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**DECLARATION OF PROTECTIVE COVENANTS AND
RESTRICTIONS**

FOR

WESTBROOK SUBDIVISION

BOZEMAN, MONTANA

This Declaration of Covenants, Conditions and Restrictions regulating and controlling the use and development of certain real property as hereinafter described is made to be effective this 4th day of August, 2015, by Westbrook Development, LLC, a Montana Limited Liability Company, with an address of 125 Central Avenue, Suite 1A, Bozeman MT, 59718 hereinafter referred to as "Declarant", the Owner or beneficial Owner of all Lots of WESTBROOK SUBDIVISION in accordance with the plat filed for record in the office of the Clerk of Gallatin County, Montana, and which shall hereinafter be referred to as the "Property" or "Westbrook Subdivision".

RECITALS

WHEREAS, Declarant is the owner of all of the real property in the Westbrook Subdivision, which is more specifically described in Exhibit "A" attached hereto and by this reference is fully and completely incorporated herein and referred to as the "Property" or "Westbrook Subdivision";

WHEREAS, it is the intent of the Declarant, by and through this Declaration, to establish and publish certain covenants, conditions and restrictions to encumber the Property, to regulate

and control the use and development of the Property, and to place building and use restrictions on the Property for the use and benefit of Declarant and present and future owners of the Property, in order to preserve and maintain the natural character, value, desirability, and aesthetic nature of the Property for the benefit of all Owners of the Property or any part thereof;

WHEREAS, Declarant intends to develop the Property with single family residences, multi-family residences, parks, private common open space and a variety of uses by means of a subdivision, and the purpose of the declaration is to create and maintain the Property as desirable, attractive, beneficial and suitable in architectural design, materials and appearance; and to guard against unnecessary interference with the natural character, value, desirability, and aesthetic nature of the Property, for all the mutual benefit and protection of owners within the Westbrook Subdivision.

WHEREAS, when a lot is purchased in the Westbrook Subdivision, the fee owner of real property within the Westbrook Subdivision automatically becomes a member of the owners association; and,

WHEREAS, the owners association shall be covered by a Board of Directors, which shall implement, administer and enforce these covenants, conditions and restrictions, and

NOW THEREFORE, Declarant hereby establishes and declares that the Property described in Exhibit "A" shall be held, sold, conveyed, encumbered, leased, occupied and improved, subject to the subdivision covenants meaning the limitations, covenants and restrictions set forth in this declaration and any subsequent amendments hereto, all of which are intended to enhance the desirability and attractiveness of the land. These limitations, covenants and restrictions shall be applicable to and binding upon the Property, and shall run with the land and shall be binding upon all persons having or who acquire any right, title or interest in and to the land, and shall inure to the benefit of the Declarant, the Association and each person who becomes an owner of the land.

ARTICLE I DEFINITIONS

SECTION 1. The following words when used in this Declaration or any supplemental declaration (unless the context shall prohibit) shall have the following meanings:

1. "Architect" shall mean a person registered to practice architecture in the State of Montana.
2. "Association" shall mean the Westbrook Homeowner's Association, and its successors and assigns which shall serve and may be referred to as the Homeowners' Association.

3. "Board" shall mean the Board of Directors of the Association.
4. "City" shall mean the City of Bozeman.
5. "Covenants" shall mean this Declaration of Protective Covenants and Restrictions for Westbrook Subdivision, and as it may, from time to time, be amended or supplemented.
6. "Declarant" shall mean Westbrook Development, LLC, or such other person, entity or corporation who Westbrook Development, LLC, may, by a recorded document, designate as the Declarant.
7. "Declaration" shall mean this Declaration of Protective Covenants and Restrictions for Westbrook Subdivision, and as it may, from time to time, be amended or supplemented.
8. "Lot" shall mean and refer to only that land so divided into a lot, tract or parcel that is a portion of the real property (a) described in Exhibit "A" or hereafter annexed to the Subdivision and (b) designated by the Declarant for residential, or other permitted use. The term lot does not include any portion of the Parkland System.
9. "Parkland System" shall mean all land and interest therein which has or may be conveyed to the Association, including but not limited to all lands identified as private common open space, trail network, park as delineated on the final plat of Subdivision. Private common open space shall remain in the ownership and control of the Association. Any portion of the Parkland System not subject to the restriction that the land remains as park land and/or private common open space. Parkland System shall include all land designated as private common open space on the Subdivision final plat, including but not limited to the detention/retention ponds.
10. "Structure" shall mean anything built or placed on the ground, excluding ground level features such as pathways or low profile patios contiguous to homes.
11. "Subdivision Design Committee", also referred to as SDC, shall mean a committee of three (3) members responsible for the review, oversight, modification and enforcement of design regulations related to the external design, appearance and location of all improvements and properties within Westbrook Subdivision and approves, conditionally approves or rejects the same.
12. "Subdivision" shall include all land described in Exhibit "A", together with such other land as may be annexed pursuant to the provisions of this Declaration.
13. "Owner" also referred to as lot owner, member and home owner, shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to or

leasehold interest in any land which is a part of Subdivision, including contract purchasers, but excluding those having such interest merely as security of the performance of an obligation.

ARTICLE II LAND SUBJECT TO THIS DECLARATION

SECTION 1. The land described in Exhibit "A" attached hereto shall be held, sold, conveyed, leased, encumbered, occupied and improved subject to this Declaration.

SECTION 2. The Declarant may, pursuant to the following provisions of this Section, from time to time and in Declarant's sole discretion, annex to the Subdivision all or any part of the land described in future exhibits (not then constituting a part of the Subdivision) owned by Declarant at the time of such annexation.

- a. The annexation of such land shall be effectuated by Declarant recording an amendment to this Declaration describing the land to be annexed; setting forth such additional limitations, restrictions, covenants and conditions as are applicable to such land; and declaring the land is to be held, sold, conveyed, encumbered, leased, occupied and improved subject to these limitations, restrictions, covenants and conditions, and this Declaration.
- b. Upon the annexation becoming effective, the annexed land shall become a part of Subdivision.
- c. The amendment to the Declaration described in Section 2.a above may include, but is not limited to, providing for the following:
 - i. A designation of land classifications as provided for by the Declarant; and
 - ii. A declaration of restrictions applicable exclusively to a specified area.
- d. Only the land described in Exhibit "A" and that specifically annexed as provided for in this section shall be deemed subject to this Declaration, whether or not shown on any subdivision map filed by Declarant or described or referred to in any document executed or recorded by Declarant. Nothing herein or in any amendment hereto shall be deemed to be representation, warranty or commitment that the Declarant will commit or subject the Subdivision covenants any land Declarant may now own or hereafter acquire except that land described in Exhibit "A" or annexed thereto.

ARTICLE III

LAND CLASSIFICATIONS AND RESTRICTIVE COVENANTS

SECTION 1. All Lots within the Subdivision shall be classified into the following City of Bozeman Zoning Code (Uniform Development Code) designations and carry their associated allowable uses, lot areas, widths and coverages, yards, setbacks, and heights:

R-1 (Residential Single-Household Low Density District)

R-4 (Residential High-Density District)

SECTION 2. All lots within the Subdivision, except as specifically noted, shall be subject to the following limitations and restrictions:

Minimum Residence Requirements: All single story family dwellings shall have a minimum of 1300 square feet of floor space. 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 developments. All plans must be approved by the SDC.

Site Design: The building structure must comply with and is subject to all City of Bozeman set back requirements.

Foundations: Foundation walls shall be exposed a maximum of 18" above the ground unless they are integral with an approved design scheme. Concrete foundations exposed more than 24" above grade must have an architectural finish (texture, pattern and/or color).

Windows and Doors: Windows shall be made of vinyl, painted or stained wood or clad in vinyl or metal. Glass shall be clear and free of color.

Shutters are not permitted. Sliding doors may only be used in walls facing the backyard.

Roofs: Pitched roofs shall be clad with cedar shingles, natural slate, artificial slate, asphalt/fiberglass shingles with materials and complementing color approved in writing by the SDC. The principal roof shall be a symmetrical hip or gable form with a pitch between 4:12 and 10:12. Steeper roofs are permitted when complementary to the overall design and when approved in writing by the SDC. Flat roofs comprising less than thirty percent (30%) of the total roof area are permitted on all buildings. Flat roofs used as balconies on street facades shall be

enclosed with solid railings and integrated with the design. Modern style homes with flat roofs will be considered on a case by case basis.

Skylights shall be flat in profile (no bubbles or domes). Skylights and solar panels shall be applied parallel and flat to the roof and are not to be on any roof parallel to the street. Roof protrusions other than chimneys and plumbing vent stacks shall not be placed on a roof facing a street or public space.

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. Overhanging eave depth shall be no less than 12”.

Walls: Exterior siding or building walls shall be clad in smooth cut cedar shingles, wood clapboard, wood board and batten, wood products, cement board siding, brick or stone approved in writing by the SDC. Stucco or EIFS with a smooth or roughcast (pebbled) finish is acceptable. No cement block siding or panel siding similar to T1-11 siding or plywood sheet siding is allowed.

The color palette of the body of the house shall be non-glossy white, cream, or earth tones, or an alternate color palette as approved in writing by the SDC based on color samples provided. No bright or shiny colors, colors are to be compatible with the balance of the neighborhood. For example, bright oranges, royal blues, pinks, purples and like bright colors are not allowed. All trim, frames, doors, and windows shall be in a compatible accent color.

Porch/Entry: Main entry doors are required to be either composed with a porch design and/or a recessed entry of a minimum of four feet (4') from the primary facade of the house. This requirement is intended to provide a consistent and defined building pattern, and a street friendly appearance and denote a clear sense of arrival.

Landscape Plan: Landscaping plans shall be submitted to the SDR for their approval and the landscaping shall be completed within 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.

Sidewalks: Sidewalks, constructed to City of Bozeman 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 final plat, 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 fails 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.

Fences: All Fence design and location shall be approved in writing by the SDC and shall conform to the requirements of section 38.23.130 of the Bozeman Municipal Code titled "Fences, Walls and Hedges". Fences will be built according to the spec sheet provided by the SDC.

Maximum height of fences, walls and hedges is four feet (4'). Maximum height for fences in corner or side yards is four feet (4'). No fences are allowed in required vehicle vision triangles. No fences are allowed in front yards. Fences adjacent to parkland or open space shall not exceed four feet (4') in height and shall be of an open construction design and consistent along all parkland and open space.

In addition, the following conditions shall apply:

- a. The fence along the side lot line of Lot shall run only from the rear lot line to a point which is the intersection with the back of the home. If the side lot line upon which the fence is to be built is a common lot line between Lots within the Subdivision, then the fence erected upon such side lot line may be centered upon the lot line. Any fence erected upon a rear lot line or upon a side lot line which is not a common line between two Lots within the property shall be erected in such a manner as to not encroach upon an adjacent Lot or open space. There shall only be one fence upon any lot line within the property affected.
- b. Any Owner electing to erect a fence to enclose a rear yard shall do so at his or her own expense; provided, however, that in the event an adjacent owner within the property affected thereafter elects to fence the rear lot behind his or her house, he or she shall utilize the common fence between the lots as one of the boundaries of his or her yard area and he or she shall, within 15 days of erecting such fence, reimburse the owner of the adjacent lot(s) whose fence(s) constitute a part of the new enclosure, for the reasonable value of such section of fence utilized, based upon the actual construction costs of such fence. It shall be the responsibility of the Owner erecting any such section of fence utilized to maintain such records if no fence is initially erected upon the adjacent Lot. In the event that an Owner elects to erect the fence himself or herself, rather than contracting for such fence, he or she shall only be allowed to charge the adjoining owner for the materials utilized for that section of fence, together with a pro-rata portion of any necessary

equipment rental for the construction of the fence, such as a posthole digger.

- c. Any Owner erecting a fence shall thereafter be responsible for the maintenance of such fence, on both sides, except in the case of a portion of fence which is shared between two Lots within the affected properties, in which case each owner shall be responsible for maintenance of the fence on the side facing his or her lot. In the event that any portion of a shared fence must be replaced, the owners of the lots sharing the fence shall each pay one half of the cost of such replacement.
- d. In the event of a dispute involving any common fence, the parties agree that if they cannot resolve the dispute through direct discussions, they will submit the matter to mediation. In the event that they cannot agree upon a mediator, the parties shall request a list of names from the president of the Gallatin County Bar Association which shall consist of one more name than the number of parties involved in the dispute, which shall be presumed as two, since each Lot shall be deemed to be one party, regardless of the number of the actual Owners of the Lot. Upon receipt of the list of potential mediators, each party shall strike one name from the list and the remaining person shall act as the mediator for the parties. The parties shall each be obligated to pay an equal portion of the fee charged by the mediator. In the event the parties cannot resolve the matter through mediation, they shall then be free to pursue other remedies available to them.

Sewage Lift Station: Lot Owners dependent on the sewage lift station shall be responsible for financing the costs of its operation and maintenance, as required by the City of Bozeman. Maintenance will be provided by the City of Bozeman.

Plans and Specification. Each building, garage, or accessory structure shall be constructed, erected and maintained in strict accordance with the approved plans and specifications.

SECTION 3. General Subdivision Restrictions.

1. Notices; Documents; Delivery. Any notice or other document permitted or required by this Declaration is to be delivered personally, by mail, and may be delivered by electronic mail upon written request of Owner. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of same has been deposited in the United States mail, postage prepaid, addressed as follows: If to the Association or to the Subdivision

Design Committee, at the registered office for the Association; if to an Owner, then at the mailing address of Lot within Westbrook Subdivision owned by the Owner; provided, however, that any such address may be changed from time to time as requested by an Owner, by the Subdivision Design Committee, or by Declarant by notice in writing, delivered to the other parties accordingly.

2. Use: Dwellings shall be used for residential purposes only. No Lot or dwelling unit will be used for a commercial enterprise. However, any artist, artisan, craftsperson or home based business person pursuing his or her artistic/business calling upon the Lot or dwelling unit owned by such person may do so if such artist, artisan, craftsperson or business person also used such Lot or dwelling unit for his, her, or their, residential purposes, is self-employed and has no employees working on such Lot or in such dwelling unit, and does not advertise any product or work or art for sale to the public upon such Lot or dwelling unit.

The leasing of any Lot/dwelling unit from time to time by the Owner thereof, is permitted. However, all person's residing in the subdivision are made subject to all covenants and restrictions, and to all of the restrictions as may be adopted from time to time by the Association.

