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Eric Semerad - Gallatin County, MT MISC



**DECLARATION  
FOR THE  
THE FLATS CONDOMINIUMS**

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Declaration for THE FLATS CONDOMINIUMS

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### CERTIFICATE OF NAME

The undersigned being the duly authorized agent of the Department of Revenue of the State of Montana within the County of Gallatin, herewith executes the following certificate relating to THE FLATS CONDOMINIUMS, situated as follows:

BAXTER MEADOWS SUB PH 2A, S34, T01 S, R05 E, BLOCK 16, Lot 1, ACRES 0.422, PLAT J-383.

1. That the name THE FLATS CONDOMINIUMS is not the same as, similar to or pronounced the same as a word in the name of any other property or subdivision within Gallatin County, except for the word Condominiums and;
2. All taxes and assessments due and payable for the said THE FLATS CONDOMINIUMS have been paid to date.

DATED: 1-4-2024

Kathleen J Hensel  
COUNTY ASSESSOR  
Treasurer

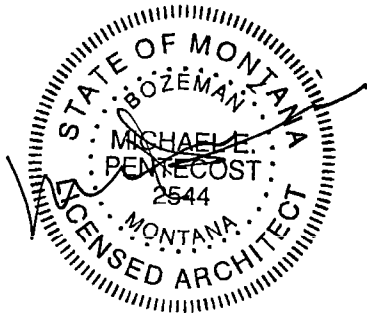
CERTIFICATE OF FLOOR PLAN

The undersigned, being a duly registered professional architect in the State of Montana, herewith certifies the following:

That the floor plans for 2350 Vaquero Parkway units (101,102,103,104,201,202,203,204) and 2352 Vaquero Parkway units (105,106,107,108,205,206,207,208) of THE FLATS CONDOMINIUMS, situated according to the official plat thereof on file and of record in the office of the County Clerk and Recorder of Gallatin County, Montana, as duly filed with the Declaration and Bylaws thereof, fully and accurately depict the layout, location, unit designation and dimensions of THE FLATS CONDOMINIUMS and that such floor plans are an accurate copy of the plans filed with and approved by the officials and officers of the City of Bozeman having jurisdiction to issue building permits.

The floor plans accurately depicting the layout, location, unit designation and dimensions of each unit as built, shall be recorded by the Declarant thirty (30) days from the date of completion of the building or from the date of occupancy of the building, whichever first occurs.

DATED: 11/13/2023



Michael E. Pentecost  
REGISTERED PROFESSIONAL ARCHITECT  
Number: 2544

**DECLARATION**  
**FOR THE**  
**THE FLATS CONDOMINIUMS**

THIS DECLARATION is hereby made and entered into this 28<sup>th</sup> day of December 2023, by The Flats at Baxter Meadows LLC, hereinafter referred to as a Declarant, whereby lands and property hereinafter described are submitted to the provisions of Chapter 23, Title 70, M.C.A., also known as the Unit Ownership Act as a condominium.

The property subject to this Declaration shall be known as THE FLATS CONDOMINIUMS and is more particularly described on **Exhibit A**. The addresses of THE FLATS CONDOMINIUMS are 2350 Vaquero Parkway Unit (101, 102, 103, 104, 201, 202, 203,204) and 2352 Vaquero Parkway Unit (105,106,107,108, 205, 206, 207, 208).

**I. DEFINITIONS**

Unless the context expressly provides otherwise, the following definitions shall pertain throughout this Declaration and in the interpretation thereof:

1. Aggregate Voting shall mean the entire number of votes of persons present or available to vote in person or by proxy in a particular circumstance.
2. Association or Association of Unit Owners shall mean all of the Unit Owners acting as a group and in accordance with duly adopted Bylaws and this Declaration, specifically THE FLATS CONDOMINIUMS HOMEOWNERS ASSOCIATION.
3. Board or Board of Directors shall mean the Board of Directors of the Association as more particularly defined in the Bylaws.
4. Building shall mean a multiple unit building or buildings comprising a party of the property.
5. Bylaws shall mean the Bylaws promulgated by the Association under this Declaration and the Unit Ownership Act.

6. Common Elements shall mean both general common elements and limited common elements. Common Elements may also be referred to as General Common Area.

A. General Common Elements include all those elements which are for the use of all Unit Owners and guests of Unit Owners of THE FLATS CONDOMINIUMS. Specifically included are: grounds surrounding the buildings, the land on which the buildings are located, paths, sidewalks and walkways, any portion of the parking areas not specifically allocated to a particular unit, any irrigation system placed on the property for landscape maintenance, any portions of the buildings designated on the floor plans as common to all Units, electrical, gas, telephone, water and sewer lines and connections serving all of the units, landscaping, plants and other materials and improvements separate from and outside of the buildings containing the units, and other elements necessary for the safety, maintenance and existence of THE FLATS CONDOMINIUMS in which each Unit Owner shall have his designated percentage of interest, as set forth in paragraph IV below.

B. Limited Common Elements as used in this Declaration shall mean those common elements which are reserved for the use of fewer than all of the owners and guests of Unit Owners of THE FLATS CONDOMINIUMS, to the exclusion of other such owners and guests. As to any given Unit Owner or Owners, limited common elements shall mean the common elements which are located within or affixed to the building containing his unit and/or limited in use to fewer than all the owners as depicted in this Declaration, and which are for the use of the Unit Owners and guests of that Unit in which the elements are located or situated on the real property known as THE FLATS CONDOMINIUMS. Specifically included are:

(1) Flues, chimneys, ducts, cables, conduits, public utility lines, water, sewer, electrical, gas, cable television lines, hot and cold water pipes (all such utility pipes and lines are limited common elements where they service only one or two units; where they service all units, they shall be general common elements), entrances, stoops, furnaces, air conditioner condenser or unit, indicated sidewalks, patios, decks, garages, windows, exterior facing doors, driveways, storage areas, boilers, hot water tanks, and fixtures, or other portions of the building servicing only a particular unit or less than all of the units. The percentage of the separate units

interest in the limited common elements shall be computed by determining the number of units that have use of the limited common elements and dividing that number into the total value of those limited common elements.

7. Common expenses shall mean expenses of administration, maintenance, repair or replacement of general common elements, expenses agreed upon as common by the Association of all Unit Owners, and expenses declared common by the Unit Ownership Act.
8. Declaration shall mean this document and all parts attached thereto or incorporated by reference.
9. Limited Expenses shall mean the expenses attributable to the maintenance, repair and replacement of limited common elements, and are expenses only for owners of units within the respective building for which the expenses are accrued.
10. Manager shall mean the manager, the Board of Directors, management corporation, or any other person or group of persons retained or appointed by THE FLATS CONDOMINIUMS HOMEOWNERS ASSOCIATION for the purpose of conducting the day-today operations of THE FLATS CONDOMINIUMS.
11. Property shall mean the land, buildings, improvements and structures thereon, and all easements, rights and appurtenances belonging thereto, which are herewith submitted to the provisions of the Unit Ownership Act.
12. Recording Officer shall mean the county officer charged with the duty of filing and recording deeds, mortgages and all other instruments or documents relating to this Declaration and the property which is its subject.
13. Unit shall be the separate condominium units of THE FLATS CONDOMINIUMS and is a parcel of real property including and containing one or more rooms occupying one or more floors or a part of parts thereof, intended for any type of independent use, and which a direct exit to a public street or highway or to a common area or areas leading to a public street or highway.
14. Unit Designation Units shall be designated by unit numbers.



15. Unit Owner shall mean the person or persons owning a fee simple absolute, or one who is a co-owner in any real estate tenancy relationship that is recognized under the laws of the State of Montana, in one or more units of THE FLATS CONDOMINIUMS.

## **II. REAL ESTATE**

### **Description.**

The property which is by this Declaration submitted and subject to the Montana Unit Ownership Act is described in **Exhibit A** attached hereto.

The condominium units declared in the present declaration in THE FLATS CONDOMINIUMS consist of two (2) buildings with sixteen (16) separate units listed as Units 101,102,103,104,105,106,107,108, 201,202, 203, 204, 205, 206, 207, 208 and one (1) detached eight (8) unit garage building. The provisions of this Declaration and the Bylaws shall be construed to be covenants running with the land and shall include every unit and shall be binding upon the Unit owners, their heirs, successors, personal representatives and assigns for as long as THE FLATS CONDOMINIUMS Declaration and Bylaws are in effect.

The real property submitted to the Unit Ownership Act is subject to existing easements, covenants, articles of incorporation, bylaws, terms, conditions, obligations, disclosures, reservations, restrictions, dedications, conditions shown and delineated in the documents, plats and site plan filed or recorded with the Clerk and Recorder of Gallatin County, Montana, or the State of Montana, applicable to said real property and subject to zoning ordinances and land use restrictions, if any, laws and regulations of the State of Montana and United States of America, and also subject to taxes, assessments and charges levied by the City of Bozeman, County of Gallatin, improvement districts, sewer and water districts and fire districts, if any.

The provisions of this Declaration and the Bylaws shall be construed to be covenants running with the land, including the buildings, improvements, easements, appurtenances and units, and shall be binding upon each Unit Owner, mortgagees, lienholders, and their heirs, successors, personal representatives and assigns, as long as this Condominium Declaration and Bylaws are in effect.

### **Exemptions and Exclusions.**

As certified pursuant to MCA §76-4-127, THE FLATS CONDOMINIUMS are excluded from review by the Montana Department of Environmental Quality pursuant to the exemption allotted for in MCA §76-4-125(1)(d)(iii) under §76-3-203(2).

**Condominium Units.**

Each Unit, together with the appurtenant undivided interest in the common elements of THE FLATS CONDOMINIUMS, shall together comprise one condominium unit, shall be inseparable, and may be conveyed, leased, rented, devised or encumbered as a condominium unit. The Units comprising the condominium are contained in not to exceed two (2) buildings.

**Encroachments.**

If any portion of the general common elements or limited common elements encroaches upon a Unit or Units, a valid easement for the encroachment and for the maintenance of the same, so long as it stands, shall and does exist. If any portion of a Unit encroaches upon the general common elements, or upon an adjoining Unit or Units, a valid easement for the encroachment and for the maintenance of the same, so long as it stands, shall and does exist. Such encroachments and easements shall not be considered or determined to be encumbrances either on the general common elements, the limited common elements, or on the Units for the purpose of marketability of title.

**Unit Boundaries.**

Each Unit shall include the part of the building containing the Unit that lies within the boundaries of the Unit, which boundaries are as follows:

A. Upper and Lower Boundaries: The upper and lower boundaries of the Unit shall be the following boundaries extended to an intersection with the perimetrical boundaries:

- (1) Upper Boundary: The plane of the lowest surfaces of the upper floor or ceiling joists for all units.
- (2) Lower Boundary: The plane of the highest surface of the concrete floor.

B. Perimetrical Boundaries: The perimetrical boundaries of the Unit shall be the following boundaries extended to an intersection with the upper and lower boundaries:

(1) Exterior Building Walls: The plane formed by the center line of the exterior walls of the buildings except that such boundary shall exclude all exterior doors and windows in the Unit.

(2) Interior Building Walls: The vertical planes of the centerline of the walls bounding a Unit extended to an intersection with other perimetrical boundaries. Where walls between units are of varying thicknesses, the plane of the centerline of a boundary wall shall be the median line drawn between the two outermost boundaries of such wall.

### **III. EASEMENT, COMMON ELEMENT - INTERIOR REMODELING**

#### **Common Element Easements.**

A nonexclusive right of ingress, egress and support through the limited common elements within the buildings is appurtenant to each unit, and all of the general common elements are subject to such rights.

#### **Easement for Utilities.**

Each Unit may have its air space penetrated by electrical wires and lines, gas lines, mechanical equipment including air handling ducts, hot and cold water lines, waste water lines and vents and other utility and mechanical lines, pipes or equipment. A nonexclusive easement shall exist through, over and across each unit for inspection, installation, maintenance, replacement and repair of such utility lines and mechanical equipment for the use of all of the unit Owners or the Unit Owners being serviced by the air space being penetrated by such lines and/or equipment to a minimum, ingress and egress for the purpose of such inspection, installation, maintenance, replacement or repair of such easement rights shall only be done under the direction and approval and with the authority of the Owners Association and/or the Manager unless an emergency exists, in which event any action may reasonably be taken which is justified under the circumstances to minimize damage which would otherwise occur as a consequence of such emergency.

#### **Interior Remodeling.**

Each Unit Owner shall have the exclusive right to paint, repaint, tile, wax, paper, panel, carpet, brick or otherwise maintain, refinish and decorate the inner surfaces of the walls, ceilings, floors, windows and doors bounding his own Unit, and the interior thereof, so long as such owner does not affect the structural integrity of the building in which his Unit is located.

#### **IV. OWNERSHIP AND VOTING - EXHIBITS - USE**

##### **Percentage of Interest.**

Each Unit Owner shall be entitled to the exclusive ownership, use and possession of his Unit. Additionally, each Unit Owner shall have a percentage of undivided interest in the general common elements of THE FLATS CONDOMINIUMS. Such percentage represents his ownership interest in the general common elements, and his liability for common expenses. The percentage of interest in the general common elements for the respective owners shall be computed by taking the square footage of each Unit at the date of filing this Declaration and dividing it by the then combined square footage of all the units having an interest in the general common elements of THE FLATS CONDOMINIUMS. Such percentage of interest owned by each of the Units in THE FLATS CONDOMINIUMS shall be according to the percentages set forth below:

| <b>UNIT</b> | <b>SQUARE FOOTAGE</b> | <b>INTEREST IN GENERAL COMMON ELEMENTS</b> |
|-------------|-----------------------|--|
|-------------|-----------------------|--|

---

##### **2350 Vaquero Parkway**

|          |     |       |
|----------|-----|-------|
| Unit 101 | 548 | 6.08% |
| Unit 102 | 547 | 6.07% |
| Unit 103 | 547 | 6.07% |
| Unit 104 | 548 | 6.08% |
| Unit 201 | 575 | 6.38% |
| Unit 202 | 569 | 6.32% |
| Unit 203 | 569 | 6.32% |
| Unit 204 | 575 | 6.38% |

##### **2352 Vaquero Parkway**

|          |     |       |
|----------|-----|-------|
| Unit 105 | 553 | 6.14% |
| Unit 106 | 553 | 6.14% |
| Unit 107 | 553 | 6.14% |
| Unit 108 | 553 | 6.14% |
| Unit 205 | 578 | 6.42% |

|          |     |       |
|----------|-----|-------|
| Unit 206 | 584 | 6.48% |
| Unit 207 | 577 | 6.41% |
| Unit 208 | 577 | 6.41% |

Detached Garage Building  
2129 N/A  
**TOTALS 100%**

For the purposes of this Declaration as set forth below, the voting interest of the Unit Owner or Owners in all matters concerning the Association of the Unit Owners shall be equal to the other units in accordance with the Bylaws of the Association of the Unit Owners.

**Floor Plans and Exhibits.**

THE FLATS CONDOMINIUMS, will consist of two (2) buildings on the real property described in **Exhibit A**, which contains sixteen (16) units as shown on the floor plans.

For identification and descriptive purposes, the following Exhibits are attached and by reference hereto incorporated into and made a part of this Declaration:

**Exhibit B:** Showing the floor plans and elevations for each of the Units of THE FLATS CONDOMINIUMS, the area of each, and the dimensions and the designation for each Unit.

**Exhibit C:** Showing the site plan of THE FLATS CONDOMINIUMS and the location of the buildings containing THE FLATS CONDOMINIUMS Units on the Property.

**Construction Materials.**

The principal materials of construction of the Units are concrete for the foundations, footings and slabs, wood and wood products for the framing, structural and finish work, sheetrock, composite board, and for the interior, carpet, wood, vinyl, tile or wood composite products for the floors, lap siding for exterior wall surfaces, and TPO or similar for the roof of the buildings.

**Use.**

The use of all of the units in THE FLATS CONDOMINIUMS declared as mixed use shall be mixed use purposes subject to the Baxter Meadows Neighborhood Center (BMNC) permitted uses. Nothing shall prohibit a Unit Owner from leasing or renting his/her Unit to third persons or holding it out for lease or rental or entering into an Agreement or contract with others for the lease or rental of his/her unit for mixed-use. The use of the general common areas shall be for the recreation and enjoyment of the Unit Owners, their guests, tenants, lessees and invitees. The units and common elements shall be limited as follows:

- A. There shall be no obstruction of the common elements, nor shall anything be stored in or on the general common elements without the prior written consent of the Association. Each Owner shall be obligated to maintain and keep in good order and repair the interior of his own unit.
- B. Nothing shall be done or kept in any Unit or in the common elements which will increase the rate of insurance on the building or contents thereof, without the prior written consent of the Association. No owner shall permit anything to be done or kept in his Unit or in the common elements which will result in the cancellation of insurance on the building, or contents thereof, or which would be in violation of any law. No waste will be permitted on the common elements.
- C. Unit Owners shall not cause or permit anything to be hung or displayed on the outside of windows or placed on the outside walls of a building, and no sign, awning, canopy, radio or television antenna shall be affixed to or placed upon the exterior walls or roof of any part thereof, without the prior written consent of the Association. Seasonal decorations that are promptly removed after the season and reasonable name plates or identification signs for individual units may be allowed.
- D. No nuisances shall be allowed upon the property nor shall any use or practice be allowed which is a source of annoyance to Unit Owners or which interferes with the peaceful possession and proper use of the property by its residents. No offensive or unlawful use shall be made of the property nor any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed.

- E. Nothing shall be done in any unit or in, on or to the common elements which will impair the structural integrity of the building or which would structurally change the building, except as is otherwise provided herein.
- F. No animals of any kind shall be raised, bred or kept in any Unit, except that dogs, cats and other household pets may be kept subject to rules and regulations from time to time adopted or amended by the Association. All dogs must be kept on a leash while on the condominium property in accordance with the laws of the City of Bozeman. Additionally, Unit Owners, their tenants and any guests, shall be responsible for the immediate clean-up of any pet waste and the repair of any damage caused by pets to any of the general or limited common areas.
- G. Nothing shall be altered or constructed in or removed from the common elements, and no easements, liens or encumbrances placed on the common elements, except upon the written consent of two-thirds of the aggregate interest of the Unit Owners affected by such action.
- H. Garbage shall be placed in the shared onsite dumpster as seen on **EXHIBIT C**.
- I. Campers, trailers, boats and other recreational vehicles may only be brought onto the condominium properties for loading and unloading for immediate use. No inoperable vehicles, and no campers, boats, recreational vehicles, or trailers, shall be left parked in the condominium parking areas for more than 24 hours at one time. Repeated parking of such vehicles or trailers is also prohibited unless approved in writing by the association.

**Exclusive Ownership.**

Each Owner or Owners shall be entitled to exclusive ownership and possession of their Unit. Such Owners may use the general and limited common elements in accordance with the purposes for which they are intended and as they may otherwise agree between themselves, so long as they do not hinder or encroach upon the lawful rights of other Unit Owners.

**V. THE ASSOCIATION**

**Membership.**

Any Owner of a Unit in THE FLATS CONDOMINIUMS shall automatically, upon becoming the Owner of said Unit, be a member of THE FLATS CONDOMINIUMS HOMEOWNERS ASSOCIATION, hereinafter referred to as the Association, and shall remain a member of said Association until such time as his membership in said Association shall automatically cease. The membership shall be limited to Unit Owners as defined in this Declaration.

**Function.**

It shall be the function of the Association to:

- A. Adopt Bylaws for the governance of the Association.
- B. Make provisions for the general management and/or repairs and maintenance of THE FLATS CONDOMINIUMS.
- C. Levy assessments as provided for in the Declaration, Bylaws and Unit Ownership Act.
- D. Determine a fine schedule, and levy fines and penalties as provided for in the Declaration, Bylaws and Unit Ownership Act.
- E. Record liens as provided for in the Declaration, Bylaws and Unit Ownership Act.
- F. Adopt and implement a policy for the affairs of the condominium.
- G. Enter into contracts or hire personnel for the management of the affairs of the Association and the maintenance and repair of the common areas.
- H. Be responsible for the perpetual maintenance of the landscaping, common open space, sidewalks and driveway.

**Voting.**

On all matters, unless excluded by this Declaration, to be decided by the Association, each unit shall be entitled to have one vote. An owner of a condominium unit, upon becoming an Owner, shall be a member of the Association and remain a member for the period of his Unit Ownership. Except as otherwise provided in the Unit Ownership



Act, this Declaration or the Bylaws, a majority of the aggregate interest present at any meeting or by proxy shall be sufficient to act on matters brought before the Association. Meetings of the Association shall only be conducted when a quorum is present, as defined in the Association Bylaws. Dates of annual meetings shall be set by the Association.

### **Failure to Comply.**

Each owner shall comply strictly with the provisions of this Declaration, the Bylaws of the Association, and the rules, regulations, decisions and resolutions of the Association adopted pursuant thereto as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief or both, and for reimbursement of all costs, including attorney fees incurred in connection therewith, which action shall be maintainable by the Manager in the name of the Association, on behalf of the owner, or in the proper case, by an aggrieved owner.

### **Fines and Penalties.**

The Association, acting through the Board or the Manager, shall have the authority to determine fines and levy fines against Units for any violation of the covenants set forth herein or for any violation of the rules and regulations duly adopted by the Board. Violations caused by a tenant shall be assessed against the occupied Unit and shall be the responsibility of the Unit Owner. For each violation, the Unit owner may be fined according to the following fine schedule or another fine schedule as determined by the Association in accordance with this Declaration and the Bylaws:

|                         |                         |
|-------------------------|-------------------------|
| First Offense:          | Oral or written warning |
| Second Offense:         | \$50.00                 |
| Third Offense and More: | \$100.00                |

All fines shall be considered final and shall be considered an assessment and a lien against the Unit unless the Unit Owner makes a written appeal to the Board within five (5) business days of receiving the fine and the Board subsequently overturns such fine. The Board shall have thirty days to meet and render its decision regarding the fine, which decision shall be final. All fines may be collected by the Association in the same manner as an assessment as set forth herein. All fines not paid within thirty (30) days shall accrue interest at the then maximum current legal rate of interest per annum on the amount of

the fine from the due date thereof.

**Payment of Assessments.**

All assessments shall be due ten (10) days from the date of mailing such assessment following the meeting at which time assessments are levied by the Association, and may be payable in one annual payment or in quarterly installments, at the option of the Unit Owner. The amount of the common expenses assessed against each Unit, and the amount of limited common expenses assessed against each Unit shall be the personal and individual debt of the owner thereof. No owner may exempt themselves from liability for this contribution toward the common expenses and the limited expenses by waiver of the use of enjoyment of any of the general common elements or limited common elements or by abandonment of his Unit. All assessments which are not paid within thirty (30) days from the date they are due and payable become delinquent and are subject to interest and penalty charges.

