. All roofs shall have overhangs of at least 16 inches. All fascia materials shall be a minimum of 6 inches.

3. Dormers and Secondary Roofs:

Dormers and secondary roofs are often necessary to add interest and scale to major roof areas and to make habitable use of the attic space within the roof. Dormers and secondary roofs shall be gable, shed, hip, and modified hip roofs and may be stacked in multiple forms.

4. Skylights and Solar Collectors:

When designing the location of skylights, consideration shall be given to both the interior and exterior appearance of the unit. Locations shall also be coordinated with window and door locations. Skylights shall be located away from valleys, ridges and all other areas where drifting snow may hinder the performance and safety of the unit. Skylights shall be of high quality, insulated, double pane construction. Roof skylights shall be flat in profile; bubble and dome style skylights shall not be permitted.

Solar collectors shall be integrated into the overall roof design, and shall be placed flush with the slope of the roof or wall of the building. All solar collectors shall be screened or concealed from view of other dwellings and Common Areas.

5. Chimney Composition, Proportion and Materials:

Chimneys, flues and vents can be used to create visual contrast to the dominant roof forms of the buildings within Baxter Meadows. All flues shall be enclosed with a chimney cap and fitted with a spark arrestor. No exposed metal or clay flues shall be allowed. All chimney forms shall relate to the overall building and



shall be covered with stone, stucco or wood siding materials to match exterior finishes of the building.

Building vents and flues for such functions as ventilation and exhaust shall be consolidated into enclosures wherever possible and shall typically be concealed from public view. Place roof penetrations on the rear side of the house whenever possible. All exposed metal shall be painted in a color compatible with the color scheme of the house. Attic openings, soffit vents, foundation louvers, or other direct openings in outside walls, overhangs or roofs shall be covered with non-combustible, corrosion-resistant metal mesh.

6. Exterior Wall Form:

Exterior wall surfaces shall be no longer than 40 feet in length without the introduction of a minimum 4-foot recess, 4-foot projection or change in orientation. Two story exterior wall forms shall be interrupted by minor roof forms.

1. Foundation walls shall be exposed a maximum of eighteen inches (18") above the ground. On sloping grades, siding shall remain at least 1'-0" above grade, and the upper edge of the water table shall remain level, stepping down the slope in increments of 4' or less. see above. Concrete foundations exposed more than eighteen inches (18") above grade must have an architectural finish (texture, pattern and/or color).

**III. MATERIAL AND DETAIL REGULATIONS.**

When choosing materials for buildings in Baxter Meadows, architects should select materials of an appropriate quality and durability in an often harsh northern environment. Synthetic and composite materials which conserve valuable wood resources should be considered whenever a building owner is contemplating opaque finishes or high maintenance areas. The use of materials and colors for all structures in the development districts shall blend into the surrounding site.

The following are the only allowable materials in Baxter Meadows:

**A. Roof Materials**

Durable roof materials capable of withstanding the freeze thaw cycle of the environment are required. Cold roof systems with adequate ventilation and insulation are recommended. **All roof materials shall carry a Class A or B rating.**

The following are the only acceptable roof materials:

- § Treated wood shakes or shingles
- § Synthetic shakes and shingles
- § Natural and synthetic slate shingles
- § Asphalt random tab shingles
- § Pre-finished metal roofing
- § Other similar materials, as allowed by the DRB
- § All roof flashing vents, hoods, and roof accessories shall be copper or a pre-finished metal that blends with the color of the roofing material selected.

**B. Exterior Wall Materials**

The character of the building exterior shall be kept simple in order to harmonize and compliment the surrounding environment of the site. Natural materials and subdued colors shall be used on the main body of the building. Exterior trim can be more colorful and may contrast with the main body in order to add visual interest to the predominant neutral tones.

Full scale samples of all exterior building materials, including window samples are required in the Final Plan Review.

The DRB shall consider materials not listed below that maintain the aesthetic continuity of Baxter Meadows, including pre-finished composite wood products and synthetic siding materials.

1. Stonework:  
Rock shall be natural or synthetic stone materials. Dry stack settings with minimal exposed mortar are preferred. Stonework shall not be applied to individual wall surfaces in order to avoid a veneer-like appearance and shall continue around corners to an inside corner. Detailed drawings of all exterior stonework shall be required as a part of the final plan submittal.
2. Concrete/Stucco:  
Exposed concrete foundation walls between ground level and exterior wall siding shall be a maximum of 8 inches. Foundation exposure over 8 inches shall be finished with synthetic textured stucco (stained a subdued color in harmony with the building), stone, or treated wood.
3. Wood and Wood Product Siding:  
Smooth or rough sawn wood siding and approved composite wood products shall be the only acceptable exterior wood sheathing materials. All wood siding shall be painted or stained with an opaque stain. Other wood product siding will be considered by the BMHOA on a case by case basis.
4. Shingles:  
Natural and synthetic shingles shall be used only as accent or detail materials within the composition of exterior finishes. Shingles shall not be the dominant exterior material on any building.
5. Natural Log:  
Natural log materials shall be milled or assembled with irregular lengths and diameters. Prefabricated log homes, including prefabricated kit homes of any type, shall not be allowed.
6. Color Schemes:  
The color palette of the body of the house shall be from white, cream, earth tones or as approved by the DRB based on color scheme merit or historical precedent. All trim, frames, doors, and windows shall be in a compatible accent color.



Color schemes must be varied from the two adjacent properties, in each direction. Attached dwelling units exempted from each other.

Exterior color schemes throughout Baxter Meadows shall emphasize the natural tones of the surrounding natural environment and those of a traditional neighborhood development. Large exterior wall surfaces shall be painted or stained with natural tones. Trim and other accenting details of the building may be of a brighter intensity and contrasting color scheme. Color schemes shall emphasize the contrast between basic wall surfaces and accented details. All exterior color schemes shall be reviewed by the DRB as a part of the Plan Review process.

Natural materials and subdued colors shall be used on the main body of the building. Exterior trim can be more colorful and may contrast with the main body in order to add visual interest to the predominant neutral tones.

- 7. Siding.  
Siding shall be run horizontally or vertically, but not at other angles to horizontal.
- 8. Masonry Stonework.  
Stonework shall be natural or approved synthetic stone materials. Dry stack, uncoursed settings with minimal exposed mortar are preferred. Stonework shall not be applied to individual wall surfaces in order to avoid a veneer-like appearance. It shall continue around corners to an inside corner.

**C. Exterior Windows and Doors**

- 1. Scale, Composition and Proportion:  
Windows and doors shall be of a consistent size, shape and orientation throughout a given building. Window and door patterns and reveals shall be carefully studied to create interest and variety.

Large scale windows and doors shall be recessed or trimmed a minimum of 6 inches in exterior wall surfaces. Uninterrupted bands of windows and doors shall not be allowed in any building. Window and door locations shall be carefully considered to avoid being obscured by accumulating snow.

- 2. Solar Orientation and Exposure:  
The design and location of exterior windows shall respond to the solar orientation of the building. The following energy considerations shall be addressed in the building design:

- § Double or triple glazing
- § Neutral density gray solar tinting
- § Openings caulked around windows and doors
- § Weather-stripping
- § Storm windows
- § Entry Vestibules

3. Materials:  
Windows and doors shall be constructed of natural, stained or painted wood, or pre-finished aluminum, enamel or vinyl cladding. All glazing shall be framed in walls of stone, stucco or wood. Glass curtain walls shall not be approved in any circumstance. Mirrored glass shall not be used.

Glass storm panels, set within the window sash, may be used within divided-light windows, provided that the storm panel is installed on the interior side of the window. Divided light glass must be authentic appearing.

4. Garage Doors:  
Garage doors shall not be oriented toward the street, and shall be de-emphasized in the elevation of the building and screened. Garage doors should be the same color as the building, and shall not be lighter in color than the building. It is encouraged that all garage doors be separated for each vehicle. Single, double-width (14' or larger) garage doors will be considered, however, they must be detailed to appear to be separated for each vehicle.

**D. Decks, Balconies, Terraces and Porches:**

1. Design:  
Decks, balconies, terraces and porches shall be designed to enhance the overall architecture of the building by creating variety and detail on exterior elevations. Covered decks, projecting balconies and bay windows shall be integrated with, rather than randomly placed throughout, the building. Terraces shall be used to integrate the building and landscape by creating a transition between the built and natural character of the site. No deck, balcony or porch shall be used for the storage of any items except normal furniture. No exterior carpeting may be used if it is visible from any neighboring lot or the street. All railings shall be wood or approved wood-like material finished to be compatible with the color scheme of the house.
2. Materials:  
Low level decks shall be skirted to grade, while providing proper ventilation and access. Decks which are not practical to skirt shall be designed to assure that the underside of the deck is integrated with the design of the building. Exposed metal joist hangers shall not be visible. Posts shall be a minimum of eight inches square, and shall be paired together to diminish a thin visual appearance. The dimensions of two-story columns shall be increased to account for the great height. Materials and colors shall be consistent with the building and surrounding landscape. Front porches are intended to be open to allow for interaction with the street. Screened-in porches and glazing are not permitted. Porch supports shall be built of stone, masonry, concrete, or wood. Column base piers shall be no less than 16" x 16" square and wood columns shall be no less than 8" square. No exterior carpeting may be used if it is visible from any neighboring lot or the street.



**E. Night Sky Requirements**

The major street intersections on Baxter Lane must be illuminated with lights that meet the City's standard requirements. In addition, all outdoor lighting (residential, commercial or otherwise) shall be free of glare, and shall be fully shielded or shall be indirect lighting. No lighting shall be beyond a property's lot line. No ranch lights or unshielded lights shall be permitted. No mercury vapor lights shall be permitted. For purposes of this paragraph, the following definitions shall apply:

- a. Fully-shielded lights: Outdoor 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 a photometric test expert.
- b. Indirect light: Direct light that has been reflected or has scattered off of other surfaces.
- c. Glare: Light emitting from a luminaire with an intensity great enough to reduce a viewer's ability to see, and in extreme cases, causing momentary blindness.
- d. Outdoor lighting: The nighttime illumination of an outside area or object by any manmade device located outdoors that produces light by any means.



IN WITNESS WHEREOF, the Design Review Guidelines and Regulations have been  
executed this 19<sup>th</sup> day of September, 2005.

**Baxter Meadows West, LLC,**  
a Montana limited liability company

Thomas L. Clinton  
Authorized Agent

STATE OF MONTANA        )  
                                      : ss  
COUNTY OF GALLATIN    )

This instrument was acknowledged before me on 19<sup>th</sup> of September, 2005, by  
Thomas L. Clinton, as Authorized Agent of Baxter Meadows West, LLC.



Terri Zullo  
Notary Public for the State of Montana  
Terri Zullo

Print Name:  
Residing at: Bozeman  
My Commission Expires: July 31, 2007





**ACKNOWLEDGMENT FORM**

Owner acknowledges that he/she has received, read, and will abide by the Community Declaration for Baxter Meadows Master Community (the "Master Declaration"). Violations of the Master Declaration and/or addenda will be remedied by the Baxter Meadows Master Community Association whereupon the Lot/Home Owner will be responsible for the cost of the remedy.

I (We) \_\_\_\_\_

am/are the owner(s) of record of Lot \_\_\_\_\_ in Phase \_\_\_\_\_ of Baxter Meadows Planned Unit Development. I/We have read these requirements and understand their implications. Furthermore, I (we) have been given sufficient opportunity to discuss these requirements with a member of the Baxter Meadows Design Review Board (DRB). My (Our) signature(s) below is/are evidence of my/our intent to comply with these requirements.

Signature- Lot Buyer: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_ Signature- Lot Buyer: \_\_\_\_\_

Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Signature-Contractor: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ FAX: \_\_\_\_\_

Email: \_\_\_\_\_



**FORM A:**  
**Construction Design Review Application**

LOT NUMBER, Phase: \_\_\_\_\_

Owner: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ FAX: \_\_\_\_\_

Email: \_\_\_\_\_

BUILDER: \_\_\_\_\_

Firm: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ FAX: \_\_\_\_\_

Email: \_\_\_\_\_

ARCHITECT: \_\_\_\_\_

Firm: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ FAX: \_\_\_\_\_

Email: \_\_\_\_\_

LANDSCAPE ARCHITECT: \_\_\_\_\_

Firm: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ FAX: \_\_\_\_\_

**INFORMATION**

1. Are any variances from the Baxter Meadows Code being requested under this application? ; Yes ; No



If yes, please describe the variance and the reason for it.

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2. Items submitted (please check):

- Review Fee
- Acknowledgement Form
- Site Plan
- Floor Plans
- Roof Plan
- Elevations
- Landscape Concept Plan

Submitted by: \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Pamela Halse  
Association Management Services, LLC  
P.O. Box 5298  
Bozeman, MT 59717-5298

**DELINQUENCY POLICY & VIOLATION POLICY OF  
THE COMMUNITY DECLARATION FOR BAXTER MEADOWS MASTER COMMUNITY**

**This Delinquency Policy is an addendum** to File No. 2202825 filed with the Gallatin County Clerk & Recorder on September 22, 2005, and is pursuant to the Declaration of Covenants, Conditions and Restrictions for Baxter Meadows Homeowners' Association ("Covenants"), recorded in the real property records of the County Clerk of Gallatin County, Montana on September 22, 2005, Document No. 2202825.

The following policy is in place to set forth the late fees and appropriate actions for late and nonpayment of Baxter Meadows Master Community association dues and Lightnex (Vivid) base service fees.

1. **Assessments.** The Baxter Meadows Master Community association assessments are billed monthly. Payments are due on the first of every month and delinquent after the 30<sup>th</sup>.
2. **Delinquent Interest.** If the assessment amount is not paid by the 1<sup>st</sup> of the following month interest will accrue at the rate of 12% per annum on the unpaid balance.
3. **Unpaid Assessments.** When a homeowner is five months delinquent in assessments a Demand Letter will be sent, the cost of which will be a charge of \$80.00 applied to the delinquent homeowner's account. If assessments are not paid in full within 30 days of the date of the Demand Letter, the association will file a Notice of Lien in Gallatin County records and will send a copy of the Notice to the delinquent owner, the cost of which will be a charge of \$150 applied to the delinquent homeowner's account. If applicable, the Association will also provide a notice of delinquency to the owner's first mortgagee.
4. **Further Action.** If the assessment remains unpaid and delinquent, the Association will decide, on a case-by-case basis, which of the following remedies to pursue:
  - Bring an action at law against the owner personally obligated to pay
  - Foreclose the association lien against the Lot

In the event any of the foregoing actions are taken by the Association, the owner shall be obligated to pay the Association, in addition to the assessment due, late fees and any interest thereon, all collection fees, attorney's fees and necessary costs incurred by the Association in enforcing its rights and taking such action. No owner may waive or otherwise escape liability for the assessments by abandonment of his Lot.

ADOPTED: July 10, 2006

2280393  
Page: 1 of 3  
10/01/2007 01:40P  
21.00  
Charlotte Mills-Gallatin Co MTMISC

**This Violation Policy is an addendum** to File No. 2202825 filed with the Gallatin County Clerk & Recorder on September 22, 2005, and is pursuant to the Declaration of Covenants, Conditions and Restrictions for Baxter Meadows Homeowners' Association ("Covenants"), recorded in the real property records of the County Clerk of Gallatin County, Montana on September 22, 2005, Document No. 2202825.

The following policy is in place to determine whether a violation exists and if a violation is determined to exist, to cause remedy of the violation.

5. **Determination of Violation.** Association Management Services, LLC, and/or any member of the Baxter Meadows Master Community Board of Directors or Design Review Board will make the final determination of whether a violation of the Protective Covenants (CC&Rs) exists.
6. **Curing the Violation.** If it is determined that a violation does exist, the Homeowner will be sent a **First Violation Notice** describing the violation, the applicable CC&Rs regulation that is being violated, and a requirement that the violation be cured within a reasonable time period.
7. **Uncured Violations.** If the violation has not been cured within the time period specified in the **First Violation Notice** a **Second Violation Notice** will be issued. If the violation remains uncured the homeowner will receive a **Third Violation Notice** instructing the homeowner of their right to a hearing. Such **Notice** shall be served personally, if possible, or mailed certified mail, return receipt requested to the last known address of the party or entity and a copy posted at a conspicuous place on the property. A written request for the hearing, which is properly signed and dated by the homeowner must be postmarked within fourteen (14) days after the **Third Violation Notice** is mailed. Failure of the homeowner to request a hearing in writing within the required time period shall constitute a waiver of the right to a hearing. Such notice shall be deemed delivered if postmarked and mailed to:

Baxter Meadows Master Community Association  
c/o Association Management Services  
P.O. Box 5298  
Bozeman, MT 59717-5298

4. **Hearing.** The Board of Directors will conduct the hearing at which, any or all of the following sanctions may be imposed:
  - a. Fine not to exceed \$500.
  - b. Cure of the violation, all costs of which will be charged back to the owner. If not paid, the owner's property will be liened for the amount owed.
  - c. Injunctive relief against the continuance of such violation through the court system; all costs will be charged to the owner.

A decision regarding the violation may be made upon conclusion of the hearing or it may be postponed no later than ten (10) days from the date of the hearing. A summary of the decision shall be included in the records of the Association and mailed to all parties involved.

If the homeowner does not cure the violation after the **Third Violation Notice** and does not request a hearing, the Board has the authority and discretion to impose any or all of the sanctions above.

2280393

Page: 2 of 3  
10/01/2007 01:40P



Charlotte Mills-Gallatin Co MTMISC 21.00

Adopted July 10, 2006

Baxter Meadows Master Community Association,  
Inc.

BOARD OF TRUSTEES

By: ASSOCIATION MANAGEMENT SERVICES,  
LLC, a Montana limited  
liability company

By: *Pamela Halse*  
Its: Community Manager

**ACKNOWLEDGEMENT**

STATE OF MONTANA )

ss.

COUNTY OF GALLATIN )

This instrument was acknowledged before me on OCTOBER 1, 2007, by Pamela Halse, the Manager of Association Management Services, LLC, a Montana limited liability corporation, as Community Manager of Baxter Meadows Master Community Association, Inc.

Notary Public *Angie Fiskum*  
My Commission Expires on: AUGUST 31, 2011

Residing BOZEMAN, MT



Angie Fiskum  
Notary Public  
for the State of Montana  
Residing at:  
Bozeman, Montana  
My Commission Expires:  
August 31, 2011

2280393

Page: 3 of 3  
10/01/2007 01:40P



Charlotte Mills-Gallatin Co MTMISC 21.00

Baxter Meadows Master Community  
3701 Tracker Trail Suite 10  
Bozeman, MT 59718



**2297089**

Page: 1 of 2  
04/14/2008 03:38P

Charlotte Mills-Gallatin Co MTMISC 14.00

**BAXTER MEADOWS MASTER COMMUNITY ASSOCIATION  
FISCAL POLICY**

The following policy is in place to set forth the late fees and appropriate actions for late and nonpayment of Baxter Meadows Master Community Association dues and Lightnex base service fees. This policy replaces the previous Delinquency Policy recorded in the Gallatin County Clerk and Records Office Document No. 2280393.

1. Assessments - The Baxter Meadows Master Community Association assessments are billed monthly. Payments are billed on the first of every month and are delinquent after the 30<sup>th</sup>.
2. Delinquent Interest - If the assessment amount is not paid within 10 days, interest will accrue at the rate of 12% per annum on the unpaid balance.
3. Unpaid Assessments - When a homeowner is five months delinquent in assessments a demand Letter will be sent, the cost of which will be a charge of \$15.00 applied to the homeowner's account. If assessments are not paid in full within thirty days or arrangements made to pay the assessment, the Association will file a Notice of Lien in the Gallatin County Clerk and Records Office. A copy of the notice will be sent to the delinquent owner and a charge of \$20.00 will be applied to the delinquent homeowners account. If applicable the Association will also provide a notice of delinquency to the owner's first mortgagee.
4. Further Action – If the assessment remains unpaid and delinquent, the Board of Directors of the Association shall decide on a case-by-case basis which of the following remedies to pursue:
  - a. Bring an action at law against the owner personally obligated to pay.
  - b. Foreclose the association lien against the lot.
5. In the event any of the foregoing actions are taken by the Association, the owner shall be obligated to pay the Association, in addition to the assessment due, late fees and any interest thereon, all collection fees, attorney's fees and necessary costs incurred by the Association in



enforcing its rights and taking such action. No owner may waive or otherwise escape liability for the assessments by abandonment of the lot or lot

Adopted; January 23, 2008

BAXTER MEADOWS MASTER COMMUNITY  
BOARD OF DIRECTORS

Mark Meissner, President

Jerry Williams, Vice President

Marjorie Seymour, Secretary

ACKNOWLEDGMENT

STATE OF MONTANA )

SS.

COUNTY OF GALLATIN )

This instrument was acknowledged before me on 03.12.08, by Mark Meissner, and Marjorie Seymour, Officers of the Baxter Meadows West Community Association, Inc.

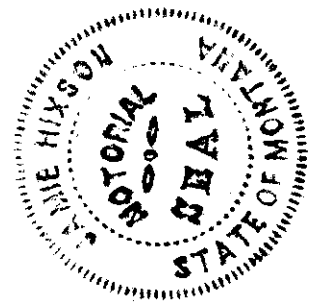
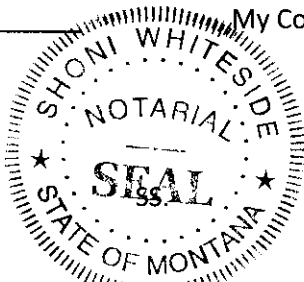
Resident Bozeman

Notary Public Shoni Whiteside  
My Commission Expires 11.02.2011

ACKNOWLEDGMENT

STATE OF MONTANA )

COUNTY OF GALLATIN )

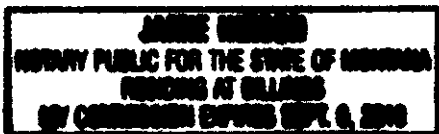


This instrument was acknowledged before me on 3/31/08, by Jerry Williams, Officer of the Baxter Meadows West Community Association, Inc.

Resident Billings, MT

Notary Public for the state of Montana  
My Commission Expires Sept. 16, 2010

Jamie Hixson





Baxter Meadows Master Community  
3701 Trakker Trail Suite 1D  
Bozeman, MT 59718



**2297090**

Page: 1 of 2  
04/14/2008 03:38P

Charlotte Mills-Gallatin Co MTMISC 14.00

**BAXTER MEADOWS MASTER COMMUNITY ASSOCIATION  
VIOLATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS POLICY**

The following policy is in place to determine whether a violation exists and if a violation is determined to exist, to cause remedy on the violation. This policy replaces the previous Violations of Covenants, Conditions, and Restrictions Policy recorded in the Gallatin County Clerk and Records Office Document No. 2280393.

The Manager of the Baxter Meadows Community Association and/or any member of the Baxter Meadows Master Community Board of Directors or Design Review Board will make the final determination of whether a violation of the Protective Covenants (CC&R's) exists.

If it is determined that a violation does exist, the Homeowner will be notified by the Manager of the Association, either in person or by phone to attempt to remedy the violation.

If the violation is not remedied within two weeks, a violation notice shall be sent to the Homeowner outlining the violation and requesting that the Association Manager be contacted within two weeks to determine the correction of the violation and the time frame.

If the Homeowner does not contact the Association Manager, a second violation notice shall be sent instructing the homeowner of their right to a hearing. Such notice shall be served personally if possible, or mailed certified mail, return receipt requested to the last known address of the party or entity. A copy shall also be posted at a conspicuous place on the property.

A written request for a hearing which is properly signed and dated by the homeowner must be postmarked within fourteen (14) days after the violation notice return receipt is signed. Failure of the homeowner to request a hearing in writing within the required time period shall constitute a waiver of the right to a hearing. Such notice shall be delivered or mailed to:

Manager  
Baxter Meadows Master Community Association  
3701 Trakker Trail, Suite 1D  
Bozeman, MT 59718

The Board of Directors will conduct the hearing at which any or all of the following sanctions may be imposed.

- A. A fine not to exceed \$500.00
- B. Cure of the violation, all costs of which will be charged back to the owner. If not paid, the owner's property will be liened for the amount owed.




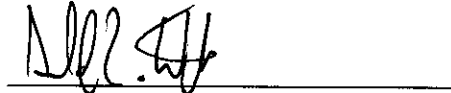
C. Injunctive relief against the continuance of such violation through the court system; all costs will be charged to the owner.


A decision regarding the violation may be made upon conclusion of the hearing or it may be postponed not later than ten (10) days from the date of the hearing. The findings of the hearing shall be included in the records of the Association and mailed to all parties involved.

If the homeowner does not cure the violation after the second violation notice, and does not request a hearing, the Board has the authority and discretion to impose any or all of the sanctions above.

BAXTER MEADOWS MASTER COMMUNITY  
BOARD OF DIRECTORS

  
Mark Meissner, President

  
Jerry Williams, Vice President

  
Marjorie Seymour, Secretary/Treasurer

ACKNOWLEDGMENT

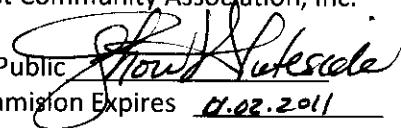
STATE OF MONTANA )

SS.

COUNTY OF GALLATIN )

This instrument was acknowledged before me on 03.12.08, by Mark Meissner, and Marjorie Seymour, Officers of the Baxter Meadows West Community Association, Inc.

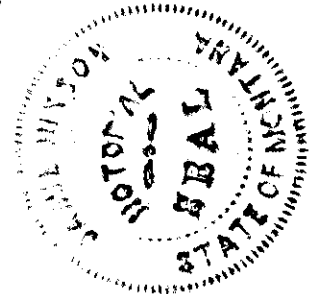
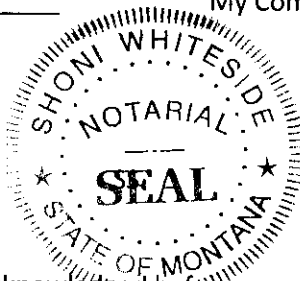
Resident Bozeman

Notary Public   
My Commission Expires 11.02.2011

ACKNOWLEDGMENT

STATE OF MONTANA )

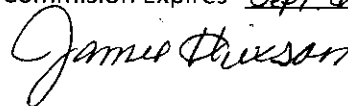
COUNTY OF GALLATIN )

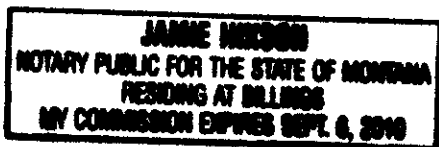


This instrument was acknowledged before me on 3/31/08, by Jerry Williams, Officer of the Baxter Meadows West Community Association, Inc.

Resident Billings, MT

Notary Public for The State of Montana  
My Commission Expires Sept 6, 2010





Luna Properties  
40 E. main St.  
Suite 210  
Bozeman, MT 59715

**2482647**

Page: 1 of 25 06/05/2014 01:11:20 PM Fee: \$175.00  
Charlotte Mills - Gallatin County, MT MISC



**AMENDED DESIGN REVIEW GUIDELINES AND REGULATIONS  
OF  
BAXTER MEADOWS MASTER COMMUNITY ASSOCIATION**

## **Design Review Guidelines and Regulations of Baxter Meadows Master Community Association**

These are the amended Design Review Guidelines and Regulations of the Baxter Meadows Master Community Association. These Review Regulations and Guidelines replace and supersede all previously adopted and/or file Design Regulations and guidelines of the Association.

The integration of buildings, improvements and landscape within Baxter Meadows Master Community Association (BMMCA) is essential to the success and appearance of the community. As provided in Section 8.1 of the BMMCA Declaration, any and all construction, alterations or improvements, and front yard landscaping shall be subject to advance approval by the BMMCA Design Review Board (DRB). Any deviation from approved plans shall be re-submitted to the Design Review Board for approval. Site Design Regulations serve to protect and enhance the natural landscape, stream corridors, view sheds and natural habitat.

