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**SECOND AMENDED AND RESTATED
DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS
AND RESERVATION OF EASEMENTS
FOR BLACK BULL SUBDIVISION**

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**SECOND AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS, AND
RESTRICTIONS AND RESERVATION OF EASEMENTS
FOR BLACK BULL SUBDIVISION**

This Second Amended Declaration is made this 24 day of March, 2020 by Bridger Basin Homes LLC ("Declarant") restates and supersedes the Declaration of Covenants, Conditions, and Restrictions and Reservation of Easements for Black Bull Subdivision recorded August 1, 2007 as Document No. 2274296, records of Gallatin County, Montana, as amended by that First Amendment to Declaration of Covenants, Conditions, and Restrictions and Reservation of Easements for Black Bull Subdivision recorded February 26, 2009 as Document No. 2322398, records of Gallatin County, Montana, and as further amended from time to time until the date of recording of these Second Amended and Restated Declaration of Covenants.

RECITALS

A. All of the property described in Exhibit A ("Property") of this Declaration shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of and which shall run with title to the real property subjected to this Declaration. This Declaration shall be binding on all parties having any right, title, or interest in the Property or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof.

B. Declarant is developing the subdivision known as Black Bull Subdivision pursuant to the Act. The Property and all improvements from time to time constructed thereon, shall hereafter be referred to as the "Project."

C. If developed as currently planned, at full completion the Project will contain 378 lots and/or condominium units (individually a "Lot" and collectively the "Lots") intended for single or multifamily residential use, related common areas, and Tracts for the construction of common use facilities to serve the Project.

D. Declarant intends by this Declaration to impose upon the Project mutually beneficial restrictions under a general plan of improvement for the benefit of all Owners of Lots in the Project that will become subject to this Declaration.

AGREEMENT

NOW, THEREFORE, Declarant hereby declares that the Project shall be held, sold, mortgaged, encumbered, used, occupied, improved and conveyed subject to the following declarations, limitations, easements, restrictions, covenants, and conditions which are imposed as equitable servitudes pursuant to a general plan for the development of the Project for the purpose of enhancing and protecting the value, desirability and attractiveness of the Project residential development. These restrictions, covenants, conditions and easements shall run with the Property

and be binding on Declarant and its successors and assigns, and on all parties having or acquiring any right, title or interest in or to the Property or any part thereof, and their respective heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I DEFINITIONS

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

1.1 "Act" shall mean and refer to the Montana Subdivision Platting Act, Mont. Code Ann. § 76-3-101, *et seq.*

1.2 "Architectural Review Committee" shall be the committee described in Section 6.3.

1.3 "Articles" shall mean and refer to the Articles of Incorporation of the Association, as amended from time to time.

1.4 "Assessment" shall mean that portion of the cost of maintaining, improving, repairing, operating and managing the Project, which is to be paid by each Owner as determined by the Association, and shall include regular and special assessments, and each Owner's share of Common Expenses.

1.5 "Association" shall mean and refer to the Black Bull Homeowners Association, a Montana non-profit mutual benefit corporation, the Members of which shall be the Owners of Lots or Units in the Project.

1.6 "Board" or "Board of Directors" shall mean and refer to the governing body of the Association.

1.7 "Bylaws" shall mean and refer to the Bylaws of the Association, as amended from time to time.

1.11 "Committee" shall mean and refer to the Architectural Review Committee.

1.12 "Common Area" or "Common Areas" shall mean and refer to the portions of the Project and all improvements thereon designated from time to time in this Declaration or in any supplemental declaration, which is to be owned by the Association or which is actually owned by the Association for the common use and enjoyment of the Owners. Common Areas within the Initial Phase are indicated on Exhibit B. Common Areas as defined herein do not include the Golf Course, which is Private Open Space.

1.13 "Common Expenses" means and includes the actual and estimated expenses of operating the Common Area (and pursuing, implementing, and executing the intent, purposes, business and affairs of the Association) and any reasonable reserve for such purposes as

found and determined appropriate by the Board, and all sums designated Common Expenses by or pursuant to this Declaration, the Articles, Bylaws or Rules. Common Expenses shall also include costs and reserves (if appropriate) incurred by the Association in connection with maintaining the Project and any areas at or adjacent to the Project that the Association is otherwise required to maintain as required by Gallatin County, Montana, or any other governmental agency with jurisdiction thereof. Funds to pay all Common Expenses may be collected as part of Assessments, as provided herein. Common Expenses include street lighting, maintenance and upkeep of the water features of the Project, landscaping and maintaining the Common Areas, landscaping and maintaining the streets (including snow removal), maintenance and upkeep of any community center or recreational facility, if any, and all expenses associated with utilities and water for the Common Areas.

1.14 "Declarant" shall mean and refer to Bridger Basin Homes LLC, qualified to do business in the State of Montana, and any successor or assign that expressly assumes the rights and duties of the Declarant hereunder in a recorded written document.

1.15 "Declaration" shall mean and refer to this Declaration, as amended or supplemented from time to time.

1.16 "Design Guidelines" shall mean and refer to the Black Bull Subdivision Design and Landscape Guidelines as revised August 2019, and as amended from time to time by Declarant or the Committee.

1.17 "Development Period" shall mean and refer to the period of time during which the Declarant is entitled to exercise Development Rights and Special Declarant Rights. The Development Period commenced on August 1, 2007 and shall terminate on the earlier of the following to occur: (a) ninety percent (90%) of the Lots and Units are sold from Declarant or any affiliate of Declarant to third parties; or (b) Declarant delivers written notice to the Association that Declarant is voluntarily relinquishing its Development Rights and Special Declarant Rights under this Declaration.

1.18 "Development Rights" shall mean and refer to the rights reserved to the Declarant to (a) submit additional property to be subject to the Declaration; (b) create Lots, Units and Common Area; (c) and subdivide Lots or convert Lots into Common Area. Development Rights may be exercised in all or any portion of the Project at any time within the Development Period.

1.19 "First Mortgage" shall mean and refer to any recorded mortgage made in good faith and for value on a Lot with first priority over other mortgages thereon.

1.20 "Foreclosure" shall mean and refer to the legal process by which the mortgaged property of a borrower in default under a Mortgage is sold, and the borrower's interest in such property is sold, pursuant to applicable law.

1.21 "Golf Club Documents" shall mean the Membership Plan, Turnover Agreements and such other documents existing or which may be created governing the operation of the

Private Golf and Social Club located on the Property. All property owners within the Project are subject to the Golf Club Documents as from time to time amended.

1.22 "Golf Club Facilities" shall mean the 18-hole championship golf course (or portion thereof), practice areas, practice tees, halfway houses, restrooms, men's and women's locker rooms located in the Clubhouse and other ancillary facilities as may be developed from time to time for use as a golf club facility. The Golf Club Facilities are private and reserved for use by Golf Members as defined in the Golf Club Documents.

1.23 "Initial Phase" shall mean the Final Plat of Black Bull Subdivision, Phase 1, located in the NE¼, SE¼ and SW¼ of Section 6, and the NE¼ and NW¼ of Section 7, Township 2 South, Range 5 East, P.M.M., Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the County Clerk and Recorder of Gallatin County, Montana.

1.24 "Lot, Residential Lot" or Unit shall mean any legally subdivided parcel or Unit within the Project which is intended for single or multifamily residential use and the development and maintenance thereon of a Residential Unit(s) as described herein. As used herein, the term "Lot" shall not include Common Areas, Common Area Lots, Parks or Tracts which are designated on the Plat Maps or areas subsequently converted to Common Area by the Declarant. Residential Lots are normally designated as numbered lots on recorded Plat Maps.

1.25 "Member" shall mean and refer to a person entitled to membership in the Association as provided herein, and "Membership" shall refer to such entitlement.

1.26 "Mitigated Area" shall mean those areas of Open Space outside the boundaries of the Golf Course which constitute wetlands or stream site areas.

1.27 "Mortgage" shall include a deed of trust, as well as a Mortgage.

1.28 "Mortgagee" shall include a beneficiary or a holder of a deed of trust, as well as a Mortgage.

1.29 "Mortgagor" shall include the trustor of a deed of trust, as well as Mortgagor.

1.30 "Open Space" shall mean undeveloped land to be owned by the Association for the use of the Owners under such restrictions as the Association or Declarant may provide.

1.31 "Owner" or "Owners" shall mean and refer to the record Owner, whether one or more Persons, of fee simple title to any Lot or Unit which is a part of the Project, but excluding those Persons having an interest merely as security for the performance of an obligation. If a Lot or Unit is sold under a contract of sale and the contract is recorded, the purchaser, rather than the fee owner, shall be considered the "Owner" from and after the date the Association receives written notice of the recorded contract.

1.32 "Person" means a natural person, a corporation, a partnership, a trust, or other legal entity.

1.33 "Plat Map" shall mean and refer to any recorded subdivision Plat Map covering all or any portion of the Project.

1.34 "Private Open Space" shall mean land dedicated for the use by the Bridger Basin Homes LLC and its members, under such terms as may be defined by the Golf Club or the Declarant. Generally speaking, Private Open Space refers to the Golf Club Facilities.

1.35 "Project" shall mean and refer to the property listed on Exhibit A, as modified from time to time and all of the improvements thereon.

1.36 "Project Documents" shall mean and refer to the basic organizational and governance documents of the Association, including the Articles, Bylaws, and this Declaration.

1.37 "Public Records" shall mean and refer to the Public Records as reflected in the office of the County Clerk and Recorder of Gallatin County, Montana.

1.38 "Rules" shall mean and refer to the rules adopted from time to time by the Association pursuant to Section 5.2D.

1.39 "Special Assessment" shall mean and refer to Assessments levied in accordance with Section 4.3.

1.40 "Special Declarant Rights" shall mean and refer to the rights of Declarant described in Article XII.

1.41 "Unit" or "Residential Unit" shall mean and refer to any single family residence or a single unit as part of a multifamily unit and related improvements constructed upon a Residential Lot.

**ARTICLE II
DESCRIPTION OF PROJECT, DIVISION OF PROPERTY,
AND CREATION OF PROPERTY RIGHTS**

2.1 Description of Project. The Project is a development consisting of the property on Exhibit A, including but not limited to, the Common Area, the Residential Lots, Condominium Units, multifamily units, the Golf Course and all improvements thereon. The Project is intended to be developed in phases. As each phase is completed, it will be subject to the terms of this Declaration.

2.2 Easements; Dedication of Common Area. Each Lot shall have appurtenant to it as the dominant tenement an easement over all Common Area Lots and Common Areas for ingress, egress, use and enjoyment, and for the construction, maintenance, operation and use of utilities, subject to the rights and easements in favor of Declarant as provided herein, and to

the following provisions:

- A. The right of the Association to discipline Members and to suspend the voting rights of a Member for any period during which any Assessment against his Lot or Unit remains unpaid, and for any infraction of the Articles, Bylaws, this Declaration or the Rules, in accordance with the provisions of this Declaration.
- B. The right of the Association to dedicate, transfer or mortgage all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by Board of Directors, provided, that in the case of the borrowing of money and the mortgaging of property as security therefor, the rights of such Mortgagee shall be subordinate to the rights of the Members of the Association, and no such dedication, transfer or Mortgage shall be effective unless an instrument signed or approved by two-thirds of the voting power of the Association.
- C. The right of the Association to grant easements under, in, upon, across, over, above or through any portion of the Common Area for reasonable purposes, as approved by the Board, which are beneficial to the Association or the Project or the development of it.
- D. Easements for work and activities necessary to complete construction, development and marketing of the Project, including all parcels annexed or to be annexed, as more particularly described in section 2.7.
- E. No easement granted herein grants any right to a Lot or Lot Owner for access to any Golf Club Facilities or amenity.

The foregoing easements are granted and reserved subject to the condition that their use and enjoyment shall not unreasonably interfere with the use, occupancy or enjoyment of all or any material part of the Lot servient to them or to which they are appurtenant.

2.3 Easements to Accompany Conveyance of Lot. Easements that benefit or burden any Lot shall be appurtenant to that Lot and shall automatically accompany the conveyance of such Lot, even though the description in the instrument of conveyance may refer only to the fee title to the Lot.

2.4 Delegation of Use. Any Owner may delegate, in accordance with the Rules, his right of enjoyment to the Common Area and facilities to the members of his family, guests, tenants, or contract purchasers, who occupy such Owner's Lot.

2.5 Conveyance of Common Area to Association; Reservations of Easements. On or before conveyance of title to the last Lot in a particular phase of the Project, Declarant shall convey the Common Area in that phase to the Association to be held for the benefit of the Members of the Association. Whenever any Common Area is conveyed by Declarant to the Association, an easement is automatically reserved (whether or not expressed in the conveyance document) over, under and through such Common Area for the benefit of remaining portions of the Property that have not yet been conveyed, for ingress, egress, access and all utilities and

similar appurtenances, and for the construction, marketing and sale of Lots and/or improvements on such remaining portions of the Annexed Property. Use of such portions of the Property shall be subject to the obligation to pay an equitable share of regular and special Assessments as provided in Article IV.

2.6 Owners' Rights and Easements for Utilities. The rights and duties of the Owners of Lots or Units within the Project with respect to sewer, drainage, water, irrigation water, electric, gas, television and telephone equipment, cables and lines (collectively "utility facilities") shall be as follows:

A. Whenever utility facilities are installed within the Project, which utility facilities or any portion thereof lie in or upon a Lot or Lots owned by other than the Owner of a Lot served by said utility facilities, the Owners of any Lots served by such utility facilities shall have the right of reasonable access for themselves or for utility companies or providers to repair, to replace and generally maintain said utility facilities as and when the same may be necessary, due to failure or inability of the Board to take timely action to make such repairs or perform such maintenance.

B. Whenever utility facilities are installed within the Project which serve more than one Lot, the Owner of each Lot served by said utility facilities shall be entitled to the full use and enjoyment of such portions of said utility facilities as service his Lot.

C. In the event of a dispute between Owners with respect to the repair or rebuilding of said utility facilities, or with respect to the sharing of the cost thereof, then, upon written request of one (1) Owner addressed to the other Owner(s), the matter shall be submitted first to the Board for mediation, and thereafter, if the dispute remains unresolved, to binding arbitration pursuant to the rules of the American Arbitration Association.