The Association or Manager shall have the responsibility of taking prompt action to collect any unpaid assessment which becomes delinquent. In the event of delinquency in the payment of the assessment, the Unit Owners shall be obligated to pay interest at the then current legal rate of interest per annum on the amount of the assessment from the due date thereof, together with all expenses, including attorney fees incurred, together with such interest and late charges as are provided in the Bylaws of the Association. Suit to recover a money judgment for unpaid common expenses and limited expenses may be maintainable without foreclosing or waiving the lien securing the same.

**Levying Assessments - When Made - Purposes.**

The Association of Unit Owners shall levy assessments upon the Unit Owners in the following manner and for the following reasons:

- A. Assessments shall be made as a part of the regular business of the Association at any regular or special meeting thereof as provided in the Bylaws of the Association. Notice of the assessment, amount thereof, and the purpose for which it is made whether regular or special, including an annual budget for expenditures and operation, shall be served on all Unit Owners affected by delivering a copy of the same to the Owner personally or by mailing a copy of the notice to the Owners at their addresses of record at least ten (10) days prior to the date for such meeting.

B. Assessments shall be made for the repair, replacement, general maintenance, management and administration of common elements, fees, costs and expenses of the manager, taxes for common areas if any, and for the Unit Owners percentage share of any Special Improvement District Assessments. Assessments shall be based upon and computed by using the percentage of interest that each Unit Owner has in the general common elements.

C. Assessments may also be made for the payment of limited common element expenses such that the Unit Owners are chargeable only for the expenses relating to their respective units or building, Unit Owners shall share in the payment for limited expenses for the repair, maintenance, and replacement of limited common elements of their respective Units in accordance with the percentage the Unit or Units have in the limited common elements for which the assessment is being made. If only one unit is associated with the limited common elements involved, then the entire cost of such repair, maintenance or replacement shall be borne by that Unit.

D. Assessments may also be made for any purpose contemplated by this Declaration and for any purpose set out in the Montana Unit Ownership Act.

E. Common expenses and profits, if any, of the condominiums shall be distributed among and charged to, the Unit Owners according to the percentage of undivided interest of each in the common elements.

F. In a voluntary conveyance of a Unit, the Grantee of the Unit shall be jointly and severally liable with the Grantor for all unpaid assessments by the Association against the latter for his share of the common expenses up to the time of the grant of conveyance, without prejudice to the Grantees right to recover from the Grantor the amounts paid by the Grantee therefor. However, any such Grantee shall be entitled to a statement from the Manager or Board of Directors of the Association, as the case may be, setting forth the amount of said unpaid assessments against the Grantor due the Association and such Grantee shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid assessments made by the Association against the Grantor in excess of the amount therein set forth.

G. At the time the Association holds its first meeting, or at any duly noticed meeting thereafter, a reserve account may be set up to which initial assessments shall then be deposited, and which assessment shall be a sum that is equal to two times the monthly assessment fee for that year multiplied by the number of Units in the project. Said total amount shall then be divided equally among all Unit

Owners. If the Declarant still holds title to one or more Units, they shall pay the amount assessed against each Unit so owned.

**First Right of Refusal.**

Any right of first refusal placed on a Unit by the owner shall not adversely impact the rights of a mortgagee to (i) foreclose or take title to the Unit, pursuant to the remedies in the mortgage; (ii) accept a deed or assignment in lieu of foreclosure in the event of default by a mortgagor; or (iii) sell or lease the Unit acquired by the mortgage.

**Availability of Declaration, Bylaws and Accountings.**

All Unit Owners, lenders, holders and insurers of first mortgages on any Unit are entitled to copies of the current Declarations, Bylaws, and rules governing THE FLATS CONDOMINIUMS and all records and financial statements of the Association.

The same shall be made available to prospective purchasers by the Association.

**VI. DECLARANT'S RIGHT TO CHANGE**

The Declarant reserves the right to change the interior design and arrangement of all Units, and alter the boundaries between Units, so long as the Declarant owns the Units so altered. No such change shall increase the number of Units or alter the boundary of the general common elements without an amendment of this Declaration. The Declarant reserves the right to modify the materials so long as any modification utilizes materials of substantially similar quality.

Until ninety-nine percent (99%) of the units have been built and sold, Declarant reserves the right to establish easements, reservations, exceptions and exclusions consistent with the condominium ownership project, which shall not materially adversely affect the Units. Any amendment that may materially adversely impact the nature of the mortgage holders interest shall be subject to approval of at least fifty-one percent (51%) of the Unit owners.

Notwithstanding any other provisions expressly or impliedly to the contrary contained in this Declaration, the Articles of Incorporation or By-Laws of the Association, Declarant reserves the right to exercise the rights, duties and functions of the Board of Directors of the Association until ninety-nine percent (99%) of the condominium units have been sold. During the period of development and sale of the remaining condominium units, the monthly assessment for common expenses shall be based upon the estimate

of the actual cost thereof, excluding therefrom any estimated amount for contingencies, reserves or sinking funds, and Declarant shall pay his pro rata share thereof only for those condominium units which have been completed.

## **VII. AMENDMENT**

Amendment of this Declaration shall be made in the following manner:

At any regular or special meeting of the Association of Unit Owners, such amendment may be proposed as a resolution by any Unit Owner, the Board or Manager. Upon adoption of the resolution by a majority vote of those present, the amendment shall be made a subject for consideration at the next succeeding meeting of the Association with notice thereof, together with a copy of the amendment, to be furnished to each owner no later than thirty (30) days in advance of such meeting. At such meeting, the amendment, exclusive of amendments that impact the common elements, shall be approved upon receiving the favorable vote of seventy-five percent (75%) of the total percentage vote of all the Unit Owners. If so approved, it shall be the responsibility of the Association to file the amendment with the Clerk and Records office of Gallatin County, Montana.

Notwithstanding the procedure set forth above, the Declarant may amend this Declaration, or any other project document, prior to any sale or lease of a Unit or interest thereof.

## **VIII. CHANGES, REPAIRS AND LIENS**

### **Alterations by Unit Owners Association.**

The interior plan of a Unit may be changed by the owner. The boundaries between Units may be changed only by the Owners of the Units affected. No Units may be subdivided. No change in the boundaries of Units shall encroach upon the boundaries of the common elements.

Boundary walls must be equal in quality of design and construction to the existing boundary walls. A change in the boundaries between Units shall be set forth in an amendment to this Declaration. In addition to compliance with the provisions of Paragraph VII above, such amendment must further set forth and contain plans for the Units concerned showing the Units after the change in boundaries, which plans shall be drawn by an architect licensed to practice in Montana, and attached to the amendment as an

exhibit, together with the certificate of architect or engineer required by the Unit Ownership Act. Such an amendment shall be signed and acknowledged by the owners of the Units concerned, as well as those owners with an interest in any common element affected. The amendment shall also be approved by the Board of Directors of the Association, and signed and acknowledged by all lienors and mortgagees of the Units concerned.

**Maintenance by Unit Owners.**

Each owner shall maintain and keep in repair the interior of his own Unit, including the fixtures thereof. All fixtures and equipment installed in the Unit, commencing at a point where the utilities enter the Unit, shall be maintained and kept in repair by the owner thereof. An owner shall neither act nor perform any work that will impair the structural soundness or integrity of the building or impair any easement.

Each owner shall also keep any balcony, entrance or deck area appurtenant to his Unit in a clean and sanitary condition. The right of each owner to repair, alter and remodel is coupled with the obligation to replace any finishing or other materials removed with similar type or kinds of materials. All glass replacement shall be with similar quality, shade and design. No act or alteration, repairing or remodeling by any Unit Owner shall impair in any way the integrity of the adjoining Units or the integrity of limited common elements or general common elements.

**Exterior Alterations.**

No Owner may change, alter or remodel the exterior of his Unit without the prior written approval of the Association.

**Liens for Alterations.**

Labor performed and materials furnished and incorporated into a Unit with the consent of or at the request of the Unit Owner, his agent, his contractor or subcontractor shall be the basis for the filing of a lien against the Unit or the Unit Owner consenting to or requesting the same. Each Unit Owner shall indemnify and hold harmless each of the other Owners from and against all liability arising from the claim of any lien against the Unit or any other Owner or against the general or limited common elements for construction performed or for labor, materials, services or other products incorporated in the Owners Unit at such Owners request.

**Liens and Foreclosure.**

All sums assessed but unpaid for the share of general common expenses and limited common expenses chargeable to any Unit, and fines and penalties, shall constitute a lien on such Unit superior to all other liens and encumbrances, except only for tax and special assessment liens on the Unit in favor of any assessing authority, and all sums unpaid on a first mortgage, a first trust indenture, or contract for deed of record. To evidence such lien, the Association shall prepare a written notice of lien assessment setting forth the amount of such unpaid indebtedness, the amount of accrued interest and late charges thereon, the name of the Unit Owner, and a description of the Unit. Such notice shall be signed and verified by one of the officers of the Association or by the Manager, or his authorized agent, and shall be recorded in the office of the Clerk and Recorder of Gallatin County, Montana. Such lien shall attach from the date of recording such notice. Such lien may be enforced by the foreclosure of the defaulting Owners Unit by the Association as provided in the Unit Ownership Act in like manner as foreclosure of a mortgage on real property. In any foreclosure, the Unit Owner shall be required to pay a reasonable rental for the unit, if so provided in the Bylaws, and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosure or waiving the lien securing the same. In any such proceeding the Owner may be required to pay the costs, expenses and attorney/s fees incurred in filing a lien, and in the event of foreclosure proceedings, additional costs, expenses and attorney/s fees incurred.

**Notice.**

A holder, insurer or guarantor of a first mortgage, upon written request to the Association, is entitled to notice of

- A. any proposed amendment to the Declarations or Bylaws that affect a change in the (i) boundaries of any Unit or the exclusive easement rights appertaining thereto, (ii) the interests in the general or limited common elements appertaining to any Unit or the liability for common expenses appertaining thereto, and (iii) the number of the Owners within THE FLATS CONDOMINIUMS;
- B. any proposed termination of the condominium regime;
- C. any condemnation loss or any casualty loss which affects a material portion of

the conditions or which affects any Unit on which there is a first mortgage held, insured or guaranteed by such eligible holder;

- D. any delinquency in the payment of assessments or charges owed by an Owner of a Unit subject to the mortgage of such eligible holder, insured or guarantor, where such delinquency has continued for a period of sixty (60) days;
- E. any lapse, cancellation or material modification of any insurance policy maintained by the Owners= Association.

Said notice must include the name and address of such holder, insurer or guarantor on the Unit number.

Consent of such disclosure is hereby given by each Unit Owner.

**Bidding at Foreclosure.**

The Association shall have the power to bid on the Unit at a foreclosure or other legal sale, and to acquire and hold, lease, mortgage and vote the votes appurtenant to, convey or otherwise deal with the same. Any lienholder holding a lien on the Unit may pay, but shall not be required to pay, any unpaid general common expenses, or limited common expenses payable with respect to any such Unit, and upon such payment such lienholder shall have a lien on said Unit for the amounts paid of the same priority as the lien of his encumbrance without the necessity of having to file a notice or claim of such lien.

**Unpaid Assessments - Mortgagee.**

Where a lienholder or other purchaser of a Unit obtains title to the Unit as a result of foreclosure of the first mortgage or trust indenture, such acquirer of title, his successors and assigns, shall not be liable for more than six (6) months share of common expenses or assessments by the Association chargeable to such Unit which became due prior to the acquisition of title to such Unit by such acquirer. Any additional unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the Units including such acquirer, his successors and assigns.

**Unpaid Dues or Charges.**

Any first mortgagee who obtains title to a condominium unit pursuant to the remedies in the Mortgage or through foreclosure of the Mortgage will not be liable for



more than six (6) months of the unit/s unpaid regularly budgeted dues or charges accrued before the acquisition of the title to the unit by the mortgagee. Unit Owner/Mortgagee will be liable for any fees and costs related to the collection of the unpaid dues.

## **IX. INSURANCE**

### **Purchase.**

All insurance policies upon THE FLATS CONDOMINIUMS property, to the exclusion of the Unit Owner's unit, as defined in the Section referred to as "Unit Boundaries", shall be purchased by the Association and shall be issued by an insurance company authorized to do business in Montana.

A. **Named Insured:** The named insured shall be the Association individually and as agent for the Unit Owners without naming them. Such policies shall provide that payments for losses thereunder by the insurer shall be paid to the insurance Trustee hereinafter designated, and all policies and endorsements thereon shall be deposited with the insurance Trustee.

B. **Unit Owner's Responsibility:** Unit Owner shall obtain insurance coverage, at their own expense, upon the portion of the Building that is considered the individual unit, pursuant to the Section referred to as "Unit Boundaries". Unit Owner may also consider insurance coverage, at their own expense, for the improvements and betterments within the Unit Owner's Unit, the contents of the Unit Owner's Unit, including but not limited to, furnishings and personal Property therein, the Unit Owner's personal Property stored elsewhere on the Property, and the Unit Owner's personal liability to the extent not covered by the liability insurance for all of the owners obtained as part of the common expenses, and the association shall have no obligation whatsoever to obtain any such insurance coverage on behalf of the Unit Owner's individual units.

C. **Copies to Mortgagees:** One copy of each insurance policy and of all endorsements thereon shall be furnished by the Association to each mortgagee of a Unit Owner on request.

### **Coverage.**

A. **Casualty:** All buildings and improvements upon the land shall be insured in an amount equal to the full insurable replacement value, and all personal property included in the common elements shall be fully insured, with all such insurance to

be based on current replacement value, as determined annually by the Board of Directors, but subject to such deductible clauses as are required in order to obtain coverage at reasonable costs. Such coverage shall afford protection against:

1. Loss or damage by fire and other hazards covered by a standard extended coverage endorsement; and
2. Such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location and use as the building on the land, including, but not limited to, vandalism and malicious mischief.

**B. Liability Insurance.**

1. Errors or Omissions Insurance for the Directors, Officers and Managers, if the Association so desires, in amounts to be determined by the Board.
2. Public Liability: In such amounts and with such coverage as shall be required by the Board of Directors of the Association, including, but not limited to, hired automobile and non-owned automobile coverage, if applicable, and with cross liability endorsement to cover liabilities of the Unit Owners as a group to a Unit Owner.

**C. Worker's Compensation.** The Association shall obtain and maintain such worker's compensation coverage as may be required by law

**D. Other Insurance:** Such other insurance as the Board of Directors of the Association shall determine from time to time to be desirable and as may be required by the Federal and State laws.

**Premiums.**

Premiums for insurance policies purchased by the Association shall be paid by the Association as a common expense, except that the amount of increase in the premium occasioned by use, misuse, occupancy or abandonment of a Unit or its appurtenances or of the common elements by a Unit Owner shall be assessed against the Owner. Not less than ten (10) days prior to the date when a premium is due, evidence of such

payment shall be furnished by the Association to each mortgagee listed in the roster of mortgagees.

**Insurance Trustee.**

All insurance policies purchased by the Association shall be for the benefit of the Association and the Unit Owners and their mortgagees as their interests may appear, and shall provide that all proceeds covering property losses shall be paid to such bank in Montana with trust powers as may be designated as insurance trustee by the Board of Directors of the Association, which trustee is herein referred to as the insurance trustee. The insurance trustee shall not be liable for payment of premiums, nor for the renewal or the sufficiency of policies, nor for the failure to collect any insurance proceeds. The duty of the insurance trustee shall be to receive such proceeds as are paid and hold the same in trust for the purposes elsewhere stated in this instrument and for the benefit of the Unit Owners, and their mortgagees in the following shares, but which shares need not be set forth on the records of the insurance trustee:

- A. Unit Owners - An undivided share for each Unit Owner, such share being the same as the undivided share in the common elements appurtenant to his Unit.
- B. Mortgagees - In the event a mortgagee endorsement has been issued as to a Unit, the share of the Unit Owner shall be held in trust for the mortgagee and the Unit Owner as their interests may appear; provided, however, that no mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds except distributions thereof made to the Unit Owner and mortgagee pursuant to the provision of this Declaration.

**Distribution of Proceeds.**

Proceeds of insurance policies received by the insurance trustee shall be distributed to or for the benefit of the beneficial owners in the following manner:

- A. Miscellaneous: Expenses of administration, the insurance trustee, and construction or remodeling supervision shall be considered as part of the cost of construction, replacement or repair.

B. Reconstruction or Repair - If the damage for which the proceeds are paid is to be repaired or reconstructed by the Association, the remaining proceeds shall be paid to defray the cost thereof as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners, remittances to Unit Owners and their mortgagees being payable jointly to them.

C. Failure to Reconstruct or Repair - If it is determined in the manner elsewhere provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial owners, remittances to Unit Owners and their mortgagees being payable jointly to them.

D. Certificate - In making distribution to Unit Owners and their mortgagees, the insurance trustee may rely upon a certificate from the Association made by its representative or Manager as to the names of the Unit Owners and their respective shares of the distribution.

#### **Association as Agent.**

The Association is irrevocably appointed agent for each Unit Owner and for each Owner of a mortgage or other lien upon a Unit and for each Owner of any other interest in the condominium property to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

#### **Benefit to Mortgagees.**

Certain provisions in this paragraph entitled as Insurance are for the benefit of mortgagees or trust indenture beneficiaries of condominium parcels, and all such provisions are covenants for the benefit of any mortgagee of a Unit and may be enforced by such mortgagee or beneficiary.

#### **Reconstruction.**

##### **A. Repair After Casualty.**

If any part of the condominium property shall be damaged by casualty, whether or not it shall be reconstructed or repaired shall be determined in the following manner:

1. Lesser Damage - If a Unit or Units are found by the Board of Directors of the Association to be tenantable after the casualty, the damaged property shall be repaired.
2. Greater Damage - If a Unit or Units are found by the Board of Directors to be not tenantable after the casualty, the damaged property shall be reconstructed or rebuilt.
3. Certificate - The insurance trustee may rely upon a certificate of the Association made by its president and secretary to determine whether or not the damaged property is to be reconstructed or repaired.

B. Plans and Specifications.

Any reconstruction or repair must be substantially in accordance with the plans for specifications and the original improvements, or if not, then according to plans and specifications approved by the Board of Directors and by more than fifty percent (50%) of the Unit Owners, including the Owners of all Units the plans for which are to altered. Any such reconstruction not in accordance with the original plans and specifications must be set forth in an amendment to the Declaration, which amendment shall be prepared and filed of record in accordance with the provisions of such amended filing, more particularly set forth in Paragraph VII and Paragraph VIII, subparagraph 1, hereinabove.

C. Responsibility.

The responsibility for reconstruction or repair after casualty shall be the same as for maintenance and repair of the condominium property, and the Association shall work with the insurance trustee to carry out the provisions of this Article.

D. Assessments.

If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction or repair for which the Association is responsible, or if at any time during such reconstruction or repair, or upon completion of such reconstruction or repair, the funds for the payment of the costs thereof are insufficient, assessments shall be made against all Unit Owners in sufficient amounts to provide funds to the payment of such costs. Such assessments shall be in proportion to the Owner=s percentage of interest in the general common elements.

E. Construction Funds.

The funds for payment of costs of reconstruction or repair after casualty, which shall consist of proceeds of insurance held by the insurance trustee and funds collected by the Association from assessments against Unit Owners, shall be disbursed in the sound discretion of the trustee and according to the contract of reconstruction or repair, which contract must have the approval of the Board and the Unit Owners involved.

F. Surplus.

It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from the insurance proceeds. If there is a balance in a construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be paid to the Association for the use and benefit of the Unit Owners.

G. Limitations in Actions of Owners Association.

Except as provided by statute, in case of condemnation or substantial loss to the units and/or common elements of the condominium project, the condominium owners association is not entitled to take any of the following actions, unless one hundred percent (100%) of the first mortgagees or unit owners give their consent:

1. Seek to abandon or terminate the condominium project by act or omission.
2. Change the pro rata interest or obligations of any condominium unit in order to levy assessments or charges, allocate the distribution of hazard insurance proceeds or condemnation awards, or determine the pro rata share of ownership of each condominium unit in the common elements.
3. Partition or subdivide any condominium unit.
4. By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the common elements. The granting of easements for public utilities or other public purposes consistent with the intended use of the common elements by the condominium project is not a transfer in the meaning of this clause.

5. Use hazard insurance proceeds for losses to any condominium property, whether units or common elements, for other than the repair, replacement, or reconstruction of the condominium property.

Implied approval may be assumed when a mortgagee fails to submit a response to any written proposal for any action pursuant to this section g within 60 days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a return receipt requested.

#### **Termination of Regime - Destruction.**

Any election to terminate the condominium regime after substantial destruction or a substantial taking in condemnation of the condominiums property must require the approval of seventy-five percent (75%) of the Unit Owners and the consent of fifty-one percent (51%) of eligible mortgage holders.

Implied approval may be assumed when a mortgagee fails to submit a response to any written proposal for any election to terminate the condominium regime within 60 days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a return receipt requested.

#### **X. REMOVAL OR PARTITION - SUBDIVISION**

THE FLATS CONDOMINIUMS may only be removed from condominium ownership, and may only be partitioned or sold, upon compliance with each of the conditions hereof:

- A. The Board of Directors of the Association must approve the plans of removal, partition or sale, including the details of how any partition or sale, and the distribution of property or funds shall be accomplished.
- B. The plan of removal, partition, or sale must be approved as provided in the Montana Unit Ownership Act. If approval for any of the foregoing is not required by the Unit Ownership Act, then approval shall be required from one hundred percent (100%) of the Owners. Upon obtaining such approval, the Board shall be empowered to implement and carry out the plan of removal, partition or sale.
- C. No Unit may be divided or subdivided into a smaller Unit, nor any portion thereof sold or otherwise transferred, except as provided above.

D. This section shall not apply to the sale of individual Units and shall not be considered as a right of first refusal.

E. The common elements of THE FLATS CONDOMINIUMS shall not be abandoned, partitioned, subdivided, encumbered, sold or transferred by removal or partition without compliance with all of the above requirements.

#### **XI. REMEDIES**

All remedies provided in this Declaration and Bylaws shall not be exclusive of any other remedies which may now be, or are hereafter, available to the parties hereto as provided for by law.

#### **XII. SEVERABILITY**

The provisions hereof shall be deemed independent and severable and the invalidity, partial invalidity or unenforceability of any one or more provisions shall not affect the validity or enforceability of any other provision hereof.

#### **XIII. INTERPRETATION**

The provisions of the Declaration and of the Bylaws to be promulgated and recorded herewith, shall be liberally construed to effectuate the purpose of the Declaration and Bylaws and to create a building or buildings subject to and under the provisions of the Unit Ownership Act.

