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**DECLARATION OF COVENANTS, CONDITIONS,
AND RESTRICTIONS OF AND FOR
HARVEST CREEK**

Date: August 23, 2000

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**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
HARVEST CREEK**

Date: _____

THIS DECLARATION is made on the date hereinafter set forth by **HOMELANDS DEVELOPMENT CO., L.L.C.**, hereinafter referred to as "Declarant," and supercedes all previous Declarations for the below referenced property.

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the County of Gallatin, State of Montana, which is more particularly described as:

Harvest Creek Subdivision, Phases I-IV, and to all future phases of Harvest Creek West Subdivision, located on approximately eighty (80) acres immediately west and adjacent to Harvest Creek Subdivision, all such subdivisions and phases located on property situated in the SW1/4 of Section 2, Township 2 South, Range 5 East, P.M.M., City of Bozeman, Gallatin County, Montana.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above, and shown on the attached, marked "Exhibit A" shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each owner thereof.

ARTICLE I. DEFINITIONS

Section 1. **"Association"** shall mean and refer to **Harvest Creek Owners' Association, Inc.**, its successors and assigns.

Section 2. **"Owner"** shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is part of the properties. Owner shall also include the purchaser under a Contract for Deed.

Section 3. "Property" or "Properties" shall mean and refer to that certain real property hereinbefore described and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Lot" shall mean and refer to any plat of land shown upon any recorded subdivision of the properties.

Section 5. "Declarant" shall mean and refer to Home Lands Development Company, L.L.C.

Section 6. "Common Areas" shall mean all property that is owned by the Association, which includes, but is not limited to waterway, park land, trails, recreation areas, retention/detention ponds, etc.

ARTICLE II. MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The term "Directors" shall mean the Directors of the Association and shall consist of the following; during the first 7 years of the development, (starting January 1, 2000), or until 70% of all Lots of the first 8 phases are sold (590 total Lots in the first 8 phases) which ever occurs first, the Directors shall consist of Tim Howard, Walt Wolf, and a Lot Owner who shall be elected at the annual meeting by a simple majority of the members of the Association, thereafter, the Directors shall consist of 3 Lot Owners, who shall be elected at the annual meeting by a simple majority of the members of the Association. That Board of Directors shall be elected for a term set by a simple majority of the membership but not less than one year. Each Director shall serve until replaced by his successor. Any vacancy in the Board of Directors occurring before the next annual meeting of the members shall be filled by the remaining Directors.

Section 3. The Directors shall have the authority to act on behalf of the Association and its members as shall be reasonably necessary to carry out the purposes of the Association and enforce these Covenants. The Directors shall act by majority vote. The officers of the Association shall follow the directions of the majority vote of the Directors.

Section 4. The Directors shall serve as the Architectural Control Committee until and unless a majority of the members vote to have a separate Architectural Control Committee.

Section 5. Directors shall also serve as officers which shall be designated by a simple majority of the members at the annual meeting unless and until a majority of the members vote to have officers elected separate and apart from the Directors.

Section 6. The duties of each of the officers shall be as follows:

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

b. **Vice President.** The Vice President shall exercise the powers of the President in the absence of the President.

c. **Secretary/Treasurer.** The Secretary shall give notice of all meetings of the Association. He shall keep a record of the proceedings of the meetings of the Association. He shall be authorized to sign, on behalf of the Association, all records, documents and instruments when such are authorized to be signed by the Association. He shall exercise such other duties as may be designated by the Association.

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

Section 7. A vacancy in any office of the Association shall be filled by appointment by the Board of Directors until the next annual meeting or his/her successor is duly appointed or elected.

Section 8. The annual meeting of the Association shall occur on May 1st of each year. Any special meeting may be called by the President, or in his absence, by the Vice President. In addition, a special meeting shall be held upon call of forty-five percent (45%) of the owners. Special meetings shall require 48 hours notice, in writing. Notice of annual and special meetings shall be mailed to owners at the address for each owner which is listed as such on the official plats and records of Gallatin County, as maintained by the Clerk and Recorder, Gallatin County, or at such address as shall be designated, in writing, by owner. The presence of members representing sixty percent (60%) of the total votes of the membership shall constitute a quorum.

Section 9. If proposed action is favored by a majority of the votes cast at a meeting, but such vote is less than the requisite sixty percent (60%) of the members, members who were not present in person or by proxy may give their assent to any action in writing, provided the same is received by the appropriate officer of the Association not later than thirty (30) days from the date of such meeting wherein the action was voted on.



ARTICLE III - HOMEOWNERS ASSOCIATION

The Association, acting through its Board of Directors, shall have the power and authority to take such actions as shall be necessary or reasonable to care for, protect and maintain the roads, easements, boundary fences, drainage easements and common areas; to enforce these Covenants; to collect assessments; to set annual and/or special meetings; and to act in any other matters set forth herein or which may serve the development, including the formation of special improvement districts, either public or private, for such improvements as the Association shall approve.

The Association shall hold an annual meeting each year at such date, place and time as shall be set by the Board of Directors. At the annual meeting, the members shall review and approve a budget for the next year, shall elect Directors to fill any expired term or vacant position, and shall conduct such other business as shall be reasonable or necessary to carry out the purpose of the Association. The members shall have the authority to set the number of Directors, which initial number shall be three.

The annual meeting of the Board of Directors shall be held immediately after the annual meeting of the members. At the annual meeting, the Directors shall elect a President, Vice President and Secretary/Treasurer for the Association from among the Directors, except that the Secretary/Treasurer may be a member who is not a Director.

For the purpose of determining membership, at any meeting a person(s) or entity(ies) shall be deemed to be a member upon the recording of a duly executed deed to an owner or upon the recording of a Notice of Purchaser's Interest or an Abstract of Contract for Deed showing a contract purchase by an owner. The legal title retained by the vendor selling under contract shall not qualify such vendor for membership.

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

ARTICLE IV - COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien for Personal Obligation of Assessments.
The Owner of any Lot by acceptance of a Contract of Sale or a deed therefore, whether or not it shall be so expressed in such deed or contract, is deemed to covenant and agree to pay to the Association (a) assessments or charges and (b) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who

was the Owner of such property at the time the assessment fell due.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the properties, and for the maintenance, upkeep, and prevention of damage to the common area and facilities and dedicated park land.

Section 3. Assessment Amount. Beginning August 1, 2000, each Owner shall pay a \$20 per month assessment for each Lot owned, payable quarterly.

Section 4. Notice of Quorum for any Action Authorized Under Section 3. Any action authorized under Section 3 shall be taken at a meeting called for that purpose, written notice of which shall be sent to all members not less than ten (10) days in advance of the meeting.

Section 5. Uniform Rate of Assessment. Both periodic and special assessments must be fixed at a uniform rate for all deeded Lots.

Section 6. Date of Commencement of Assessments - Due Dates. The assessments provided herein shall be levied quarterly following the closing of the sale to an individual Owner. Voting rights attributable to property interest shall not vest until assessments against those interest have been levied by the Association. The first assessment for each Lot shall be adjusted according to the number of months remaining in the calendar quarter. The Board of Directors shall fix the amount of the assessment against each deeded Lot at least thirty (30) days in advance of each assessment period. Written notice of the assessment shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on specific Lot have been paid.

Section 7. Delinquent Dues and Assessments. After any dues or assessments have been delinquent for a period of one month or more, the Association may mail to the Owner a Notice of Delinquency. After any dues or assessments have been delinquent for a period of two months or more, the Association shall be entitled to file a lien against the Owner's property, provided said Association has given notice of delinquency 30 days in advance, which shall be filed in accordance with the provisions of Title 71, Chapter 3, M.C.A. The Association shall have all rights and remedies as provided herein.

The Declarant and each Lot Owner, by entry into an agreement to purchase a Lot and taking title to the same, waive the right to protest any special improvement district created and of public record in existence prior in time to Owner receiving title to any Lot. In this regard, Owner, prior to taking title to a Lot, is advised to review or seek advice with respect to the public record in the Gallatin County Clerk and Recorder's Office. Further, each Lot Owner waives the right to protest the creation of a Park Maintenance District whose purposes will be to maintain, improve, and restore or replace all parks, open space



common areas, and trails with this subdivision.

ARTICLE V - SIDEWALKS

Sidewalks, constructed to city standards, shall be installed on both sides of the streets at the time houses are constructed on individual lots. Upon the third anniversary (3 years) of each final plat phase recordation, any Lot Owners who have not constructed their sidewalks shall be required to install sidewalks on their lots, regardless of whether a home is constructed on the Lot or not. In the event that said Lot Owner shall fail to do so, the Association may do so and the cost shall be added to and become a part of the assessment to which such Lot is subject.

ARTICLE VI - MAINTENANCE

Owners are required to establish lawn or other suitable landscaping for their Lot. They shall also mow, irrigate, control noxious weeds and otherwise maintain their Lot and the right-of-way boulevard that adjoins their Lot so that the landscaping does not detract from the general appearance of the subdivision in the opinion of the Architectural Control Committee. To prevent the potential for groundwater contamination, the amount and type of chemicals applied to yards shall be restricted to acceptable standards.

In the event that the need for maintenance or repair or weed control is caused through the willful or negligent act of the Owner, his family, guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject. For purposes of this Article, maintenance and repair caused by willful acts of the Owners shall include maintenance and repairs required as a result of utility repairs or other actions or contractors or agents of the Owner performed outside the boundary of his Lot.

In the event that the need for maintenance, repairs, and replacement of common areas and park land, or weed control is needed, the cost shall become a part of the assessment to which all Lots are subject.

The covenants and restrictions of this Declaration on exterior maintenance shall run with and bind the land and shall inure to the benefit of and be enforceable by the Association and the Owner of any Lot subject to this Declaration.

ARTICLE VII - UTILITIES

Section 1. Refuse Disposal. No part of the above described property shall be used or maintained as a dumping ground for rubbish, trash or garbage. All waste shall be kept in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition and shall comply with all applicable laws and regulations.

Section 2. Easements. At no time will patios, barbecues or other permanent

structures be erected upon any utility easement within the exterior boundary of a Lot. Fencing of a permanent nature shall be permitted only if it is of a type that is easily and quickly removed in the form of panels, gates or other similar units of construction.

Section 3. Reservations of Utility Easements. Each Lot in the above-described property shall be subject to an easement for the purposes of constructing, operating, maintaining, enlarging, reducing, removing, laying or relaying lines and related facilities and equipment for utilities including but not limited to those providing heat, communication and electrical power.

ARTICLE VIII - ARCHITECTURAL CONTROLS

Section 1. Temporary Structures, Trailers Forbidden. No structure of a temporary character, mobile home, trailer, basement, tent, shack, garage or any other outbuilding shall be used on any Lot at any time as a residence either temporarily or permanently. All structures must be maintained in a reasonable manner to present a neat and attractive exterior appearance.

Section 2. Landscape Plan. Landscaping plans shall be submitted to the Architectural Control Committee for their approval and the landscaping shall be completed with twelve (12) months after the Owner's first occupancy of the residence. As part of the landscape plan the requirement for boulevard trees shall be as required by the City of Bozeman.

Section 3. Minimum Residence Requirements. All single story family dwellings shall have a minimum of 1,300 square feet of floor space, except for lots in block 7 and 8, which shall be allowed a minimum of 1,200 square feet for single story dwellings, together with a double car attached garage. All two story family dwellings shall have a minimum of 1550 square feet, with at least 800 square feet at or above grade. Except for the allowable square footage on a second story as defined above, all square footage requirements must be at or above grade and exclude basements, garages, carports, porches, etc. It is the intention of this Covenant to ensure that all dwellings shall be of a quality workmanship and materials substantially the same as or better than other dwellings in the development, all plans must be approved by the Board of Directors or their assigned representatives.

Section 4. Exterior Siding. The exterior siding of the structure shall consist of wood, wood look-alikes or wood products, brick, stone, stucco or other manufactured exterior good quality materials, including insulated metal siding. However, no sheet or panel metal siding nor cement block siding is allowed. No panel siding similar to T1-11 siding or plywood sheet siding is allowed.

Section 5. Roofs of Structures. The roofs shall be covered with shakes, tiles or shingles and no rolled roofing shall be allowed. Exposed aluminum or silver

flashing around the chimneys or roof valleys shall not be allowed unless colored, textured or painted to match the roof design and color. Rain gutters are allowed, provided the same are colored to match the trim or color of the roof. Steel galvanized gutters are not allowed. The roofs shall have a minimum pitch of 6/12. Further, all structures shall be constructed so that the roof overhand and gable end are a minimum of 12 inches.

Section 6. Foundation of Structures. The exterior colors of the structures shall be earth tones, pastels, non gloss white or wood colors. No bright or shiny colors or exterior siding shall be allowed. For example, bright oranges, royal blues, pinks, purples and like bright colors are not allowed. Colors are to be compatible with the balance of the neighborhood.