2.7 Annexation of Additional Property. Declarant reserves the right from time to time to add additional property ("Annexed Property") to the Project. This right is irrevocable. Declarant shall not be required to add such additional lands to the Project and Declarant may add a portion or all thereof at Declarant's discretion. Declarant reserves an easement through the Common Elements herein described for access, ingress and egress, and for utility and service lines, and the hookup to existing access and utility and service lines. The manner of subjecting the Annexed Property to this Declaration shall be accomplished by the filing of record in the office of the County Clerk and Recorder for Gallatin County an amendment to the legal description of the lands covered by this Declaration. Any Annexed Property shall be deemed annexed to the Project and made subject to the Declaration and the jurisdiction of the Association, and shall be held, sold, leased, transferred, occupied and conveyed subject to the terms, provisions, covenants, conditions, restrictions, reservations and easements of this Declaration. The right of unilateral annexation provided for in this paragraph constitutes a covenant running with the land and is as such enforceable by any successor or assignee of Declarant who acquires any part of the Annexed Property, and who assumes the role of Declarant.

2.8 Party Walls:

A. General Rules of Law to Apply: Each wall (or fence) that is built as part of original construction, is located on the boundary line with an adjacent Lot and either is used in common with the adjacent Lot or abuts against a similar wall on the adjacent Lot shall constitute a party wall. To the extent not inconsistent with this section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

B. Sharing of Repair and Maintenance: The cost of reasonable repairs and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

C. Destruction by Fire or Other Casualty: If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use; provided, however, that the Owner or Owners whose negligent act or omission proximately caused the damage or destruction shall ultimately be responsible for such restoration.

D. Weatherproofing: Notwithstanding any other provisions of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

E. Right to Contribution Runs with Land: The right of any Owner to contribution from any other Owner under this section shall be appurtenant to the land and shall pass to such Owner's successors in title.

F. Arbitration: In the event of any dispute arising concerning a party wall, or concerning the provisions of this section, upon written request of one Owner addressed to the other Owner, the matter shall be submitted first to the Board of Directors for mediation, and thereafter, if the dispute remains unresolved, to binding arbitration pursuant to the rules of the American Arbitration Association.

2.9 Maintenance Easement. An easement over each Lot as the servient tenement is reserved by Declarant in favor of each other Lot as the dominant tenement, and in favor of the Association, for the purpose of allowing the Association's agents the right, but not the obligation, to enter the Lot to perform such maintenance, if any, as the Association may do in accordance with the provisions of this Declaration.

2.10 Drainage Easements. An easement over and under each Lot as the servient tenement is reserved by Declarant in favor of each other Lot and the Association for the purpose of allowing the Association's agents the right, but not the obligation, to enter the Lot to maintain that portion of any storm drainage system located thereon. No Owner or occupant shall commit any act that would interfere with the operation of any drainage

system (including drainage swales) installed on the Owner's Lot. The Owner shall maintain the system free of debris and other obstacles at all times. Reciprocal appurtenant easements between each Lot and the Common Area and between adjoining Lots are reserved for the flow of water in the storm drainage system.

2.11 Other Easements. The Common Area and each Lot are subject to all easements, dedications, and rights of way granted or reserved in, on, over and under the Project as shown on any Plat Map for the Project, and as otherwise provided or contemplated in this Declaration.

2.12 Rights of Entry and Use. The Lots and Common Area shall be subject to the following rights of entry and use:

- A. The right, but not the obligation, of the Association's agents to enter any Lot to cure any violation of this Declaration, the Articles, Bylaws or Rules, provided that the Owner has received notice and a hearing as required by the Bylaws (except in the case of an emergency) and the Owner has failed to cure the violation or take steps necessary to cure the violation within thirty (30) days after the finding of a violation by the Association;
- B. The access rights of the Association to perform maintenance as provided in Section 5.2E;
- C. The easements described in this Article II;
- D. The right of the Association's agents to enter any Lot to perform maintenance to the extent described herein; and
- E. The rights and easements of the Declarant during construction and sales as described in herein.

2.13 Partition of Common Area. Unless approved in writing by Declarant, there shall be no subdivision or partition of the Common Area, nor shall any Owner seek any partition or subdivision thereof. Nothing herein shall be construed to prohibit partition of a joint tenancy or co-tenancy in any Residential Lot.

2.14 Subdividing or combining Lots.

- A. No Subdivision of Lots. There shall be no further division of any Residential Lot without written approval of Declarant and the Board, which approval may be withheld or conditioned in the discretion of Declarant and the Board, and which approval would be subject to the Laws of the State of Montana and Gallatin County. This limitation excludes the subdivision of Lots into condominium units by the Developer.

- B. Combining Lots. There shall be no combining of any Residential Lot without written approval of Declarant and the Board, which approval may be withheld or conditioned in the discretion of Declarant and the Board, and which approval would be subject to the Laws of the State of Montana and Gallatin County. Dues and assessments shall be paid on each combined lot as if such lots had not been combined.

2.15 No View Rights. This Declaration is not intended and shall not in anyway confer or grant (or be construed to confer or grant) to any Residential Lot or Residential Unit or the Owner thereof any right to the maintenance of any view, viewscape or scenic corridor or area. Each Owner, by acceptance of a deed to his or her Lot, acknowledges and agrees that no representations or warranties have been made concerning any view, present or future, that may be enjoyed from all or any portion of the Project or such Owner's Lot or Unit, and that the same may change and/or be affected or obstructed by construction or installation of improvements, structures, fences, walls and/or landscaping by Declarant or other owners of property within or outside the Project and/or the growth of trees, landscaping and/or vegetation within or outside the Project. This Declaration does not contain any provisions intended to protect the view from any Lot or Unit or any other portion of the Project.

2.16 All Easements Part of Common Plan. Whenever any easements are reserved or created herein, such easements shall constitute equitable servitudes for the mutual benefit of all property in the Project, even if only certain Lots are specifically mentioned as subject to or benefiting from a particular easement, and when easements referred to herein are subsequently created or reserved by deeds or conveyances, such easements are to be considered to be part of the common plan created by this Declaration for the benefit of all property Owners within the Project.

2.17 Sewer and Water Services. Sewer and water services for the Project will be provided by the Four Corners Sewer and Water District (collectively the "District"). Lot Owners will be billed for services by the District and are subject to the rules, regulations and operating procedures of the District.

ARTICLE III ASSOCIATION ADMINISTRATION, MEMBERSHIP AND VOTING RIGHTS

3.1 Association to Own and Manage Common Areas. The Association shall own and manage the Common Area in accordance with the provisions of this Declaration, the Articles, Bylaws and Rules. Declarant shall provide Common Area noxious weed control, litter removal and implementation of the riparian management plan until the Association accepts maintenance responsibility.

3.2 Membership. The Owner of a Lot, or Unit in a multifamily building, shall automatically upon becoming the Owner of same, be a Member of the Association, and shall remain a Member thereof until such time as his ownership ceases for any reason. Membership shall be appurtenant to and may not be separated from ownership of a Lot.

Membership shall be held in accordance with this Declaration, the Articles, Bylaws and Rules. Declarant shall be a Member of the Association for all Lots owned by Declarant and all parcels designated in the Master Plan to become Lots in the future.

3.3 Transferred Membership. Membership in the Association shall not be transferred, encumbered, pledged, or alienated in any way, except upon the sale or transfer of the Lot to which it is appurtenant, and then only to the purchaser, in the case of a sale, or to a Mortgagee that has foreclosed or received a deed in lieu of foreclosure, in the case of an encumbrance. On any transfer of title to an Owner's Lot, Membership shall automatically pass with such transfer. A Mortgagee shall not have Membership rights until it obtains title to the Lot through foreclosure or deed in lieu thereof. Any attempt to make a prohibited transfer is void. No Member may resign his Membership. On receipt of notice of a transfer, the Association shall record the transfer on its books.

3.4 Membership and Voting Rights. Membership and voting rights shall be as set forth in the Bylaws.

ARTICLE IV MAINTENANCE AND ASSESSMENTS

4.1 Creation of the Lien and Personal Obligation of Assessments. Subject to the exception for Declarant as provided in Section 4.7A, each Owner of any Lot by acceptance of a deed or conveyance thereto, whether or not it shall be so expressed in such deed or conveyance, covenants and agrees:

- (1) to pay to the Association regular and special Assessments, to be established and collected as hereinafter provided; and
- (2) to allow the Association to enforce any Assessment lien established hereunder by non-judicial proceedings under a power of sale or by any other means authorized by law.

The regular and special Assessments, together with interest, late charges, collection costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such Assessment is made, the lien to become effective upon recordation of a notice of delinquent Assessment. Each such Assessment, together with interest, late charges, collection costs, and reasonable attorneys' fees, shall also be the personal obligation (joint and several) of each Person who was the Owner of such property at the time when the Assessment fell due. No Owner of a Lot may exempt himself from liability for his contribution towards the Common Expenses by waiver of the use or enjoyment of any of the Common Areas or by the abandonment of his Lot.

The interest of any Owner in the amounts paid pursuant to any Assessment upon the transfer of ownership shall pass to the new Owner. Upon the termination of these covenants for any reason, any amounts remaining from the collection of such Assessments after paying all amounts properly charged against such Assessments shall be distributed to the then Owners on the same pro rata basis

on which the Assessments were collected.

4.2 Purpose of Assessments. The Assessments levied by the Association shall be used to pay Common Expenses, to promote the economic interests, recreation and parks, health, safety and welfare of Owners in the Project, and to enable the Association to perform its obligations hereunder.

4.3 Assessments:

A. Regular Assessments: The Board shall annually establish and levy regular Assessments in an amount that the Board estimates will be sufficient to raise the funds needed to pay Common Expenses and perform the duties of the Association during each fiscal year. The regular Assessments shall include a portion for reserves in such amounts as the Board in its discretion considers appropriate to meet the costs of the future repair, replacement or additions to the major improvements and fixtures that the Association is obligated to maintain and repair. Reserve funds shall be deposited in a separate account and the signatures of at least two (2) Persons, who shall either be Members of the Board or one officer who is not a Member of the Board and one Member of the Board, shall be required to withdraw monies from the reserve account. Except to the limited extent otherwise provided herein, reserve funds may not be expended for any purpose other than repairing, restoring, maintaining or replacing the major components that the Association is obligated to maintain without the consent of Owners holding a majority of the voting power either at a duly held meeting or by written ballot.

B. Special Assessments: The Board may at any time levy a special assessment in order to raise funds for unexpected operating or other costs, insufficient operating or reserve funds, or such other purposes as the Board in its discretion considers appropriate. Special Assessments shall be allocated among the Lots in the same manner as regular Assessments, except in the case of an Assessment levied by the Board against a Member to reimburse the Association for costs incurred in bringing the Member and his Lot into compliance with provisions of the Project Documents.

C. Transfer Fee Assessments: A Buyer transfer fee may be assessed upon the transfer of a Lot or Unit in an amount determined by the Board.

4.4 Restrictions on Increases in Regular and Special Assessments. The Board may not impose a regular Assessment on any Lot which is more than one hundred percent (100%) greater than the regular Assessment for the immediate preceding fiscal year, or levy a special Assessment to defray the cost of any action or undertaking on behalf of the Association which in the aggregate exceeds one hundred percent (100%) of the budgeted gross expenses of the Association for that fiscal year, without the vote or written assent of Members casting a majority of the votes at a meeting of the Association at which a quorum is present. Any meeting of the Association for purposes of complying with this section 4.4 shall be conducted in accordance with the Montana Non-Profit Corporation Act.

The Board may increase regular Assessments by more than one hundred percent (100%) over the regular Assessment for the immediately preceding fiscal year only if the Board has complied with the provisions set forth in the Bylaws and this Declaration.

Notwithstanding the foregoing, the Board, without Membership approval, may increase regular Assessments or levy special Assessments necessary for an emergency situation. For purposes of this section, an emergency situation is one of the following:

- (1) an extraordinary expense required by an order of a court;
- (2) an extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible where a threat to personal safety on the Project is discovered; or
- (3) an extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget, provided, however that prior to the imposition or collection of the Assessment, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process and the resolution shall be distributed to the Members with the notice of the Assessment.

The Association shall provide by first-class mail notice to Owners of any increase in the regular or special Assessments of the Association not less than thirty (30) nor more than Sixty (60) days prior to the increased Assessment becoming due.

4.5 Notice and Quorum for Any Action Authorized Under Section 4.4. Any action authorized under section 4.4, which requires a vote of the Membership, shall be taken at a meeting called for that purpose, written notice of which shall be sent to all Members not less than ten (10) nor more than sixty (60) days in advance of the meeting, specifying the place, day and hour of the meeting and, in the case of a special meeting, the nature of the business to be undertaken. The action may also be taken without a meeting pursuant to the provisions of the Bylaws.

4.6 Division of Assessments. All Assessments, both regular and special, shall be levied equally among the Lots, except to the limited extent otherwise provided herein. The assessments discussed herein do not include any assessments for condominium and other multifamily dwellings where the assessments per Unit will be set by the relevant Association.. Regular Assessments shall be collected on a monthly basis unless the Board directs otherwise. Special Assessments may be collected in one payment or periodically as the Board shall direct.

4.7 Date of Commencement of Regular Assessment; Due Dates. The regular Assessments provided for herein shall commence as to each Lot in the Initial Phase on

the first day of the month following the conveyance from Declarant of the Lot to an Owner in the Initial Phase. In subsequent phases, the regular Assessments against each Lot in each phase shall commence on the first day of the month following the conveyance from Declarant of the Lot to an Owner in such phase. As Lots in each annexed phase become subject to Assessments, the Board shall determine whether the amount of regular Assessments payable by all Owners will change and, if so, the amount of such change, and the Board shall then send out revised Assessment notices as appropriate. Subject to the provisions of section 4.3, the Board of Directors shall use its best efforts to fix the amount of the regular Assessments against each Lot and send written notice thereof to every Owner at least forty-five (45) days in advance of each fiscal year, provided that failure to comply with the foregoing shall not affect the validity of any Assessment levied by the Board. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association stating whether the Assessments on a specified Lot have been paid. Such a certificate shall be conclusive evidence of such payment.

A. Assessment on Lots Owned by Declarant: Notwithstanding anything stated in this Declaration to the contrary, the Board of Directors shall determine the amount of Assessments on Lots owned by Declarant and available for sale.

4.8 Effect of Nonpayment of Assessments. Any Assessment not paid within fifteen (15) days after the due date shall be delinquent, shall bear interest at the rate of twelve percent (12%) per annum from thirty (30) days after the due date until paid, and shall incur a late payment penalty in an amount to be set by the Board from time to time, such interest and penalties not to exceed the maximum permitted under Montana law.