#### **XIV. ARBITRATION**

In the event of any dispute arising hereunder as to whether the work complies with the plans and specifications or whether payment is properly due and the same is not settled within fifteen (15) days after receipt of notice, then either party may request that the dispute be submitted for decision to three (3) arbitrators, one (1) of whom shall be chosen by the Owner, and one (1) by the Declarant. The two (2) chosen arbitrators shall select a third arbitrator and the parties shall proceed with arbitration in accordance with the provisions of the Montana Arbitration Act. Any arbitration between the parties shall be held in Gallatin County, Montana.



## **XV. MISCELLANEOUS**

### **Utility Easements.**

In addition to the easements provided for herein, easements are reserved through the condominium property as may be required for utility services, including heat, air conditioning, water, sewer, power, telephone, natural gas and cable television, in order to serve THE FLATS CONDOMINIUMS adequately. However, such easement through the property or Units shall be only according to the plans and specifications for the Unit building, as set forth in the recorded plat, or as the building is constructed, unless approved in writing by the Unit Owner.

### **Right of Access.**

The Association shall have the irrevocable right, to be exercised by the Manager or Board of Directors, to have access to each Unit from time to time during reasonable hours as may be necessary for the maintenance, repair and replacement of any of the limited common elements therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the general or limited common elements or to any other Unit.

Damage to the interior or any part of the Unit resulting from maintenance, repair, emergency repair or replacement of any of the general or limited common elements, or as a result of an emergency repair within another Unit at the instance of the Association, shall be designated either limited or general common expenses by the Association and assessed in accordance with such designation.

### **Benefit.**

Except as otherwise provided herein, this Declaration shall be binding upon and shall insure to the benefit of the Declarant, the Association and each Unit Owner, and the heirs, personal representatives, successors and assigns of each.

### **Service of Process.**

The name and address of the person to receive service of process for THE FLATS CONDOMINIUMS until another designation is filed of record shall be:

KLH Advisors PLLC  
1940 West Dickerson Street, Suite 206  
Bozeman, MT 59718

**Warranties.**

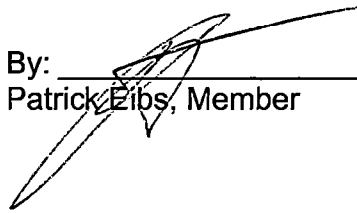
The Declarant expressly make no warranties or representations concerning the property, the Units, the Declaration, Bylaws, or deeds of conveyance except as specifically set forth therein, and no one may rely upon such warranty or representation not so specifically expressed therein. Estimates of common expenses are deemed accurate, but no warranty or guarantee is made or is intended, nor may one be relied upon.

**IN WITNESS WHEREOF**, the Declarant have caused this Declaration to be made and executed according to the provisions of the Montana Unit Ownership Act, Title 70, Section 23, M.C.A.

**DECLARANT:**

The Flats at Baxter Meadows LLC

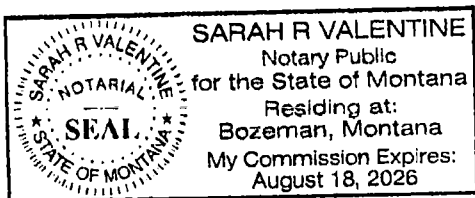
By: \_\_\_\_\_  
Patrick Eibs, Member



STATE OF MONTANA )  
: ss.  
County of Gallatin )

On this 28 day of December, 2023, before me, a Notary Public in and for the State of Montana, personally appeared Patrick Eibs, known to me to be the Member of The Flats at Baxter Meadows LLC, the Declarant, and acknowledged to me that he executed the same on behalf of the LLC.

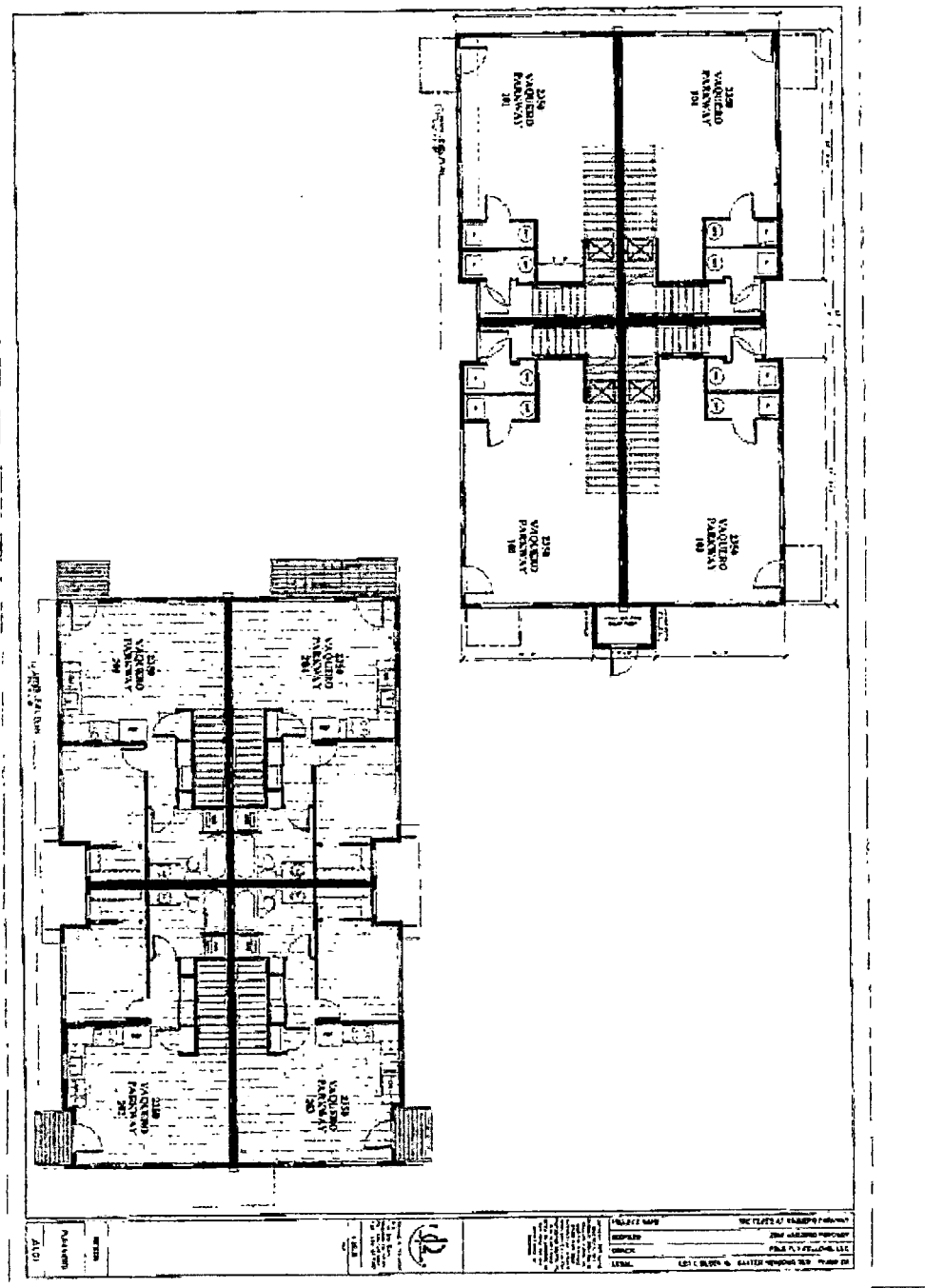
Sarah R Valentine  
Notary Public for State of Montana  
Printed Name: Sarah R Valentine



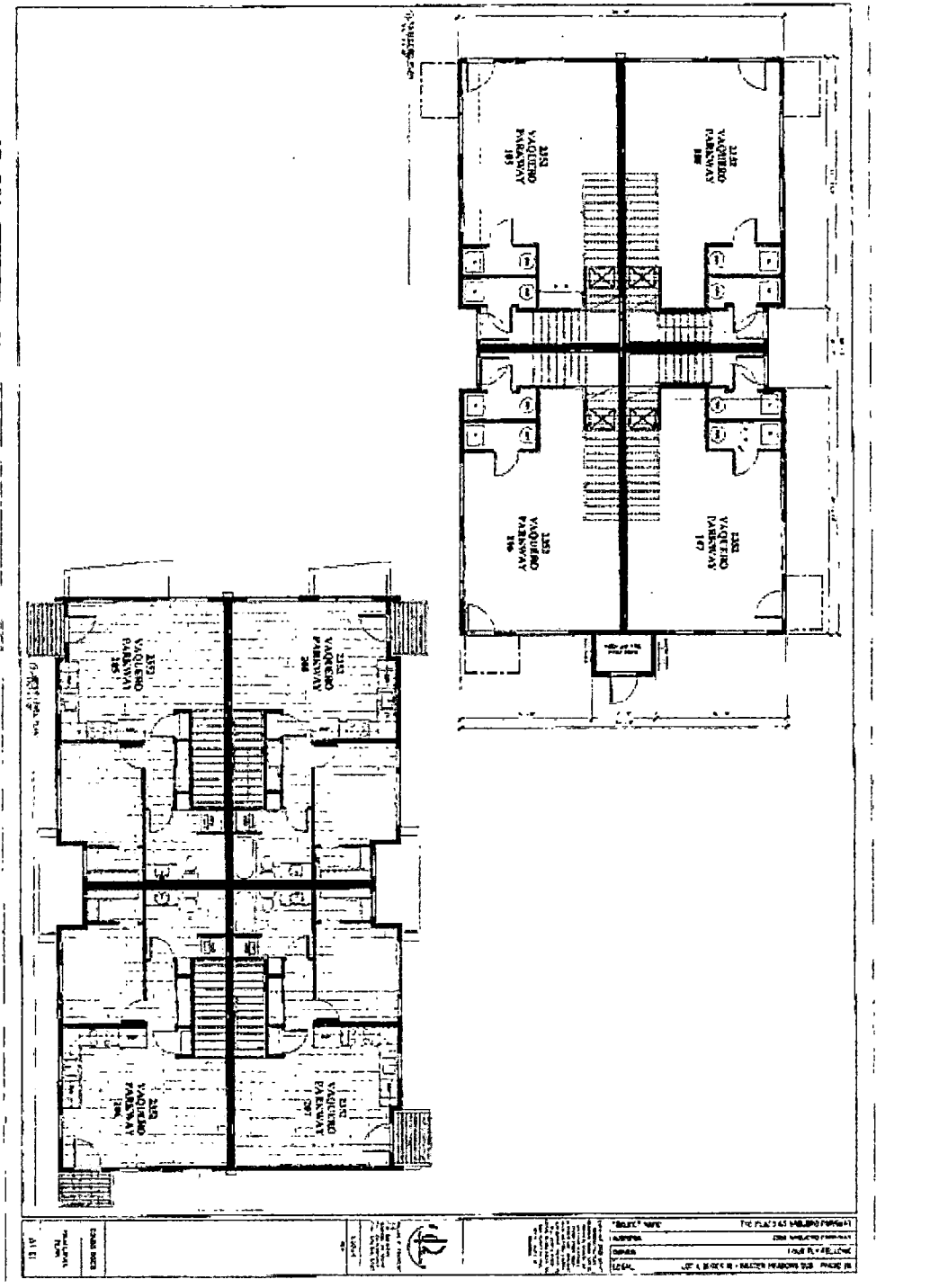
**Exhibit A**

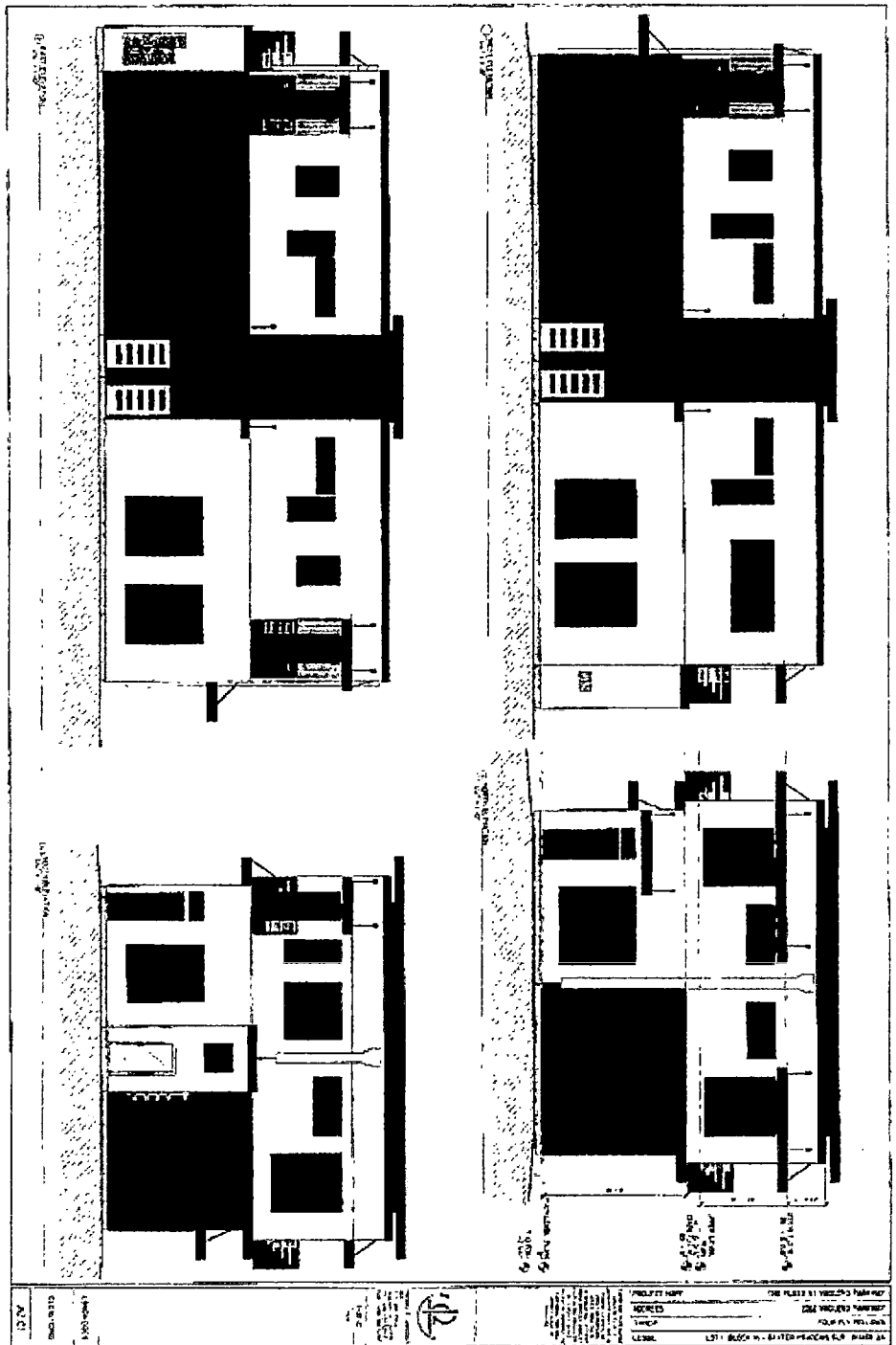
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J-383