3. Owners will keep their Lot, structures, improvements, landscaping, walkways and driveways in a clean, sanitary, attractive and marketable condition at all times. No Owner shall permit his or her Lot, dwelling unit or structures to fall into disrepair. Owners will perform all painting and make all appropriate repairs and replacements timely, and as often as necessary.
4. Unsightliness. No unsightliness is permitted on any Lot. Unsightliness shall include, without limitation: 1) the open storage of any building materials, except during construction of any structure; 2) accumulation of lawn or tree clippings or trimmings; 3) accumulation of construction debris or waste or household refuse or garbage; 4) accumulation of animal waste; 5) the storage or accumulation of any other material or equipment on the Lot in a manner that is visible to the public view.
5. Nuisance. No noxious odors, offensive or hazardous activity shall take place or be carried on within the Lots or common areas, nor will anything be done or placed within any Lot or the common area that may be or become a nuisance, or cause an unreasonable hazard, disturbance, or annoyance to other Owners in the enjoyment of the properties. Without limiting any of the foregoing, no Owner will permit noise, including but not limited to, barking dogs or excessive volume of stereo amplifiers or other sound, to emanate from Owner's Lot, which would unreasonably disturb another Owners' quiet enjoyment of their Lots or of the common area. Quiet hours observed shall be 10:00 p.m. – 8:00 a.m.

6. Pets.

a. No livestock, poultry or other animals, except dogs, cats or small in-house pets and birds are permitted on the properties. Each property shall be restricted to no more than two (2) commonly recognized domesticated pets; provided, however that they are not kept, bred or maintained for any commercial purpose. All pets are subject to City of Bozeman pet ordinance in addition to all requirements of this Section.

b. All dogs, cats and other pets shall be strictly controlled by their Owners so as not to annoy or interfere with the use of Lots and common areas by the other Owners and to prevent any interference or harassment of wild birds or animals in the subdivision or on surrounding adjacent properties. Dogs and cats and other domesticated pets shall be kept on Owner's Lot, shall not be allowed to roam free or roam on other Owners' Properties or roam on common areas. While on Common area's dogs must, at all times, be leashed and under the Owner's control.

c. In common areas, including boulevards, parks, open space and trails, on other Lot Owners' Lots pet owners are required to immediately clean up after pets. Owners that fail to immediately clean up after pets will be subject to a fine of \$25.00 or other fine as established or from time to time changed by the Association.

d. Pets shall not be allowed to become a nuisance or annoyance to neighboring property owners. Dogs shall not be allowed to continuously bark or create an audible disturbance or nuisance to other persons residing in the area. Repeated continuous barking (more than 30 seconds) will not be tolerated. Barking that becomes a nuisance will be subject to a fine as established by the Association.

e. All dogs, cats and other pets shall be strictly controlled by their owners to prevent any interference or harassment of wildlife, wild birds, or other animals in the Subdivision or on surrounding or adjacent properties. If any animals are caught or identified chasing or otherwise harassing wildlife, wild birds, or other animals, or people, or have become a nuisance or annoyance to neighboring property owners, the Association or any Owner shall have the authority to have such animal or animals impounded in accordance with the City of Bozeman animal control regulations.

7. Parking, Recreational Vehicles and Equipment.

a. Commercial vehicles. No commercial vehicles with a load capacity of greater than one (1) ton or construction vehicles, including but not limited to back hoes, front loaders, dump trucks etc., shall be stored or parked on any Lot or in any common area except for and during construction on that same Lot. This restriction will not, however, be deemed to prohibit commercial and construction vehicles, in the ordinary course of business, from making deliveries or otherwise providing services to any portion of the property.

b. Campers, RVs, boats, snow mobile or similar recreational vehicles ("recreational vehicles") shall be stored in an enclosed garage or off-site. For the purpose of loading, unloading

etc. recreational vehicles will be allowed to remain on the property for short periods of time. Recreational vehicles may be on-site for no longer than three (3) consecutive days and no more than nine (9) total days in one month. In no case are recreational vehicles allowed to be stored long-term on the property.

c. Inoperable vehicles. No inoperable or unlicensed motor vehicles shall be stored or parked on any Lot or any common area at any time. Scrap or junk vehicles, or any parts thereof, will not be placed or stored on said property or on any Lot

d. Owners will be allowed to park no more than two (2) automobiles in their driveway or parking space, as long as the automobiles are licensed and operable.

e. No snowmobile, motorcycle, all-terrain vehicle or similar recreational vehicle shall be operated on any Lot for recreational purposes within the Subdivision.

8. Kennels, and Dog Runs. Kennels and dog runs must be located in an inconspicuous area of a Lot and out of the direct view of neighbors and the primary road and are limited to the rear yard. All kennels and dog runs must be approved in writing by the SDC for size, materials, construction, and location. Chain link material is prohibited and kennel size shall not exceed 100 sq. ft.

9. Commencing with the transfer of any land in the Subdivision from Declarant, the Owner(s) shall cause all the land to be maintained in a neat appearance at all times. Grass shall be cut not less than every two (2) weeks during the growing season (May 1 - November 1) and trees, bushes and hedges shall be trimmed at such intervals as are necessary to maintain the attractiveness of Subdivision. All landscaping and boulevards shall be maintained, watered, trimmed, mowed, controlled for weeds and replaced as necessary so as not to detract from the general appearance of the Subdivision and neighboring Lots. Boulevards, rights-of-way and ditches located on Lots are to be mowed and maintained by the Lot Owners and by the Association in common areas. Boulevards, rights-of-way, and ditches may not be blocked or filled. Should the Owner be a part-time resident, maintenance contracts shall be entered into to accomplish the same. If grounds are not being maintained, the Owner will be notified to remedy the situation. If non-maintenance continues after such notice, arrangements for maintenance will be made and the Owner will be assessed, nonpayment of which may result in a lien on the property.

10. Every Lot Owner shall be responsible for maintenance of the sidewalk located on, adjacent to and between the Owner's Lot and the nearest right-of-way. Maintenance shall include, but not be limited to snow and ice removal as required by City of Bozeman and within 24 hours of snowfall.

11. Noxious Weed Control: Lot Owners shall control noxious weeds on their Lot, whether improved or unimproved, as set forth Montana Noxious Weed Control Act (7-22-2101 through 7-22-2153 MCA) and the rules and regulations of the Gallatin County Weed Control District;

provided, however, that the Owner shall not use spray or killing materials in such a way as to be harmful to humans or animals or to the other owners' vegetation. The Gallatin County Weed Board should be consulted before applying such chemicals. Contact a local nursery for the most effective pesticides that least impact animals and desirable species of insects. In the event an Owner does not control noxious weeds, the Association, after ten days written notice to an Owner to control the same, may cause the noxious weeds to be controlled, and may assess the lot owner for the costs thereof.

12. Garbage, trash, refuse and other waste. All rubbish, trash, garbage, junk, nonworking or out-of-use vehicles, equipment, parts, metals, lumber, debris, or other waste ("waste") shall be regularly removed from the Lot, and shall not be allowed to accumulate thereon. All garbage shall be stored in animal-proof garbage containers, trash receptacles, or the like, including recycling containers and/or bins, or otherwise made unavailable to animals and stored in the garage or other enclosures, or such a place as not to be visible from main roadways, common areas, or neighboring Lots, except on trash collection day receptacles may be placed near the roadway. Receptacles must be removed from site within 24 hours of trash collection. All equipment, wood piles, compost piles or storage piles shall be screened or concealed from view of other dwellings and common areas. All garbage and trash requirements of the City of Bozeman shall be observed.

13. Temporary Structures. No temporary structures or tents shall be used as a residence or outbuilding on any lot.

14. Signs and Billboards. No signs, billboards, posters, placards, notices, or advertising displays or devices of any kind or character will be displayed on any Lot or common area except as provided herein. The following signs must be in accordance with the UDC and approved in writing by the SDC, and any necessary permits must be obtained:

- a. Contractor-BUILDER-Developer. Construction signs shall be allowed on Lots only during the construction period. Construction signs shall be no larger than four (4') square feet in size and be of a color that is harmonious with the structure being built and the surrounding area. The sign must be removed immediately upon issuance of a certificate of occupancy or no longer than one year, whichever occurs first.
- b. Temporary. Temporary signs, limited to, real estate and political campaign signs are allowed but must not exceed eighteen inches by 24 inches (18 x 24). No real estate directional signs are allowed on corner Lots or road intersections. All temporary signs must be removed within 10 days after the sale of the property and immediately after the end of the election and/or vote.
- c. Commercial Signs. Signs for identification of residences, streets, parks or areas, places of business, or other commercial uses.

15. Address Numbers. Each lot owner is required to install address numbers on the exterior

of their home in a manner and style determined by the SDC, when the personal residence is constructed.

16. **Satellite Dishes and Antennas.** Only smaller dishes of the latest technology (not exceeding two (2') feet in diameter) are allowed. All satellite dishes must be inconspicuously located on the side or rear of the home and shall not be placed on front street facing elevation.

17. **Recreational Play Equipment.** All recreational and play equipment, including, but not limited to, swing sets, play houses, tee-pee's, trampolines, sports nets, etc. shall be limited to Rear Yard areas.

18. **Decorations.** All holiday and seasonal decorations, including but not limited to lights, decorations, and ornaments on structures, lawns, trees, or windows shall not installed or lighted more than 30 days prior to the designated calendar date for the applicable holiday or season and must be taken down and removed within 30 days after the designated calendar date for the applicable holiday or season.

19. **Wildlife.** No feeding or interaction with any wildlife is permitted, with the exception that bird feeders are allowed.

20. **Clothes Lines.** Clothes Lines and the like may not be constructed or installed on any Lot.

21. **Fires/Fireworks.** No open burning of any kind is allowed. No fireworks of any kind may be brought into, discharged or used in the Subdivision.

22. **Firearms.** No Firearms are permitted to be discharged within the Subdivision.

23. **Hunting.** No hunting, shooting or harassing of any birds, animals or any wildlife will be permitted. Skunks, gophers and rodents may be trapped; however poison may not be used.

24. **City or County Violation.** Any violation of City of Bozeman or Gallatin County ordinances or other regulations shall be a violation of these covenants and can be enforced by the Association.

SECTION 4. Each Owner grants to Declarant and reserves to Declarant, a lien upon the Lot of the Owner to secure the faithful performance by the Owner of the requirements and restrictions contained in this Declaration, and any amendments thereto.

1. If any Owner shall fail to comply with Article III Section 2 or any other requirement for building location, setback, design, landscaping or construction within ten (10) days after Declarant shall have deposited in the United States postal system a notice to the Owner of the failure to comply, Declarant shall have the right to cause the necessary work to be

done and to have a lien upon the land of the noncomplying Owner for the reasonable cost of such work plus an additional amount equal to ten percent (10%) of the cost of such work.

2. If within thirty (30) days the noncomplying Owner does not pay to Declarant the sum secured by the lien, then Declarant may foreclose the lien in compliance with the mortgage foreclosure laws of the state of Montana for the aggregate of (i) the reasonable cost of such work (ii) a sum equal to ten percent (10%) of such work, and (iii) all cost incurred by Declarant in foreclosing the lien, including a reasonable attorney's fees and court costs. Declarant is in no way precluded from seeking any remedy available to Declarant pursuant to the laws of Montana, including but not limited to immediate, temporary and permanent injunctive relief.

SECTION 5. Enforcement of these covenants by Declarant, SDC, the Board, the Association, an Owner or any party having standing, shall include for the party seeking enforcement, and, if prevailing in such enforcement, an award of court costs and reasonable attorney's fees.

ARTICLE IV DESIGN REVIEW PROCESS

SECTION 1. Submission of Plans before Construction.

No residence or dwelling, fence, wall, garage, outbuilding, or other structure, or sign shall be made, erected, altered or permitted to remain upon a Lot until written plans and specifications showing the design, nature, kind, color, dimensions, shape, elevations, material, use and location of the same shall have been submitted and approved, in writing, by a majority of the SDC, as well as any applicable City of Bozeman or County review and permitting has been granted.

SECTION 2. General Review Requirements.

1. Submit two (2) copies of the required documents for each design review to:

Subdivision Design Committee (SDC)
Attn: John Rosa
125 Central Avenue, Suite 1A
Bozeman, MT 59718

The design review cycle begins on Monday of each week. Submittals must be received by noon on Friday of the previous week. All documents must be dated and labeled with "Subdivision Design Committee" and specific project title and address.

2. Upon SDC review, the owner will be notified within fifteen (15) business days after the

start of the review cycle date that the design has been approved, approved with stipulations or disapproved. Submittals deemed incomplete will be returned. If the SDC does not contact the owner within fifteen (15) business days of the review commencement date, the application shall not be deemed "approved".

3. If the SDC approves an Owner's plans, the SDC will place a stamp upon the plans. An owner shall not apply for the building permit or other approval from the City of Bozeman or County until that Owner's plans have been stamped as approved by SDC.
4. Request for withdrawal of an application may be made without prejudice, provided the request for withdrawal is made in writing to the SDC. If an application has been denied, or the approval is subject to conditions that the Owner feels are unacceptable, the Owner may request a hearing before the SDC to justify his/her/its position. The SDC will consider the argument and facts presented by the Owner and notify the Owner of its final decision within ten (10) days of the hearing.

SECTION 3. One Year to be Completed.

Any structure to be erected in accordance with an approval so given must be erected and completed within one (1) year from the date of approval. If any structure is commenced and is not completed in accordance with the plans and specifications within one (1) year, the Directors of the Association, at their option, may take such action as may be necessary, in their judgment, to improve the appearance so as to make the property harmonious with other properties and to comply with these Covenants, including completion of the exterior or the combination thereof, or removing the uncompleted structure or similar operations. The amount of any expenditure made in so doing shall be an obligation of the Owner. A lien on the property may be recorded and shall be enforceable by an action at law. In lieu thereof, the Association may take such action as is available by law, including an injunction, or for damages. If construction of a structure is not commenced within one (1) year after approval shall be deemed denied and a new approval must be obtained prior to the commencement of construction.

SECTION 4. Criteria, Liability and Variances.

In passing upon all such plans and specifications, the SDC shall take into consideration the suitability of the proposed building or other structure and the materials of which it is to be built to the Lot upon which it is to be erected, its harmony with the surroundings, and other Lots, and the effect of the building on other structures, as planned, as viewed from adjacent or neighboring Lots. The SDC shall use reasonable judgment in determine whether a structure meets this criteria in passing upon all such plans and specifications, but shall not be liable to any person for its actions in connection with submitted plans and specifications.

Neither the Association, the Declarant, the Board of Directors, the SDC nor the individual

members thereof, may be held liable to any person for any damages for any action taken pursuant to these Covenants, including but not limited to, damages which may result from correction, amendment, changes or rejection of plans and specifications, the issuance of approvals, denials, conditional approvals, or any delays associated with such action.