4.9 Transfer of Lot, by Sale or Foreclosure. Sale, transfer or foreclosure of any Lot shall not affect the Assessment lien. If a Lot is transferred, both the grantee and the grantor shall remain liable to the Association for all unpaid Assessments against the Lot through and including the date of the transfer. The grantee shall be entitled to a statement from the Association, dated as of the date of transfer, setting forth the amount of the unpaid Assessments against the Lot to be transferred and the Lot shall not be subject to a lien for unpaid Assessments in excess of the amount set forth in the statement; provided, however, the grantee shall be liable for any Assessments that become due after the date of the transfer.

4.10 Priorities; Enforcement; Remedies.

(a) If an Owner fails to pay an Assessment when due, the Association has the right, and option, to bring legal action against the Owner to enforce collection of the unpaid and past-due Assessment, or may impose a lien on the Lot owned by Owner, or both. Suit to recover a money judgment for unpaid Assessments and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same. Before the Association may place a lien upon a Lot, the Association shall notify the Owner in writing by certified mail of the fee and penalty procedures of the Association, provide an itemized statement of the charges owed by the Owner, including the principal owed, any late

charges, and the method of collection, any attorneys' fees, and the collection practices used by the Association, including the right of the Association to the reasonable costs of collection. The Association may record a notice of delinquent Assessment and establish a lien against the Lot of the delinquent Owner prior and superior to all other liens except (1) all taxes, bonds, Assessments and other levies which, by law, would be superior thereto, and (2) the prior lien or charge of any Mortgage of record (meaning any recorded Mortgage or deed of trust with first priority over other Mortgages or deeds of trust) made in good faith and for value. The notice of delinquent Assessment shall state the amount of the Assessment, collection costs, attorney's fees, late charges and interest, a description of the Lot against which the Assessment and other sums are levied, the name of the record owner, and the name and address of the trustee authorized by the Association to enforce the lien by sale. The notice shall be signed by any officer of the Association or any management agent retained by the Association and shall be mailed in the manner required under Montana law to all record owners of the Lot no later than 10 days after recordation.

(b) After the expiration of thirty days following the recordation of the lien, an Assessment lien may be enforced in any manner permitted by law, including sale by the court or sale by the trustee designated in the notice of delinquent Assessment. Any sale by the trustee shall be conducted in accordance with the provisions of Montana law applicable to the exercise of powers of sale in Mortgages and deeds of trust, or in any other manner permitted by law. Nothing herein shall preclude the Association from bringing an action directly against an Owner for breach of the personal obligation to pay Assessments.

(c) The Association, acting on behalf of the Owners, shall have the power to bid for the Lot at a foreclosure sale, and to acquire and hold, lease, mortgage and convey the same.

(d) The Board may temporarily suspend the voting rights of a Member who is in default in payment of any Assessment, after notice and hearing, as provided in the Bylaws.

(e) To the extent allowed under Montana law, the Association may file a lien against a Lot for fines and penalties for violation of restrictions, as well as monetary penalties imposed by the Association to reimburse the Association for costs incurred for repair of damage to Common Area or facilities for which the Owner, or guests or tenants of an Owner, were responsible.

(f) The Association is not empowered to cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of his Lot on account of the failure by the Owner to comply with provisions of the Project Documents or Rules, except by judgment of a court or a decision arising out of binding arbitration or on account of a foreclosure or sale under power of sale for failure of the Owner to pay Assessments duly levied by the Association.

(g) Each Owner waives, to the maximum extent permitted by law, the benefit of any Montana homestead or exemption laws in effect when any Assessment or installment becomes delinquent or a lien is imposed.

4.11 Unallocated Taxes. In the event that any taxes are assessed against the

Common Area, or the personal property of the Association, rather than against the Lots, said taxes shall be included in the Assessments made under the provisions of section 4.1 and, if necessary, a special Assessment may be levied against the Lots in an amount equal to said taxes, to be paid in two (2) installments, thirty (30) days prior to the due date of each tax installment.

4.12 Membership Dues. Any club membership dues or charges owed to Black Bull Golf Club in connection with a Lot or membership and not paid within fifteen (15) days after the due date shall be delinquent, shall bear interest at the rate of twelve percent (12%) per annum from thirty (30) days after the due date until paid, and shall incur a late payment penalty in an amount to be set by Black Bull Golf Club from time to time, such interest and penalties not to exceed the maximum permitted under Montana law. If a member of Black Bull Golf Club fails to pay any amounts to Black Bull Golf Club when due, Black Bull Golf Club has the right, and option, to bring legal action against such member of Black Bull Golf Club to enforce collection of the unpaid and past-due charges, or Black Bull Golf Club may impose a lien on the Lot owned in connection with membership in Black Bull Golf Club, or both. The Lots are subject to The Black Bull Membership Plan as amended from time to time.

ARTICLE V DUTIES AND POWERS OF THE ASSOCIATION

5.1 Duties. In addition to the duties enumerated in the Articles and Bylaws, or elsewhere provided for in this Declaration, and without limiting the generality thereof, the Association shall perform the following duties:

A. Maintenance: The Association shall maintain and repair the Common Area, all improvements and landscaping thereon, all mitigation areas outside the boundaries of the Golf Course, and all property owned by the Association, including but not limited to the landscaping and water features contained within the Common Area. The Association shall also pay all Common Expenses, as defined herein which will include but not be limited to road maintenance, Common Area maintenance, irrigation water for Residential Lots and Common Areas, snow removal of Common Areas, and the provision of certain designated services to the Lots, and arrange for the maintenance of all areas for which Common Expenses are payable. Additionally, the Association shall maintain and repair any designated areas of the Lots identified by the Board, which maintenance may include lawns, streets and landscaping maintenance, water for sprinkling, maintenance and blow out of sprinkling systems and snow removal, as determined by the Association. Such maintenance and repair of any designated areas of the Lots shall be set forth in the Bylaws for the Association or in Rules adopted by the Board of Directors.

The responsibility of the Association for maintenance and repair described above shall not extend to repairs or replacements arising out of or caused by the willful or negligent act or omission of any Owner, or his/or her guest, tenant, invitee or pet. Any such

repairs or replacements not covered by insurance carried by the Association shall be made by the responsible Owner, provided the Board approves the Person or entity actually making the repairs and the method of repair. If the responsible Owner fails to take the necessary steps to make the repairs within a reasonable time under the circumstances, the Association shall cause the repairs to be made and charge the cost thereof to the responsible Owner, which costs shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate allowed by law) until paid in full. If such repair is covered by the insurance carried by the Association, the Association shall be responsible for making the repairs, and the responsible Owner shall pay any deductible pursuant to the insurance policy. If the Owner fails to make such payment, then the Association may make such payment and shall charge the responsible Owner, which charge shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate allowed by law) until paid in full. If the Owner disputes the charge, the Owner shall be entitled to a notice and a hearing as provided in the Bylaws or as provided in any Rules promulgated by the Board before the charge may be collected.

Owners that do not own Lots designated by the Board for the additional maintenance described in Paragraph 2, Section 5.1(A) above shall be responsible for keeping their Lots in good maintenance and repair. If the responsible Owner fails to take the necessary steps to keep its Lot in good repair and well maintained, make the repairs or keep up with the maintenance within a reasonable time under the circumstances, the Association shall cause the repairs/maintenance to be made and charge the cost thereof to the responsible Owner, which costs shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate allowed by law) until paid in full. If such repair is covered by the insurance carried by the Association, the Association shall be responsible for making the repairs, and the responsible Owner shall pay any deductible pursuant to the insurance policy. If the Owner fails to make such payment, then the Association may make such payment and shall charge the responsible Owner, which charge shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate allowed by law) until paid in full.

B. Insurance: The Association shall obtain and maintain such policy or policies of insurance as are required by section 9.1 of this Declaration.

C. Discharge of Liens: The Association shall discharge by payment, if necessary, any lien against the Common Area and charge the cost thereof to the Member or Members responsible for the existence of the lien after notice and hearing as provided in the Declaration.

D. Assessments: The Association shall fix, levy, collect and enforce Assessments as set forth in Article IV hereof

E. Payment of Expenses and Taxes: The Association shall pay all expenses and obligations incurred by the Association in the conduct of its business including,

without limitation, all licenses, taxes, assessments and governmental charges levied or imposed upon, or which are or may become a lien against, the property of the Association.

F. Enforcement: The Association shall be responsible for the enforcement of this Declaration, the Articles, Bylaws and Rules. In the event an Owner fails to comply with any Project Documents, the Association has the right to enter upon such Owner's Lot, remedy the lack of compliance and assess the costs incurred by the Association to such Owner.

G. Operation of Common Area and Creation of Rules: The Association shall maintain and operate the Common Area of the Project in accordance with all applicable municipal, state, and federal laws, statutes and ordinances, as the case may be. The Association shall also, as a separate and distinct responsibility, exert reasonable efforts to endeavor to ensure that third parties (including Owners and their guests) utilize the Common Area in accordance with the aforementioned regulations. The Association shall, when it becomes aware of any violation of the aforementioned regulations, endeavor to expeditiously correct such violations.

H. Inspection and Maintenance Guidelines: The Board shall adopt inspection and maintenance guidelines for the periodic inspection and maintenance of the Common Area improvements and landscaping and any other improvements outside the Common Area which the Association has the responsibility to maintain. The Board periodically and at least once every two years shall review and update the inspection and maintenance guidelines. The Board shall take all appropriate steps to implement and comply with the inspection and maintenance guidelines.

I. Preparation of Financial Documents: The Board shall cause the preparation of budgets and financial statements as required by the Bylaws.

J. Restriction on Open Space Park 1 adjacent to Lot 200. Declarant recognizes that the planting of any trees or shrubs in Open Space Park 1 might impact the views, site distance and aesthetics of Lot 200. As a result, the owner of Lot 200 shall have exclusive and final authority regarding any planting (other than ground cover) in that portion of Open Space Park 1 depicted on Exhibit 1. This authority shall include, but not be limited to, the species of trees and shrubs, and the maintenance of such plantings. Notwithstanding the foregoing, it is understood that any plantings shall be consistent with the species and style of planting described in the Design Guidelines. Additionally, for purposes of architectural review, Lot 200 is not a "corner lot" and therefore is not subject to the 30-foot setback required for a corner lot adjacent to lands established for parks and open space. The terms of this Section 5.1J may not be amended without the consent of the owner of Lot 200.

5.2 Powers. In addition to the powers enumerated in the Articles and Bylaws, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall have the following powers:

A. Utility Service: The Association shall have the authority (but not the obligation) to obtain, for the benefit of all of the Owners, all utilities and utility services including, without limitation, water, sewer, gas, electric service, refuse collection and cable access television.

B. Easements: The Association shall have the right to grant easements under, in, upon, across, over, above or through any portion of the Common Area for reasonable purposes, as approved by the Board, which are beneficial to the Association or the Project or the development of same.

C. Manager: The Association may employ a manager or other Persons and contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, as directed by the Board.

D. Adoption of Rules: The Board shall have the right to adopt, promulgate and enforce reasonable rules and regulations ("Rules"), not in conflict or inconsistent with this Declaration relating to the Project and all aspects thereof including, without limitation, the operation, maintenance, use and enjoyment of the Project, the Common Areas and individual Lots. It is the intent of this section that the Board have broad discretion with respect to the Rules and that the Board's authority in this regard be construed liberally in order to effectuate the objectives of the Board with respect to the Rules. In general, the objectives of the Board should be to promote and enhance the Project, its attractiveness and economic viability, and provide for the orderly operation, maintenance, repair and upkeep of the Project, including procedures relating to the conduct of Association business. Written copies of such Rules and any schedule of fines and penalties adopted by the Board shall be furnished to Owners. Anything contained herein to the contrary notwithstanding, until ninety percent (90%) of the Lots planned for the overall Project (including subsequently planned phases), the adoption or amendment of any Rules shall require the consent of Declarant.

E. Access: For the purpose of performing construction, maintenance or emergency repair for the benefit of the Common Area or the Owners in common and/or to perform maintenance work which the Lot Owner has failed to perform as provided herein, the Association's agents or employees shall have the right, after reasonable notice to the Owner thereof, to enter any Lot at reasonable hours and at any necessary time in the event of an emergency. Such entry shall be made with as little inconvenience to the Owner as practicable and, except as otherwise provided herein, any damage caused thereby shall be repaired by the Board at the expense of the Association.

F. Assessments, Liens, Penalties, and Fines: The Board shall have the power to levy and collect Assessments in accordance with the provisions of Article IV hereof. The Association may impose fines or take disciplinary action against any Owner for failure to pay Assessments or for violation of any provision of the Project Documents and the unrecorded Rules adopted by the Board or the Association.

Penalties may include but are not limited to fines, temporary suspension of voting rights, rights to the use of recreational facilities, if any, or other appropriate discipline, provided the Member is given notice and a hearing as provided in the Bylaws before the imposition of any fine or disciplinary action. The Board shall have the power to adopt a schedule of reasonable fines and penalties for violations of the terms of this Declaration, and for violations of any Rules adopted pursuant to section 5.2D. The penalties prescribed may include suspension of all rights and privileges of Membership; provided, however, that suspension for failure to pay Assessments shall be for a maximum period of thirty (30) days, renewable by the Board for an additional thirty (30) day period or periods until paid; and provided further that suspension for infraction of Rules or violation of this Declaration, other than for failure to pay Assessments, shall be limited to a maximum period of thirty (30) days per infraction or violation, and shall be imposed only after a hearing before the Board. The Board may extend said period for an additional period or periods in the case of a continuing infraction or violation, and no hearing need be held for such extension. Written copies of Rules and the schedule of penalties shall be furnished to Owners. The Board shall assess fines and penalties and shall enforce such Assessments as appropriate under applicable law.

G. Enforcement: The Board shall have the power to enforce this Declaration, the Articles, Bylaws and Rules.

H. Acquisition and Disposition of Property: Once the Property has been conveyed to the Association by the Declarant the Board shall have the power to acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, or otherwise dispose of real or personal property in connection with the affairs of the Association. Except to the extent authorized herein, any transfer of fee title to Association property shall be by document signed or approved by two-thirds (2/3) of the total voting power of the Members of the Association.

I. Loans: The Board shall have the power to borrow money, and only with the assent (by vote or written consent) of two-thirds (2/3) of the total voting power of the Members of the Association, to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

J. Dedication: The Association shall have the power to dedicate, sell, or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication shall be effective unless an instrument has been signed or approved by two-thirds (2/3) of the total voting power of the Members of the Association.

K. Contracts: The Board shall have the power to contract for goods and/or services for the Project including Common Areas subject to limitations set forth in the

Bylaws, or elsewhere herein.