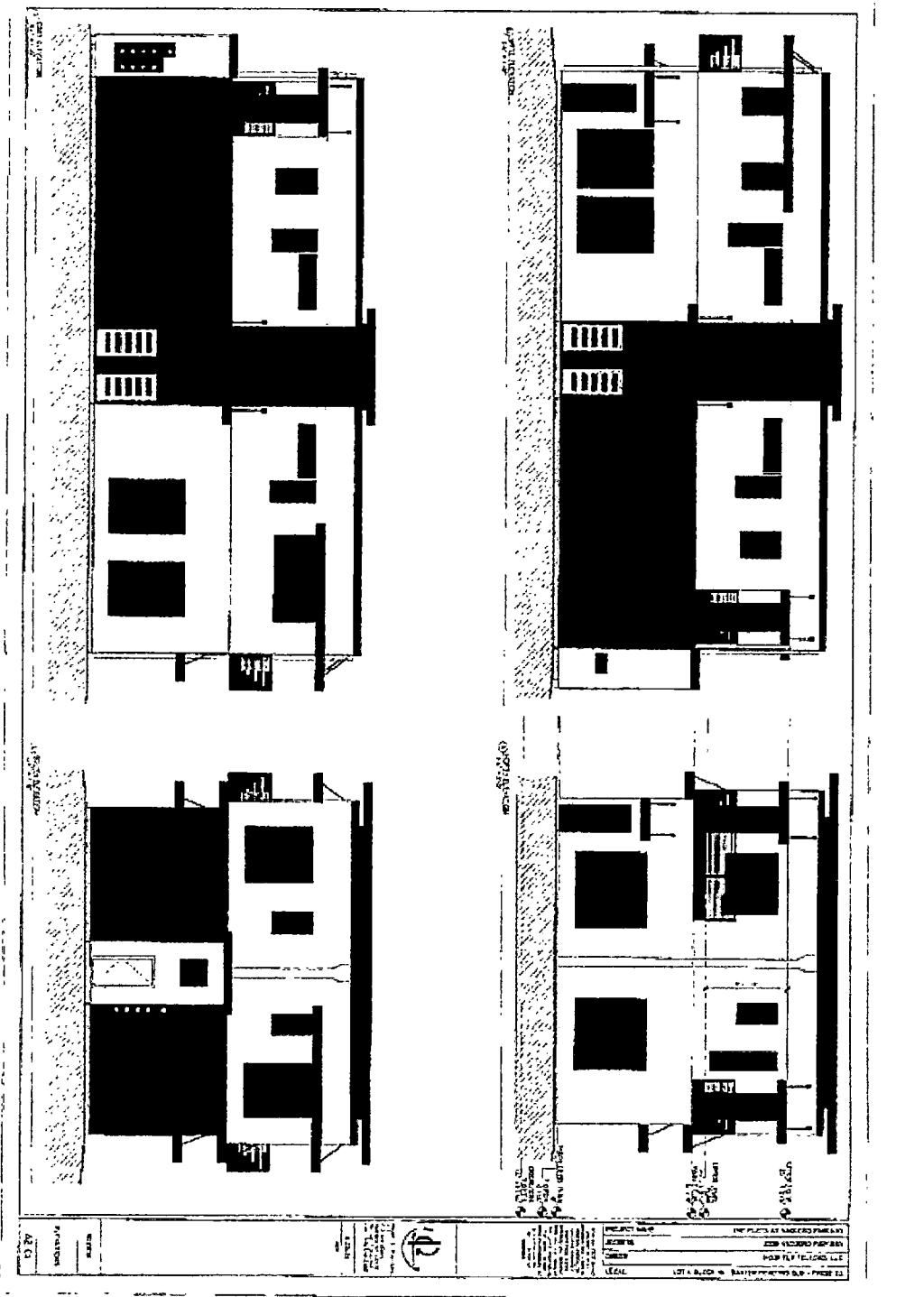
Exhibit B

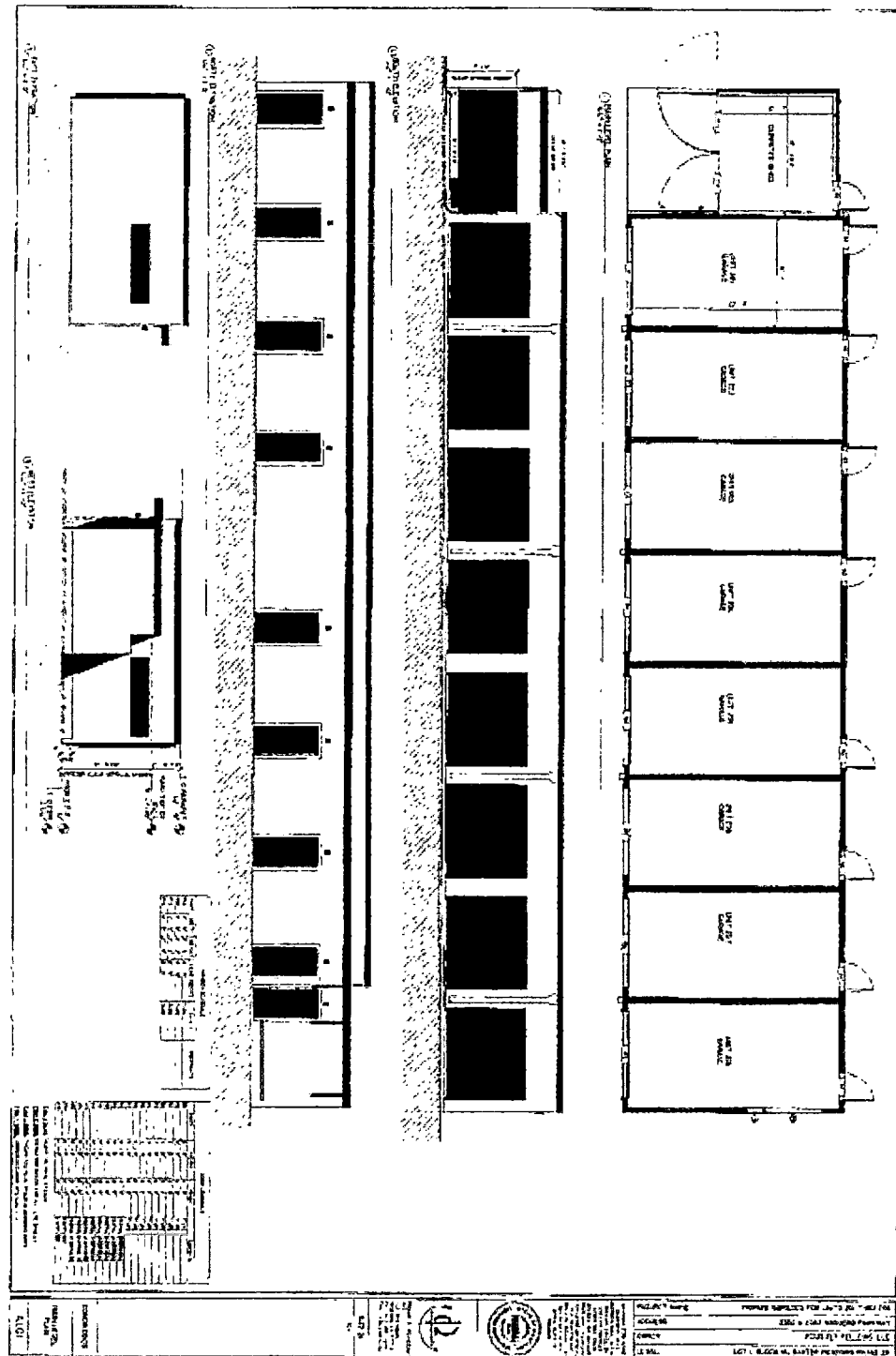


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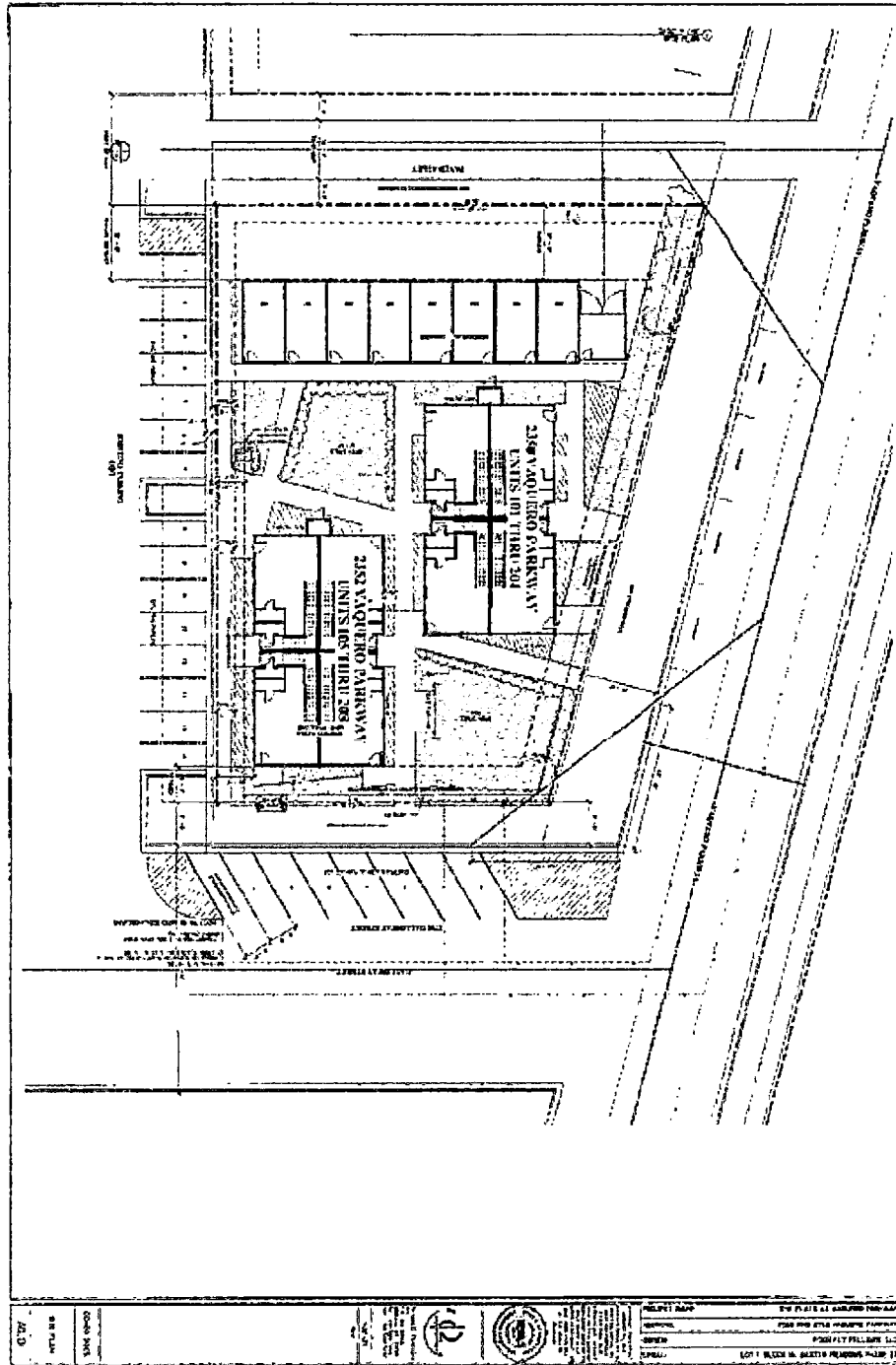




INSTRUMENT OF POOR PHOTOGRAPHIC QUALITY



**Exhibit C**





December 19, 2023

Erick Ringsak PE  
Madison Engineering  
895 Technolgy BLVD Suite 203  
Bozeman MT 59718-5858

RE: The Flats Condominiums  
Municipal Facilities Exclusion  
EQ# 24-1651  
City of Bozeman  
Gallatin County

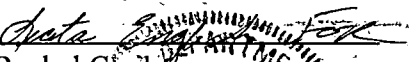
Dear Mr. Ringsak,

This is to certify that the information and fees received by the Department of Environmental Quality relating to this subdivision are in compliance with 76-4-127, MCA. Under 76-4-125(1)(d), MCA, this subdivision is not subject to review, and the Declaration can be filed with the county clerk and recorder.

Plans and specifications must be submitted when extensions of municipal facilities for the supply of water or disposal of sewage are proposed 76-4-131. Construction of water or sewer extensions prior to DEQ, Public Water Supply Section's approval is prohibited, and is subject to penalty as prescribed in Title 75, Chapter 6 and Title 76, Chapter 4.

The Flats Condominiums Municipal Facilities Exclusion will consist of 16 Units.

Sincerely,

  
Rachel Clark  
Engineering Bureau Chief  
Water Quality Division  
Department of Environmental Quality  
(406) 444-1277  
Email [rachel.clark2@mt.gov](mailto:rachel.clark2@mt.gov)

cc: City Engineer  
County Sanitarian  
file

# CONDOMINIUM REVIEW DECISION

## Project Information

Date:

November 8, 2023

Number of Units total / this phase:

8 Commercial/8 Residential (2 buildings)

File Number:

23287

Original Project File number, If applicable:

21078; 22-33936; 22-33937; 22-33938

Condominium Name:

The Flats Condominiums

Legal Description:

Lot 1 Block 16 Baxter Meadows Phase 2A

Review Planner:

**Elizabeth Cramblet**

### STATUTE:

**"76-3-203. Exemption for certain condominiums.** Condominiums constructed on land subdivided in compliance with parts

5 and 6 of this chapter or on lots within incorporated cities and towns are exempt from the provisions of this chapter if:

- (1) the approval of the original subdivision of land expressly contemplated the construction of the condominiums and any applicable park dedication requirements in 76 -3-621 are complied with; or
- (2) the condominium proposal is in conformance with applicable local zoning regulations when local zoning regulations are in effect."

### FINDINGS:

Per the above statute, the Department of Community Development finds the condominium development noted above meets the Subdivision & Platting Act (SPA) and Sanitation in Subdivision Act (SiS) by:

- SPA) Does not require subdivision review and has satisfied the exemption criteria.
- SPA) Has completed review as a subdivision.
- SiS) A municipal facilities exemption has been granted (**see attached**).
- SiS) Exempt from Sanitation Review per:

### DEPARTMENT APPROVAL:

**Brian Krueger**

Digitally signed by Brian Krueger  
DN: C=US, E=bkrueger@bozeman.net, O=City of Bozeman, OU=Department of Community Development, CN=Brian Krueger  
Date: 2023.11.14 15:55:27-07'00'

4E1 Property Mgt  
667 Glider Ln  
Belgrade Mt 59714

**BYLAWS**

**OF**

**THE FLATS CONDOMINIUMS HOMEOWNERS ASSOCIATION**

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## **1. PURPOSE AND APPLICATION**

These Bylaws are and shall be the Bylaws of THE FLATS CONDOMINIUMS HOMEOWNERS ASSOCIATION. These Bylaws shall, upon being recorded with the Clerk and Recorder of Gallatin County, State of Montana, govern and control the administration of THE FLATS CONDOMINIUMS. All Unit Owners, their employees, business invitees, guests and any renters or sublessees, present and future, shall have the rights and responsibilities described in these Bylaws and shall be subject to the provisions thereof.

The acquisition of an ownership interest in a unit in THE FLATS CONDOMINIUMS signifies that the Owner accepts, ratifies and agrees to comply with these Bylaws.

## **2. MEMBERSHIP**

Persons owning a Unit in THE FLATS CONDOMINIUMS or an interest in a unit or owning a unit in any real estate tenancy relationship recognized by the State of Montana, shall be a member of THE FLATS CONDOMINIUMS HOMEOWNERS ASSOCIATION ("Association"). An owner may not decline membership in the Association. Membership begins concurrently with the acquisition of an ownership interest and terminates at the time such ownership interest is terminated. Such termination shall not relieve any owner of liability for obligations incurred while a member of the Association; further, membership in the Association does not in any way negate or impair any owner's legal remedies, right to bring legal action, or defenses to any and all actions involving the Association, other Unit Owners, or the Management, which may arise from or be incidents of unit ownership.

## **3. OBLIGATIONS**

Each Unit Owner shall be obligated to comply with these Bylaws, the Declaration, and the laws of the City of Bozeman, the County of Gallatin, and the State of Montana. Such obligations shall include, but not be limited to, the paying of assessments levied by the Association, and the adherence to the protective covenants which are a part of the Declaration. Failure of any owner to abide by these Bylaws, and all rules made pursuant thereto, the declaration, and the laws of the City of Bozeman, the County of Gallatin, and the State of Montana, shall be grounds for appropriate legal action by the Association of Unit Owners or by an aggrieved Unit Owner against such noncomplying owner.

## **4. MEETING AND VOTING**

There shall be a regular meeting of the Unit Owners annually on the second Monday in September of each year, commencing in the year the Association is established, or on such other time and date properly announced by the Board at a place, including solely by means of remote communication.

Pursuant to these Bylaws, the Association may at any time hold special meetings. Such special meetings may be called on the initiative of the Association's President, by the Board, a signed request of the Manager, or a petition signed by ten percent (10%) of the Unit Owners. ee of any special meeting must specify the reason for such meeting and the matters to be raised. Only matters set forth in the petition or request may be brought before such meeting unless more than fifty-one percent (51%) of the aggregate interest present agree otherwise.

#### 4.1. Notice.

Notice of all meetings, regular or special, shall be delivered by the Association's Secretary to every Unit Owner of record at his address of record or electronically at least ten (10) business days prior to the time for holding such meeting or, if notice is mailed by certified mail, not less than thirty (30) days or more than sixty (60) days before the meeting date. Such notice shall specify the date, time and place of the meeting and shall make provisions to allow for the voting of each Unit Owner's interest by proxy at the discretion of the owner. The mailing of a notice in the manner provided in this paragraph or the personal delivery of such notice by the Secretary of the Association shall be considered as notice served.

#### 4.2. Quorum.

No meeting, regular or special, shall be convened to conduct business unless a quorum is present in person or by proxy. A quorum shall consist of ten percent (10%) of the total aggregate interest of THE FLATS CONDOMINIUMS. At any time, during any meeting, a quorum is not present, such meeting shall be adjourned forthwith.

#### 4.3. Membership Action by Written Ballot.

Members may take any action without a meeting if action by ballot is authorized by the Board and the Association delivers a written ballot to every member entitled to vote on that matter.

A written ballot must set forth:

4.3.1. each proposed action; and

4.3.2. provide an opportunity to vote for or against each proposed action.

The Association shall consider an action by written ballot approved only when:

4.3.3. the number of votes cast by ballot equals or exceeds the quorum that the bylaws require to be present at a meeting authorizing the action; and

4.3.4. the number of approvals equals or exceeds the number of votes that the bylaws require to approve the matter at a meeting.



All solicitations made in advance of the meeting for votes by written ballot must:

- 4.3.5. indicate the number of responses needed to meet the quorum requirements;
- 4.3.6. state the percentage of approvals necessary to approve each matter other than election of directors; and
- 4.3.7. specify the time by which a ballot must be received by the Association to be counted.

A written ballot may not be revoked.

#### 4.4. Action by Written Consent.

The members may act on any matter generally required or permitted at a membership meeting, without actually meeting, if eighty percent (80%) of the members entitled to vote on the subject matter sign one or more written consent(s) to the action; the members must deliver the consent(s) to the Association for inclusion in the minute book.

### **5. VOTING INTEREST**

Each Unit at Association meetings shall have an equal voting interest as set forth in the Declaration, a copy of which is being filed concurrently with the filing of these Bylaws with the Clerk and Recorder of Gallatin County, State of Montana.

Each Unit shall thus have an equal voting interest on all matters affecting the general business of THE FLATS CONDOMINIUMS, on all matters affecting the common elements, assessments for the common elements, and on all matters upon which the Association has agreed to have voting on the general common elements' interests. Voting upon matters affecting limited common elements and assessments for limited expenses shall be only by owners having a unit or interest in units located in the building affected.

Whenever a quorum is present at a meeting of the Association or the Board, those present may do any and all acts they are empowered to do unless specific provisions of these Bylaws, the Declaration, or the laws of the State of Montana direct otherwise.

### **6. BOARD OF DIRECTORS**

The governance of THE FLATS CONDOMINIUMS shall be by a Board of three (3) Directors, elected among the Unit Owners. Such Board shall have all powers and responsibilities attendant to the general administration and control of the condominium. Additionally, the Board shall have the authority necessary to carry into effect the powers and duties specified by these Bylaws.

### 6.1. Regular Meetings of the Board of Directors

The Board may hold a regular meeting immediately after, and at the same place as or in the same manner as the annual membership meeting. No notice of the meeting other than this bylaw is required. The Board may hold monthly meetings setting by resolution, the date, time and place of additional regular meetings. Regular Board meetings may be held by conference telephone or other means of remote communication, if convened in accordance with Section 6.3.

### 6.2. Special Meetings of the Board of Directors

The president, secretary or ten percent (10%) of the directors then in office may call and give notice of special meetings of the Board. Those authorized to call special Board meetings may fix any place within Gallatin County as the special meeting place. Special Board meetings may be held by conference telephone, if convened in accordance with Section 6.3.

### 6.3. Board of Director Meetings by Any Means of Communication

If, authorized by the Board, the Board or any designated committee of the Association may participate in a Board or committee meeting by means of a conference telephone or any means of communication, provided all persons entitled to participate in the meeting received proper notice of the meeting (see Section 6.4.1), and provided all persons participating in the meeting can hear each other at the same time. A director participating in a remote meeting by this means is deemed present in person at the meeting. The chairperson of the meeting may establish reasonable rules as to Notice of, and Waiver of Notice for, special director meetings

### 6.4. Notice.

6.4.1. Association's secretary shall give either oral or written notice of any special director meeting at least two (2) days before the meeting. The notice shall include the meeting place, day and hour. If the meeting is to be held by conference telephone or remote communication, (regardless of whether it is regular or special), the secretary must provide instructions for participating in the meeting.

### 6.5. Waiver of Notice.

6.5.1. Any director may waive notice of any meeting. The waiver must be in writing, signed by the director entitled to the notice, and filed with the minutes or corporate records. A director's attendance at a meeting waives the director's right to object to lack of notice or defective notice of the meeting; this shall be true unless the director, at the beginning of the meeting (or promptly upon

arrival), objects to holding the meeting or transacting business at the meeting, and does not vote for or assent to action taken at the meeting. Neither the secretary nor director needs to specify in the notice or waiver of notice the business to be transacted at, or the purpose of, any special Board meeting.

#### 6.6. Director Quorum

The fewer than the greater of one-third of the number of directors in office or two (2) directors shall constitute a quorum for the transaction of business at any Board meeting.

#### 6.7. Directors, Manner of Acting

6.7.1. Required Number to Constitute Act. The act of a majority of the directors present at a meeting at which a quorum is present (when the vote is taken) shall be the act of the Board. If no quorum is present at a meeting of directors, the directors may not take action on any Board matter other than to adjourn the meeting to a later date.

6.7.2. Director Approval. The Association shall deem a director to have approved of an action taken if the director is present at a meeting of the Board unless:

- (i) the director objects at the beginning of the meeting (or promptly upon arrival) to holding it or transacting business at the meeting;
- (ii) the director's dissent or abstention from the action taken is entered in the minutes of the meeting; or
- (iii) the director delivers written notice of dissent or abstention to the presiding officer of the meeting before its adjournment or to the Association immediately after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken.

#### 6.8. Conduct of Board of Director Meetings

The president, or in the president's absence, the president-elect or the past president, or in their absence, any person chosen by the directors' present shall call the meeting of the directors to order and shall act as the chairperson of the meeting. The chairperson, or the chairperson's designee, shall establish rules of the meeting that will freely facilitate debate and decision making. The chairperson will indicate who may speak when and when a vote will be taken. The secretary of the Association shall act as the secretary of all meetings of the directors, but in the secretary's absence, the presiding officer may appoint any other person to act as the secretary of the meeting.

#### 6.9. Mediation, Arbitration if Board Deadlocked

6.9.1. General. If the Board is equally divided on any aspect of the management of the property, business and affairs of the Association, or Association transactions, or if the Board is equally divided on any question, dispute, or controversy, and the deadlock is preventing action or non-action by the Board, then the Board shall submit the deadlock to mediation in accordance with Section 6.9.2. If the directors are unable to resolve the deadlock through mediation, the directors agree to submit the dispute to binding arbitration in accordance with Section 6.9.3.

6.9.2. Mediation. If the Board is unable to resolve the deadlock itself the directors agree to submit the dispute to mediation and the following guidelines shall apply:

- (i) The directors agree to have the dispute mediated by any Montana District Court Judge.
- (ii) The directors agree to follow the mediation procedure selected by the mediator.
- (iii) Mediation shall terminate upon the request of the mediator or thirty percent (30%) of the directors.

6.9.3. Arbitration.

- (i) If the Board is unable to resolve the deadlock through mediation, upon written request of thirty percent (30%) of the directors, the directors agree to submit the deadlock to binding arbitration in the following manner:
- (ii) At a duly held Board meeting, directors shall submit written requests for an arbitrator; the Board shall then vote on which arbitrator to select. If the majority of Board members agree on a single arbitrator, then the Board shall contact that individual with a request for arbitration. If a majority of the board members cannot agree on a single arbitrator, then the Board shall select two (2) arbitrators, each director having, in the selection, a number of votes equal to the number of directors under a system of cumulative voting; after the members appoint two (2) arbitrators, those two (2) arbitrators shall select a third arbitrator to be the professional who actually arbitrates for the Board. If the initial two (2) arbitrators are unable to agree within fifteen (15) days upon a third arbitrator, the president of the Association will ask an officer at the Association's primary banking facility to appoint the third arbitrator.
- (iii) The arbitrator shall determine, decide on and help resolve the matters that are equally dividing the Board. The arbitrator's scope of responsibility will be to decide on matters including (but not limited to) whether the subject before the Board is a proper subject for action by the

Board; the arbitrator may decide whether matters have been properly submitted to the Board for decision, whether, the Board is actually divided, and whether this Section and the arbitration provisions provided here were properly invoked by the Board or applicable. The arbitrator may act until all questions, disputes and controversies are determined, adjudged, and resolved.

(iv) The arbitrator shall conduct the arbitration proceedings in accordance with the rules of the American Arbitration Rules, then in effect, except where these bylaws make a special provision.

(v) The arbitrator's decision shall be conclusive and binding upon the Board, the Association and the parties on all matters that the board submits to the arbitrator. The arbitrator's decision shall be the equivalent of a resolution unanimously passed by the full Board at an organized meeting. The Board or the members may not revoke, amend or overrule the decision, except by a majority action of either body. The arbitrator's decision shall be filed with the secretary of the Association; and the arbitrator may enter judgment on the decision in the highest court of the forum having jurisdiction.

#### 6.10. Director Action Without a Meeting

The directors may act on any matter generally required or permitted at a Board meeting, without actually meeting, if all the directors take the action, each one signs a written consent describing the action take, and the directors file all the consents with the records of the Association. Action taken by consents is effective when the last director signs the consent, unless the consent specifies a different effective date. A signed consent has the effect of a meeting vote and may be referred to as a meeting vote in any document.

#### 6.11. Director Committees

##### 6.11.1. Creation of Committees.

The Board may create one or more committees and appoint members of the board to serve on them. Each committee must have two (2) or more directors, who serve at the pleasure of the Board.

##### 6.11.2. Selection of Members.

To create a committee and appoint members to it, the Board must acquire approval by the majority of all the existing directors when the action is taken.

##### 6.11.3. Required Procedures.

Sections 6.1, 6.2, 6.3, 6.4, 6.5, 6.6, 6.8 and 6.9, which govern meetings, notice and waiver of notice, quorum and voting requirements, conduct of the Board, and action without

meetings apply to committees and their members. In addition, the committees shall keep regular minutes of their proceedings and report the same to the Board. The committees are subject to all the procedural rules governing the operation of the board itself.

#### 6.11.4. Authority.

Each committee may exercise the specific Board authority which the Board confers upon the committee in the resolution creating the committee. Provided, however, a committee may not:

- (i) approve or recommend to members dissolution, merger, or the sale, pledge, or transfer of all or substantially all of the Association's assets;
- (ii) elect, appoint, or remove directors or fill vacancies on the Board or on any of its committees; or
- (iii) adopt, amend, or repeal the articles or bylaws.

#### 6.11.5. Audit Committee.

The Board, by resolution adopted by the affirmative vote of a majority of the directors then in office, may create an audit committee consisting of three (3) or more directors designated by the the Board, but not employed by the Association. The committee shall have the power to appoint, oversee, and assist accountants or auditors in any audit or review of the records of the Association.

### **7. OFFICERS OF THE BOARD OF DIRECTORS**

The Association shall elect from its membership a Board which shall consist of a President, Secretary, and Treasurer, who shall all serve for a term of one (1) year. The manner of election of the Board shall be as follows:

At the first and all subsequent annual meetings of the Association, nominations for positions on the Board shall be accepted from any of the Unit Owners present. Voting will be noncumulative, with each Association member having a vote equal to his percentage of interest in the general common elements, for as many persons as there are Directors to be elected. Board members shall be elected by majority vote of the interests present or voting by proxy at any annual or special meeting. The first Board consisting of one (1) person, as listed below, shall serve until the first annual meeting of the Association, at which time a new Board shall be elected.

### **8. POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

The Board shall have the following powers and duties:

- 8.1. To call annual meetings of the Association and give due notice thereof.

8.2. To conduct elections of the Board.

To enforce the provisions of the Declaration, Bylaws and protective covenants of THE FLATS CONDOMINIUMS by appropriate action.

8.3. To promulgate and adopt rules and regulations for the use of the common elements and for the occupancy of the units so as not to interfere with the peace and quiet of all the residents.

8.4. To provide for the management of THE FLATS CONDOMINIUMS by hiring or contracting with suitable and capable management and personnel for the day-to-day operation, maintenance, upkeep and repair of the general common and limited common elements.