Further, the SDC may, upon application, grant a variance from the Architectural Regulations, provided that the spirit of these Covenants is complied with, and provided that Notice of the nature of the variance is mailed (certified) to adjacent Lot Owners within a one hundred foot (100') radius of the subject property, at least seven (7) days before the variance is approved in order to give the other owners a chance to comment and provide input to the SDC. All comment shall be in writing. All variance requests pertaining to the SDC approvals must be made in writing to the SDC. Any variance granted shall be considered unique and based on the particular facts and circumstances associated with the particular Lot and will not set precedent for future variance applications and decisions. The SDC, in reviewing and considering an application for a variance, shall consider the nature of the hardship claimed, the impact on the adjacent lot owners, the impact on Subdivision and any proposed mitigations for the impacts. The Committee shall have the duty and power to make the final decision on the granting of the variance, without any liability being incurred or damages being assessed due to any decision of the Committee.

Variances. The Subdivision Design Committee (SDC) may allow reasonable variances as provided herein in order to:

- 1) Overcome practical difficulties and prevent unnecessary hardships in the application of
- 2) the covenants;
- 3) Enhance views;
- 4) Utilize a lot to better advantage;
- 5) Preventing the removal of trees; or,
- 6) Enhance the placement of improvements on the property.

Variances shall only be granted in conformity with the intent and purpose of this Declaration, and when such variance will not be materially detrimental or injurious to other Lot, common areas, or improvements in the Subdivision. With respect to movement of building envelopes, approval shall be required from both the SDC and contiguous lot Owners. Notwithstanding the foregoing provision, no variance shall be allowed which has the effect of creating additional lots.

Neither granting of a variance nor failure to enforce any violation of the conditions and restrictions herein, shall be deemed a waiver of any of the conditions and restrictions in any other instance.

SECTION 5. Review Procedure.

STEP 1. CONSTRUCTION DESIGN REVIEW.

The construction design review verifies the following: (1) that the construction documents are in compliance with this Declaration, the SDC approval, applicable local regulations and building codes; (2) that SDC recommendations, stipulations, or conditions, if any, have been incorporated into the construction documents; and (3), that all appropriate permits have been obtained by the architect and/or builder. Applicants must submit the Construction Design Review Application (Form B) and the following:

- a. *Site Plan (1/8" = 1'-0" scale or larger) showing:*
 - i. North arrow.
 - ii. Property lines and setbacks with dimensions.
 - iii. Building footprints with entry area delineated and overhangs shown as dashed lines.
 - iv. Garden walls/fence lines: location, height and materials.
 - v. Water electric and sewer service.
 - vi. Location of adjacent streets/alleys.
 - vii. Site contours beginning at the curb.
 - viii. Location, dimensions and materials for walks and drives.
 - ix. Exterior light locations, type and bulb size.
 - x. Location of external equipment (electric meter, location of waste bins, etc.)
- b. *Floor Plans (1/4" = 1'-0" scale or larger) showing:*
 - i. Foundation plan dimensioned.
 - ii. Room use labeled.
 - iii. Wall, window and door openings dimensioned.
 - iv. All overhangs of floors and roofs as dashed lines.
 - v. Overall exterior dimensions.
 - vi. Gross square footage, excluding garage.
- c. *Roof Plan (1/8" = 1'-0") showing:*
 - i. Overhangs.
 - ii. Slope directions.
 - iii. Penetrations.
- d. *Elevations (1/4" = 1'-0" scale or larger) showing:*
 - i. All elevations (colors rendered of fronting street elevation).
 - ii. Roof penetrations located.

- e. *Landscape Plan (1/8" - 1'-0" or larger) showing:*

A landscape plan including plant listing, planting and mature sizes and their respective locations.

STEP 2. CONSTRUCTION COMMENCEMENT

Construction may not commence without the approval of the City of Bozeman Building Division, and until all necessary approvals and permits are obtained and fees collected. A copy of Construction Design Review Application (Form B) bearing the SDC approval letter must accompany City of Bozeman building permit applications.

The SDC reserves the right to inspect in the field for compliance during any stage of construction. The SDC, through the Association is empowered to enforce the requirements of this Declaration, and conditions related to approval thereunder, by any action, in law or equity, to ensure compliance.

STEP 3. MINOR CHANGES

It is anticipated that Owners may wish to make improvements or modifications to their buildings or property during initial construction or at a future date. A change may be executed upon receipt of Application for Change(s) (Form C) bearing the SDC stamp of approval.

ARTICLE V SUBDIVISION DESIGN COMMITTEE

SECTION 1. Function of the Subdivision Design Committee (SDC).

To encourage the architectural harmony of SDC, the developer and all Owners are bound by the requirements of this Declaration. To that end, no structure shall be erected or altered until City of Bozeman, SDC and any other required approvals have been obtained.

SECTION 2. Scope of Responsibilities.

The SDC has the right to exercise control over all construction in the Subdivision. It will also review all Owner's exterior alterations and modifications to existing structures (including but not limited to additions, renovations, and landscaping).

SECTION 3. Enforcing Powers.

Should a violation occur, the SDC has the right to an injunctive relief, which requires the Owner

to stop, remove, and/or alter any improvements in a manner that complies with the standards established by the SDC. Approval by the SDC does not relieve an owner of his/her obligation to obtain any government approvals.

SECTION 4. Committee Members.

The SDC shall consist of three (3) individuals appointed initially by the Declarant. At such time as eighty percent (80%) of the Lots are held in individual ownership other than that of the Declarant, the SDC will consist of three (3) individuals appointed by the Board of Directors, of which one shall be an architect licensed in the State of Montana, and two members of the Association.

SECTION 5. Limitation of Responsibilities

The primary goal of the SDC is to review the submitted applications, plans, specifications, materials, and samples in order to determine if the proposed structure conforms to the Subdivision Covenants. The SDC does not assume responsibility for the following:

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

ARTICLE V COMMON AREAS/OPEN SPACE

- a. The Association shall be responsible for the operation and maintenance of all common areas and open space within the subdivision. Common areas include roadway easements, trails, ponds, storm water runoff facilities, entryway landscaping, wells and structural or other appurtenances and agricultural lands.
- b. No Property Owner shall have the right to occupy or possess any of the roadway easements by reason of owning a Lot in Westbrook Subdivision.
- c. Weeds shall be controlled within the common areas by the Association as set forth and specified under the Montana Noxious Weed Control Act (7-22-2101 through

7-22-2153 MCA) and the rules and regulations of the Gallatin County Weed Control District.

- d. The Common Area is subject to any and all of the following exceptions, obligations, encumbrances and easements:
 - (1) Such easements and rights-of-way on, over or under all or any part thereof as may be reserved to Declarants or granted to any Owner or participating facility for the use thereof in accordance with the provisions this Declaration;
 - (2) Easements and rights-of-way on, or under all or any part thereof as are hereby reserved to Declarants or which may be granted by Declarants to or for the benefit of the United States of America, the State of Montana, the County of Gallatin, or the City of Bozeman, any other political subdivision or public organization, or any utility corporation, any participating facility, any project, or any lot, for the purpose of constructing, erecting, operating and maintaining utilities thereon, therein and thereunder, at that time or at any time in the future;
 - (a) Roads, streets, pedestrian walks, trails, and park and open space areas,
 - (b) Public and private sewers, storm water drains, land drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes and any and all equipment in connection therewith.
 - (3) The obligations imposed, directly or indirectly by virtue of any statute, law, ordinance, resolution or regulation of the United States of America, the State of Montana or any other political subdivision or public organization having jurisdiction over such property, or by virtue of any organization or body politic created pursuant to any such statute, law, ordinance or regulation.
 - (4) Easements depicted on the final plat of the Subdivision.
- e. If at any time, or from time to time, all or any portion of Common Area, or any interest therein, be taken for any public or quasi-public use, under any statute, by right of eminent domain or by private purchase in lieu of eminent domain, the entire award in condemnation shall be paid to the Association and deposited into either the operating fund or the development fund as the Association may, in its sole discretion, determine. No Owner shall be entitled to participate as a party, or otherwise, in any proceeding relating to such condemnation, such right or participation being herein reserved exclusively to the Association which shall, in its name alone, represent the interests of all owners; provided, however, that the portion of any award relating to improvements which constitute a private recreation facility shall be divided equally among the owners who, at the time of such taking, are permitted users of such facility.
- f. No motorcycles, ATV's, snowmobiles or similar means of transportation shall be

operated in the parkland, open space or trails for recreational purposes. Such motorized vehicles and equipment are allowed in the parkland, open space and trails exclusively for snow removal and landscape maintenance.

- g. No Owner, guest or invitee may use or occupy the park lands, open space, trails, boulevards, roads, parking areas, or any Lot in such a manner as to disturb or interfere with the peaceful use, occupancy or enjoyment of any other owner, guest or invitee.

ARTICLE VI

WESTBROOK HOMEOWNER'S ASSOCIATION

SECTION 1. Membership and voting rights

Membership shall be as provided for in the Bylaws.

Each Lot Owner shall have one vote per Lot, and in the event of ownership by more than one person or entity, the Owners shall designate one person to be the agent for receiving notices hereunder, and for the purpose of voting. Each Lot Owner shall be responsible for advising the Association in writing of their current address and the person designated to vote. The Association shall be deemed to have complied with notice requirements and these Covenants by mailing notice to the address of the designated Lot Owner which is on file in writing with the Association.

Section 2. Maintenance and Assessments

2.1 Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot by acceptance of a deed consents to the creation of a lien against the Owner's real property to the extent of non-payment of any assessment for maintenance or otherwise levied by the Association, therefore, whether or not it shall be so expressed in such deed, is deemed to have consented to be subject to these Covenants and agrees to pay to the Association:

- (1) Annual operating assessments or charges; and
- (2) Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

The annual operating and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land, shall be the personal obligation of the entity or person who was the Owner of such property at the time when the assessment is made, and shall be a continuing lien upon the property against which each such assessment is made.

2.2 Purpose of Assessments. The assessments levied by the Association shall be used to provide for the improvement, repair, and maintenance of the main subdivision road(s), and common areas including roadway easements, trails, fire ponds, entryway landscaping, wells and structural or other appurtenances and agricultural lands, trail system, and open space; for maintaining any fenced, landscaped or pond areas for which the Association is responsible; for maintenance of any common structures, for noxious weed management; for the establishment and maintenance of a reserve fund, for the maintenance of mailboxes, community signs, community trees, landscaping, snow removal, association management, association insurance; and for promoting generally the enjoyment, standard of living and property values of the Members of the Association and for any other legitimate purposes, expressed or implied, in this Declaration or the Association Bylaws.

2.3 Amount of Assessment:

- a. Each dwelling unit on multi-family Lots or Lot will be assessed an equal proportionate share.
- b. Assessments to Owners will commence immediately after the transfer of title from the Declarant to the Owner.
- c. The Board shall have the right to determine and refine the specifics and timing of assessments within the parameters of the preceding statements.
- d. No assessments will be levied against Lots owned by the Declarant.

2.4 Amount and Approval of Assessments. The maximum assessment per Lot which may be made by the Association in every calendar year shall not substantially exceed the projected and budgeted actual and reasonable costs to be incurred by the Association during the coming year in carrying out the purposes herein set forth, and may include a reasonable reserve for contingencies.

The amount of the annual assessments shall be fixed by the Board of Directors of the Association in the following manner:

At each annual meeting of the Members of the Association, the Directors shall present a proposed budget of the estimated expenses of the Association for the coming year to the members for review, discussion, amendment, comment and approval. The Members shall approve or amend the proposed budget by a majority vote of the members present or voting by proxy. After the annual meeting, at the annual Board of Directors meeting the Board of Directors shall set the amount of the assessments and the date(s) due for the coming year to cover the budget approved in the manner herein set forth. The Board of Directors shall fix the amount of the annual assessments at least thirty (30) days in advance of the due date of each annual assessments and at least ninety (90) days in advance of a special assessment.

2.5 Uniform Rate of Assessment. Annual assessments shall be fixed by the Board of Directors at a uniform rate for each dwelling unit in the case of a multi-family lot or Lot.

- 2.6 Effect of Nonpayment of Assessments; remedies of the Association. Any assessment not paid within thirty (30) days of the due date shall bear a late fee of \$25.00 plus interest at the highest rate allowable by law, or other late fee and interest rate as may be determined by the Board of Directors. The assessment will bear interest from the due date. The Association may record a Notice of Delinquency or file a Lien with the Clerk and Recorder of Gallatin County at any time after such assessment or assessments become delinquent and said Notice of Delinquency will constitute public notice that said lot is encumbered with a lien. At such time as the delinquency is corrected, the Association will file the appropriate document to release the lien. The Owner of the Lot will further reimburse the Association for costs to prepare and release said Notice of Delinquency, which may include reasonable attorney's fees. Said delinquency will not be cured until the Owner of the lot pays for said costs as well as the amount of the delinquent assessment including interest, late charges, associated costs for collection, and attorney's fees. The obligation of the Owner to pay any assessment or interest will not be affected by any conveyance or transfer of title to said lot. The Association may use a collection company to collect the assessment, may bring an action at law against the Owner obligated to pay the same, and/or foreclose the lien against the property. There will be added to the amount of such assessment the costs of collecting the same or foreclosing lien thereof including reasonable attorney's fee. If a Lot is sold, said obligation will be paid from seller's proceeds at the time of sale.

Section 3. Board of Directors

- 3.1 The Board of Directors of the Association shall consist of at least three (3) but not more than five (5), Lot Owners who shall be elected at the annual meeting by a simple majority of the Members of the Association.
- 3.2 Until 75% of the Lots in Westbrook Subdivision, as described on Exhibit A have been sold, the Declarant shall have the right to appoint the Board of Directors, who shall not be required to be Lot Owners or Members of the Association.
- 3.3 The Bylaws of the Association shall set forth and determine the selection, term and duties of the Board of Directors and officers.
- 3.4 All Director meetings shall require the presence of Directors entitled to cast a minimum of 55% of all votes of the Directors, either in person or by remote access agreed upon in advance by all directors. The presence of Directors entitled to cast a 55% of all votes of the Directors shall constitute a quorum. The Directors shall act by majority vote.
- 3.5 The annual meeting of the Board of Directors shall be held immediately after the annual meeting of the members. At the annual Board of Directors 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.

Section 4. Duties and Powers of the Association

- 4.1 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 easements, parklands, boundary fences, drainage easements, open space, and trails; 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.
- 4.2 The Bylaws of the Association shall set forth and determine the annual meeting date. Any special meetings may be called by the President, or in the absence of the President, by the Vice-President. In addition, special meetings of the members for any purpose or purposes, unless otherwise prescribed by statute, may be called by the President, the Board of Directors, or not less than fifty-five percent (55%) of all the members entitled to vote at the meeting. 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 at the office of the Clerk and Recorder, Gallatin County, Montana, or at such address as shall be designated, in writing, by any owner. The presence of members, in person or by written proxy, representing fifty-five percent (55%) of the total votes of the membership shall constitute a quorum.
- 4.3 The Association shall have the rights, obligations and duties, subject to these Covenants, to do and perform each and every one of the following for the benefit of the Owners and for the maintenance and improvement of Subdivision:
 - A. The Association shall accept title to all Parkland Systems.
 - B. The Association shall maintain or provide for the maintenance the Parkland System, as defined herein, and improvements located on or in the Parkland System. All maintenance and/or improvement of or to the Parkland System shall be consistent with and in conformance with the approved Westbrook Park Plan, which outlines the installation of landscaping improvements, trail/bike path improvements and maintenance and upkeep of the parklands, open space and trails approved by the City of Bozeman in conjunction with the Subdivision. All private common open space areas identified on the final plat of the Subdivision are included in the Parkland System. These lands are available for the enjoyment and use of the residents, guests, and the public visiting the Subdivision.