Section 7. Exterior of Structures. The exterior design, style and colors of each of the outbuilding and structures on a Lot shall conform to the design, style and colors of the residence. Roof fascia trim on any structure constructed on the real property which is the subject of this Declaration shall extend downward on the roof and be visible for at least 6 inches. The building should be a visual combination of forms that does not give a "box" appearance. Breaks in the roof lines and wall lines that add interest to the form and help define the design of the building are encouraged.

Section 8. Entrances. The main entrance to the living structures constructed on the real property which is the subject of this Declaration shall be architecturally defined and enhanced by incorporating an entry porch or gable extending over the entrance denoting a clear sense of arrival. It shall provide weather protection and visual definition.

Section 9. Architectural Enhancement. Any residential structure constructed on the real property which is the subject of this Declaration shall contain an offset or set back in its architectural design and construction of a minimum of 2 feet between the residence and attached garage.

Section 10. The height of all structures erected within the confines of the real property which is the subject of this Declaration shall be controlled by the zoning and other appurtenant regulations enacted by the City of Bozeman.

Section 11. Accessory Buildings. All necessary buildings, such as garages and storage buildings, shall be architecturally compatible with the residence on or being constructed on the Lot.

Section 12. Fencing. Backyards and sideyards may be fenced with wood or materials that look like wood. The front yard toward the public road shall not be fenced. No chain line or wire fences shall be allowed. Fences shall be maintained in good condition. Fences within the rear yard, set back of lots adjoining the linear park, shall not be higher than four feet, and shall be constructed of wooden turned post and rail design.

Section 13. Antennas and Satellite Dishes. In no case shall a satellite dish exceed 30" in diameter.

Section 14. Dog Kennels. Dog kennels are allowed provided they do not exceed 10 feet by 20 feet in size and are located in the rear yards and screened or fenced from the neighbors' view. Such kennels are to be kept in a clean and odor free condition at all times.

Section 15. Architectural Control Committee Rules. The Architectural Control Committee may make such reasonable rules and bylaws and adopt such procedures as it deems necessary to carry out its functions, which rules, bylaws and procedures may not be inconsistent with the provisions of these covenants.

Section 16. Architectural Control Committee Approval. No buildings, construction, landscaping, parking, fence, wall or other improvements shall be placed, constructed, erected, repaired, restored, reconstructed, altered, remodeled, added to or maintained on any Lot or area until building and site plans and specifications, and such other information as the Committee may reasonably require, including, without being limited and approved by a majority of the Architectural Control Committee in writing; nor may the same be commenced until the Architectural Control Committee shall have issued a permit allowing such improvements.

Section 17. Minimum Building Standard Requirements. The Architectural Control Committee shall require that all construction complies with the provisions of the following standard codes or their amendments:

- (1) Uniform Building Code;
- (2) International Conference of Building Officials;
- (3) National Plumbing Code;
- (4) National Electric Code;
- (5) National Fire Protective Association;
- (6) Bozeman Building Code.

Section 18. Plan Rejection. The Architectural Control Committee shall have the authority to reject materials, designs submitted with plans, or the plans themselves if they are not compatible with, or are inappropriate for the rest of the subdivision.

Section 19. Construction Compliance. All improvements, construction, reconstruction, alterations, or remodeling requiring the approval of the Architectural Control Committee must be completed in substantial compliance with the plans and specifications initially approved by the Committee. All such construction must be completed within one (1) year from the date construction is commenced.

Section 20. Enforcement. The Architectural Control Committee shall have the power, authority, standing and right to enforce these covenants in any court or law or equity when it reasonable believes the same have been violated, and shall have the authority to revoke or suspend building permits and/or order suspension or cessation of any construction or work in violation of these covenants or of any permit issued by the

Committee.

Section 21. Fees. The Architectural Control Committee may require reasonable fees to be paid with the filing of plans and specifications and the issuance of building permits.

Section 22. Liability. The Architectural Control Committee or the individual members thereof may not be held liable by any person for any damages which may result from Committee action taken pursuant to these covenants, including but not by way of limitation, damages which may result from correction, amendment, change or rejection of plans, the issuance of building permits, or any delays associated with such action on the part of the Committee.

ARTICLE IX - USE RESTRICTIONS

Section 1. Prohibited Commercial Use. No residence or other structure erected on the real property which is the subject of this Declaration shall be used for any commercial endeavor or activity including cottage industry type business, day care, or other business type activity. It is the express intent of the Declarant that the real property which is the subject of this Declaration be devoted to creating a neighborhood consisting of single-family residential units and preserving within the community so created a quiet, peaceful, harmonious existence between the neighbors.

Section 2. Animals. Dogs, cats or other household pets may be kept in reasonable numbers provided they are confined to the Lot of their Owner. Household pets may not be kept, bred or maintained for any commercial purposes. Pets cannot be allowed to become a nuisance or annoyance to neighboring property Owners, nor can they be allowed to wander at large or bark uncontrolled.

Section 3. Storage of Equipment. No Lot or adjacent street, roadway or alleyway shall be used for the storage of any inoperable vehicle, machinery or equipment. No Lot shall be used for storage of any articles, vehicles, equipment or other personal property of any quantity in excess of the immediate needs and personal use of the Owner of a Lot or the occupants and guests thereof as the case may be, and shall not interfere with the use or enjoyment of neighboring Lots.

Section 4. Commercial Vehicles. No Lot shall be used for the outside parking or storage of any commercial trucks, large commercial vehicles or other heavy equipment, except as may be necessary during reasonable periods of construction. Nothing herein shall prohibit the storage of such vehicles within the confines of a garage approved by the Architectural Committee.

Section 5. Recreational Equipment. All campers, trailers, motor homes, boats, and all other recreational equipment and the like shall only be parked on or

adjacent to the Lot in compliance with the applicable zoning code. In no event shall such equipment be parked on roads, nor shall any equipment be parked such that it is visible from the streets or adjacent lots for a period exceeding 3 days in any 30 day period, unless a shorter prohibition is imposed by the City of Bozeman. Storage or location of such equipment and vehicles, in excess of the requirements of this Section, shall occur in an enclosed garage or other screened area with such garage or screen having been pre-approved in writing by the Architectural Committee.

Section 6. Offensive Activity.

a. No noxious odors or offensive activity shall take place upon any portion of the above-described property, nor shall anything be done thereon which may be, or may become, an annoyance to the neighborhood.

b. No fireworks of any kind may be bought, brought into, discharged or stored on the above-described property.

c. No firearms shall be discharged on the above-described property.

Any violation of city ordinances, zoning or other regulations shall be a violation of these covenants and can be enforced by the Association or individual Lot Owners.

Section 7. Waterways. The Owner or Occupant of any Lot shall at all times conduct its use and activities in a manner that will preserve the integrity of waterways within the Common Area, including the prevention of any degradation of water quality, any reduction or increase in the flow of said waterways, or any damage to the stream bed or banks of said waterways. The Owner or Occupant of any Lot shall not conduct or permit the conduct of the following activities:

a. The discharge of any liquid, solid, or gas into waterways;

b. The use of any fertilizers or herbicides other than those specifically approved by Declarant; or the polluting of waterways; or

c. Any refuse encouraging activities.

d. A 20 foot easement extending from each bank, for access and maintenance of all waterways has been, and is hereby reserved in perpetuity.

e. No structures shall be placed within 35 feet of the high water mark of any water course within this subdivision.

f. All water rights appurtenant to lands within this subdivision shall be owned, administered and operated by the Homeowners Association.

g. No person, owner or otherwise shall divert any waterway onto any subdivision Lot.

ARTICLE X – PARK LAND MAINTANANCE

The Homeowners Association shall be responsible for the maintaining, preservation, and care needed for the improvements of the common areas and dedicated park land of the Harvest Creek Subdivisions and delineated on Exhibit A "Park." The maintenance shall include, but not be limited to, the mowing, trimming, watering, trash, clean up, fertilizing, and maintenance of all equipment associated there with. The maintenance contract shall be bid and awarded annually, and paid through the Homeowners Association.



ARTICLE XI - GENERAL PROVISIONS

Section 1. Effects of Covenants on Mortgage. A breach of any of the foregoing provisions, conditions, restrictions or covenants shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value on any Lot, or portion of any Lot, and any improvements thereon, but said provisions, conditions, restrictions and covenants shall be binding upon and effective against any Owner thereof whose title thereto was acquired by foreclosure, trustee sale or otherwise.

Section 2. Waiver of Right to Protest. Each Lot Owner waives the right to protest the creation of RID's and SID's as required by the Bozeman City Commission as a condition of final plat approval, including, but not limited to, any district created for a city wide park maintenance or otherwise. Should city create said district the district fees collected by the Homeowners Association for park maintenance shall cease.

Section 3. Incorporation by Reference. In any conveyance of the lands covered hereby, it shall be sufficient to insert a provision therein to the effect that the conveyance is subject to the restrictions and covenants contained in this document, without setting forth such restrictions and covenants verbatim or in substance in such conveyance.

Section 4. Enforcement. Enforcement of these covenants shall be by procedure of law or in equity against any person or persons violating or attempting to violate any covenants, and the legal proceedings may be either to restrain the violation of the covenants or to recover damages, or both. Each person who has been found by a court of competent jurisdiction to have violated one or more of these covenants shall be liable for all attorney's fees and costs incurred in connection with the litigation. The failure of any Owner or Owners of any Lot to enforce any of the restrictions set forth herein shall be personally binding upon any person, persons or corporation, only with respect to breaches committed during its, his or their ownership of or title to any of said tracts and any part thereof.

Section 5. Severability. Invalidation of any of these covenants by a judgment or a court order shall in no way effect any of the other provisions, but they shall remain in full force and effect.

Section 6. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by an instrument signed by the Owners of not less than sixty percent (60%) of the Lots, each Lot being entitled to one (1) vote.



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Notwithstanding the foregoing, the Declarant reserves the right to modify and amend these Covenants at any time during the first five (5) years following the filing of the final plat or upon the sale of seventy-five percent (75%) of the lots which comprise phases 1, 2, 3 and 4, whichever comes first. No amendment or modification to these Covenants shall be effective to the extent the same was a condition of final plat approval required by the Bozeman City Commission without the express written consent of the Bozeman City Commission.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal the 3RD day of OCTOBER, 19992000.

Walter Vance
HOMELANDS DEVELOPMENT CO., L.L.C.
Declarant

STATE OF MONTANA)
) ss.
County of Gallatin)

On this 3RD day of OCTOBER, 2000, before me, a Notary Public for the State of Montana, personally appeared known to me to be the managing member of Homelands Development Co., a L.L.C., and acknowledged to me they executed the same pursuant to the power and authority vested in him.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal as of the day and year first above written.

(Seal)

Evelyn J. Schree
Notary Public for the State of Montana
Residing at Bozeman, Montana
My Commission Expires: 10-01-03

THIS DOCUMENT PREPARED BY:
WITTICH LAW OFFICES, P.C.
2621 W. College St., Ste E
Bozeman, MT 59718
(406) 585-5598



Harvest Creek
Covenants, Conditions, and Restrictions



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**DECLARATION OF COVENANTS, CONDITIONS,
AND RESTRICTIONS OF AND FOR
HARVEST CREEK, PHASES I - IV**

Date: December 3, 1999



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DRAFT
DECLARATION OF
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WHEREAS, Declarant is the owner of certain property in the County of Gallatin, State of Montana, which is more particularly described as:

Harvest Creek Subdivision - Phase 1,
located in the SW¼ of Section 2, Township 2 South, Range 5 East, P.M.M.,
City of Bozeman, Gallatin County, Montana. Plat J - 285

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Section 4. "Lot" shall mean and refer to any plat of land shown upon any recorded subdivision of the properties.

Section 5. "Declarant" shall mean and refer to Home Lands Development Company, L.L.C.

Section 6. "Common Areas" shall mean all property that is owned by the Association, which includes, but is not limited to waterway, park land, trails, recreation areas, retention/detention ponds, etc.

ARTICLE II. MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The term "Directors" shall mean the Directors of the Association and shall consist of the following; during the first 5 years of the development, or until 70% of all Lots of the first 4 phases are sold (230 total Lots in the first 4 phases) which ever occurs first, the Directors shall consist of Tim Howard, Walt Wolf, and a Lot Owner who shall be elected at the annual meeting by a simple majority of the members of the Association, thereafter, the Directors shall consist of 3 Lot Owners, who shall be elected at the annual meeting by a simple majority of the members of the Association. That Board of Directors shall be elected for a term set by a simple majority of the membership but not less than one year. Each Director shall serve until replaced by his successor. Any vacancy in the Board of Directors occurring before the next annual meeting of the members shall be filled by the remaining Directors.