8.5. To determine and to levy assessments as allowed by the Declaration, these Bylaws and the State of Montana, and to provide for the collection, expenditure and accounting of said assessments.

8.6. To pay for the expenses of the maintenance, repair and upkeep of the general common elements and the limited common elements, and to approve payment vouchers either at regular or special meetings.

8.7. To delegate authority to the Manager for the routine conduct of condominium business, however, such authority shall be precisely defined with ultimate authority at all time residing in the Board.

8.8. To provide a means of hearing grievances of Unit Owners and to respond appropriately thereto.

8.9. To prepare an annual budget for the condominium in order to determine the amount of the assessments payable by the Unit Owners to meet the general common and limited common expenses and allocate and assess such charges among the Unit Owners according to their respective interests in the general common and limited common elements.

8.10. To levy and collect special assessments whenever, in the opinion of the Board, it is necessary to do so in order to meet increased operating or maintenance expenses, costs, or additional capital expenses, or because of emergencies.

8.11. To take appropriate legal action to collect any delinquent assessments, payments or amounts due from Unit Owners, or from any person or persons owing money to the condominium, and to levy a penalty and to charge interest on unpaid amounts due and owing. However, other than for the collection of delinquent assessments or accounts, the Board shall not initiate any litigation or lawsuit

without prior approval of at least two-thirds (2/3) of the aggregate interest of the Unit Owners in the condominium.

- 8.12. To defend in the name of the Association any and all lawsuits wherein THE FLATS CONDOMINIUMS is a party defendant.
- 8.13. To enter into contracts necessary to carry out the duties herein set forth.
- 8.14. To establish a bank account for THE FLATS CONDOMINIUMS, and to keep therein all funds of the Association. Withdrawal of monies from such accounts shall only be by checks signed by such persons as are authorized by the Board.
- 8.15. In general, to act for and carry on the administration and affairs of the Association as authorized and prescribed by the Declaration, and to do all those things which are necessary and reasonable in order to carry out the governance and operation of THE FLATS CONDOMINIUMS.
- 8.16. To make repairs, alterations, additions and improvements to the general common and limited common elements consistent with managing the condominium in a first-class manner and in the best interest of the Unit Owners.
- 8.17. To provide for the perpetual maintenance of the general common open area and landscaping, the parking areas and driving lanes, and any stream/ditch and irrigation canals, and to make any assessments necessary for such maintenance as provided herein. Such maintenance shall specifically include the control of County declared noxious weeds.
- 8.18. To arrange, keep, maintain and renew the insurance for the Association as set forth in the Declaration.
- 8.19. To receive and make payment for common utility expenses, including the common meter power bill, for all of the condominium units. The pro rata portion of the utility expenses shall be paid by the unit owners as part of, or in addition to, their condominium assessment, with the method of payment to be determined by the Board.
- 8.20. To carry out the duties and responsibilities of the Board in all other matters as may be authorized, needed or required by the Declaration.

## **9. VACANCIES AND REMOVAL**

Should a vacancy occur on the Board, the Board, subject to the exception described below, shall appoint a member of the Association to serve for the unexpired term. Such vacancy shall be filled no later than the next regular Board meeting after which it occurs.



Should such vacancy not be filled by the Board at the next regular meeting of the Association, the Association may fill such vacancy.

At any regular or special meeting of the Association, any member of the Board may be removed by a majority of the aggregate interest in THE FLATS CONDOMINIUMS. Such vacancy shall be filled by the Association. Such removal matter must be announced in the notice of such regular or special meeting. The personal delivery of such notice by the Secretary of the Association shall be considered notice served.

## **10. COMPENSATION**

No member of the Board shall receive any compensation for acting as such. Nothing herein, however, shall be construed to preclude compensation being paid to Managers who are hired by the Board.

## **11. MANAGERS**

The Manager shall be appointed and/or removed by the Board. The Manager (or any member of the Board or Association handling Association funds or having power to withdraw or spend such funds) shall be bonded if required by the Board, and shall maintain the records of the financial affairs of the condominium. Such records shall detail all assessments made by the Association and the status of payments of said assessments by all Unit Owners. All records shall be available for examination during normal business hours to any Unit Owner or his assigned representative. All functions and duties herein provided for the Manager may be performed by the Board, or the President, if the Board should decide not to have a Manager.

11.1. Accounts: The receipts and expenditures of the Association shall be under the direction of the Manager and be classified as appropriate into general common expenses and limited common expenses and shall include a provision for current expenses which shall include all receipts and expenditures to be made within the year for which the budget is made, including a reasonable allowance for contingencies and working funds, except expenditures chargeable to reserves or betterments. The balance in this fund at the end of each year shall be applied to reduce the assessments for current expenses for the succeeding year. Other budget items may be provided for in the discretion of the Manager.

11.2. Budget: The Manager shall prepare and submit to the Board each calendar year, a budget, which must be approved and adopted by the Board. The budget shall include the estimated funds required to defray the general common and limited common expenses and to provide and maintain funds for the foregoing accounts according to good accounting practices. Copies of the budget and proposed assessments shall be transmitted to each member on or before December 15<sup>th</sup> of

the year preceding the year for which the budget is made. If the budget is subsequently amended, a copy of the amended budget shall be furnished to each member.

11.3. Financial Report: An audit and financial report of the accounts of the Association may be made annually by a Certified Public Accountant, if required by the Board, and a copy of the report shall be furnished to each member no later than March 1<sup>st</sup> of each year for which the audit is made.

11.4. The Manager shall generally operate and manage the condominium for and on behalf of the Unit Owners and shall have such other powers and authority as the Board may designate. If there is no Manager or the Manager resigns, is terminated or their contract expires, the Board shall perform all the duties of the Manager.

## **12. AMENDMENT OF BYLAWS**

12.1. These Bylaws may be amended at any regular or special meetings of the Association providing that a copy of the proposed revision is included in the notice of such meeting. Upon a vote of over seventy-five percent (75%) of the aggregate interest in the condominium, the amendment shall be declared adopted. The Secretary shall as soon as practicable after adoption, prepare a copy of these Bylaws as amended for certification by the President and Secretary of the Association. Such amended and certified Bylaws shall then be filed and recorded in the office of the Clerk and Recorder of Gallatin County, State of Montana. Bylaws as amended shall become effective at the time of such recording.

12.2. Amendment by Declarant. Notwithstanding the procedure set forth in Section 12.1, the Declarant may amend the Bylaws, or any other THE FLAT CONDOMINIUM governing document, prior to any sale or lease of a Unit or interest thereof.

## **13. ASSESSMENTS**

In accordance with the percentage of interest in the general common elements as set forth in the Declaration, each Unit Owner shall be assessed for general common expenses. Such assessments, and assessments for limited common expenses, shall be collected and paid according to the terms and under the procedures more particularly set forth in the Declaration. The amount of assessments described above and any other assessments allowed by these Bylaws, the Declaration, and by the State of Montana, shall be fixed by the Board. Notice of each owner's assessments shall be mailed to said owner at his address of record.

#### **14. THE DECLARATION**

The undersigned has filed, along with these Bylaws, a Declaration whereby the properties known as THE FLATS CONDOMINIUMS are submitted subject to Title 70, Chapter 23, M.C.A. The Declaration shall govern the acts, powers, duties and responsibilities of the Association of Unit Owners, and in the event these Bylaws and the Declaration are in conflict, the Declaration shall prevail.

The definition of terms set forth in the Declaration shall be applicable throughout these Bylaws and the interpretation thereof.

By virtue of these Bylaws and the Declaration, each Unit Owner has the right to membership in the Association of Unit Owners and any Unit Owner may be on the Board of THE FLATS CONDOMINIUMS.

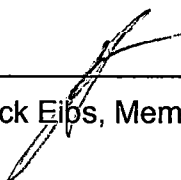
THE FLATS CONDOMINIUMS HOMEOWNERS ASSOCIATION and its Board shall have the primary and final authority on all matters solely affecting the condominium area, subject to the laws, rules and regulations of the City of Bozeman, County of Gallatin, and the State of Montana.

[SIGNATURE PAGE TO FOLLOW]

**IN WITNESS WHEREOF**, the undersigned, as the owners of record of all of the condominium units and one hundred percent (100%) of the voting interests of THE FLATS CONDOMINIUMS as of the date hereof, hereby appoint the following persons to serve on the Board and as officer until the first annual meeting of the Association, to-wit:

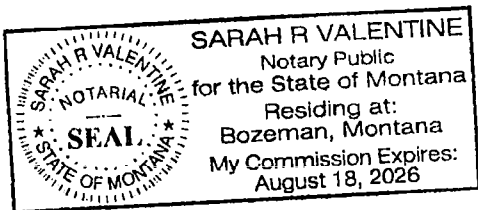
And, the Declarant and the said Board hereby declare and affirm the adoption of the foregoing Bylaws on the 28<sup>th</sup> day of December, 2023.

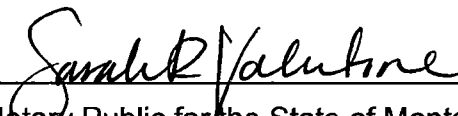
**DECLARANT: The Flats at Baxter Meadows LLC**

By:   
Patrick Eibs, Member

STATE OF MONTANA     )  
  : ss.  
County of Gallatin     )

On this 28 day of December 2023, before me, a Notary Public in and for the State of Montana, personally appeared Patrick Eibs, Member of The Flats at Baxter Meadows LLC whose name is subscribed to the within instrument and acknowledged to me that he executed the same on behalf of the LLC.



  
Notary Public for the State of Montana  
Printed Name: Sarah R Valentine

Return To:  
Security Title Company

P.O. Box 6550  
Please Return after Recording:  
**Bozeman, MT 59771-6550**  
Property Management  
667 Glider Lane  
Belgrade, MT 59714

① Accommodation Recording Only  
STC# G-2024

**2821095**

Page 1 of 3 02/28/2024 11:34:12 AM Fee: \$24.00  
Eric Semerad - Gallatin County, MT MISC

FIRST AMENDMENT TO THE BYLAWS OF THE FLATS CONDOMINIUMS  
HOMEOWNERS ASSOCIATION:

COMES NOW, THE FLATS CONDOMINIUMS HOMEOWNERS ASSOCIATION (the "Association") hereby records the following amendment to the Bylaws of The Flats Condominiums Association (the "Amendment"). The Declarant certifies that pursuant to Section 12.2 of the Bylaws, the Declarant may amend the Bylaws prior to the sale or lease of a Unit or interest thereof without a vote of the members. This Amendment amends that certain Bylaws of The Flats Condominiums Association recorded on January 4, 2024, Document No. 2818169, records of Gallatin County, Montana (the "Bylaws"), located in:

BAXTER MEADOWS SUB PH 2A, S34, T01 S, R05 E, BLOCK 16,  
LOT 1, ACRES 0.422, PLAT J-383.

The purpose of this Amendment to the Bylaws is to amend the quorum provision.

**RECITALS**

**WHEREAS**, Baxter Meadows is an existing subdivision in Gallatin County, Montana;

**WHEREAS**, this First Amendment amends the Bylaws of The Flats Condominiums Association recorded on January 4, 2024, Document No. 2818169, records of Gallatin County, Montana.

**WHEREAS**, according to the Bylaws, Declarant may amend the Bylaws prior to the sale or lease of a Unit or interest thereof without a vote of the members; and

**WHEREAS**, the Amendment shall be effective on the date the same as recorded in the office of the Clerk and Recorder of Gallatin County, Montana.

**NOW THEREFORE**, the Bylaws is amended as follows:

Strikethrough represents a deletion and CAPITALIZATION and *ITALICS* represents the amended language.

1. Paragraph 4.2, is amended to read:

**QUORUM**

No meeting, regular or special, shall be convened to conduct business unless a quorum is present in person or by proxy. A quorum shall consist of ~~ten~~ *FORTY* percent (~~40~~*40*%) of the total aggregate interest of THE FLATS CONDOMINIUMS. At any time, during any meeting, a quorum is not present, such meeting shall be adjourned forthwith.

[ACKNOWLEDGEMENT PAGE TO FOLLOW]

IN WITNESS WHEREOF, Declarant has hereunto set its hand as of this 21<sup>st</sup> day of February, 2024.

DECLARANT: The Flats at Baxter Meadows LLC

By: [Signature]  
Name: Patrick Eibs  
Its: Member

ACKNOWLEDGMENT

STATE OF MONTANA )  
 ) ss.  
COUNTY OF GALLATIN )

On the 21<sup>st</sup> day of February, 2024, before me, a Notary Public for the State of Montana, personally appeared Patrick Eibs, (the Declarant)\*\* known to me to be the Authorized signer for \*[NAME] and who executed this instrument on behalf of the corporation, and acknowledged to me that such corporation executed the same.

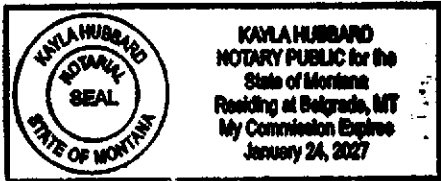
\*The Flats at Baxter Meadows LLC \*\*Member

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

[Signature]  
Notary Signature, Title or Rank

1124 Cruiser LN Unit K Belgrade MT 59714  
Address

January 24, 2027  
Commission Expiration Date



**2821096**

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Eric Semerad - Gallatin County, MT MISC

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**AMENDED AND RESTATED DECLARATION**

**FOR**

**THE FLATS CONDOMINIUMS**



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**AMENDED AND RESTATED DECLARATION**

**FOR THE**

**THE FLATS CONDOMINIUMS**

THIS AMENDED AND RESTATED DECLARATION is hereby made and entered into this 21<sup>st</sup> day of February 2024, by The Flats at Baxter Meadows LLC, hereinafter referred to as a Declarant, whereby lands and property hereinafter described are submitted to the provisions of Chapter 23, Title 70, M.C.A., also known as the Unit Ownership Act as a condominium.

The Declarant desires to replace, supersede and restate the entirety of the Declaration for The Flats Condominium, excluding the Certificate of Name and Certificate of Floor Plan (pages 4 and 5), specifically Document Number 2818169, dated December 28, 2023, recorded January 4, 2024, with Gallatin County Clerk and Recorder.

The property subject to this Declaration shall be known as THE FLATS CONDOMINIUMS and is more particularly described on **Exhibit A**. The addresses of THE FLATS CONDOMINIUMS are 2350 Vaquero Parkway Unit (101, 102, 103, 104, 201, 202, 203, 204) and 2352 Vaquero Parkway Unit (105, 106, 107, 108, 205, 206, 207, 208).

**I. DEFINITIONS**

Unless the context expressly provides otherwise, the following definitions shall pertain throughout this Declaration and in the interpretation thereof:

1. Aggregate Voting shall mean the entire number of votes of persons present or available to vote in person or by proxy in a particular circumstance.
2. Association or Association of Unit Owners shall mean all of the Unit Owners acting as a group and in accordance with duly adopted Bylaws and this Declaration, specifically THE FLATS CONDOMINIUMS HOMEOWNERS ASSOCIATION.
3. Board or Board of Directors shall mean the Board of Directors of the Association as more particularly defined in the Bylaws.

4. **Building** shall mean a multiple unit building or buildings comprising a party of the property.
5. **Bylaws** shall mean the Bylaws promulgated by the Association under this Declaration and the Unit Ownership Act.
6. **Commercial Unit** shall mean units on the first floors of THE FLATS CONDOMINIUMS, more particularly described as 2350 Vaquero Parkway Unit (101, 102, 103, 104) and 2352 Vaquero Parkway Unit (105, 106, 107, 108).
7. **Common Elements** shall mean both general common elements and limited common elements. Common Elements may also be referred to as General Common Area.
  - A. **General Common Elements** include all those elements which are for the use of all Unit Owners and guests of Unit Owners of THE FLATS CONDOMINIUMS. Specifically included are: grounds surrounding the buildings, the land on which the buildings are located, paths, sidewalks and walkways, any portion of the parking areas not specifically allocated to a particular unit, any irrigation system placed on the property for landscape maintenance, any portions of the buildings designated on the floor plans as common to all Units, electrical, gas, telephone, water and sewer lines and connections serving all of the units, landscaping, plants and other materials and improvements separate from and outside of the buildings containing the units, and other elements necessary for the safety, maintenance and existence of THE FLATS CONDOMINIUMS in which each Unit Owner shall have his designated percentage of interest, as set forth in paragraph IV below.
  - B. **Limited Common Elements** as used in this Declaration shall mean those common elements which are reserved for the use of fewer than all of the owners and guests of Unit Owners of THE FLATS CONDOMINIUMS, to the exclusion of other such owners and guests. As to any given Unit Owner or Owners, limited common elements shall mean the common elements which are located within or affixed to the building containing his unit and/or limited in use to fewer than all the owners as depicted in this Declaration, and which are for the use of the Unit Owners and guests of that Unit in which the elements are located or situated on the real property known as THE FLATS CONDOMINIUMS. Specifically included are:

(1) Flues, chimneys, ducts, cables, conduits, public utility lines, water, sewer, electrical, gas, cable television lines, hot and cold water pipes (all such utility pipes and lines are limited common elements where they service only one or two units; where they service all units, they shall be general common elements), entrances, stoops, furnaces, air conditioner condenser or unit, indicated sidewalks, patios, decks, portions of the detached garages that not a part of the unit boundaries, other parking that is specifically allotted to a particular unit, windows, exterior facing doors, driveways, storage areas, boilers, hot water tanks, and fixtures, or other portions of the building servicing only a particular unit or less than all of the units. The percentage of the separate units interest in the limited common elements shall be computed by determining the number of units that have use of the limited common elements and dividing that number into the total value of those limited common elements.

8. Common expenses shall mean expenses of administration, maintenance, repair or replacement of general common elements, expenses agreed upon as common by the Association of all Unit Owners, and expenses declared common by the Unit Ownership Act.
9. Declaration shall mean this document and all parts attached thereto or incorporated by reference.
10. Limited Expenses shall mean the expenses attributable to the maintenance, repair and replacement of limited common elements, and are expenses only for owners of units within the respective building for which the expenses are accrued.
11. Manager shall mean the manager, the Board of Directors, management corporation, or any other person or group of persons retained or appointed by THE FLATS CONDOMINIUMS HOMEOWNERS ASSOCIATION for the purpose of conducting the day-today operations of THE FLATS CONDOMINIUMS.
12. Property shall mean the land, buildings, improvements and structures thereon, and all easements, rights and appurtenances belonging thereto, which are herewith submitted to the provisions of the Unit Ownership Act.

13. Recording Officer shall mean the county officer charged with the duty of filing and recording deeds, mortgages and all other instruments or documents relating to this Declaration and the property which is its subject.
14. Residential Unit shall mean units on the second floors of THE FLATS CONDOMINIUMS, more particularly described as 2350 Vaquero Parkway Unit (201, 202, 203, 204) and 2352 Vaquero Parkway Unit (205, 206, 207, 208) and the specifically allotted detached garage located in the separate unit garage building.
15. Unit shall be the separate condominium units of THE FLATS CONDOMINIUMS and is a parcel of real property including and containing one or more rooms occupying one or more floors or a part of parts thereof, intended for any type of independent use, and which a direct exit to a public street or highway or to a common area or areas leading to a public street or highway and in the case of a Residential Unit, shall include the specifically allotted detached garage located in the separate unit garage building.
16. Unit Designation Units shall be designated by unit numbers.
17. Unit Owner shall mean the person or persons owning a fee simple absolute, or one who is a co-owner in any real estate tenancy relationship that is recognized under the laws of the State of Montana, in one or more units of THE FLATS CONDOMINIUMS.

## **II. REAL ESTATE**

### **Description.**

The property which is by this Declaration submitted and subject to the Montana Unit Ownership Act is described in **Exhibit A** attached hereto.

The condominium units declared in the present declaration in THE FLATS CONDOMINIUMS consist of two (2) buildings with sixteen (16) separate units listed as Units 101,102,103,104,105,106,107,108, 201,202, 203, 204, 205, 206, 207, 208 and one (1) detached eight (8) unit garage building. The provisions of this Declaration and the Bylaws shall be construed to be covenants running with the land and shall include every unit and shall be binding upon the Unit owners, their heirs, successors, personal

representatives and assigns for as long as THE FLATS CONDOMINIUMS Declaration and Bylaws are in effect.

The real property submitted to the Unit Ownership Act is subject to existing easements, covenants, articles of incorporation, bylaws, terms, conditions, obligations, disclosures, reservations, restrictions, dedications, conditions shown and delineated in the documents, plats and site plan filed or recorded with the Clerk and Recorder of Gallatin County, Montana, or the State of Montana, applicable to said real property and subject to zoning ordinances and land use restrictions, if any, laws and regulations of the State of Montana and United States of America, and also subject to taxes, assessments and charges levied by the City of Bozeman, County of Gallatin, improvement districts, sewer and water districts and fire districts, if any.

The provisions of this Declaration and the Bylaws shall be construed to be covenants running with the land, including the buildings, improvements, easements, appurtenances and units, and shall be binding upon each Unit Owner, mortgagees, lienholders, and their heirs, successors, personal representatives and assigns, as long as this Condominium Declaration and Bylaws are in effect.

#### **Exemptions and Exclusions.**

As certified pursuant to MCA §76-4-127, THE FLATS CONDOMINIUMS are excluded from review by the Montana Department of Environmental Quality pursuant to the exemption allotted for in MCA §76-4-125(1)(d)(iii) under §76-3-203(2) as per description in **Exhibit D and Exhibit E.**

#### **Condominium Units.**

Each Unit, together with the appurtenant undivided interest in the common elements of THE FLATS CONDOMINIUMS, shall together comprise one condominium unit, shall be inseparable, and may be conveyed, leased, rented, devised or encumbered as a condominium unit. The Units comprising the condominium are contained in not to exceed two (2) buildings. Each Residential Unit will also include one (1) specifically allotted detached garage as part of the condominium unit.

#### **Encroachments.**

If any portion of the general common elements or limited common elements encroaches upon a Unit or Units, a valid easement for the encroachment and for the maintenance of the same, so long as it stands, shall and does exist. If any portion of a Unit encroaches upon the general common elements, or upon an adjoining Unit or Units,

a valid easement for the encroachment and for the maintenance of the same, so long as it stands, shall and does exist. Such encroachments and easements shall not be considered or determined to be encumbrances either on the general common elements, the limited common elements, or on the Units for the purpose of marketability of title.

**Unit Boundaries.**

Each Unit, and when applicable, the specifically allotted detached garage that is part of a Residential Unit (together referred to as the Unit below), shall include the part of the building containing the Unit that lies within the boundaries of the Unit, which boundaries are as follows:

A. Upper and Lower Boundaries: The upper and lower boundaries of the Unit and specifically allotted detached garage, as applicable, shall be the following boundaries extended to an intersection with the perimetrical boundaries:

- (1) Upper Boundary: The plane of the lowest surfaces of the upper floor or ceiling joists for all units.
- (2) Lower Boundary: The plane of the highest surface of the concrete floor.