L. Delegation: The Association, the Board, and the officers of the Association shall have the power to delegate their authority and powers to committees, officers or employees of the Association, or to a manager employed by the Association, provided that the Board shall not delegate its responsibility:

- (1) to make expenditures for capital additions or improvements chargeable against the reserve funds;
- (2) to conduct hearings concerning compliance by an Owner or his tenant, lessee, guest or invitee with the Declaration, Bylaws or Rules promulgated by the Board;
- (3) to make a decision to levy monetary fines, impose special Assessments against individual Lots, temporarily suspend an Owner's rights as a Member of the Association or otherwise impose discipline;
- (4) to make a decision to levy regular or special Assessments; and
- (5) to make a decision to bring suit, record a claim of lien or institute Foreclosure proceedings for default in payment of Assessments.

M. Appointment of Trustee: The Association, or the Board acting on behalf of the Association, has the power to appoint or designate a trustee to enforce Assessment liens by sale as provided in section 4.10.

N. Litigation/Arbitration: Subject to the terms and provisions of Article X, the Association shall have the power to institute, defend, settle or intervene in litigation, arbitration, mediation or administrative proceedings in matters pertaining to (A) enforcement of the Project Documents, (B) damage to the Common Areas, (C) damage to the separate interests which the Association is obligated to maintain or repair, or (D) damage to the separate interests which arises out of or is integrally related to damage to the Common Areas or separate interests that the Association is obligated to maintain or repair.

O. Other Powers: In addition to the powers contained herein, the Board may exercise the powers granted to a nonprofit mutual benefit corporation under Montana law.

ARTICLE VI ARCHITECTURAL CONTROL

6.1 Purpose of Architectural Controls: The purpose and intent of this Article VI and the Design Guidelines is to empower the Declarant to preserve property values within the Project. The Declarant has the ultimate responsibility but may delegate that authority

to an Architectural Review Committee (“Committee”). All Lots are subject to the provisions of this Article VI and the Design Guidelines; provided, however, homes constructed for Declarant do not require Committee approval. A current copy of the Design Guidelines may be obtained from the Declarant. To the extent any building or landscape design provisions in this Declaration conflict with the Design Guidelines, the Design Guidelines shall control. The Declarant is exempt from any provisions or limitations set forth in this Article VI.

6.2 Requirement for Approval of Plans. No Residential Unit, fence, wall, pool, spa, obstruction, satellite dish, outside or exterior wiring, balcony, screen, patio, patio cover, tent, awning, carport, carport cover, trellis, landscaping, structure or improvement of any kind shall be commenced, installed, erected, painted or maintained upon the Project, nor shall any alteration or improvement of any kind be made thereto, or to any Lot, until the same has been approved in writing by the Declarant, or the Committee appointed by the Declarant or the Board. Plans and specifications showing the nature, kind, shape, color, size, materials and location of such improvements, alterations, etc., shall be submitted to the Declarant or to the Committee appointed by the Declarant for approval of the submitted plans and specifications including approval as to quality of workmanship and design and harmony of external design with existing structures, and as to location in relation to surrounding structures, topography, and finish grade elevation. All such applications must bear the stamp of a licensed architect certifying that the applications have been reviewed for compliance with the provisions of this Article and any applicable design guidelines. No permission or approval shall be required to repaint in accordance with a color scheme previously approved by the Declarant or the Committee, or to rebuild in accordance with plans and specifications previously approved by the Declarant or the Committee. The Declarant or the Committee shall have the right to adopt, amend and promulgate reasonable architectural rules and guidelines to implement the intents, purposes and provisions hereof, which, upon adoption, shall have the same force and effect as other Rules as provided herein. All plans and specifications for a Residential Unit or other improvement proposed to be built on a Lot shall comply with all applicable zoning laws and regulations, building codes and regulations and building height restrictions.

6.3 Architectural Review Committee Membership. If formed by the Declarant, the Committee shall consist of three (3) Persons. Declarant shall appoint all Persons to serve on the Committee and all replacements. Persons appointed to the Committee by the Declarant need not be Members of the Association. A majority of the Committee may designate a representative to act for it. In the event of death or resignation of any Person on the Committee, the successor shall be appointed by the Declarant. Neither the Declarant nor any Person on the Committee shall be entitled to any compensation for services performed pursuant hereto. The Committee (or the Declarant) shall have the right, but not the obligation, to engage (on a case by case basis or otherwise) an independent architect, draftsman or engineer to assist the Committee (or the Declarant) in the review process, and to charge all costs reasonably incurred in connection therewith to the applicant for architectural approval.

6.4 Architectural Review Committee Action: Approval of any plan submitted to the Committee shall be made by the Declarant or by the majority vote of the Committee. Upon

receipt of a complete application, the Committee has thirty (30) business days to approve or disapprove the location, construction design, landscaping, and materials used for the residence, followed by a seven (7) day period upon the applicant's request for a response. The thirty (30) day time period will not start until after the detailed site plan, floor plans, roof plans, trim details, project specifications, color samples, sample materials and landscaping plans have all been submitted to the Committee. Upon receipt of all such required items, the Committee will notify the Owner, in writing, of the date of the start of the thirty (30) day approval period. If the Committee feels that insufficient plans, project specifications, color samples, sample materials or landscaping plans have been submitted either by the Lot Owner or the Owner's representative, then the Committee may notify the Owner in writing of the incomplete submittal. If the Committee sends such notice of an incomplete submittal, the Owner will have thirty (30) days to resubmit a completed submittal. Upon submission of complete application, the Committee will then have an additional thirty (30) days to review the resubmittal. If the Owner does not receive a response from the Committee within thirty (30) days of receiving notice the application is complete, the Owner may request, in writing, a response and the Committee shall then have seven (7) days to respond. As a protection to the Owner, if the Owner has been notified in writing by the Committee of the starting date of the thirty (30) day approval period and the Committee does not respond with approval or disapproval by the end of the thirty (30) day approval period, and the Owner submits a written request for a response and no such response is sent by the Committee within seven (7) days, then the approval shall be deemed granted. The timeline for approval may be changed by Declarant and the Committee, and set forth in the Design Guidelines. If the timeline for approval in this Declaration and the Design Guidelines conflict, the Design Guidelines shall prevail. Approval of plans by the Committee or the Declarant shall in no way make the Committee or the Declarant responsible for or liable for the improvements built after approval of the plans, and the Owner whose plans are approved shall defend, indemnify and hold the Committee and the Declarant harmless from any and all liability arising out of such approval. The Committee shall have the power to extend due dates or time periods set forth in this Article VI; provided, however, the Committee shall inform the Owner of such extension in writing prior to the expiration of the original due date.

6.5 Landscaping. No landscaping or other physical improvements or additions shall be made to any Lots until plans and specifications showing the nature, kind, shape, and location of the materials shall have been submitted to and approved in writing by Declarant or the Committee.

6.6 Solar Energy, Water Saving Devices. The Declarant or the Committee may impose such restrictions on the installation of solar panels as are permitted by applicable state laws, and properly screened. Water saving devices shall be required on all dishwashers, washing machines, toilet flushing mechanisms, showers and sink heads.

6.7 Governmental Approval. Before commencement of any alteration or improvements approved by Declarant or the Committee, the Owner shall comply with all appropriate governmental laws and regulations, including but not limited to any zoning ordinances or regulations then in effect in Gallatin County. Approval by the Committee does not satisfy the appropriate approvals that may be required by any governmental entity with appropriate jurisdiction.

6.8 Structural Integrity. Nothing shall be done in or on any Lot or in or on the Common Area which will impair the structural integrity of any building or structure.

6.9 Appeals to Declarant. Any final decision of the Committee may be appealed in writing to Declarant or the Board. Any such appeal must be submitted in writing to Declarant or the Board within fifteen (15) days after the date the appealing Member receives notice of the final decision by the Committee. The written notice of the appeal shall specifically state the appealing member's grounds for appeal. Declarant or the Board may adopt and promulgate procedures and grounds for appeals. The decision of Declarant or the Board with respect to all appeals shall be final and determinative.

6.10 Architectural Review.

(a) The following shall be included in all Design Submittals:

i. Site plans including landscaping, driveways, walks and decks (Scale: 1/8" = 1'-0" or similar engineering scale)

ii. Complete construction drawings – Two (sets) shall be submitted to the Committee for approval. Each set shall include floor plans, exterior color selections, exterior elevations of all sides, roof design, specifications and any construction details with a materials board, if applicable. (scale 1/4" = 1'-0")

iii. Samples of all exterior materials with their respective color proposals in an adequate size to evaluate properly.

iv. A review fee of \$1.00 per square foot or such other amount as determined by the Committee.

(b) The purpose of the design review fee shall be to defray the Association's cost of review of all proposed site plans and specifications submitted to them.

6.11 Start of Construction. No construction work shall be initiated without any required governmental approval or permits and without written approval of the plans by Declarant or the Committee. All building construction and landscaping must conform to both the final approved plans by any governmental agency with jurisdiction and the Committee. Vacant lots shall be maintained by the Owner at the Owner's expense in accordance with these Covenants including mowing for fire safety and the control of noxious weeds. Irrigation and grassing of vacant lots may be required by the Association.

6.12 Completion. All work on any improvement in the single-family residential property once started must be continued on a continuous and diligent basis until completion which shall not exceed 18 months without approval from the Committee.

ARTICLE VII USE RESTRICTIONS

In addition to all of the covenants, conditions and restrictions contained herein, the use of the Project and each Lot therein is subject to the following:

7.1 Use of Lot. Lots in the Project shall be used for purposes of constructing and maintaining single or multifamily family Residential Units and purposes reasonably incidental thereto and for no other purposes and be used and maintained in compliance with this Declaration, the Articles, Bylaws and Rules. Use of Lots shall at all times be in compliance with the conditions of approval of the Project by Gallatin County, Montana.

7.2 Nuisances. No noxious, illegal, or seriously offensive (to a reasonable Person) activities shall be carried on upon any Lot, or in any part of the Project, nor shall anything be done thereon which may be or may become a serious annoyance or a nuisance to or which may in any way interfere with the quiet enjoyment of each of the Owners or his respective Lot.

7.3 Vehicle Restrictions and Towing.

(a) Vehicles may be operated, maintained, parked or stored in the Project only in strict compliance with the Rules and to the extent allowed by the Rules. In general, only normal and reasonable transportation vehicles shall be allowed. Inoperable, noisy, smoky, unregistered, unlicensed vehicles shall not be allowed. Recreational vehicles and boats may not be stored or parked at any location within the Project except within a fully enclosed garage or designated area approved by the Association so as not to be visible from the Common Area or from any other Lot within the Project. Such vehicles and boats may be temporarily parked for purposes of loading and unloading, such time not to exceed 24 hours.

(b) The Association may cause the removal of any vehicle wrongfully parked on the Project, including a vehicle owned by an occupant. If the identity of the registered owner of the vehicle is known or readily ascertainable, the Association shall, within a reasonable time, notify the owner of the removal in writing by personal delivery or first class mail. In addition, notice of the removal shall be given to the local traffic law enforcement agency immediately after the vehicle has been removed. The notice shall include a description of the vehicle, the license plate number and the address from where the vehicle was removed. If the identity of the owner is not known or readily ascertainable and the vehicle has not been returned to the owner within one hundred twenty (120) hours after its removal, the Association immediately shall send or cause to be sent a written report of the removal by mail to the Montana Department of Justice and shall file a copy of the notice with the proprietor of the public garage in which the vehicle is stored. The report shall be made on a form furnished by the Department of Justice and shall include a complete description of the vehicle, the date, time and place from which the vehicle was removed, the amount of mileage on the vehicle at the time of removal, the grounds for removal and the name of the garage or place where the vehicle is stored. Notwithstanding the foregoing, the Association may cause the removal, without notice, of any vehicle parked in a marked fire lane, within fifteen (15) feet of a fire hydrant, in

a parking space designated for handicapped without proper authority or in a manner which interferes with any entrance to, or exit from the Project or any Lot, parking space or garage located thereon. The Association shall not be liable for any damages incurred by the vehicle owner because of the removal in compliance with this section or for any damage to the vehicle caused by the removal, unless such damage resulted from the intentional or negligent act of the Association or any Person causing the removal of or removing the vehicle. If requested by the owner of the vehicle, the Association shall state the grounds for the removal of the vehicle.

7.4 Parking. Parking of vehicles (recreational, transportation or otherwise) shall be allowed on the Common Area only in designated areas and in compliance with the Rules.

7.5 Commercial Activity. No business, professional or commercial activity shall be conducted on any Lot, except for Declarant's activities in connection with development of the Project and marketing and sales of the Lots as provided or contemplated herein. Nothing in this section is intended to restrict or prohibit Owners from using portions of their Units for home offices and related purposes such as operations of personal computers, the internet and similar equipment and facilities, so long as such activities do not materially increase the volume of vehicular traffic into the Project.

7.6 Storage. No machinery, equipment, trailer, boats, recreational vehicles or other personal property shall be stored on the Common Area or Lots except in compliance with the Rules. Temporary basketball hoops may be located on the Lots and remain outside from Memorial Day through Labor Day. Outside of those dates the temporary hoops must be placed in the garage sunset to sun rise.

7.7 Signs. No signs shall be displayed to the public view on any Lot or on any portion of the Project except such signs as are allowed by the Rules. This provision shall not apply to Declarant.

7.8 Animals. No animals, pets or insects of any kind shall be raised, bred, or kept on any Lot or in the Common Area except that no more than three (3) usual and ordinary household pets such as dogs or cats provided they are not kept, bred, or maintained for any commercial purposes, and are kept under reasonable control at all times. Animals being walked in the Project shall be under leash control. No dangerous or poisonous animals, pets or insects of any kind shall be allowed in the Project. No pets shall be allowed in the Common Area except as may be permitted by Rules which shall include, without limitation, the requirement that such pets be maintained under control. After making a reasonable attempt to notify the Owner, the Board may cause any pet found within the Common Area in violation of the Rules or this Declaration to be removed to a pound or animal shelter under the jurisdiction of the city or county, by calling the appropriate authorities, whereupon the Owner may, upon payment of all expenses connected therewith, repossess the pet. Owners shall prevent their pets from soiling the Common Area or other's property and shall promptly clean up any mess left by their pets. Owners shall be fully responsible for any damage caused by their pets.

7.9 Garbage and Refuse Disposal. All rubbish, trash and garbage shall be regularly removed from the Lots, and shall not be allowed to accumulate thereon. Trash, garbage and other waste must be kept in appropriate containers. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition, and shall be screened from view of neighboring Lots, Common Areas and streets. No toxic or hazardous materials shall be disposed of within the Project by dumping in the garbage containers or down the drains, or otherwise.