Section 3. The Directors shall have the authority to act on behalf of the Association and its members as shall be reasonably necessary to carry out the purposes of the Association and enforce these Covenants. The Directors shall act by majority vote. The officers of the Association shall follow the directions of the majority vote of the Directors.

Section 4. The Directors shall serve as the Architectural Control Committee until and unless a majority of the members vote to have a separate Architectural Control Committee.

Section 5. Directors shall also serve as officers which shall be designated by a simple majority of the members at the annual meeting unless and until a majority of the members vote to have officers elected separate and apart from the Directors.

Section 6. The duties of each of the officers shall be as follows:

a. President. The President shall preside over all meetings of the Association. He shall call the membership together whenever necessary. The President shall be the general administrative and executive officer of the Association. He shall perform such duties as may be specified, and exercise such

powers as may be delegated to him by the Association.

b. Vice President. The Vice President shall exercise the powers of the President in the absence of the President.

c. Secretary/Treasurer. The Secretary shall give notice of all meetings of the Association. He shall keep a record of the proceedings of the meetings of the Association. He shall be authorized to sign, on behalf of the Association, all records, documents and instruments when such are authorized to be signed by the Association. He shall exercise such other duties as may be designated by the Association.

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

Section 7. A vacancy in any office of the Association shall be filled by appointment by the Board of Directors until the next annual meeting or his/her successor is duly appointed or elected.

Section 8. The annual meeting of the Association shall occur on May 1st of each year. Any special meeting may be called by the President, or in his absence, by the Vice President. In addition, a special meeting shall be held upon call of forty-five percent (45%) of the owners. Special meetings shall require 48 hours notice, in writing. Notice of annual and special meetings shall be mailed to owners at the address for each owner which is listed as such on the official plats and records of Gallatin County, as maintained by the Clerk and Recorder, Gallatin County, or at such address as shall be designated, in writing, by owner. The presence of members representing sixty percent (60%) of the total votes of the membership shall constitute a quorum.

Section 9. If proposed action is favored by a majority of the votes cast at a meeting, but such vote is less than the requisite sixty percent (60%) of the members, members who were not present in person or by proxy may give their assent to any action in writing, provided the same is received by the appropriate officer of the Association not later than thirty (30) days from the date of such meeting wherein the action was voted on.

ARTICLE III - HOMEOWNERS ASSOCIATION

The Association, acting through its Board of Directors, shall have the power and authority to take such actions as shall be necessary or reasonable to care for, protect and maintain the roads, easements, boundary fences, drainage easements and common areas; to enforce these Covenants; to collect assessments; to set annual and/or special meetings; and to act in any other matters set forth herein or which may serve the development, including the formation of special improvement districts, either public or private, for such improvements as the Association shall approve.



The Association shall hold an annual meeting each year at such date, place and time as shall be set by the Board of Directors. At the annual meeting, the members shall review and approve a budget for the next year, shall elect Directors to fill any expired term or vacant position, and shall conduct such other business as shall be reasonable or necessary to carry out the purpose of the Association. The members shall have the authority to set the number of Directors, which initial number shall be three.

The annual meeting of the Board of Directors shall be held immediately after the annual meeting of the members. At the annual meeting, the Directors shall elect a President, Vice President and Secretary/Treasurer for the Association from among the Directors, except that the Secretary/Treasurer may be a member who is not a Director.

For the purpose of determining membership, at any meeting a person(s) or entity(ies) shall be deemed to be a member upon the recording of a duly executed deed to an owner or upon the recording of a Notice of Purchaser's Interest or an Abstract of Contract for Deed showing a contract purchase by an owner. The legal title retained by the vendor selling under contract shall not qualify such vendor for membership.

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

ARTICLE IV - COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien for Personal Obligation of Assessments. The Owner of any Lot by acceptance of a Contract of Sale or a deed therefore, whether or not it shall be so expressed in such deed or contract, is deemed to covenant and agree to pay to the Association (a) annual assessments or charges and (b) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time the assessment fell due.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the properties, and for the maintenance, upkeep, and prevention of damage to the common area and facilities and dedicated park land.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be \$40.00 per Lot. Notwithstanding any other provision herein, no Lot owned by Declarant, or Mike & Joe Mahar shall be subject to annual or other special assessments unless and until such Lot has been sold or transferred to a third party.



Thereafter, annual assessments shall be determined by the Board of Directors, provided, however, that from and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may not be increased each year more than ten percent (10%) above the maximum assessment for the previous year without the vote or written assent of sixty percent (60%) of the membership.

Section 4. Notice of Quorum for any Action Authorized Under Section 3. Any action authorized under Section 3 shall be taken at a meeting called for that purpose, written notice of which shall be sent to all members not less than ten (10) days in advance of the meeting.

Section 5. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all deeded Lots.

Section 6. Date of Commencement of Annual Assessments - Due Dates. The annual assessments provided herein shall be levied on the first day of January following the closing of the sale to an individual Owner. Voting rights attributable to property interest shall not vest until assessments against those interest have been levied by the Association. The first annual assessment for each Lot shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each deeded Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on specific Lot have been paid.

Section 7. Delinquent Dues and Assessments. After any dues or assessments have been delinquent for a period of two months or more, the Association may mail to the Owner a Notice of Delinquency. After any dues or assessments have been delinquent for a period of four months or more, the Association shall be entitled to file a lien against the Owner's property, provided said Association has given notice of delinquency 30 days in advance, which shall be filed in accordance with the provisions of Title 71, Chapter 3, M.C.A. The Association shall have all rights and remedies as provided herein.

The Declarant and each Lot Owner, by entry into an agreement to purchase a Lot and taking title to the same, waive the right to protest any special improvement district created and of public record in existence prior in time to Owner receiving title to any Lot. In this regard, Owner, prior to taking title to a Lot, is advised to review or seek advice with respect to the public record in the Gallatin County Clerk and Recorder's Office. Further, each Lot Owner waives the right to protest the creation of a Park Maintenance District whose purposes will be to maintain, improve, and restore or replace all parks, open space common areas, and trails with this subdivision.



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ARTICLE V - SIDEWALKS

Sidewalks, constructed to city standards, shall be installed on both sides of the streets at the time houses are constructed on individual lots. Upon the third anniversary (3 years) of each final plat phase recordation, any Lot Owners who have not constructed their sidewalks shall be required to install sidewalks on their lots, regardless of whether a home is constructed on the Lot or not. In the event that said Lot Owner shall fail to do so, the Association may do so and the cost shall be added to and become a part of the assessment to which such Lot is subject.

ARTICLE VI - MAINTENANCE

Owners are required to establish lawn or other suitable landscaping for their Lot. They shall also mow, irrigate, control noxious weeds and otherwise maintain their Lot and the right-of-way boulevard that adjoins their Lot so that the landscaping does not detract from the general appearance of the subdivision in the opinion of the Architectural Control Committee. To prevent the potential for groundwater contamination, the amount and type of chemicals applied to yards shall be restricted to acceptable standards.

In the event that the need for maintenance or repair or weed control is caused through the willful or negligent act of the Owner, his family, guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject. For purposes of this Article, maintenance and repair caused by willful acts of the Owners shall include maintenance and repairs required as a result of utility repairs or other actions or contractors or agents of the Owner performed outside the boundary of his Lot.

In the event that the need for maintenance, repairs, and replacement of common areas and park land, or weed control is needed, the cost shall become a part of the assessment to which all Lots are subject.

The covenants and restrictions of this Declaration on exterior maintenance shall run with and bind the land and shall inure to the benefit of and be enforceable by the Association and the Owner of any Lot subject to this Declaration.

ARTICLE VII - UTILITIES

Section 1. Refuse Disposal. No part of the above described property shall be used or maintained as a dumping ground for rubbish, trash or garbage. All waste shall be kept in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition and shall comply with all applicable laws and regulations.

Section 2. Easements. At no time will patios, barbecues or other permanent structures be erected upon any utility easement within the exterior boundary of a Lot. Fencing of a permanent nature shall be permitted only if it is of a type that is easily and quickly removed in the form of panels, gates or other similar units of construction.



Section 3. Reservations of Utility Easements. Each Lot in the above-described property shall be subject to an easement for the purposes of constructing, operating, maintaining, enlarging, reducing, removing, laying or relaying lines and related facilities and equipment for utilities including but not limited to those providing heat, communication and electrical power.

ARTICLE VIII - ARCHITECTURAL CONTROLS

Section 1. Temporary Structures, Trailers Forbidden. No structure of a temporary character, mobile home, trailer, basement, tent, shack, garage or any other outbuilding shall be used on any Lot at any time as a residence either temporarily or permanently. All structures must be maintained in a reasonable manner to present a neat and attractive exterior appearance.

Section 2. Landscape Plan. Landscaping plans shall be submitted to the Architectural Control Committee for their approval and the landscaping shall be completed with twelve (12) months after the Owner's first occupancy of the residence. As part of the landscape plan the requirement for boulevard trees shall be as required by the City of Bozeman.

Section 3. Minimum Residence Requirements. All single story family dwellings shall have a minimum of 1300 square feet of floor space, together with at least a double-car attached garage. All two story family dwellings shall have a minimum of 1550 square feet, with at least 800 square feet at or above grade. Except for the allowable square footage on a second story as defined above, all square footage requirements must be at or above grade and exclude basements, garages, carports, porches, etc. It is the intention of this Covenant to ensure that all dwellings shall be of a quality workmanship and materials substantially the same as or better than other dwellings in the development, all plans must be approved by the Board of Directors or their assigned representatives.

Section 4. Exterior Siding. The exterior siding of the structure shall consist of wood, wood look-alikes or wood products, brick, stone, stucco or other manufactured exterior good quality materials, including insulated metal siding. However, no sheet or panel metal siding nor cement block siding is allowed. No panel siding similar to T-11 siding or plywood sheet siding is allowed.

Section 5. Roofs of Structures. The roofs shall be covered with shakes, tiles or shingles and no rolled roofing shall be allowed. Exposed aluminum or silver flashing around the chimneys or roof valleys shall not be allowed unless colored, textured or painted to match the roof design and color. Rain gutters are allowed, provided the same are colored to match the trim or color of the roof. Steel galvanized gutters are not allowed. The roofs shall have a minimum pitch of 6/12. Further, all structures shall be constructed so that the roof overhand and gable end are a minimum of 12 inches.

Section 6. Foundation of Structures. The exterior colors of the structures shall be earth tones, pastels, non gloss white or wood colors. No bright or shiny colors or



exterior siding shall be allowed. For example, bright oranges, royal blues, pinks, purples and like bright colors are not allowed. Colors are to be compatible with the balance of the neighborhood.

Section 7. Exterior of Structures. The exterior design, style and colors of each of the outbuilding and structures on a Lot shall conform to the design, style and colors of the residence. Roof fascia trim on any structure constructed on the real property which is the subject of this Declaration shall extend downward on the roof and be visible for at least 6 inches. The building should be a visual combination of forms that does not give a "box" appearance. Breaks in the roof lines and wall lines that add interest to the form and help define the design of the building are encouraged.

Section 8. Entrances. The main entrance to the living structures constructed on the real property which is the subject of this Declaration shall be architecturally defined and enhanced by incorporating an entry porch or gable extending over the entrance denoting a clear sense of arrival. It shall provide weather protection and visual definition.

Section 9. Architectural Enhancement. Any residential structure constructed on the real property which is the subject of this Declaration shall contain an offset or set back in its architectural design and construction of a minimum of 2 feet between the residence and attached garage.

Section 10. The height of all structures erected within the confines of the real property which is the subject of this Declaration shall be controlled by the zoning and other appurtenant regulations enacted by the City of Bozeman.

Section 11. Accessory Buildings. All necessary buildings, such as garages and storage buildings, shall be architecturally compatible with the residence on or being constructed on the Lot.

Section 12. Fencing. Backyards and sideyards may be fenced with wood or materials that look like wood. The front yard toward the public road shall not be fenced. No chain line or wire fences shall be allowed. Fences shall be maintained in good condition. Fences within the rear yard, set back of lots adjoining the linear park, shall not be higher than four feet, and shall be constructed of wooden turned post and rail design.

Section 13. Antennas and Satellite Dishes. In no case shall a satellite dish exceed 30" in diameter.

Section 14. Dog Kennels. Dog kennels are allowed provided they do not exceed 10 feet by 20 feet in size and are located in the rear yards and screened or fenced from the neighbors' view. Such kennels are to be kept in a clean and odor free condition at all times.

Section 15. Architectural Control Committee Rules. The Architectural Control Committee may make such reasonable rules and bylaws and adopt such procedures as it deems necessary to carry out its functions, which rules, bylaws and procedures may not be inconsistent with the provisions of these covenants.