- C. The Association shall have routinely inspected and maintained the Storm Drainage System within the Subdivision, which maintenance shall include the following:
 - a. Detention/Retention ponds shall be kept free of trash, and the berms/slopes shall be mowed or otherwise maintained to provide for a pleasant appearance;
 - b. A cleanout stake (2"x 4" treated wood) shall be installed and maintained near the center of the pond. The cleanout elevation shall be clearly marked on the stake;
 - c. The Association shall have inspected detention/retention ponds monthly from May to October to insure that the original design capacity is maintained. Records shall be kept in a separate log book of the inspections of said ponds, indicating the bottom elevation and condition of the ponds, and any maintenance conducted;
 - d. Sediment shall be removed and the pond restored to its original dimensions when the sediment reaches the elevation marked on the cleanout stake; and
 - e. Maintenance of the ponds shall be the responsibility of the Declarant until the Declarant forms the Owners' Association for the Subdivision.
- D. The Association shall pay all real property taxes and assessments levied upon any portion of the Parkland Systems.
- E. The Association may contract and pay for, employ or otherwise provide for operation and maintenance of the park areas.
- F. The Association must obtain and maintain in force a general liability insurance policy, and such other policies as the Board of Directors may deem appropriate.
- G. The Association shall have all powers set forth in this Declaration and the Bylaws, including, without limitation, the power to levy assessments, to make contracts and to acquire and dispose of property, and shall take such action, whether or not expressly authorized by this Declaration or the Bylaws as may reasonably be necessary to enforce the limitations, covenants, conditions and restrictions of this Declaration, the Bylaws, and any other rules and regulations hereafter adopted by the Association.
- H. During reasonable hours, and with reasonable notice, the Declarant, Association, or their agents, shall have the power and authority, without liability to any Owner for trespass, or other wrongful act, to enter upon and inspect any Lot and the structures and improvements thereon, for the purpose of determining whether the provisions of this Declaration have been or are being complied with, maintaining and repairing any Lot, if for any reason the Owner fails to maintain and repair the Lot as required by this Declaration, or for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon such area in violation of these Covenants. The Association shall also have the power and authority from time to time in its' own name, on its' own behalf, or in the name and behalf of any Owner or Owners who consent

thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of these Covenants, or to enforce by mandatory injunction or otherwise all of the provisions of these Covenants.

- I. In fulfilling any of its duties under these Covenants, including its duties for the maintenance, repair, operation or administration of the Parkland System, , or in exercising any of its rights to construction improvements of other work upon the Parkland System, the Association shall have the power and authority:
 - a. To contract and pay for, or otherwise provide for, construction, maintenance and repair of all improvements upon the Parkland System on such terms and conditions as the Association, shall deem appropriate and to pay and discharge all liens arising out of any work;
- J. To contract and pay for, or otherwise provide for, such utility services including, but without limitation, water sewer, trash, electrical, telephone and gas services as may from time to time be required;
- K. To contract and pay for, or otherwise provide for the services of architects, engineers, attorney and certified public accountants or such other professional or nonprofessional services as the Board may deem necessary;
- L. To contract and pay for, or otherwise provide for, fire, police and such other protection services as the Board deems necessary, and to pay and discharge any and all liens placed upon any Parkland System on account of any work done or performed by the Association in the fulfillment of any of its obligations and duties of maintenance, repair, operation or administration.
- M. The Board shall be required to grant and convey to any third parties easements or rights-of way in, on over or under any Parkland System without payment to the Association when requested by Declarant. The Board shall also have the power and authority to grant and convey to any third parties, on such terms as the Board may approve, parcels or strips of land from any Parkland System. The Board may not grant or convey land from the Parkland System which would jeopardize the land required by the subdivision, planned unit development or zoning approvals for the land described in Exhibit A.
- N. The Board may from time to time employ the services of a manager to manage the affairs for the Association. The Board may delegate to the manager any of its powers under the Subdivision restrictions, provided, however, the Board cannot delegate to such manager the power to execute any contract binding on the Association for a sum in excess of \$1,000.00 except that the manager is able to renew an existing insurance policy and renew contracts in excess of \$1,000 for existing seasonal contracts for snow removal,

lawn care, weed and pest control; nor for the performance of any work or services, which work or services are not to be completed within sixty (60) days; nor the power to sell, convey, mortgage or encumber any property of the Association.

- O. No single expenditure or debt in excess of \$2,500.00, other than for the payment of property taxes and insurance procured by the Association, may be made or incurred by the Association or Manager unless the same has been presented to the Owners during the budgetary process.
- P. The Board shall have the right to pay compromise or contest any or all taxes and assessments levied against all or any part of the Parkland System, or upon any personal property belonging to the Association.
- Q. The Association may adopt Bylaws for the governance of the Association.
- R. The Board from time to time and subject to the provisions of Subdivision may adopt, amend and repeal rules and regulations to be known as Subdivision Rules.

No member of the Board shall be personally liable to any Owner, guest, leases or to any other persons, including the Declarant, for any error or omission of the Association, its representatives and employees, Committee or the manager, provided, however, that such member according to the actual knowledge possessed by him, acted in good faith.

ARTICLE VIII MISCELLANEOUS PROVISIONS

SECTION 1. Declarant has designed the Subdivision to include sidewalks in certain common areas designated on the final plat of the Subdivision. Declarant shall have three (3) years from the date the final plat for the Subdivision is recorded to install the sidewalks within the common areas of the Subdivision.

ARTICLE VI ENFORCEMENT, DURATION AND AMENDMENT

The provisions of these Covenants shall be continuous and binding unless terminated.

Amendment. For an initial term of fifteen (15) years from the date of these Covenants, or until 75% of the lots in the Subdivision have been sold, these Covenants may be modified, altered or amended only with the Declarant's written approval. After the initial fifteen (15) year period, or after 75% of the lots in the Subdivision have been sold, whichever occurs first, the provisions of these Covenants may be changed or amended, in whole or in part, or additional Covenants added, upon approval of two-thirds (2/3) of the votes of the Homeowners' Association, at a meeting duly noticed and called for that purpose.

The dedications or easements for roads, utilities, parks, trails, and common areas shall not be changed without the unanimous consent of all of all the owners affected by the change. Any covenant required as a condition of the subdivision approval shall not be altered or amended without the agreement of the governing body.

Any such amendment of this Declaration, or any term, covenant, condition, or restriction shall be effective upon the filing and recording of such an instrument in the office of the Gallatin County Clerk and Recorder. The President or Vice-President shall execute and record the amendment, modification, termination, or extension, with the Clerk and Recorder of Gallatin County, Montana. Any change in these Covenants shall not affect existing structures and uses of the lots.

Enforcement. The Association, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration.

Attorney's Fees. Should any lawsuit or other legal proceeding be instituted by the Association against an owner alleged to have violated one or more of the provisions of these Covenants the prevailing party shall be entitled to recover the costs of such proceeding, including reasonable attorney's fees associated with the action, as may be ordered by the court.

Severability. Invalidation of any one of terms, covenants, conditions, or restrictions, or part thereof, by judgment or by Court order shall in no way affect any of the other Covenants or provisions, all of which shall remain in full force and effect.

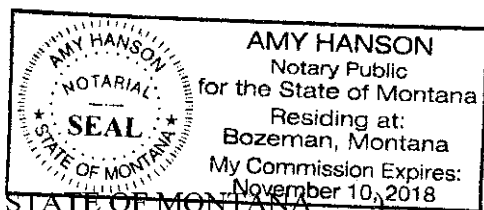
Violation Constitutes Nuisance. Every act or omission, whereby any restriction, condition or covenant in this Declaration set forth, if violated in whole or in part, is declared to be and shall constitute a nuisance and may be abated by Declarant or his successors in interest and such remedies shall be deemed cumulative and not exclusive.

No Waiver. The failure of the Declarant, Association, or Board, or agents thereof to insist, in one or more instances, upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration, or to exercise any right or option herein contained, including enforcement of any of the terms, covenants, conditions, or restrictions, and to collect damages for any subsequent breach of Covenants, or to serve any notice or to institute any action, shall not be construed as a waiver or relinquishment for the future of such term, covenant, condition or restriction, or enforcement thereof; but such term, covenant, condition or restriction shall remain in full force and effect. Neither Declarant, the Association, nor the Board, nor their successors and assigns shall be liable to any Owner or occupant by reason of any mistake in judgment, negligence, nonfeasance, action or inaction, or for the enforcement or failure to enforce any provision of this Declaration. The receipt and acceptance by the Declarant, Association, Board or their agent of the payment of any assessment from an Owner, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver of any provision hereof shall be deemed to have been made unless expressed in writing and duly signed by or on behalf of the Declarant, Association, Board or agent thereof.

Transfer. Any and all of the rights and powers vested in Declarant pursuant to the this Declaration may be delegated, transferred, assigned, conveyed or released by Declarant to the Association, and the Association shall accept the same, effective upon the recording by the Declarants of a notice of such delegation, transfer, assignment, conveyance or release.

IN WITNESS WHEREOF, Declarant has hereunto set its hand as of this 16 day of November 2015

Westbrook Development, LLC.

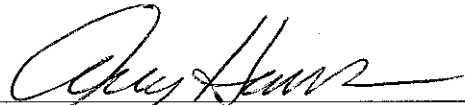


By: [Signature]

STATE OF MONTANA)
:ss.
County of Gallatin)

On this 16th day of November, before me, the undersigned, a Notary Public of the State of Montana, personally appeared Scott V. Johnson, known to me to be the manager of Westbrook Development, LLC., the entity that executed the within instrument and acknowledged to me it executed the same.

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



(sign)

NOTARY PUBLIC for the State of Montana

Printed Name: Amy Hanson

Residing at: Bozeman, MT

My Commission expires: 11/10/2018

FORM A

CONSTRUCTION DESIGN REVIEW APPLICATION

LOT NUMBER: _____

OWNER: _____

Address: _____

Telephone: _____ FAX: _____

BUILDER: _____

Firm: _____

Address: _____

Telephone: _____ FAX: _____

ARCHITECT/DESIGNER: _____

Firm: _____

Address: _____

Telephone: _____ FAX: _____

LANDSCAPE ARCHITECT: _____

Firm: _____

Address: _____

Telephone: _____ FAX: _____

Drawings submitted (please check):

☐ Site Plan

☐ Floor Plans

☐ Roof Plan

☐ Elevations

☐ Landscape Concept Plan

Submitted by: _____ Date: _____

Signature: _____

FORM B
APPLICATION FOR CHANGE(S)

LOT NUMBER: _____

OWNER: _____

Address: _____

Telephone: _____ FAX: _____

BUILDER: _____

Firm: _____

Address: _____

Telephone: _____ FAX: _____

ARCHITECT/DESIGNER: _____

Firm: _____

Address: _____

Telephone: _____ FAX: _____

Change Description: (attach sketch of proposed change)

Reason for Change:

Submitted by: _____ Date: _____

Signature: _____

EXHIBIT A

Lot 2A of Minor Subdivision No. 201A, located in the South ½ of Section 4, Township 2 South, Range 5 East, P.M.M, City of Bozeman, Gallatin County, Montana.

2563065

Page: 1 of 36 11/07/2016 03:48:07 PM Fee: \$252.00
Charlotte Mills - Gallatin County, MT MISC



AFTER RECORDING, PLEASE RETURN TO:
Scott Johnson
2264 Jackrabbit Lane, Unit B
Bozeman, MT 59718

**DECLARATION OF PROTECTIVE COVENANTS AND
RESTRICTIONS**

FOR

WESTBROOK SUBDIVISION

BOZEMAN, MONTANA

The Declaration of Protective Covenants, Conditions and Restrictions regulating and controlling the use and development of certain real property, as hereinafter described, was effective the 4th day of August, 2015, and is hereby superseded this _____ of _____, 2016, by and with this Declaration of Protective Covenants and Restrictions for Westbrook Subdivision, by Westbrook Development, LLC, a Montana Limited Liability Company, with an address of 2264 Jackrabbit Lane, Unit B, , Bozeman Montana, 59718, hereinafter referred to as "Declarant", the owner or beneficial owner of all Lots of WESTBROOK SUBDIVISION in accordance with the plat filed of record in the Office of the Clerk and Recorder, Gallatin County, Montana, and which shall hereinafter be referred to as the "Property" or "Westbrook Subdivision".

RECITALS

WHEREAS, Declarant is the owner of all of the real property in the Westbrook Subdivision, which is more specifically described in Exhibit "A" attached hereto and by this reference is fully and completely incorporated herein;

WHEREAS, it is the intent of the Declarant, by and through this Declaration, to establish and publish certain covenants, conditions and restrictions to encumber the Property, to regulate and control the use and development of the Property, and to place building and use restrictions on the Property for the use and benefit of Declarant and present and future owners of the Property, in order to preserve and maintain the natural character, value, desirability, and aesthetic nature of the Property for the benefit of all owners of the Property or any part thereof;

WHEREAS Declarant has previously established and recorded the Declaration of Covenants, Conditions and Restrictions for Westbrook Subdivision, Bozeman, Montana, on file and of record with the Gallatin County Clerk and Recorder, Document No. 2530937, recorded November 19, 2015, and, the Ratification of Declaration of Protective Covenants and Restrictions for Westbrook Subdivision, Bozeman Montana, on file and of record with the Gallatin County Clerk and Recorder, Document No. 2530938, recorded November 19, 2015, and by and with this Declaration of Covenants, Conditions and Restrictions, Declarant hereby replaces and supersedes the previously recorded covenants, conditions and restrictions on the Property, and ratification thereof;

WHEREAS, prior owners previously established and recorded the Restrictive Covenants for Lots 1, 2 and 4, Minor Subdivision No. 201 that were required by the County Commission in 1996 as a condition of the preliminary plat approval, which covenants may not be amended nor revoked without the mutual consent of the owners, in accordance with the amendment procedures therein, and the governing body of Gallatin County, on file and of record with the Gallatin County Clerk and Recorder, Film 169 page 3439, which covenants were amended by the First Amendment to the Restrictive Covenants for Lots 1, 2 and 3, Minor Subdivision No. 201,

on file and of record with the Gallatin County Clerk and Recorder, Document No. 2538451, February 24, 2016, neither of which are hereby superseded and replaced;

WHEREAS, Declarant has and intends to continue to develop the Property with single family residences, multi-family residences, parks, private common open space and a variety of uses by means of a subdivision, and the purpose of the declaration is to create and maintain the Property as desirable, attractive, beneficial and suitable in architectural design, materials and appearance; and to guard against unnecessary interference with the natural character, value, desirability, and aesthetic nature of the Property, for all the mutual benefit and protection of owners within the Westbrook Subdivision;

WHEREAS, when a lot is purchased in the Westbrook Subdivision, the fee owner of real property within the Westbrook Subdivision automatically becomes a member of the Association;

WHEREAS, the Association shall be governed by a Board of Directors, which shall implement, administer and enforce these covenants, conditions and restrictions, and,

WHEREAS, Declarant has prepared this superseded and replaced Declaration of Covenants, Conditions and Restrictions, which are hereby approved as required to amend the Covenants;

NOW THEREFORE, Declarant hereby establishes and declares that the Property described in Exhibit "A" shall be held, sold, conveyed, encumbered, leased, occupied and improved, subject to the subdivision covenants meaning the limitations, covenants and restrictions set forth in this declaration and any subsequent amendments hereto, all of which are intended to enhance the desirability and attractiveness of the land. These limitations, covenants and restrictions shall be applicable to and binding upon the Property, and shall run with the land and shall be binding upon all persons having or who acquire any right, title or interest in and to the land, and shall inure to the benefit of the Declarant, the Association and each person who becomes an owner of the land.