7.10 Antennas. Antennas shall be authorized on Lots for purposes of transmitting or receiving radio, video, television and related signals, to the extent allowed by the Rules and approved by the Committee.

7.11 Power Equipment and Car Maintenance. No offensive power equipment, hobby shops, or recreational vehicle, truck, car, motorcycle or boat maintenance (other than emergency work) or similar maintenance shall be conducted or stored outside of a garage. The Association shall have sole discretion in determining what constitutes "offensive" under this Section 7.11; provided however, the Association recognizes that the reasonable use of power washers and other power tools that do not disturb neighbors are not offensive. All hazardous waste shall be disposed of properly by each Owner.

7.12 Liability of Owners for Damage to Common Area. The Owner of each Lot shall be liable to the Association for all damage to the Common Area improvements (including landscaping) caused by such Owner, his agents, employees, guests, invitees or pets, except for that portion of damage covered by insurance carried by the Association. The responsible Owner shall be charged with the cost of repairing such damage (including interest thereon) as described in section 5.1A.

7.13 Leasing of Lots. No Owner shall be permitted to lease his Unit for any period less than one hundred eighty (180) days. Any lease shall be in writing and shall be subject in all respects to the provisions of the Declaration, the Bylaws and the Rules, and any failure of the tenant to comply with the foregoing shall be a default under the lease, regardless of whether the lease so provides. In the event of such a default, the Owner immediately shall take all action to cure the default including, if necessary, eviction of the tenant. All Owners leasing their Lots shall promptly notify the Secretary of the Association in writing of the names of all tenants and Members of tenant's family occupying such Lot and of the address and telephone number where the tenant and such Owner can be reached. Owners remain fully responsible for any Lessee's non-compliance with the Declaration, Bylaws and Rules. Lots 53-62 are exempt from the minimum leasing term requirements.

7.14 Commonly Metered Utilities. The Board may establish restrictions regarding the individual use of any utility on a common meter, if any, and may impose reasonable charges for the individual use thereof.

7.15 Activities Causing Increase in Insurance Rates. Nothing shall be done or kept on any Lot or in any improvements constructed thereon, or in the Common Area, which will increase any applicable rate of insurance or which will result in the cancellation of

insurance on any Lot or any part of the Common Area, or which would be in violation of any law.

7.16 Temporary Structures. No structure, facility or appurtenance of a temporary character shall be placed upon any Lot except in accordance with the Rules.

7.17 Owner's Right and Obligation to Maintain and Repair. Each Owner shall, at his/her sole cost and expense, maintain and repair his Unit and Lot and all improvements and /the lawn and landscaping thereon, including snow removal, keeping the same in good condition, provided, however, the obligation to maintain the Lot may be delegated to the Association. In the event an Owner of any Lot shall fail to so maintain his/her Lot, the Association's agents may, after notice and a hearing as provided in the Bylaws, enter the Lot and perform the necessary maintenance. The cost of such maintenance shall immediately be paid to the Association by the Owner of such Lot, together with interest at the rate of twelve percent (12%) per annum (but not to exceed the maximum interest rate authorized by law) from the date the cost was incurred by the Association until the date the cost is paid by the Owner.

7.18 Timeshare and Fractional Ownership Prohibition. No Lot or Lots, Condominium Units or Units in a multifamily dwelling, or any portion thereof in the Project shall be leased, subleased, occupied, rented, let, sublet, or used for or in connection with any time sharing or fractional agreement, plan, program or arrangement, including, without limitation, any so called "vacation license," "travel club," "extended vacation," or other membership or time interval ownership arrangement; provided, however, a Lot or Unit may, with the prior written permission of Declarant (to be granted within Declarant's sole discretion) create a fractional program. The term "time sharing" as used herein shall be deemed to include, but shall not be limited to, any agreement, plan, program, or arrangement under which the right to use, occupy, or possess the Lot, or any portion thereof, rotates among various Persons, either corporate, partnership, individual, or otherwise, on a periodically recurring basis for value exchanged, whether monetary or like kind use privileges, according to a fixed or floating interval or period of time. This section shall not be construed to limit the personal use of any Lot or any portion thereof in the Project by any Owner or his or her social or familial guests.

7.19 High Groundwater Note. Owners are hereby informed that areas of high groundwater and outside shallow flooding areas exist within the Project (see also, Article XIV). In addition, agricultural practices in the area can artificially raise groundwater levels during certain times of the year. It is recommended that Owners consult with a qualified Consulting Professional Engineer licensed in the State of Montana prior to initiating construction of full or partial basements in order to determine if groundwater could impact the planned structure and what mitigation actions might be taken.

7.20 Golf and Social Memberships. Each Owner of a Lot is required to be a Social Member or Golf Member of the Club and are subject to the The Black Bull Golf Club Membership plan as from time to time amended. Golf Memberships include a Social Membership, but a Social Membership does not carry with it any rights to use the Golf Facilities except the Clubhouse.

Details of membership rights and privileges are set forth in the Golf Club Documents. Units in a multifamily dwelling are exempt from the Social and Golf Membership requirements.

ARTICLE VIII PROJECT DEVELOPMENT AND LANDSCAPE GUIDELINES

All site improvement plans shall be reviewed and approved by Declarant or the Committee prior to commencement of construction or alteration. Minor adjustments to the homesite and landscaping after initial construction shall not require submittal of plans. Minor adjustments shall include replacement of dead or dying vegetation and the addition of trees, shrubs or other landscaping features providing that such additions are consistent with the Black Bull Subdivision Design and Landscape Guidelines.

8.1 **Driveways.** All driveways and parking areas shall be surfaced with asphalt or concrete.

8.2 **Driveway Swale Prohibitions.** No Lot owner shall fill or obstruct the natural flow of any borrow ditch or drainage swale with the exception of the materials placed for the location of the driveway culvert. No barrow ditches may be filled.

8.3 **Kennels.** In general, kennels are discouraged in favor of the "invisible fence" system. A kennel shall not exceed 300 square feet. Kennels or dog runs must be placed within the area allowable for side or rear yard fencing. Kennels shall be integrated into the dwelling (attached) to avoid isolation and to provide as much aesthetic appeal as possible. Kennels shall not be higher than six (6') feet in height and must be built using the same building materials as Privacy Screening. Kennels must be kept clean and free from obnoxious odors or undue barking dogs. All kennels and dog runs must be approved by the Committee.

8.4 **Fences.** One of the primary goals of the Project is to create an atmosphere that is open and friendly. Because of the importance of this goal perimeter lot fencing will not be allowed in this subdivision. Dog runs, kennels, and electric invisible fence are to be used for constraining dogs. The Committee may approve fencing consistent with the Design Guidelines.

8.5 **Privacy Screening.** Privacy screens will be allowed but must be constructed of wood siding, stucco, brick, or stone, and they shall be an integrated part of the main building. Privacy Screening shall not extend into more than 1/3 of the required setback on the front or sides, nor more than 1/3 of the setback on the rear elevation, nor be more than 1/3 the width of the structure on the front (street) or rear elevation, nor 2/3 the length on the side elevations. Plans for privacy screening must be submitted and approved by the Committee.

8.6 **Antennas and Satellite Dishes.** Only smaller dishes of the latest technology (not exceeding two feet in diameter) will be allowed. Such dishes must be hidden from view and shall require Committee approval.

8.7 Exterior Lighting. Exterior Lighted Address plaque shall be installed so that it is visible from the street with downcast lighting. The lighted fixture will be chosen at the discretion of the Board. All other exterior lighting types and locations must be approved by the Committee, who will approve lighting choices and locations that are unobtrusive, deflect down/away from adjoining properties and are compatible with the architecture and site design.

8.8 Utilities. All utilities including, but not limited to, natural gas, electricity, telephone and cable T.V. shall be located underground.

8.9 No Storage Sheds. Storage needs should be anticipated in the planning stage and will be required to be an integral part of the design of the garage so that all storage is within the garage or attached structure.

8.10 Temporary Structures. No temporary structures, trailers, campers, motor homes, tents, shacks, or similar structures shall be used as a residence on any Lot. No permanent basketball hoops are allowed. Temporary hoops may remain outside from Memorial Day through Labor Day. Outside of those dates such hoops shall be stored as required by the Rules.

8.11 Solid Waste Containers. All solid waste containers must be stored out of view except during reasonable periods prior to and after pick-up, and only on day of pick-up.

8.12 Recreational Vehicles. Recreational vehicles and boats may not be stored or parked at any location within the Project except within a fully enclosed garage or designated area approved by the Association so as not to be visible from the Common Area or from any other Lot within the Project. Such vehicles and boats may be temporarily parked for purposes of loading and unloading, such time not to exceed 24 hours.

8.13 Flagpoles. Flagpoles may be permitted upon approval of the Architectural Committee and shall be reviewed on a case by case basis.

8.14 Irrigation Systems. A connection to each homes irrigation system must be provided outside the home in such fashion as to allow access to blow out the lines on a seasonal basis.

ARTICLE IX INSURANCE; DAMAGE OR DESTRUCTION; CONDEMNATION

9.1 Insurance. The Association shall obtain and maintain the following insurance:

- (1) a hazard policy insuring all improvements, equipment, and fixtures owned by the Association, unless the Board determines, in its sole discretion,

that such insurance is not necessary;

(2) a comprehensive general liability policy insuring the Association, its agents, the Owners and their respective family Members, against liability incident to the ownership or use of the Common Area or any other Association owned or maintained real or personal property (in occurrence version form if obtainable); the amount of general liability insurance which the Association shall carry at all times shall be not less than the minimum amounts required by Montana law;

(3) workers' compensation insurance to the extent required by law (or such greater amount as the Board deems necessary); the Association shall obtain a Certificate of Insurance naming it as an additional insured in regard to workers' compensation claims from any independent contractor who performs any service for the Association, if the receipt of such a certificate is practicable;

(4) fidelity bonds or insurance covering officers, directors, and employees that have access to any Association funds;

(5) officers and directors liability insurance in the minimum amounts required by Montana law;

(6) flood insurance if the Project is located in an area designated by an appropriate governmental agency as a special flood hazard area;

(7) earthquake insurance to the extent deemed appropriate by the Board, in its discretion, provided same is available at commercially reasonable rates, in the opinion of the Board;

(8) water damage coverage, to the extent deemed appropriate by the Board, in its discretion;

(9) liability for non-owned and hired automobiles; and

(10) such other insurance as the Board in its discretion considers necessary or advisable.

To the extent applicable, the Board may, in its discretion, consider including the following endorsements:

(a) changes in building codes, and demolition coverage (sometimes referred to as "ordinance or law endorsement");

(b) inflation guard coverage;

- (c) "agreed-amount" endorsement (to eliminate a coinsurance problem);
- (d) replacement cost endorsement; or
- (e) primary coverage endorsement.

Each Owner appoints the Association, or any insurance trustee designated by the Association, to act on behalf of the Owners in connection with all insurance matters arising from any insurance policy maintained by the Association, including without limitation, representing the Owners in any proceeding, negotiation, settlement or agreement. Any insurance maintained by the Association shall contain "waiver of subrogation" as to the Association and its officers, directors and Members, the Owners and occupants of the Lots (including Declarant) and Mortgagees, and cross-liability and severability of interest coverage insuring each insured against liability to each other insured. The Association shall periodically (and not less than once every three years) review all insurance policies maintained by the Association to determine the adequacy of the coverage and to adjust the policies accordingly.

All individually owned insurance shall contain a waiver of subrogation as to the Association and its officers, directors and Members, the Owners and occupants of the Lots and Mortgagees, and all Members are deemed to have waived subrogation rights as to the Association and/or other Members, whether or not their policies so provide.

Each Owner shall be responsible for obtaining, maintaining and paying for such insurance as the Owner may deem reasonably necessary with respect to fire, casualty and liability involving such Owner's Lot and all improvements and property thereon. All such individually carried insurance shall contain a waiver of subrogation by the carrier as to the other Owners, the Association, Declarant, and the Mortgagees of such Lot.

The Association shall make available to Members upon request copies of the Association's policies to enable Members to insure their Lots without duplicating insurance carried by the Association.

The Association, and its directors and officers, shall have no liability to any Owner or Mortgagee if, after a good faith effort, it is unable to obtain the insurance required hereunder, because the insurance is no longer available or, if available, can be obtained only at a cost that the Board in its sole discretion determines is unreasonable under the circumstances, or the Members fail to approve any Assessment increase needed to fund the insurance premiums. In such event, the Board immediately shall notify each Member and any Mortgagee entitled to notice that the insurance will not be obtained or renewed.

9.2 Damage or Destruction. If any improvements or landscaping on any Lot are damaged or destroyed by fire or other casualty, the Owner of such Lot may repair or reconstruct the improvement only in accordance with the plans and specifications approved by the Association or its representative as provided herein including but not

limited to approval by the Committee. In the event that such an Owner elects not to rebuild any structures, said Owner shall be responsible for promptly removing from the Lot any and all debris, including any portion of a structure which may remain standing after partial damage or destruction, and the Owner shall landscape the Lot in the manner approved by the Committee and the Association. If such an Owner elects to rebuild the damaged or destroyed improvements, the Owner of such Lot is responsible for the cost of all such reconstruction that is not covered by insurance or is within the deductible amount. If an Owner fails to pay the cost of required demolition or re-landscaping, the Association may elect to pay for the uninsured portion of the cost and shall have the right to assess the Owner for the cost thereof and to enforce the Assessment as provided in this Declaration.

If Common Area improvements are damaged or destroyed by fire or other casualty, the improvements shall be repaired or reconstructed substantially in accordance with the original as-built plans and specifications, modified as may be required by applicable building codes and regulations in force at the time of such repair or reconstruction, and subject to such alterations or upgrades as may be approved by the Architectural Control Committee, unless either of the following occurs: (1) the cost of repair or reconstruction is more than fifty percent (50%) of the current replacement cost of all Common Area improvements, available insurance proceeds are not sufficient to pay for at least eighty-five percent (85%) of the cost of such repairs or reconstruction, and three-fourths (3/4) of the total voting power of the Association vote against such repair and reconstruction; or (2) available insurance proceeds are not sufficient to substantially repair or reconstruct the improvements within a reasonable time as determined by the Board, a special Assessment levied to supplement the insurance fails to receive the requisite approval (if such approval is required) as provided in section 4.4, and the Board, without the requirement of approval by the Owners, is unable to supplement the insurance by borrowing on behalf of the Association sufficient monies to enable the improvements to be substantially repaired or reconstructed within a reasonable time.