Section 16. Architectural Control Committee Approval. No buildings, construction, landscaping, parking, fence, wall or other improvements shall be placed, constructed, erected, repaired, restored, reconstructed, altered, remodeled, added to or maintained on any Lot or area until building and site plans and specifications, and such other information as the Committee may reasonably require, including, without being limited and approved by a majority of the Architectural Control Committee in writing; nor may the same be commenced until the Architectural Control Committee shall have issued a permit allowing such improvements.

Section 17. Minimum Building Standard Requirements. The Architectural Control Committee shall require that all construction complies with the provisions of the following standard codes or their amendments:

- (1) Uniform Building Code;
- (2) International Conference of Building Officials;
- (3) National Plumbing Code;
- (4) National Electric Code;
- (5) National Fire Protective Association;
- (6) Bozeman Building Code.

Section 18. Plan Rejection. The Architectural Control Committee shall have the authority to reject materials, designs submitted with plans, or the plans themselves if they are not compatible with, or are inappropriate for the rest of the subdivision.

Section 19. Construction Compliance. All improvements, construction, reconstruction, alterations, or remodeling requiring the approval of the Architectural Control Committee must be completed in substantial compliance with the plans and specifications initially approved by the Committee. All such construction must be completed within one (1) year from the date construction is commenced.

Section 20. Enforcement. The Architectural Control Committee shall have the power, authority, standing and right to enforce these covenants in any court or law or equity when it reasonable believes the same have been violated, and shall have the authority to revoke or suspend building permits and/or order suspension or cessation of any construction or work in violation of these covenants or of any permit issued by the Committee.

Section 21. Fees. The Architectural Control Committee may require reasonable fees to be paid with the filing of plans and specifications and the issuance of building permits.

Section 22. Liability. The Architectural Control Committee or the individual members thereof may not be held liable by any person for any damages which may result from Committee action taken pursuant to these covenants, including but not by way of limitation, damages which may result from correction, amendment, change or rejection of plans, the issuance of building permits, or any delays associated with such action on the part of the Committee.

ARTICLE IX - USE RESTRICTIONS

Section 1. Prohibited Commercial Use. No residence or other structure erected on the real property which is the subject of this Declaration shall be used for any commercial endeavor or activity including cottage industry type business, day care, or other business type activity. It is the express intent of the Declarant that the real property which is the subject of this Declaration be devoted to creating a neighborhood consisting of single-family residential units and preserving within the community so created a quiet, peaceful, harmonious existence between the neighbors.

Section 2. Animals. Dogs, cats or other household pets may be kept in reasonable numbers provided they are confined to the Lot of their Owner. Household pets may not be kept, bred or maintained for any commercial purposes. Pets cannot be allowed to become a nuisance or annoyance to neighboring property Owners, nor can they be allowed to wander at large or bark uncontrolled.

Section 3. Storage of Equipment. No Lot or adjacent street, roadway or alleyway shall be used for the storage of any inoperable vehicle, machinery or equipment. No Lot shall be used for storage of any articles, vehicles, equipment or other personal property of any quantity in excess of the immediate needs and personal use of the Owner of a Lot or the occupants and guests thereof as the case may be, and shall not interfere with the use or enjoyment of neighboring Lots.

Section 4. Commercial Vehicles. No Lot shall be used for the outside parking or storage of any commercial trucks, large commercial vehicles or other heavy equipment, except as may be necessary during reasonable periods of construction. Nothing herein shall prohibit the storage of such vehicles within the confines of a garage approved by the Architectural Committee.

Section 5. Recreational Equipment. All campers, trailers, motor homes, boats, and all other recreational equipment and the like shall only be parked on or adjacent to the Lot in compliance with the applicable zoning code. In no event shall such equipment be parked on roads, nor shall any equipment be parked such that it is visible from the streets or adjacent lots for a period exceeding 3 days in any 30 day period, unless a shorter prohibition is imposed by the City of Bozeman. Storage or location of such equipment and vehicles, in excess of the requirements of this Section, shall occur in an enclosed garage or other screened area with such garage or screen having been pre-approved in writing by the Architectural Committee.

Section 6. Offensive Activity.

a. No noxious odors or offensive activity shall take place upon any portion of the above-described property, nor shall anything be done thereon which may be, or may become, an annoyance to the neighborhood.

b. No fireworks of any kind may be bought, brought into, discharged or stored on the above-described property.

c. No firearms shall be discharged on the above-described property.

Any violation of city ordinances, zoning or other regulations shall be a violation of these covenants and can be enforced by the Association or individual Lot Owners.

Section 7. Waterways. The Owner or Occupant of any Lot shall at all times conduct its use and activities in a manner that will preserve the integrity of waterways within the Common Area, including the prevention of any degradation of water quality, any reduction or increase in the flow of said waterways, or any damage to the stream bed or banks of said waterways. The Owner or Occupant of any Lot shall not conduct or permit the conduct of the following activities:

- a. The discharge of any liquid, solid, or gas into waterways;
- b. The use of any fertilizers or herbicides other than those specifically approved by Declarant; or the polluting of waterways; or
- c. Any refuse encouraging activities.
- d. A 20 foot easement extending from each bank, for access and maintenance of all waterways has been, and is hereby reserved in perpetuity.
- e. No structures shall be placed within 35 feet of the high water mark of any water course within this subdivision.
- f. All water rights appurtenant to lands within this subdivision shall be owned, administered and operated by the Homeowners Association.
- g. No person, owner or otherwise shall divert any waterway onto any subdivision Lot.

ARTICLE X – PARK LAND MAINTANANCE

The Homeowners Association shall be responsible for the maintaining, preservation, and care needed for the improvements of the common areas and dedicated park land of the Harvest Creek Subdivisions and delineated on Exhibit A "Park." The maintenance shall include, but not be limited to, the mowing, trimming, watering, trash, clean up, fertilizing, and maintenance of all equipment associated there with. The maintenance contract shall be bid and awarded annually, and paid through the Homeowners Association.

ARTICLE XI - GENERAL PROVISIONS

Section 1. Effects of Covenants on Mortgage. A breach of any of the foregoing provisions, conditions, restrictions or covenants shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value on any Lot, or portion of any Lot, and any improvements thereon, but said provisions, conditions, restrictions and covenants shall be binding upon and effective against any Owner thereof whose title thereto was acquired by foreclosure, trustee sale or otherwise.

Section 2. Waiver of Right to Protest. Each Lot Owner waives the right to protest the creation of RID's and SID's as required by the Bozeman City Commission as a condition of final plat approval, including, but not limited to, any district created for a city wide park maintenance or otherwise. Should city create said district the district fees collected by the Homeowners Association for park maintenance shall cease.

Section 3. Incorporation by Reference. In any conveyance of the lands covered hereby, it shall be sufficient to insert a provision therein to the effect that the



conveyance is subject to the restrictions and covenants contained in this document, without setting forth such restrictions and covenants verbatim or in substance in such conveyance.

Section 4. Enforcement. Enforcement of these covenants shall be by procedure of law or in equity against any person or persons violating or attempting to violate any covenants, and the legal proceedings may be either to restrain the violation of the covenants or to recover damages, or both. Each person who has been found by a court of competent jurisdiction to have violated one or more of these covenants shall be liable for all attorney's fees and costs incurred in connection with the litigation. The failure of any Owner or Owners of any Lot to enforce any of the restrictions set forth herein shall be personally binding upon any person, persons or corporation, only with respect to breaches committed during its, his or their ownership of or title to any of said tracts and any part thereof.

Section 5. Severability. Invalidation of any of these covenants by a judgment or a court order shall in no way effect any of the other provisions, but they shall remain in full force and effect.

Section 6. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by an instrument signed by the Owners of not less than sixty percent (60%) of the Lots, each Lot being entitled to one (1) vote.

Notwithstanding the foregoing, the Declarant reserves the right to modify and amend these Covenants at any time during the first five (5) years following the filing of the final plat or upon the sale of seventy-five percent (75%) of the lots which comprise phases 1, 2, 3 and 4, whichever comes first. No amendment or modification to these Covenants shall be effective to the extent the same was a condition of final plat approval required by the Bozeman City Commission without the express written consent of the Bozeman City Commission.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal the 10th day of December, 1999.


HOMELANDS DEVELOPMENT, L.L.C.
Declarant

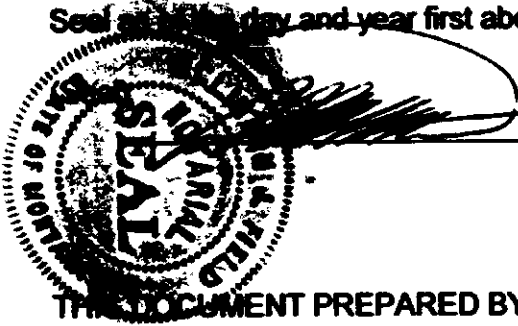


STATE OF MONTANA)
)ss.

County of Gallatin)

On this 10th day of December, 1999, before me, a Notary Public for the State of Montana, personally appeared Walter Wolf and _____, known to me to be the MAMMA MAMA and _____, respectively, of Homelands Development Co, a Montana LLC, and acknowledged to me they executed the same pursuant to the power and authority vested in them.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal at this day and year first above written.



Notary Public for the State of Montana
Residing at Bozeman, Montana
My Commission Expires: 4-15-2000

THIS DOCUMENT PREPARED BY:
ARTHUR V. WITTICH, P.C.
2621 W. College St., Ste E
Bozeman, MT 59718
(406) 585-5598



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**AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS OF AND FOR HARVEST CREEK, PHASES I-IV**

COMES NOW, HOMELANDS DEVELOPMENT CO., L.L.C. as "Declarant" and hereby amends the Declaration of Covenants, Conditions and Restrictions of and for Harvest Creek, Phases I-IV, as provided by Article XI, Section 6, as said covenants are recorded as Document No. 2003751, records of Gallatin County, Montana.

1. The Declarant hereby provides that the above referenced Covenants shall apply to the following described property:

Harvest Creek Subdivision, Phases I-IV, and to all future phases of Harvest Creek West Subdivision, located on approximately eighty (80) acres immediately west and adjacent to Harvest Creek Subdivision, all such subdivisions and phases located on property situated in the SW1/4 of Section 2, Township 2 South, Range 5 East, P.M.M., City of Bozeman, Gallatin County, Montana.

2. The Bylaws of and for Harvest Creek Owners' Association also recorded as Document No. 2003752, records of Gallatin County, Montana, shall apply to all properties described above. The intent of the Declarant is that the above referenced covenants and bylaws shall be for one association to administer all phases of Harvest Creek Subdivision and Harvest Creek West Subdivision.

3. Article II, the first sentence of Section 2 shall be amended as follows:

The term "Directors" shall mean the Directors of the Association and shall consist of the following: during the first 7 years of the development, (starting January 1, 2000), or until 70% of all Lots of the first 8 phases are sold (590 total Lots in the first 8 phases) whichever occurs first, the directors shall consist of Tim Howard, Walt Wolf, and a Lot Owner who shall be elected at the annual meeting by a simple majority of the members of the association, thereafter, the Directors shall consist of three Lot owners, who shall be elected at the annual meeting by a simple majority of the members of the Association.

4. Article IV, the entire Section 3 is amended as follows:

Assessment Amount. Beginning August 1, 2000, each Owner shall pay a \$20 per month assessment for each Lot owned, payable quarterly.

5. Article IV, Section 6 shall be amended as follows:

Date of Commencement of Assessments - Due Dates. The assessments provided herein shall be levied quarterly following the closing of the sale to an individual Owner. Voting rights attributable to property interest shall not vest until assessments against those interest have been levied by the Association. The first assessment for each Lot shall be adjusted according to the number of months remaining in the calendar quarter. The Board of Directors shall fix the amount of the assessment against each deeded Lot at least thirty (30) days in advance of each assessment period. Written notice of the assessment shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specific Lot have been paid.

6. Article IV, Section 7 shall be amended as follows:

Delinquent Dues and Assessments. After any dues or assessments have been delinquent for a period of one month or more, the Association may mail to the Owner a Notice of Delinquency. After any dues or assessments have been delinquent for a period of two months or more, the Association shall be entitled to file a lien against the Owner's property, provided said Association has given notice of delinquency 30 days in advance, which shall be filed in accordance with the provisions of Title 71, Chapter 3, M.C.A. The Association shall have all rights and remedies as provided herein.

7. Article VIII, the first sentence of Section 3, shall be amended as follows:

All single story family dwellings shall have a minimum of 1,300 square feet of floor space, except for lots in block 7 and 8, which shall be allowed a minimum of 1,200 square feet for single story dwellings, together with a double car attached garage.

8. This amendment shall not alter nor amend any other terms or conditions of the above referenced covenants and Bylaws.

Dated this 29 day of August, 2000.

HOMELANDS DEVELOPMENT CO. L.L.C.