ARTICLE I DEFINITIONS

SECTION 1. The following words when used in this Declaration or any supplemental declaration (unless the context shall prohibit) shall have the following meanings:

"Architect" shall mean a person registered to practice architecture in the State of Montana.

"Association" shall mean the Westbrook Homeowners' Association, and its successors and assigns which shall serve and may also be referred to as the "Homeowners' Association."

“Board” shall mean the Board of Directors of the Association.

“City” shall mean the City of Bozeman.

“Covenants” shall mean this Declaration of Protective Covenants and Restrictions for Westbrook Subdivision, and as it may, from time to time, be amended or supplemented.

“Declarant” shall mean Westbrook Development, LLC, or such other person, entity or corporation who Westbrook Development, LLC, may, by a recorded document, designate as the Declarant.

“Declaration” shall mean this Declaration of Protective Covenants and Restrictions for Westbrook Subdivision, and as it may, from time to time, be amended or supplemented.

“Lot” shall mean and refer to only that land so divided into a lot, tract or parcel that is a portion of the real property (a) described in Exhibit “A” or hereafter annexed to the Subdivision and (b) designated by the Declarant for residential, or other permitted use. The term lot does not include any portion of the Parkland System.

“Owner” also referred to as Lot Owner, member and home owner, shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to or leasehold interest in any land which is a part of Subdivision, including contract purchasers, but excluding those having such interest merely as security of the performance of an obligation.

“Parkland System” shall mean all land and interest therein which has or may be conveyed to the Association, including but not limited to all lands identified as private common open space, trail network, and park as delineated on the final plat of Subdivision. Private common open space shall remain in the ownership and control of the Association. Parkland System shall include all land designated as private common open space on the Subdivision final plat, including but not limited to the detention/retention ponds.

“Structure” shall mean anything built or placed on the ground, excluding ground level features such as pathways or low profile patios contiguous to homes.

“Subdivision Design Committee”, also referred to as SDC, shall mean a committee of three (3) members responsible for the review, oversight, modification, and enforcement of architectural regulations related to the external design, appearance and location of all improvements and properties within Westbrook Subdivision and approves, conditionally approves or rejects the same.

“Subdivision” shall include all land described in Exhibit “A”, together with such other land as

may be annexed pursuant to the provisions of this Declaration.

ARTICLE II LAND SUBJECT TO THIS DECLARATION

SECTION 1. The land described in Exhibit "A" attached hereto shall be held, sold, conveyed, leased, encumbered, occupied and improved subject to this Declaration.

SECTION 2. The Declarant may, pursuant to the following provisions of this Section, from time to time and in Declarant's sole discretion, annex to the Subdivision all or any part of the land described in future exhibits (not then constituting a part of the Subdivision) owned by Declarant at the time of such annexation.

- a. The annexation of such land shall be effectuated by Declarant recording an amendment to this Declaration describing the land to be annexed; setting forth such additional limitations, restrictions, covenants and conditions as are applicable to such land; and declaring the land is to be held, sold, conveyed, encumbered, leased, occupied and improved subject to these limitations, restrictions, covenants and conditions, and this Declaration.
- b. Upon the annexation becoming effective, the annexed land shall become a part of Subdivision.
- c. The amendment to the Declaration described in Section 2.a above may include, but is not limited to, providing for the following:
 - i. A designation of land classifications as provided for by the Declarant; and
 - ii. A declaration of restrictions applicable exclusively to a specified area.
- d. Only the land described in Exhibit "A" and that specifically annexed as provided for in this section shall be deemed subject to this Declaration, whether or not shown on any subdivision map filed by Declarant or described or referred to in any document executed or recorded by Declarant. Nothing herein or in any amendment hereto shall be deemed to be representation, warranty or commitment that the Declarant will commit or subject the Subdivision covenants to any land Declarant may now own or hereafter acquire except that land described in Exhibit "A" or annexed thereto.

**ARTICLE III
LAND CLASSIFICATIONS AND RESTRICTIVE COVENANTS**

SECTION 1. All Lots within the Subdivision shall be classified into the following City of Bozeman Zoning Code (Uniform Development Code) designations and carry their associated allowable uses, lot areas, widths and coverages, yards, setbacks, and heights:

- R-1 (Residential Single-Household Low Density District)
- R-2 (Residential Two-Household Medium Density District)
- R-4 (Residential High-Density District)

SECTION 2. Architectural Regulations. 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 Lots within the Subdivision, except as specifically noted, shall be subject to the following limitations and restrictions:

- a. Minimum Residence Requirements: All single story family dwellings shall have a minimum of 1300 square feet of floor space. 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. All plans must be approved by the SDC.

These are the minimum requirements for the Property, with the exception of Phase 1, Block 1 and the south side of Block 2, for which single story family dwellings shall have a minimum of 800 square feet of floor space.

Minimum floor area requirements for each dwelling in all districts shall be that area required by the City's adopted International Building Code, pursuant to section 38.08.040 of the Bozeman Municipal Code, as of the date of this Declaration.

- b. Site Design: The building structure must comply with and is subject to all City of Bozeman set back requirements.
- c. Foundations: Foundation walls shall be exposed a maximum of 18" above the ground unless they are integral with an approved design scheme. Concrete foundations exposed more than 24" above grade must have an architectural finish (texture, pattern and/or color).
- d. Windows and Doors: Windows shall be made of vinyl, painted or stained wood or

clad in vinyl or metal. Glass shall be clear and free of color.

Shutters are not permitted. Sliding doors may only be used in walls facing the backyard.

- e. Roofs: Pitched roofs shall be clad with cedar shingles, natural slate, artificial slate, asphalt/fiberglass shingles or metal, with materials and complementing color approved in writing by the SDC. The principal roof shall be a symmetrical hip or gable form with a pitch between 4:12 and 10:12. Steeper roofs are permitted when complementary to the overall design and when approved in writing by the SDC. Flat roofs comprising less than thirty percent (30%) of the total roof area are permitted on all buildings. Flat roofs used as balconies on street facades shall be enclosed with solid railings and integrated with the design. Modern style homes with flat roofs will be considered on a case by case basis, and must be approved in writing by the SDC.

Skylights shall be flat in profile (no bubbles or domes). Skylights and solar panels shall be applied parallel and flat to the roof and are not to be on any roof parallel to the street. Roof protrusions other than chimneys and plumbing vent stacks shall not be placed on a roof facing a street or public space.

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. Overhanging eave depth shall be no less than 12".

- f. Walls: Exterior siding or building walls shall be clad in smooth cut cedar shingles, wood clapboard, wood board and batten, wood products, cement board siding, metal, brick or stone approved in writing by the SDC. Stucco or EIFS with a smooth or roughcast (pebbled) finish may be acceptable, if approved in writing by the SDC. No cement block siding or panel siding similar to T1-11 siding or plywood sheet siding is allowed.

Siding shall run horizontally, unless approved in writing by the SDC.

The color palette of the body of the house shall be non-glossy white, cream, or earth tones, or an alternate color palette as approved in writing by the SDC based on color samples provided. Colors are to be compatible with the balance of the neighborhood. No bright or shiny colors, for example, bright oranges, royal blues, pinks, purples and like bright colors are not allowed. All trim, frames, doors, and windows shall be in a compatible accent color.

- g. Porch/Entry: Main entry doors are required to be either composed with a porch design and/or a recessed entry of a minimum of four feet (4') from the primary facade of the house. This requirement is intended to provide a consistent and defined building pattern, and a street friendly appearance and denote a clear sense of arrival.

This porch/entry requirement may be relaxed for Phase 1, Block 1 and the south side of Block 2, in which case either a partial width entry porch or covered entry shall be required.

- h. Landscape: The Front Yard shall be the area from the front build to or setback line to the property line and from the side lot line to the side lot line. The Side Yard shall be the areas from the side of the building to the side lot line, less front yard and rear yard. The Rear Yard shall be the area from the back of the building extending to the rear property line.

Each Owner is required to meet the following minimum landscape specifications consistent with the overall plan, which shall include street trees, large canopy trees in specified yards, shrubs, mixed planting beds and turf lawns. Minimum requirements include at least three minimum two inch (2") diameter caliper trees, one (1) in the Front Yard and two (2) in Rear Yard, and at least three (3) appropriately sized planting beds, two (2) in the Front Yard, one (1) in the Rear Yard containing mixed shrubs. Wildlife-friendly shrubs planted in an informal or mixed hedges along yard perimeters is preferable. Native shrubs and trees are encouraged.

Owners are responsible for landscaping of adjacent boulevards and maintenance thereof. The requirement for boulevard trees shall be as required by the City of Bozeman

Landscaping plans for deviations from the minimum requirements shall be submitted to the SDC for approval. Landscaping, including adjacent boulevards, shall be completed within six (6) months after the Owner's first occupancy of the residence. Prior to any project requiring digging, it is the responsibility of the Owner to contact the appropriate utility companies to mark the location of underground lines within the dig site.

- i. Residential Decks: Decks must face rear yards. Decks may continue into side yards, but may not extend more than thirty-six feet (36') from the side yard façade. The space below first floor elevated decks visible from streets or public places shall be wood lattice with a maximum of one and a half inch (1½") between the strips, and which shall be applied in a non-diagonal design, between

and not concealing deck supports, or otherwise covered in like material as approved in writing by the SDC. Upper level decks shall be integral to the design and over first floor space.

- j. Sidewalks: Sidewalks, constructed to City of Bozeman 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 final plat, 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 fails 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.
- k. Fences: All Fence design and location shall be approved in writing by the SDC and shall conform to the requirements of section 38.23.130 of the Bozeman Unified Development Code titled "Fences, Walls and Hedges". Fences will be built according to the specifications provided by the SDC.

Maximum height of fences, walls and hedges is five feet (5'). Maximum height for fences in corner or side yards is five feet (5'), except in any required corner side yard that is forward of the rear edge of the building façade nearest the corner side yard, which may not exceed four feet (4') in height. No fences are allowed in required vehicle vision triangles. No fences are allowed in front yards. Fences adjacent to parkland or open space shall not exceed four feet (4') in height and shall be of an open construction design and consistent along all parkland and open space.

In addition, the following conditions shall apply:

- i. The fence along the side lot line of Lot shall run only from the rear lot line to a point which is the intersection with the back of the home. If the side lot line upon which the fence is to be built is a common lot line between Lots within the Subdivision, then the fence erected upon such side lot line may be centered upon the lot line. Any fence erected upon a rear lot line or upon a side lot line which is not a common line between two Lots within the property shall be erected in such a manner as to not encroach upon an adjacent Lot or open space. There shall only be one fence upon any lot line within the property affected.
- ii. Any Owner electing to erect a fence to enclose a rear yard shall do so at his or her own expense; provided, however, that in the event an adjacent Owner within the property affected thereafter elects to fence the rear lot behind his or her house, he or she shall utilize the common fence between

the Lots as one of the boundaries of his or her yard area and he or she shall, within 15 days of erecting such fence, reimburse the Owner of the adjacent lot(s) whose fence(s) constitute a part of the new enclosure, for the reasonable value of such section of fence utilized, based upon the actual construction costs of such fence. It shall be the responsibility of the Owner erecting any such section of fence utilized to maintain such records if no fence is initially erected upon the adjacent Lot. In the event that an Owner elects to erect the fence himself or herself, rather than contracting for such fence, he or she shall only be allowed to charge the adjoining Owner for the materials utilized for that section of fence, together with a pro-rata portion of any necessary equipment rental for the construction of the fence, such as a posthole digger.

- iii. Any Owner erecting a fence shall thereafter be responsible for the maintenance of such fence, on both sides, except in the case of a portion of fence which is shared between two Lots within the affected properties, in which case each owner shall be responsible for maintenance of the fence on the side facing his or her lot. In the event that any portion of a shared fence must be replaced, the Owners of the Lots sharing the fence shall each pay one half of the cost of such replacement.
- iv. In the event of a dispute involving any common fence, the parties agree that if they cannot resolve the dispute through direct discussions, they will submit the matter to mediation. In the event that they cannot agree upon a mediator, the parties shall request a list of names from the Gallatin County Bar Association which shall consist of one more name than the number of parties involved in the dispute, which shall be presumed as two, since each Lot shall be deemed to be one party, regardless of the number of the actual Owners of the Lot. Upon receipt of the list of potential mediators, each party shall strike one name from the list and the remaining person shall act as the mediator for the parties. The parties shall each be obligated to pay an equal portion of the fee charged by the mediator. In the event the parties cannot resolve the matter through mediation, they shall then be free to pursue other remedies available to them.
- l. Lighting: All exterior lighting must be free of glare and shall be fully shielded or shall be indirect lighting, and shall comply with the requirements of the City of Bozeman, Unified Development Code, Sec. 38.13.150, or as otherwise amended. No lighting shall shine beyond a property's lot line. Obtrusive flood lighting is prohibited.
- m. Sewage Lift Station: Lot Owners dependent on the sewage lift station shall be

responsible for financing the costs of its operation and maintenance, as required by the City of Bozeman.

- n. Plans and Specifications. Each building, garage, or accessory structure shall be constructed, erected and maintained in strict accordance with the approved plans and specifications.
- o. Accessory Dwelling Units: Accessory Dwelling Units must be approved in writing by the SDC, meet the requirements of the Bozeman Municipal Code, and obtain any necessary approvals.

SECTION 3. General Subdivision Restrictions.