No structures, including residences, outbuildings, accessory buildings, tennis courts, swimming pools, antennas (except as otherwise permitted in this Declaration), flag poles, fences, walls, exterior lighting, landscaping, or any other Improvements shall be constructed, erected, relocated, removed or installed on a Unit or on any lot, nor shall any painting, alteration or change to the exterior of the Improvements, the exterior of a residence, to a Unit or to any lot front yard or to any structure or any attachment to the exterior of a residence (including paint, awnings, patios, decks, or shutters) be commenced unless: complete plans and specifications shall have been first submitted to and approved in writing by the DRB ("Committee") as may be outlined in the Rules and Regulations. Additional written approval may be required by sub Architectural Review Committee administered by any Sub association.

### **I. Design Review Process**

#### **Section 1. Submission of Plans Before Construction**

No residence, fence, wall, garage, outbuilding or other structure shall be made, erected, altered or permitted to remain upon the properties until written plans and specifications showing the 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 DRB as to compliance with these Covenants, as well as appropriate City of Bozeman review, permitting and fee payment. All plans submitted to the City of Bozeman Building Division must have the Baxter Meadows Design Review Board stamp of approval.

## **Section 2. General Requirements**

Not less than ninety (90) days prior to the anticipated date of construction commencement, Applicant shall submit two copies of the required documents (See Form "A" attached) for each design review to the following:

*Deliver or mail to:*

Baxter Meadows Design Review Board (DRB)  
c/o Penny Murray  
[pennymurray@msn.com](mailto:pennymurray@msn.com)  
406-581-1832  
Bozeman, Montana 59718

Submittals must be labeled with "Baxter Meadows Design Review Board" and specific project title and address.

Upon DRB review, the owner will be notified within fifteen (15) days after the start of the review cycle date that the design has been approved, approved with stipulations or disapproved. Applications which are submitted to the DRB incomplete will be returned and may be subject to a re-submittal fee.

The reasons for approval with stipulation and disapproved will be clarified for the owner in writing and/or with drawings. If the DRB does not contact the owner within fifteen (15) days of the review commencement date, the application shall be deemed "disapproved".

An application for withdrawal may be made without prejudice, provided the request for withdrawal is made in writing to the DRB.

All variance requests pertaining to the DRB approvals must be made in writing to the DRB. Any variance granted shall be considered unique and will not set any precedent for future decisions.

If an application has been denied, or the approval is subject to conditions that the owner feels are unacceptable, the owner may request a hearing before the DRB to justify his/her position. The DRB will consider the arguments and facts presented by the owner and notify the owner of its final decision within ten (10) days of the hearing.

## **Section 3. Construction Completion**

If construction of a structure is not commenced within one year after DRB approval, a new DRB application must be submitted. No construction shall be commenced without a valid DRB approval. Any structure to be erected in accordance with an approval so given must be erected and completed within one year from the date of construction commencement. If any structure is commenced and is not completed in accordance

with the plans and specifications within one year, the Directors of the Association, at their option, may take such action as may be necessary, in their judgment, to improve the appearance so as to make the property harmonious with other properties and to comply with these Covenants, including the completion of the exterior of the combination thereof, or removing the uncompleted structure or similar operations. The amount of any expenditure made in so doing shall be an obligation of the owner. A lien on the property 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, including an injunction, or action for damages.

#### **Section 4. Inspection Procedure**

Inspections are required to ensure that construction proceeds in compliance with these covenants and the approved drawings. An inspection is required at each of three stages of construction: framing, siding, and landscaping. The owner shall request an inspection of the improvements by the DRB. Owners are responsible for scheduling an inspection accordingly: 1) when the framing is complete; 2) when siding is at a point, prior to completion, to allow the DRB to see the siding and cladding product(s) installed in their planned locations; and 3) when landscaping components (beds, plants, sod, irrigation, and trees) are installed in their planned locations.

The inspections shall only determine compliance with the covenants and approved plans. If the DRB finds the improvements were not completed in strict compliance with the covenants and approved plans, the DRB shall notify the owner of the noncompliance within seven (7) days of the inspection request and shall require remedy of the same. The owner shall have seven (7) days from the noncompliance notification to remedy the noncompliance or shall submit a work plan delineating the time frame when the noncompliance will be remedied. The DRB may allow up to forty-five (45) days for the noncompliance to be remedied if the submitted work plan provides adequate justification for the requested time.

No occupancy of the project shall take place prior to written DRB approval, as well as payment of all inspection and review fees, and any outstanding costs, unless otherwise allowed. If the noncompliance is not remedied within seven (7) days of notification and the owner does not provide a work plan within said time, or if the noncompliance is not remedied within the time frame provided in the work plan as approved by the DRB, the DRB may, at their option, remedy the noncompliance. The owner shall reimburse the DRB upon demand for all expenses incurred in connection therewith. If the owner does not promptly repay such expenses, the DRB shall levy an assessment and file a lien against such owner and the improvement in question and the land on which the same is situated for reimbursement and the same shall be enforced and/or foreclosed upon in the manner provided for by law.

No occupancy of the project shall take place prior to written DRB approval as well as payment of both inspections and any outstanding costs, unless otherwise allowed.

### **Section 5. Liability and Variances**

Neither the Association, the Declarant, the Directors, the DRB nor the individual members thereof, may be held liable to any person for any damages for any action taken pursuant to these Covenants, including but not 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.

Further, the Committee may, upon application, grant a variance from the Architectural Regulations, provided that the spirit of these Design Guidelines is complied with. The committee shall have the duty and power to make the final decision on the granting of the variance, without any liability being incurred or damages being assessed due to any decision of the Committee.

Within all sections of these Design Guidelines, when a variance is indicated that it may be granted, the variance must be requested and approved by the DRB and/or the Bozeman City Commission, as applicable, depending on whether the variance is from the Covenants or from the current City Zoning Ordinance or both.

### **Section 6. Design Review Procedure**

#### **Step 1: Construction Design Review**

In addition to verifying the required setbacks, this review checks the designs for correct interpretation of the Architectural Regulations, checks the construction documents for compliance with the DRB and verifies that the previous DRB recommendations have been incorporated. Conformity to applicable local regulations and building codes, as well as obtaining appropriate permits is the responsibility of the architect and/or builder.

#### **Forms Required**

Acknowledgement Form

Form A – Construction Design Review Application

Review Fee: Design/Review fee to be determined by the DRB and to be consistent with all phases. Incomplete applications which are returned to Applicant may be subject to a \$100 re-submittal fee. Fees are based on each individual property.

#### **Minimum Drawings Required:**

Site Plan (1/8" = 1'-0" scale or larger) showing:

- North arrow
- Property lines and setback lines with dimensions.
- Building footprints with entry area delineated and overhangs shown as dashed lines.
- Garden walls, fence lines, location, height and material quality of retaining walls.
- Water, electric and sewer service.
- Grading plan.
- Location of streets.
- Location, dimensions and materials for walks and drives.
- Limits of construction activity (no construction, traffic or storage of materials will be permitted beyond these limits).
- Exterior light locations and type.
- Location of external equipment (electric meter, location of waste bins, etc.)

Floor Plans (1/4" = 1'-0") showing:

- Foundation plan dimensioned.
- Room use labeled and rooms dimensioned.
- Walls, window and door openings dimensioned.
- Exterior walls dimensioned.
- All overhangs of floors and roofs as dashed lines.
- Gross square footage.

Elevations & Sections showing:

- Each elevation at 1/4" = 1'-0" with colors rendered of fronting street elevation.

Landscape Plan:

- Including plant listing (name, planting and mature sizes) and their respective locations.

Material Samples:

- As requested by DRB.
- Siding and trim sample with actual color applied.

### Step 2: Construction Commencement

Construction may not commence without the approval of the City of Bozeman Building Division, necessary permits obtained and fees collected. A copy of Form A – Construction Design Review Application bearing the DRB approval letter must accompany City of Bozeman building permit applications.

The DRB reserves the right to inspect in the field for compliance during any stage of construction. The DRB is empowered to enforce its policy as set forth in the Baxter Meadows Master Community Declaration by any action, in law or equity, to ensure compliance.

## **II. Topography and Features**



1. Response to Character of Land Form:

Development Areas shall be designated upon all new sites in order to assure that each building site responds to the existing topography, tree masses and adjacent properties. All site plans must indicate surface drainage patterns.

2. Relationship to Open Space: Estate Homes

Buildings shall be located in a manner that preserves the character of the open space within the community. When an entirely open site is developed, buildings shall be organized in a cluster that diminishes the scale and impact of the building in the landscape. In addition, indigenous landscape materials shall be introduced to minimize the exposure of the building. Manicured lawns shall be separated from the established native vegetation with landscape materials.

3. Stream Corridor Protection

All buildings and improvements shall maintain a minimum setback of 50 feet from the annual high water line of all streams, rivers, creeks and water courses within all development districts of Baxter Meadows. Uses within the stream setback shall be limited to planting of native riparian vegetation, maintenance of existing non-native vegetation, and the control and maintenance of noxious weeds. The removal of existing native vegetation within the stream shed protection area is not permitted.

### **III. Improvements**

1. Driveways & Parking

Site access when entered from the street, shall be perpendicular to the street. Parking areas and garage doors shall not be the primary visual element of any residence. Landscaping materials shall be used to diminish the impact of the entry to the garage. All parking shall be within the lot boundary, off public and private rights-of-way. No driveway or access shall be allowed to encroach into the side yard setbacks other than those on shared driveway easements filed of record.

The construction and maintenance of all driveways and culverts shall be the responsibility of the owner. Driveways and parking areas shall be crowned and sloped for adequate drainage and safety.

Driveway and parking surfaces shall be constructed of concrete paving units, stone cobbles, asphalt or concrete. Any other material shall be approved by the BMMCA DRB. Materials shall restrict weed growth and maintain a clearly defined edge between the landscaped area and the driveway surface. Materials shall withstand deterioration

from winter snow plowing and erosion.

Driveways shall be limited in width to 14 feet minimum and 16 feet maximum at the intersecting street. Drives can be expanded to 24 feet at turn-around areas and parking structures. Maximum driveway grades shall not exceed 1:20 for the first 20 feet from the roadway, and shall not exceed 1:10 slope beyond.

## 2. Privacy Screens and Retaining Walls

Privacy screens may be used in conjunction with a hot tub or sunning deck. The screening shall be consistent with the overall design, construction and materials of the existing building. Privacy screens shall not be taller than the edge of the roof eaves, and shall not be longer than 16 feet in uninterrupted length.

Retaining walls shall be an integral part of the overall design of the site and building. Retaining walls shall not be greater than 4 feet in height, or 24 feet in uninterrupted length. Retaining walls can also be used as a screening device to obscure service areas such as the view of a driveway from the main road. Retaining walls shall be constructed of wood, stone, or approved masonry products, and shall blend into the contour of the existing landscape.

Utility boxes and pedestals owned by utility providers shall not be screened or buffered so as to inhibit access and/or function to such above-grade utility systems.

## 3. Walkways, Paths and Trails

Walkways, paths and trails introduce places for pedestrians within the built and natural environment. The size and character of such paths shall respond to the surrounding buildings and site in the form of material, scale and configuration. Paving units, stone, textured or exposed aggregate concrete and wood shall be the only acceptable materials. Detailed drawings of paths shall be required as a part of the Final Plan review requirements.

# IV. Utilities and Site Details

## 1. Utilities

All utilities (natural gas, electric, telephone and television cable) shall be installed underground. No antenna or satellite dish shall be installed on any structure, lot or unit so that it is visible from any street. 18" satellite dishes shall not be required to be screened from adjacent lots. Larger satellite dishes are not permitted.

Meters shall be placed in a location so as to be accessible to the meter reader and yet not visible from adjoining roadways. All conduit wires servicing the meter shall be beneath the exterior wall sheathing or enclosed. Meters, transformers and other

utility boxes shall be concealed with landscaping.

2. Radon

Radon gas is a hazard found in all soil types throughout the country, and shall be anticipated in Baxter Meadows. The owner and architect shall contract an EPA certified installer who shall be responsible for introducing mitigation measures into the design of the building, conducting appropriate tests for radon, and activating the system if necessary.

3. Wood Storage

Firewood shall be stored outdoors shall be stacked in an enclosed area, such as a garage, covered porch, or structure designed for the storage of wood, so as to be invisible to neighboring owners and the street frontage. Such structures shall be architecturally compatible with the material and color of the primary structure, and shall be integrated into the design of the building.

4. Garbage and Refuse Disposal

Trash, garbage and other waste shall not be kept except in sanitary containers. All equipment, garbage cans, wood piles, compost piles or storage piles shall be screened or concealed from view of other dwellings and Common Areas. Sanitary containers may be placed on the street curb for collection only on collection days.

## V. Landscape Controls

All landscaping must be completed within one year of receiving certificate of occupancy.

1. Definitions

**Caliper** – The diameter of the trunk measured six inches above ground level up to and including four inch caliper size, and measured twelve inches above ground level if the measurement taken at six inches above ground level exceeds four inches. If a tree is of a multi-trunk variety, the caliper of the tree is the average caliper of all of its trunks.

**Corner Lot** – A lot located adjacent to two public streets where those two streets intersect at a perpendicular angle.

**Mulched Bed** – An area within a yard with no turf and 3" minimum depth landscape mulch. Landscape mulches include but are not limited to river rock (type) or landscape bark (i.e., shredded cedar) (type) etc., separated or contained by appropriate edging material (aluminum, metal, or similar).

**Yard** – A space on the same lot with a principal building, which is open and unoccupied from the ground upward or from the ground downward other than by steps, walks, terraces, driveways, lamp posts and similar structures, and unobstructed by structures.

**Yard: Front** – A yard extending across the full width of the lot between two side lot lines the depth of which is the least distance between the street right-of-way and the front

building line.

Yard: Rear – A yard extending across the full width of the lot between the two side lot lines and between the rear line and a parallel line tangent to the rear of the principal building and the depth of which is the least distance between the rear lot line and the parallel line.

Yard: Side – A yard extending between the front building line and the rear building line, the width of which is the least distance between the side lot line and the nearest part of the principal building.

## 2. Installation

Street Trees – Builder shall install boulevard trees per City of Bozeman boulevard tree guidelines.

Sodding – Sodding of front yards shall be the responsibility of the builder. On any yards where sodding has not been provided by the builder, the homeowners are responsible for sodding or seeding within one year of property purchase.

Mulched Beds – Front yards will be installed with 4-8 shrubs within a mulched bed and shall be the responsibility of the builder. In addition, each home will have a meandering 18-24" min. wide mulched bed around its perimeter in the rear and side yards to reduce water and mowing damage to the architectural siding.

Trees – Trees installed by homeowner are to be planted within property lines. Prior to planting a utility line locator service must locate utility lines. Refer to city guidelines regarding trees planted in the boulevard.

Trees must not be planted in front yards where they may conflict with utility lines.

The minimum required installation shall be three small shade trees of 1-2" caliper or one 5' high conifer (evergreen). Recommended species include: Ash (*Fraxinus*), Honey Locust (*Gleditsia Triacanthos*), Linden (*Tilia*), Locust (*Robinia Pseudo acacia*), Maple (*Acer*), Mountain Ash (*Sorbus Aucuparia*), Oak (*Quercus*), Walnut (*Juglans Nigra*). Installation shall be the responsibility of the builder.

The required installation of a shade tree within 18 months of purchasing property in Baxter Meadows may be substituted for one non-canopy tree (evergreen/conifer). The non-canopy tree must have a minimum height of 5'. Heights are measured from the top of the root ball to the plants highest point. Trees installed by homeowners may be planted in front; side or rear yards as long as they are not in conflict with the utility lines and are on the owner's property.

Fencing – Any fences installed at the option of an owner shall be no taller than six feet and shall be constructed of wood only. Panel fencing shall have the "dog-eared" panels. All owners shall have a locator service locate utility lines prior to digging. Fencing other than that described above must be approved by the Design Review Board prior to installation. Temporary fencing will be approved on a case by case basis.

3. Maintenance

Every homeowner shall be responsible for the care of his or her entire lot excluding only the street right-of-way. Maintenance includes lawn care, irrigation and weed control. Mulched beds shall be weed controlled by a consistent spray regime or manual weeding. Pesticides, herbicides, fertilizers, etc., if used shall be applied in strict accordance with the manufacturer's instructions and all applicable laws in accordance with USDA and the EPA.

Every homeowner shall be responsible for the care of his or her lot excluding areas maintained by the BMMCA or a Sub Association.

4. Irrigation Installation and Maintenance

An irrigation system is required. The builder shall be responsible for the installation of irrigation systems within the areas described below. Landscaping plans (including the proposed irrigation equipment to be installed) must be provided to the BMMCA DRB for approval prior to installation. On homes that are irrigated from the BMMCA or any Sub Association system, a list of compatible equipment will be required for installation to ensure proper watering.

The builder shall install separately metered irrigation systems which are controlled by each individual owner. At a minimum, builder shall install front yard piping, heads, and a controller with sufficient capacity for the owner to install an irrigation system in the rear yard. Every homeowner shall be responsible for the maintenance of their entire system excluding only the right-of-way.

## VI. BUILDING FORM REGULATIONS

The intent of the following building design regulations is to develop architectural unity within the districts of Baxter Meadows while allowing for the vitality of individual expression.

A. Building Height

Residential Buildings - Building heights within all residential areas of the BMMCA shall be limited to a maximum of 38 feet. Building height shall be measured from the highest ridge to the adjacent grade. The maximum building height shall never exceed that stipulated and governed by the City of Bozeman. With the approval of the DRB, chimneys, cupolas and other rooftop architectural features may exceed the given maximum height limitations by no more than four feet.

On complex buildings with multiple heights, the building height shall be determine by calculating the highest ridge line of the building, and measuring to the average of the highest and lowest finished grade. The final elevation of the finished surface materials, whether soil, paving, or decking shall be indicated as the finished grade, and shall be shown on he Architect's drawings.

**B. Roof Form**

The architecture within Baxter Meadows shall complement and respond to the natural qualities of Bozeman. The consistency and compatibility of roof shapes, pitches and materials will contribute significantly to the continuity of the character of Baxter Meadows. The following design regulations have been developed to allow for distinct building forms while addressing the character of the entire community. Exterior walls shall not exceed 40 feet in length without a change of orientation such as the introduction of dormers, projected bays, or recesses greater than two feet. When refining roof forms consideration shall also be given to the prevention of excessive snow build-up and snow shedding.

**1. Shape and Pitch**

When examining roof shapes and pitches for buildings within Baxter Meadows, designers should consider the simple shapes and pitches of buildings found within traditional neighborhoods. Gable, hip, and modified hip roofs shall be the only acceptable roof forms. Shed roofs shall not be major roof forms. Mansard roofs, pseudo-mansard roofs, curvilinear roofs, and A-frame roofs shall not be allowed for any roof form.

Variation in orientation of the dominant roof form is essential to the successful design of large buildings. Dominant roof forms shall not exceed 40 feet in length without a change in orientation or introduction of dormers.

Within all Development Areas, roof slopes shall be a minimum of 6:12 and a maximum of 12:12. Secondary roofs may be gable, shed, hip, and modified hip roofs with pitches not less than 4:12 when attached to major building forms. Such roof forms shall be integral to the building or roof form.

Roof protrusions other than chimneys and plumbing vent stacks shall not be located on any roof facing the front or street side of the building.

The BMMCA DRB retains the right to waive the minimum or maximum roof pitch requirement when, in its sole judgment, a lower or steep roof pitch is more appropriate for the design of a building, and does not compromise the integrity of the development district. This privilege may be exercised by the DRB without relinquishing its right to enforce the minimum or maximum requirements on other projects.

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

Snow in the Bozeman area often builds up on roof surfaces and slides off at irregular intervals. Such slides can damage property, decks, balconies and even injure people. No roof without adequate protection from snow slides shall slope toward driveways, sidewalks, porches, decks, balconies or any other areas that may be damaged or cause injury through the shedding of snow or ice from the roof.

Entrances shall be specifically expressed and protected with adequate overhangs. All roofs shall have overhangs of at least 16 inches. All fascia materials shall be a minimum of 6 inches.

### 3. Dormers and Secondary Roofs

Dormers and secondary roofs are often necessary to add interest and scale to major roof areas and to make habitable use of the attic space within the roof. Dormers and secondary roofs shall be gable, shed, hip, and modified hip roofs and may be stacked in multiple forms.

### 4. Skylights and Solar Collectors

When designing the location of skylights, consideration shall be given to both the interior and exterior appearance of the unit. Locations shall also be coordinated with window or door locations. Skylights shall be located away from valleys, ridges and all other areas where drifting snow may hinder the performance and safety of the unit. Skylights shall be of high quality, insulated, double pane construction. Roof skylights shall be flat in profile; bubble and dome style skylights shall not be permitted.

Solar collectors shall be integrated into the overall roof design, and shall be placed flush with the slope of the roof or wall of the building. All solar collectors shall be screen or concealed from view of other dwellings and Common Areas.

### 5. Chimney Composition Proportion and Materials

Chimneys, flues and vents can be used to create visual contrast to the dominant roof forms of the buildings within Baxter Meadows. All flues shall be enclosed with a chimney cap and fitted with a spark arrestor. No exposed metal or clay flues shall be allowed. All chimney forms shall relate to the overall building and shall be covered with stone, stucco or wood siding materials to match exterior finishes of the building.

Building vents and flues for such functions as ventilation and exhaust shall be consolidated into enclosures wherever possible, and shall typically be concealed from public view. Place roof penetrations on the rear side of the house whenever possible. All exposed metal shall be painted in a color compatible with the color scheme of the house. Attic openings, soffit vents, foundation louvers, or other direct openings in outside walls, overhangs or roofs shall be covered with non-combustible, corrosion-resistant metal mesh.

### 6. Exterior Wall Form

Exterior wall surfaces shall be no longer than 40 feet in length without the introduction of a minimum 4-foot recess, 4-foot projection or change in orientation. Two story exterior wall forms shall be interrupted by minor roof forms.

Foundation walls shall be exposed a maximum of eighteen inches (18") above the

ground. On sloping grades, siding shall remain at least 1'-0" above grade, and the upper edge of the water table shall remain level, stepping down the slope in increments of 4' or less. See above. Concrete foundations exposed more than eighteen inches (18") above grade must have an architectural finish (texture, pattern and/or color).

## **VII. MATERIALS AND DETAIL REGULATIONS**

When choosing materials for buildings in Baxter Meadows, architects should select materials of an appropriate quality and durability in an often harsh northern environment. Synthetic and composite materials which conserve valuable wood resources should be considered whenever a building owner is contemplating opaque finishes or high maintenance areas. The use of materials and colors for all structures in the development districts shall blend into the surrounding site.

The following are the only allowable materials in Baxter Meadows:

### **A. Roof Materials**

Durable roof materials capable of withstanding the freeze thaw cycle of the environment are required. Cold roof systems with adequate ventilation and insulation are recommended. **All roof materials shall carry a Class A or B rating.**

The following are the only acceptable roof materials:

- Treated wood shakes or shingles
- Synthetic shakes and shingles
- Natural and synthetic slate shingles
- Asphalt random tab shingles
- Pre-finished metal roofing
- Other similar materials, as allowed by the DRB
- All roof flashing vents, hoods, and roof accessories shall be copper or pre-finished metal that blends with the color of the roof material selected.

### **B. Exterior Wall Materials**

The character of the building exterior shall be kept simple in order to harmonize and compliment the surrounding environment of the site. Natural materials and subdued colors shall be used on the main body of the building. Exterior trim can be more colorful and may contrast with the main body in order to add visual interest to the predominant neutral tones.

Full scale samples of all exterior building materials, including window samples are required in the Final Plan Review.

The DRB shall consider materials not listed below that maintain the aesthetic continuity of



Baxter Meadows, including pre-finished composite wood products and synthetic siding materials.

1. Stonework

Rock shall be natural or synthetic stone materials. Dry stack settings with minimal exposed mortar are preferred. Stonework shall not be applied to individual wall surfaces in order to avoid a veneer-like appearance and shall continue around corners to an inside corner. Detailed drawings of all exterior stonework shall be required as a part of the final plan submittal.

2. Concrete/Stucco

Exposed concrete foundation walls between ground level and exterior wall siding shall be a maximum of 8 inches. Foundation exposure over 8 inches shall be finished with synthetic textured stucco (stained a subdued color in harmony with the building), stone, or treated wood.

3. Wood and Wood Product Siding

Smooth or rough sawn wood siding and approved composite wood products shall be the only acceptable exterior wood sheathing materials. All wood siding shall be painted or stained with an opaque stain. Other wood product siding will be considered by the DRB on a case by case basis.

4. Shingles

Natural and synthetic shingles shall be used only as accent or detail materials within the composition of exterior finishes. Shingle shall not be the dominant exterior material on any building.

5. Natural Log

Natural log materials shall be milled or assembled with irregular lengths and diameters. Prefabricated log homes, including prefabricated kit homes of any type, shall not be allowed.

6. Color Schemes

The color palette of the body of the house shall be from white, cream, earth tones or as approved by the DRB based on color scheme merit or historical precedent. All trim, frames, doors, and windows shall be in a compatible accent color.

Color schemes must be varied from the two adjacent properties, in each direction. Attached dwelling units exempted from each.

Exterior color schemes through Baxter Meadows shall emphasize the natural tones of the surrounding natural environment and those of a traditional neighborhood development. Large exterior wall surfaces shall be painted or stained with natural tones. Trim and other accenting details of the building may be of a brighter intensity and contrasting color scheme. Color schemes shall emphasize the contrast between basic wall surfaces and accented details. All exterior color schemes shall be reviewed by the DRB as a part of the Plan Review process.

Natural material and subdued colors shall be used on the main body of the building. Exterior trim can be more colorful and may contrast with the main body in order to add visual interest to the predominant neutral tones.

7. Siding

Siding shall be run horizontally or vertically, but not at other angles to horizontal.

8. Masonry Stonework

Stonework shall be natural or approved synthetic stone materials. Dry stack, uncoursed settings with minimal exposed mortar are preferred. Stonework shall not be applied to individual wall surfaces in order to avoid a veneer-like appearance. It shall continue around corners to an inside corner.

**C. Exterior Windows and Doors**

1. Scale, Composition and Proportion

Windows and doors shall be of a consistent size, shape and orientation throughout a given building. Windows and door patterns and reveals shall be carefully studied to create interest and variety.

Large scale windows and doors shall be recessed or trimmed a minimum of 6 inches in exterior wall surfaces. Uninterrupted bands of windows and doors shall not be allowed in any building. Window and door locations shall be carefully considered to avoid being obscured by accumulating snow.

2. Solar Orientation and Exposure

The design and location of exterior windows shall respond to the solar orientation of the building. The following energy considerations shall be addressed in the building design:

- Double or triple glazing
- Neutral density gray solar tinting
- Openings caulked around windows and doors
- Weather-stripping
- Storm windows
- Entry vestibules

3. Materials

Windows and doors shall be constructed of natural, stained or painted wood, or prefinished aluminum, enamel or vinyl cladding. All glazing shall be framed in walls of stone, stucco or wood. Glass curtain walls shall not be approved in any circumstance. Mirrored glass shall not be used.

Glass storm panels, set within window sash, may be used within divided-light windows, provided

that the storm panel is installed on the interior side of the window. Divided light glass must be authentic appearing.

#### 4. Garage Doors

Garage doors shall not be oriented toward the street, and shall be de-emphasized in the elevation of the building and screened. Garage doors are to be specifically subdued by recess or other design which results in garage being subordinate to the principal façade. Garage doors should be the same color as the building, and shall not be lighter in color than the building. It is encouraged that all garage doors be separated for each vehicles. Single, double-width (14' or larger) garage doors will be considered, however they must be detailed to appear separated for each vehicle.