Tim Howard, Managing Member



2019638

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STATE OF MONTANA)

: ss.

County of Gallatin)

On this 29th day of August, 2000, before me, a Notary Public in and for said State, personally appeared TIM HOWARD, Managing Member of HOMELANDS DEVELOPMENT CO., L.L.C., known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.



Jennifer Hilliard
Notary Public for the State of Montana.
Residing at Bozeman, Montana.
My commission Expires: 6/2/01

**AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS OF AND FOR HARVEST CREEK, PHASES I-IV**

COMES NOW, HOMELANDS DEVELOPMENT CO., L.L.C. as "Declarant" and hereby amends the Declaration of Covenants, Conditions and Restrictions of and for Harvest Creek, Phases I-IV, as provided by Article XI, Section 6, as said covenants are recorded as Document No. 2003751, records of Gallatin County, Montana.

1. The Declarant hereby provides that the above referenced Covenants shall apply to the following described property:

Harvest Creek Subdivision, Phases I-IV, and to all future phases of Harvest Creek West Subdivision, located on approximately eighty (80) acres immediately west and adjacent to Harvest Creek Subdivision, all such subdivisions and phases located on property situated in the SW1/4 of Section 2, Township 2 South, Range 5 East, P.M.M., City of Bozeman, Gallatin County, Montana.

2. The Bylaws of and for Harvest Creek Owners' Association also recorded as Document No. 2003752, records of Gallatin County, Montana, shall apply to all properties described above. The intent of the Declarant is that the above referenced covenants and bylaws shall be for one association to administer all phases of Harvest Creek Subdivision and Harvest Creek West Subdivision.

3. Article II, the first sentence of Section 2 shall be amended as follows:

The term "Directors" shall mean the Directors of the Association and shall consist of the following: during the first 7 years of the development, (starting January 1, 2000), or until 70% of all Lots of the first 8 phases are sold (590 total Lots in the first 8 phases) whichever occurs first, the directors shall consist of Tim Howard, Walt Wolf, and a Lot Owner who shall be elected at the annual meeting by a simple majority of the members of the association, thereafter, the Directors shall consist of three Lot owners, who shall be elected at the annual meeting by a simple majority of the members of the Association.

4. Article IV, the entire Section 3 is amended as follows:

Assessment Amount. Beginning August 1, 2000, each Owner shall pay a \$20 per month assessment for each Lot owned, payable quarterly.



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5. Article IV, Section 6 shall be amended as follows:

Date of Commencement of Assessments - Due Dates. The assessments provided herein shall be levied quarterly following the closing of the sale to an individual Owner. Voting rights attributable to property interest shall not vest until assessments against those interest have been levied by the Association. The first assessment for each Lot shall be adjusted according to the number of months remaining in the calendar quarter. The Board of Directors shall fix the amount of the assessment against each deeded Lot at least thirty (30) days in advance of each assessment period. Written notice of the assessment shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specific Lot have been paid.

6. Article IV, Section 7 shall be amended as follows:

Delinquent Dues and Assessments. After any dues or assessments have been delinquent for a period of one month or more, the Association may mail to the Owner a Notice of Delinquency. After any dues or assessments have been delinquent for a period of two months or more, the Association shall be entitled to file a lien against the Owner's property, provided said Association has given notice of delinquency 30 days in advance, which shall be filed in accordance with the provisions of Title 71, Chapter 3, M.C.A. The Association shall have all rights and remedies as provided herein.

7. Article VIII, the first sentence of Section 3, shall be amended as follows:

All single story family dwellings shall have a minimum of 1,300 square feet of floor space, except for lots in block 7 and 8, which shall be allowed a minimum of 1,200 square feet for single story dwellings, together with a double car attached garage.

8. This amendment shall not alter nor amend any other terms or conditions of the above referenced covenants and Bylaws.

Dated this 3RD day of OCT. ~~August~~, 2000.

HOMELANDS DEVELOPMENT CO., L.L.C.,


Walter Wolf, Managing Member



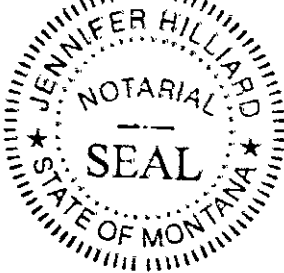
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STATE OF MONTANA)

: ss.

County of Gallatin)

On this 3rd day of ~~August~~ ^{October}, 2000, before me, a Notary Public in and for said State, personally appeared WALTER WOLF, Managing Member of HOMELANDS DEVELOPMENT CO., L.L.C., known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.



Jennifer Hilliard
Notary Public for the State of Montana.
Residing at Bozeman, Montana
My commission Expires: 6/2/01



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DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
HARVEST CREEK, PHASE V

THIS DECLARATION is made on the date hereinafter set forth by Homelands Development Co., L.L.C. as "Declarant".

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain property in the County of Gallatin, State of Montana, which is commonly referred to Harvest Creek Phase V and more particularly described as follows:

That part of the SW $\frac{1}{4}$ of Section 2, Township 2 South, Range 5 East, P.M.M., Gallatin County, Montana described as follows:

Commencing at the South Quarter Corner of said Section 2; thence Westerly 269°27'06", assumed azimuth from north, 867.75 feet along the south line of said Southwest Quarter to the point of beginning of the property to be described; thence continuing westerly 269°27'06" azimuth 1696.00 feet along said south line; thence northerly 001°13'17" azimuth 340.39 feet; thence easterly 089°27'06" azimuth 913.25 feet; thence northerly 001°13'17" azimuth 2.84 feet; thence easterly 089°27'06" azimuth 273.72 feet; thence easterly 078°18'54" azimuth 221.29 feet; thence southerly 172°28'29" azimuth 20.84 feet along the boundary of Harvest Creek Subdivision - Phase 1, according to the plat thereof on file and of record in the office of the Clerk and Recorder, Gallatin County, Montana; thence southeasterly 122°31'44" azimuth 63.82 feet along said boundary; thence easterly 089°28'00" azimuth 224.35 feet along said boundary; thence southerly 179°17'16" azimuth 330.23 feet along said boundary to the point of beginning.

NOW THEREFORE, Declarant hereby declares that all of the properties described above, and shown on the attached, marked "Exhibit A" shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each owner thereof.



ARTICLE I

The property, Harvest Creek Phase V, shall be subject to those Covenants, Conditions and Restrictions for Harvest Creek, Phases I-IV and any subsequent Amended Covenants, Conditions and Restrictions for Harvest Creek, Phases I-IV, specifically those Covenants and Amended Covenants recorded on December 3, 1999 as Document No. 2003751; August 23, 2000 as Document No. 2022236; August 29, 2000 as Document No. 2019638; and October 5, 2000 as Document No. 2022237.

ARTICLE II

Each owner of real property shall be a member of the homeowners association as established and consistent with the recorded and amended Covenants for Harvest Creek Phases I-IV and for future phases.

ARTICLE III

No owner of real property in Harvest Creek Phase V shall take any action that may impact any downstream water user facilities.

ARTICLE IV

Front and Rear Yards. The front yard of each individual corner lot shall be the yard coinciding with the front yards established by the interior subdivision lots on that particular block. The side yard of each individual corner lot shall be the yard not established as the front yard or rear yard.

Side Yard. The side yard setback shall be seven and one-half (7½) feet.

Determination of Yard. Each owner shall, prior to submitting plans to the City of Bozeman Planning Department for their building permit application, submit to the Architectural Control Committee all necessary information for review and approval of yard orientation along with the architectural plans.

ARTICLE V

Maintenance of Common Open Space. The Homeowners Association shall maintain all areas of common open space in accordance with these covenants.



ARTICLE VI

Durston/West Oak Set Back. All lots adjoining Durston Road and West Oak Street shall have a 25 foot set back along the respective right-of-way. No structures may be placed in said set back.

ARTICLE VII

Exterior Lighting. All structures shall comply with Section 18.50.03A, Glare and Lighting, of the City of Bozeman Zoning Ordinance or any subsequently adopted ordinance section proscribing regulations on glare and lighting.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand this 12th day of June, 2002.

HOMELANDS DEVELOPMENT CO., LLC., By

Walt Wolf
 Walt Wolf, Managing Member

STATE OF MONTANA)
 :
 County of Gallatin)

On this 12 day of June, 2002, before me, a Notary Public in and for said State, personally appeared WALT WOLF, the Managing Member of HOMELANDS DEVELOPMENT CO., L.L.C., known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that the company executed the same.



Tami Geissler
 Notary Public for the State of Montana
 Printed Name: Tami Geissler
 Residing at Belgrade, Montana
 My commission expires: 5-26-2013



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**BYLAWS
OF AND FOR
HARVEST CREEK OWNERS' ASSOCIATION, INC.**

ARTICLE I

NAME

The following shall prevail throughout these Bylaws in the interpretation thereof unless specific provisions direct otherwise:

HARVEST CREEK OWNERS' ASSOCIATION, INC., is the incorporated organization which is to be governed by, and, which is empowered to act in accordance with these Bylaws. Hereinafter said corporation shall be referred to as the "Association".

ARTICLE II

ADDRESS

The address of the initial principal office of the Association shall be 225 East Mendenhall, Bozeman, Montana 59715.

ARTICLE III

POWERS

The Association shall have all the powers of a nonprofit corporation enumerated and set forth in Title 35, Chapter 2, Mont. Code Ann. The purposes of the Association are those set forth in the Articles of Incorporation.

ARTICLE IV

MEMBERSHIP INTEREST

Every person, group of persons, partnership, corporation, or association who is a fee owner of real property within the boundaries of the area described as Harvest

Creek Subdivision according to the official plat thereof on file and of record in the office of the County Clerk and Recorder of Gallatin County, Montana, shall be a member of the Association. By this provision, each tract as shown on the plat and amendments thereto shall entitle the owner of one membership interest in the Association.

Multiple owners of a single parcel of real property would have, collectively, one such membership or voting interest. If more than one tract is owned, the owner or owners thereof would have one membership or voting interest for each separate parcel of real property.

Membership interest shall run with the land so that said interest is an incident to ownership beginning when ownership rights are acquired and terminating when such rights are divested. Accordingly, no member shall be expelled, nor shall he be permitted to withdraw or resign while possessing a membership interest.

ARTICLE V

MEETINGS

There shall be an annual meeting of the membership. The date, hour and place of such meeting shall be contained in the notice of meetings as hereinafter described. The annual meeting shall be the time for the conduct of any and all legitimate business of the Association, including election of directors and presentation of reports. Voting at all meetings shall be in the manner prescribed in these Bylaws.

Special meetings may be called at any time upon the initiative of the Board of Directors. A special meeting must be called when a Petition signed by seventy-five percent (75%) of the membership interest outstanding and eligible to vote at the time has

been presented to any member of the Board of Directors. Such special meeting shall be called as soon as practicable after receipt of said Petition. Notice of any such special meeting shall state the hour, date and place of the meeting and shall further precisely state the reasons of such meeting, and said special meeting held shall be strictly confined to the matters set forth in the notice unless sixty percent (60%) of the said membership interest present agree otherwise.

All meetings, both annual and special, shall be presided over by the Chairman of the Board of Directors or his appointed representative.

Any meeting may be adjourned by the Board of Directors at their discretion, but any meeting adjourned before all its business is disposed of shall be reconvened within thirty (30) days of such adjournment upon due notice given.

Resolutions as hereinafter described may be introduced by any member at any annual meeting provided such resolution in written form is presented to the Secretary of the Board no later than ten (10) days prior to the date of such meeting.

Written notice of all meetings, annual and special, shall be mailed to every member of record no later than ten (10) days and not more than fifty (50) days before the date of the meeting. It shall be the duty of each member to advise the Association of his current address.

ARTICLE VI

VOTING

Each membership interest as defined in Article IV of these Bylaws shall have one (1) vote on all matters to come before the Association meeting. Voting of such

interest shall be in the manner provided by the Board of Directors and in these Bylaws.

Voting may be in person or by proxy.

ARTICLE VII

RESOLUTIONS

All matters that are the business and concern of the Association shall be presented to the Association and meetings of the Association in the form of resolutions directed to the Board of Directors. Such resolutions as are passed by over fifty percent (50%) of the said membership interest of record and eligible to vote shall be binding on the Board of Directors. Such binding resolution shall have the effect of compelling the Board of Directors to take positive action in response to the general inclination of the resolution. However, the scope, extent, and specific character of all such action shall be within the final discretion of the Board of Directors.

ARTICLE VIII

POWERS AND DUTIES OF BOARD

The Board of Directors shall have the following powers and duties:

- A. To enter into contracts and agreements as are necessary to effect the business of the Association.
- B. To provide for the construction, installation, acquisition, replacement, operation, maintenance, and repair by the Association of buildings, equipment, common areas, facilities, and service streets, roads, bridges, lighting, garbage removal and disposal in common areas, security of persons or property, fire protection, and other municipal or quasi-municipal services and functions. Contracts for such work with third parties which provide for a term or duration in excess of one year must be approved by a majority of the members, which approval may be ratified at the annual or any special meeting of the Association.