- a. Notices; Documents; Delivery. Any notice or other document permitted or required by this Declaration is to be delivered personally, by mail, and may be delivered by electronic mail upon written request of Owner. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of same has been deposited in the United States mail, postage prepaid, addressed as follows: If to the Association or to the Subdivision Design Committee, at the registered office for the Association; if to an Owner, then at the mailing address of Lot within Westbrook Subdivision owned by the Owner; provided, however, that any such address may be changed from time to time as requested by an Owner, by the Subdivision Design Committee, or by Declarant by notice in writing, delivered to the other parties accordingly.
- b. Use. Dwellings shall be used for residential purposes only. No Lot or dwelling unit will be used for a commercial enterprise. However, any artist, artisan, craftsperson or home based business person pursuing his or her artistic/business calling upon the Lot or dwelling unit owned by such person may do so if such artist, artisan, craftsperson or business person also uses such Lot or dwelling unit for his, her, or their, residential purposes, is self-employed and has no employees working on such Lot or in such dwelling unit, and does not advertise any product or work or art for sale to the public upon such Lot or dwelling unit.
- c. Long-Term Leasing. The long-term leasing of any Lot/dwelling unit from time to time by the Owner thereof, is permitted. Long-term leasing shall be of a period no shorter than six (6) months. All persons residing in the subdivision are subject to all covenants and restrictions, and to all of the restrictions as may be adopted from time to time by the Association.
- d. Maintenance. Owners will keep their Lot, structures, improvements, landscaping, walkways and driveways in a clean, sanitary, attractive and marketable condition at all times. No Owner shall permit his or her Lot, dwelling unit or structures to

fall into disrepair. Owners will perform all painting and make all appropriate repairs and replacements timely, and as often as necessary.

- e. Unsightliness. No unsightliness is permitted on any Lot. Unsightliness shall include, without limitation: 1) the open storage of any building materials, except during construction of any structure; 2) accumulation of lawn or tree clippings or trimmings; 3) accumulation of construction debris or waste or household refuse or garbage; 4) accumulation of animal waste; 5) the storage or accumulation of any other material or equipment on the Lot in a manner that is visible to the public view.

- f. Nuisance. No noxious odors, offensive or hazardous activity shall take place or be carried on within the Lots or common areas, nor will anything be done or placed within any Lot or the common area that may be or become a nuisance, or cause an unreasonable hazard, disturbance, or annoyance to other Owners in the enjoyment of the properties. Without limiting any of the foregoing, no Owner will permit noise, including but not limited to, barking dogs or excessive volume of stereo amplifiers or other sound, to emanate from Owner's Lot, which would unreasonably disturb another Owners' quiet enjoyment of their Lots or of the common area. Quiet hours observed shall be 10:00 p.m. – 8:00 a.m.

- g. Pets. All pets are subject to City of Bozeman pet ordinance in addition to all requirements of this Section.
 - i) No livestock, poultry or other animals, except dogs, cats or small in-house pets and birds are permitted on the properties. Each property shall be restricted to no more than two (2) commonly recognized domesticated pets; provided, however that they are not kept, bred or maintained for any commercial purpose.

 - ii) All dogs, cats and other pets shall be strictly controlled by their owners so as not to anno or interfere with the use of Lots and common areas by the other Owners and to prevent any interference or harassment of wild birds or animals in the subdivision or on surrounding adjacent properties. Dogs and cats and other domesticated pets shall be kept on Owner's Lot, shall not be allowed to roam free or roam on other Owners' Lots or roam on common areas. While on common area's dogs must, at all times, be leashed and under the Owner's control.

 - iii) In common areas, including boulevards, parks, open space and trails, on other Lot Owners' Lots pet owners are required to immediately clean up after pets. Owners that fail to immediately clean up after pets will be subject to a fine of \$25.00 or other fine as established or from time to time

changed by the Association.

- iv) Pets shall not be allowed to become a nuisance or annoyance to neighboring property owners. Dogs shall not be allowed to continuously bark or create an audible disturbance or nuisance to other persons residing in the area. Repeated continuous barking (more than 30 seconds) will not be tolerated. Barking that becomes a nuisance will be subject to a fine as established or from time to time changed by the Association.
- v) All dogs, cats and other pets shall be strictly controlled by their owners to prevent any interference or harassment of wildlife, wild birds, or other animals in the Subdivision or on surrounding or adjacent properties. If any animals are caught or identified chasing or otherwise harassing wildlife, wild birds, or other animals, or people, or have become a nuisance or annoyance to neighboring property Owners, the Association or any Owner shall have the authority to have such animal or animals impounded in accordance with the City of Bozeman animal control regulations.
- h. Kennels, and Dog Runs. Kennels, dog runs, and other outdoor dog enclosures must be located in an inconspicuous area of a Lot and out of the direct view of neighbors and the primary road and are limited to the rear yard. All kennels, dog runs, and outdoor dog enclosures must be approved in writing by the SDC for size, materials, construction, and location. Chain link material is prohibited and size shall not exceed 100 sq. ft.
- i. Parking, Recreational Vehicles and Equipment.
 - i) Commercial vehicles. No commercial vehicles with a load capacity of greater than one (1) ton or construction vehicles, including but not limited to back hoes, front loaders, dump trucks etc., shall be stored or parked on any Lot or in any common area except for and during construction on that same Lot. This restriction will not, however, be deemed to prohibit commercial and construction vehicles, in the ordinary course of business, from making deliveries or otherwise providing services to any portion of the property.
 - ii) Campers, RVs, boats, snow mobile or similar recreational vehicles ("recreational vehicles") shall be stored in an enclosed garage or off-site. For the purpose of loading, unloading, washing, and other temporary use, recreational vehicles will be allowed to remain exposed and openly visible on a Lot for short periods of time, not to exceed three (3) consecutive days and no more than nine (9) total days in one month. In no case are recreational vehicles allowed to be stored exposed and openly visible for any long-term period on a Lot.

- iii) Inoperable vehicles. No inoperable or unlicensed motor vehicles shall be stored or parked on any Lot or any common area at any time. Scrap or junk vehicles, or any parts thereof, will not be placed or stored on said property or on any Lot.
 - iv) Owners will be allowed to park no more than two (2) automobiles in their driveway or parking space, as long as the automobiles are licensed and operable.
 - v) No snowmobile, motorcycle, all-terrain vehicle or similar recreational vehicle shall be operated on any Lot for recreational purposes within the Subdivision.
- j. Landscaping and Lawn Maintenance. Commencing with the transfer of any land in the Subdivision from Declarant, the Owner(s) shall cause all the land to be maintained in a neat appearance at all times. Grass shall be cut not less than every two (2) weeks during the growing season (May 1 - November 1) and trees, bushes and hedges shall be trimmed at such intervals as are necessary to maintain the attractiveness of Subdivision. All landscaping and boulevards shall be maintained, watered, trimmed, mowed, controlled for weeds and replaced as necessary so as not to detract from the general appearance of the Subdivision and neighboring Lots. Boulevards, rights-of-way and ditches located on Lots are to be mowed and maintained by the Lot Owners and by the Association in common areas. Boulevards, rights-of-way, and ditches may not be blocked or filled. Should the Owner be a part-time resident, maintenance contracts shall be entered into to accomplish the same. If grounds are not being maintained, the Owner will be notified to remedy the situation. If non-maintenance continues after such notice, arrangements for maintenance will be made and the Owner will be assessed, nonpayment of which may result in a lien on the property.
- k. Sidewalk Maintenance and Snow Removal. Every Lot Owner shall be responsible for maintenance of the sidewalk located on, adjacent to and between the Owner's Lot and the nearest right-of-way. Maintenance shall include, but not be limited to snow and ice removal as required by City of Bozeman and within 24 hours of snowfall.
- l. Noxious Weed Control. Lot Owners shall control noxious weeds on their Lot, whether improved or unimproved, as set forth Montana Noxious Weed Control Act (7-22-2101 through 7-22-2153 MCA) and the rules and regulations of the Gallatin County Weed Control District; provided, however, that the Owner shall not use spray or killing materials in such a way as to be harmful to humans or animals or to the other Owners' vegetation. The Gallatin County Weed Board should be consulted before applying such chemicals. Contact a local nursery for the most effective pesticides that least impact animals and desirable species of

insects. In the event an Owner does not control noxious weeds, the Association, after ten days written notice to an Owner to control the same, may cause the noxious weeds to be controlled, and may assess the Lot Owner for the costs thereof.

- m. Garbage, trash, refuse and other waste. All rubbish, trash, garbage, junk, nonworking or out-of-use vehicles, equipment, parts, metals, lumber, debris, or other waste ("waste") shall be regularly removed from the Lot, and shall not be allowed to accumulate thereon. All garbage shall be stored in animal-proof garbage containers, trash receptacles, or the like, including recycling containers and/or bins, or otherwise made unavailable to animals and stored in the garage or other enclosures, or such a place as not to be visible from main roadways, common areas, or neighboring Lots, except on trash collection day receptacles may be placed near the roadway. Receptacles must be removed from site within 24 hours of trash collection. All equipment, wood piles, compost piles or storage piles shall be screened or concealed from view of other dwellings and common areas. All garbage and trash requirements of the City of Bozeman shall be observed.
- n. Temporary Structures. No temporary structures or tents shall be used as a residence or outbuilding on any lot.
- o. Signs and Billboards. No signs, billboards, posters, placards, notices, or advertising displays or devices of any kind or character will be displayed on any Lot or common area except as provided herein. The following signs must be in accordance with the UDC and approved in writing by the SDC, and any necessary permits must be obtained:
 - i) Contractor-Builder-Developer. Construction signs shall be allowed on Lots only during the construction period. Construction signs shall be no larger than four (4') square feet in size and be of a color that is harmonious with the structure being built and the surrounding area. The sign must be removed immediately upon issuance of a certificate of occupancy or no longer than one year, whichever occurs first.
 - ii) Temporary. Temporary signs, limited to, real estate and political campaign signs are allowed but must not exceed eighteen inches by 24 inches (18 x 24). No real estate directional signs are allowed on corner Lots or road intersections. All temporary signs must be removed within 10 days after the sale of the property and immediately after the end of the election and/or vote.
- p. Address Numbers. Each Owner is required to install address numbers on the

exterior of their home in a manner and style determined by the SDC, when the personal residence is constructed.

- q. Satellite Dishes and Antennas. Only smaller dishes of the latest technology (not exceeding two (2') feet in diameter) are allowed. All satellite dishes must be inconspicuously located on the side or rear of the home and shall not be placed on front street facing elevation.
- r. Recreational Play Equipment. All recreational and play equipment, including, but not limited to, swing sets, play houses, tee-pee's, trampolines, sports nets, etc. shall be limited to rear yard.
- s. Decorations. All holiday and seasonal decorations, including but not limited to lights, decorations, and ornaments on structures, lawns, trees, or windows shall not installed or lighted more than 30 days prior to the designated calendar date for the applicable holiday or season and must be taken down and removed within 30 days after the designated calendar date for the applicable holiday or season.
- t. Wildlife. No feeding or interaction with any wildlife is permitted, with the exception that bird feeders are allowed.
- u. Clothes Lines. Clothes Lines and the like may not be constructed or installed on any Lot.
- v. Fires/Fireworks. No open burning of any kind is allowed. No fireworks of any kind may be brought into, discharged or used in the Subdivision.
- w. Firearms. No Firearms are permitted to be discharged within the Subdivision.
- x. Hunting. No hunting, shooting or harassing of any birds, animals or any wildlife will be permitted. Skunks, gophers and rodents may be trapped; however poison may not be used.
- y. City or County Violation. Any violation of City of Bozeman or Gallatin County ordinances or other regulations shall be a violation of these covenants and can be enforced by the Association.

SECTION 4. Each Owner grants to Declarant and reserves to Declarant, a lien upon the Lot of the Owner to secure the faithful performance by the Owner of the requirements and restrictions contained in this Declaration, and any amendments thereto.

- a. If any Owner shall fail to comply with Article III Section 2 or any other

requirement for building location, setback, design, landscaping or construction within ten (10) days after Declarant shall have deposited in the United States postal system a notice to the Owner of the failure to comply, Declarant shall have the right to cause the necessary work to be done and to have a lien upon the land of the noncomplying Owner for the reasonable cost of such work plus an additional amount equal to ten percent (10%) of the cost of such work.

- b. If within thirty (30) days the noncomplying Owner does not pay to Declarant the sum secured by the lien, then Declarant may foreclose the lien in compliance with the mortgage foreclosure laws of the state of Montana for the aggregate of (i) the reasonable cost of such work (ii) interest as allowed by law, and (iii) all cost incurred by Declarant in foreclosing the lien, including a reasonable attorney's fees and court costs. Declarant is in no way precluded from seeking any remedy available to Declarant pursuant to the laws of Montana, including but not limited to immediate, temporary and permanent injunctive relief.

ARTICLE IV DESIGN REVIEW PROCESS

SECTION 1. Submission of Plans before Construction. No residence or dwelling, fence, wall, garage, outbuilding, or other structure, or sign shall be made, erected, altered or permitted to remain upon a Lot until written plans and specifications showing the design, nature, kind, color, dimensions, shape, elevations, material, use and location of the same shall have been submitted and approved, in writing, by a majority of the SDC, and applicable City of Bozeman or County permit(s) granted.

SECTION 2. General Review Requirements.

- a. Submit two (2) copies of the required documents for each design review to:

Attn: Subdivision Design Committee (SDC)
2264 Jackrabbit Lane, Unit B
Bozeman, MT 59718

The design review cycle begins on Monday of each week. Submittals must be received by noon on Friday of the previous week. All documents must be dated and labeled with "Subdivision Design Committee" and specific project title and address.

- b. Upon SDC review, the Owner will be notified within twenty (20) business days after the start of the review cycle date that the design has been approved, approved with stipulations or disapproved. Submittals deemed incomplete will be returned.

If the SDC does not contact the Owner within twenty (20) business days regarding an incomplete submittal, or complete its review in that time period, the SDC may request an extension in writing, approval of which shall not be unreasonably withheld.

- c. If the SDC approves an Owner's plans, the SDC will place a stamp upon the plans. An Owner shall not apply for the building permit or other approval from the City of Bozeman or County until that Owner's plans have been approved by SDC in writing.

- d. Request for withdrawal of an application may be made without prejudice, provided the request for withdrawal is made in writing to the SDC. If an application has been denied, or the approval is subject to conditions that the Owner feels are unacceptable, the Owner may request a hearing before the SDC to justify his/her/its position. The SDC will consider the argument and facts presented by the Owner and notify the Owner of its final decision within ten (10) days of the hearing.

SECTION 3. One Year to be Completed. Any Structure to be erected in accordance with an approval so given must be erected and completed within one (1) year from the date of approval. If any Structure is commenced and is not completed in accordance with the plans and specifications within one (1) year, the Directors of the Association, at their option, may take such action as may be necessary, in their judgment, to improve the appearance so as to make the property harmonious with other properties and to comply with these Covenants, including completion of the exterior or the combination thereof, or removing the uncompleted Structure or similar operations. The amount of any expenditure made in so doing shall be an obligation of the Owner. A lien on the property may be recorded and shall be enforceable by an action at law. In lieu thereof, the Association may take such action as is available by law, including an injunction, or for damages. If construction of a Structure is not commenced within one (1) year after approval shall be deemed denied and a new approval must be obtained prior to the commencement of construction.