### **D. Decks, Balconies, Terraces, and Porches**

#### 1. Design

Decks, balconies, terraces and porches shall be designed to enhance the overall architecture of the building by creating variety and detail on exterior elevations. Covered decks, projecting balconies and bay windows shall be integrated with, rather than randomly placed throughout, the building. Terraces shall be used to integrate the building and landscape by creating a transition between the built and natural character of the site. No deck, balcony or porch shall be used for the storage of any items except normal furniture. No exterior carpeting may be used if it is visible from any neighboring lot or the street. All railings shall be wood or approved wood-like material finished to be compatible with the color scheme of the house.

#### 2. Material

Low level decks shall be skirted to grade, while providing proper ventilation and access. Decks which are not practical to skirt shall be designed to assure that the underside of the deck is integrated with the design of the building. Exposed metal joist hangers shall not be visible. Posts shall be a minimum of eight inches square, and shall be paired together to diminish a thin visual appearance. The dimensions of two-story columns shall be increased to account for the great height. Materials and colors shall be consistent with the building and surrounding landscape. Front porches are intended to be open to allow for interaction with the street. Screened-in porches and glazing are not permitted. Porch supports shall be built of stone, masonry, concrete, or wood. Column base piers shall be not less than 16" x 16" square and wood columns shall be no less than 8" square. No exterior carpeting may be used if it is visible from any neighboring lot or the street.

### **E. Night Sky Requirements**

The major street intersections on Baxter Lane must be illuminated with lights that meet the City's standard requirements. In addition, all outdoor lighting (residential, commercial or otherwise) shall be free of glare, and shall be fully shielded or shall be indirect lighting. No lighting shall be beyond a property's lot line. No ranch lights or unshielded lights shall be

permitted. No mercury vapor lights shall be permitted. For purposes of this paragraph, the following definitions shall apply:

- a) Fully-shielded lights: Outdoor 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 test expert.
- b) Indirect light: Direct light that has been reflected or has scattered off of other surfaces.
- c) Glare: Light emitting from luminaries with intensity great enough to reduce a viewer's ability to see, and in extreme cases, causing momentary blindness.
- d) Outdoor lighting: The nighttime illumination of an outside area or object by any manmade device located outdoors that produces light by any means.

### **VIII. Central Community Architectural Guidelines**

In addition to the *Design Guidelines and Regulations of Baxter Meadows Master Community Association* the following guidelines also apply:

1. **Fences** -- Fences shall be made of wood. Lot owners are reminded that fences shall not exceed four feet in height along parks and open space. City of Bozeman fence regulations also apply and can be found on-line at [www.bozeman.net](http://www.bozeman.net) or by calling the Planning Department at (406)582-2260.
2. **Landscaping**
  - a) Each homeowner shall be responsible for the installation of one 1.5" minimum caliper shade tree within 18 months of purchasing property in Baxter Meadows. Recommended species include: ash, honeylocust, linden, locust, maple mountain ash, oak, and walnut. Trees installed by homeowner are to be planted within property lines. Exceptions may be granted with conflicts with utility lines prevent planting.
  - b) For Bungalow and Village Lots identified in the attached tables.
    - Master Design Guidelines, V. Landscape Controls, Section 2, "Trees", paragraph 3, "the minimum required installation..." does not apply.
    - Trees shall not be planted within front yards.
    - Trees planted outside of the front yard area shall be located in the rear yard or within a mulched bed.
  - c) Traditional Style homes -- trees may be planted in front, side or rear yards as long as they are not in conflict with the utility lines and are on the owner's property.

Lot owners are reminded not to plant trees within 10 feet of water or sewer service lines.

### **3. Setbacks (see tables below)**

**Baxter Meadows Phase 6**

<u>Lot &amp; Block:</u>	<u>Front Yard Setback:</u>	<u>Rear Yard Setback:</u>	<u>Side Yard Setback:</u>	<u>Max Lot Coverage:</u>	<u>Min. Lot Area:</u>	<u>Min. Lot Width:</u>
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**Block 14: (no relaxations)**

Lot 5:	7	10	5	100% of B.E.	-	-
Lot 6:	7	10	5	100% of B.E.	-	-

**Block 15 - Village Lots**

Lot 1:	10	5	10-N; 5-S	55%	4800	40
Lot 2:	10	5	5	55%	4800	40
Lot 3:	10	5	5	55%	4800	40
Lot 4:	10	5	5	55%	4800	40
Lot 5:	10	5	5	55%	4800	40
Lot 6:	10	5	5	55%	4800	40
Lot 7:	10	5	5	55%	4800	40
Lot 8:	10	5	5	55%	4800	40
Lot 9:	10	5	5	55%	4800	40
Lot 10:	10	5	10-S; 5-N	55%	4800	40
Lot 11:	10	2	10-N; 5-S	55%	4800	40
Lot 12:	10	2	5	55%	4800	40
Lot 13:	10	2	5	55%	4800	40
Lot 14:	10	2	5	55%	4800	40
Lot 15:	10	2	5	55%	4800	40
Lot 16:	10	2	5	55%	4800	40
Lot 17:	10	2	5	55%	4800	40
Lot 18:	10	2	5	55%	4800	40
Lot 19:	10	2	5	55%	4800	40
Lot 20:	10	2	10-S; 5-N	55%	4800	40

**Baxter Meadows Phase 6 cont.**

<u>Lot &amp; Block:</u>	<u>Front Yard Setback:</u>	<u>Rear Yard Setback:</u>	<u>Side Yard Setback:</u>	<u>Max Lot Coverage:</u>	<u>Min. Lot Area:</u>	<u>Min. Lot Width:</u>	<u>Max. Lot Area:</u>	<u>Max. House Sq. Footage:</u>
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**Block 16 - Bungalow Lots**

Lot 1:	10	2	10-W; 5-E	52%	2432	40		
Lot 2*:	10	2	5	52%	2432	40	3384	1575
Lot 3*:	10	2	5	52%	2432	40	3384	1575
Lot 4*:	10	2	5	52%	2432	40	3384	1575
Lot 5:	10	2	10-N; 5-S	52%	2432	40		
Lot 6*:	10	2	5	52%	2432	40	3384	1575
Lot 7*:	10	2	5	52%	2432	40	3384	1575
Lot 8*:	10	2	5	52%	2432	40	3384	1575
Lot 9*:	10	2	5	52%	2432	40	3384	1575
Lot 10:	10	2	5	52%	2432	40		
Lot 11*:	10	2	5	52%	2432	40	3384	1575
Lot 12*:	10	2	5	52%	2432	40	3384	1575
Lot 13:	10	2	10-S; 5-N	52%	2432	40		
Lot 14*:	10	2	5	52%	2432	40	3384	1575
Lot 15*:	10	2	5	52%	2432	40	3384	1575
Lot 16*:	10	2	5	52%	2432	40	3384	1575
Lot 17:	10	2	10-W; 5-E	52%	2432	40		
Lot 18:	10	5	5	52%	2432	40		
Lot 19:	10	5	5	52%	2432	40		
Lot 20*:	10	5	5	52%	2432	40	3384	1575
Lot 21*:	10	5	5	52%	2432	40	3384	1575
Lot 22*:	10	5	5	52%	2432	40	3384	1575
Lot 23:	10	5	5	52%	2432	40		
Lot 24*:	10	5	5	52%	2432	40	3384	1575
Lot 25*:	10	5	5	52%	2432	40	3384	1575
Lot 26:	10	5	5	52%	2432	40		
Lot 27:	10	5	5	52%	2432	40		
Lot 28:	10	5	5	52%	2432	40		

# Baxter Meadows Phases 2C and 2D

## SETBACK NOTES PHASES 2C & 2D (BLOCKS 9 - 14)

Product	Village	Village	Traditional	Traditional	Village	Village	Traditional	Bungalow	Bungalow	Village	Village	Bungalow	Bungalow	Bungalow	Multi-Fam	
	R-3	R-3	R-3	R-3	R-3	R-3	R-3	R-3	R-3	R-3	R-3	R-3	R-3	R-3	R-3	
General	R-3	R-3	R-3	R-3	R-3	R-3	R-3	R-3	R-3	R-3	R-3	R-3	R-3	R-3	R-3	
TYPE	BFR	BFR	BFR	BFR	BFR	BFR	BFR	BFR	BFR	BFR	BFR	BFR	BFR	BFR	BFR	
Lot Area / Sublots	BLK 9 - LOT 7 & 11	BLK 9 - LOT 7 & 11	BLK 9 - LOT 7 & 11	BLK 9 - LOT 7 & 11	BLK 9 - LOT 7 & 11	BLK 9 - LOT 7 & 11	BLK 9 - LOT 7 & 11	BLK 9 - LOT 7 & 11	BLK 9 - LOT 7 & 11	BLK 9 - LOT 7 & 11	BLK 9 - LOT 7 & 11	BLK 9 - LOT 7 & 11	BLK 9 - LOT 7 & 11	BLK 9 - LOT 7 & 11	BLK 9 - LOT 7 & 11	BLK 9 - LOT 7 & 11
	BLK 10 - LOTS 1, 7	BLK 10 - LOTS 1, 7	BLK 10 - LOTS 1, 7	BLK 10 - LOTS 1, 7	BLK 10 - LOTS 1, 7	BLK 10 - LOTS 1, 7	BLK 10 - LOTS 1, 7	BLK 10 - LOTS 1, 7	BLK 10 - LOTS 1, 7	BLK 10 - LOTS 1, 7	BLK 10 - LOTS 1, 7	BLK 10 - LOTS 1, 7	BLK 10 - LOTS 1, 7	BLK 10 - LOTS 1, 7	BLK 10 - LOTS 1, 7	BLK 10 - LOTS 1, 7
	BLK 11 - LOTS 1, 5, 7, 11, 15	BLK 11 - LOTS 1, 5, 7, 11, 15	BLK 11 - LOTS 1, 5, 7, 11, 15	BLK 11 - LOTS 1, 5, 7, 11, 15	BLK 11 - LOTS 1, 5, 7, 11, 15	BLK 11 - LOTS 1, 5, 7, 11, 15	BLK 11 - LOTS 1, 5, 7, 11, 15	BLK 11 - LOTS 1, 5, 7, 11, 15	BLK 11 - LOTS 1, 5, 7, 11, 15	BLK 11 - LOTS 1, 5, 7, 11, 15	BLK 11 - LOTS 1, 5, 7, 11, 15	BLK 11 - LOTS 1, 5, 7, 11, 15	BLK 11 - LOTS 1, 5, 7, 11, 15	BLK 11 - LOTS 1, 5, 7, 11, 15	BLK 11 - LOTS 1, 5, 7, 11, 15	BLK 11 - LOTS 1, 5, 7, 11, 15
	BLK 12 - LOT 1	BLK 12 - LOT 1	BLK 12 - LOT 1	BLK 12 - LOT 1	BLK 12 - LOT 1	BLK 12 - LOT 1	BLK 12 - LOT 1	BLK 12 - LOT 1	BLK 12 - LOT 1	BLK 12 - LOT 1	BLK 12 - LOT 1	BLK 12 - LOT 1	BLK 12 - LOT 1	BLK 12 - LOT 1	BLK 12 - LOT 1	BLK 12 - LOT 1
	BLK 13 - LOTS 1, 5, 7, 11, 15	BLK 13 - LOTS 1, 5, 7, 11, 15	BLK 13 - LOTS 1, 5, 7, 11, 15	BLK 13 - LOTS 1, 5, 7, 11, 15	BLK 13 - LOTS 1, 5, 7, 11, 15	BLK 13 - LOTS 1, 5, 7, 11, 15	BLK 13 - LOTS 1, 5, 7, 11, 15	BLK 13 - LOTS 1, 5, 7, 11, 15	BLK 13 - LOTS 1, 5, 7, 11, 15	BLK 13 - LOTS 1, 5, 7, 11, 15	BLK 13 - LOTS 1, 5, 7, 11, 15	BLK 13 - LOTS 1, 5, 7, 11, 15	BLK 13 - LOTS 1, 5, 7, 11, 15	BLK 13 - LOTS 1, 5, 7, 11, 15	BLK 13 - LOTS 1, 5, 7, 11, 15	BLK 13 - LOTS 1, 5, 7, 11, 15
Priority	10'	10'	10'	10'	10'	10'	10'	10'	10'	10'	10'	10'	10'	10'	10'	10'
Neighborhood	10'	10'	10'	10'	10'	10'	10'	10'	10'	10'	10'	10'	10'	10'	10'	10'
Setback	North = 10' South = 5'	North = 10' South = 5'	North = 10' South = 5'	North = 10' South = 5'	North = 10' South = 5'	North = 10' South = 5'	North = 10' South = 5'	North = 10' South = 5'	North = 10' South = 5'	North = 10' South = 5'	North = 10' South = 5'	North = 10' South = 5'	North = 10' South = 5'	North = 10' South = 5'	North = 10' South = 5'	North = 10' South = 5'

Approved Drawings - Residential

BLK LOT	10'	10'	10'	10'	10'	10'	10'	10'	10'	10'	10'	10'	10'	10'	10'	10'
CONCRETE	50% Bracing	50% Bracing	50% Bracing	50% Bracing	50% Bracing	50% Bracing	50% Bracing	50% Bracing	50% Bracing	50% Bracing	50% Bracing	50% Bracing	50% Bracing	50% Bracing	50% Bracing	50% Bracing
AREA	2,442 SF	2,442 SF	2,442 SF	2,442 SF	2,442 SF	2,442 SF	2,442 SF	2,442 SF	2,442 SF	2,442 SF	2,442 SF	2,442 SF	2,442 SF	2,442 SF	2,442 SF	2,442 SF
DATE	2/10/14	2/10/14	2/10/14	2/10/14	2/10/14	2/10/14	2/10/14	2/10/14	2/10/14	2/10/14	2/10/14	2/10/14	2/10/14	2/10/14	2/10/14	2/10/14
BY	2/10/14	2/10/14	2/10/14	2/10/14	2/10/14	2/10/14	2/10/14	2/10/14	2/10/14	2/10/14	2/10/14	2/10/14	2/10/14	2/10/14	2/10/14	2/10/14
DATE	2/10/14	2/10/14	2/10/14	2/10/14	2/10/14	2/10/14	2/10/14	2/10/14	2/10/14	2/10/14	2/10/14	2/10/14	2/10/14	2/10/14	2/10/14	2/10/14

ADDITIONAL NOTES

As the Plan Submitter you are accompanied by a Certificate of Completion by the Baxter Meadows Design Review Board

1. For Multi-Family, use 1'-4" for Block 14, orientation of the building and other which setbacks are required.
2. Corner Setbacks for BFR's shall be equal to the dimensions set forth for Front Yards.

**ACKNOWLEDGMENT FORM**

Owner acknowledges that he/she has received, read, and will abide by the Community Declaration for Baxter Meadows Master Community (the "Master Declaration"). Violations of the Master Declaration and/or addenda will be remedied by the Baxter Meadows Master Community Association whereupon the Lot/Home owner will be responsible for the cost of the remedy.

I(We) \_\_\_\_\_

Am/are the owner(s) of record of Lot \_\_\_\_\_ in Phase \_\_\_\_\_ of Baxter

Meadows Planned Unit Development. I/w have read these requirements and understand their implications. Furthermore, I (we) have been given sufficient opportunity to discuss these requirements with a member of the Baxter Meadows Design Review Board (DRB). My (Our) signature(s) below is/are evidence of my/our intent to comply with these requirements.

Signature – Lot Buyer: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Date: \_\_\_\_\_

Signature – Lot Buyer: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Date: \_\_\_\_\_

Signature – Contractor: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Date: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ FAX: \_\_\_\_\_

Email: \_\_\_\_\_



**FORM A**

**Construction Design Review Application**

LOT NUMBER, Phase \_\_\_\_\_

Owner: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Telephone \_\_\_\_\_ FAX \_\_\_\_\_

Email: \_\_\_\_\_

BUILDER: \_\_\_\_\_

Firm: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Telephone \_\_\_\_\_ FAX \_\_\_\_\_

Email: \_\_\_\_\_

ARCHITECT: \_\_\_\_\_

Firm: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Telephone \_\_\_\_\_ FAX \_\_\_\_\_

Email: \_\_\_\_\_

LANDSCAPE ARCHITECT: \_\_\_\_\_

Firm: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Telephone \_\_\_\_\_ FAX \_\_\_\_\_

Email: \_\_\_\_\_

**INFORMATION**

1) Any variances from the Baxter Meadows Code being requested under this applications?

\_\_\_\_\_ Yes \_\_\_\_\_ No

If yes, please describe the variance and reason for it:

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2) Items submitted (please check);

- Review Fee
- Acknowledgement Form
- Site Plan
- Floor Plans
- Roof Plan
- Elevations
- Landscape Concept Plan

Submitted by: \_\_\_\_\_ Date: \_\_\_\_\_

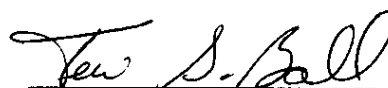
Signature: \_\_\_\_\_

**THIS IS TO CERTIFY:**

That I am the duly elected, qualified and acting President of Baxter Meadow's Master Community Association, Inc., a Montana Non-Profit Corporation, and that the above and foregoing Amendment was adopted by the Board of the Association on the 22 day of MAY, 2014, by the vote of the Board.

Executed this 22 day of MAY, 2014.

Baxter Meadows Master  
Community Association, Inc.



**Teri Ball**  
**Association President**

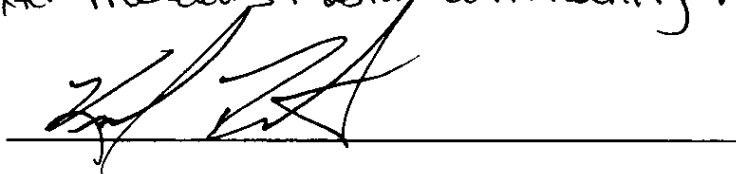
STATE OF MT )

: ss.

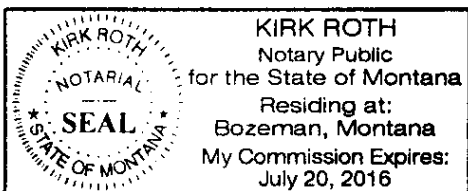
COUNTY OF Gallatin )

On this 22 day of may, 2014, before me, a Notary Public in and for said County and State personally appeared Teri Ball, the Association President, known to me to be the person described in and that executed the within and foregoing instrument and acknowledged to me that he executed the same.

\*Baxter Meadows Master Community Association



, Notary Public



Luna Properties  
40 E. Main St Suite 210  
Bozeman MT  
59715

**2522063**

Page: 1 of 25 08/19/2015 09:02:24 AM Fee: \$175.00  
Charlotte Mills - Gallatin County, MT MISC



**AMENDED DESIGN REVIEW GUIDELINES AND REGULATIONS**

**OF**

**BAXTER MEADOWS MASTER COMMUNITY ASSOCIATION**

**6.18.2015**

## **Design Review Guidelines and Regulations of Baxter Meadows Master Community Association**

These are the amended Design Review Guidelines and Regulations of the Baxter Meadows Master Community Association. These Review Regulations and Guidelines replace and supersede all previously adopted and/or file Design Regulations and guidelines of the Association.

The integration of buildings, improvements and landscape within Baxter Meadows Master Community Association (BMMCA) is essential to the success and appearance of the community. As provided in Section 8.1 of the BMMCA Declaration, any and all construction, alterations or improvements, and front yard landscaping shall be subject to advance approval by the BMMCA Design Review Board (DRB). Any deviation from approved plans shall be re-submitted to the Design Review Board for approval. Site Design Regulations serve to protect and enhance the natural landscape, stream corridors, view sheds and natural habitat.

No structures, including residences, outbuildings, accessory buildings, tennis courts, swimming pools, antennas (except as otherwise permitted in this Declaration), flag poles, fences, walls, exterior lighting, landscaping, or any other Improvements shall be constructed, erected, relocated, removed or installed on a Unit or on any lot, nor shall any painting, alteration or change to the exterior of the Improvements, the exterior of a residence, to a Unit or to any lot front yard or to any structure or any attachment to the exterior of a residence (including paint, awnings, patios, decks, or shutters) be commenced unless: complete plans and specifications shall have been first submitted to and approved in writing by the DRB ("Committee") as may be outlined in the Rules and Regulations. Additional written approval may be required by sub Architectural Review Committee administered by any Sub association.

### **I. Design Review Process**

#### **Section 1. Submission of Plans Before Construction**

No residence, fence, wall, garage, outbuilding or other structure shall be made, erected, altered or permitted to remain upon the properties until written plans and specifications showing the 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 DRB as to compliance with these Covenants, as well as appropriate City of Bozeman review, permitting and fee payment. All plans submitted to the City of Bozeman Building Division must have the Baxter Meadows Design Review Board stamp of approval.

## **Section 2. General Requirements**

Not less than ninety (90) days prior to the anticipated date of construction commencement, Applicant shall submit two copies of the required documents (See Form "A" attached) for each design review to the following:

*Deliver or mail to:*

Baxter Meadows Design Review Board (DRB)  
c/o Penny Murray  
[pennymurray@msn.com](mailto:pennymurray@msn.com)  
406-581-1832  
Bozeman, Montana 59718

Submittals must be labeled with "Baxter Meadows Design Review Board" and specific project title and address.

Upon DRB review, the owner will be notified within fifteen (15) days after the start of the review cycle date that the design has been approved, approved with stipulations or disapproved. Applications which are submitted to the DRB incomplete will be returned and may be subject to a re-submittal fee.

The reasons for approval with stipulation and disapproved will be clarified for the owner in writing and/or with drawings. If the DRB does not contact the owner within fifteen (15) days of the review commencement date, the application shall be deemed "disapproved".

An application for withdrawal may be made without prejudice, provided the request for withdrawal is made in writing to the DRB.

All variance requests pertaining to the DRB approvals must be made in writing to the DRB. Any variance granted shall be considered unique and will not set any precedent for future decisions.

If an application has been denied, or the approval is subject to conditions that the owner feels are unacceptable, the owner may request a hearing before the DRB to justify his/her position. The DRB will consider the arguments and facts presented by the owner and notify the owner of its final decision within ten (10) days of the hearing.

## **Section 3. Construction Completion**

If construction of a structure is not commenced within one year after DRB approval, a new DRB application must be submitted. No construction shall be commenced without a valid DRB approval. Any structure to be erected in accordance with an approval so given must be erected and completed within one year from the date of construction commencement. If any structure is commenced and is not completed in accordance

with the plans and specifications within one year, the Directors of the Association, at their option, may take such action as may be necessary, in their judgment, to improve the appearance so as to make the property harmonious with other properties and to comply with these Covenants, including the completion of the exterior of the combination thereof, or removing the uncompleted structure or similar operations. The amount of any expenditure made in so doing shall be an obligation of the owner. A lien on the property 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, including an injunction, or action for damages.

#### **Section 4. Inspection Procedure**

Inspections are required to ensure that construction proceeds in compliance with these covenants and the approved drawings. An inspection is required at each of three stages of construction: framing, siding, and landscaping. The owner shall request an inspection of the improvements by the DRB. Owners are responsible for scheduling an inspection accordingly: 1) when the framing is complete; 2) when siding is at a point, prior to completion, to allow the DRB to see the siding and cladding product(s) installed in their planned locations; and 3) when landscaping components (beds, plants, sod, irrigation, and trees) are installed in their planned locations.

The inspections shall only determine compliance with the covenants and approved plans. If the DRB finds the improvements were not completed in strict compliance with the covenants and approved plans, the DRB shall notify the owner of the noncompliance within seven (7) days of the inspection request and shall require remedy of the same. The owner shall have seven (7) days from the noncompliance notification to remedy the noncompliance or shall submit a work plan delineating the time frame when the noncompliance will be remedied. The DRB may allow up to forty-five (45) days for the noncompliance to be remedied if the submitted work plan provides adequate justification for the requested time.

No occupancy of the project shall take place prior to written DRB approval, as well as payment of all inspection and review fees, and any outstanding costs, unless otherwise allowed. If the noncompliance is not remedied within seven (7) days of notification and the owner does not provide a work plan within said time, or if the noncompliance is not remedied within the time frame provided in the work plan as approved by the DRB, the DRB may, at their option, remedy the noncompliance. The owner shall reimburse the DRB upon demand for all expenses incurred in connection therewith. If the owner does not promptly repay such expenses, the DRB shall levy an assessment and file a lien against such owner and the improvement in question and the land on which the same is situated for reimbursement and the same shall be enforced and/or foreclosed upon in the manner provided for by law.

No occupancy of the project shall take place prior to written DRB approval as well as payment of both inspections and any outstanding costs, unless otherwise allowed.

### **Section 5. Liability and Variances**

Neither the Association, the Declarant, the Directors, the DRB nor the individual members thereof, may be held liable to any person for any damages for any action taken pursuant to these Covenants, including but not 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.

Further, the Committee may, upon application, grant a variance from the Architectural Regulations, provided that the spirit of these Design Guidelines is complied with. The committee shall have the duty and power to make the final decision on the granting of the variance, without any liability being incurred or damages being assessed due to any decision of the Committee.

Within all sections of these Design Guidelines, when a variance is indicated that it may be granted, the variance must be requested and approved by the DRB and/or the Bozeman City Commission, as applicable, depending on whether the variance is from the Covenants or from the current City Zoning Ordinance or both.

### **Section 6. Design Review Procedure**

#### **Step 1: Construction Design Review**

In addition to verifying the required setbacks, this review checks the designs for correct interpretation of the Architectural Regulations, checks the construction documents for compliance with the DRB and verifies that the previous DRB recommendations have been incorporated. Conformity to applicable local regulations and building codes, as well as obtaining appropriate permits is the responsibility of the architect and/or builder.

#### **Forms Required**

Acknowledgement Form

Form A – Construction Design Review Application

Review Fee: Design/Review fee to be determined by the DRB and to be consistent with all phases. Incomplete applications which are returned to Applicant may be subject to a \$100 re-submittal fee. Fees are based on each individual property.

#### **Minimum Drawings Required:**



Site Plan (1/8" = 1'-0" scale or larger) showing:

- North arrow
- Property lines and setback lines with dimensions.
- Building footprints with entry area delineated and overhangs shown as dashed lines.
- Garden walls, fence lines, location, height and material quality of retaining walls.
- Water, electric and sewer service.
- Grading plan.
- Location of streets.
- Location, dimensions and materials for walks and drives.
- Limits of construction activity (no construction, traffic or storage of materials will be permitted beyond these limits).
- Exterior light locations and type.
- Location of external equipment (electric meter, location of waste bins, etc.)

Floor Plans (1/4" = 1'-0") showing:

- Foundation plan dimensioned.
- Room use labeled and rooms dimensioned.
- Walls, window and door openings dimensioned.
- Exterior walls dimensioned.
- All overhangs of floors and roofs as dashed lines.
- Gross square footage.

Elevations & Sections showing:

- Each elevation at 1/4" = 1'-0" with colors rendered of fronting street elevation.

Landscape Plan:

- Including plant listing (name, planting and mature sizes) and their respective locations.

Material Samples:

- As requested by DRB.
- Siding and trim sample with actual color applied.

### Step 2: Construction Commencement

Construction may not commence without the approval of the City of Bozeman Building Division, necessary permits obtained and fees collected. A copy of Form A – Construction Design Review Application bearing the DRB approval letter must accompany City of Bozeman building permit applications.

The DRB reserves the right to inspect in the field for compliance during any stage of construction. The DRB is empowered to enforce its policy as set forth in the Baxter Meadows Master Community Declaration by any action, in law or equity, to ensure compliance.

## **II. Topography and Features**

1. Response to Character of Land Form:

Development Areas shall be designated upon all new sites in order to assure that each building site responds to the existing topography, tree masses and adjacent properties. All site plans must indicate surface drainage patterns.