B. Perimetrical Boundaries: The perimetrical boundaries of the Unit and the specifically allotted detached garage, as applicable, shall be the following boundaries extended to an intersection with the upper and lower boundaries:

- (1) Exterior Building Walls: The plane formed by the center line of the exterior walls of the buildings except that such boundary shall include all exterior doors (including garage doors) and windows in the Unit (and detached garage).
- (2) Interior Building Walls: The vertical planes of the centerline of the walls bounding a Unit extended to an intersection with other perimetrical boundaries. Where walls between units are of varying thicknesses, the plane of the centerline of a boundary wall shall be the median line drawn between the two outermost boundaries of such wall.



### **III. EASEMENTS - INTERIOR REMODELING**

#### **Common Element Easements.**

A nonexclusive right of ingress, egress and support through the limited common elements within the buildings is appurtenant to each unit, and all of the general common elements are subject to such rights.

#### **Easement for Utilities.**

Each Unit may have its air space penetrated by electrical wires and lines, gas lines, mechanical equipment including air handling ducts, hot and cold water lines, waste water lines and vents and other utility and mechanical lines, pipes or equipment. A nonexclusive easement shall exist through, over and across each unit for inspection, installation, maintenance, replacement and repair of such utility lines and mechanical equipment for the use of all of the unit Owners or the Unit Owners being serviced by the air space being penetrated by such lines and/or equipment to a minimum, ingress and egress for the purpose of such inspection, installation, maintenance, replacement or repair of such easement rights shall only be done under the direction and approval and with the authority of the Owners Association and/or the Manager unless an emergency exists, in which event any action may reasonably be taken which is justified under the circumstances to minimize damage which would otherwise occur as a consequence of such emergency.

#### **Interior Remodeling.**

Each Unit Owner shall have the exclusive right to paint, repaint, tile, wax, paper, panel, carpet, brick or otherwise maintain, refinish and decorate the inner surfaces of the walls, ceilings, floors, windows and doors bounding his own Unit, and the interior thereof, so long as such owner does not affect the structural integrity of the building in which his Unit is located. Any replacement of doors and windows, including garage doors, will require the approval of the Owners Association's Board.

#### **IV. OWNERSHIP AND VOTING - EXHIBITS - USE**

##### **Percentage of Interest.**

Each Unit Owner shall be entitled to the exclusive ownership, use and possession of his Unit. Additionally, each Unit Owner shall have a percentage of undivided interest in the general common elements of THE FLATS CONDOMINIUMS. Such percentage represents his ownership interest in the general common elements, and his liability for common expenses. The percentage of interest in the general common elements for the respective owners shall be computed by taking the square footage of each Unit at the date of filing this Declaration and dividing it by the then combined square footage of all the units having an interest in the general common elements of THE FLATS CONDOMINIUMS. Such percentage of interest owned by each of the Units in THE FLATS CONDOMINIUMS shall be according to the percentages set forth below:

| <b>UNIT</b> | <b>SQUARE FOOTAGE</b> | <b>INTEREST IN GENERAL COMMON ELEMENTS</b> |
|-------------|-----------------------|--|
|-------------|-----------------------|--|

---

##### **2350 Vaquero Parkway**

|          |     |       |
|----------|-----|-------|
| Unit 101 | 553 | 6.12% |
| Unit 102 | 553 | 6.12% |
| Unit 103 | 553 | 6.12% |
| Unit 104 | 553 | 6.12% |
| Unit 201 | 581 | 6.42% |
| Unit 202 | 574 | 6.35% |
| Unit 203 | 574 | 6.35% |
| Unit 204 | 580 | 6.41% |

##### **2352 Vaquero Parkway**

|          |     |       |
|----------|-----|-------|
| Unit 105 | 553 | 6.12% |
| Unit 106 | 553 | 6.12% |
| Unit 107 | 553 | 6.12% |
| Unit 108 | 553 | 6.12% |
| Unit 205 | 581 | 6.42% |
| Unit 206 | 572 | 6.33% |
| Unit 207 | 574 | 6.35% |
| Unit 208 | 580 | 6.41% |

Detached Garage Building  
2129 N/A

**TOTALS 100%**

For the purposes of this Declaration as set forth below, the voting interest of the Unit Owner or Owners in all matters concerning the Association of the Unit Owners shall be equal to the other units in accordance with the Bylaws of the Association of the Unit Owners.

**Floor Plans and Exhibits.**

THE FLATS CONDOMINIUMS, will consist of two (2) buildings on the real property described in **Exhibit A**, which contains sixteen (16) units as shown on the floor plans.

For identification and descriptive purposes, the following Exhibits are attached and by reference hereto incorporated into and made a part of this Declaration:

**Exhibit B:** Showing the floor plans and elevations for each of the Units of THE FLATS CONDOMINIUMS, the area of each, and the dimensions and the designation for each Unit.

**Exhibit C:** Showing the site plan of THE FLATS CONDOMINIUMS and the location of the buildings containing THE FLATS CONDOMINIUMS Units on the Property.

**Construction Materials.**

The principal materials of construction of the Units are concrete for the foundations, footings and slabs, wood and wood products for the framing, structural and finish work, sheetrock, composite board, and for the interior, carpet, wood, vinyl, tile or wood composite products for the floors, lap siding for exterior wall surfaces, and TPO or similar for the roof of the buildings.

**Use.**

The use of all of the units in THE FLATS CONDOMINIUMS declared as mixed use shall be mixed use purposes subject to the Baxter Meadows Neighborhood Center (BMNC) permitted uses. Nothing shall prohibit a Unit Owner from leasing or renting his/her Unit to third persons or holding it out for lease or rental or entering into an Agreement or contract with others for the lease or rental of his/her unit for mixed-use. The

use of the general common areas shall be for the recreation and enjoyment of the Unit Owners, their guests, tenants, lessees and invitees. The units and common elements shall be limited as follows:

- A. There shall be no obstruction of the common elements, nor shall anything be stored in or on the general common elements without the prior written consent of the Association. Each Owner shall be obligated to maintain and keep in good order and repair the interior of his own unit.
- B. Nothing shall be done or kept in any Unit or in the common elements which will increase the rate of insurance on the building or contents thereof, without the prior written consent of the Association. No owner shall permit anything to be done or kept in his Unit or in the common elements which will result in the cancellation of insurance on the building, or contents thereof, or which would be in violation of any law. No waste will be permitted on the common elements. No Commercial Unit Owner shall conduct any business that would increase the rate of the Association's insurance.
- C. Unless a Commercial Unit Owner, Residential Unit Owners shall not cause or permit anything to be hung or displayed on the outside of windows or placed on the outside walls of a building, and no sign, awning, canopy, radio or television antenna shall be affixed to or placed upon the exterior walls or roof of any part thereof, without the prior written consent of the Association. Seasonal decorations that are promptly removed after the season and reasonable name plates or identification signs for individual units may be allowed. Commercial Unit Owners are only permitted to have window signage, but must obtain prior written consent of the Association.
- D. No nuisances shall be allowed upon the property nor shall any use or practice be allowed which is a source of annoyance to Unit Owners or which interferes with the peaceful possession and proper use of the property by its residents. No offensive or unlawful use shall be made of the property nor any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed.
- E. Nothing shall be done in any unit or in, on or to the common elements which will impair the structural integrity of the building or which would structurally change the building, except as is otherwise provided herein.

- F. No animals of any kind shall be raised, bred or kept in any Unit, except that a maximum of one (1) dog OR (1) cat, may be kept in each Unit, subject to rules and regulations from time to time adopted or amended by the Association. All dogs must be kept on a leash while on the condominium property in accordance with the laws of the City of Bozeman. Additionally, Unit Owners, their tenants and any guests, shall be responsible for the immediate clean-up of any pet waste and the repair of any damage caused by pets to any of the general or limited common areas.
- G. Nothing shall be altered or constructed in or removed from the common elements, and no easements, liens or encumbrances placed on the common elements, except upon the written consent of two-thirds of the aggregate interest of the Unit Owners affected by such action.
- H. Garbage shall be placed in the shared onsite dumpster as seen on **EXHIBIT C**.
- I. Campers, trailers, boats and other recreational vehicles may only be brought onto the condominium properties for loading and unloading for immediate use. No inoperable vehicles, and no campers, boats, recreational vehicles, or trailers, shall be left parked in the condominium parking areas for more than 24 hours at one time. Repeated parking of such vehicles or trailers is also prohibited unless approved in writing by the association.
- J. The use the Commercial Unit on the first floor of THE FLATS CONDOMINIUM shall be for professional offices, business headquarters, retail sales, medical offices, and other similar daytime business uses only. No business will be conducted that includes the prescribing, selling, or using of medicinal and/or recreational marijuana.
- K. The use of all of the Residential Units on the second floor of the THE FLATS CONDOMINIUM shall be for residential purposes only and there shall be no commercial use whatsoever. However, the respective Unit shall not be rented by the owners thereof for hotel purposes or any rental if the occupants are provided customary hotel services, such as room service for food and beverage, maid service, laundry and linen service or bell boy service.
- L. All Units must adhere to Quiet Hours from 7 p.m. to 7 a.m.

**Exclusive Ownership.**

Each Owner or Owners shall be entitled to exclusive ownership and possession of their Unit. Such Owners may use the general and limited common elements in accordance with the purposes for which they are intended and as they may otherwise agree between themselves, so long as they do not hinder or encroach upon the lawful rights of other Unit Owners.

## **V. THE ASSOCIATION**

### **Membership.**

Any Owner of a Unit in THE FLATS CONDOMINIUMS shall automatically, upon becoming the Owner of said Unit, be a member of THE FLATS CONDOMINIUMS HOMEOWNERS ASSOCIATION, hereinafter referred to as the Association, and shall remain a member of said Association until such time as his membership in said Association shall automatically cease. The membership shall be limited to Unit Owners as defined in this Declaration.

### **Function.**

It shall be the function of the Association to:

- A. Adopt Bylaws for the governance of the Association.
- B. Make provisions for the general management and/or repairs and maintenance of THE FLATS CONDOMINIUMS.
- C. Levy assessments as provided for in the Declaration, Bylaws and Unit Ownership Act. The Association shall levy two separate assessments amounts for the Commercial Units and Residential Units.
- D. Determine a fine schedule, and levy fines and penalties as provided for in the Declaration, Bylaws and Unit Ownership Act.
- E. Record liens as provided for in the Declaration, Bylaws and Unit Ownership Act.
- F. Adopt and implement a policy for the affairs of the condominium.

- G. Enter into contracts or hire personnel for the management of the affairs of the Association and the maintenance and repair of the common areas.
- H. Be responsible for the perpetual maintenance of the landscaping, common open space, sidewalks and driveway.

**Voting.**

On all matters, unless excluded by this Declaration, to be decided by the Association, each unit shall be entitled to have one vote. An owner of a condominium unit, upon becoming an Owner, shall be a member of the Association and remain a member for the period of his Unit Ownership. Except as otherwise provided in the Unit Ownership Act, this Declaration or the Bylaws, a majority of the aggregate interest present at any meeting or by proxy shall be sufficient to act on matters brought before the Association. Meetings of the Association shall only be conducted when a quorum is present, as defined in the Association Bylaws. Dates of annual meetings shall be set by the Association.

**Failure to Comply.**

Each owner shall comply strictly with the provisions of this Declaration, the Bylaws of the Association, and the rules, regulations, decisions and resolutions of the Association adopted pursuant thereto as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief or both, and for reimbursement of all costs, including attorney fees incurred in connection therewith, which action shall be maintainable by the Manager in the name of the Association, on behalf of the owner, or in the proper case, by an aggrieved owner.

**Fines and Penalties.**

The Association, acting through the Board or the Manager, shall have the authority to determine fines and levy fines against Units for any violation of the covenants set forth herein or for any violation of the rules and regulations duly adopted by the Board. Violations caused by a tenant shall be assessed against the occupied Unit and shall be the responsibility of the Unit Owner. For each violation, the Unit owner may be fined according to the following fine schedule or another fine schedule as determined by the Association in accordance with this Declaration and the Bylaws:

First Offense:

Oral or written warning

|                         |          |
|-------------------------|----------|
| Second Offense:         | \$50.00  |
| Third Offense and More: | \$100.00 |

All fines shall be considered final and shall be considered an assessment and a lien against the Unit unless the Unit Owner makes a written appeal to the Board within five (5) business days of receiving the fine and the Board subsequently overturns such fine. The Board shall have thirty days to meet and render its decision regarding the fine, which decision shall be final. All fines may be collected by the Association in the same manner as an assessment as set forth herein. All fines not paid within thirty (30) days shall accrue interest at the then maximum current legal rate of interest per annum on the amount of the fine from the due date thereof.

### **Payment of Assessments.**

All assessments shall be due ten (10) days from the date of mailing such assessment following the meeting at which time assessments are levied by the Association, and may be payable in one annual payment or in quarterly installments, at the option of the Unit Owner. The amount of the common expenses assessed against each Unit, and the amount of limited common expenses assessed against each Unit shall be the personal and individual debt of the owner thereof. No owner may exempt themselves from liability for this contribution toward the common expenses and the limited expenses by waiver of the use of enjoyment of any of the general common elements or limited common elements or by abandonment of his Unit. All assessments which are not paid within thirty (30) days from the date they are due and payable become delinquent and are subject to interest and penalty charges.

The Association or Manager shall have the responsibility of taking prompt action to collect any unpaid assessment which becomes delinquent. In the event of delinquency in the payment of the assessment, the Unit Owners shall be obligated to pay interest at the then current legal rate of interest per annum on the amount of the assessment from the due date thereof, together with all expenses, including attorney fees incurred, together with such interest and late charges as are provided in the Bylaws of the Association. Suit to recover a money judgment for unpaid common expenses and limited expenses may be maintainable without foreclosing or waiving the lien securing the same.

### **Levying Assessments - When Made - Purposes.**



The Association of Unit Owners shall levy assessments upon the Unit Owners in the following manner and for the following reasons:

- A. Assessments shall be made as a part of the regular business of the Association at any regular or special meeting thereof as provided in the Bylaws of the Association. Notice of the assessment, amount thereof, and the purpose for which it is made whether regular or special, including an annual budget for expenditures and operation, shall be served on all Unit Owners affected by delivering a copy of the same to the Owner personally or by mailing a copy of the notice to the Owners at their addresses of record at least ten (10) days prior to the date for such meeting.
- B. Assessments shall be made for the repair, replacement, general maintenance, management and administration of common elements, fees, costs and expenses of the manager, taxes for common areas if any, and for the Unit Owners percentage share of any Special Improvement District Assessments. Assessments shall be based upon and computed by using the percentage of interest that each Unit Owner has in the general common elements.
- C. Assessments may also be made for the payment of limited common element expenses such that the Unit Owners are chargeable only for the expenses relating to their respective units or building, Unit Owners shall share in the payment for limited expenses for the repair, maintenance, and replacement of limited common elements of their respective Units in accordance with the percentage the Unit or Units have in the limited common elements for which the assessment is being made. If only one unit is associated with the limited common elements involved, then the entire cost of such repair, maintenance or replacement shall be borne by that Unit.
- D. Assessments may also be made for any purpose contemplated by this Declaration and for any purpose set out in the Montana Unit Ownership Act.
- E. Common expenses and profits, if any, of the condominiums shall be distributed among and charged to, the Unit Owners according to the percentage of undivided interest of each in the common elements.
- F. In a voluntary conveyance of a Unit, the Grantee of the Unit shall be jointly and severally liable with the Grantor for all unpaid assessments by the Association against the latter for his share of the common expenses up to the time of the grant of conveyance, without prejudice to the Grantees right to recover from the Grantor the amounts paid by the Grantee therefor. However, any such Grantee shall be

entitled to a statement from the Manager or Board of Directors of the Association, as the case may be, setting forth the amount of said unpaid assessments against the Grantor due the Association and such Grantee shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid assessments made by the Association against the Grantor in excess of the amount therein set forth.

G. At the time the Association holds its first meeting, or at any duly noticed meeting thereafter, a reserve account may be set up to which initial assessments shall then be deposited, and which assessment shall be a sum that is equal to two times the monthly assessment fee for that year multiplied by the number of Units in the project. Said total amount shall then be divided equally among all Unit Owners. If the Declarant still holds title to one or more Units, they shall pay the amount assessed against each Unit so owned.

**First Right of Refusal.**

Any right of first refusal placed on a Unit by the owner shall not adversely impact the rights of a mortgagee to (i) foreclose or take title to the Unit, pursuant to the remedies in the mortgage; (ii) accept a deed or assignment in lieu of foreclosure in the event of default by a mortgagor; or (iii) sell or lease the Unit acquired by the mortgage.

**Availability of Declaration, Bylaws and Accountings.**

All Unit Owners, lenders, holders and insurers of first mortgages on any Unit are entitled to copies of the current Declarations, Bylaws, and rules governing THE FLATS CONDOMINIUMS and all records and financial statements of the Association.

The same shall be made available to prospective purchasers by the Association.

**VI. DECLARANT'S RIGHT TO CHANGE**

The Declarant reserves the right to change the interior design and arrangement of all Units, and alter the boundaries between Units, so long as the Declarant owns the Units so altered. No such change shall increase the number of Units or alter the boundary of the general common elements without an amendment of this Declaration. The Declarant reserves the right to modify the materials so long as any modification utilizes materials of substantially similar quality.

Until ninety-nine percent (99%) of the units have been built and sold, Declarant reserves the right to establish easements, reservations, exceptions and exclusions consistent with the condominium ownership project, which shall not materially adversely affect the Units. Any amendment that may materially adversely impact the nature of the mortgage holders interest shall be subject to approval of at least fifty-one percent (51%) of the Unit owners.

Notwithstanding any other provisions expressly or impliedly to the contrary contained in this Declaration, the Articles of Incorporation or By-Laws of the Association, Declarant reserves the right to exercise the rights, duties and functions of the Board of Directors of the Association until ninety-nine percent (99%) of the condominium units have been sold. During the period of development and sale of the remaining condominium units, the monthly assessment for common expenses shall be based upon the estimate of the actual cost thereof, excluding therefrom any estimated amount for contingencies, reserves or sinking funds, and Declarant shall pay his pro rata share thereof only for those condominium units which have been completed.

#### **VII. AMENDMENT**

Amendment of this Declaration shall be made in the following manner:

At any regular or special meeting of the Association of Unit Owners, such amendment may be proposed as a resolution by any Unit Owner, the Board or Manager. Upon adoption of the resolution by a majority vote of those present, the amendment shall be made a subject for consideration at the next succeeding meeting of the Association with notice thereof, together with a copy of the amendment, to be furnished to each owner no later than thirty (30) days in advance of such meeting. At such meeting, the amendment, exclusive of amendments that impact the common elements, shall be approved upon receiving the favorable vote of seventy-five percent (75%) of the total percentage vote of all the Unit Owners. If so approved, it shall be the responsibility of the Association to file the amendment with the Clerk and Records office of Gallatin County, Montana.

Notwithstanding the procedure set forth above, the Declarant may amend this Declaration, or any other project document, prior to any sale or lease of a Unit or interest thereof.

#### **VIII. CHANGES, REPAIRS AND LIENS**

##### **Alterations by Unit Owners Association.**

The interior plan of a Unit may be changed by the owner. The boundaries between Units may be changed only by the Owners of the Units affected. No Units may be subdivided. No change in the boundaries of Units shall encroach upon the boundaries of the common elements.

Boundary walls must be equal in quality of design and construction to the existing boundary walls. A change in the boundaries between Units shall be set forth in an amendment to this Declaration. In addition to compliance with the provisions of Paragraph VII above, such amendment must further set forth and contain plans for the Units concerned showing the Units after the change in boundaries, which plans shall be drawn by an architect licensed to practice in Montana, and attached to the amendment as an exhibit, together with the certificate of architect or engineer required by the Unit Ownership Act. Such an amendment shall be signed and acknowledged by the owners of the Units concerned, as well as those owners with an interest in any common element affected. The amendment shall also be approved by the Board of Directors of the Association, and signed and acknowledged by all lienors and mortgagees of the Units concerned.

#### **Maintenance by Unit Owners.**

Each owner shall maintain and keep in repair the interior of his own Unit, including the fixtures thereof. All fixtures and equipment installed in the Unit, commencing at a point where the utilities enter the Unit, shall be maintained and kept in repair by the owner thereof. An owner shall neither act nor perform any work that will impair the structural soundness or integrity of the building or impair any easement.

Each owner shall also keep any balcony, entrance or deck area appurtenant to his Unit in a clean and sanitary condition. The right of each owner to repair, alter and remodel is coupled with the obligation to replace any finishing or other materials removed with similar type or kinds of materials. All glass replacement shall be with similar quality, shade and design. No act or alteration, repairing or remodeling by any Unit Owner shall impair in any way the integrity of the adjoining Units or the integrity of limited common elements or general common elements.

#### **Exterior Alterations.**

No Owner may change, alter or remodel the exterior of his Unit without the prior written approval of the Association.

**Liens for Alterations.**

Labor performed and materials furnished and incorporated into a Unit with the consent of or at the request of the Unit Owner, his agent, his contractor or subcontractor shall be the basis for the filing of a lien against the Unit or the Unit Owner consenting to or requesting the same. Each Unit Owner shall indemnify and hold harmless each of the other Owners from and against all liability arising from the claim of any lien against the Unit or any other Owner or against the general or limited common elements for construction performed or for labor, materials, services or other products incorporated in the Owners Unit at such Owners request.

**Liens and Foreclosure.**

All sums assessed but unpaid for the share of general common expenses and limited common expenses chargeable to any Unit, and fines and penalties, shall constitute a lien on such Unit superior to all other liens and encumbrances, except only for tax and special assessment liens on the Unit in favor of any assessing authority, and all sums unpaid on a first mortgage, a first trust indenture, or contract for deed of record. To evidence such lien, the Association shall prepare a written notice of lien assessment setting forth the amount of such unpaid indebtedness, the amount of accrued interest and late charges thereon, the name of the Unit Owner, and a description of the Unit. Such notice shall be signed and verified by one of the officers of the Association or by the Manager, or his authorized agent, and shall be recorded in the office of the Clerk and Recorder of Gallatin County, Montana. Such lien shall attach from the date of recording such notice. Such lien may be enforced by the foreclosure of the defaulting Owners Unit by the Association as provided in the Unit Ownership Act in like manner as foreclosure of a mortgage on real property. In any foreclosure, the Unit Owner shall be required to pay a reasonable rental for the unit, if so provided in the Bylaws, and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosure or waiving the lien securing the same. In any such proceeding the Owner may be required to pay the costs, expenses and attorney/s fees incurred in filing a lien, and in the event of foreclosure proceedings, additional costs, expenses and attorney/s fees incurred.