- C. To make and establish rules and regulations for the governance of facilities and the performing of such functions, the taking of such action and operating in such areas as are within the jurisdictions of the Association.
- D. To make assessments as described in these Bylaws and the Declaration of Covenants, Conditions and Restrictions including Design Guidelines on file and of record in the office of the County Clerk and Recorder of Gallatin County, Montana.
- E. To take necessary and appropriate action to collect assessments from members, including the filing of liens and prosecuting foreclosures as provided in these Bylaws.
- F. To call meetings of the Association, both annual and special, and to preside over such meetings and to give appropriate notice of such meetings as required by these Bylaws.
- G. To formulate and introduce resolutions at the meetings of the Association.
- H. To hold meetings of the Board of Directors as are necessary to conduct Association affairs.
- I. To exercise ultimate decisional power in and on all matters affecting the Association.
- J. To pay the expenses of the Association, including all taxes or assessments, and to contract and pay for such insurance as may be necessary in the best interests of the Association, and to provide for the use and disposition of the insurance proceeds in the event of loss or damage.
- K. To fill vacancies on the Board by agreement of the two remaining members, should the vacancy not, however, be filled by the Board, it may be filled by an election at an annual or special meeting wherein each membership interest shall have one (1) vote.
- L. To maintain lists of members.
- M. To keep records in a good and businesslike manner of all assessments made, all expenditures, and the status of each member's payments of assessment; and to make such records accessible at reasonable times to all members.



- N. To provide municipal type facilities for the safety, comfort, health, well-being, and pleasure of the owners, their guests and invitees.
- O. To promote, conserve, and preserve the premises.
- P. To do any and all things necessary to carry into effect these Bylaws and to implement the purposes as stated in the Articles of Incorporation and to do any and all things necessary to require compliance with and enforce the Declaration of Covenants, Conditions and Restrictions including Design Guidelines which, by Article XIX, are made a part of these Bylaws.
- Q. To deal with agencies, officers, boards, commissions, departments, and bureaus or other governmental bodies in a federal, state, county and local basis to carry out the above powers, duties, and responsibilities.
- R. To establish accounts for operating and/or development funds as set out in the Declaration of Covenants, Conditions and Restrictions including Design Guidelines.
- S. To provide, through assessments, an adequate reserve fund for maintenance, repairs and replacement of those elements in the common area that must be replaced or maintained on a periodic basis.
- T. In addition to the above powers, the Board of Directors shall act and perform the functions of the Architectural Review Committee, or, in the alternative, may appoint an Architectural Review Committee, as referenced in the Covenants, Conditions and Restrictions including Design Guidelines on file and of record in the office of the County Clerk and Recorder of Gallatin County, Montana, and shall have all of the powers, duties, obligations and responsibilities set forth in said document.

ARTICLE IX

ASSESSMENTS

The Association, acting through the Board of Directors, shall have the power to levy assessments on its members. The assessments levied by the Association shall be used exclusively to promote health, safety and welfare of the owners of the property,



their guests and invitees and for the improvement of the maintenance of the common areas, open spaces and park areas, to include common road maintenance and utility line maintenance, landscape maintenance in common areas and in parks, property liability insurance, Association employees' wages, mailing costs, common signage, common utility expenses and traffic control signs, and other related expenses incurred on behalf of the Association as further described hereafter.

The quarterly assessments provided for herein shall commence, for each phase of the development, independently of the other phases and quarterly assessments will commence to accrue on the first day of the month following the conveyance of the first lot in each phase by the developer to any third party or entity.

There shall be two classes of assessments allowable under these Bylaws:

(1) Capital assessments, and (2) Operating assessments.

Capital assessments shall be for the purpose of acquiring, replacement, or the construction of new facilities, or the major repair or renovation on existing facilities.

Operation assessments shall be for the purpose of sustaining day-to-day activities of the Association, including maintenance of real property including open space, common areas and parks, maintenance of common landscaping, minor repairs, accounting for the Association, common utility expense, liability insurance and other ordinary expenses.

The Board of Directors shall have the final authority to determine under which general heading to make various assessments. Further, the Board may make assessments in either or both categories on each person or persons or entity having a membership interest.



The Board of Directors must first obtain the approval of at least fifty-one percent (51%) of the membership interests before taking the following action:

- A. Making any assessment for a capital improvement costing in excess of \$3,000.00.
- B. Mortgaging, encumbering, or otherwise disposing of any property of the corporation, whether real or personal, in excess of the amount of value of \$1,000.00.

Assessments shall be made on a quarterly basis and notice thereof shall be mailed by the Secretary of the Board to each member at his address of record on or before the first of January and the first of June of each year, or annually on or before the first of January each year as shall be determined by the Board of Directors.

All assessments become due thirty (30) days after the date of mailing and must be paid within thirty (30) days of the said due date, after which they will become delinquent. The Board shall have authority to impose reasonable interest charges and penalties on amounts which are overdue. Any assessment not paid within thirty (30) days as set forth above shall bear interest at the maximum amount allowed by law. The Association may bring an action against the owner personally obligated to pay the assessment, or foreclose a lien filed against the property. No owner may waive or otherwise escape liability for the assessment provided for herein by non-use or abandonment of his tract.

All assessments shall be levied and assessed equally on all lots on a pro rata basis regardless of size.

ARTICLE X

BUDGETS

On or before November 30th of each year, the Board shall prepare and mail to each member a budget for both capital and operating expenses for the forthcoming calendar year. The two budgets shall be divided by the total number of tracts in the subdivision at the time, and assessments shall be made against each membership interest equally.

ARTICLE XI

LIENS FOR ASSESSMENTS AND FORECLOSURES

All sums assessed, but unpaid for either capital or operating assessments, shall constitute a lien against any tract where the said assessment remains unpaid after three (3) months following the date when the same became delinquent, as set forth in paragraph IX above. Such lien shall be superior to all other liens and encumbrances, except for tax and special assessment liens placed by a statutory authority, other statutory liens, and the lien of any first mortgage or a first trust indenture of record.

To evidence such liens, the Association shall prepare a written notice of lien assessment, setting forth the amount of such unpaid indebtedness, the amount of the accrued interest, the late charges thereon, the name of the owner of the tract and a description of the real property. Such notice shall be signed and verified by the Owner or the Chairman of the Board of Directors and shall be recorded in the office of the County Clerk and Recorder. Such lien shall attach from the date of the recording of such notice. Such lien may be enforced by the foreclosure of the defaulting membership interest by the Association in like manner as a mortgage on real property as otherwise

provided by law upon the recording of a notice or claim thereof. In any such proceedings, the owner shall be required to pay the costs, expenses, and attorney's fees incurred for filing a lien, and in the event of foreclosing proceedings, additional costs, all expenses, and reasonable attorney's fees incurred.

ARTICLE XII

QUORUM

Meetings of the Association shall be convened at the time and place contained in the notice of such meeting only if a quorum of the membership interest is present either in person or by proxy. A quorum shall consist of thirty percent (30%) of the total membership interest of the Association qualified and eligible to vote at the time. Any membership interest may be represented by the owner thereof or by his agent who has written authority to so act.

ARTICLE XIII

VOTING INTEREST

Whenever any tract is owned or leased by two or more persons, or by an entity, or contains a condominium comprised of various owners, such person, or persons, or entity must, prior to a meeting where voting may be allowed, among and between themselves, determine who is entitled to vote the membership interest and in what manner it shall be voted. If, in the judgment of the Board, a bona fide and irreconcilable dispute arises as to the voting or right to vote a membership interest, such interest may be declared to be a dispute and for the time such interest is in dispute, it shall have no voting rights.

ARTICLE XIV

SECRETARY

The Secretary of the Board of Directors shall maintain a record of all membership interests in the Association. In order to make a determination of membership interest for any purpose stated in these Bylaws or the laws of the State of Montana, the Board may order the record closed for a stated period of time, which period shall be thirty (30) days at a minimum. Notice of assessments and liability for assessments shall be in the name of the registered owner on the membership list at the time assessments are declared by the Board.

ARTICLE XV

BOARD MEMBERS

The Board of Directors of the Association shall consist of three (3) members. The individual who receives the most votes in any Board election shall serve as Chairman. Until December 2004 [date], or until three-quarters of the tracts have been sold and title is transferred to owners, whichever occurs first, the Owner reserves the right to appoint and remove all members of the Board and to exercise the powers and responsibilities otherwise assigned by the Declaration of Covenants, Conditions and Restrictions, including Design Guidelines and these Bylaws. By expressed written declaration, the initial directors shall have the option to, at any time, turn over to the Association the total responsibility for electing and removing members of the Board.

Members of the Board and their officers, assistant officers, agents and employees acting in good faith on behalf of the Association:

(1) shall not be liable to the owners as a result of their activities as such, for any mistake of judgment, negligence or otherwise, except for their own willful misconduct or bad faith;

(2) shall have no personal liability in contract to an owner or any other person or entity under any agreement, instrument or transaction entered into by them on behalf of the Association in their capacity as such;

(3) shall have no personal liability in tort to any owner or any person or entity, except for their own willful misconduct or bad faith.

(4) shall have no personal liability arising out of the use, misuse or condition of the Property which might, in any way, be assessed against or imputed to them as a result of, or, by virtue of their capacity as such.

ARTICLE XVI

TERMS AND REPLACEMENT

The terms of office for members of the Board shall be three (3) years, notwithstanding the fact that the terms shall be staggered. Positions on the Board of Directors shall be filled in the manner hereinafter described. At the first annual meeting of the Association, the members shall elect, by majority vote, three (3) members of the Board of Directors who shall have as their respective term of office one (1), two (2) and three (3) years. At each succeeding annual meeting of the Association an election shall be held to fill the directorship of the Director whose term will next expire.

Any vacancy created by resignation shall be filled immediately by appointment by the remaining Board members. Such appointment must be approved by a majority of the members of the Association at the next meeting of the Association,



whether general or special. If the appointment is not approved, then the members shall fill the vacancy by a majority vote. At any time and for any reason that a vacancy occurs on the Board and an agreement cannot be reached on a successor, then such vacancy shall be filled by the membership interest at large at a special meeting held for that purpose. At such election, any membership interest may nominate candidates from the floor and voting shall be by ballot and each membership interest shall have one (1) vote. In the event the membership should nominate more than three (3) individuals to fill a vacancy, the three individuals receiving the highest number of votes shall become candidates to fill the vacancy and a second vote shall be taken to select one of the three (3). The person receiving the highest number of votes shall be deemed to be elected to fill the vacant position on the Board of Directors.

At any meeting, whether general or special, any one or all of the members of the Board may be removed and replacements elected upon a majority vote of the total membership interests outstanding and eligible to vote at that time.

ARTICLE XVII

COMMITTEES

Pursuant to the Title 35, Chapter 2, Mont. Code Ann. and, subject to the restrictions stated therein, the Board may appoint committees to act for the Board and to exercise the authority of the Board on matters referred to them by the Board. Such committees may be dissolved at any time by the Board of Directors.



ARTICLE XVIII

INSURANCE

The Board shall purchase insurance policies to protect the property of the Association against casualty loss and to protect the Association and the Board members, when acting in their official capacity, from liability. The extent and specific nature of coverage shall be determined by the Board.

ARTICLE XIX

COVENANTS

No acts by the Association or by the Board of Directors shall be contrary to the Declaration of Covenants, Conditions and Restrictions, including Design Guidelines on file with the Clerk and Recorder of Gallatin County, Montana, and amendments thereto. On its own initiative, the Board may take such action as it deems necessary, including the taking of legal action and initiating suit to enforce the Declaration of Covenants, Conditions and Restrictions, including Design Guidelines.

ARTICLE XX

OFFICERS

The Board of Directors shall appoint a secretary for the Association. The Board of Directors may, at its discretion, appoint additional officers to generally supervise and control the business of this Corporation and delegate certain powers, duties and responsibilities to such officers. The manner of selection, the qualifications, salaries, if any, the term of office, the method of removal, the scope of duties and responsibilities, and the number of such officers shall be determined by the Board of Directors.



ARTICLE XXI

COMPENSATION

Board members shall be reimbursed for any out-of-pocket expenses incurred while acting in their official capacity and may be entitled to a nominal fee for their services as members of the Board of Directors.

ARTICLE XXII

SEVERABILITY

A determination of invalidity of any one, or more, of the provisions or conditions hereof, by judgment, order, or decree of a Court shall not affect, in any manner, the other provisions hereof which, shall remain in full force and effect.