2. Relationship to Open Space: Estate Homes

Buildings shall be located in a manner that preserves the character of the open space within the community. When an entirely open site is developed, buildings shall be organized in a cluster that diminishes the scale and impact of the building in the landscape. In addition, indigenous landscape materials shall be introduced to minimize the exposure of the building. Manicured lawns shall be separated from the established native vegetation with landscape materials.

3. Stream Corridor Protection

All buildings and improvements shall maintain a minimum setback of 50 feet from the annual high water line of all streams, rivers, creeks and water courses within all development districts of Baxter Meadows. Uses within the stream setback shall be limited to planting of native riparian vegetation, maintenance of existing non-native vegetation, and the control and maintenance of noxious weeds. The removal of existing native vegetation within the stream shed protection area is not permitted.

### III. Improvements

1. Driveways & Parking

Site access when entered from the street, shall be perpendicular to the street. Parking areas and garage doors shall not be the primary visual element of any residence. Landscaping materials shall be used to diminish the impact of the entry to the garage. All parking shall be within the lot boundary, off public and private rights-of-way. No driveway or access shall be allowed to encroach into the side yard setbacks other than those on shared driveway easements filed of record.

The construction and maintenance of all driveways and culverts shall be the responsibility of the owner. Driveways and parking areas shall be crowned and sloped for adequate drainage and safety.

Driveway and parking surfaces shall be constructed of concrete paving units, stone, cobbles, asphalt or concrete. Any other material shall be approved by the BMMCA DRB. Materials shall restrict weed growth and maintain a clearly defined edge between the landscaped area and the driveway surface. Materials shall withstand deterioration

from winter snow plowing and erosion.

Driveways shall be limited in width to 14 feet minimum and 16 feet maximum at the intersecting street. Drives can be expanded to 24 feet at turn-around areas and parking structures. Maximum driveway grades shall not exceed 1:20 for the first 20 feet from the roadway, and shall not exceed 1:10 slope beyond.

2. Privacy Screens and Retaining Walls

Privacy screens may be used in conjunction with a hot tub or sunning deck. The screening shall be consistent with the overall design, construction and materials of the existing building. Privacy screens shall not be taller than the edge of the roof eaves, and shall not be longer than 16 feet in uninterrupted length.

Retaining walls shall be an integral part of the overall design of the site and building. Retaining walls shall not be greater than 4 feet in height, or 24 feet in uninterrupted length. Retaining walls can also be used as a screening device to obscure service areas such as the view of a driveway from the main road. Retaining walls shall be constructed of wood, stone, or approved masonry products, and shall blend into the contour of the existing landscape.

Utility boxes and pedestals owned by utility providers shall not be screened or buffered so as to inhibit access and/or function to such above-grade utility systems.

3. Walkways, Paths and Trails

Walkways, paths and trails introduce places for pedestrians within the built and natural environment. The size and character of such paths shall respond to the surrounding buildings and site in the form of material, scale and configuration. Paving units, stone, textured or exposed aggregate concrete and wood shall be the only acceptable materials. Detailed drawings of paths shall be required as a part of the Final Plan review requirements.

## **IV. Utilities and Site Details**

1. Utilities

All utilities (natural gas, electric, telephone and television cable) shall be installed underground. No antenna or satellite dish shall be installed on any structure, lot or unit so that it is visible from any street. 18" satellite dishes shall not be required to be screened from adjacent lots. Larger satellite dishes are not permitted.

Meters shall be placed in a location so as to be accessible to the meter reader and yet not visible from adjoining roadways. All conduit wires servicing the meter shall be beneath the exterior wall sheathing or enclosed. Meters, transformers and other

utility boxes shall be concealed with landscaping.

2. Radon

Radon gas is a hazard found in all soil types throughout the country, and shall be anticipated in Baxter Meadows. The owner and architect shall contract an EPA certified installer who shall be responsible for introducing mitigation measures into the design of the building, conducting appropriate tests for radon, and activating the system if necessary.

3. Wood Storage

Firewood shall be stored outdoors shall be stacked in an enclosed area, such as a garage, covered porch, or structure designed for the storage of wood, so as to be invisible to neighboring owners and the street frontage. Such structures shall be architecturally compatible with the material and color of the primary structure, and shall be integrated into the design of the building.

4. Garbage and Refuse Disposal

Trash, garbage and other waste shall not be kept except in sanitary containers. All equipment, garbage cans, wood piles, compost piles or storage piles shall be screened or concealed from view of other dwellings and Common Areas. Sanitary containers may be placed on the street curb for collection only on collection days.

## V. Landscape Controls

All landscaping must be completed within one year of receiving certificate of occupancy.

1. Definitions

Caliper – The diameter of the trunk measured six inches above ground level up to and including four inch caliper size, and measured twelve inches above ground level if the measurement taken at six inches above ground level exceeds four inches. If a tree is of a multi-trunk variety, the caliper of the tree is the average caliper of all of its trunks.

Corner Lot – A lot located adjacent to two public streets where those two streets intersect at a perpendicular angle.

Mulched Bed – An area within a yard with no turf and 3" minimum depth landscape mulch. Landscape mulches include but are not limited to river rock (type) or landscape bark (i.e., shredded cedar) (type) etc., separated or contained by appropriate edging material (aluminum, metal, or similar).

Yard – A space on the same lot with a principal building, which is open and unoccupied from the ground upward or from the ground downward other than by steps, walks, terraces, driveways, lamp posts and similar structures, and unobstructed by structures.

Yard: Front – A yard extending across the full width of the lot between two side lot lines the depth of which is the least distance between the street right-of-way and the front

building line.

Yard: Rear – A yard extending across the full width of the lot between the two side lot lines and between the rear line and a parallel line tangent to the rear of the principal building and the depth of which is the least distance between the rear lot line and the parallel line.

Yard: Side – A yard extending between the front building line and the rear building line, the width of which is the least distance between the side lot line and the nearest part of the principal building.

## 2. Installation

Street Trees – Builder shall install boulevard trees per City of Bozeman boulevard tree guidelines.

Sodding – Sodding of front yards shall be the responsibility of the builder. On any yards where sodding has not been provided by the builder, the homeowners are responsible for sodding or seeding within one year of property purchase.

Mulched Beds – Front yards will be installed with 4-8 shrubs within a mulched bed and shall be the responsibility of the builder. In addition, each home will have a meandering 18-24" min. wide mulched bed around its perimeter in the rear and side yards to reduce water and mowing damage to the architectural siding.

Trees – Trees installed by homeowner are to be planted within property lines. Prior to planting a utility line locator service must locate utility lines. Refer to city guidelines regarding trees planted in the boulevard.

Trees must not be planted in front yards where they may conflict with utility lines.

The minimum required installation shall be three small shade trees of 1-2" caliper or one 5' high conifer (evergreen). Recommended species include: Ash (*Fraxinus*), Honey Locust (*Gleditsia Triacanthos*), Linden (*Tilia*), Locust (*Robinia Pseudo acacia*), Maple (*Acer*), Mountain Ash (*Sorbus Aucuparia*), Oak (*Quercus*), Walnut (*Juglans Nigra*). Installation shall be the responsibility of the builder.

The required installation of a shade tree within 18 months of purchasing property in Baxter Meadows may be substituted for one non-canopy tree (evergreen/conifer). The non-canopy tree must have a minimum height of 5'. Heights are measured from the top of the root ball to the plants highest point. Trees installed by homeowners may be planted in front, side or rear yards as long as they are not in conflict with the utility lines and are on the owner's property.

Fencing – Any fences installed at the option of an owner shall be no taller than six feet and shall be constructed of wood only. Panel fencing shall have the "dog-eared" panels. All owners shall have a locator service locate utility lines prior to digging. Fencing other than that described above must be approved by the Design Review Board prior to installation. Temporary fencing will be approved on a case by case basis.

3. Maintenance

Every homeowner shall be responsible for the care of his or her entire lot excluding only the street right-of-way. Maintenance includes lawn care, irrigation and weed control. Mulched beds shall be weed controlled by a consistent spray regime or manual weeding. Pesticides, herbicides, fertilizers, etc., if used shall be applied in strict accordance with the manufacturer's instructions and all applicable laws in accordance with USDA and the EPA.

Every homeowner shall be responsible for the care of his or her lot excluding areas maintained by the BMMCA or a Sub Association.

4. Irrigation Installation and Maintenance

An irrigation system is required. The builder shall be responsible for the installation of irrigation systems within the areas described below. Landscaping plans (including the proposed irrigation equipment to be installed) must be provided to the BMMCA DRB for approval prior to installation. On homes that are irrigated from the BMMCA or any Sub Association system, a list of compatible equipment will be required for installation to ensure proper watering.

The builder shall install separately metered irrigation systems which are controlled by each individual owner. At a minimum, builder shall install front yard piping, heads, and a controller with sufficient capacity for the owner to install an irrigation system in the rear yard. Every homeowner shall be responsible for the maintenance of their entire system excluding only the right-of-way.

## VI. BUILDING FORM REGULATIONS

The intent of the following building design regulations is to develop architectural unity within the districts of Baxter Meadows while allowing for the vitality of individual expression.

A. Building Height

Residential Buildings - Building heights within all residential areas of the BMMCA shall be limited to a maximum of 38 feet. Building height shall be measured from the highest ridge to the adjacent grade. The maximum building height shall never exceed that stipulated and governed by the City of Bozeman. With the approval of the DRB, chimneys, cupolas and other rooftop architectural features may exceed the given maximum height limitations by no more than four feet.

On complex buildings with multiple heights, the building height shall be determined by calculating the highest ridge line of the building, and measuring to the average of the highest and lowest finished grade. The final elevation of the finished surface materials, whether soil, paving, or decking shall be indicated as the finished grade, and shall be shown on the Architect's drawings.

## B. Roof Form

The architecture within Baxter Meadows shall complement and respond to the natural qualities of Bozeman. The consistency and compatibility of roof shapes, pitches and materials will contribute significantly to the continuity of the character of Baxter Meadows. The following design regulations have been developed to allow for distinct building forms while addressing the character of the entire community. Exterior walls shall not exceed 40 feet in length without a change of orientation such as the introduction of dormers, projected bays, or recesses greater than two feet. When refining roof forms consideration shall also be given to the prevention of excessive snow build-up and snow shedding.

### 1. Shape and Pitch

When examining roof shapes and pitches for buildings within Baxter Meadows, designers should consider the simple shapes and pitches of buildings found within traditional neighborhoods. Gable, hip, and modified hip roofs shall be the only acceptable roof forms. Shed roofs shall not be major roof forms. Mansard roofs, pseudo-mansard roofs, curvilinear roofs, and A-frame roofs shall not be allowed for any roof form.

Variation in orientation of the dominant roof form is essential to the successful design of large buildings. Dominant roof forms shall not exceed 40 feet in length without a change in orientation or introduction of dormers.

Within all Development Areas, roof slopes shall be a minimum of 6:12 and a maximum of 12:12. Secondary roofs may be gable, shed, hip, and modified hip roofs with pitches not less than 4:12 when attached to major building forms. Such roof forms shall be integral to the building or roof form.

Roof protrusions other than chimneys and plumbing vent stacks shall not be located on any roof facing the front or street side of the building.

The BMMCA DRB retains the right to waive the minimum or maximum roof pitch requirement when, in its sole judgment, a lower or steep roof pitch is more appropriate for the design of a building, and does not compromise the integrity of the development district. This privilege may be exercised by the DRB without relinquishing its right to enforce the minimum or maximum requirements on other projects.

### 2. Entry Definition, Overhangs and Fascia

Snow in the Bozeman area often builds up on roof surfaces and slides off at irregular intervals. Such slides can damage property, decks, balconies and even injure people. No roof without adequate protection from snow slides shall slope toward driveways, sidewalks, porches, decks, balconies or any other areas that may be damaged or cause injury through the shedding of snow or ice from the roof.

Entrances shall be specifically expressed and protected with adequate overhangs. All roofs shall have overhangs of at least 16 inches. All fascia materials shall be a minimum of 6 inches.

### 3. Dormers and Secondary Roofs

Dormers and secondary roofs are often necessary to add interest and scale to major roof areas and to make habitable use of the attic space within the roof. Dormers and secondary roofs shall be gable, shed, hip, and modified hip roofs and may be stacked in multiple forms.

### 4. Skylights and Solar Collectors

When designing the location of skylights, consideration shall be given to both the interior and exterior appearance of the unit. Locations shall also be coordinated with window or door locations. Skylights shall be located away from valleys, ridges and all other areas where drifting snow may hinder the performance and safety of the unit. Skylights shall be of high quality, insulated, double pane construction. Roof skylights shall be flat in profile; bubble and dome style skylights shall not be permitted.

Solar collectors shall be integrated into the overall roof design, and shall be placed flush with the slope of the roof or wall of the building. All solar collectors shall be screen or concealed from view of other dwellings and Common Areas.

### 5. Chimney Composition Proportion and Materials

Chimneys, flues and vents can be used to create visual contrast to the dominant roof forms of the buildings within Baxter Meadows. All flues shall be enclosed with a chimney cap and fitted with a spark arrestor. No exposed metal or clay flues shall be allowed. All chimney forms shall relate to the overall building and shall be covered with stone, stucco or wood siding materials to match exterior finishes of the building.

Building vents and flues for such functions as ventilation and exhaust shall be consolidated into enclosures wherever possible, and shall typically be concealed from public view. Place roof penetrations on the rear side of the house whenever possible. All exposed metal shall be painted in a color compatible with the color scheme of the house. Attic openings, soffit vents, foundation louvers, or other direct openings in outside walls, overhangs or roofs shall be covered with non-combustible, corrosion-resistant metal mesh.

### 6. Exterior Wall Form

Exterior wall surfaces shall be no longer than 40 feet in length without the introduction of a minimum 4-foot recess, 4-foot projection or change in orientation. Two story exterior wall forms shall be interrupted by minor roof forms.

Foundation walls shall be exposed a maximum of eighteen inches (18") above the



ground. On sloping grades, siding shall remain at least 1'-0" above grade, and the upper edge of the water table shall remain level, stepping down the slope in increments of 4' or less. See above. Concrete foundations exposed more than eighteen inches (18") above grade must have an architectural finish (texture, pattern and/or color).

## **VII. MATERIALS AND DETAIL REGULATIONS**

When choosing materials for buildings in Baxter Meadows, architects should select materials of an appropriate quality and durability in an often harsh northern environment. Synthetic and composite materials which conserve valuable wood resources should be considered whenever a building owner is contemplating opaque finishes or high maintenance areas. The use of materials and colors for all structures in the development districts shall blend into the surrounding site.

The following are the only allowable materials in Baxter Meadows:

### **A. Roof Materials**

Durable roof materials capable of withstanding the freeze thaw cycle of the environment are required. Cold roof systems with adequate ventilation and insulation are recommended. **All roof materials shall carry a Class A or B rating.**

The following are the only acceptable roof materials:

- Treated wood shakes or shingles
- Synthetic shakes and shingles
- Natural and synthetic slate shingles
- Asphalt random tab shingles
- Pre-finished metal roofing
- Other similar materials, as allowed by the DRB
- All roof flashing vents, hoods, and roof accessories shall be copper or pre-finished metal that blends with the color of the roof material selected.

### **B. Exterior Wall Materials**

The character of the building exterior shall be kept simple in order to harmonize and compliment the surrounding environment of the site. Natural materials and subdued colors shall be used on the main body of the building. Exterior trim can be more colorful and may contrast with the main body in order to add visual interest to the predominant neutral tones.

Full scale samples of all exterior building materials, including window samples are required in the Final Plan Review.

The DRB shall consider materials not listed below that maintain the aesthetic continuity of

Baxter Meadows, including pre-finished composite wood products and synthetic siding materials.

1. Stonework

Rock shall be natural or synthetic stone materials. Dry stack settings with minimal exposed mortar are preferred. Stonework shall not be applied to individual wall surfaces in order to avoid a veneer-like appearance and shall continue around corners to an inside corner. Detailed drawings of all exterior stonework shall be required as a part of the final plan submittal.

2. Concrete/Stucco

Exposed concrete foundation walls between ground level and exterior wall siding shall be a maximum of 8 inches. Foundation exposure over 8 inches shall be finished with synthetic textured stucco (stained a subdued color in harmony with the building), stone, or treated wood.

3. Wood and Wood Product Siding

Smooth or rough sawn wood siding and approved composite wood products shall be the only acceptable exterior wood sheathing materials. All wood siding shall be painted or stained with an opaque stain. Other wood product siding will be considered by the DRB on a case by case basis.

4. Shingles

Natural and synthetic shingles shall be used only as accent or detail materials within the composition of exterior finishes. Shingle shall not be the dominant exterior material on any building.

5. Natural Log

Natural log materials shall be milled or assembled with irregular lengths and diameters. Prefabricated log homes, including prefabricated kit homes of any type, shall not be allowed.

6. Color Schemes

The color palette of the body of the house shall be from white, cream, earth tones or as approved by the DRB based on color scheme merit or historical precedent. All trim, frames, doors, and windows shall be in a compatible accent color.

Color schemes must be varied from the two adjacent properties, in each direction. Attached dwelling units exempted from each.

Exterior color schemes through Baxter Meadows shall emphasize the natural tones of the surrounding natural environment and those of a traditional neighborhood development. Large exterior wall surfaces shall be painted or stained with natural tones. Trim and other accenting details of the building may be of a brighter intensity and contrasting color scheme. Color schemes shall emphasize the contrast between basic wall surfaces and accented details. All exterior color schemes shall be reviewed by the DRB as a part of the Plan Review process.

Natural material and subdued colors shall be used on the main body of the building. Exterior trim can be more colorful and may contrast with the main body in order to add visual interest to the predominant neutral tones.

7. Siding

Siding shall be run horizontally or vertically, but not at other angles to horizontal.

8. Masonry Stonework

Stonework shall be natural or approved synthetic stone materials. Dry stack, uncoursed settings with minimal exposed mortar are preferred. Stonework shall not be applied to individual wall surfaces in order to avoid a veneer-like appearance. It shall continue around corners to an inside corner.

**C. Exterior Windows and Doors**

1. Scale, Composition and Proportion

Windows and doors shall be of a consistent size, shape and orientation throughout a given building. Windows and door patterns and reveals shall be carefully studied to create interest and variety.

Large scale windows and doors shall be recessed or trimmed a minimum of 6 inches in exterior wall surfaces. Uninterrupted bands of windows and doors shall not be allowed in any building. Window and door locations shall be carefully considered to avoid being obscured by accumulating snow.

2. Solar Orientation and Exposure

The design and location of exterior windows shall respond to the solar orientation of the building. The following energy considerations shall be addressed in the building design:

- Double or triple glazing
- Neutral density gray solar tinting
- Openings caulked around windows and doors
- Weather-stripping
- Storm windows
- Entry vestibules

3. Materials

Windows and doors shall be constructed of natural, stained or painted wood, or prefinished aluminum, enamel or vinyl cladding. All glazing shall be framed in walls of stone, stucco or wood. Glass curtain walls shall not be approved in any circumstance. Mirrored glass shall not be used.

Glass storm panels, set within window sash, may be used within divided-light windows, provided

that the storm panel is installed on the interior side of the window. Divided light glass must be authentic appearing.

#### 4. Garage Doors

Garage doors shall not be oriented toward the street, and shall be de-emphasized in the elevation of the building and screened. Garage doors are to be specifically subdued by recess or other design which results in garage being subordinate to the principal façade. Garage doors should be the same color as the building, and shall not be lighter in color than the building. It is encouraged that all garage doors be separated for each vehicles. Single, double-width (14' or larger) garage doors will be considered, however they must be detailed to appear separated for each vehicle.

### **D. Decks, Balconies, Terraces, and Porches**

#### 1. Design

Decks, balconies, terraces and porches shall be designed to enhance the overall architecture of the building by creating variety and detail on exterior elevations. Covered decks, projecting balconies and bay windows shall be integrated with, rather than randomly placed throughout, the building. Terraces shall be used to integrate the building and landscape by creating a transition between the built and natural character of the site. No deck, balcony or porch shall be used for the storage of any items except normal furniture. No exterior carpeting may be used if it is visible from any neighboring lot or the street. All railings shall be wood or approved wood-like material finished to be compatible with the color scheme of the house.

#### 2. Material

Low level decks shall be skirted to grade, while providing proper ventilation and access. Decks which are not practical to skirt shall be designed to assure that the underside of the deck is integrated with the design of the building. Exposed metal joist hangers shall not be visible. Posts shall be a minimum of eight inches square, and shall be paired together to diminish a thin visual appearance. The dimensions of two-story columns shall be increased to account for the great height. Materials and colors shall be consistent with the building and surrounding landscape. Front porches are intended to be open to allow for interaction with the street. Screened-in porches and glazing are not permitted. Porch supports shall be built of stone, masonry, concrete, or wood. Column base piers shall be not less than 16" x 16" square and wood columns shall be no less than 8" square. No exterior carpeting may be used if it is visible from any neighboring lot or the street.

### **E. Night Sky Requirements**

The major street intersections on Baxter Lane must be illuminated with lights that meet the City's standard requirements. In addition, all outdoor lighting (residential, commercial or otherwise) shall be free of glare, and shall be fully shielded or shall be indirect lighting. No lighting shall be beyond a property's lot line. No ranch lights or unshielded lights shall be

permitted. No mercury vapor lights shall be permitted. For purposes of this paragraph, the following definitions shall apply:

- a) Fully-shielded lights: Outdoor 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 test expert.
- b) Indirect light: Direct light that has been reflected or has scattered off of other surfaces.
- c) Glare: Light emitting from luminaries with intensity great enough to reduce a viewer's ability to see, and in extreme cases, causing momentary blindness.
- d) Outdoor lighting: The nighttime illumination of an outside area or object by any manmade device located outdoors that produces light by any means.

### **VIII. Central Community Architectural Guidelines**

In addition to the *Design Guidelines and Regulations of Baxter Meadows Master Community Association* the following guidelines also apply:

1. **Fences** -- Fences shall be made of wood. Lot owners are reminded that fences shall not exceed four feet in height along parks and open space. City of Bozeman fence regulations also apply and can be found on-line at [www.bozeman.net](http://www.bozeman.net) or by calling the Planning Department at (406)582-2260.
2. **Landscaping**
  - a) Each homeowner shall be responsible for the installation of one 1.5" minimum caliper shade tree within 18 months of purchasing property in Baxter Meadows. Recommended species include: ash, honeylocust, linden, locust, maple mountain ash, oak, and walnut. Trees installed by homeowner are to be planted within property lines. Exceptions may be granted with conflicts with utility lines prevent planting.
  - b) For Bungalow and Village Lots identified in the attached tables.
    - Master Design Guidelines, V. Landscape Controls, Section 2, "Trees", paragraph 3, "the minimum required installation..." does not apply.
    - Up to 3 trees can be planted within front yards. Owner is responsible to have utility lines located.
    - Trees planted outside of the front yard area shall be located in the rear yard or within a mulched bed.
  - c) Traditional Style homes -- trees may be planted in front, side or rear yards as long as they are not in conflict with the utility lines and are on the owner's property.

Lot owners are reminded not to plant trees within 10 feet of water or sewer service lines.

### **3. Setbacks (see tables below)**

**Baxter Meadows Phase 6**

<u>Lot &amp; Block:</u>	<u>Front Yard Setback:</u>	<u>Rear Yard Setback:</u>	<u>Side Yard Setback:</u>	<u>Max Lot Coverage:</u>	<u>Min. Lot Area:</u>	<u>Min. Lot Width:</u>
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**Block 14: (no relaxations)**

Lot 5:	7	10	5	100% of B.E.	-	-
Lot 6:	7	10	5	100% of B.E.	-	-

**Block 15 - Village Lots**

Lot 1:	10	5	10-N; 5-S	55%	4800	40
Lot 2:	10	5	5	55%	4800	40
Lot 3:	10	5	5	55%	4800	40
Lot 4:	10	5	5	55%	4800	40
Lot 5:	10	5	5	55%	4800	40
Lot 6:	10	5	5	55%	4800	40
Lot 7:	10	5	5	55%	4800	40
Lot 8:	10	5	5	55%	4800	40
Lot 9:	10	5	5	55%	4800	40
Lot 10:	10	5	10-S; 5-N	55%	4800	40
Lot 11:	10	2	10-N; 5-S	55%	4800	40
Lot 12:	10	2	5	55%	4800	40
Lot 13:	10	2	5	55%	4800	40
Lot 14:	10	2	5	55%	4800	40
Lot 15:	10	2	5	55%	4800	40
Lot 16:	10	2	5	55%	4800	40
Lot 17:	10	2	5	55%	4800	40
Lot 18:	10	2	5	55%	4800	40
Lot 19:	10	2	5	55%	4800	40
Lot 20:	10	2	10-S; 5-N	55%	4800	40

**Baxter Meadows Phase 6 cont.**

<u>Lot &amp; Block:</u>	<u>Front Yard Setback:</u>	<u>Rear Yard Setback:</u>	<u>Side Yard Setback:</u>	<u>Max Lot Coverage:</u>	<u>Min. Lot Area:</u>	<u>Min. Lot Width:</u>	<u>Max. Lot Area:</u>	<u>Max. House Sq. Footage:</u>
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**Block 16 - Bungalow Lots**

Lot 1:	10	2	10-W; 5-E	52%	2432	40		
Lot 2*:	10	2	5	52%	2432	40	3384	1575
Lot 3*:	10	2	5	52%	2432	40	3384	1575
Lot 4*:	10	2	5	52%	2432	40	3384	1575
Lot 5:	10	2	10-N; 5-S	52%	2432	40		
Lot 6*:	10	2	5	52%	2432	40	3384	1575
Lot 7*:	10	2	5	52%	2432	40	3384	1575
Lot 8*:	10	2	5	52%	2432	40	3384	1575
Lot 9*:	10	2	5	52%	2432	40	3384	1575
Lot 10:	10	2	5	52%	2432	40		
Lot 11*:	10	2	5	52%	2432	40	3384	1575
Lot 12*:	10	2	5	52%	2432	40	3384	1575
Lot 13:	10	2	10-S; 5-N	52%	2432	40		
Lot 14*:	10	2	5	52%	2432	40	3384	1575
Lot 15*:	10	2	5	52%	2432	40	3384	1575
Lot 16*:	10	2	5	52%	2432	40	3384	1575
Lot 17:	10	2	10-W; 5-E	52%	2432	40		
Lot 18:	10	5	5	52%	2432	40		
Lot 19:	10	5	5	52%	2432	40		
Lot 20*:	10	5	5	52%	2432	40	3384	1575
Lot 21*:	10	5	5	52%	2432	40	3384	1575
Lot 22*:	10	5	5	52%	2432	40	3384	1575
Lot 23:	10	5	5	52%	2432	40		
Lot 24*:	10	5	5	52%	2432	40	3384	1575
Lot 25*:	10	5	5	52%	2432	40	3384	1575
Lot 26:	10	5	5	52%	2432	40		
Lot 27:	10	5	5	52%	2432	40		
Lot 28:	10	5	5	52%	2432	40		





**ACKNOWLEDGMENT FORM**

Owner acknowledges that he/she has received, read, and will abide by the Community Declaration for Baxter Meadows Master Community (the "Master Declaration"). Violations of the Master Declaration and/or addenda will be remedied by the Baxter Meadows Master Community Association whereupon the Lot/Home owner will be responsible for the cost of the remedy.

I(We) \_\_\_\_\_

Am/are the owner(s) of record of Lot \_\_\_\_\_ in Phase \_\_\_\_\_ of Baxter

Meadows Planned Unit Development. I/w have read these requirements and understand their implications. Furthermore, I (we) have been given sufficient opportunity to discuss these requirements with a member of the Baxter Meadows Design Review Board (DRB). My (Our) signature(s) below is/are evidence of my/our intent to comply with these requirements.