**Notice.**

A holder, insurer or guarantor of a first mortgage, upon written request to the Association, is entitled to notice of

- A. any proposed amendment to the Declarations or Bylaws that affect a change in the (i) boundaries of any Unit or the exclusive easement rights appertaining thereto, (ii) the interests in the general or limited common elements appertaining to any Unit or the liability for common expenses appertaining thereto, and (iii) the number of the Owners within THE FLATS CONDOMINIUMS;
- B. any proposed termination of the condominium regime;
- C. any condemnation loss or any casualty loss which affects a material portion of the conditions or which affects any Unit on which there is a first mortgage held, insured or guaranteed by such eligible holder;
- D. any delinquency in the payment of assessments or charges owed by an Owner of a Unit subject to the mortgage of such eligible holder, insured or guarantor, where such delinquency has continued for a period of sixty (60) days;
- E. any lapse, cancellation or material modification of any insurance policy maintained by the Owners= Association.

Said notice must include the name and address of such holder, insurer or guarantor on the Unit number.

Consent of such disclosure is hereby given by each Unit Owner.

**Bidding at Foreclosure.**

The Association shall have the power to bid on the Unit at a foreclosure or other legal sale, and to acquire and hold, lease, mortgage and vote the votes appurtenant to, convey or otherwise deal with the same. Any lienholder holding a lien on the Unit may pay, but shall not be required to pay, any unpaid general common expenses, or limited common expenses payable with respect to any such Unit, and upon such payment such lienholder shall have a lien on said Unit for the amounts paid of the same priority as the lien of his encumbrance without the necessity of having to file a notice or claim of such lien.

**Unpaid Assessments - Mortgagee.**

Where a lienholder or other purchaser of a Unit obtains title to the Unit as a result of foreclosure of the first mortgage or trust indenture, such acquirer of title, his successors and assigns, shall not be liable for more than six (6) months share of common expenses or assessments by the Association chargeable to such Unit which became due prior to the acquisition of title to such Unit by such acquirer. Any additional unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the Units including such acquirer, his successors and assigns.

**Unpaid Dues or Charges.**

Any first mortgagee who obtains title to a condominium unit pursuant to the remedies in the Mortgage or through foreclosure of the Mortgage will not be liable for more than six (6) months of the unit/s unpaid regularly budgeted dues or charges accrued before the acquisition of the title to the unit by the mortgagee. Unit Owner/Mortgagee will be liable for any fees and costs related to the collection of the unpaid dues.

**IX. INSURANCE**

**Purchase.**

All insurance policies upon THE FLATS CONDOMINIUMS property, to the exclusion of the Unit Owner's unit, as defined in the Section referred to as "Unit Boundaries", shall be purchased by the Association and shall be issued by an insurance company authorized to do business in Montana.

- A. Named Insured: The named insured shall be the Association individually and as agent for the Unit Owners without naming them. Such policies shall provide that payments for losses thereunder by the insurer shall be paid to the insurance Trustee hereinafter designated, and all policies and endorsements thereon shall be deposited with the insurance Trustee.

**B. Unit Owner's Responsibility:** Unit Owner shall obtain insurance coverage, at their own expense, upon the portion of the Building that is considered the individual unit, pursuant to the Section referred to as "Unit Boundaries". Unit Owner may also consider insurance coverage, at their own expense, for the improvements and betterments within the Unit Owner's Unit, the contents of the Unit Owner's Unit, including but not limited to, furnishings and personal Property therein, the Unit Owner's personal Property stored elsewhere on the Property, and the Unit Owner's personal liability to the extent not covered by the liability insurance for all of the owners obtained as part of the common expenses, and the association shall have no obligation whatsoever to obtain any such insurance coverage on behalf of the Unit Owner's individual units.

**C. Copies to Mortgagees:** One copy of each insurance policy and of all endorsements thereon shall be furnished by the Association to each mortgagee of a Unit Owner on request.

**Coverage.**

**A. Casualty:** All buildings and improvements upon the land shall be insured in an amount equal to the full insurable replacement value, and all personal property included in the common elements shall be fully insured, with all such insurance to be based on current replacement value, as determined annually by the Board of Directors, but subject to such deductible clauses as are required in order to obtain coverage at reasonable costs. Such coverage shall afford protection against:

1. Loss or damage by fire and other hazards covered by a standard extended coverage endorsement; and
2. Such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location and use as the building on the land, including, but not limited to, vandalism and malicious mischief.

**B. Liability Insurance.**

1. Errors or Omissions Insurance for the Directors, Officers and Managers, if the Association so desires, in amounts to be determined by the Board.



2. **Public Liability:** In such amounts and with such coverage as shall be required by the Board of Directors of the Association, including, but not limited to, hired automobile and non-owned automobile coverage, if applicable, and with cross liability endorsement to cover liabilities of the Unit Owners as a group to a Unit Owner.

C. **Worker's Compensation.** The Association shall obtain and maintain such worker's compensation coverage as may be required by law.

D. **Other Insurance:** Such other insurance as the Board of Directors of the Association shall determine from time to time to be desirable and as may be required by the Federal and State laws.

### **Premiums.**

Premiums for insurance policies purchased by the Association shall be paid by the Association as a common expense, except that the amount of increase in the premium occasioned by use, misuse, occupancy or abandonment of a Unit or its appurtenances or of the common elements by a Unit Owner shall be assessed against the Owner. Not less than ten (10) days prior to the date when a premium is due, evidence of such payment shall be furnished by the Association to each mortgagee listed in the roster of mortgagees.

### **Insurance Trustee.**

All insurance policies purchased by the Association shall be for the benefit of the Association and the Unit Owners and their mortgagees as their interests may appear, and shall provide that all proceeds covering property losses shall be paid to such bank in Montana with trust powers as may be designated as insurance trustee by the Board of Directors of the Association, which trustee is herein referred to as the insurance trustee. The insurance trustee shall not be liable for payment of premiums, nor for the renewal or the sufficiency of policies, nor for the failure to collect any insurance proceeds. The duty of the insurance trustee shall be to receive such proceeds as are paid and hold the same in trust for the purposes elsewhere stated in this instrument and for the benefit of the Unit Owners, and their mortgagees in the following shares, but which shares need not be set forth on the records of the insurance trustee:

A. **Unit Owners -** An undivided share for each Unit Owner, such share being the same as the undivided share in the common elements appurtenant to his Unit.

B. Mortgagees - In the event a mortgagee endorsement has been issued as to a Unit, the share of the Unit Owner shall be held in trust for the mortgagee and the Unit Owner as their interests may appear; provided, however, that no mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds except distributions thereof made to the Unit Owner and mortgagee pursuant to the provision of this Declaration.

**Distribution of Proceeds.**

Proceeds of insurance policies received by the insurance trustee shall be distributed to or for the benefit of the beneficial owners in the following manner:

A. Miscellaneous: Expenses of administration, the insurance trustee, and construction or remodeling supervision shall be considered as part of the cost of construction, replacement or repair.

B. Reconstruction or Repair - If the damage for which the proceeds are paid is to be repaired or reconstructed by the Association, the remaining proceeds shall be paid to defray the cost thereof as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners, remittances to Unit Owners and their mortgagees being payable jointly to them.

C. Failure to Reconstruct or Repair - If it is determined in the manner elsewhere provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial owners, remittances to Unit Owners and their mortgagees being payable jointly to them.

D. Certificate - In making distribution to Unit Owners and their mortgagees, the insurance trustee may rely upon a certificate from the Association made by its representative or Manager as to the names of the Unit Owners and their respective shares of the distribution.

**Association as Agent.**

The Association is irrevocably appointed agent for each Unit Owner and for each Owner of a mortgage or other lien upon a Unit and for each Owner of any other interest

in the condominium property to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

**Benefit to Mortgagees.**

Certain provisions in this paragraph entitled as Insurance are for the benefit of mortgagees or trust indenture beneficiaries of condominium parcels, and all such provisions are covenants for the benefit of any mortgagee of a Unit and may be enforced by such mortgagee or beneficiary.

**Reconstruction.**

A. Repair After Casualty.

If any part of the condominium property shall be damaged by casualty, whether or not it shall be reconstructed or repaired shall be determined in the following manner:

1. Lesser Damage - If a Unit or Units are found by the Board of Directors of the Association to be tenantable after the casualty, the damaged property shall be repaired.
2. Greater Damage - If a Unit or Units are found by the Board of Directors to be not tenantable after the casualty, the damaged property shall be reconstructed or rebuilt.
3. Certificate - The insurance trustee may rely upon a certificate of the Association made by its president and secretary to determine whether or not the damaged property is to be reconstructed or repaired.

B. Plans and Specifications.

Any reconstruction or repair must be substantially in accordance with the plans for specifications and the original improvements, or if not, then according to plans and specifications approved by the Board of Directors and by more than fifty percent (50%) of the Unit Owners, including the Owners of all Units the plans for which are to be altered. Any such reconstruction not in accordance with the original plans and specifications must be set forth in an amendment to the Declaration, which amendment shall be prepared and filed of record in accordance with the provisions of such amended filing, more particularly set forth in Paragraph VII and Paragraph VIII, subparagraph 1, hereinabove.

C. Responsibility.

The responsibility for reconstruction or repair after casualty shall be the same as for maintenance and repair of the condominium property, and the Association shall work with the insurance trustee to carry out the provisions of this Article.

D. Assessments.

If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction or repair for which the Association is responsible, or if at any time during such reconstruction or repair, or upon completion of such reconstruction or repair, the funds for the payment of the costs thereof are insufficient, assessments shall be made against all Unit Owners in sufficient amounts to provide funds to the payment of such costs. Such assessments shall be in proportion to the Owner's percentage of interest in the general common elements.

E. Construction Funds.

The funds for payment of costs of reconstruction or repair after casualty, which shall consist of proceeds of insurance held by the insurance trustee and funds collected by the Association from assessments against Unit Owners, shall be disbursed in the sound discretion of the trustee and according to the contract of reconstruction or repair, which contract must have the approval of the Board and the Unit Owners involved.

F. Surplus.

It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from the insurance proceeds. If there is a balance in a construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be paid to the Association for the use and benefit of the Unit Owners.

G. Limitations in Actions of Owners Association.

Except as provided by statute, in case of condemnation or substantial loss to the units and/or common elements of the condominium project, the condominium owners association is not entitled to take any of the following actions, unless one hundred percent (100%) of the first mortgagees or unit owners give their consent:

1. Seek to abandon or terminate the condominium project by act or omission.
2. Change the pro rata interest or obligations of any condominium unit in order to levy assessments or charges, allocate the distribution of hazard insurance proceeds or condemnation awards, or determine the pro rata share of ownership of each condominium unit in the common elements.
3. Partition or subdivide any condominium unit.
4. By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the common elements. The granting of easements for public utilities or other public purposes consistent with the intended use of the common elements by the condominium project is not a transfer in the meaning of this clause.
5. Use hazard insurance proceeds for losses to any condominium property, whether units or common elements, for other than the repair, replacement, or reconstruction of the condominium property.

Implied approval may be assumed when a mortgagee fails to submit a response to any written proposal for any action pursuant to this section g within 60 days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a return receipt requested.

#### **Termination of Regime - Destruction.**

Any election to terminate the condominium regime after substantial destruction or a substantial taking in condemnation of the condominiums property must require the approval of seventy-five percent (75%) of the Unit Owners and the consent of fifty-one percent (51%) of eligible mortgage holders.

Implied approval may be assumed when a mortgagee fails to submit a response to any written proposal for any election to terminate the condominium regime within 60 days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a return receipt requested.

**X. REMOVAL OR PARTITION - SUBDIVISION**

THE FLATS CONDOMINIUMS may only be removed from condominium ownership, and may only be partitioned or sold, upon compliance with each of the conditions hereof:

- A. The Board of Directors of the Association must approve the plans of removal, partition or sale, including the details of now any partition or sale, and the distribution of property or funds shall be accomplished.
- B. The plan of removal, partition, or sale must be approved as provided in the Montana Unit Ownership Act. If approval for any of the foregoing is not required by the Unit Ownership Act, then approval shall be required from one hundred percent (100%) of the Owners. Upon obtaining such approval, the Board shall be empowered to implement and carry out the plan of removal, partition or sale.
- C. No Unit may be divided or subdivided into a smaller Unit, nor any portion thereof sold or otherwise transferred, except as provided above.
- D. This section shall not apply to the sale of individual Units and shall not be considered as a right of first refusal.
- E. The common elements of THE FLATS CONDOMINIUMS shall not be abandoned, partitioned, subdivided, encumbered, sold or transferred by removal or partition without compliance with all of the above requirements.

**XI. REMEDIES**

All remedies provided in this Declaration and Bylaws shall not be exclusive of any other remedies which may now be, or are hereafter, available to the parties hereto as provided for by law.

**XII. SEVERABILITY**

The provisions hereof shall be deemed independent and severable and the invalidity, partial invalidity or unenforceability of any one or more provisions shall not affect the validity or enforceability of any other provision hereof.

### **XIII. INTERPRETATION**

The provisions of the Declaration and of the Bylaws to be promulgated and recorded herewith, shall be liberally construed to effectuate the purpose of the Declaration and Bylaws and to create a building or buildings subject to and under the provisions of the Unit Ownership Act.

### **XIV. ARBITRATION**

In the event of any dispute arising hereunder as to whether the work complies with the plans and specifications or whether payment is properly due and the same is not settled within fifteen (15) days after receipt of notice, then either party may request that the dispute be submitted for decision to three (3) arbitrators, one (1) of whom shall be chosen by the Owner, and one (1) by the Declarant. The two (2) chosen arbitrators shall select a third arbitrator and the parties shall proceed with arbitration in accordance with the provisions of the Montana Arbitration Act. Any arbitration between the parties shall be held in Gallatin County, Montana.

### **XV. MISCELLANEOUS**

#### **Utility Easements.**

In addition to the easements provided for herein, easements are reserved through the condominium property as may be required for utility services, including heat, air conditioning, water, sewer, power, telephone, natural gas and cable television, in order to serve THE FLATS CONDOMINIUMS adequately. However, such easement through the property or Units shall be only according to the plans and specifications for the Unit building, as set forth in the recorded plat, or as the building is constructed, unless approved in writing by the Unit Owner.

#### **Right of Access.**

The Association shall have the irrevocable right, to be exercised by the Manager or Board of Directors, to have access to each Unit from time to time during reasonable hours as may be necessary for the maintenance, repair and replacement of any of the limited common elements therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the general or limited common elements or to any other Unit.

Damage to the interior or any part of the Unit resulting from maintenance, repair, emergency repair or replacement of any of the general or limited common elements, or as a result of an emergency repair within another Unit at the instance of the Association, shall be designated either limited or general common expenses by the Association and assessed in accordance with such designation.

**Benefit.**

Except as otherwise provided herein, this Declaration shall be binding upon and shall insure to the benefit of the Declarant, the Association and each Unit Owner, and the heirs, personal representatives, successors and assigns of each.

**Service of Process.**

The name and address of the person to receive service of process for THE FLATS CONDOMINIUMS until another designation is filed of record shall be:

4G Property Management  
667 Glider Lane  
Belgrade, MT 59714

**Warranties.**

The Declarant expressly make no warranties or representations concerning the property, the Units, the Declaration, Bylaws, or deeds of conveyance except as specifically set forth therein, and no one may rely upon such warranty or representation not so specifically expressed therein. Estimates of common expenses are deemed accurate, but no warranty or guarantee is made or is intended, nor may one be relied upon.

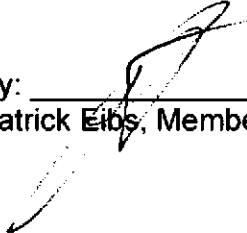
**IN WITNESS WHEREOF**, the Declarant have caused this Declaration to be made and executed according to the provisions of the Montana Unit Ownership Act, Title 70, Section 23, M.C.A.



**DECLARANT:**

The Flats at Baxter Meadows LLC

By: \_\_\_\_\_  
Patrick Eibs, Member

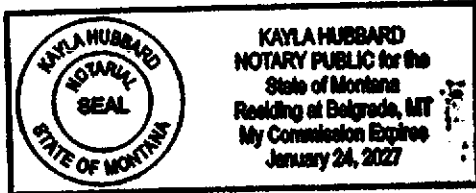



STATE OF MONTANA )

: ss.

County of Gallatin )

On this 21<sup>st</sup> day of February, 2024, before me, a Notary Public in and for the State of Montana, personally appeared Patrick Eibs, known to me to be the Member of The Flats at Baxter Meadows LLC, the Declarant, and acknowledged to me that he executed the same on behalf of the LLC.



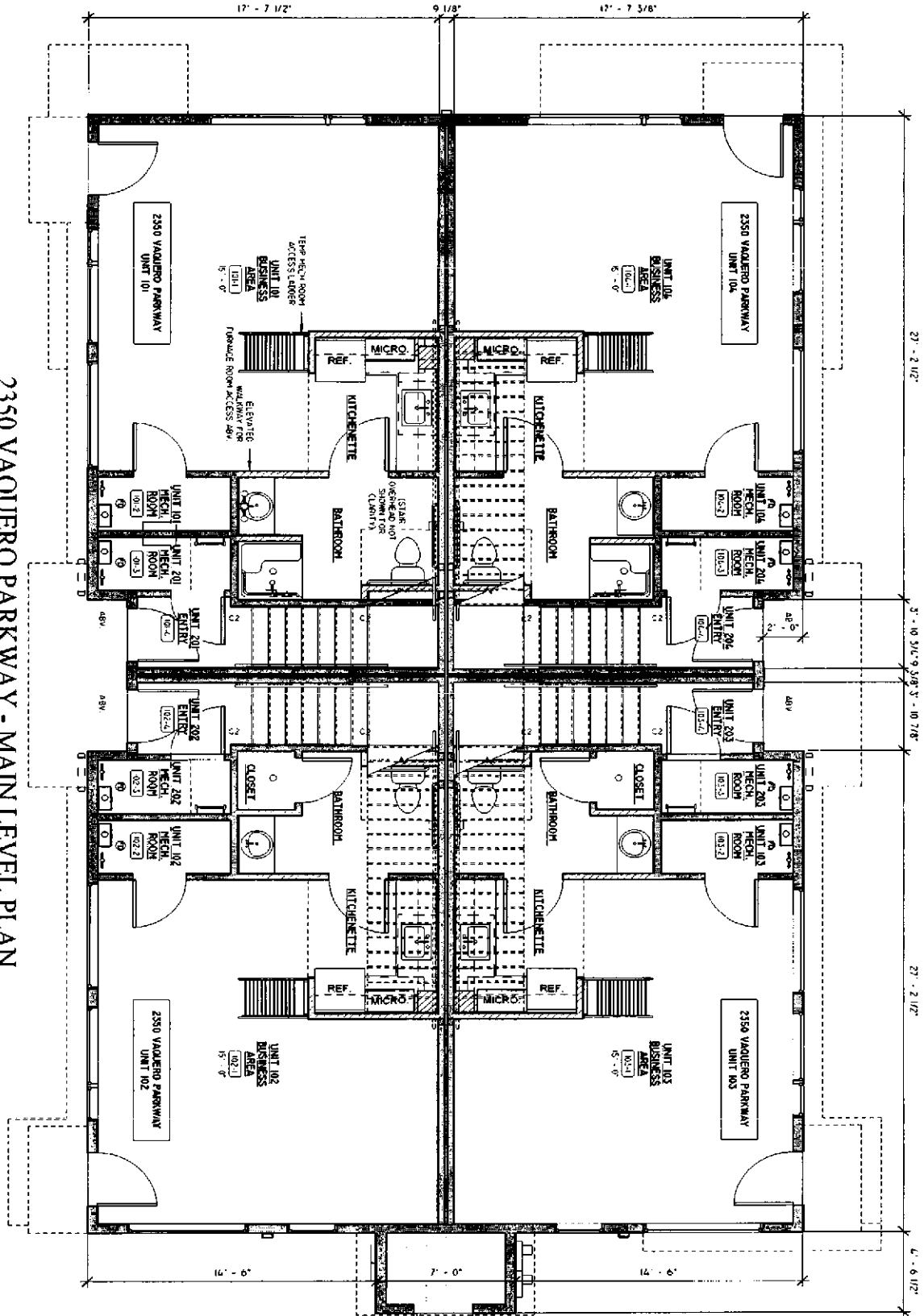
  
Notary Public for State of Montana  
Printed Name: Kayla Hubbard

**Exhibit A**

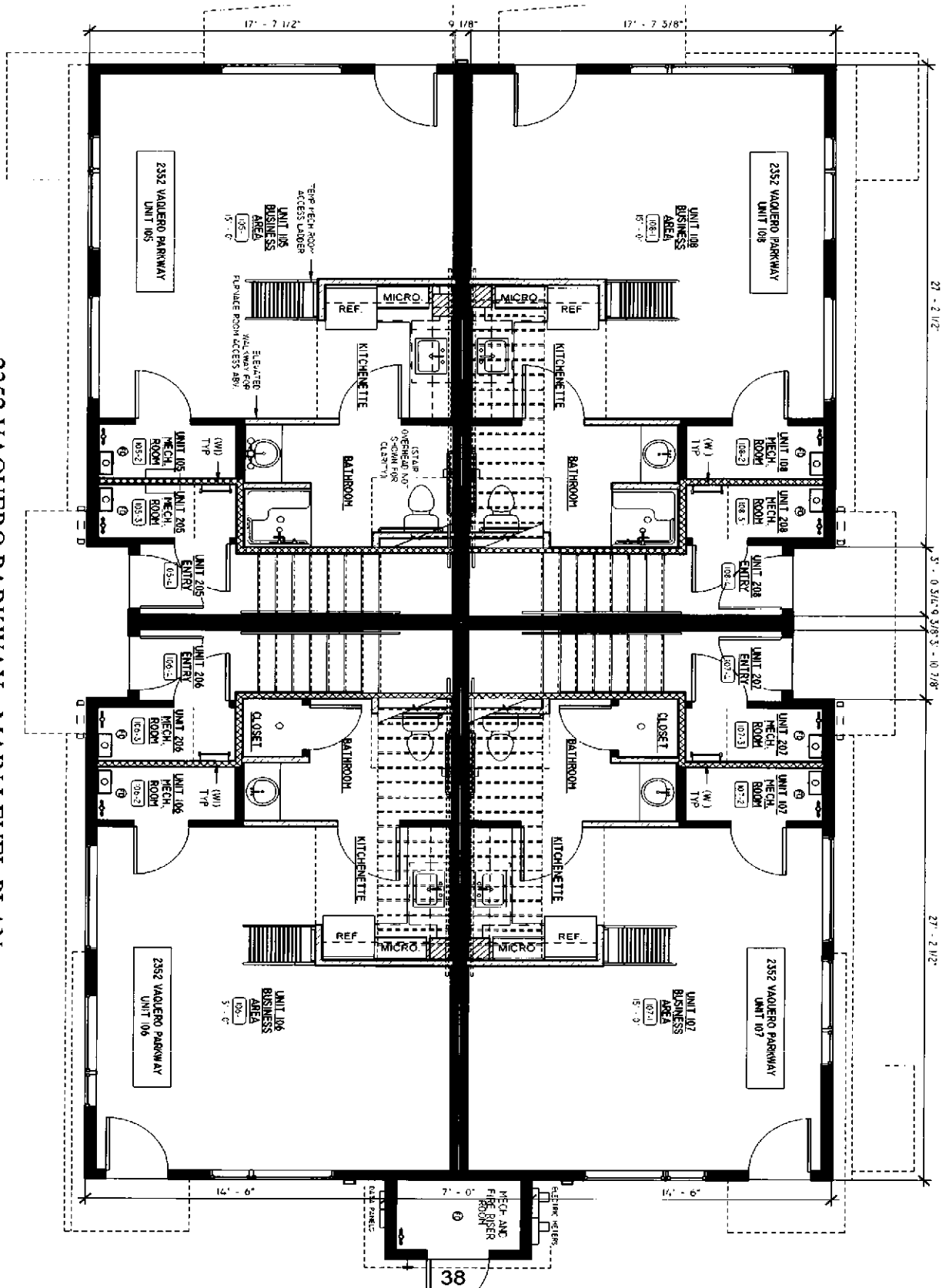
BAXTER MEADOWS SUB PH 2A, S34, T01 S, R05 E, BLOCK 16, Lot 1, ACRES 0.422, PLAT  
J-383