ARTICLE XXIII

INTERPRETATION AND AMENDMENT

The Board of Directors shall have the power to interpret all the provisions of these Bylaws and such interpretation shall be binding on all persons. These Bylaws may be amended from time to time whenever at least fifty-one percent (51%) of the membership interests shall have voted in favor of such amendment.

THESE BYLAWS were adopted by the Board of Directors for HARVEST CREEK OWNERS' ASSOCIATION, INC. on the 10TH day of December, 1999.

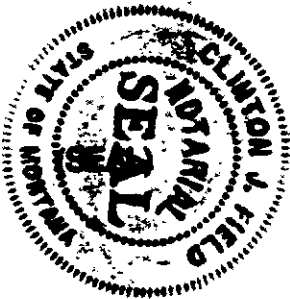
HOMELANDS DEVELOPMENT CO., L.L.C.
A Montana Limited Liability Company

By: Walter J. [Signature]
Its: managing member

STATE OF MONTANA)
)
:ss
County of Gallatin)

On this 10th day of December, 1999, before me, a Notary Public for the State of Montana, personally appeared Walter Wolf, known to me to be a Member of HOMELANDS DEVELOPMENT CO., L.L.C., a Montana Limited Liability Company, and acknowledged to me that he executed the same on behalf of the limited liability company pursuant to the power and authority vested in him.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal as of the day and year first above written.



Notary Public for the State of Montana
Residing at: BELGRADE, MT 59714
My Commission Expires: 4-25-2000

THIS DOCUMENT PREPARED BY:

Joseph W. Sabol II
Attorney and Counselor at Law
225 East Mendenhall
Bozeman, Montana 59715
(406) 587-9338



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**DECLARATION OF COVENANTS, CONDITIONS,
AND RESTRICTIONS OF AND FOR
HARVEST CREEK**

Date: August 23, 2000

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**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
HARVEST CREEK**

Date: _____

THIS DECLARATION is made on the date hereinafter set forth by **HOMELANDS DEVELOPMENT CO., L.L.C.**, hereinafter referred to as "Declarant," and supercedes all previous Declarations for the below referenced property.

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the County of Gallatin, State of Montana, which is more particularly described as:

Harvest Creek Subdivision, Phases I-IV, and to all future phases of Harvest Creek West Subdivision, located on approximately eighty (80) acres immediately west and adjacent to Harvest Creek Subdivision, all such subdivisions and phases located on property situated in the SW1/4 of Section 2, Township 2 South, Range 5 East, P.M.M., City of Bozeman, Gallatin County, Montana.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above, and shown on the attached, marked "Exhibit A" shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each owner thereof.

ARTICLE I. DEFINITIONS

Section 1. **"Association"** shall mean and refer to **Harvest Creek Owners' Association, Inc.**, its successors and assigns.

Section 2. **"Owner"** shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is part of the properties. Owner shall also include the purchaser under a Contract for Deed.

Section 3. **"Property" or "Properties"** shall mean and refer to that certain real property hereinbefore described and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. **"Lot"** shall mean and refer to any plat of land shown upon any recorded subdivision of the properties.

Section 5. **"Declarant"** shall mean and refer to Home Lands Development Company, L.L.C.

Section 6. **"Common Areas"** shall mean all property that is owned by the Association, which includes, but is not limited to waterway, park land, trails, recreation areas, retention/detention ponds, etc.

ARTICLE II. MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The term **"Directors"** shall mean the Directors of the Association and shall consist of the following; during the first 7 years of the development, (starting January 1, 2000), or until 70% of all Lots of the first 8 phases are sold (590 total Lots in the first 8 phases) which ever occurs first, the Directors shall consist of Tim Howard, Walt Wolf, and a Lot Owner who shall be elected at the annual meeting by a simple majority of the members of the Association, thereafter, the Directors shall consist of 3 Lot Owners, who shall be elected at the annual meeting by a simple majority of the members of the Association. That Board of Directors shall be elected for a term set by a simple majority of the membership but not less than one year. Each Director shall serve until replaced by his successor. Any vacancy in the Board of Directors occurring before the next annual meeting of the members shall be filled by the remaining Directors.

Section 3. The Directors shall have the authority to act on behalf of the Association and its members as shall be reasonably necessary to carry out the purposes of the Association and enforce these Covenants. The Directors shall act by majority vote. The officers of the Association shall follow the directions of the majority vote of the Directors.

Section 4. The Directors shall serve as the Architectural Control Committee until and unless a majority of the members vote to have a separate Architectural Control Committee.

Section 5. Directors shall also serve as officers which shall be designated by a simple majority of the members at the annual meeting unless and until a majority of the members vote to have officers elected separate and apart from the Directors.

Section 6. The duties of each of the officers shall be as follows:

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

b. **Vice President.** The Vice President shall exercise the powers of the President in the absence of the President.

c. **Secretary/Treasurer.** The Secretary shall give notice of all meetings of the Association. He shall keep a record of the proceedings of the meetings of the Association. He shall be authorized to sign, on behalf of the Association, all records, documents and instruments when such are authorized to be signed by the Association. He shall exercise such other duties as may be designated by the Association.

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

Section 7. A vacancy in any office of the Association shall be filled by appointment by the Board of Directors until the next annual meeting or his/her successor is duly appointed or elected.

Section 8. The annual meeting of the Association shall occur on May 1st of each year. Any special meeting may be called by the President, or in his absence, by the Vice President. In addition, a special meeting shall be held upon call of forty-five percent (45%) of the owners. Special meetings shall require 48 hours notice, in writing. Notice of annual and special meetings shall be mailed to owners at the address for each owner which is listed as such on the official plats and records of Gallatin County, as maintained by the Clerk and Recorder, Gallatin County, or at such address as shall be designated, in writing, by owner. The presence of members representing sixty percent (60%) of the total votes of the membership shall constitute a quorum.

Section 9. If proposed action is favored by a majority of the votes cast at a meeting, but such vote is less than the requisite sixty percent (60%) of the members, members who were not present in person or by proxy may give their assent to any action in writing, provided the same is received by the appropriate officer of the Association not later than thirty (30) days from the date of such meeting wherein the action was voted on.

ARTICLE III - HOMEOWNERS ASSOCIATION

The Association, acting through its Board of Directors, shall have the power and authority to take such actions as shall be necessary or reasonable to care for, protect and maintain the roads, easements, boundary fences, drainage easements and common areas; to enforce these Covenants; to collect assessments; to set annual and/or special meetings; and to act in any other matters set forth herein or which may serve the development, including the formation of special improvement districts, either public or private, for such improvements as the Association shall approve.

The Association shall hold an annual meeting each year at such date, place and time as shall be set by the Board of Directors. At the annual meeting, the members shall review and approve a budget for the next year, shall elect Directors to fill any expired term or vacant position, and shall conduct such other business as shall be reasonable or necessary to carry out the purpose of the Association. The members shall have the authority to set the number of Directors, which initial number shall be three.

The annual meeting of the Board of Directors shall be held immediately after the annual meeting of the members. At the annual meeting, the Directors shall elect a President, Vice President and Secretary/Treasurer for the Association from among the Directors, except that the Secretary/Treasurer may be a member who is not a Director.

For the purpose of determining membership, at any meeting a person(s) or entity(ies) shall be deemed to be a member upon the recording of a duly executed deed to an owner or upon the recording of a Notice of Purchaser's Interest or an Abstract of Contract for Deed showing a contract purchase by an owner. The legal title retained by the vendor selling under contract shall not qualify such vendor for membership.

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

ARTICLE IV - COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien for Personal Obligation of Assessments.
The Owner of any Lot by acceptance of a Contract of Sale or a deed therefore, whether or not it shall be so expressed in such deed or contract, is deemed to covenant and agree to pay to the Association (a) assessments or charges and (b) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who

was the Owner of such property at the time the assessment fell due.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the properties, and for the maintenance, upkeep, and prevention of damage to the common area and facilities and dedicated park land.

Section 3. Assessment Amount. Beginning August 1, 2000, each Owner shall pay a \$20 per month assessment for each Lot owned, payable quarterly.

Section 4. Notice of Quorum for any Action Authorized Under Section 3. Any action authorized under Section 3 shall be taken at a meeting called for that purpose, written notice of which shall be sent to all members not less than ten (10) days in advance of the meeting.

Section 5. Uniform Rate of Assessment. Both periodic and special assessments must be fixed at a uniform rate for all deeded Lots.

Section 6. Date of Commencement of Assessments - Due Dates. The assessments provided herein shall be levied quarterly following the closing of the sale to an individual Owner. Voting rights attributable to property interest shall not vest until assessments against those interest have been levied by the Association. The first assessment for each Lot shall be adjusted according to the number of months remaining in the calendar quarter. The Board of Directors shall fix the amount of the assessment against each deeded Lot at least thirty (30) days in advance of each assessment period. Written notice of the assessment shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on specific Lot have been paid.

Section 7. Delinquent Dues and Assessments. After any dues or assessments have been delinquent for a period of one month or more, the Association may mail to the Owner a Notice of Delinquency. After any dues or assessments have been delinquent for a period of two months or more, the Association shall be entitled to file a lien against the Owner's property, provided said Association has given notice of delinquency 30 days in advance, which shall be filed in accordance with the provisions of Title 71, Chapter 3, M.C.A. The Association shall have all rights and remedies as provided herein.

The Declarant and each Lot Owner, by entry into an agreement to purchase a Lot and taking title to the same, waive the right to protest any special improvement district created and of public record in existence prior in time to Owner receiving title to any Lot. In this regard, Owner, prior to taking title to a Lot, is advised to review or seek advice with respect to the public record in the Gallatin County Clerk and Recorder's Office. Further, each Lot Owner waives the right to protest the creation of a Park Maintenance District whose purposes will be to maintain, improve, and restore or replace all parks, open space

common areas, and trails with this subdivision.

ARTICLE V - SIDEWALKS

Sidewalks, constructed to city standards, shall be installed on both sides of the streets at the time houses are constructed on individual lots. Upon the third anniversary (3 years) of each final plat phase recordation, any Lot Owners who have not constructed their sidewalks shall be required to install sidewalks on their lots, regardless of whether a home is constructed on the Lot or not. In the event that said Lot Owner shall fail to do so, the Association may do so and the cost shall be added to and become a part of the assessment to which such Lot is subject.

ARTICLE VI - MAINTENANCE

Owners are required to establish lawn or other suitable landscaping for their Lot. They shall also mow, irrigate, control noxious weeds and otherwise maintain their Lot and the right-of-way boulevard that adjoins their Lot so that the landscaping does not detract from the general appearance of the subdivision in the opinion of the Architectural Control Committee. To prevent the potential for groundwater contamination, the amount and type of chemicals applied to yards shall be restricted to acceptable standards.

In the event that the need for maintenance or repair or weed control is caused through the willful or negligent act of the Owner, his family, guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject. For purposes of this Article, maintenance and repair caused by willful acts of the Owners shall include maintenance and repairs required as a result of utility repairs or other actions or contractors or agents of the Owner performed outside the boundary of his Lot.

In the event that the need for maintenance, repairs, and replacement of common areas and park land, or weed control is needed, the cost shall become a part of the assessment to which all Lots are subject.

The covenants and restrictions of this Declaration on exterior maintenance shall run with and bind the land and shall inure to the benefit of and be enforceable by the Association and the Owner of any Lot subject to this Declaration.

ARTICLE VII - UTILITIES

Section 1. Refuse Disposal. No part of the above described property shall be used or maintained as a dumping ground for rubbish, trash or garbage. All waste shall be kept in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition and shall comply with all applicable laws and regulations.

Section 2. Easements. At no time will patios, barbecues or other permanent

structures be erected upon any utility easement within the exterior boundary of a Lot. Fencing of a permanent nature shall be permitted only if it is of a type that is easily and quickly removed in the form of panels, gates or other similar units of construction.

Section 3. Reservations of Utility Easements. Each Lot in the above-described property shall be subject to an easement for the purposes of constructing, operating, maintaining, enlarging, reducing, removing, laying or relaying lines and related facilities and equipment for utilities including but not limited to those providing heat, communication and electrical power.

ARTICLE VIII - ARCHITECTURAL CONTROLS

Section 1. Temporary Structures, Trailers Forbidden. No structure of a temporary character, mobile home, trailer, basement, tent, shack, garage or any other outbuilding shall be used on any Lot at any time as a residence either temporarily or permanently. All structures must be maintained in a reasonable manner to present a neat and attractive exterior appearance.

Section 2. Landscape Plan. Landscaping plans shall be submitted to the Architectural Control Committee for their approval and the landscaping shall be completed with twelve (12) months after the Owner's first occupancy of the residence. As part of the landscape plan the requirement for boulevard trees shall be as required by the City of Bozeman.