Signature – Lot Buyer: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Date: \_\_\_\_\_

Signature – Lot Buyer: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Date: \_\_\_\_\_

Signature – Contractor: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Date: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ FAX: \_\_\_\_\_

Email: \_\_\_\_\_

**FORM A**

**Construction Design Review Application**

LOT NUMBER, Phase \_\_\_\_\_

Owner: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Telephone \_\_\_\_\_ FAX \_\_\_\_\_

Email: \_\_\_\_\_

BUILDER: \_\_\_\_\_

Firm: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Telephone \_\_\_\_\_ FAX \_\_\_\_\_

Email: \_\_\_\_\_

ARCHITECT: \_\_\_\_\_

Firm: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Telephone \_\_\_\_\_ FAX \_\_\_\_\_

Email: \_\_\_\_\_

LANDSCAPE ARCHITECT: \_\_\_\_\_

Firm: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Telephone \_\_\_\_\_ FAX \_\_\_\_\_

Email: \_\_\_\_\_

INFORMATION

1) Any variances from the Baxter Meadows Code being requested under this applications?

\_\_\_\_\_ Yes \_\_\_\_\_ No

If yes, please describe the variance and reason for it:

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2) Items submitted (please check);

- Review Fee
- Acknowledgement Form
- Site Plan
- Floor Plans
- Roof Plan
- Elevations
- Landscape Concept Plan

Submitted by: \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_

This is to certify:

That I am the duly elected, qualified and acting President of Baxter Meadow's Master Community Association, a Montana Non-Profit Corporation, and that the above and foregoing design guidelines were adopted by the board of the Association on \_\_\_ day of \_\_\_, 20\_\_\_, by a vote of the board.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2015  
Board of Directors  
Baxter Meadows Master Community Association

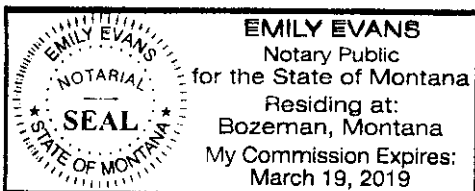
Celia Christensen  
Board President-Celia Christensen

State of MONTANA

County of GALLATIN

Signed or attested before me on (date) 8/7/15 by (name(s) of person(s)) Celia Christensen President of Baxter Meadows Master Community Association.

(Seal)



Emily Evans  
Notary Officer-Printed Name

[Signature]  
Notary Office-Signature

Notary Public  
Title

Bozeman MT  
Residing At

My Commission Expires: 3/19/2019

**2544175**

Page: 1 of 20 05/03/2016 03:47:36 PM Fee: \$140.00  
Charlotte Mills - Gallatin County, MT MISC



AMENDED COMMUNITY DECLARATION  
FOR  
BAXTER MEADOWS MASTER ASSOCIATION

**AMENDED COMMUNITY DECLARATION FOR BAXTER MEADOWS MASTER COMMUNITY**

**THIS AMENDED COMMUNITY DECLARATION FOR BAXTER MEADOWS MASTER COMMUNITY, ("Community Declaration") is made on the date hereinafter set forth by the Owners of the Baxter Meadows Master Community Association (Community Association) pursuant to Section 10.8 of the Original Covenants do hereby amend the Covenants as follows:**

***RECITALS***

A. The Community Association desires to amend the Master Planned Community on the Real Property under the initial name of "Baxter Meadows Master Planned Community," in which portions of the Real Property described in Exhibit A will be designated for separate ownership, with allowed diverse mixed uses, including residential uses, office uses, retail uses, light industrial and related uses, commercial uses, employment uses, education uses and public and private open space uses.

B. The Community Association, by amending this Community Declaration, desires:

(i) to allow for and encourage the purposes of the development, including residential uses, office uses, retail uses, light industrial and related uses, commercial uses, employment uses, education uses and public and private open space uses;

(ii) to allow for and encourage diversity of residential housing and mixed uses within the Community;

(iii) to further promote the welfare of the community and its residents, occupants, tenants and guests;

(iv) to provide for the maintenance, repair, improvement and replacement of the Common Elements and to provide services as set forth in this Community Declaration and various budgets of the Community Association;

(v) to provide for the implementation of the powers and duties of the Board as set forth in this Community Declaration and the other Governing Documents of the Community; and

(vi) to implement the purposes of the Community Association as provided for in this Community Declaration and as provided for in any of the other Governing Documents of the Community.

G. The Community Association desires to provide for the development of the Project Area to achieve these stated general purposes, and to allow the Community to undertake and continue these stated purposes as integral and fundamental aspects of the Community.

H. "Baxter Meadows Master Community Association," a Montana nonprofit corporation, is incorporated under the laws of the State of Montana, as a master owners' association, for the purpose of exercising the functions set forth in this Community Declaration.

I. The Community Association wishes to fully amend all Covenants governing the Baxter Meadows Master Association previously adopted. The intent is for these Amended Covenants to fully amend and supersede in full all previous Covenants including but not limited to the following:

Community Declaration for Baxter Meadows Master Community, Doc. No. 2202825, filed on September 22, 2005 in the Gallatin County Clerk and Recorder's Office.

J. The necessary number of the Members desire to amend the existing Covenants, have voted to approve this amendment per the terms of the prior Covenants in effect at the time the vote was taken, and the President has executed this instrument and it shall supersede and replace the original and all other Covenants previously adopted governing the Baxter Meadows Master Association, and all guidelines or written interpretations governing the Baxter Meadows Master Association prior to this amendment.

K. The undersigned do hereby establish, dedicate, declare, publish, and impose upon the Real Property, the following protective and restrictive Covenants, as amended, which shall run with the land and shall be binding upon and be for the benefit of all persons claiming the Subdivision Lots, their grantors, legal representatives, heirs, successors, and assigns, and shall be for the purpose of maintaining the value, character, architectural design, use and development of the Lots. The amended Covenants shall apply to the entire Subdivision Lots, and all Lot Alterations placed or erected thereon, unless otherwise specifically accepted as herein mentioned. The Covenants shall be binding to and pass with each and every parcel, tract, Lot, or division of the property described above. The Amended Covenants are as follows:

ARTICLE 1 SUBMISSION/DEFINED TERMSSection 1.1 Real Property in the Community Declaration.

The real property described in Exhibit A is bound to the terms and conditions of this Community Declaration. ("Real Property") This Community is not subject to M.C.A. 70-23-101.

Section 1.2 Purpose and Intent.

This Community Declaration is made for the purposes set forth in the recitals of this Community Declaration. This Community Declaration establishes a general plan for the development of the Community. This Community Declaration is intended to and provides a flexible and reasonable procedure for the future expansion of the Community and provides for its overall development, administration, maintenance and preservation. An integral part of the development plan is the creation and operation of the Community Association to own, operate and maintain various Common Elements and community improvements, and to administer and enforce this Community Declaration and the other Governing Documents referenced in this Community Declaration.

Section 1.3 Binding Effect.

The Community Association hereby declares that all of the Real Property shall be held, sold, and conveyed subject to the easements, restrictions, covenants and conditions of this Community Declaration except such portions of the Real Property as are a part of or are subsequently dedicated as right-of-way, public street, road or highway or dedicated as and used as a public park. Portions of Real Property once subject to this Community Declaration that become exempt upon dedication as a right-of-way, public street, road or highway, or dedicated as and used as a public park, shall, upon vacation of all or any part of the dedication, then again be subject to this Community Declaration, to the extent of such vacation. Declarant declares that this Community Declaration shall run with the Real Property and shall be binding on all parties having any right, title or interest in the Real Property or any part thereof, their heirs, legal representatives, successors, and assigns and shall inure to the benefit of each Owner thereof.

Section 1.4 Name and Type.

The type of Community is a Master, Planned Community. The Community may be located both in the City and/or in Gallatin County, State of Montana. The name of the Community is "Baxter Meadows Master Community."

Section 1.5 Governing Documents.

The Community's Governing Documents consist of the following, as they may be amended: (a) Articles; (b) Bylaws; (c) Community Declaration; (d) plats, maps (as those terms are defined in this Community Declaration) and deeds, as appropriate; (e) Supplemental Declarations; (f) Rules and Regulations; and (g) Board Resolutions.

Portions of the Real Property within the Community may be subject to additional covenants, restrictions and easements, which a Sub-Association may administer. In such case, if there is a conflict between or among the Governing Documents and any such additional covenants or restrictions, or the governing documents or policies of any such Sub-Association, the Governing Documents shall control.

Nothing in this Section shall preclude any Supplemental Declaration or other recorded covenants applicable to any portion of the Community from containing additional restrictions or provisions which are more restrictive than the provisions of this Community Declaration and, in such case, the more restrictive shall control.

Section 1.6 Defined Terms.

Each capitalized term in this Community Declaration or in the plats or maps shall have the meaning specified unless otherwise defined in this Community Declaration or in a plat or map, or unless the context requires otherwise, all as set forth below:

1. **"Allocated Interests"** shall mean the applicable Assessment liability and also the votes in the Community Association allocated in this Community Declaration, as allowed for in the Act.
2. **"Apartment"** shall mean a Residential Unit that has separate Dwelling Units inside the Residential Unit, where all such Dwelling Units are under Common Ownership.
3. **"Articles"** shall mean the Articles of Incorporation for the Baxter Meadows Community Association, Inc., as may be amended from time to time.
4. **"Assessment(s)"** shall mean a Community Wide Services Assessment, Special Assessments for Capital Improvements and any other assessment as allowed or provided for by this Community Declaration or the Act.
5. **"Board" or "Executive Board"** shall mean the body designated in this Community Declaration to act on behalf of the Community Association.
6. **"Builder"** shall mean a home builder, general contractor or other party, which may also be an Owner, who acquires one or more Units without improvements of a home, office building or commercial building constructed thereon for the purpose of constructing the initial Improvements upon the Unit or for the purpose of reselling or renting to a third party or third parties, or who purchases one or more parcels of land in the Community for further subdivision, development, and/or resale in the ordinary course of its business.

7. **"Bylaws"** shall mean the Bylaws adopted by the Community Association, as may be amended from time to time.
8. **"Capital Improvement"** shall mean a planned Improvement of one or more Improvements benefiting the Association and Common Elements, easements and other community property as a whole which, when undertaken, may reasonably be anticipated to require an expenditure by the Association of a total amount more than \$3,000.00 or such equivalent amount as proportionately adjusted for inflation from the date hereof to correspond to variations in the index for U.S. wholesale prices.
9. **"City"** means City of Bozeman, Montana.
10. **"Commercial Units"** shall mean and include each separately owned Unit that may be used for commercial purposes.
11. **"Common Element(s)"** means all real property and improvements in which the Association owns an interest for the common use and enjoyment of all of the Members. The interest or interests may include, without limitation, estates in fee, estates for a term of years, water rights or easements. For example, one of the Common Elements which was conveyed by Declarant and which is owned by the Association is that area designated as the Park, according to the plat thereof on file and of record in the office of the Clerk and Recorder of the Gallatin County, Montana. All Common Elements(s) shall remain titled in the name of the Association, unless transferred by a Board vote to the City.
12. **"Community"** means the Master Planned Community created by this Community Declaration.
13. **"Community Association"** or **"Association"** shall mean the Baxter Meadows Master Community Association, Inc., a Montana nonprofit corporation.
14. **"Community Declaration"** shall mean this Amended Community Declaration for Baxter Meadows Master Community, as amended and supplemented from time to time.
15. **"Community Manager"** shall mean any one (1) or more persons or companies engaged or employed by the Community Association to perform any of the duties, powers or functions of the Community Association.
16. **"Community Wide Services Assessment(s)"** shall mean an assessment for common expenses, incurred by or on behalf of the Community Association for the annual costs of operating the Community Association and maintaining, replacing and or improving Common Elements, together with an allocation for reserves, and including the late charges, attorney fees, fines, collection costs and interest charged by the Community Association.
17. **"Design Review Board" (DRB)** shall be the committee appointed by the ~~Declarant~~ Board, as allowed for in this Declaration, subject to the terms of this Declaration.
18. **"Dwelling Unit"** shall mean and include any portion of the Improvements on a Unit improved to allow separate occupancy for primarily residential use.
19. **"Governing Documents"** shall mean those documents listed in the applicable section of this Community Declaration, as they may be amended from time to time.
20. **"Improvement(s)"** shall mean alterations or improvements of any kind installed upon a Unit.
21. **"Limited Common Elements"** shall mean those portions of the Common Elements, if any, designated by Declarant Board for the exclusive use of one (1) or more but fewer than all of the Units.
22. **"Member"** shall mean the person, or if more than one, all persons collectively, who constitute the Owner of a Unit, as more fully provided for in the Articles and Bylaws.
23. **"Membership"** shall mean the rights and obligations associated with being a Member.
24. **"Operating Fund"** shall mean the account into which the Board shall deposit monies paid to the Community Association from the Working Fund and any portions of the Community Wide Services Assessment as determined by the Board.
25. **"Sub-Association"** shall mean any unit owners' association organized and established or authorized pursuant to this Community Declaration and a Supplemental Declaration, the membership of which is composed of Owners of Units within that portion of the Real Property covered by a Supplemental Declaration. Such Sub-Associations shall be responsible for their own Assessments and expenditures made or liabilities incurred by or on behalf of that Sub-Association.
26. **"Project Area"** shall mean all of the real estate generally described, shown and depicted by the illustration contained in Exhibit A attached hereto.
27. **"Real Property"** (or "real estate") shall mean the property described in Exhibit A, together with all easements, rights, and appurtenances thereto and the buildings and Improvements erected or to be erected thereon. Easements and licenses to which the Common Interest Community is initially subject to are to be set forth, as applicable, in Exhibit A.
28. **"Residential Units"** shall mean and include any Unit or lot primarily intended or zoned for residential uses, including, Units where any residential condominium units have the right to be created or have been created; Units where apartments have the right to be created or have been created; and Units where a single family home or other property for individual occupancy has the right to be created or has been created.
29. **"Rules and Regulations"** means all rules, regulations, procedures and any Renovation and Remodeling



Criteria, as the same may be adopted and amended from time to time by the Board, pursuant to this Community Declaration.

- 30. **"Supplemental Declaration"** shall mean a written recorded instrument containing covenants, conditions, restrictions, reservations, easements or equitable servitudes, or any combination thereof, which affects any portion, but not all, of the Real Property.
- 31. **"Unit"** shall mean a physical portion of the Community, designated for separate ownership, shown as a condominium unit, or lot or described as a separate parcel or separately deeded; or assessment or voting equivalent, as appropriate and applicable in the context. With regards to Apartments, a Unit shall mean five or less Dwelling Units. For example, if an Apartment contains 21 separate Dwelling Units, then it shall have Five "Units" for the purpose of this definition. The definition "Unit" is not the same as the definition of "Unit" in M.C.A. 70-23-102(14).
- 32. **"Unit Owner" or "Owner"** shall mean any person or entity that owns a Unit.
- 33. **"Working Fund"** shall mean an Assessment for the Association's operating capital, as allowed for in this Community Declaration.

ARTICLE 2

THE COMMUNITY ASSOCIATION OPERATIONS

Section 2.1 General Purposes and Powers of the Community Association.

- (a) The Community Association, acting through the Board, shall:
  - (i) perform functions and manage the Community as provided for in the Governing Documents, to meet the purposes of this Community Declaration, and
- (b) The Community Association shall also have all power necessary or desirable to effectuate its purposes as an owners' association as provided for in this Community Declaration.

Section 2.2 Deemed Assent, Ratification and Approval.

All Owners, occupants and residents in the Community shall be deemed to have assented to, ratified and approved the general purposes of this Community Declaration and the power, authority, management responsibility and designation of the Community Association, acting through the Board as allowed for in this Community Declaration.

Section 2.3 Duty of the Board to Exercise Judgment and be Reasonable/Rights of Owners.

In furtherance of the purposes of this Community Declaration, the Owners shall have the right and benefit of the administration of the Community by the Board, with the Board required to exercise judgment and reasonableness on behalf of the Community Association and Owners.

Section 2.4 Community Manager.

The Board may, by written resolution, delegate authority to a Community Manager, provided no delegation shall relieve the Board of final responsibility.

Section 2.5 Operating Fund.

The Board shall establish a fund (the "Operating" Fund") into which shall be deposited monies for maintenance, repair, replacement and improvement of the Common Elements.

Section 2.6 Establishment of Other Funds.

The Community Association may establish other funds as and when needed and nothing herein shall limit, preclude or impair the authority of the Community Association to establish other funds for specified purposes authorized by this Community Declaration. If the Community Association establishes any additional funds, the Board shall designate an appropriate title for the fund to distinguish it from the other funds maintained by the Community Association.

Section 2.7 Authority for Disbursements.

The Board shall have the authority to make or to authorize an agent to make disbursements of any monies in the Operating Fund or other funds that may be established pursuant to this Community Declaration.

Section 2.8 Power to Provide Special or Community Services

The Community Association shall have the power to provide services or offer community events to one (1) or more, but less than all, Owners. Any such service or services may also be provided pursuant to an agreement in writing, or through one or more Supplemental Declarations. Any such Supplemental Declaration or agreement may provide for payment to the Community Association by such Owner or Owners of the costs and expenses that the Community Association incurs in providing such services, including a fair share of the overhead expenses of the Community Association. In addition, any such Supplemental Declaration or agreement shall contain provisions assuring that the obligation to pay for such services shall be binding upon any heirs, personal

representatives, successors and assigns of the Owner, and that the payment for such services shall be secured by a lien on the Unit of such Owners and may be collected in the same manner as an Assessment, or, if the written agreement so provides, in installments as part of the Community Wide Services Assessment.

**Section 2.9 Power to Operate and Charge for Facilities and Services.**

The Community Association shall have the power to acquire, create, own and operate any and all such facilities and services as it deems appropriate, and to establish charges for the use of facilities and services. The charges may include admission, rental or other fees and charges for any use of property, facilities or services of the Community Association. Such charges or fees shall be as determined from time to time by the Board.

**Section 2.10 Bulk Service Agreements.**

The Community Association shall have the power and authority to enter into bulk service agreements for such terms and rates as it deems appropriate in order to provide the Owners with any of the following services: cable television, community satellite television, electronic entertainment, information or communication services, or any other service the Community Association believes to be in the best interests of the Owners. If such a bulk service agreement is executed, the costs shall be allocated as a part of the Community Wide Services Assessment.

**Section 2.11 Right to Notice and Comment.**

Under circumstances as set forth in this Community Declaration, where the Community Declaration require that an action be taken after 'Notice and Comment,' and at any other time the Board determines, the Owners have the right to receive notice of the proposed action and the right to comment orally or in writing.

**Section 2.12 Indemnification.**

To the full extent permitted by law, each officer and director of the Community Association shall be and is hereby indemnified by the Community Association against all expenses and liabilities, including attorney fees, reasonably incurred by or imposed upon such officer or director in any proceeding to which he or she may be a party, or in which he or she may become involved, by reason of being or having been an officer or director of the Community Association, or any settlements thereof, whether or not he or she is an officer or director of the Community Association at the time such expenses are incurred. This indemnification shall not apply in cases where an officer or director is adjudged guilty of willful misfeasance or malfeasance in the performance of his or her duties. In the event of a settlement, the indemnification provided for in this Community Declaration shall apply only when the Board approves such settlement and reimbursement as being in the best interests of the Community Association.

**Section 2.13 Education and Training.**

As a Common Expense, the Community Association may provide education and training opportunities, including providing funding and permitting facilities use for such purposes. The Community Association may provide education and training activities as a tool for fostering Owner, resident and occupant awareness of governance, operations and concerns of the Community and of the Community Association. Appropriate educational topics include dispute or conflict resolution, issues involving the Governing Documents, and education or topics benefitting or contributing to operation or governance of the Community. The Community Association shall also fund, as a Common Expense, and support the education and training required for officers and directors.

### ARTICLE 3

#### MEMBERSHIP, VOTING AND ASSESSMENT ALLOCATIONS

**Section 3.1 Membership.**

Every person who is a record Owner of a fee interest in any Unit which is subject to this Community Declaration shall be a Member of the Community Association. There shall be one (1) Membership in the Community Association for each Unit within the Community. The person or persons who constitute the Owner shall automatically be the holder of the Membership appurtenant to the Owner's Unit, and the Membership shall automatically pass with fee simple title to the Unit. Membership shall be appurtenant to and may not be separated from ownership of any Unit. Ownership of a Unit shall be the sole qualification for Membership. Where more than one (1) person holds an interest in any Unit, all those persons shall be Members. No Owner, whether one (1) or more persons, shall have more than one (1) Membership per Unit owned, but all persons owning each Unit shall be entitled to rights of Membership and use of enjoyment appurtenant to ownership. The Articles of Incorporation and Bylaws of the Community Association may set forth classifications of Membership.

**Section 3.2 Voting Rights of Members.**

(a) Generally, each Member shall:

(i) have the right to cast votes for the election of the Board of Directors to the Community Association; and

(ii) have such other voting rights as provided for in this Community Declaration. Except as expressly provided in this Section and in this Community Declaration, no other voting rights are created by this Community Declaration.

(b) Bylaws. Unless otherwise addressed in this Community Declaration or the Articles of

Incorporation, the Bylaws shall provide the manner, time, place, conduct and voting procedures for Member meetings for the purpose of electing a Board of Directors.

- (c) No Fractionalized Voting. Vote(s) allocated to any Unit must be cast as a block and without dividing or fractionalizing such vote or votes.

Section 3.4 Voting Allocations.

(a) Residential Use - Individually Owned Units. If a Unit is used for single family, duplex, triplex, townhouse, or other multifamily residential dwellings and the Unit is individually owned, the vote attributable to a Unit shall be one (1) vote for each Dwelling Unit.

(b) Residential Use - Apartments and Rentals. If a Unit is used as a part of residential building or buildings devoted to apartments or multifamily rental use, the vote attributable to such Unit shall be one (1) vote for every five (5) Dwelling Units.

(c) Commercial, Office and Other Uses. If a Unit is used for commercial, retail, light industrial, office or for public or private recreation use, regardless of the size of the Unit, the vote attributable to such Unit shall be one (1) vote for each 2,000 square foot increment of floor area within the building(s) or Improvements on that Unit. The calculation of floor area of a building or of the Improvements shall be the gross floor area of all floor(s) of the building(s) measured from the exterior of the structure, including any basement area, but excluding floor areas not comprising a full 2,000 square feet increment, shall not receive a proration or fractional vote. The Board may require as built plans to be filed with the Community Association and may promulgate written standards for fairly and uniformly calculating the floor area for purposes of this Section.

(d) Allocations Prior to Use and Other Units or Other Uses. For all Units not allocated votes above, based on use, including any Unit comprised entirely of vacant land, regardless of zoning classification or anticipated use, the vote attributable to such Unit shall be one (1) vote per Unit.

Section 3.5 Proxies Of Members.

Votes allocated to a Unit may be cast pursuant to a proxy duly executed by an Owner. If a Unit is owned by more than one (1) person, any one (1) co-Owner of the Unit may vote the vote of that Unit or register a protest to the casting of the vote of that Unit by the other co-Owners of the Unit through a duly executed proxy. An Owner may not revoke a proxy given pursuant to this Section except by actual notice of revocation to the person presiding over a meeting of the Community Association. Proxies may be sent to via mail, hand delivery, facsimile and/or email.

## ARTICLE 4

### UNIT DESCRIPTIONS/COMMON ELEMENTS/EASEMENTS

Section 4.1 Identification of Unit Descriptions.

The identification of each Unit is to be shown on an applicable plat, maps or deed for properties included in the Community. Every contract for sale, deed, lease, Security Interest, will or other legal instrument may legally describe a Unit by any identifying number established by a plat or map, with reference to the plat or map, and the Community Declaration, followed by the name of the Community. Reference to the Community Declaration, plat or map in any instrument shall be deemed to include any supplement(s) or amendment(s) to the Community Declaration, map or plat, without specific references thereto.

Section 4.2 Common Elements.

The Community Association is not obligated to construct any particular type or kind or area of Common Elements. The Community Association may construct Common Elements for office or other use by the Community Association, for recreational use by all or some portion of the Owners (provided those with a right to use shall have an obligation to fund the ongoing maintenance, repair, replacement and improvement of any recreational facilities limited to use by less than all Owners and provided that if rights to use are limited to less than all Owners, that Common Element shall then be a Limited Common Element) and such other facilities as Community Association may determine.

Section 4.3 Duty to Accept Common Elements and Facilities Transferred by Declarant.

The Community Association shall accept any Common Elements or property, including any Improvements thereon, and personal property transferred to the Community Association by Declarant and equipment related thereto, together with the responsibility to perform any and all functions associated therewith, provided that such property and functions are not inconsistent with the terms of this Community Declaration. Any property or interest in property transferred to the Community Association by Declarant shall, except to the extent otherwise specifically approved by resolution of the Board, be transferred to the Community Association free and clear of all liens (other than the lien of property taxes and Assessments not then due and payable), but shall be subject to the terms of this Community Declaration and any Supplemental Declaration applicable thereto. The improvements on the Common Elements may be changed from time to time by the Board. Portions of the

Common Elements may be designated by Declarant as a part of a Unit or as a Limited Common Element to a Unit. Portions of Units not yet conveyed by Declarant to a third party owner may become Common Elements or Limited Common Elements, pursuant to rights reserved elsewhere in this Community Declaration.

Section 4.4 Utility, Map and Plat Easements.

Easements for utilities and other purposes over and across the Units and Common Elements may be as shown upon a recorded plat, map or separate document and as may be established pursuant to the provisions of this Community Declaration, or granted by authority reserved in any recorded document.

Section 4.5 Owners' Easements of Enjoyment.

Every Owner shall have a right and easement for access to his or her Unit and of enjoyment in and to any Common Elements and such easement shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

- (a) this Community Declaration and the other Governing Documents;
- (b) any restriction contained in any deeds of Common Elements to the Community Association;
- (c) the right of the Community Association to regulate use and enjoyment;
- (d) the right of the Community Association to promulgate and publish Rules and Regulations, subject to limitations included in this Community Declaration, which Owners shall strictly comply with;
- (e) the right of the Community Association to suspend rights to use Common Elements for any period during which any Assessment against such Owner's Unit remains unpaid;
- (f) the right of the Board to impose reasonable membership requirements and charge reasonable membership admission or other fees for the use of any Common Elements and the right of the Board to permit use of any Common Elements by persons other than Owners, their families, lessees and guests upon payment of use fees established by the Board;
- (g) the right of the Community Association to allow public use of Common Elements or recreational amenities, with or without a fee or charge;
- (h) the right, power and authority of the Community Association to grant any dedication, transfer or conveyance or grant of any similar interest affecting the Common Elements, to the extent permitted by the Act;
- (i) the right of the Community Association to close or limit the use of the Common Elements while maintaining, repairing and making replacements in the Common Elements or as determined by the Board;

Section 4.6 Rights Regarding Common Elements.

Regardless of any general rights to use and enjoyment (a) only Owners of a Residential Unit or the tenant, lessee or occupant of a Dwelling Unit in a Residential Unit used as an apartment or for multi-family rental use, shall have a right to use any Common Elements, unless otherwise provided in a Supplemental Declaration; (b) these Owners, tenants, lessees and occupants of Residential Units shall only have a right to use Common Elements after they have occupied their Units.

Section 4.7 Delegation of Use.

Any Owner may delegate their right of enjoyment to the Common Elements and facilities to the members of such Owner's family or their guests, or contract purchasers who reside at such Owner's Unit or at the Dwelling Units that are a part of that Unit and shall be deemed to have delegated that authority to the Owner's tenants.

Section 4.8 Liability of Owners for Damage.