A. Process For Repair or Reconstruction of Common Area Improvements: If the Common Area improvement is to be repaired or reconstructed and the cost for repair or reconstruction is in excess of twenty-five percent (25%) of the current replacement cost of all the Common Area improvements in the Project, the Board shall designate a construction consultant, a general contractor, and an architect for the repair or reconstruction. All insurance proceeds, Association monies allocated for the repair or reconstruction, and any borrowings by the Association for the repair or reconstruction shall be deposited with a commercial lending institution experienced in the disbursement of construction loan funds (the "depository") as selected by the Board. Funds shall be disbursed in accordance with the normal construction loan practices of the depository that require as a minimum that the construction consultant, general contractor and architect certify within ten (10) days prior to any disbursement substantially the following:

- (1) that all of the work completed as of the date of such request for disbursement has been done in compliance with the approved plans and specifications;

- (2) that such disbursement request represents monies which either have been paid by or on behalf of the construction consultant, the general contractor or the architect and/or are justly due to contractors, subcontractors, material men, engineers, or other Persons (whose name and address shall be stated) who have rendered or furnished certain services or materials for the work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the respective amounts paid or due to each of said Persons in respect thereof and stating the progress of the work up to the date of said certificate;
- (3) that the sum then requested to be disbursed plus all sums previously disbursed does not exceed the cost of the work insofar as actually accomplished up to the date of such certificate;
- (4) that no part of the cost of the services and materials described in the foregoing paragraph 8.2A(1) has been or is being made the basis for the disbursement of any funds in any previous or then pending application; and
- (5) that the amount held by the depository, after payment of the amount requested in the pending disbursement request, will be sufficient to pay in full the costs necessary to complete the repair or reconstruction.

If the cost of repair or reconstruction is less than twenty-five percent (25%) of the current replacement cost of all the Common Area improvements in the Project, the Board shall disburse the available funds for the repair and reconstruction under such procedures as the Board deems appropriate under the circumstances.

The repair or reconstruction shall commence no later than ninety (90) days after the date of such damage or destruction and shall be completed no later than one hundred eighty (180) days after commencement of reconstruction, subject to delays that are beyond the control of the party responsible for making the repairs. Steps shall be taken as reasonably necessary to secure any hazardous condition and to screen any unsightly views resulting from the damage or destruction.

In the event the work required to maintain or to repair or restore damage or destruction involves work that is the responsibility of Owner and the Association, then all of such work shall be directed by the Board, with the expense to be allocated as appropriate between Owner and the Association. If more than one Owner is involved, the expense to be paid by each Owner shall be apportioned by the Board.

If the Association undertakes any work which this Declaration requires an Owner to undertake, or any work which, pursuant to this Declaration, the Association is required to undertake at the expense of the Owner, the Board shall assess the Lot of the Owner for such work and shall so inform the Owner thereof in writing; provided, however, that

the Assessment shall be reduced by the amount of any insurance proceeds paid to the Association as a result of damage to or destruction of the Lot involved. Such Assessment shall be a lien upon the Lot of the Owner and may be foreclosed, as set forth in section 4. 10.

B. Process If Repair or Reconstruction Not Undertaken: If the Common Area improvement is not repaired or reconstructed in accordance with the foregoing, all available insurance proceeds shall be disbursed among all Owners and their respective Mortgagees in the same proportion that the Owners are assessed, subject to the rights of the Owners' Mortgagees, after first applying the proceeds to the cost of mitigating hazardous conditions on the Project, making provision for the continuance of public liability insurance to protect the interests of the Owners until the property can be sold, and complying with all other applicable requirements of governmental agencies.

9.3 Condemnation. If all or any part of a Lot (except the Common Area) is taken by eminent domain, the award shall be disbursed to the Owner of the Lot, subject to the rights of the Owner's Mortgagees. If the taking renders the Lot uninhabitable, the Owner shall be divested of any further interest in the Project, including Membership in the Association, and the interest of the remaining Owners shall be adjusted accordingly. If all or any part of the Common Area is taken by eminent domain, the proceeds of condemnation shall be used to restore or replace the portion of the Common Area affected by condemnation, if restoration or replacement is impossible, and any remaining funds, after payment of any and all fees and expenses incurred by the Association relating to such condemnation, shall be distributed among the Owners in the same proportion as such Owners are assessed, subject to the rights of Mortgagees. If necessary, the remaining portion of the Project shall be resurveyed to reflect such taking. The Association shall participate in the negotiation and shall propose the method of division of the proceeds of condemnation, where Lots are not valued separately by the condemning authority or by the court. The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Area or part thereof.

ARTICLE X GENERAL PROVISIONS

10.1 Enforcement. Subject to the provisions and requirements of Article X, 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, the Articles and the Bylaws, and in such action shall be entitled to recover reasonable attorneys' fees as are ordered by the Court. The Association has the right to record a Notice of Violation against the Lot of an Owner who is not in compliance with the provisions of the Project Documents. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

10.2 Invalidity of Any Provision. Should any provision or portion hereof be declared invalid or in conflict with any law of the jurisdiction where this Project is situated, the validity of all other provisions and portions hereof shall remain unaffected and in full force and effect.

10.3 Term. The covenants and restrictions of this Declaration shall run with and bind the Project, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of sixty (60) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners of the Lots, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions in whole or in part, or to terminate the same.

10.4 Amendments. Prior to sale of ninety percent (90%) of the Lots planned for the overall Project (including subsequently planned phases), the Declarant may amend this Declaration without the consent of the Owners or the Association. After sale of ninety percent (90%) of the Lots planned for the overall Project (including subsequently planned phases), this Declaration may be amended only by the affirmative vote (in person or by proxy) or written consent of Members representing a majority of the total voting power of the Association. However, the percentage of voting power necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment must be certified in a writing executed and acknowledged by the Association President or Vice President and recorded in the Gallatin County Clerk & Recorder's Office. No amendment shall adversely affect the rights of the holder of any Mortgage of record prior to the recordation of such amendment.

10.5 Limitation of Restrictions on Declarant. Declarant is undertaking the work of construction of improvements upon the Project. The completion of that work and the sale of said Lots are essential to the establishment and welfare of the Project as a residential community. In order that said work may be completed and said Project be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

- A. Prevent Declarant, its contractors, or subcontractors from doing on the Project or any Lot, whatever is reasonably necessary or advisable in connection with the completion of said work; or
- B. Prevent Declarant or its representatives from erecting, constructing and maintaining on the Project (except upon Lots owned by others), such structures as may be reasonable and necessary for developing said Project as a residential community and disposing of the same by sale, including a sales office and design center; or

- C. Prevent Declarant from conducting on the Project (except upon Lots owned by others) its business of completing said work and of establishing a plan of residential ownership and of disposing of the Lots and Units by sale;
or
- D. Prevent Declarant from maintaining or displaying such signs, pennants and flags(s) on the Project (except upon Lots owned by others) as may be necessary for the sale, lease or disposition thereof, or
- E. Subject Declarant to the architectural control provisions of Article VI for the construction of any improvement on the Project.
- F. Prevent Declarant from exercising the following rights: Declarant reserves and shall have the right and easement, both while Declarant is still the Owner of Lots in the Project and thereafter, to enter upon the Project, and all portions thereof, for purposes of inspecting and correcting any alleged defect in the design or construction of improvements in the Project.

The foregoing rights of Declarant shall, except as provided in Section 10.5F, terminate upon the sale by Declarant of all Lots in the Project. Until such time, said rights shall constitute easements reserved by Declarant for the benefit of Declarant and any Lots or property owned by Declarant within the Project.

So long as Declarant, or its successors and assigns, owns one or more of the Lots described herein, Declarant, or its successors and assigns, shall be subject to the provisions of this Declaration. Declarant shall make reasonable efforts to avoid disturbing the use and enjoyment of Lots and the Common Area by their Owners, while completing any work necessary to said Lots or Common Area.

10.6 Termination of Any Responsibility of Declarant. In the event Declarant shall convey all of its rights, title and interest in and to the Project to any successor Person or entity, then and in such event, Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such successor Person or entity shall be obligated to perform all such duties and obligations of the Declarant.

10.7 Owners' Compliance. Each Owner, tenant or occupant of a Lot shall comply with the provisions of this Declaration, and (to the extent they are not in conflict with the Declaration) the Articles, Bylaws and Rules, and the decisions and resolutions of the Association or the Board, as lawfully amended from time to time. Failure to comply with any such provisions, decisions, or resolutions shall be grounds for an action (1) to recover sums due, (2) for damages, (3) for injunctive relief, (4) for costs and attorney's fees, or (5) any combination of the foregoing.

In the event of a violation of the Project Documents, the Association may record a Notice of Violation against the Lot of the non-complying Owner. Upon recording a Notice of Violation, the Association shall have complete discretion in deciding whether, when and how to proceed with enforcement, and any delay after recording a Notice of Violation shall not give rise to

a defense of waiver or estoppel in favor of a noncomplying Owner. The Association may take action to enforce compliance against a subsequent Owner who acquires a Lot with a recorded Notice of Violation. The right of the Association to record a Notice of Violation shall be in addition to all other rights and remedies the Association may have at law or under the Project Documents.

All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in this Declaration, or in the Articles or the Bylaws, shall be deemed to be binding on all Owners, their successors and assigns.

10.8 Notice. Any notice permitted or required by the Declaration, Articles or Bylaws may be delivered either personally or by mail. If delivery is by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, first class or registered, postage prepaid, addressed to the person to be notified at the current address given by such person to the Secretary of the Board or addressed to the Lot of such person if no address has been given to the Secretary.

10.9 No Discrimination. No Owner shall, either directly or indirectly, forbid or restrict the conveyance, encumbrance, leasing, or mortgaging, or occupancy of his Lot to any person of a specified race, sex, adulthood, marital status, color, religion, ancestry, physical handicap, or national origin.

10.10 Alternative Dispute Resolution. Alternative dispute resolution procedures shall be applicable and implemented as provided in Article XI hereof.

10.11 Number; Gender. The singular and plural number and the masculine, feminine and neuter gender shall each include the other where the context requires.

10.12 Captions. The captions and headings herein are for convenience only and shall not be used to limit or expand the terms or provisions hereof.

10.13 Exhibits. All Exhibits are deemed incorporated herein by reference as though set forth in full.

10.14 Compliance with FHA, VA, FHLMC or FNMA Requirements. If Declarant chooses a financing program that involves Mortgage insurance issued by a government agency such as the FHA or VA, or involves first Mortgage sales to an agency such as FHLMC or FNMA, the Association, the Board and each Owner shall take reasonable steps to satisfy the requirements of such program and/or agency including, without limitation, initiating and completing amendments to the Project Documents.

10.15 Power of Attorney. Each Owner hereby appoints the Declarant as his or her attorney-in-fact and grants the Declarant all necessary authority so that the Declarant may file any amendment authorized by the process described herein.

ARTICLE XI ENFORCEMENT

11.1 Priority and Defined Terms. The terms and provisions of this Article shall have priority over and supersede any inconsistent terms or provisions contained in any other Articles or portions of this Declaration. The defined (initially capitalized) terms contained in this Article shall be in addition to defined terms set forth in Article I hereof.

11.2 Enforcement and Nonwaiver.

11.2.1 Rights of Enforcement of Project Documents. The Association, the Club Home Owners Association (with respect to an assessment or rule promulgated by the Club Home Owners Association) shall have a right of action against the Association, to enforce by proceedings at law or in equity, all restrictions, conditions, covenants and reservations, now or hereafter imposed by the provisions of the Project Documents or any amendment thereto, including the right to prevent the violation of such restrictions, conditions, covenants, or reservations and the right to recover damages or other dues for such violation except that Owners shall not have any right of enforcement concerning liens for Assessments. The Association shall have the exclusive right to the enforcement of provisions relating to architectural control and the Rules, unless the Association refuses or is unable to effectuate such enforcement, in which case any Owner who otherwise has standing shall have the right to undertake such enforcement. Failure of the Association, Declarant or any Owner to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

11.3 Agreement to Avoid Litigation. The Declarant, the Association, its officers, directors, and committee members, all Persons subject to this Declaration, any Builder, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively "Bound Parties") agree to encourage the amicable resolution of disputes involving the Properties, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that those claims, grievances or disputes described in Section 11.5 ("Claims") shall be resolved using the procedures set forth in Section 11.6 in lieu of filing suit in any court.

11.4 Claims. Unless specifically exempted below, all claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of the Project Documents, or the rights and duties of any Bound Party under the Project Documents or relating to the design or construction of improvements on the Lots shall be subject to the provisions of Section 11.5.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 11.5:

A. any suit by the Association against any Bound Party to enforce the provisions of Article IV (Assessments);

B. any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article VI (Architectural Controls) and Article VII (Use Restrictions).

C. any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Project Documents; and

D. any suit in which any indispensable party is not a Bound Party.

11.5 Mandatory Procedures.

A. Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (collectively the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

1. the nature of the Claim, including the Persons involved and Respondent's role in the Claim;
2. the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
3. Claimant's proposed remedy; and
4. that Claimant will meet the Respondent to discuss in good faith ways to resolve the Claim.

B. Negotiation and Mediation.

1. The parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation.

2. If the Parties do not resolve the Claim within thirty (30) days of the date of the Notice (or within such period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have 30 days to submit the Claim to mediation under the auspices of an independent agency providing dispute resolution services in Montana.

3. If Claimant does not submit the Claim to mediation within 30 days after Termination of Negotiations, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

4. Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation process, or within such time as determined by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

5. Within five (5) days of the Termination of Mediation, the Claimant shall make a final settlement demand ("Settlement Demand") to the Respondent and Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

C. Arbitration.

1. If the parties do not agree in writing to a settlement of the Claim within fifteen (15) days of the Termination of Mediation, the Claimant shall have 15 additional days to submit the Claim to arbitration in accordance with the rules of the American Arbitration Association. If not timely submitted to arbitration or if the Claimant fails to appear for the arbitration proceeding, the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons other than Claimant.

2. This subsection (C) is an agreement to arbitrate and is specifically enforceable under applicable arbitration laws. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Montana.

11.6 Allocation of Costs of Resolving Claims.

(a) Subject to Section 11.6.2, each party shall bear its own costs, including any attorney's fees incurred, and each Party shall share equally all charges rendered by the mediator(s) and all filing fees and costs of conducting the arbitration proceeding ("Post Mediation Costs").