Section 3. Minimum Residence Requirements. All single story family dwellings shall have a minimum of 1,300 square feet of floor space, except for lots in block 7 and 8, which shall be allowed a minimum of 1,200 square feet for single story dwellings, together with a double car attached garage. All two story family dwellings shall have a minimum of 1550 square feet, with at least 800 square feet at or above grade. Except for the allowable square footage on a second story as defined above, all square footage requirements must be at or above grade and exclude basements, garages, carports, porches, etc. It is the intention of this Covenant to ensure that all dwellings shall be of a quality workmanship and materials substantially the same as or better than other dwellings in the development, all plans must be approved by the Board of Directors or their assigned representatives.

Section 4. Exterior Siding. The exterior siding of the structure shall consist of wood, wood look-alikes or wood products, brick, stone, stucco or other manufactured exterior good quality materials, including insulated metal siding. However, no sheet or panel metal siding nor cement block siding is allowed. No panel siding similar to T1-11 siding or plywood sheet siding is allowed.

Section 5. Roofs of Structures. The roofs shall be covered with shakes, tiles or shingles and no rolled roofing shall be allowed. Exposed aluminum or silver

flashing around the chimneys or roof valleys shall not be allowed unless colored, textured or painted to match the roof design and color. Rain gutters are allowed, provided the same are colored to match the trim or color of the roof. Steel galvanized gutters are not allowed. The roofs shall have a minimum pitch of 6/12. Further, all structures shall be constructed so that the roof overhand and gable end are a minimum of 12 inches.

Section 6. Foundation of Structures. The exterior colors of the structures shall be earth tones, pastels, non gloss white or wood colors. No bright or shiny colors or exterior siding shall be allowed. For example, bright oranges, royal blues, pinks, purples and like bright colors are not allowed. Colors are to be compatible with the balance of the neighborhood.

Section 7. Exterior of Structures. The exterior design, style and colors of each of the outbuilding and structures on a Lot shall conform to the design, style and colors of the residence. Roof fascia trim on any structure constructed on the real property which is the subject of this Declaration shall extend downward on the roof and be visible for at least 6 inches. The building should be a visual combination of forms that does not give a "box" appearance. Breaks in the roof lines and wall lines that add interest to the form and help define the design of the building are encouraged.

Section 8. Entrances. The main entrance to the living structures constructed on the real property which is the subject of this Declaration shall be architecturally defined and enhanced by incorporating an entry porch or gable extending over the entrance denoting a clear sense of arrival. It shall provide weather protection and visual definition.

Section 9. Architectural Enhancement. Any residential structure constructed on the real property which is the subject of this Declaration shall contain an offset or set back in its architectural design and construction of a minimum of 2 feet between the residence and attached garage.

Section 10. The height of all structures erected within the confines of the real property which is the subject of this Declaration shall be controlled by the zoning and other appurtenant regulations enacted by the City of Bozeman.

Section 11. Accessory Buildings. All necessary buildings, such as garages and storage buildings, shall be architecturally compatible with the residence on or being constructed on the Lot.

Section 12. Fencing. Backyards and sideyards may be fenced with wood or materials that look like wood. The front yard toward the public road shall not be fenced. No chain line or wire fences shall be allowed. Fences shall be maintained in good condition. Fences within the rear yard, set back of lots adjoining the linear park, shall not be higher than four feet, and shall be constructed of wooden turned post and rail design.

Section 13. Antennas and Satellite Dishes. In no case shall a satellite dish exceed 30" in diameter.

Section 14. Dog Kennels. Dog kennels are allowed provided they do not exceed 10 feet by 20 feet in size and are located in the rear yards and screened or fenced from the neighbors' view. Such kennels are to be kept in a clean and odor free condition at all times.

Section 15. Architectural Control Committee Rules. The Architectural Control Committee may make such reasonable rules and bylaws and adopt such procedures as it deems necessary to carry out its functions, which rules, bylaws and procedures may not be inconsistent with the provisions of these covenants.

Section 16. Architectural Control Committee Approval. No buildings, construction, landscaping, parking, fence, wall or other improvements shall be placed, constructed, erected, repaired, restored, reconstructed, altered, remodeled, added to or maintained on any Lot or area until building and site plans and specifications, and such other information as the Committee may reasonably require, including, without being limited and approved by a majority of the Architectural Control Committee in writing; nor may the same be commenced until the Architectural Control Committee shall have issued a permit allowing such improvements.

Section 17. Minimum Building Standard Requirements. The Architectural Control Committee shall require that all construction complies with the provisions of the following standard codes or their amendments:

- (1) Uniform Building Code;
- (2) International Conference of Building Officials;
- (3) National Plumbing Code;
- (4) National Electric Code;
- (5) National Fire Protective Association;
- (6) Bozeman Building Code.

Section 18. Plan Rejection. The Architectural Control Committee shall have the authority to reject materials, designs submitted with plans, or the plans themselves if they are not compatible with, or are inappropriate for the rest of the subdivision.

Section 19. Construction Compliance. All improvements, construction, reconstruction, alterations, or remodeling requiring the approval of the Architectural Control Committee must be completed in substantial compliance with the plans and specifications initially approved by the Committee. All such construction must be completed within one (1) year from the date construction is commenced.

Section 20. Enforcement. The Architectural Control Committee shall have the power, authority, standing and right to enforce these covenants in any court or law or equity when it reasonable believes the same have been violated, and shall have the authority to revoke or suspend building permits and/or order suspension or cessation of any construction or work in violation of these covenants or of any permit issued by the

Committee.

Section 21. Fees. The Architectural Control Committee may require reasonable fees to be paid with the filing of plans and specifications and the issuance of building permits.

Section 22. Liability. The Architectural Control Committee or the individual members thereof may not be held liable by any person for any damages which may result from Committee action taken pursuant to these covenants, including but not by way of limitation, damages which may result from correction, amendment, change or rejection of plans, the issuance of building permits, or any delays associated with such action on the part of the Committee.

ARTICLE IX - USE RESTRICTIONS

Section 1. Prohibited Commercial Use. No residence or other structure erected on the real property which is the subject of this Declaration shall be used for any commercial endeavor or activity including cottage industry type business, day care, or other business type activity. It is the express intent of the Declarant that the real property which is the subject of this Declaration be devoted to creating a neighborhood consisting of single-family residential units and preserving within the community so created a quiet, peaceful, harmonious existence between the neighbors.

Section 2. Animals. Dogs, cats or other household pets may be kept in reasonable numbers provided they are confined to the Lot of their Owner. Household pets may not be kept, bred or maintained for any commercial purposes. Pets cannot be allowed to become a nuisance or annoyance to neighboring property Owners, nor can they be allowed to wander at large or bark uncontrolled.

Section 3. Storage of Equipment. No Lot or adjacent street, roadway or alleyway shall be used for the storage of any inoperable vehicle, machinery or equipment. No Lot shall be used for storage of any articles, vehicles, equipment or other personal property of any quantity in excess of the immediate needs and personal use of the Owner of a Lot or the occupants and guests thereof as the case may be, and shall not interfere with the use or enjoyment of neighboring Lots.

Section 4. Commercial Vehicles. No Lot shall be used for the outside parking or storage of any commercial trucks, large commercial vehicles or other heavy equipment, except as may be necessary during reasonable periods of construction. Nothing herein shall prohibit the storage of such vehicles within the confines of a garage approved by the Architectural Committee.

Section 5. Recreational Equipment. All campers, trailers, motor homes, boats, and all other recreational equipment and the like shall only be parked on or

adjacent to the Lot in compliance with the applicable zoning code. In no event shall such equipment be parked on roads, nor shall any equipment be parked such that it is visible from the streets or adjacent lots for a period exceeding 3 days in any 30 day period, unless a shorter prohibition is imposed by the City of Bozeman. Storage or location of such equipment and vehicles, in excess of the requirements of this Section, shall occur in an enclosed garage or other screened area with such garage or screen having been pre-approved in writing by the Architectural Committee.

Section 6. Offensive Activity.

a. No noxious odors or offensive activity shall take place upon any portion of the above-described property, nor shall anything be done thereon which may be, or may become, an annoyance to the neighborhood.

b. No fireworks of any kind may be bought, brought into, discharged or stored on the above-described property.

c. No firearms shall be discharged on the above-described property.

Any violation of city ordinances, zoning or other regulations shall be a violation of these covenants and can be enforced by the Association or individual Lot Owners.

Section 7. Waterways. The Owner or Occupant of any Lot shall at all times conduct its use and activities in a manner that will preserve the integrity of waterways within the Common Area, including the prevention of any degradation of water quality, any reduction or increase in the flow of said waterways, or any damage to the stream bed or banks of said waterways. The Owner or Occupant of any Lot shall not conduct or permit the conduct of the following activities:

a. The discharge of any liquid, solid, or gas into waterways;

b. The use of any fertilizers or herbicides other than those specifically approved by Declarant; or the polluting of waterways; or

c. Any refuse encouraging activities.

d. A 20 foot easement extending from each bank, for access and maintenance of all waterways has been, and is hereby reserved in perpetuity.

e. No structures shall be placed within 35 feet of the high water mark of any water course within this subdivision.

f. All water rights appurtenant to lands within this subdivision shall be owned, administered and operated by the Homeowners Association.

g. No person, owner or otherwise shall divert any waterway onto any subdivision Lot.

ARTICLE X – PARK LAND MAINTANANCE

The Homeowners Association shall be responsible for the maintaining, preservation, and care needed for the improvements of the common areas and dedicated park land of the Harvest Creek Subdivisions and delineated on Exhibit A "Park." The maintenance shall include, but not be limited to, the mowing, trimming, watering, trash, clean up, fertilizing, and maintenance of all equipment associated there with. The maintenance contract shall be bid and awarded annually, and paid through the Homeowners Association.



ARTICLE XI - GENERAL PROVISIONS

Section 1. Effects of Covenants on Mortgage. A breach of any of the foregoing provisions, conditions, restrictions or covenants shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value on any Lot, or portion of any Lot, and any improvements thereon, but said provisions, conditions, restrictions and covenants shall be binding upon and effective against any Owner thereof whose title thereto was acquired by foreclosure, trustee sale or otherwise.

Section 2. Waiver of Right to Protest. Each Lot Owner waives the right to protest the creation of RID's and SID's as required by the Bozeman City Commission as a condition of final plat approval, including, but not limited to, any district created for a city wide park maintenance or otherwise. Should city create said district the district fees collected by the Homeowners Association for park maintenance shall cease.

Section 3. Incorporation by Reference. In any conveyance of the lands covered hereby, it shall be sufficient to insert a provision therein to the effect that the conveyance is subject to the restrictions and covenants contained in this document, without setting forth such restrictions and covenants verbatim or in substance in such conveyance.

Section 4. Enforcement. Enforcement of these covenants shall be by procedure of law or in equity against any person or persons violating or attempting to violate any covenants, and the legal proceedings may be either to restrain the violation of the covenants or to recover damages, or both. Each person who has been found by a court of competent jurisdiction to have violated one or more of these covenants shall be liable for all attorney's fees and costs incurred in connection with the litigation. The failure of any Owner or Owners of any Lot to enforce any of the restrictions set forth herein shall be personally binding upon any person, persons or corporation, only with respect to breaches committed during its, his or their ownership of or title to any of said tracts and any part thereof.

Section 5. Severability. Invalidation of any of these covenants by a judgment or a court order shall in no way effect any of the other provisions, but they shall remain in full force and effect.

Section 6. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by an instrument signed by the Owners of not less than sixty percent (60%) of the Lots, each Lot being entitled to one (1) vote.



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Notwithstanding the foregoing, the Declarant reserves the right to modify and amend these Covenants at any time during the first five (5) years following the filing of the final plat or upon the sale of seventy-five percent (75%) of the lots which comprise phases 1, 2, 3 and 4, whichever comes first. No amendment or modification to these Covenants shall be effective to the extent the same was a condition of final plat approval required by the Bozeman City Commission without the express written consent of the Bozeman City Commission.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal the 3RD day of OCTOBER, 1999 ~~2000~~.

HOMELANDS DEVELOPMENT CO., L.L.C.
Declarant

STATE OF MONTANA)
) ss.
County of Gallatin)

On this 3RD day of OCTOBER, 2000, before me, a Notary Public for the State of Montana, personally appeared known to me to be the managing member of Homelands Development Co., a L.L.C., and acknowledged to me they executed the same pursuant to the power and authority vested in him.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal as of the day and year first above written.

(Seal)

Notary Public for the State of Montana
Residing at Bozeman, Montana
My Commission Expires: 10-01-03

THIS DOCUMENT PREPARED BY:
WITTICH LAW OFFICES, P.C.
2621 W. College St., Ste E
Bozeman, MT 59718
(406) 585-5598



Harvest Creek
Covenants, Conditions, and Restrictions