Each Owner shall be liable to the Community Association for any damage to Common Elements or for any expense or liability incurred by the Community Association which may be sustained by reason of negligence or willful misconduct of such Owner or a guest of the Owner, and for any violation by such Owner or guest of this Community Declaration or any Rule or Regulation. The Community Association shall have the power to levy and collect an Assessment against a Member to cover the costs and expenses incurred by the Community Association on account of any such damage or any such violation of this Community Declaration or of the Rules and Regulations, including interest, additional management or administrative fees and attorneys' fees, or for any increase in insurance premiums directly attributable to any such damage or violation.

Section 4.9 Power to Grant Easements.

The Community Association shall have the power to grant access, utility, drainage, water facility and any other easements in, on, over or under the Common Elements for any lawful purpose, including without limitation, the provision of emergency services, utilities (including, without limitation, water, sanitary sewer, storm sewer, gas and other energy services), telephone, cable television, fiber optic and other telecommunication services, and other uses or services to some or all of the Members.

Section 4.10 Safety and Security.

Each Owner and occupant, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in the Community. The Association may, but shall not be obligated to, maintain or support certain activities within the Community designed to enhance the level of safety or security which each person provides for himself or herself and his or her property. The Community Association shall not in any way be considered insurers or guarantors of safety or security within the Community, nor shall it be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. Each Owner acknowledges, understands and shall be responsible for informing its tenants and all occupants that the Community Association and its Board and committees, are not insurers or guarantors of security or safety and that each person within the Community assumes all risks of personal injury and loss or damage to property, including Units and the contents of Dwelling Units, resulting from acts of third parties.

## ARTICLE 5

## COMMUNITY ASSOCIATION MAINTENANCE RESPONSIBILITIES

Section 5.1 Association Responsibility.

The Association is responsible for permanent care and maintenance of all Common Elements. These responsibilities include but are not limited to maintenance of vegetation, playground areas, playground equipment, sidewalks, common open space, center areas, public parking facilities, paths and trails, boulevards and medians, alleys, all storm water facilities and recreational areas and all liability insurance and applicable taxes. The Association is responsible for maintenance of the Common Elements Land and Facilities listed above and the storm water detention basins, storm water facilities, the stream/ditch in the Public Linear Park as well as the sidewalks adjacent to each of these areas. The Association is also responsible for costs of irrigation including the cost of water and irrigation system maintenance.

Section 5.2 Flexible Authority of the Board for Community Association Maintenance.

The Board shall determine the specifications, scope, extent, nature and parameters of the Community Association's maintenance, repair, replacement and improvement responsibilities with regards to the Common Elements or other areas as designated by this Community Declaration.

Section 5.3 Generally Designated Areas of Maintenance.

The Community Association may be responsible for:

- (a) Designated landscaping and other flora, signage, structures, entry sign-age, and similar improvements situated upon the Common Elements or in public rights of way or public easement areas.
- (b) Designated Common Elements, if any, which may include swimming pools and other facilities.
- (c) The improvement, upkeep and maintenance, repair and reconstruction of landscaped areas in designated parks, parkways, dedicated public right of ways, alleys, or public easements, or for the payment of expenses which may be incurred by virtue of agreement with or requirement of any local governmental authority.
- (d) Such portions of property included within the Real Property as may be dictated by local government, this Community Declaration or any Supplemental Declaration or in any contract or agreement for maintenance thereof entered into by the Community Association, or as expressly delegated by a Sub-Association and accepted by the Community Association.
- (e) Real property within any portion of the Community, in addition to that designated by any Supplemental Declaration, either by agreement with the Sub Association or because, in the opinion of the Board, the level and quality of service then being provided is not adequate. All costs of maintenance pursuant to this paragraph may be assessed as a Sub-Association Assessment of the Community Association or sub-Assessment only against the Units within the Sub-Association, or if there is no Sub-Association, then to that Unit, to which the services are provided. The provision of services in accordance with this Section shall not constitute discrimination within a class. These Assessments, if necessary, are included in the "Other Assessments" paragraph of Section 6.
- (f) Other property which it does not own, including, without limitation, conservation easements held by nonprofit entities, and other property dedicated to public use, if the Board determines that such maintenance is necessary or desirable.
- (g) Such other maintenance and repair as set forth below or elsewhere in this Community Declaration.
- (h) Common Elements Maintenance Guarantee. In the event the Association or any successor organization established to own and maintain commonly owned open spaces, recreational areas, facilities, private streets, and parking lots, shall at any time fail to maintain the Common Elements in reasonable order and condition in accordance with the approved plan, the City Commission may cause written notice to be served upon such organization or upon the owners of property in the development. The written notice shall set forth the manner in which the Common Elements have failed to be maintained in reasonable condition. In addition, the notice shall include the demand that the deficiencies noted be cured within thirty days thereafter and shall state the date and place of a hearing to be held within fourteen days of the notice. At the time of hearing, the City Commission may modify the terms of the original notice as to deficiencies and may extend the time within

which the same may be cured. If the deficiencies set forth in the original notice or modifications are not cured within the time set, the City may enter upon such common facilities and maintain the same for a period of one year, in order to preserve the taxable values of properties within the development and to prevent the common facilities from becoming a public nuisance. Such entry and maintenance shall not vest in the public any right to use the common facilities not dedicated to public use. Before the one year period expires, the Commission shall, upon its own initiative or upon written request of the organization theretofore responsible for maintenance, call a public hearing and give notice of such hearing to the organization responsible for maintenance or the property owners of the development. At the hearing, the organization responsible for maintenance and or the residents of the development may show cause why maintenance by the City should not be continued for a succeeding year. If the City Commission determines that it is not necessary for the City to continue such maintenance, the City shall cease such maintenance at the time established by the City Commission. Otherwise, the City shall continue maintenance for the next succeeding year subject to a similar hearing and determination at the end of each year thereafter.

1. The cost of maintenance by the City shall be a lien against the common facilities of the development and the private properties within the development. The City Commission shall have the right to make Assessments against properties in the development on the same basis that the organization responsible for maintenance of the facilities could make such Assessments. Any unpaid Assessment shall be a lien against the property responsible for the same, enforceable the same as a mortgage against such property. The City may further foreclose its lien on the common facility by certifying the same to the County Treasurer for collection as in the case of collection of general property taxes.
2. Should the property owners association request that the City assume permanent responsibility for maintenance of facilities, all facilities shall be brought to City standards prior to the City assuming responsibility. The assumption of responsibility must be by action of the City Commission and all costs to bring facilities to City standards shall be the responsibility of the property owners association. They City may create special financing mechanisms so that those properties within the area affected by the property owners association continue to bear the costs of maintenance.

#### Section 5.4 Additional Services.

Any group of Units, acting through a Sub-Association, if any, may request that the Community Association provide a higher level of service than that which the Community Association generally provides, or may request that the Community Association provide special services. The cost of such services, which may include a reasonable administrative charge in such amount as the Board deems appropriate (provided, any such administrative charge shall apply at a uniform rate for all Units receiving the same service), shall be assessed against the Units as a part of one of the Assessments, as determined by the Community Association.

#### Section 5.5 Sub-Association's Responsibility.

The Owners of Units within each Sub-Association, if any, may be responsible for paying, through Sub-Association Assessments to their Sub-Association or through a separate Assessment to the Community Association, the costs of operating, costs of utilities, and costs of maintaining and insuring certain portions of the Real Property within their neighborhood. This may include, without limitation, the costs of maintaining any Sub-Association sign-age, entry features, right-of-way and open space between the Sub-Association and adjacent public roads and private streets within the Sub-Association, regardless of ownership and regardless of the fact that such maintenance may be performed by the Community Association; provided, however, all Sub Associations which are similarly situated shall be treated the same. Any Sub-Association having any responsibility for maintenance of property within such Sub-Association shall perform such maintenance responsibility in a manner consistent with first class, community-wide standards. If it fails to do so, the Community Association may perform such responsibilities and assess the costs against all Units within such Sub Association; as a Sub Association Assessment of the Community Association.

## ARTICLE 6

### COVENANT FOR ASSESSMENTS

#### Section 6.1 Creation of Community Association Lien and Personal Obligation to Pay.

By the act of purchasing a Unit, each Owner shall be deemed to covenant and agree to pay all Assessments as imposed by the Community Association or as may be imposed by a Sub Association for payment to the Community Association. Any such Sub-Association shall allocate the Assessments of the Community Association to the Units in the Sub-Association as set forth in this Community Declaration. Assessments provided for in this Community Declaration, including fees, charges, late charges, attorney fees, collection fees, fines and interest charged by the Community Association shall be the personal obligation of the each Owner of such Unit at the time when the Assessment or other charges becomes due; provided, however, that where a Sub-Association has expressly assumed those obligations pursuant to the governing documents for that Sub Association, as provided for in this Community Declaration), and in that event, so long as the Sub-Association has that obligation, only that Sub-Association shall have the personal obligation to pay. In the case where an Owner is a corporation, limited liability company, trust, limited partnership or any other type of entity other than individually named people, by purchasing the Unit, the individuals within the entity agree they are jointly and severally liable for the Assessments.

Section 6.2 Continuing Lien.

The Assessments together with interest of 10% per annum, costs, and reasonable attorney's fees, shall be a charge on the land, run with the land and shall be a continuing lien upon the property against which the assessment is made. All Assessments and such other Assessments as imposed by the Community Association, including fees, charges, late charges, attorney fees, collection fees, fines and interest charged by the Community Association, shall be a charge on each Unit and shall be a continuing lien upon the Unit against which each such Assessment or charge is made.

Section 6.3 No Exemptions, Offsets or Reductions.

No Owner may become exempt from liability for payment of any Assessment to the Community Association by waiver of the use or enjoyment of the Common Elements or by abandonment of the Unit against which the Assessment is made. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted for any reason including, without limitation, any claim that the Community Association or the Board or any other entity is not properly exercising its duties and powers under this Community Declaration.

Section 6.4 Capitalization of the Association/Working Funds

The Association requires that every Owner of each Unit, upon close of escrow or transfer of title, make a non-refundable payment to the Association in an amount equal to two months' Assessments which sums shall comprise the Working Fund to be used by the Association as operating capital. The contribution by the Owners of each Unit shall be collected and transferred to the Association at the time of closing of each sale and the sums collected shall be for the use and benefit of the Association, through the Association's Working Fund Contribution and payment of each Owner's portion of the Working Fund to the Association shall not relieve an Owner from making regular payments of any other Assessments as the same become due. Upon the Transfer of a Unit, an Owner may be entitled to a credit from their Buyer collected at closing.

Section 6.5 Transfer Fees.

The Association may collect a transfer fee upon the close of escrow or transfer of title.

Section 6.6 Community Wide Services Assessments.

The Community Association may levy a Community Wide Services Assessment against Units, effective upon creation of such Unit, allocated as provided for above in this Community Declaration. After any Community Wide Services Assessment has been levied by the Community Association, Community Wide Services Assessments shall be levied no less frequently than annually by the Community Association. Where the obligation to pay a Community Wide Services Assessment first arises after the commencement of the year or other period for which the Community Wide Services Assessment was levied, the Community Wide Services Assessment shall be prorated, as of the date when said obligation first arose, in proportion to the amount of the Assessment year or other period remaining after said date.

(a) The Budget Process. Once begun, the Community Wide Services Assessment may be levied on an annual basis and must be levied based upon the Community Association's advance budget of the cash requirements for this Assessment.

(b) Due Dates. Community Wide Services Assessments shall be due and payable in monthly, quarterly, or annual installments, or in any other manner, as determined by the Board. Community Wide Services Assessments may begin on the first day of the month in which conveyance of the first Unit to a Unit Owner (other than Declarant or a Builder) occurs. The omission or failure of the Board to levy the Assessment for any period shall not be deemed a waiver, modification or release of the Unit Owners from their obligation to pay.

Section 6.7 Special Assessments for Capital Improvements or Emergency Repairs.

In addition to the Community Wide Services Assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the costs of any construction, reconstruction, repair or replacement of roads, water systems, or Capital Improvements on the Properties, including fixtures and personal property related thereto. Any special assessment totaling over \$3,000.00 or such equivalent amount as proportionately adjusted for inflation from the date hereof to correspond to variations in the index for U.S. wholesale prices must pass by sixty percent (60%) or more of the votes of the membership present at any duly called meeting at which quorum is present. A written notice of payment due to the members shall include the date of the vote, the total number of votes, the percentage of the votes that authorized the special assessment as determined by the Board of Directors, the due date of the payment for the Special Assessment and where to send the payment.

Section 6.8 Other Assessments.

The Community Association shall also have the authority to assess Units, pursuant to and as allocated, under other provisions of this Declaration or as allowed by Court Order or law.

Section 6.9 Statements of Account.

The Community Association shall furnish to an Owner or such Owner's designee (including, without limitation, a prospective purchaser from or lender of such Owner), upon written request, delivered personally or

by certified mail, first class, postage prepaid, return receipt, to the Community Association's registered agent, a written statement setting forth the amount of unpaid Assessments currently levied against such Owner's Unit. The statement shall be furnished within fourteen (14) calendar days after receipt of the request and shall be binding on the Community Association, the Board and every Owner. The Community Association shall have the right to charge a reasonable fee for the issuance of such certificates.

Section 6.10 Effect of Non-Payment of Assessments.

Any Assessment, charge or fee provided for in this Community Declaration, or any monthly or other installment thereof, which is not fully paid within ten (10) days after the due date thereof, as established by the Board, shall bear interest at the rate of interest as may be determined, from time to time, by the Board, and the Community Association may assess a reasonable late charge thereon as determined by the Board. Further, the Community Association may bring an action at law or in equity, or both, against the person(s) personally obligated to pay such overdue Assessments, charges or fees, or monthly or other installments thereof, and may also proceed to foreclose its lien. An action at law or in equity by the Community Association against an Owner to recover a money judgment for unpaid Assessments, charges or fees, or monthly or other installments thereof, may be commenced and pursued by the Community Association without foreclosing, or in any way waiving, the Community Association's lien therefor. Foreclosure or attempted foreclosure by the Community Association of its lien shall not be deemed to estop or otherwise preclude the Community Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent Assessment, charges or fees, or monthly or other installments thereof, which are not fully paid when due. The Community Association shall have the power and right to bid on or purchase any Unit at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, vote the Community Association votes appurtenant to ownership thereof, convey or otherwise deal with the same. The rights of the Community Association shall be expressly subordinate to the rights of any holder of a first lien security interest as set forth in its deed of trust or mortgage (including any assignment of rents), to the extent permitted.

Section 6.11 Lien Priority.

The lien of the Community Association for all Assessments allowed for in this Community Declaration is prior to all other liens and encumbrances on a Unit except: (a) liens and encumbrances recorded before the recordation of the Community Declaration; (b) a first lien security interest on the Unit (except as otherwise expressly provided by state statute for any limited lien priority allowed to the Community Association); and (c) liens for real property taxes and other governmental assessments or charges against the Unit. This Section does not affect the priority of mechanics' or materialmen's liens. The lien of the Community Association under this Article is not subject to the provision of any homestead exemption as allowed under state or federal law. Transfer of any Unit shall not affect the lien for said Assessments or charges except that Transfer of any Unit pursuant to foreclosure of any first lien security interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the lien of Assessment charges as provided by applicable state law. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Unit from continuing liability for any Assessment charges thereafter becoming due, nor from the lien thereof.

**ARTICLE 7**

**GENERAL RESTRICTIONS**

Section 7.1 Purposes, Plan of Development, Applicability, Effect

The Community is a mixed use, Master Planned Community, in furtherance of its and every other Owner's collective interests. The Real Property is subject to land development constraints and requirements, Rules and Regulations and provisions of this Community Declaration governing land use, individual conduct, and uses of or actions upon the Real Property as provided in this Community Declaration. This Community Declaration establishes affirmative and negative covenants, easements, and restrictions.

Section 7.2 Changes in Circumstances Anticipated.

The Community Declaration is a general plan of development for the purposes stated in the recitals of this Community Declaration; provided, however, that in all cases and events such general plan for development shall be subject to the Community Association's ability to respond to changes in circumstances, conditions, needs, and desires within the Community, except as expressly provided for in this Community Declaration.

Section 7.3 Owner Acknowledgment.

Each Owner is subject to this Community Declaration and the covenants and restrictions contained in this Community Declaration. By acceptance of a deed, or other instrument establishing title or ownership, each Owner acknowledges that such Owner has been given notice of this Community Declaration; that use of a Unit is limited by the provisions of the Governing Documents; that the Board may, from time to time, adopt and amend definitions of words, phrases and terms used in this Community Declaration and other Governing Documents; that the use, enjoyment and marketability of the Units can be affected by this Community Declaration; and that the restrictions and Rules and Regulations may change from time to time; provided, however, no action by the Board may invalidate a specific provision of this Community Declaration.

Section 7.4 Use Covenants and Restrictions Based on Zoning.

Units within the Community shall be used for purposes as allowed by zoning, planned unit development or other local governmental determination. Use of Residential Units for primary residential use shall not be



unreasonably regulated or governed by the Community Association. Use of Commercial Units for primary commercial uses shall not be unreasonably regulated or governed by the Community Association.

Section 7.5 Units to be Maintained.

Owners of a Unit are responsible for the maintenance, repair and replacement of the properties located within their Unit boundaries except as such maintenance, repair and replacement are expressly the obligation of any applicable Sub-Association for that Unit. Each Unit and the Improvements on a Unit, shall, at all times, be kept in a clean, sightly, and wholesome condition.

Section 7.6 Architectural Review by the ORB/Required Approval.

1. Requirements. No Improvement shall be made to a Unit unless complete plans and specifications have been first submitted to an approved in writing by the Design Review Board ("Committee") as may be outlined in the Rules and Regulation. For the purpose of example, this shall include by is not limited to the building, erection, relocation, removal, installation, painting or any other alteration of No structures, including residences, outbuildings, accessory buildings, tennis courts, swimming pools, antennas (except as otherwise permitted in this Declaration), flag poles, fences, walls, exterior lighting, landscaping, or any other Improvements.

2. Applications. The DRB may require that applications of Owners and their plans and specifications show exterior design, height, materials, color, location of the structure or addition to the structure or proposed improvement (plotted horizontally and vertically), location and size of driveways, walls, windbreaks and grading plan, as well as such other materials and information as may be required by the DRB.

3. Acknowledgment of Owners. Owners acknowledge, accept and agree to the following:

- a. Owners will not commence construction or installation of an Improvement until they have submitted Improvement plans and specifications and received written approval from the DRB;
- b. Owners shall immediately comply with any request by the Association for additional information relating to an Improvement prior to the DRB's approval of a request and/or prior to the completion of an improvement. Failure to comply with such a request by an Owner shall result in the withdrawal of DRB approval, if previously granted;
- c. DRB approval does not constitute approval of the local building or zoning department, drainage design or structural soundness;
- d. Owners shall notify the DRB of completion of the Improvement's installation or construction within five days of such completion;
- e. Upon completion of an Improvement, Owners authorize the DRB or its representative(s) to enter onto the Lot for exterior inspection;
- f. Failure of an Owner to notify the DRB of completion of an approved Improvement, or refusal to allow inspection, shall result in the withdrawal of the DRB's approval;
- g. If the Improvement as built does not conform to the Improvement as approved by the DRB, the DRB's approval will be deemed withdrawn, and upon written request of the DRB, Owners shall, at their own expense and cost, promptly bring the Improvement into compliance with the submitted and approved plans and specifications;
- h. In the event of withdrawal of DRB approval for any reason(s) cited in this Section, and upon written request from the DRB, the Owner, at his or her expense and cost, shall promptly restore the Unit to substantially the same condition as it existed prior to commencement of the Improvement's installation or construction, and such withdrawal will be deemed to toll the statute of limitations as it pertains to the improvement until such time as the Improvement is brought into compliance.

4. Architectural Criteria. The DRB shall exercise its reasonable judgment to the end that all attachments, improvements, construction, landscaping and alterations to Improvements to a Unit or landscaping of a Unit shall comply with the requirements set forth in this Declaration. The approval or consent of the DRB on matters properly coming before it shall not be unreasonably withheld, and actions taken shall not be arbitrary or capricious. Approval shall be based upon, but not limited to, aesthetics, harmonious compliment to the Community and such other factors as the DRB may determine, including conformity with the specifications and purposes generally set out in this Declaration. Upon its review of such plans, specifications and submittals, the DRB may require that the applicant(s) reimburse the Board for actual expense incurred by it in its review and approval process.

5. Establishment of the DRB. The DRB shall consist of a minimum of three members appointed by, the Board. In the event a DRB is not established, the Board shall perform all duties of the DRB as provided in this Article and the Governing Documents of the Association. Once appointments by the Board of the Association are made, the Board shall have the authority to remove any members of the DRB at their sole discretion.

6. Architectural Guidelines. The DRB may propose architectural guidelines, for the Community as a whole, or for any portions, from time to time, which guidelines may be approved by the Board of Directors an included in or with any Rules and Regulations of the Association.

7. Reply and Communication. The DRB shall reply to all submittals of plans made in accordance herewith in writing within 15 days after receipt. In the event the DRB fails to take any action on submitted plans and specifications within 15 days after the DRB has received the plans and specifications, approval shall be deemed to be granted; provided, however, nothing in this Section shall authorize anyone to construct or maintain any structure or Improvement that is otherwise in violation of this Declaration, the Rules and Regulations or any architectural guidelines adopted by the Board. All communications and submittals shall be addressed to the DRB in care of the Association.

8. Conditions of Approval. In the discretion of the Board or the DRB, an Owner may be required to enter into a written agreement establishing the approval of the application in recordable form acknowledged by such Owner on behalf of himself or herself and all successors-in-interest. As a condition of approval for a requested architectural change, modification, addition or alteration, an Owner, on behalf of himself or herself and his or her successors-in-interest, affirms and shall assume, unless otherwise agreed in writing, all responsibilities for maintenance, repair, replacement and insurance to and on such change, modification, addition or alteration.

9. Commencement and Completion of Construction. All Improvements approved by the DRB must be commenced within two years from the date of approval. If not commenced within such time, then such approval shall be deemed revoked by the DRB, unless the DRB gives a written extension for commencing the work. Additionally, except with written DRB approval otherwise, and except for delays caused by strikes, fires, national emergencies, critical materials shortages or other intervening forces beyond the control of the Owner, all work approved by the DRB shall be completed within *one* ~~two~~ years of commencement.

10. Variances. The DRB may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Declaration in order to overcome practical difficulties and unnecessary hardships arising by reason of the application of the conditions and restrictions contained in this Declaration or in architectural guidelines.

11. Right to Appeal. Once the DRB is appointed by the Board of Directors of the Association, and if the Board of Directors is not acting as the DRB, an Owner whose plans have been disapproved or conditionally approved may appeal any decision of the DRB to the Board of Directors. The Board of Directors shall review the decision of the DRB pursuant to the criteria set forth in this Section above and/or the architectural guidelines. Any decision of the DRB may be overruled and reversed by a majority of the directors by a written decision setting forth the reasons for the reversal when the directors conclude that the DRB's decision was inconsistent with the criteria set forth in this Article and the guidelines.

12. Waivers. The approval or consent of the DRB, or appointed representative thereof, to any application for architectural approval shall not be deemed to constitute a waiver of any right to hold or deny approval or consent by the DRB as to any application or other matters subsequently or additionally submitted for approval or consent.

13. Liability. The DRB and the members thereof, as well as any representative of the Board designated to act on its behalf, shall not be liable in damages to any person submitting requests for approval or for any approval, or failure to approve or disapprove in regard to any matter within its jurisdiction under these covenants. Neither the Board nor the DRB shall bear any responsibility for ensuring the design, quality, structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes, zoning regulations and other governmental requirements.

14. Records. The Association shall maintain written records of all applications submitted to it and of all actions taken by it with respect thereto. Such records shall be open and available for inspection by any interested party during reasonable hours of the business day according to any policy adopted by the Board.

15. Enforcement. Enforcement of these covenants, restrictions, charges and other provisions, as amended, may be by any proceeding at law or in equity against any person or persons violating or attempting to violate any such provision. The Association shall have the right, but not the obligation, to institute, maintain and prosecute any such proceedings. In any action instituted or maintained under this Section, the Association may be entitled to recover its costs and reasonable attorney fees incurred pursuant thereto, as well as any and all other sums awarded by the court. Failure of the Association to enforce any covenant or restriction contained in this Section shall in no event be deemed a waiver of the right to do so thereafter. In addition, or in the alternative, the Association shall have all other enforcement rights as set forth in this Declaration.

#### Section 7.7 Landscaping Requirements of Owners/Restrictions and Maintenance Covenants.

All portions of a Unit not improved with a residence, building, driveway, walkways, patios or decks (referred to as the unimproved area or landscaped areas of a Unit) shall be landscaped by the Owner thereof or a Builder. Any portions of a Unit that are not landscaped by a Builder must be fully landscaped by the Unit Owner, no later than one (1) year after the date the City issues a certificate of occupancy. Any landscape plan must be approved by the DRB. The landscaping of each Unit, having once been installed, shall be maintained by the Owner, or the applicable owner association or Sub-Association, in a neat, attractive, sightly and well-kept condition, which shall include lawns mowed, hedges, shrubs, and trees pruned and trimmed, adequate watering, replacement of dead, diseased or unsightly materials, and removal of weeds and debris.

#### Section 7.8 Restrictions on Subordinate Covenants, Maps and Planned Unit Developments on Residential Units.

The Board shall be required by any Owner or with regard to any Residential Unit:

- (a) before junior or subordinate covenants may be filed of record against all or any portion of a Unit,

and

(b) before any planned unit development, map, plat or re-subdivision may be filed of record against all or any portion of a Unit.

In the event an Owner records covenants against all or any part of a Residential Unit without the written consent required by the provisions of this Section, or in the event an Owner records any planned unit development, map, plat or re-subdivision against all or any part of any Unit without the written consent required by the provisions of this Section, the instruments recorded shall be voidable and shall be deemed void by the Board upon the Board recording a notice to that effect.

Section 7.9 Use of Common Elements.

There shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements without the prior written approval of the Community Association. Nothing shall be altered on, constructed in, or removed from the Common Elements without the prior written approval of the Community Association.

Section 7.10 Restriction on Timesharing, Vacation Clubs and Similar Programs.

Use or ownership of any Unit for operation of a timesharing, fraction-sharing, vacation club or similar program, where the right to exclusive use of a Dwelling Unit rotates among participants in the program on a fixed or floating time schedule over a period of years and all similar ownership or use programs, schemes or clubs is prohibited.

Section 7.11 Right of Owners Regarding Rules and Regulations.

In furtherance of the purposes of this Community Declaration, and subject to the Board's duty to exercise judgment and reasonableness on behalf of the Community Association and Members, the Board may adopt, amend or repeal, Rules and Regulations concerning and governing the Community or any portion thereof. The Board may establish and enforce penalties for the infraction thereof.

Section 7.12 Construction Use.

It is expressly permissible for Builders to perform construction and such other reasonable activities, and to maintain upon portions of the Community such facilities as deemed reasonably necessary or incidental to the construction and sale of Units in the development of the Community, specifically including, without limiting the generality of the foregoing, the maintenance of temporary business offices, storage areas, trash bins, construction yards and equipment, signs, model units, temporary sales offices, parking areas and lighting facilities.

Section 7.13 Reasonable Rights to Develop. None of the covenants and restrictions in this Community Declaration may unreasonably impede a Builder's right to develop the Real Property. Additionally, the Board may not adopt any Rule or Regulation that unreasonably impedes Builder's right to develop the Real Property.

## ARTICLE 8 INSURANCE/CONDEMNATION

Section 8.1 Community Association Hazard Insurance on the Common Elements.

The Community Association shall obtain adequate hazard insurance covering loss, damage or destruction by fire or other casualty to the Common Elements and the other property of the Community Association. If obtainable, the Community Association shall also obtain the following insurance and any additional endorsements deemed advisable by the Board.