(b) Any award which is equal to or more favorable to Claimant than Claimant's Settlement Demand shall add to Claimant's Post Mediation Costs to the Award, such costs to be borne equally by all Respondents. Any award which is equal to or less favorable to Claimant than any Respondent's Settlement Offer shall award to such Respondent its Post Mediation Costs.

11.7 Enforcement of Resolution. After resolution of any Claim, if any Party fails to abide by the terms of any agreement or binding Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorney's fees and court costs.

11.8 Agreement for Dispute Resolution Waivers of Jury Trial and Award of Punitive Damages. DECLARANT, AND BY ACCEPTING A DEED OR CONVEYANCE TO THE COMMON AREA OR A LOT, AS THE CASE MAY BE, THE ASSOCIATION AND EACH OWNER, AGREE TO HAVE ANY DISPUTE RESOLVED ACCORDING TO THE PROVISIONS OF THIS ARTICLE XI AND WAIVE THEIR RESPECTIVE RIGHTS TO PURSUE ANY DISPUTE IN ANY MANNER OTHER THAN AS PROVIDED IN THIS ARTICLE X. SUCH PARTIES ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DISPUTES AS PROVIDED IN THIS ARTICLE XI. THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH DISPUTES TRIED BEFORE A JURY AND FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE DAMAGES RELATING TO SUCH DISPUTES, THEREBY GIVING UP ANY RIGHTS SUCH PARTIES MAY POSSESS TO SUCH REMEDIES. THIS ARTICLE XI SHALL NOT BE AMENDED WITHOUT DECLARANT'S PRIOR WRITTEN CONSENT.

**ARTICLE XII
GOLF COURSE**

12.1 Golf Course. Each Lot and the Common Area are burdened with the following non-exclusive easements: (a) an easement permitting errant golf balls to come upon the Lots and Common Area in the vicinity of the Adjacent Property, and for golfers and the Operator, at reasonable times and in a reasonable manner, to come upon the exterior portions of Lots and Common Area to retrieve errant golf balls, although they shall have no obligation to retrieve any such golf balls, (b) an easement for the Operator for access and use over those portions of the Common Area reasonably necessary for the use, operation, maintenance, repair and replacement

of the golf course on the Adjacent Property, and (c) an easement for overspray of water and other materials used in the normal maintenance and care of such golf course, including operation of any irrigation system. Each Owner, for itself and its Guests, acknowledges that the proximity of Lots and Common Area to the Adjacent Property results in certain foreseeable risks, including risks of damage or injury from the use or exercise of any of the foregoing easements, and assumes such risks. Under no circumstances shall any of the following persons have any obligation to remove, alleviate or protect against any such risk, or be liable for any damage or injury arising out of or resulting from any errant golf balls: the Association, the Declarant, the Operator, any successor or assign of any thereof, or any officer, director, partner, shareholder, member or employee of any of the foregoing, as well as the individual who struck the errant golf ball unless it is determined that such person was negligent in his or her actions.

12.2 Assumption of Risk and Indemnification. Each Owner, by its purchase of a Lot in the vicinity of any golf course, hereby expressly assumes the risk of noise, personal injury or property damage caused by maintenance and operation of any such golf course, including, without limitation: (a) noise from maintenance equipment (it being specifically understood that such maintenance typically takes place around sunrise or sunset), (b) noise caused by golfers, (c) use of pesticides, herbicides and fertilizers, (d) use of effluent in the irrigation of the golf course, (e) reduction in privacy caused by constant golf traffic on the golf course or the removal or pruning of shrubbery or trees on the golf course, (f) errant golf balls and golf clubs, and (g) design of the golf course.

Each such Owner agrees that neither Declarant, the Association nor any of Declarant's affiliates or agents shall be liable to Owner or any other person claiming any loss or damage, including, without limitation, indirect, special or consequential loss or damage arising from personal injury, destruction of property, trespass, loss of enjoyment or any other alleged wrong entitlement to remedy based upon, due to, arising from or otherwise related to the proximity of Owner's Lot to the golf course, including, without limitation, any claim arising in whole or in part from the negligence of Declarant, any of Declarant's affiliates or agents or the Association. The Owner hereby agrees to indemnify and hold harmless Declarant, Declarant's affiliates and agents and the Association against any and all claims by Owner's visitors, tenants and others upon such Owner's Lot.

12.3 View Impairment. Neither the Declarant nor the Association guarantees or represents that any view over and across any golf course from adjacent Lots will be preserved without impairment. No provision of this Declaration shall be deemed to create an obligation of the Association or the Declarant to relocate, prune, or thin trees or other landscaping except as provided in Article V. The owner of the golf course, if any, may, in its sole and absolute discretion, change the location, configuration, size and elevation of the trees, bunkers, fairways and greens on such golf course from time to time. Any such additions or changes to such golf course may diminish or obstruct any view from the Lots and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed. Any such addition or change to any golf course may not adversely affect drainage flow across the Properties.

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**ARTICLE XIII
SPECIAL DECLARANT RIGHTS**

13.1 Special Declarant Rights. Declarant reserves the following Declarant Rights during the Development Period ("Special Declarant Rights"), which may be exercised, where applicable, anywhere within the Project:

- A. To complete any improvements indicated on Plat Maps or development plans filed with the Declaration or the Master Plan on the Property or any Annexed Property;
- B. To exercise a Development Right;
- C. To maintain sales offices, management offices, signs advertising on the Project as set forth in section 13.3;
- D. To use easements through the Common Area for the purpose of making improvements within the Project;
- E. To merge or consolidate the Association with another common interest community of the same form of ownership or make it subject to a master association;
- F. To operate a resale or rental office on site after all the Lots has been developed, sold and completed; and
- G. To exercise any rights granted to the Declarant by these Covenants.

13.2 Transfer of Special Declarant Rights.

A. Assignment. Declarant may assign any Special Declarant Rights, Development Rights, or other special rights and obligations of Declarant set forth in this Declaration or the Bylaws to any affiliate of Declarant, or Declarant may allow any affiliate of Declarant to exercise such rights on behalf of Declarant. The method of exercising such rights shall be subject to the agreement of the parties thereto, which shall not require recordation in the Public Records.

B. Transfer. Any or all Special Declarant Rights identified in this section, Development Rights, or any of the other special rights and obligations of Declarant set forth in this Declaration or the Bylaws may be transferred in whole or in part to other Persons, provided that the transfer shall not reduce an obligation nor enlarge la right beyond that which Declarant has under this Declaration or the Bylaws. No such transfer shall be effective unless it is in a written instrument signed by Declarant and duly recorded in the Public Records.

13.3 Models, Sales Offices and Management Offices. During the Development Period, Declarant may maintain and carry on upon any Lot owned by Declarant or any portion of the Common Area such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the sale of Lots and construction of Units on the Lots, including, but not limited to, business offices, signs, model units, marketing trails, and sales offices. Declarant shall have easements for access to and use of such facilities. Declarant's unilateral right to use the Common Area for purposes stated in this section shall not be exclusive and shall not unreasonably interfere with use of such Common Area by Owners unless leased pursuant to a lease agreement with the Association providing for payment of reasonable rent.

13.4 Construction of Improvements. Declarant and its employees, agents and designees shall also have a right and easement during the Development Period over and upon all of the Common Area for the purpose of making, constructing and installing such improvements to the Common Area as it deems appropriate in its sole discretion.

13.5 Other Covenants Prohibited. During the Development Period, no Person other than Declarant shall record any declaration of covenants, conditions and restrictions, or similar instrument affecting any portion of the Project without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by Declarant and recorded in the Public Records.

13.6 Master Planned Community. Each Owner, by accepting title to a Lot or Unit and becoming an Owner, and each other Person, by acquiring any interest in the Lots, acknowledges awareness that the Project is a master planned community, the development of which is likely to extend over many years, and agrees not to protest or otherwise object to (a) zoning or changes in zoning or to uses of, or changes in density of, the Project (other than within said Owner's or other Person's Neighborhood) during the Development Period, or (b) changes in any conceptual or master plan for the Project; provided, such revision is or would be lawful (including, but not limited to, lawful by special use permit, variance or the like) and is not inconsistent with what is permitted by the Declaration (as amended from time to time).

13.7 Equal Treatment. So long as Declarant owns any property described in Exhibit A, the Association shall not, without prior written consent of Declarant, adopt any policy, rule or procedure that:

- A. Limits the access of Declarant, its successors, assigns and/or affiliates or their personnel from advertising, marketing or using the Association or its Common Areas or any property owned by any of them in promotional materials;
- B. Limits or prevents Declarant, its successors, assigns and/or affiliates or their personnel from advertising, marketing or using the Association or its Common Areas or any property owned by any of them in promotional materials;

C. Limits or prevents Owners of Units from becoming members of the Association or enjoying full use of its Common Areas, subject to the membership provisions of this Declaration and the Bylaws;

D. Discriminates against or singles out any group of Association members or prospective members or Declarant that discriminates against or singles out any group or Association members or Declarant;

E. Impacts the ability of Declarant, its successors, assigns and/or affiliates, to carry out to completion its development plan and related construction activities for the Project as such may be amended and updated from time to time, including Declarant's right to easements for development and construction of residential units and related landscaping activities; or

F. Impacts the ability of Declarant, its successors, assigns and/or affiliates to develop and conduct customer service programs and activities in a customary and reasonable manner. The Association shall not exercise its authority over the Common Areas (including, but not limited to, any gated entrances and other means of access to the Project) to interfere with the rights of Declarant set forth in this Declaration or to impede access to any portion of the Project over the streets and other Common Areas within the Project.

13.8 Right to Use Common Area for Special Events. As long as Declarant owns any property described in Exhibit A (as amended from time to time), Declarant shall have the right to use all Common Area, including any recreational facilities, for up to eight days each year to sponsor special events for charitable, philanthropic, political or marketing purposes as determined by Declarant in its sole discretion. Any such event shall be subject to the following conditions.

A. the availability of the facilities at the time a request is submitted to the Association;

B. Declarant shall pay all costs and expenses incurred and shall indemnify the Association against any loss or damage resulting from the special event; and

C. Declarant shall return the facilities and personal property owned by the Association and used in conjunction with the special event to the Association in the same condition as existed prior to the special events.

Declarant shall have the right to assign the rights contained in this section 13.8 to charitable organizations or foundations selected by Declarant. Declarant's right to use the Common Area for special events shall be enforceable by injunction, by any other remedy in law or equity, and by the terms of this Declaration.

13.9 Amendment. This Article shall not be amended without the prior written consent of Declarant so long as Declarant owns any property described in Exhibit A (as amended from

time to time). The rights contained in this Article shall terminate as specifically provided in the Act, or upon the earlier of (a) 30 years after the conveyance of the first Lot to an Owner, or (b) upon recording by Declarant of a written statement that all sales activity has ceased. Thereafter, Declarant may continue to use the Common Areas for purposes stated in this Article only pursuant to a rental or lease agreement between Declarant and the Association which provides for rental payments based on the fair market value of any such portion of the Common Areas.

13.10 Perpetual Right to Use Office. Notwithstanding anything stated in this Article XIII to the contrary, Declarant shall have the perpetual right to use an office in any community center constructed by Declarant and transferred to the Association. Declarant shall have the right to use such office for the purpose of managing the Project and for sales, resales, or rentals of Residential Units. The office shall be under the sole control and possession of Declarant, and Declarant shall have perpetual right to use the office rent free. However, Declarant shall pay its pro rata share of maintenance and utility costs for the building in which the office is located.

ARTICLE XIV REQUIREMENTS OF GALLATIN COUNTY

The following conditions have been imposed on the Project by Gallatin County, and shall not be amended or revoked without the consent of the Owner in accordance with the amendment procedures of these Covenants, and the County Commission:

- A. The property owner shall be responsible for the control of County-declared noxious weeds.
- B. Individual lot accesses from County public roads shall be built to the standards of Section 7.G.2 of the Subdivision Regulations.
- C. The control of noxious weeds by the Association on those areas for which the Association is responsible and the control of noxious weeds by individual owners on their respective lots shall be as set forth and specified under the Montana Noxious Weed Control Act (MCA 7-22-2101 through 7-22-2153) and the rules and regulations of the Gallatin County Weed Control District.
- D. The landowner shall be responsible for the control of state and county declared noxious weeds on his or her lot. Both unimproved and improved lots shall be managed for noxious weeds. In the event a landowner does not control the noxious weeds, after 10 days' notice from the property owners' association, the association may cause the noxious weeds to be controlled.

The cost and expense associated with such weed management shall be assessed to the lot and such assessment may become a lien if not paid within 30 days of the mailing of such assessment.

E. Lot owners and residents of the subdivision are informed that nearby uses may be agricultural. Lot owners accept and are aware that standard agricultural and farming practices can result in smoke, dust, animal odors, flies and machinery noise. Standard agricultural practices feature the use of heavy equipment, burning, chemical sprays and the use of machinery early in the morning and sometimes late into the evening.

F. All fences bordering agricultural lands shall be maintained by the property owners, in accordance with state law.

G. All garbage shall be stored in animal-proof containers or be made unavailable to animals.

H. All areas disturbed by construction shall be re-seeded with vegetation types approved by the Gallatin County Weed Control Officer.

I. The private open space (golf course) shall be maintained in accordance with the Golf Course Management Plan (submitted with the original application for Black Bull Major Subdivision).

J. All public and private structures shall be properly designed in accordance with the International Building Code (IBC).

The following Covenants K through U apply specifically to lots in “Shallow Flooding Areas” defined as areas subject to one foot or less of flooding. Lots subject to the following covenants are 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, and 138.

K. Building pads consisting of fill shall be constructed on all lots located in the shallow flooding area. The building pad shall be at least one foot above existing (natural) grade. The building pad shall extend for at least 15 feet, in all directions, at that elevation, beyond any proposed structure.

L. Fill material shall be stable, compacted, well-graded, pervious, generally unaffected by water and frost, devoid of trash or similar foreign matter, devoid of tree stumps or other organic material, and appropriate for the purpose of supporting the intended use and/or permanent structure.

M. The new construction, alterations, and substantial improvements of residential and accessory structures shall be constructed such that the bottom floor elevations are at least three feet above existing (natural) grade.

N. No basements shall be allowed in the shallow flooding area.

O. There shall be no construction or placement of buildings or mobile homes, fences, signs, billboards or other advertising material, or other structures, whether temporary or permanent, on the Land (with the exception of signage and/or benchmarks identifying the boundaries of the areas as described as wetland mitigation areas).

P. There shall be no filling, draining, excavating, dredging, mining, drilling or removal of topsoil, loam, peat, sand, gravel, rock, minerals or other materials within the boundaries and the wetland mitigation areas.