SECTION 4. Criteria, Liability and Variances.

- a. Criteria. In passing upon all such plans and specifications, the SDC shall take into consideration the suitability of the proposed building or other Structure and the materials of which it is to be built to the Lot upon which it is to be erected, its harmony with the surroundings, and other Lots, and the effect of the building on other Structures, as planned, as viewed from adjacent or neighboring Lots. The SDC shall use reasonable judgment in determine whether a Structure meets this criteria in passing upon all such plans and specifications, but shall not be liable to any person for its actions in connection with submitted plans and specifications.

- b. Liability. Neither the Association, the Declarant, the Board of Directors, the SDC nor the individual members thereof, may be held liable to any person for any damages for any action taken pursuant to these Covenants, including but not limited to, damages which may result from correction, amendment, changes or rejection of plans and specifications, the issuance of approvals, denials, conditional approvals, variances, or any delays associated with such action.

- c. Variances. Further, the SDC may, upon application, grant a variance from the Architectural Regulations, provided that the spirit of these Covenants is complied with, and provided that Notice of the nature of the variance is mailed (certified) to adjacent Lot Owners within a one hundred foot (100') radius of the subject property, at least seven (7) days before the variance is approved in order to give the other Owners a chance to comment and provide input to the SDC. All comment shall be in writing. All variance requests pertaining to the SDC approvals must be made in writing to the SDC. Any variance granted shall be considered unique and based on the particular facts and circumstances associated with the particular Lot and will not set precedent for future variance applications and decisions. The SDC, in reviewing and considering an application for a variance, shall consider the nature of the hardship claimed, the impact on the adjacent Owners, the impact on Subdivision and any proposed mitigations for the impacts. The Committee shall have the duty and power to make the final decision on the granting of the variance, without any liability being incurred or damages being assessed due to any decision of the Committee.
The Subdivision Design Committee (SDC) may allow reasonable variances as provided herein in order to:
 - i) Overcome practical difficulties and prevent unnecessary hardships in the application of the covenants;
 - ii) Enhance views;
 - iii) Utilize a lot to better advantage;
 - iv) Prevent the removal of trees; or,
 - v) Enhance the placement of improvements on the property.

Variances shall only be granted in conformity with the intent and purpose of this Declaration, and when such variance will not be materially detrimental or injurious to other Lot, common areas, or improvements in the Subdivision. With respect to movement of building envelopes, approval shall be required from both the SDC and contiguous lot Owners. Notwithstanding the foregoing provision, no variance shall be allowed which has the effect of creating additional lots.

Neither granting of a variance nor failure to enforce any violation of the conditions and restrictions herein, shall be deemed a waiver of any of the

conditions and restrictions in any other instance.

SECTION 5. Review Procedure.

STEP 1. CONSTRUCTION DESIGN REVIEW.

The construction design review verifies the following: (1) that the construction documents are in compliance with this Declaration and the SDC approval, applicable; and (2) that SDC recommendations, stipulations, or conditions, if any, have been incorporated into the construction documents. The Owner, Architect or builder must obtain all necessary and appropriate permits and comply with any and all local, state, and federal regulations.

Applicants must submit the Construction Design Review Application (Form B) and the following:

- a. *Site Plan (1/8" = 1'-0" scale or larger) showing:*
 - i. North arrow.
 - ii. Property lines and setbacks with dimensions.
 - iii. Building footprints with entry area delineated and overhangs shown as dashed lines.
 - iv. Garden walls/fence lines: location, height and materials.
 - v. Water electric and sewer service.
 - vi. Location of adjacent streets/alleys.
 - vii. Site contours beginning at the curb.
 - viii. Location, dimensions and materials for walks and drives.
 - ix. Exterior light locations, type and bulb size.
 - x. Location of external equipment (electric meter, location of waste bins, etc.)
- b. *Floor Plans (1/4" = 1'-0" scale or larger) showing:*
 - i. Foundation plan dimensioned.
 - ii. Room use labeled.
 - iii. Wall, window and door openings dimensioned.
 - iv. All overhangs of floors and roofs as dashed lines.
 - v. Overall exterior dimensions.
 - vi. Gross square footage, excluding garage.
- c. *Roof Plan (1/8" = 1'-0") showing:*

- i. Overhangs.
 - ii. Slope directions.
 - iii. Penetrations.
- d. *Elevations (1/4" = 1'-0" scale or larger) showing:*
 - i. All elevations (colors rendered of fronting street elevation).
 - ii. Roof penetrations located.
- e. *Landscape Plan (1/8" - 1'-0" or larger) showing:*

A landscape plan including plant listing, planting and mature sizes and their respective locations.

STEP 2. CONSTRUCTION COMMENCEMENT

Construction may not commence without the approval of the City of Bozeman Building Division, and until all necessary approvals and permits are obtained and fees collected. A copy of Construction Design Review Application (Form B) bearing the SDC approval letter must accompany City of Bozeman building permit applications.

The SDC reserves the right to inspect in the field for compliance during any stage of construction. The SDC, through the Association is empowered to enforce the requirements of this Declaration, and conditions related to approval thereunder, by any action, in law or equity, to ensure compliance.

STEP 3. MINOR CHANGES

It is anticipated that Owners may wish to make improvements or modifications to their buildings or property during initial construction or at a future date. A change may be executed upon receipt of Application for Change(s) (Form C) bearing the SDC stamp of approval. The SDC may determine an improvement or modification is not minor and require and entirely new submittal.

ARTICLE V SUBDIVISION DESIGN COMMITTEE

SECTION 1. Function of the Subdivision Design Committee (SDC). To encourage the architectural harmony of SDC, the developer and all Owners are bound by the requirements of this Declaration. To that end, no Structure shall be erected or altered until City of Bozeman, SDC and any other required approvals have been obtained.

SECTION 2. Scope of Responsibilities. The SDC has the right to exercise control over all construction in the Subdivision. It will also review all Owner's exterior alterations and modifications to existing Structures (including but not limited to additions, renovations, and landscaping).

SECTION 3. Enforcing Powers. Should a violation occur, the SDC has the right to issue a stop work order, and require the Owner to remove, and/or alter any improvements in a manner that complies with the requirements of these covenants and any SDC approvals. Approval by the SDC does not relieve an owner of his/her obligation to obtain any government approvals.

SECTION 4. Committee Members. The SDC shall consist of three (3) individuals appointed initially by the Declarant. At such time as eighty percent (80%) of the Lots are held in individual ownership other than that of the Declarant, the SDC will consist of three (3) individuals appointed by the Board of Directors, of which one shall be an Architect licensed in the State of Montana, and two members of the Association.

SECTION 5. Limitation of Responsibilities. The primary goal of the SDC is to review the submitted applications, plans, specifications, materials, and samples in order to determine if the proposed Structure conforms to the Subdivision Covenants. The SDC does not assume responsibility for the following:

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

ARTICLE VI COMMON AREAS/OPEN SPACE

SECTION 1. The Association shall be responsible for the operation and maintenance of all common areas and open space within the subdivision. Common areas include roadway easements, trails, ponds, storm water runoff facilities, entryway landscaping, wells and structural or other appurtenances and agricultural lands.

- a. No Property Owner shall have the right to occupy or possess any of the roadway easements by reason of owning a Lot in Westbrook Subdivision.
- b. Weeds shall be controlled within the common areas by the Association as set forth and specified under the Montana Noxious Weed Control Act (7-22-2101 through

7-22-2153 MCA) and the rules and regulations of the Gallatin County Weed Control District.

- c. The common area is subject to any and all of the following exceptions, obligations, encumbrances and easements:
 - i) Such easements and rights-of-way on, over or under all or any part thereof as may be reserved to Declarant or granted to any Owner or participating facility for the use thereof in accordance with the provisions this Declaration;
 - ii) Easements and rights-of-way on, or under all or any part thereof as are hereby reserved to Declarant or which may be granted by Declarant to or for the benefit of the United States of America, the State of Montana, the County of Gallatin, or the City of Bozeman, any other political subdivision or public organization, or any utility corporation, any participating facility, any project, or any lot, for the purpose of constructing, erecting, operating and maintaining utilities thereon, therein and thereunder, at that time or at any time in the future;
 - (a) Roads, streets, pedestrian walks, trails, and park and open space areas,
 - (b) Public and private sewers, storm water drains, land drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes and any and all equipment in connection therewith.
 - iii) The obligations imposed, directly or indirectly by virtue of any statute, law, ordinance, resolution or regulation of the United States of America, the State of Montana or any other political subdivision or public organization having jurisdiction over such property, or by virtue of any organization or body politic created pursuant to any such statute, law, ordinance or regulation.
 - iv) Easements depicted on the final plat of the Subdivision.
- d. If at any time, or from time to time, all or any portion of Common Area, or any interest therein, be taken for any public or quasi-public use, under any statute, by right of eminent domain or by private purchase in lieu of eminent domain, the entire award in condemnation shall be paid to the Association and deposited into either the operating fund or the development fund as the Association may, in its sole discretion, determine. No Owner shall be entitled to participate as a party, or otherwise, in any proceeding relating to such condemnation, such right or participation being herein reserved exclusively to the Association which shall, in its name alone, represent the interests of all Owners; provided, however, that the

portion of any award relating to improvements which constitute a private recreation facility shall be divided equally among the Owners who, at the time of such taking, are permitted users of such facility.

- e. No motorcycles, ATV's, snowmobiles or similar means of transportation shall be operated in the parkland, open space or trails for recreational purposes. Such motorized vehicles and equipment are allowed in the parkland, open space and trails exclusively for snow removal and landscape maintenance.
- f. No Owner, guest or invitee may use or occupy the park lands, open space, trails, boulevards, roads, parking areas, or any Lot in such a manner as to disturb or interfere with the peaceful use, occupancy or enjoyment of any other Owner, guest or invitee.

ARTICLE VII WESTBROOK HOMEOWNERS' ASSOCIATION

SECTION 1. Membership and voting rights. Membership shall be as provided for in the Bylaws. Each Lot Owner shall have one vote per Lot, and in the event of ownership by more than one person or entity, the Owners shall designate one person to be the agent for receiving notices hereunder, and for the purpose of voting. Each Lot Owner shall be responsible for advising the Association in writing of their current address and the person designated to vote. The Association shall be deemed to have complied with notice requirements and these Covenants by mailing notice to the address of the designated Lot Owner which is on file in writing with the Association.

SECTION 2. Maintenance and Assessments

- a. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot by acceptance of a deed consents to the creation of a lien against the Owner's real property to the extent of non-payment of any annual operating or special assessment levied by the Association, therefore, whether or not it shall be so expressed in such deed, is deemed to have consented to be subject to these Covenants and agrees to pay to the Association:
 - i) Annual operating assessments; and
 - ii) Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

The annual operating and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land, shall be the personal obligation of the entity or person who was the Owner of such property at the time when the assessment is made, and shall be a continuing lien upon the property against which each such assessment is made.

- b. Purpose of Assessments. The annual operating assessments levied by the Association shall be used to provide for the improvement, repair, and maintenance of the main subdivision road(s), and common areas including roadway easements, trails, fire ponds, entryway landscaping, wells and structural or other appurtenances and agricultural lands, trail system, and open space; for maintaining any fenced, landscaped or pond areas for which the Association is responsible; for maintenance of any common Structures, for noxious weed management of common areas; for the establishment and maintenance of a reserve fund, for the maintenance of mailboxes, community signs, community trees, landscaping, snow removal, Association management, Association insurance; and for promoting generally the enjoyment, standard of living and property values of the Members of the Association and for any other legitimate purposes, expressed or implied, in this Declaration or the Association Bylaws.
- c. Amount of Assessment:
- i) Each dwelling unit on multi-family Lots or Lot will be assessed an equal proportionate share.
 - ii) Assessments to Owners will commence immediately after the transfer of title from the Declarant to the Owner.
 - iii) The Board shall have the right to determine and refine the specifics and timing of assessments within the parameters of the preceding statements.
 - iv.) No assessments will be levied against Lots owned by the Declarant.
- d. Amount and Approval of Annual Operating and Special Assessments. The maximum annual operating assessment per Lot which may be made by the Association in every calendar year shall not substantially exceed the projected and budgeted actual and reasonable costs to be incurred by the Association during the coming year in carrying out the purposes herein set forth, and may include a reasonable reserve for contingencies.
- i) *Annual Operating Assessments.* The amount of the annual operating assessments shall be fixed by the Board of Directors of the Association in the following manner: At each annual meeting of the Members of the Association, the Directors shall present a proposed budget of the estimated expenses of the Association for the coming year to the members for review, discussion, amendment, comment and approval, which approval shall not unreasonably be withheld. Such proposed budget shall be as determined in conformity with standard accounting practices. The Members shall approve or amend the proposed budget by a majority vote of the members present or voting by proxy. After the annual meeting of the Members, at the annual Board of Directors meeting the Board of Directors shall set the amount of the

assessments, and the date(s) due for the coming year to in an amount to cover the budget approved, together with such amounts as may, in their reasonable judgment, be necessary to cover any past deficits, in the manner herein set forth.

- ii) *Special Assessments.* The amount of any special assessment for capital improvements, or as otherwise approved shall be fixed by the Board of Directors of the Association, in addition to any annual operating assessment in the following manner: The Board of Directors may levy, in any assessment year, one or more special assessments for the purpose of reserving or paying for, in whole or part, the cost of any construction, reconstruction, maintenance repair or replacement of a capital improvement of the Association, and for such purposes benefitting the Association and its interest, provided that such special assessment has the assent of a majority vote of the members present or voting by proxy at the annual meeting or any such special meeting called for such purpose.

The Board of Directors shall fix the amount of the annual assessments at least thirty (30) days in advance of the due date of each annual assessments and at least ninety (90) days in advance of a special assessment.

- e. Uniform Rate of Assessment. Both annual operating and special assessments shall be fixed by the Board of Directors at a uniform rate for each dwelling unit in the case of a multi-family lot or Lot.
- f. Effect of Nonpayment of Assessments; remedies of the Association. Any assessment not paid within thirty (30) days of the due date shall bear a late fee of \$25.00 plus interest at the highest rate allowable by law, or other late fee and interest rate as may be determined by the Board of Directors. The assessment will bear interest from the due date. The Association may file a Lien with the Clerk and Recorder of Gallatin County at any time after such assessment or assessments become delinquent and said Lien will constitute public notice that said lot is encumbered with such Lien. Such Lien may be foreclosed upon in like manner as a mortgage or other lien upon real property, and may include additional costs of expenses, interest, late charges, and attorney's fees. Such Lien shall continue until fully paid or otherwise satisfied. At such time as the delinquency is corrected, the Association will file a subsequent notice to release the Lien.