(a) Community Association Liability Insurance. The Community Association

shall obtain an adequate comprehensive policy of public liability and property damage liability insurance covering all of the Common Elements, in such limits as the Board may from time to time determine, but not in any amount less than Two Million Dollars (\$2,000,000.00) per injury, per person, and per occurrence, and in all cases covering all claims for bodily injury or property damage. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Community Association, and activities in connection with the ownership, operation, maintenance and other uses of the Community. All liability insurance shall name the Community Association as the insured.

(b) Community Association Fidelity Insurance. The Community Association shall obtain adequate fidelity coverage or fidelity bonds to protect against dishonest acts on the parts of its officers, directors, trustees and employees and on the part of all others who handle or are responsible for handling the funds of the Community Association, including persons who serve the Community Association with or without compensation. The fidelity coverage or bonds should be in an amount sufficient to cover 3 months of budgeting operating expenses that will be in the control of the Community Association, its officers, directors, trustees and employees.

(c) Community Association Worker's Compensation and Employer's Liability Insurance. The Community Association shall obtain worker's compensation and employer's liability insurance and all other similar insurance with respect to its employees in the amounts and forms as may now or hereafter be required by law.

(d) Community Association Officers' and Directors' Personal Liability Insurance. The Community Association shall obtain a broad or expansive form of an officers' and directors' personal liability insurance to protect the officers and directors from personal liability in relation to their duties and responsibilities in acting as officers and directors on behalf of the Community Association.

(e) Other Insurance of the Community Association the Community Association may obtain insurance against such other risks, of similar or dissimilar nature, as it shall deem appropriate with respect to the Community Association responsibilities and duties.

(i) Community Association Insurance and General Terms. The Community Association shall obtain and maintain in full force and effect to the extent reasonably available, and at all times, the insurance coverage set forth herein, which insurance coverage shall be provided by financially responsible and able companies duly authorized to do business in the State of Montana. Commencing not later than the time of the first conveyance of a Unit to a person other than a Builder, the Community Association shall maintain, to the extent reasonably available, policies for the above insurance with the following terms or provisions:

- a. All policies of insurance shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of an Owner and shall provide that such policies may not be canceled or modified without at least twenty (20) days prior written notice to all of the Owners and the Community Association.
- b. All liability insurance shall be carried in blanket form naming the Community Association, the Board, the Community Manager, the officers of the Community Association, ~~the Declarant~~, their successors and assigns and Owners as insureds.
- c. Prior to obtaining any policy of casualty insurance or renewal thereof, pursuant to the provisions hereof, the Board may obtain an appraisal from a duly qualified Real Property or insurance appraiser, which appraiser shall reasonably estimate the full replacement value of the Common Elements, without deduction for depreciation, review any increases in the cost of living, and/or consider other factors, for the purpose of determining the amount of the insurance to be affected pursuant to the provisions hereof. In no event shall any casualty insurance policy contain a co-insurance clause for less than one hundred percent (100%) of the full insurable replacement cost.

#### Section 8.2 Community Association Insurance Premium.

Except as assessed in proportion to risk, if permitted under the terms of this Community Declaration, insurance premiums for the above provided insurance shall be a part of the Community Wide Services Assessment.

#### Section 8.3 Community Manager Insurance.

The Community Manager, if not an employee, shall be insured for the benefit of the Community Association, and shall maintain and submit evidence of such coverage to the Community Association.

#### Section 8.4 Waiver of Claims Against Community Association.

As to all policies of insurance maintained by or for the benefit of the Community Association and Owners, the Community Association and the Owners hereby waive and release all claims against one another, the Board and ~~Declarant~~, to the extent of the insurance proceeds available, whether or not the insurance damage or injury is caused by the negligence of or breach of any agreement by and of said persons.

#### Section 8.5 Adjustments by the Community Association.

Any loss covered by an insurance policy described above shall be adjusted by the Community Association, and the insurance proceeds for that loss shall be payable to the Community Association. The Community Association shall hold any insurance proceeds in trust for the Community Association and Owners.

#### Section 8.6 Condemnation and Hazard Insurance Allocations.

In the event of a distribution of condemnation proceeds or hazard insurance proceeds to the Owners, the distribution shall be as the parties with interests and rights are determined or allocated by record.

## ARTICLE 9

### GENERAL PROVISIONS

Section 9.1 Compliance and Enforcement.

(a) Every Owner and occupant of a Unit shall comply with the Governing Documents, and each Owner shall have the right to enforce applicable covenants in this Community Declaration.

(b) The Association, acting through the Board, may enforce all applicable provisions of this Community Declaration and may impose sanctions for violation of the Governing Documents. Such sanctions may include, without limitation:

- (i) imposing reasonable monetary fines, after notice and opportunity for a hearing, which fine shall constitute a lien upon the violator's Unit.
- (ii) suspending the right to vote;
- (iii) suspending any person's right to use any Common Element; provided, however, nothing herein shall authorize the Board to limit ingress or egress from a Unit;
- (iv) suspending any services provided by the Association to an Owner or the Owner's Unit if the Owner is more than thirty (30) days delinquent in paying any Assessment or other charge owed to the Association;
- (v) exercising self-help or taking action to abate any violation of the Governing Documents in a non-emergency situation;
- (vi) requiring an Owner, at its expense, to remove any structure or improvement on such Owner's Unit in violation of the Governing Documents and to restore the Unit to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such actions shall not be deemed a trespass;
- (vii) without liability to any person, precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of the Article entitled "Residential Renovation and Remodeling Design Review" and the Renovation and Remodeling Criteria from continuing or performing any further activities in the Community; and
- (viii) levying specific Assessments to cover costs incurred by the Association to bring a Unit into compliance with the Governing Documents.

(c) In addition, the Association, acting through the Board, may take the following enforcement procedures to ensure compliance with the Governing Documents:

- (i) exercising self-help in any emergency situation (specifically including, but not limited to, the towing of vehicles that are in violation of any parking rules and regulations); or
- (ii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

(d) In addition to any other enforcement rights, if an Owner fails to properly perform his or her maintenance responsibility, or otherwise fails to comply with the Governing Documents, the Community Association may record a notice of violation or perform such maintenance responsibilities and assess all costs incurred by the Community Association against the Unit and the Owner as an Assessment. If a Sub-Association fails to perform its maintenance responsibilities, the Community Association may perform such maintenance and assess the costs against all Units within such Sub-Association. The Community Association shall provide the Owner or Sub-Association reasonable notice and an opportunity to cure the problem prior to taking such enforcement action.

(e) All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, the prevailing party shall be entitled to recover all costs, including, without limitation, attorney's fees and court costs, reasonably incurred in such action.

(f) The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

- (i) the Association's position is not strong enough to justify taking any or further action;
- (ii) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;
- (iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Community Association's resources; or
- (iv) that it is not in the Community Association's best interests, based upon hardship, expense or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed as a waiver of the Community Association's right to enforce such provisions

at a later time under other circumstances or preclude the Community Association from enforcing any other covenant, restriction or rule.

Section 9.2 Joint Right to Enforce Junior or Subordinate Covenants.

The Community Association, after first giving written notice to any governing Sub-Association or applicable or appropriate committee, if any, shall have the right to enforce, by any proceeding at law or in equity, all subordinate or junior restrictions, conditions, covenants, reservations, rules, regulations and architectural guidelines, now or hereafter imposed by the provisions of any subordinate or junior covenants, protective covenants, declaration, rules, regulations or guidelines on all or any portion of a Unit in this Community (including covenants for the payment of Assessments established in such subordinate or junior declaration if expressly permitted or delegated). Further, the Community Association shall be entitled to enjoin any violation thereof, to cause any such violation to be remedied, or to recover damages resulting from such violation. In addition, violation of any such condition, covenant, restriction, reservation, rule, regulation or guideline shall give to the Community Association the right to enter upon the portion of the Unit wherein said violation or breach exists and to summarily abate and remove, at the expense of the violator, any structure, thing or condition that may be or exist thereon contrary to the intent and meaning of the applicable provisions of such subordinate or junior governing documents. No such entry by the Community Association or its agents shall be deemed a trespass, and the Community Association and its agents shall not be subject to liability for such entry and any action taken to remedy or remove such a violation. The cost of any abatement, remedy or removal hereunder shall be a binding personal obligation on the violator. Further, the Community Association shall have the right, power and authority to establish and enforce penalties or monetary charges for violations of any subordinate or junior declaration, rules, regulations and architectural guidelines, and such penalties and/or monetary fines shall be a binding personal obligation of any violators. In any legal or equitable proceeding for the enforcement of such provisions, whether an action for damage, declaratory relief or injunctive relief, or any other action, the party prevailing in such action shall be entitled to recover from the losing party all of its costs, including court costs, administrative fees and reasonable attorneys' fees. The prevailing party shall be entitled to say attorneys' fees even though said proceeding may be settled prior to judgment. All remedies provided herein or at law or in equity shall be cumulative and are nonexclusive. Failure by the Community Association to enforce any covenant or restriction contained in any subordinate or junior governing documents shall in no event be deemed a waiver of the right to do so thereafter.

Section 9.3 Violations Constitute a Nuisance.

Any violation of any provision, covenant, condition, restriction or equitable servitude contained in this Community Declaration, whether by act or omission, is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by any person entitled to enforce the provisions of this Community Declaration.

Section 9.4 Remedies Cumulative.

Each remedy provided under this Community Declaration is cumulative and nonexclusive.

Section 9.5 Severability.

Each of the provisions of this Community Declaration shall be deemed independent and severable. If any provision of this Community Declaration or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Community Declaration which can be given effect without the invalid provisions or applications.

Section 9.6 Term of Community Declaration.

The covenants and restrictions of this Community Declaration shall run with and bind the land in perpetuity.

Section 9.8 Amendment of Community Declaration by Owners.

Except as otherwise expressly provided in this Community Declaration, and subject to provisions elsewhere contained in this Community Declaration, any provision, covenant, condition, restriction or equitable servitude contained in this Community Declaration may be amended, repealed, added to, and/or changed by the addition of new or different covenants, conditions or restrictions at any time and from time to time upon approval of:

- (a) at least fifty-one percent (51%) of the votes directly from the Residential Units; and
- (b) at least fifty-one percent (51%) of the votes directly from the Commercial Units; and

An amendment or repeal shall be effective upon the recordation in the real property records of all counties of which the Community is a part, which may include the City and the County of Gallatin, State of Montana, of a certificate, setting forth the amendment in full and certifying that the amendment has been approved as set forth above, and containing the written consent and approval of the Community Association.

Section 9.9 Amendment Required by Mortgage Agencies.

Prior to forty (40) years after recording of this Community Declaration, any provision, covenant, condition, restriction or equitable servitude contained in this Community Declaration which FHA, VA, FHLMC, GNMA, FNMA or any similar entity authorized to insure, guarantee, make or purchase mortgage loans requires to be amended or repealed shall be amended or repealed by the Community Association. Any such amendment or repeal shall be effective upon the recordation in the real property records of all counties of which

the Community is a part, which may include the City and the County of Gallatin, State of Montana, of a certificate, setting forth the amendment or repeal in full.

Section 9.10 Validity of Amendments.

Any action to challenge the validity of an amendment of this Community Declaration must be brought within one year after the amendment is recorded in the real property records of all counties of which the Community is a part, which may include the County of Gallatin, State of Montana.

Section 9.11 Interpretation.

The provisions of this Community Declaration shall be liberally construed to effectuate their purposes of creating a uniform plan for the development of the Units and of promoting and effectuating the fundamental concepts as set forth in the recitals of this Community Declaration. This Community Declaration shall be construed and governed under the laws of the State of Montana.

Section 9.12 No Representations or Warranties.

No representations or warranties of any kind, express or implied, shall be deemed to have been given or made by the Board or its agents or employees in connection with any portion of the Community, it's or their physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in writing.

Section 9.13 Singular Includes the Plural.

Unless the context otherwise requires, the singular shall include the plural, and the plural shall include the singular, and each gender referral shall be deemed to include the masculine, feminine and neuter.

Section 9.14 Captions.

All captions and titles used in this Community Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any paragraph, section or article hereof.

Section 9.15 Liberal Interpretation.

The provisions of this Community Declaration shall be liberally construed as a whole to effectuate the purposes of this Community Declaration.

Section 9.16 Governing Law.

This Community Declaration shall be construed and governed under the laws of the State of Montana.

IN WITNESS WHEREOF, the undersigned has caused this "AMENDED COMMUNITY DECLARATION FOR BAXTER MEADOWS MASTER COMMUNITY" to be made and executed on this 13<sup>th</sup> day of April, 2016.

*Celia Christensen*

Celia Christensen, President  
Baxter Meadows Master Community Association, Inc.

Certificate of Amendment of Presiding Officer and Secretary

We, the undersigned President and Secretary of the Baxter Meadows Master Community Association do hereby certify that the foregoing Amended Declaration for the Baxter Meadows Master Community Association were approved and adopted by a vote of fifty one percent (51%) or more of the Residential Owners and fifty one percent (51%) or more of the Commercial Owners (there are no other types of ownership at this time) at a duly called and noticed meeting of the Association. This certificate of Amendment is made this 13 day of April, 2016.

*Celia Christensen*

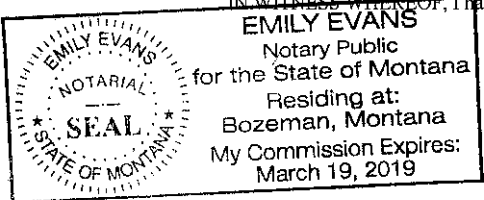
Celia Christensen, President

Attest: *Kellen Gamradt*  
Kellen Gamradt, Secretary

STATE OF MONTANA )  
 )ss.  
County of Gallatin )

On this 13<sup>th</sup> day of APRIL, 2016, before me, a notary public in and for said State, personally appeared Celia Christensen and Kellen Gamradt, known to me to be the President and Secretary of the Baxter Meadows Master Community Association, the Association that executed this document, and acknowledged to me that such Association executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the date first above written.



*Emily Evans*  
Notary Public for the State of Montana  
Print Name: Emily Evans  
Residing at: Bozeman MT  
My commission expires: 3/19/2019

EXHIBIT A

PROPERTY IN THE COMMUNITY ASSOCIATION

All of those lands situated in Tracts 2A and 4A of Certificate of Survey No. 2202A, located in the NE 1/4 of Section 3, Township 2 South, Range 5 East and the S1/2, of Section 34, Township 1 South, Range 5 East, P.M.M., Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the County Clerk and Recorder of Gallatin County, Montana.



**AMENDED BYLAWS  
OF  
BAXTER MEADOWS MASTER COMMUNITY ASSOCIATION, INC.**

**ARTICLE I. INTRODUCTION**

**SECTION 1. Bylaws Definition.** The Bylaws are a set of rules adopted by an organization or assembly for governing its own meetings or affairs.

**SECTION 2. Association Name.** The name of the Montana non-profit Corporation shall be Baxter Meadows Master Community Association, Inc., hereinafter referred to as the "Association."

**SECTION 3. Organization and Operation.** The provisions of these Bylaws shall apply to and govern the Association, established for the purpose of performing the rights, obligations and duties of the Association and the membership as set forth in these Bylaws, the Articles of Incorporation and the Community Declaration covering the Properties. The Association is organized and shall be operated as a Montana public benefit membership corporation. It is an exclusively nonprofit and volunteer Association with the purposes stated in the Articles of Incorporation.

**SECTION 4. Supersede.** These Bylaws supersede in its entirety all bylaws formerly adopted by the Baxter Meadows Master Community Association, Inc.

**ARTICLE II. ASSOCIATION DEFINITIONS**

**SECTION 1. Definition of Terms.** Definition of terms applicable to the Association, Owners, Members, Units, Association Directors and Committees shall be defined, maintained, and updated as necessary in the Baxter Meadows Master Community Association.

**ARTICLE III. PRINCIPAL OFFICE**

**SECTION 1. Location.** The principal office of the Association shall be the Association's property management company. The office location shall be reported in the Annual Report filed with the Montana Secretary of State, or as revised with election of the new Board of Directors of the Association.

**ARTICLE IV. MEMBERSHIP, VOTING RIGHTS, PROPERTY RIGHTS**

**SECTION 1. Member.** Member is defined in the Community Declaration. The Community Declaration definition shall apply to all references to "Member" in this document. . Each Owner shall agree to abide and be bound by these Bylaws, the Articles of Incorporation, the Community Declaration and the Resolutions of the Association.

**A. Member Admission.** Those persons and entities described in the Community Declaration are Members of the Association..

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Charlotte Mills - Gallatin County, MT    MISC



**B. Member in Good Standing.** Member in Good Standing is defined in the Community Declaration. The Restrictive Covenant definition shall apply to all references to “Member in Good Standing” in this document.

**C. Membership Quorum .** A quorum of Owners shall consist of more than forty percent (40 %) of those Owners in person or by proxy in Good Standing with the Association.

**SECTION 2. Voting Rights.** Members shall be entitled to one vote for each Unit owned. When more than one person holds an interest in any Unit, all such persons shall be members. The vote for such Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Unit. All of the persons or entities collectively named in the Deed as owner(s) shall designate in writing to the Association the individual authorized to exercise voting rights for the Unit in any voting matter. The Association has the right through the Board of Directors to suspend the voting rights of any Member that is not In Good Standing. Voting rights are suspended automatically by nonpayment of dues or liens. In cases of extreme financial or personal health hardship, or military deployment, the Board of Directors may grant a temporary variance waiving the suspension of voting rights.

**SECTION 3. Member’s Rights And Duties.** Each member shall have the right, duties and obligations set forth in the Community Declaration, the Articles of Incorporation, these Bylaws, and any rules adopted by the Subdivision Board of Directors in accordance with the Community Declaration and these Bylaws, as the same may from time to time be amended.

**SECTION 4. Termination of Membership.** Immediately upon the transfer of a Owners legal or equitable title to a Unit subject to the Subdivision Community Declaration, as they exist or as they are amended, he/she shall be deemed to have transferred his/her membership as to that Unit to the grantee(s).

**SECTION 5. Transfer of Membership.** Membership in this Subdivision is not transferable or assignable, except by the way of a proxy in the event of Member absence from a Subdivision meeting scheduled by the Board.

**SECTION 6. Proxies And Written Ballot.** Any member entitled to vote may do so in person, by proxy or by written ballot. No proxy shall be deemed valid for more than two (2) months after the date of execution thereof unless otherwise provided in the proxy instrument. All proxies must be in writing. Voting by proxy or by written ballot shall be in accordance with the Community Declaration and Bylaws.

**SECTION 7. Resignation Of Membership.** As long as a Member has legal or equitable ownership in a Unit subject to the Subdivision Community Declaration, he/she may not resign as a Member of the Subdivision. By purchasing a Unit in the Subdivision, the Owner agrees to belong to the Association for the entire ownership period.

## **ARTICLE V. MEMBERSHIP ASSESSMENT AND LIEN RIGHTS**

**SECTION 1. Membership Assessments.** Community Wide assessments, special assessments and fines as provided for in the Community Declaration and Bylaws shall be paid by the Members in accordance with the Community Declaration and Bylaws. The Board shall fix, levy, collect and enforce such assessments in accordance with the Community Declaration and Bylaws. Enforcement of the Community Declaration shall be by proceedings either at law or in equity against any person or persons violating or attempting to violate any covenant; and the legal proceedings may be either to restrain violation of the Community Declaration or to recover damages or both. In the event of any action to enforce these Community Declaration, the prevailing party shall be entitled to costs and a reasonable attorney's fee to be set by the Court. Any Owner, Declarant or the Association may enforce these Community Declaration. For the purpose of enforcing and collecting assessments, the Association shall have the lien rights set forth in the Community Declaration, and shall be enforceable by the Board in the manner set forth in the Community Declaration and Bylaws. The Board shall be entitled to exercise all other rights and remedies set forth in the Community Declaration and Bylaws or otherwise provided for at law or in equity.

## **ARTICLE VI. MEMBERSHIP RIGHTS AND PRIVILEGES**

**SECTION 1. Rights and Privileges of Members.** No Member shall have the right, without the prior approval of the Board to exercise any of the powers or to perform any of the acts by these Bylaws or the Community Declaration delegated to the Board or the Association. Each Member in Good Standing shall have all of the rights and privileges, including, but not limited to, property rights and rights to access, use and enjoyment of the Common Area(s) and Facilities granted to the Members or Owners by these Bylaws or the Community Declaration subject to such limitations as may be imposed in accordance therewith.

**SECTION 2. Suspension of Voting Rights.** The Board shall have the right to suspend the voting right of any Member or Members of the Association for the period during which any assessment against the Unit owned by such Member or Members remains unpaid and delinquent. Voting rights are suspended automatically by nonpayment of dues or liens. In cases of extreme financial or personal health hardship, or military deployment, the board of Directors may grant a temporary variance waiving the suspension of voting rights. The Board shall have the right to suspend Member voting rights for each infraction of the Association Community Declaration committed by such Member. Any suspension of such voting rights shall be made by the Board only after a meeting of the Board at which a quorum of the Board is present, duly called and held for such purpose in the manner as provided in the Bylaws and Community Declaration for the notice. Written notice of such meeting shall be given to the Member whose rights are being sought to be suspended at least ten (10) days prior to the holding of such meeting. Such notice shall be given either by personal delivery, or deposited in the United States mail, certified or registered, postage and fees prepaid, return receipt requested, addressed to such Member at the address given to the Association by him for the purpose of Association records, or by e-mail if the Member has given the Association the Member's email address for the purpose of Association records. Such notice, if mailed, shall be deemed given and received four (4) days after being so deposited in the United States mail in the manner aforesaid, or if emailed, shall be

deemed given and received upon sending the email, and said Member whose rights are being sought to be suspended shall be entitled to appear at such meeting and present his/her case as to why such rights should not be suspended in accordance with the provisions of this Section. The decision to suspend a Member's rights shall be made by a majority of the Members of the Board present at such meeting and shall be binding upon all Members of the Association. No action taken at such meeting shall be effective unless a quorum of the Board is present at such meeting.

## **ARTICLE VII. DIRECTORS**

**SECTION 1. Number and Qualifications.** The affairs of the Association shall be managed by a Board of a minimum of five (5) and a maximum of seven (7) Directors/Officers, each of whom shall be Members In Good Standing of the Association.

**SECTION 2. Directors.** The business and affairs of the Association shall be managed, conducted and controlled by a Board of Directors. Each Director shall be elected for a three (3) year term by the Members of the Association at the Annual Meeting. Any vacancies that result after the Annual Meeting shall be filled by selection by the remaining members of the Board, and shall serve for the remainder of the term. Any elected person may serve two or more terms in succession. Directors shall hold office until successors are elected and qualified. A member shall be in Good Standing within the Association in order to be eligible for election to any office, or to remain in office. Only one elected Director shall be permitted from each Unit.

**SECTION 3. Association Board Officers.** The Membership of the Association shall elect the Board of Directors annually at an Annual Meeting. The Board shall consist of a minimum of five (5) and a maximum of seven (7) members. Any of these duties may be delegated to the Association's property management company; however, the officer must ensure that the property management company completes the duties. Officers may not be combined and filled by one person. The duties of the Officers shall be:

**A. President.** The President shall preside over all meetings of the Association and overall Board meetings. 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 by the Board. Issues that require a vote by the Board at any Board meeting shall be voted by the quorum of Board members present. The President or his designated Board Member shall attend and represent the best interests for the Association at all City of Bozeman Commissioners meetings that have agenda topics pertinent to the Association. A report of the meeting actions and results shall be provided to the Association Board of Directors in a timely manner and maintained in the Association files by the Secretary.

**B. Vice-President.** The Board may decide to appoint a Vice-President. If the Board appoints a Vice President, the Vice-President shall serve on the Board and perform such duties as may be directed by the President in conducting Association business and duties. The Vice-President shall preside over any meeting in the absence of the President and shall perform such duties as may be specified, and exercise such powers as may be delegated by the Board.

**C. Secretary.** The Secretary shall give written notice to the Membership of all Membership meetings of the Association. The Secretary shall keep written records of all Membership addresses, phone numbers, E-mail addresses (if available), Unit owned, and Subdivision Unit Number as a minimum; maintain records of the proceedings of all Membership meetings of the Association, and all Board meetings. The Secretary shall archive and maintain all historical Association records in chronological order, including historical Treasurer's records. The Secretary shall be authorized to sign or cosign on a directive from the President, on behalf of the Association, all records, documents and instruments when such are authorized by the Board. The Secretary shall file in a timely manner the annual report required by the state of Montana.

**D. Treasurer.** The Treasurer shall keep and maintain accurate financial records and accounts of all financial and business transactions, including accounts of assets, liabilities, receipts, disbursements, gains and losses, and property records of the Association. The Treasurer shall receive and prepare all bills for payment and verify adequate funding. The Treasurer shall present quarterly financial reports to the Board that are reconciled to the Association approved income/expense budget for the year. The Treasurer shall present an annual financial report at the Association Annual Meeting that reconciles income/expenses to the Association approved budget for the previous year, and shall present a budget for Member review and approval by the Membership for the ensuing year. The Treasurer shall render other accountings and reports as may be required by the Board, county, state and Federal Government.

**SECTION 4. Election.** The Board of Directors shall be elected by Members or their proxies by written or oral nomination at the Association's Annual Meeting. Election to the Board of Directors shall be by secret written ballot or any other means as the Board may designate. At such election the members or their proxies may cast as many votes as they are entitled to exercise under the provisions of the corporate articles. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

The Board shall elect from within the Board of Directors, a President, Vice-President, Treasurer, and Secretary at their first meeting following the Association Annual Meeting.

**SECTION 5. Removal and Vacancies.** Any director may be removed from the Board, with or without cause, by a majority vote of the members. In the event of death, resignation or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

**SECTION 6. Annual Meetings.** The Board shall hold an annual Membership meeting once per fiscal year at the place designated in the meeting notice sent to Members by the Secretary, for the purpose of organization, election of Directors, and the transactions of other business. Annual meetings may be held telephonically.

**SECTION 7. Board Meetings.** Immediately following the first annual meeting and each subsequent annual meeting of members, the Board of Directors shall hold a regular meeting at the same place for the purpose of organization, election of officers, and the transactions of other business. Notice of such meeting is hereby dispensed with. Other regular meetings of the Board of Directors may be held without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

**A. Special Meetings.** Special meetings of the Board shall be held when called by the President of the Board, or by any two Directors, after not less than three days notice to each Director and Board Member. An accurate written record of all business transactions shall be maintained as meeting minutes by the Board Secretary.

**B. Meeting Quorum.** A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board. Minutes of all Board Meeting shall record those present at the meeting.

**C. Action Without Meeting.** The Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written or electronic (electronic constitutes written) approval of all the Directors, and filing the same with the minutes of the proceedings of the Board. Any action so approved shall have the same effect as though taken at a meeting of the Directors.

**SECTION 8. Compensation.** No Director shall receive compensation for any non-contracted service he may render to the Association. However, any Director may be reimbursed for his actual expenses incurred in the performance of his/her duties.