Q. There shall be no building of roads or paths nor any change in the topography of the Land within the boundaries and the wetland mitigation areas.

R. There shall be no removal, destruction, or cutting of trees or plants, spraying with biocides, insecticides, pesticides or herbicides (except to control noxious weeds), grazing of animals, farming, tilling of soil, or other agricultural activity within the boundaries and the wetland mitigation areas.

S. There shall be no operation of snowmobiles, motorcycles, all-terrain vehicles or any other type of motorized vehicles on the Land within the boundaries and the wetland mitigation areas.

T. Upon completion of the monitoring period, an operation and maintenance plan shall be developed. Maintenance within the wetland mitigation areas shall be turned over to the Homeowner's Association and/or subcontracted to the Golf Course Maintenance Staff.

U. The Declarant hereby warrants that it is the owner in fee of the realty described as the Stream Mitigation Areas on Exhibit B ("Land), and that the Land is hereby dedicated in perpetuity for use as a conservancy area.

The Declarant hereby agrees to restrict the use and title of the Land as follows:

1. There shall be no construction or placement of buildings or mobile homes, fences, signs, billboards or other advertising material, or other structures, whether temporary or permanent, on the Land (with the exception of signage and/or benchmarks identifying the boundaries of the areas described as the Stream Mitigation Areas on Exhibit B).

2. There shall be no filling, draining, excavating, dredging, mining, drilling or removal of topsoil, loam, peat, sand, gravel, rock, minerals or other material.

3. There shall be no building of roads or paths nor any change in the topography of the Land.

4. There shall be no removal, destruction, or cutting of trees or plants, spraying with biocides, insecticides, pesticides, or herbicides (except to control noxious weeds), grazing of animals, farming, tilling of soil, or other agricultural activity.

5. There shall be no operation of snowmobiles, motorcycles, all-terrain vehicles or any other type of motorized vehicles on the Land.

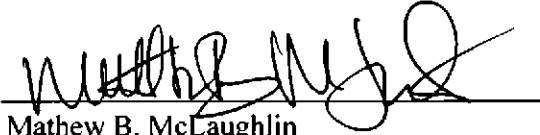
6. The Covenant of Dedication may be changed, modified or revoked only upon written approval of the District Engineer of the Omaha District of the US Army Corps of Engineers. To be effective, such approval must be witnessed, authenticated and recorded pursuant to the law of the State of Montana.

V. These Covenants P through V are made in perpetuity such that the present owner and its heirs and assigns forever shall be bound by the terms and conditions set forth herein.

ARTICLE XV FIRE PROTECTION

The Project receives fire protection services from the Belgrade Rural Fire District (Fire District). The Project has adopted a comprehensive First Protection Plan (Plan) for protection of the Project. Generally, the Plan provides for sprinkler protection for homes and other structures, a water supply system, an approval and inspection process of insuring compliance with the Plan and master signage requirements. The Plan is shown on Exhibit C attached and may be modified from time to time by the Declarant or the Association working in conjunction with the Fire District.

Bridger Basin Homes LLC,
a Montana limited liability company

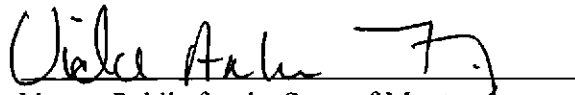
By: 
Name: Mathew B. McLaughlin
Title: Member

STATE OF MONTANA)
 :SS.
COUNTY OF GALLATIN)

On this 24 day of March 2020, before me, a notary public in and for the State of Montana, personally appeared Mathew B. McLaughlin, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity as Member of Bridger Basin Homes LLC, a Montana limited liability company.

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

(SEAL)


Notary Public for the State of Montana

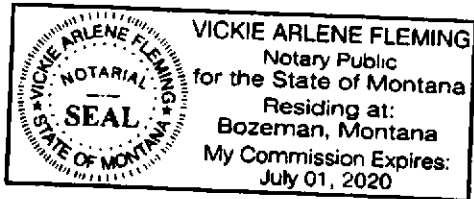


EXHIBIT A

Final Plat of Black Bull Subdivision, Phase 1, located in the NE¼, SE¼ and SW¼ of Section 6, and the NE¼ and NW¼ of Section 7, Township 2 South, Range 5 East, P.M.M., Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the County Clerk and Recorder of Gallatin County, Montana.

EXHIBIT B

[see attached plat map]

EXHIBIT C

FIRE PROTECTION PLAN

1.0 The Developer shall provide, at their expense, the fire protection authority having jurisdiction (FPAHJ) with a detailed site map, including fire protection features (access roads, hydrant systems, water supply points, etc.) that have been installed within the development and addresses for each lot (as approved and provided by the Gallatin County GIS Department). The FPAHJ shall approve all address-related issues. All address-related data, maps and any related information shall be provided to the Gallatin County GIS Department.

2.0 Fire Protection Water Supply System.

2.1 The developer shall provide a Fire Protection Water System in the Black Bull Subdivision consisting of:

2.1.1 Wet hydrants shall be installed throughout the Project as approved by the FPAHJ.

2.1.2 The fire protection water supply system shall be fully operational, having performance certified, using accepted field measures, by a professional engineer, licensed in Montana and approved by the FPAHJ prior to final plat approval.

3.0 Fire Protection Covenants for the Black Bull Subdivision.

3.1 General Fire Protection Requirements.

3.1.1 Any fire protection covenant required as a condition of the preliminary or final plat approval and required by the FPAHJ may not be amended or revoked without the mutual consent of the owners, in accordance with the amendment procedures in the covenants, and Gallatin County Commission. The Gallatin County Commission shall consult the FPAHJ prior to adoption of amendment of the fire protection Covenants.

3.1.2 Prior to construction of any structure, the Association, or a designated committee, shall review and approve all proposed building projects within the subdivision. The Association shall not approve any construction that is not in compliance with all of the fire protection requirements. The FPAHJ shall be made a party to these covenants, for the purpose of enforcement of the fire covenants. Compliance with and enforcement of the fire protection covenants and requirements is the responsibility of the property owners and their Association. Any action by the FPAHJ required to enforce any of these fire protection requirements and covenants shall be at the expense of the property owners.

3.1.4 Residential address signage shall incorporate 6-inch address numbers, with such numbers being made of material with the same reflectivity as Scotchlite 3M product, on a contrasting metal surface, supported by at a 3-foot above grade elevation by a metal support. Signs shall be posted at the intersection of the driveway and the subdivision roadway. The address signs shall face both directions of travel of the roadway serving the driveway. Driveways off cul-de-sac roadways shall post a minimum of one sign facing the direction of travel toward the driveway. The address sign shall be posted a minimum of 3 feet above ground level. Addresses shall be posted at the street prior to any construction activity.

3.1.5 All buildings shall be built in compliance with the current editions of the Uniform Fire Code and Uniform Building Code or successor fire and or building codes adopted by the authorities having jurisdiction.

3.1.6 Maintenance and fire department use of Fire Protection Features, such as fire suppression water supply, accesses to open spaces, etc., must be maintained at minimum of the original performance capability, in perpetuity by and at the expense of the property owners. Performance of all fire protection water supply features shall be tested (using accepted field measures) and certified annually by a professional engineer. Said engineer must be licensed in Montana and approved by the FPAHJ. The results of the annual test shall be submitted in writing to the FPAHJ.

3.1.7 The fire department shall have unrestricted use, in perpetuity and at no cost to the fire department, of the fire protection features described herein, including but not limited to water sources, pumps, and hydrants.

3.1.8 Alternative Fire Protection Features or Systems may be approved by the FPAHJ. The alternatives may be approved only where they provide fire protection equivalent to or greater than specific features required in these regulations.

3.1.9 Fire Apparatus shall be able to park on a roadway, driveway, or parking area within 150' of all parts of the exterior of the building.

3.1.10 To allow for emergency vehicle access to structures, the property owner shall provide a driveway having a minimum unobstructed driving surface of 12 feet and a vertical clearance of 15 feet, as approved by the FPAHJ.

4. Construction Requirements for Structures

4.1 Roofing: Only fire-retardant roof covering assemblies rated Class A shall be used. Metal roofing is permitted.

4.2 Fire Protection Sprinkler Systems Required

4.2.1 Any structure over 3,600 square feet or with a building height greater than 35 feet shall have fire sprinkler systems installed. The fire sprinkler systems shall be designed and installed

in accordance with the current edition of the NFPA and in compliance with Montana Board of Engineers adopted rules defining qualification of design fire sprinkler systems.

The Fire Protection Sprinkler System and its alarm system shall be installed, tested and functional prior to enclosure of the interior walls of the home. The owner shall provide the FPAHJ 48 hours advanced notice of testing in order to allow the FPAHJ to witness the testing.

4.2.2 Prior to occupancy, the independent inspector, who shall be a Professional Engineer licensed by the State of Montana and approved by the FPAHJ if the sprinklers were installed by the homeowner or who shall be an independent NICET level II or above or a Fire Protection Sprinkler Contractor shall provide written certification to the FPAHJ.

The FPAHJ shall be permitted to witness the checklist inspections required in this section. The developer or owner shall provide the FPAHJ within 48 hours' notice of all the checklist inspections and related performance tests.

4.2.3 Occupancy shall be permitted only when all fire protection requirements detailed in Section 5.3 have been met.

4.2.4 The following Fire Protection Sprinkler/Fire Alarm System Project Tracking Process shall be used in all circumstances where a structure has a fire protection sprinkler system installed as part of the Fire Protection Covenants. The Tracking Process shall be administered by the FPAHJ and may be assigned to an appropriate committee of the property owners' association (once it is properly organized). If this process is assigned to a committee of the property owners' association, the property owners' association shall accept and execute this program responsibility of the property owners. Enforcement of all fire protection requirements is the responsibility of the property owners' association. The Tracking Process requirements are as follows:

4.2.4.1 The property owners shall provide 14 day written notice to the FPAHJ of intent to build a structure which requires a fire sprinkler system, and when applicable, fire alarm system. The fire sprinkler system plans designed by a person recognized by the Board of Professional Engineers as competent to prepare plans for a sprinkler system shall accompany the notice to the FPAHJ. At the time of declaration of these covenants, persons recognized as competent to prepare such plans are NICET Level II and above and professional engineers.

4.2.4.2 Prior to the installation of sheet rock or interior walls coverings, an inspection of the installed system and testing for functioning must be conducted by a qualified person, as defined below. The purpose of this inspection is to have an independent review of the system in order to ensure appropriate fire protection of the structure. This inspection is at the expense of the property owner. The inspection shall be conducted by a person who did not design or install the sprinkler system and alarm system, if required. The FPAHJ shall develop an approved list of qualified inspectors.

If the sprinkler and alarm system, if required, is installed by the property owner, then the property owner shall notify the FPAHJ no less than 7 days prior to the completion of the installation of the sprinkler system and identify the date when the system will be installed and available for pre-enclosure inspections. Also included in the Notice to the FPAHJ, the property owner shall identify a preferred Professional Engineer who will inspect and, if appropriate, issue to the FPAHJ a certificate of inspection or certification to the applicable NFPA standard. The Professional Engineer shall report all results to the FPAHJ and the property owner. The FPAHJ retains the right to disapprove the preferred Professional Engineer. Upon such disapproval, the property owner shall submit another preference. The FPAHJ shall not unreasonably disapprove a property owner's preference.

If the sprinkler and alarm system, if required, is installed by a qualified third party installer, then the property owner or installer shall notify the FPAHJ no less than 7 days prior to the completion of the installation of the sprinkler system and identify the date when the system will be installed and available for the pre-enclosure inspections. Also included in the Notice to the FPAHJ, the property owner shall identify a preferred Professional Engineer or NICET Level II or above, who will inspect and, if appropriate, issue to the FPAHJ a certificate of inspection or certification to the applicable NFPA standard. The Professional Engineer shall report all results to the FPAHJ and the property owner.

The property owner shall provide the FPAHJ with notice 48 hours in advance of the inspection described in this section. The FPAHJ may attend the inspection.

4.3 Attic and Sub-Floor Ventilation: Vents shall be screened with a corrosion-resistant, non-combustible wire mesh with the mesh opening not to exceed nominal ¼ inches (6.35mm) in size.

4.4 Eaves: Eaves shall be constructed with a 2 inch (12.7 mm) nominal sheathing or non-combustible materials, or otherwise designed to minimize the potential to trap burning embers.

4.5 Overhanging Projections: Porches, decks, patios, balconies, and similar undersides of overhangs shall be enclosed or constructed in a manner similar to 4.4.3 above, to minimize the potential trap burning embers.

In addition, non-combustible materials (rock mulch, etc.) shall be installed on grade beneath overhanging or projecting elements and shall extend 3 feet beyond the outside perimeter of these elements.

4.6 Overhanging Buildings: The underside of overhanging buildings shall be constructed as specified in Section 5.4.3, above, to minimize the potential to trap burning embers. In addition, non-combustible materials (rock mulch, etc.) shall be installed on grade beneath overhanging building elements and shall extend 3 feet beyond the outside perimeter of these elements.

4.7 Exterior Vertical Walls: Exterior vertical wall coverings shall be constructed of at least 2 inch (12.7 mm) nominal sheathing or equivalent material.

4.8 Windows: Exterior windows, window walls and skylights shall be tempered or multi-layered glazed panels.

4.9 Exterior Doors: Exterior doors, other than vehicular access doors to garages, shall be noncombustible or solid core not less than 1-3/4 inches thick. Windows within doors and glazed doors shall be in accordance with the window section.

4.10 Chimney and Flues.

4.9.1 Outlet Screen: Every fireplace and woodstove chimney and flue shall be provided with an approved spark arrestor, constructed of a minimum 12-gauge welded wire or woven wire mesh, with openings not to exceed 2 inch (12.7 mm) in size.

4.9.2 Clearance: Vegetation shall not be allowed within 10 feet (3.05m) of a chimney outlet.

4.11 Accessory Structures. Outbuildings, patio covers, trellises and other accessory structures shall be constructed to meet the requirements of this section.

5. The Design Review Committee shall develop a list of recommended trees and shrubs and groundcover, in consultation with local Landscape Architects, landscape horticulturists, and other professionals having knowledge of plant performance. The purpose of this list is two-fold:

To assure that plants chosen for the Black Bull Subdivision are visually appropriate to the setting, and well adapted to the soils and climate conditions there.

To assure that the landscapes established at Black Bull Subdivision are chosen to avoid excessive water consumption and the risks of high combustibility in specific areas.