The obligation of the Owner to pay any assessment or interest will not be affected by any conveyance or transfer of title to said lot. The Association may use a collection company to collect the assessment, may bring an action at law against the Owner obligated to pay the same, and/or foreclose the lien against the property. If a Lot is sold, said obligation will be paid from seller's proceeds at the time of sale.

SECTION 3. Board of Directors

- a. The Board of Directors of the Association shall consist of at least three (3) but not more than five (5), Lot Owners who shall be elected at the annual meeting by a simple majority of the Members of the Association.
- b. Until eighty percent 80% of the Lots in Westbrook Subdivision, as described on Exhibit A have been sold, the Declarant shall have the right to appoint the Board of Directors, who shall not be required to be Lot Owners or Members of the Association.
- c. The Bylaws of the Association shall set forth and determine the selection, term and duties of the Board of Directors and officers.
- d. All Director meetings shall require the presence of Directors entitled to cast a minimum of 55% of all votes of the Directors, either in person or by remote access agreed upon in advance by all directors. The presence of Directors entitled to cast a 55% of all votes of the Directors shall constitute a quorum. The Directors shall act by majority vote.
- e. The annual meeting of the Board of Directors shall be held immediately after the annual meeting of the members. At the annual Board of Directors meeting, the Directors shall elect a President, Vice-President and Secretary-Treasurer for the Association from among the Directors.

SECTION 4. Duties and Powers of the Association

- a. 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 Westbrook Subdivision, including easements, parklands, boundary fences, drainage easements, open space, and trails; to enforce, by any proceeding at law and/or in equity, all restrictions, conditions, covenants, reservations, easements, liens, charges, or other obligations or terms now or hereafter imposed by the provisions of this Declaration, the Articles of Incorporation and Bylaws; 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 Subdivision, including the formation of special improvement districts, either public or private, for such improvements as the Association shall approve.
- b. The Bylaws of the Association shall set forth and determine the annual meeting date. Any special meetings may be called by the President, or in the absence of the President, by the Vice-President. In addition, special meetings of the members for any purpose or purposes, unless otherwise prescribed by statute, may be called by the President, the Board of Directors, or not less than fifty-five percent (55%) of all the

members entitled to vote at the meeting. 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 at the office of the Clerk and Recorder, Gallatin County, Montana, or at such address as shall be designated, in writing, by any Owner and last on file with the Association. The presence of members, in person or by written proxy, representing fifty-five percent (55%) of the total votes of the membership shall constitute a quorum.

- c. The Association shall have the rights, obligations and duties, subject to these Covenants, to do and perform each and every one of the following for the benefit of the Owners and for the maintenance and improvement of Subdivision:
 - i. The Association shall accept title to all Parkland Systems.
 - ii. The Association shall maintain or provide for the maintenance the Parkland System, as defined herein, and improvements located on or in the Parkland System. All maintenance and/or improvement of or to the Parkland System shall be consistent with and in conformance with the approved Westbrook Park Plan, which outlines the installation of landscaping improvements, trail/bike path improvements and maintenance and upkeep of the parklands, open space and trails approved by the City of Bozeman in conjunction with the Subdivision. All private common open space areas identified on the final plat of the Subdivision are included in the Parkland System. These lands are available for the enjoyment and use of the residents, guests, and the public visiting the Subdivision.
 - iii. The Association shall have routinely inspected and maintained the Storm Drainage System within the Subdivision, which maintenance shall include the following:
 - 1. Detention/Retention ponds shall be kept free of trash, and the berms/slopes shall be mowed or otherwise maintained to provide for a pleasant appearance;
 - 2. A cleanout stake (2"x 4" treated wood) shall be installed and maintained near the center of the pond. The cleanout elevation shall be clearly marked on the stake;
 - 3. Sediment shall be removed and the pond restored to its original dimensions when the sediment reaches the elevation marked on the cleanout stake;

4. Inspection of detention/retention ponds monthly from May to October to insure that the original design capacity is maintained, and record keeping of such pond inspections in a separate log book, indicating the bottom elevation and condition of the ponds, and any maintenance conducted; and
 5. Maintenance of the ponds shall be the responsibility of the Declarant until the Declarant forms the Owners' Association for the Subdivision.
- iv. The Association shall pay all real property taxes and assessments levied upon any portion of the Parkland Systems.
 - v. The Association may contract for and pay for, employ, or otherwise provide for operation and maintenance of the park areas.
 - vi. The Association must obtain and maintain in force a general liability insurance policy, and such other policies as the Board of Directors may deem appropriate.
 - vii. The Association shall have all powers set forth in this Declaration and the Bylaws, including, without limitation, the power to levy assessments, to make contracts and to acquire and dispose of property, and shall take such action, whether or not expressly authorized by this Declaration or the Bylaws as may reasonably be necessary to enforce the limitations, covenants, conditions and restrictions of this Declaration, the Bylaws, and any other rules and regulations hereafter adopted by the Association.
 - viii. During reasonable hours, and with reasonable notice, the Declarant, Association, or their agents, shall have the power and authority, without liability to any Owner for trespass, or other wrongful act, to enter upon any Lot to inspect any Lot and the Structures and improvements thereon, for the purpose of determining whether the provisions of this Declaration have been or are being complied with, maintaining and repairing any Lot, if for any reason the Owner fails to maintain and repair the Lot as required by this Declaration, or for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon such Lot in violation of these Covenants. The Association shall have the power and authority from time to time in its' own name, on its' own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of these Covenants, or to enforce by mandatory injunction or otherwise all of the provisions of these Covenants.
 - ix. In fulfilling any of its duties under these Covenants, including its duties for the maintenance, repair, operation or administration of the Parkland System, or in

exercising any of its rights to construction improvements of other work upon the Parkland System, the Association shall have the power and authority to contract and pay for, or otherwise provide for, construction, maintenance and repair of all improvements upon the Parkland System on such terms and conditions as the Association, shall deem appropriate and to pay and discharge all liens arising out of any work.

- x. To contract and pay for, or otherwise provide for, such utility services including, but without limitation, water sewer, trash, electrical, telephone and gas services as may from time to time be required.
- xi. To contract and pay for, or otherwise provide for the services of Architects, engineers, attorney and certified public accountants or such other professional or nonprofessional services as the Board may deem necessary.
- xii. To contract and pay for, or otherwise provide for, fire, police and such other protection services as the Board deems necessary, and to pay and discharge any and all liens placed upon any Parkland System on account of any work done or performed by the Association in the fulfillment of any of its obligations and duties of maintenance, repair, operation or administration.
- xiii. The Board shall be required to grant and convey to any third parties easements or rights-of way in, on over or under any Parkland System without payment to the Association when requested by Declarant. The Board shall also have the power and authority to grant and convey to any third parties, on such terms as the Board may approve, parcels or strips of land from any Parkland System. The Board may not grant or convey land from the Parkland System which would jeopardize the land required by the subdivision, planned unit development or zoning approvals for the land described in Exhibit A.
- xiv. The Board may from time to time employ the services of a manager to manage the affairs for the Association. The Board may delegate to the manager any of its powers under the Subdivision restrictions, provided, however, the Board cannot delegate to such manager the power to execute any contract binding on the Association for a sum in excess of \$1,000.00 except that the manager is able to renew an existing insurance policy and renew contracts in excess of \$1,000 for existing seasonal contracts for snow removal, lawn care, weed and pest control; nor for the performance of any work or services, which work or services are not to be completed within sixty (60) days; nor the power to sell, convey, mortgage or encumber any property of the Association.
- xv. No single expenditure or debt in excess of \$2,500.00, other than for the payment of property taxes and insurance procured by the Association, may be made or incurred

by the Association or Manager unless the same has been presented to the Owners during the budgetary process.

- xvi. The Board shall have the right to pay, compromise, or contest any or all taxes and assessments levied against all or any part of the Parkland System, or upon any personal property belonging to the Association.
- xvii. The Association may adopt Bylaws for the governance of the Association.
- xviii. The Board from time to time and subject to the provisions of Subdivision may adopt, amend and repeal rules and regulations to be known as Subdivision Rules.

No member of the Board shall be personally liable to any Owner, guest, leases or to any other persons, including the Declarant, for any error or omission of the Association, its representatives and employees, Committee or the manager, provided, however, that such member according to the actual knowledge possessed by him, acted in good faith.

ARTICLE VIII DURATION, AMENDMENT AND ENFORCEMENT

SECTION 1. Duration. The provisions of these Covenants shall be continuous and binding for a term of twenty-five (25) years from the date hereof, after which it shall be automatically extended for successive periods of ten (10) years.

SECTION 2. Amendment. For an initial term of fifteen (15) years from the date of these Covenants, or until 80% of the Lots in the Subdivision have been sold, these Covenants may be modified, altered or amended only with the Declarant's written approval. After the initial fifteen (15) year period, or after 80% of the Lots in the Subdivision have been sold, whichever occurs first, the provisions of these Covenants may be changed or amended, in whole or in part, or additional Covenants added, upon approval of two-thirds (2/3) of the votes of the Homeowners' Association, at a meeting duly noticed and called for that purpose.

The dedications or easements for roads, utilities, parks, trails, and common areas shall not be changed without the unanimous consent of all of all the Owners affected by the change. Any covenant required as a condition of the subdivision approval shall not be altered or amended without the agreement of the governing body.

Any such amendment of this Declaration, or any term, covenant, condition, or restriction shall be effective upon the filing and recording of such an instrument in the office of the Gallatin County Clerk and Recorder. The President or Vice-President shall execute and record the amendment, modification, termination, or extension, with the Clerk and Recorder of Gallatin County, Montana. Any change in these Covenants shall not affect existing Structures and uses of the

Lots.

SECTION 3. Enforcement. The Association, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration.

ARTICLE IX MISCELLANEOUS

SECTION 1. Attorney's Fees. Should any lawsuit or other legal proceeding be instituted by the Association against an Owner alleged to have violated one or more of the provisions of these Covenants the prevailing party shall be entitled to recover the costs of such proceeding, including reasonable attorney's fees associated with the action, as may be ordered by the court.

SECTION 2. Severability. Invalidation of any one of terms, covenants, conditions, or restrictions, or part thereof, by judgment or by Court order shall in no way affect any of the other Covenants or provisions, all of which shall remain in full force and effect.

SECTION 3. Violation Constitutes Nuisance. Every act or omission, whereby any restriction, condition or covenant in this Declaration set forth, if violated in whole or in part, is declared to be and shall constitute a nuisance and may be abated by Declarant or his successors in interest and such remedies shall be deemed cumulative and not exclusive.

SECTION 4. No Waiver. The failure of the Declarant, Association, or Board, or agents thereof to insist, in one or more instances, upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration, or to exercise any right or option herein contained, including enforcement of any of the terms, covenants, conditions, or restrictions, and to collect damages for any subsequent breach of Covenants, or to serve any notice or to institute any action, shall not be construed as a waiver or relinquishment for the future of such term, covenant, condition or restriction, or enforcement thereof; but such term, covenant, condition or restriction shall remain in full force and effect. Neither Declarant, the Association, nor the Board, nor their successors and assigns shall be liable to any Owner or occupant by reason of any mistake in judgment, negligence, nonfeasance, action or inaction, or for the enforcement or failure to enforce any provision of this Declaration. The receipt and acceptance by the Declarant, Association, Board or their agent of the payment of any assessment from an Owner, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver of any provision hereof shall be deemed to have been made unless expressed in writing and duly signed by or on behalf of the Declarant, Association, Board or agent thereof.

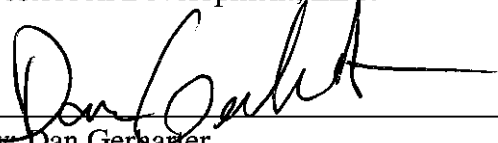
SECTION 5. Transfer. Any and all of the rights and powers vested in Declarant pursuant to the this Declaration may be delegated, transferred, assigned, conveyed or released by Declarant to the Association, and the Association shall accept the same, effective upon the recording by the

Declarants of a notice of such delegation, transfer, assignment, conveyance or release.

SECTION 6. Binding Effect. This Declaration shall attach to and run with the Property for all purposes and shall be binding upon, and inure to the benefit of the Westbrook Subdivision, the Declarant, the Association, and all Owners, Tenants, and other parties having, acquiring or otherwise at any time possessing any right, title, interest in or to the Property, or any part thereof, their respective heirs, personal representatives, successors, and assigns.

IN WITNESS WHEREOF, Declarant has hereunto set its hand as of this 7 day of November

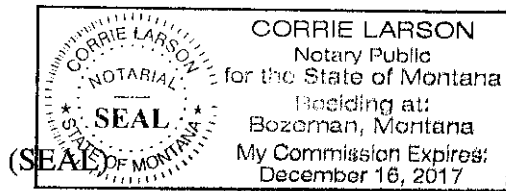
Westbrook Development, LLC.



By: Dan Gerharter
Member

STATE OF MONTANA)
 :SS.
County of Gallatin)

On this 13 day of November 2016^{PG}, before me, the undersigned, a Notary Public of the State of Montana, personally appeared Dan Gerharter, known to me to be a Member of Westbrook Development, LLC., the entity that executed the within instrument and acknowledged to me it executed the same.

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




NOTARY PUBLIC for the State of Montana
Printed Name: _____
Residing at: _____
My Commission expires: _____

FORM A
CONSTRUCTION DESIGN REVIEW APPLICATION

LOT NUMBER: _____

OWNER: _____

Address: _____

Telephone: _____ FAX: _____

BUILDER: _____

Firm: _____

Address: _____

Telephone: _____ FAX: _____

ARCHITECT/DESIGNER: _____

Firm: _____

Address: _____

Telephone: _____ FAX: _____

LANDSCAPE ARCHITECT: _____

Firm: _____

Address: _____

Telephone: _____ FAX: _____

Drawings submitted (please check):

___ Site Plan

___ Floor Plans

___ Roof Plan

___ Elevations

___ Landscape Concept Plan

Submitted by: _____ Date: _____

Signature: _____

FORM B
APPLICATION FOR CHANGE(S)

LOT NUMBER: _____

OWNER: _____

Address: _____

Telephone: _____ FAX: _____

BUILDER: _____

Firm: _____

Address: _____

Telephone: _____ FAX: _____

ARCHITECT/DESIGNER: _____

Firm: _____

Address: _____

Telephone: _____ FAX: _____

Change Description: (attach sketch of proposed change)

Reason for Change:

Submitted by: _____ Date: _____

Signature: _____

EXHIBIT A

Lots 1-12 in Block 1, Lots 1-10 in Block 2 and Restricted Development Lot R1,
Westbrook Subdivision, Bozeman, Gallatin County, Montana [Plat J-574].