**SECTION 9. Powers and Duties.** Subject to the limitations of the Articles of Incorporation, these Bylaws, and the Community Declaration as to action required to be taken, authorized or approved by the Members of the Association, or a portion or percentage thereof, all Association powers and duties including those set forth in the Declaration shall be exercised or controlled by the Board. Without limiting the generality of the foregoing, the Board shall:

- A. Adopt and amend budgets for revenues, expenditures and reserves
- B. As a part of the adoption of the regular budget the Executive Board shall include an amount which, in its reasonable business judgment, will establish and maintain a reserve fund for the replacement of those improvements that it is obligated to maintain, based upon age, remaining life, quantity and replacement cost;
- C. Collect Assessments to the extent expressly permitted by the Community Declaration or delegated;
- D. Hire and discharge an independent managing agent, provided that any

agreement for professional management of the Community must provide for the termination by either party with or without cause and without payment of a termination fee or penalty upon thirty (30) days written notice;

- E. Hire and discharge employees, independent contractors and agents other than managing agents;
- F. Institute, defend or intervene in litigation or administrative proceedings or seek injunctive relief for violations of the Community Declaration or Bylaws in the Community Association's name, on behalf of the Community Association or two (2) or more Owners on matters affecting the Community;
- G. Enter into contracts on the Association's behalf and incur liabilities;
- H. Regulate the use, maintenance, repair, replacement and modifications of Common Elements;
- I. Cause additional improvements to be made as a part of the Common Elements;
- J. Acquire, hold, encumber and convey, in the Community Association's name, any right, title or interest to real estate or personal property, but Common Elements may be conveyed or subjected to a security interest only pursuant to state law or the terms of the Community Declaration;
- K. Grant easements for any period of time, including permanent easements, and grant leases, licenses and concessions, through or over the Common Elements;
- L. Impose and receive a payment, fee or charge for services provided and/or for the use, rental or operation of the Common Elements;
- M. Impose a reasonable charge for late payment of assessments and, after notice and hearing, levy reasonable fines or assessments provided for or allowed in the Community Declaration or Bylaws of the Community Association;
- N. Keep and maintain full and accurate books and records showing all of the receipts, expenses, or disbursements of the Community Association;
- O. Borrow funds in order to pay for any expenditure or outlay required pursuant to the authority granted by the provisions of the recorded Community Declaration and these Bylaws, and to execute all such instruments evidencing such indebtedness as the Executive Board may deem necessary and give security therefor;
- P. Impose a reasonable charge for the preparation and recording of amendments to the Community Declaration, liens, or statements of

- unpaid assessments;
- Q. Provide for the indemnification of the Community Association 's Officers and the Executive Board and maintain Directors' and Officers' liability insurance;
  - R. Procure and maintain adequate liability and hazard insurance on property owned by the Community Association and as further set forth in the Community Declaration;
  - S. Cause all Directors, Officers, employees or agents having fiscal responsibilities to be bonded or insured, as it may deem appropriate and in such amounts as it may deem appropriate. Such expense shall be a cost to the Association;
  - T. Declare the office of a member of the Board to be vacant in the event such member shall be regularly absent from meetings of the Executive Board;
  - U. Exercise for the Community Association all powers, duties, rights and obligations in or delegated to the Community Association and not reserved to the membership by other provisions of these Bylaws, Articles or the Community Declaration; and
  - V. Exercise any other powers conferred by the Community Declaration, Montana law or Bylaws.

**SECTION 10. Enforcement of Bylaws and Community Declaration.** The Board shall enforce the Bylaws and Community Declaration. To this end, the Board shall, directly or by delegation, establish forms, procedures, and standards for enforcement of the Bylaws and Community Declaration. The Board may hire counsel and other experts necessary for such enforcement, within the limitations of the Bylaws and Community Declaration.

## **ARTICLE VIII. COMMITTEES**

**SECTION 1. Design Review Board.** The Board shall appoint a minimum of three (3) Members. Member to serve on the Design Review Board, subject to the requirements and limitations set forth in the Bylaws and the Community Declaration, for the purpose of Subdivision Architectural Control. All Committee Members shall not be replaced in any one year, with the exception of extenuating circumstances. The Committee's function shall consist of accepting, reviewing, approving and/or rejecting all submitted plans from Owners within the Subdivision that desire to make alterations to their Unit. The review, acceptance, or rejection of plans shall be in accordance with the Community Declaration requirements. The Design Review Board shall act by a majority of the Members. Any authorization, approval, or disapproval made by the Design Review Board shall be signed by a majority of the Members. The Board shall also notify the Secretary or President of the Board of Directors of any pending approvals on all new construction. Copies of all written approvals or denials shall be provided to the Board of Directors. A timeline record of all actions taken shall be maintained by the Design Review



Board for all plans submitted. The Design Review Board shall archive and maintain a copy of all approved plans, review documents, and correspondence as historical records of the Design Review Board for a period of no less than five (5) years. The Design Review Board, at a time determined to be adequate for completion of their review functions, shall retire their inactive files to the Secretary of the Association for permanent archive retention.

**SECTION 2. Other Committees.** Other Committees will be appointed if and when needed.

**SECTION 3. Powers and Duties.** All appointed Committees shall have the powers and duties given to them in the Bylaws, the Community Declaration, and the Resolutions by which they are created.

**SECTION 4. Conflict of Interest.** No Committee Member shall serve on a Committee where a conflict of interest arises, such as:

**A. Design Review Board.** A Committee Member shall not serve on the Design Review Board to review and approve any alterations of his/her Unit. The other two (2) Members shall perform the review process. In the event that approval cannot be given due to differing opinions, the Committee shall consult with the President of the Association for final resolution.

**SECTION 5. Compensation.** With regards to this Article, under no circumstances shall any compensation be paid to any Member of any Committee for services rendered as a Member thereof; provided, however, that any Committee Member may be reimbursed for his actual authorized expenses incurred in the performance of his duties. However, if the Board of Directors determines there is a need, the Board of Directors may hire an architect, engineer or other necessary person to aid the Design Review Board in their review of submissions.

## **ARTICLE IX. MEETING OF MEMBERS.**

**SECTION 1. Annual Meeting.** The Association Board of Directors shall conduct an Annual Meeting of the Members at the place and hour designated by the Board. Subsequent regular Annual Meetings of the Members shall be held as close as practically possible during the same month of the year thereafter, and not on a legal holiday. At all Annual Meetings there shall be elected by the Members, a Board of Directors in accordance with the requirements of the Bylaws and the Community Declaration. The Board and Members present may also transact all other matters of Association business as may properly come before the Association Membership and Board.

**SECTION 2. Annual Meeting Order Of Business.** The order of business at an annual Membership meeting shall be, at a minimum as follows:

- (1) Call to order and determine that a quorum is present, by Members present and proxies.
- (2) Reading of prior minutes, discussion, correction, and approval by Membership vote.
- (3) Treasurer's Annual Report, to include a summary of all income/expenses reconciled to the Association approved operating budget for the year completed, followed by discussion, correction, and Report approval by Membership vote.

- (4) Old Business: to include a summary of all major actions taken or delayed by Board actions since last Annual Meeting, summary of verbal reports for all Committees.
- (5) New Business: all actions pending by Board action and those that are presented by Members present or by proxy request.
- (6) budget presentation, to include income needs and estimated expenditures for the ensuing year.
- (7) Committee report, discussion and election of Directors.
- (8) Adjournment.

**SECTION 3. Special Meetings.** Special meetings of the Members may be called at any time by the Board, or upon written request to the Board of Directors of twenty percent (20%) of the Members in Good Standing.

**SECTION 4. Notice of Meetings.** Written notice of the Annual Meeting of Members shall be given by, or at the direction of, the President or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, not less than fifteen (15) nor more than forty (40) days before such meeting to each Member entitled to vote thereat addressed to each Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice, or by email if the Member has furnished Member's email address to the Association for the purpose of notice,. Written notice of any meeting called for the purpose of approving special assessments pursuant to the Community Declaration shall be given not less than fifteen (15) days or more than forty (40) days before such meetings. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

**SECTION 5. Quorum.** A quorum of Members for any Association meeting shall be Forty percent (40 %) of the Members, including proxies submitted by absentee Members who are entitled to vote. If a quorum is not present at the first meeting called for the purpose conducting any Association business, another meeting shall be called subject to the same notice requirement as set forth herein. The required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**SECTION 6. Action Without Meeting.** Any action, which under the provisions of the Montana Non-Profit Corporation act, may be taken at a meeting of the Members, may be taken without a meeting if authorized in writing and signed by all of the Members who would be entitled to vote at a meeting for such purpose, and filed with the Secretary of the Association.

**SECTION 7. Proxies.** Every Member entitled to vote or execute consents shall have the right to do so either in person or by an agent or agents authorized by a written proxy executed by such Member or his duly authorized agent and filed with the Secretary and/or Treasurer of the Association at which the proxy is to be exercised. Except for the Secretary, no Member present at the meeting can hold and vote for more than three (3) proxies of absent Members. Every proxy shall be revocable by the person granting it announcing its revocation to the Secretary of the meeting at which it would otherwise be exercised prior to the exercise thereof and shall automatically cease upon sale or conveyance of the person granting the proxy of his interest in his Unit.

**SECTION 8. Member Address.** Each Member of the Association is responsible for delivering to the Secretary of the Association his/her current address, phone number and E-mail address for notice purposes and for keeping the Association advised as to current contact information. In the event that current Member address or contact information is not on file with the Secretary and/or Treasurer so that conventional mail or electronic mail is not delivered, received or responded to by the Member in the requested time frame, the Member/Owner shall not hold the Board, Association or Members of the Association liable for decisions made in the absence of a response from the addressed Member.

## **ARTICLE X. MEMBER DUES, ASSESSMENTS, FINES, AND PENALTIES**

**SECTION 1. Member Dues, Unit Assessments, Fines and Penalties.** Member dues, Unit assessments and Unit fines shall be as required, defined, and enforced in the Community Declaration and Bylaws. The Board of Directors shall have the responsibility to establish, levy and enforce fines and penalties, and file liens with the Gallatin County Recorder when a Unit and/or Owner are not in conformance with the Bylaws and Community Declaration or is delinquent in payment of Member dues, Unit assessments, fines and penalties.

**SECTION 2. Developed Owner Warnings for Infractions.** Any member of the Board of Directors will give a written warning for an infraction of the Community Declaration. An Owner must immediately correct the infraction and not make the same infraction again in order not to be assessed a fine(s). Warnings may not be given for Major Violations as outlined below.

- A. **Procedure.** Each Owner or his/her tenants, guests and/or invitees of any Unit shall comply with the Community Declaration and resolutions of the Board, all as lawfully amended from time to time. Each Owner shall be responsible to the Association for compliance with the foregoing by his/her tenants, guests and/or invitees. The Association shall have the right (but not the obligation) to enforce the Community Declaration, through its procedure adopted by resolution of the Board, abatement of the violation by the Association, or by proceedings either at law or in equity against any Person(s) violating or attempting to violate any of the Community Declaration. Legal proceedings may be either to restrain violation of the Community Declaration or to recover damages or both. Such procedures adopted by the Board to enforce the Community Declaration shall include provisions for due process (including but not limited to notice and an opportunity to be heard at a regular meeting of the Board) for Person(s) violating or attempting to violate any of the Community Declaration.
  
- B. **Discretion.** The decision to have the Association pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:
  - i. the Association's position is not strong enough to justify taking any or further action; or
  - ii. the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; or
  - iii. although a technical violation may exist or may have occurred, it is not of such

a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or

iv. it is not in the Association's best interest, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be deemed a waiver of the right of the Association to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule, nor shall it preclude any Owner from taking action at law or in equity to enforce the Community Declaration.

**SECTION 3. Non-payment of Dues or Assessments.** Notice will be sent via regular mail or email that payment is due. Failure to pay any dues or assessment by its due date will create an automatic lien against the property being assessed. The Association may file that lien with the Gallatin County Clerk and Recorder's Office, bring an action at law to collect the lien or foreclose the lien against the property in the same manner as a mortgage on real property, and the Association shall be entitled in any such actions or foreclosure proceedings to recover its costs, including lien release fees, expenses and reasonable attorneys' fees. No Owner may waive or otherwise escape liability for the dues or assessments provided for in the Community Declaration or herein by non-use of the Association Common Area(s) or non-use or abandonment of his Unit. In cases of extreme financial or personal health hardship, or military deployment, a temporary variance for delayed payment of any assessment and fines may be granted by the Board of Directors.

**SECTION 4. Notice of Violations, Fines and Penalties.** Notice of any fine must be approved by the Board of Directors and mailed with return receipt or hand delivered to the offender or by email if the Member has given the Association Members email address for the purpose of notice within three (3) days of the date that the fine has been levied or commenced. In the event of a tenant incurring the infraction the Owner shall also be notified if their current address is on file with the Association. The notice shall contain:

- (a) Description of the violation, Covenant Article(s) and Sections(s) not in compliance.
- (b) Recommended action, the fine assessed, and date for compliance by the Owner.
- (c) The Owner shall have a thirty (30) day period to comply from the delivery date of the notice. Included will be a description of penalties for not paying the fine or coming into compliance. Penalties shall include fines being doubled after 30 days. After 60 days of noncompliance and/or nonpayment of the fine it shall cumulate monthly at the same amount of the doubled fine.
- (d) Description of any legal action that will take place.
- (e) The Board of Directors will also assess and take similar action on any other Owner not in compliance for a similar violation.

**SECTION 5. Failure to Pay or Come into Compliance.** In the event of failure to pay a fine and/or come into compliance with the Community Declaration by the due date/time set by the Board for compliance, the Association may take such action, including legal action, needed to alleviate the violation at the Owner's expense and a lien may be placed upon the Unit. Once the violation/offense is corrected and in compliance with the Community Declaration, the offending

Owner/tenant may request in writing within 30 days of compliance to the Board for the assessed fine to be refunded or the lien to be removed. If approved by the Board of Directors, the refund shall be reduced to no less than the costs incurred by the Association in enforcing the Community Declaration and Association Bylaws for the specific violation. The Board of Directors retains the right to refuse refund requests. There is no refund taken if legal action has been taken.

**SECTION 6. Fines for Minor or Easily Corrected Violations.** Amounts of fines for violations that are easily corrected and/or happen for the first time are set at the discretion of the Board of Directors. They shall be appropriate for the offense. Examples of such minor violations include but are not limited to: parking of campers beyond the accepted term, setting off fireworks outside of the allowed days, junk vehicle or trash, etc. A minimum fine of \$25 but not more than one half of the established current year Owner's dues shall be levied (if no dues were assessed for the current year, then the established dues of the previous year shall be used for the fine assessment).

**SECTION 7. Fines for Major Violations.** Amounts of fines for violations that are willful, continually repeated, or cannot come back easily into compliance will be set at the discretion of the Board of Directors as outlined below. They shall fit the seriousness of such noncompliance. Examples of such major violations include but are not limited to: repeated minor violations, discharging a Firearm, performing a nonconforming Unit Alteration, Commercial or Industrial Use of a Unit etc. Such fines shall be a minimum of \$100 for each day the violation occurs.

## **ARTICLE XI. FINANCES**

**SECTION 1. Budget.** Prior to the Annual Membership Meeting, the Board of Directors shall cause a budget for the forthcoming year to be prepared and adopted. Based on the adopted budget, the Board shall set the annual dues assessment for the forthcoming year. A copy of the budget and the recommended dues assessment, with any explanation deemed desirable by the Board, shall be sent to the Membership with the notice of Annual Meeting. The adopted budget and dues assessment shall be discussed at the Annual Meeting.

## **ARTICLE XII. MISCELLANEOUS**

**SECTION 1. Checks, Drafts, Etc.** All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness, issued in the name of or payable to the Association, shall be signed or endorsed by such person or persons and in such manner as, shall be determined by resolution of the Board of Directors. If any check is return non-sufficient funds, the Board will charge the person or persons a reasonable fee for the returned check costs. The reasonable fee will be determined by the Board.

**SECTION 2. Contracts, Etc.** The Board of Directors, except as in these Bylaws otherwise provided, may authorize any Officer or Officers, agent or agents, to enter into any contract or execute any instrument in the name and on behalf of the Association, and such authority may be general or confined to specific instances; and unless so authorized by the Board of Directors, no Officer, agent, or employee shall have any power or authority to bind the Association by a

contract or engagement or to pledge its credit or to render it liable for any purpose or to any amount.

**SECTION 3. Inspection of Bylaws.** The Association shall keep the original or a copy of the current Bylaws at the residence of the Association Secretary which shall be open to inspection by the Members at all reasonable times by appointment or at the office of the Gallatin County Clerk and Recorder.

**SECTION 4. Fiscal Year and Tax Exemption.** The fiscal year of the Association shall be from January 1 through December 31. The Association shall apply for and maintain a tax exempt status under Internal Revenue Code Section 528.

**SECTION 5. Books and Records.** The books, records and papers of the Association shall be kept at the residence of the Association Secretary and/or Treasurer, or at the property management company or appropriate Committee or Director, which shall be open to inspection by the Members at all reasonable times by appointment.

**SECTION 6. Reports to Members.** The Board of Directors shall cause an annual operating statement reflecting income and expenditures of the Association for the recent fiscal year to be prepared and shall cause the delivery of a copy thereof to all Members of the Association at the Annual Meeting.

**SECTION 7. Evidence of Membership.** The Board of Directors shall have the power, but not the obligation, to cause the issuance of evidence of Membership in the Association to Members thereof in such form as the Board may determine.

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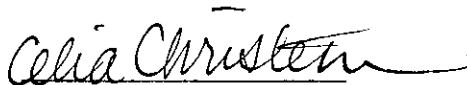
**ARTICLE XIII. BYLAW REVISIONS AND AMENDMENTS**

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**SECTION 1. Bylaw Revisions and Amendments.** The Bylaws shall be reviewed, and may be updated as needed. All Bylaw revisions and amendments shall be voted on for acceptance by the Membership at any duly called meeting or the Annual Meeting at which a quorum of Membership is present in accordance with the operating Bylaws and Community Declaration. After Membership vote and acceptance by the members by two-thirds of the votes cast or a majority of the voting power, whichever is less, the updated Bylaws shall be recorded at the office of the Gallatin County Clerk and Recorder.

**SECTION 2. Conflicts.** In the event of any conflict or inconsistency between these Bylaws and the Articles, the Articles shall control. In the event of any conflict or inconsistency between these Bylaws or the Articles and the Community Declaration, the Community Declaration shall control.

IN WITNESS WHEREOF, the undersigned has caused these Amended Bylaws to be made and executed on this 13<sup>th</sup> day of April, 2016.

  
Celia Christensen, President  
Baxter Meadows Master Community  
Association, Inc.

Certificate of Amendment of Presiding Officer and Secretary

We, the undersigned President and Secretary of the Baxter Meadows Master Community Association do hereby certify that the foregoing Amended Bylaws for the Baxter Meadows Master Community Association were approved and adopted by a vote of Fifty-One percent (51%) or more of the membership at a duly called and noticed meeting of the Association. This certificate of Amendment is made this 13 day of April, 2016.

*Celia Christensen*  
Celia Christensen, President

Attest: *Kellen Gamradt*  
Kellen Gamradt, Secretary

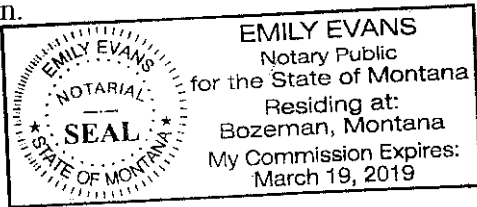
STATE OF MONTANA )

:ss.

County of Gallatin )

On this 13<sup>th</sup> day of APRIL, 2016, before me, a notary public in and for said State, personally appeared Celia Christensen and Kellen Gamradt, known to me to be the President and Secretary of the Baxter Meadows Master Community Association, the Association that executed this document, and acknowledged to me that such Association executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the date first above written.



*Emily Evans*  
Notary Public for the State of Montana  
Print Name: Emily Evans  
Residing at: Bozeman MT  
My commission expires: 3/19/2019

# BAXTER MEADOWS MASTER COMMUNITY ASSOCIATION BOARD OF DIRECTORS RESOLUTION

RESOLUTION: Policies and Procedures for the Covenant and Rule Enforcement

Date of Board Adoption: May 19, 2016

Resolution No.: 2013-01

Effective Date: May 19, 2016

Dates Revised: \_\_\_\_\_

## RESOLUTION

**WHEREAS**, the Baxter Meadows Master Community Association, Inc. ("Community Association") is a Montana non-profit corporation and has all the powers of a non-profit corporation enumerated and set forth in §35-2-113 et. seq., MCA and the purpose of the corporation is formed exclusively as a home owners association within the meaning of Section 501(c)(4) of the Internal Revenue Code of 1986, and its regulations as the same now exists or as it may be amended from time to time.

**WHEREAS**, the Community Association has the duty to meet the purposes of the Community Declaration and manage all Sub Associations that are created pursuant to the Declaration (Declaration, Article 2, Section 2.1) and has "all power necessary or desirable to effectuate its purposes as an owners' association as provided for in this Community Declaration." (Declaration, Article 2, Section 2.1(b).)

**WHEREAS**, Every Owner and occupant of a Unit shall comply with the Governing Documents, and each Owner shall have the right to enforce applicable covenants in this Community Declaration (Declaration, Article 10, Section 10.1(a)), and the Community Association, acting through the Board, may enforce all applicable provisions of the Community Declaration and may impose sanctions for violation of the Governing Documents (Declaration, Article 10, Section 10.1(b)).

**WHEREAS**, a number of violations of covenants and restrictions are occurring in the Community, and the current policy for correcting violations is not effectively resulting in compliance.

**WHEREAS**, the Community Association Board of Directors (Board) has reviewed its current policy and compared it with other homeowner associations and finds that implementing a notice and fine schedule with an appeal process is the best way to effectively bring units into compliance.

The Board hereby adopts the following procedures to be followed when enforcing the covenants and rules of the Association:

1. Reporting Violations. Complaints regarding alleged violations may be reported by an owner or resident within the community, a group of owners or residents, the Association's management company, if any, Board member(s), or committee member(s) by submission of a written complaint.
2. Complaints.
  - a. Complaints by owners or residents shall be in writing and submitted to the Board. The complaining owner or resident shall have observed the alleged violation and shall identify the complainant ("Complainant"), the alleged violator ("Violator"), if known and set forth a statement describing the alleged violation, referencing the specific provisions which are alleged to have been violated, when the violation was observed, and any other

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pertinent information (i.e. photos). Non-written complaints or written complaints failing to include any information required by this provision may or may not be investigated or prosecuted at the discretion of the Board.

- b. Complaints by a member of the Board, a committee member, or the manager, if any, may be made in writing or by any other means deemed appropriate by the Board if such violation was observed by the Director or manager.
3. Investigation. Upon receipt of a complaint by the Board, if additional information is needed, the complaint may be returned to the Complainant or may be investigated further by a Board-designated individual or committee. The Board shall have the sole discretion in appointing an individual or committee to investigate the matter.
4. Initial Warning Letter and/or Email. If a violation is found to exist, a warning letter and/or email shall be sent to the Violator explaining the nature of the violation. The Violator will have seven (7) calendar days from the date of the letter to come into compliance or submit for a variance.
5. Continued Violation After Initial Warning Letter. If the alleged Violator does not come into compliance or submit for a variance within seven (7) calendar days of the first warning letter, this will be considered a second violation for which a fine may be imposed following notice and opportunity for a hearing. A second letter shall then be sent to the alleged Violator, providing notice and an opportunity for a hearing, and explaining if a violation is still found to exist, a fine may be imposed pursuant to this Policy. The letter shall further state that the alleged Violator is entitled to a hearing on the merits of the matter provided that such hearing is requested in writing within 14 days of the date of the second violation letter.
6. Notice of Hearing. If a hearing is requested by the alleged Violator, then the Board, committee, or other Board-designated person conducting such hearing as may be determined in the sole discretion of the Board, may serve a written notice of the hearing to all parties involved at least seven (7) calendar days prior to the hearing.
7. Hearing. At the beginning of each hearing, the presiding officer shall introduce the case by describing the alleged violation and the procedure to be followed during the hearing. Each party or designated representative, may, but is not required to, make an opening statement, present evidence and testimony, present witnesses, and make a closing statement. The presiding officer may also impose such other rules of conduct as may be appropriate under the given circumstances. Neither the Complainant nor the alleged Violator nor their representatives are required to be in attendance at the hearing. The Board shall base its decision solely on the matters set forth in the Complaint, results of the investigation, and such other credible evidence as may be presented at the hearing. Unless otherwise determined by the Board, all hearings shall be open to attendance by all Owners. After all testimony and other evidence has been presented at a hearing, the Board shall, within a reasonable time, not to exceed 10 days, render its written finding and decision, and impose a fine, if applicable. A decision, either a finding for or against an Owner, shall be by a majority (quorum?) of the Board members present at the hearing. Failure to strictly follow the hearing procedures set forth above shall not constitute grounds for appeal of the hearing committee's decision absent a showing of denial of due process.
8. Failure to Timely Request Hearing. If the alleged Violator fails to request a hearing within 14 days of the second letter, or fails to appear at the hearing, the Board may make a decision with respect to the alleged violation based on the Complaint, results of the investigation, and any other available information without the necessity of holding a formal hearing. If a violation is

found to exist, the alleged Violator may be assessed a fine pursuant to these policies and procedures.

9. Notification of Decision. The decision of the Board shall be in writing and provided to the Violator and Complainant within 14 days of the hearing, or if no hearing is requested, within 14 days of the final decision.
10. Fine Schedule. The following fine schedule is adopted for all recurring covenant violations:
  - a. First Violation: Warning Letter
  - b. Second Violation \$100.00  
(of same covenant or rule, 7 days after first warning letter)
  - c. Third Violation \$25.00 a day, retroactive to the date  
(after notice and hearing) of the initial warning letter.
11. Continuous Violations. Continuous violations are defined as violation of Owner obligations that are materially uninterrupted by time. After seven (7) days from the date of the initial warning letter, each day of noncompliance constitutes a separate violation. *For example, the failure to remove an unapproved exterior improvement or the repeated nightly use of the fire lane for parking.*

If an Owner is determined as having a continuous violation, in accordance with the terms of this Policy, such Owner may be subject to a daily fine of \$25.00 per day per each covenant violation, retroactive to the date of the initial warning letter, if not corrected following a notice and opportunity for a hearing as set forth above.
12. Waiver of Fines. The Board may waive all, or any portion, of the fines, if, in its sole discretion, such waiver is appropriate under the circumstances. Additionally, the Board may condition waiver of the entire fine, or any portion thereof, upon the Violator coming into and staying in compliance with the Articles, Declaration, Bylaws and Rules.
13. Other Enforcement Means. This fine schedule and enforcement process is adopted in addition to all other enforcement means which are available to the Community Association through its Declaration, Bylaws, Articles of Incorporation, and Montana law. The use of this process does not preclude the Community Association from using any other enforcement means.
14. Supplement to Law. The provisions of this Resolution shall be in addition to and in supplement of the terms and provisions of the Declaration and the law of the State of Montana.
15. Deviations. The Board may deviate from the procedures set forth in this Resolution if, in its sole discretion, such deviation is reasonable under the circumstances.
16. Amendment. This policy may be amended from time to time by the Board of Directors.
17. The Board interprets this resolution, and its decision is final;
18. This Resolution is effective the date it is adopted.

19. This Resolution supersedes all other Policies/Resolutions adopted by the Community Association with regard to document policies and procedures for covenant and rule enforcement.

DATED this 19 day of May, 2016

BOARD OF DIRECTORS  
Baxter Meadows Master Community Association

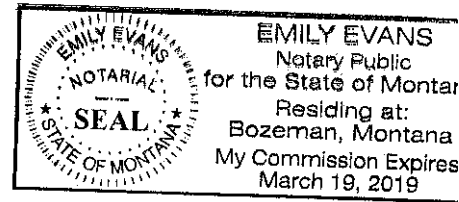
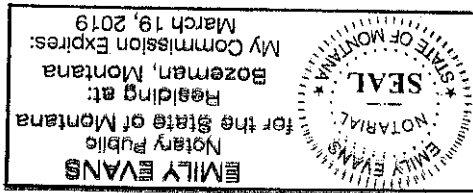
Celia Christensen  
President-Celia Christensen

State of Montana  
:ss  
County of Gallatin

This instrument was acknowledged before me on May 19, 2016 by Celia Christensen, President of Baxter Meadows Master Community Association, executed this document and acknowledged to me that such Association executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.

[Signature]  
Notary Public for the State of Montana  
Emily Evans  
Print



Bozeman MT Gallatin Co  
Residing at  
3/19/2019  
My Commission Expires