**Exhibit B**

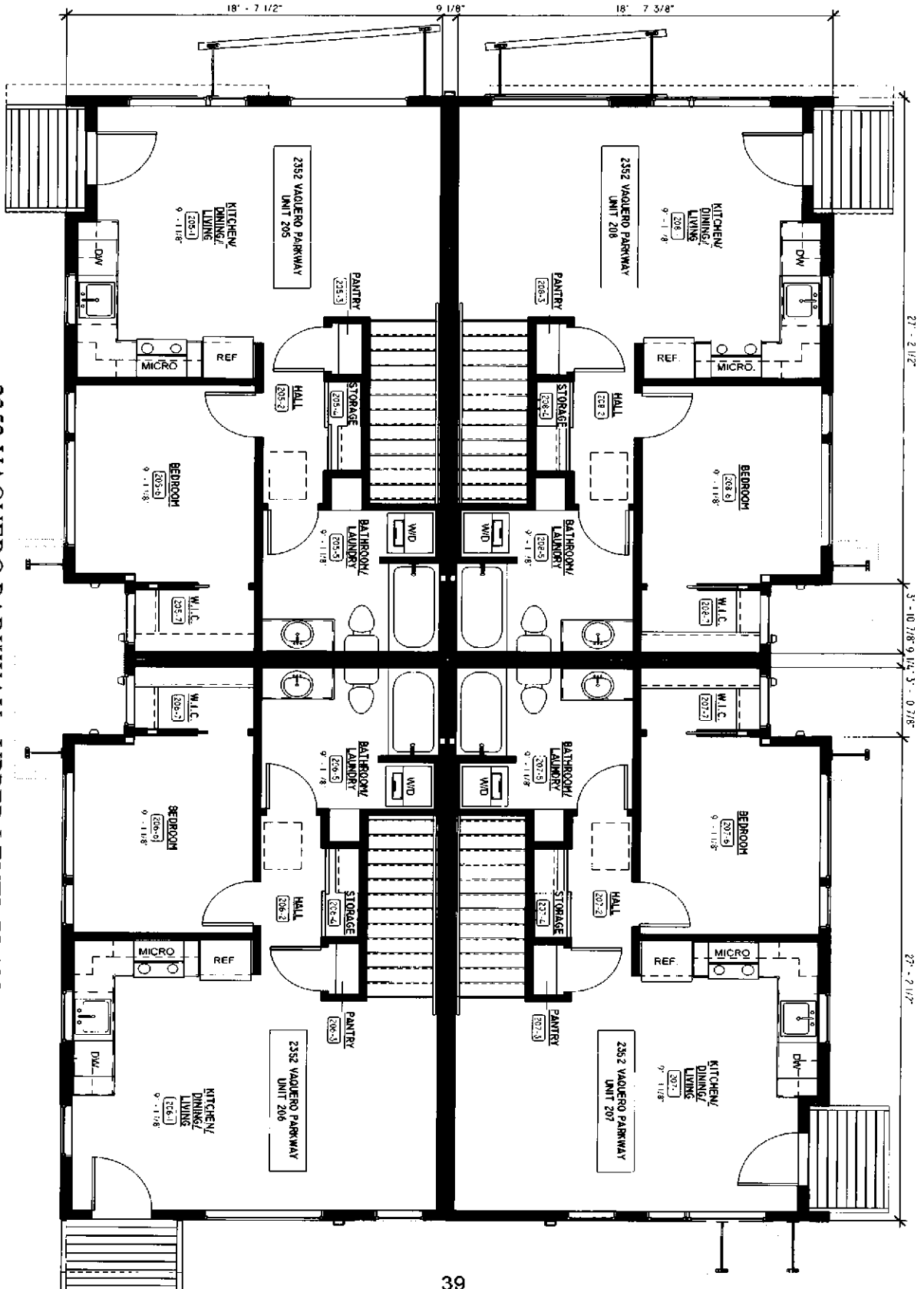
2350 VAQUERO PARKWAY - MAIN LEVEL PLAN



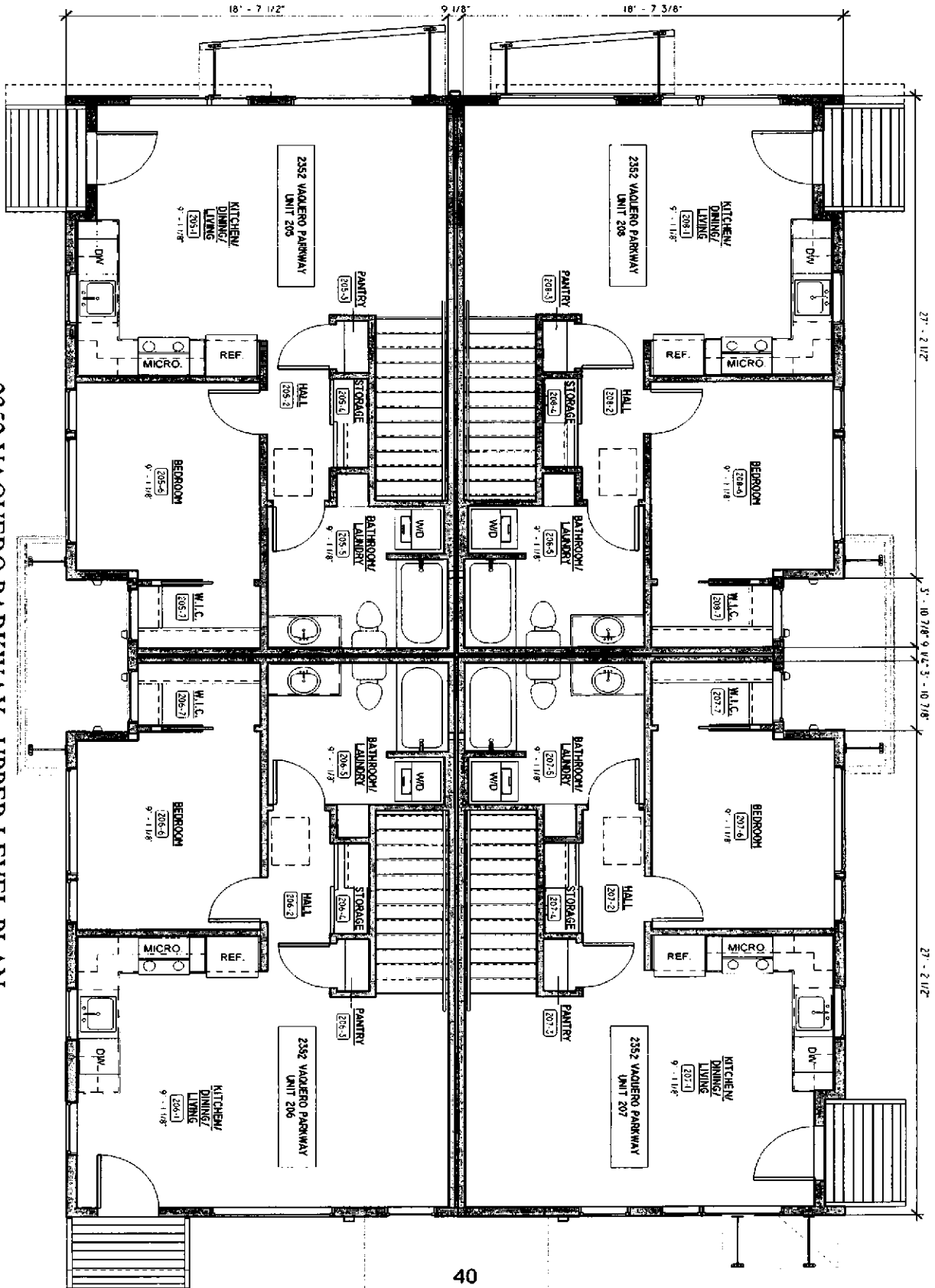
2352 VAQUERO PARKWAY - MAIN LEVEL PLAN



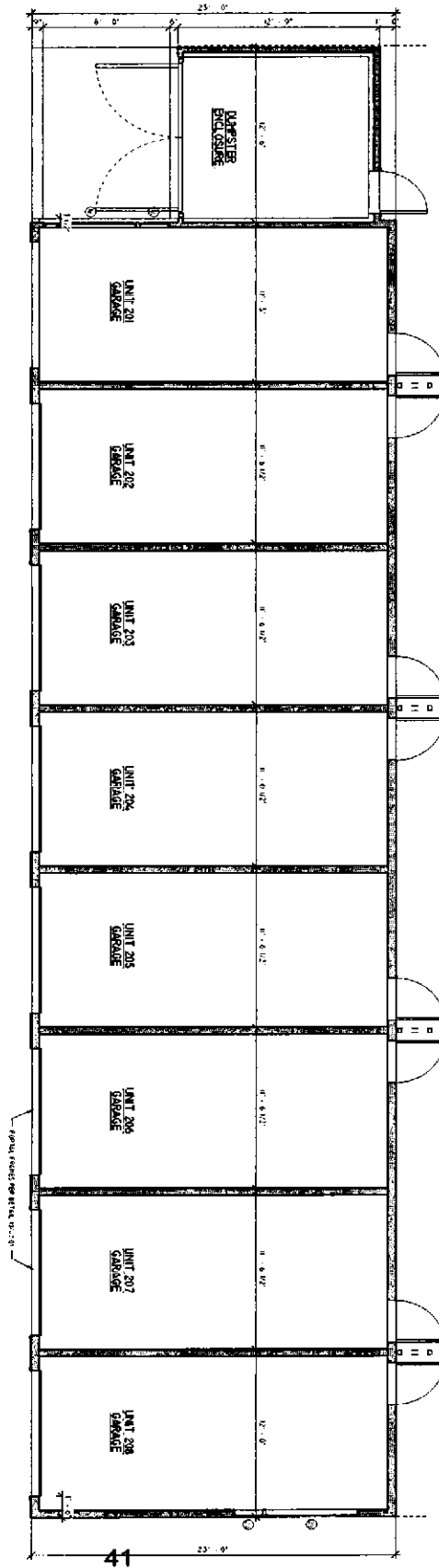
2352 VAQUERO PARKWAY - UPPER LEVEL PLAN



2352 VAQUERO PARKWAY - UPPER LEVEL PLAN

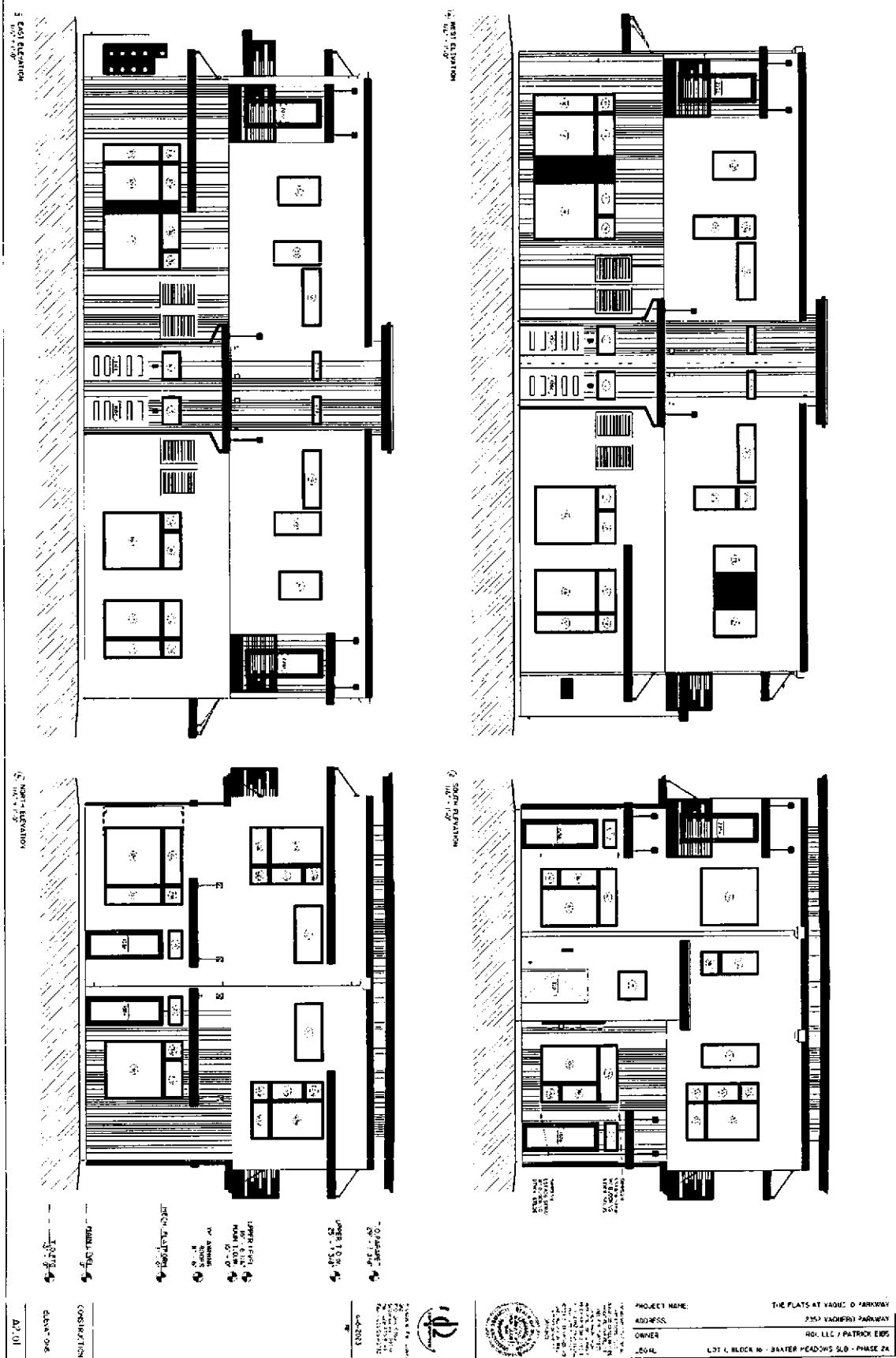


2350 AND 2352 VAQUERO PARKWAY - GARAGE PLAN

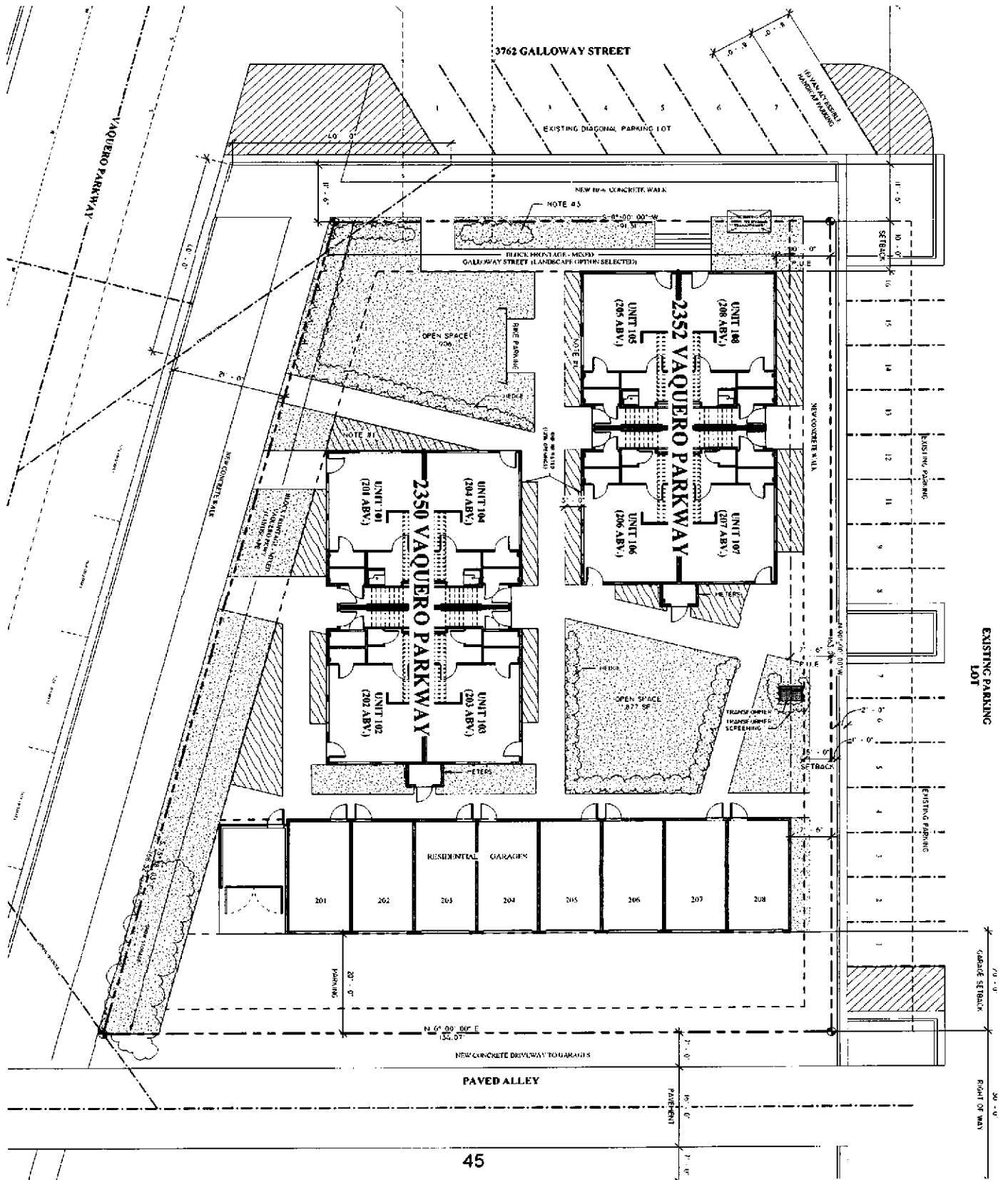








**Exhibit C**



**Exhibit D**



December 19, 2023

Erick Ringsak PE  
Madison Engineering  
895 Technology BLVD Suite 203  
Bozeman MT 59718-5858

RE: The Flats Condominiums  
Municipal Facilities Exclusion  
EQ# 24-1651  
City of Bozeman  
Gallatin County


Dear Mr. Ringsak,

This is to certify that the information and fees received by the Department of Environmental Quality relating to this subdivision are in compliance with 76-4-127, MCA. Under 76-4-125(1)(d), MCA, this subdivision is not subject to review, and the Declaration can be filed with the county clerk and recorder.

Plans and specifications must be submitted when extensions of municipal facilities for the supply of water or disposal of sewage are proposed 76-4-131. Construction of water or sewer extensions prior to DEQ, Public Water Supply Section's approval is prohibited, and is subject to penalty as prescribed in Title 75, Chapter 6 and Title 76, Chapter 4.

The Flats Condominiums Municipal Facilities Exclusion will consist of 16 Units.

Sincerely,

  
Rachel Clark  
Engineering Bureau Chief  
Water Quality Division  
Department of Environmental Quality  
(406) 444-1277  
Email [rachel.clark@mt.gov](mailto:rachel.clark@mt.gov)

cc: City Engineer  
County Sanitarian  
file

**Exhibit E**

Planning

# CONDOMINIUM REVIEW DECISION

## Project Information

Date:  
November 8, 2023

Number of Units total / this phase:  
8 Commercial/8 Residential (2 buildings)

File Number:  
23287

Original Project File number, If applicable:  
21078; 22-33936; 22-33937; 22-33938

Condominium Name:  
The Flats Condominiums

Legal Description:  
Lot 1 Block 16 Baxter Meadows Phase 2A

Review Planner:

**Elizabeth Cramblet**

### STATUTE:

**"76-3-203. Exemption for certain condominiums.** Condominiums constructed on land subdivided in compliance with parts 5 and 6 of this chapter or on lots within incorporated cities and towns are exempt from the provisions of this chapter if:  
(1) the approval of the original subdivision of land expressly contemplated the construction of the condominiums and any applicable park dedication requirements in 76 -3-621 are complied with; or  
(2) the condominium proposal is in conformance with applicable local zoning regulations when local zoning regulations are in effect."

### FINDINGS:

Per the above statute, the Department of Community Development finds the condominium development noted above meets the Subdivision & Platting Act (SPA) and Sanitation in Subdivision Act (SiS) by:

- SPA) Does not require subdivision review and has satisfied the exemption criteria.
- SPA) Has completed review as a subdivision.
- SiS) A municipal facilities exemption has been granted (see attached).
- SiS) Exempt from Sanitation Review per:

### DEPARTMENT APPROVAL:

**Brian Krueger**

Digitally signed by Brian Krueger  
DN: C=US, E=bkrueger@bozeman.net, O=City of Bozeman, OU=Department of Community Development, CN=Brian Krueger  
Date: 2023.11.14 15:55:27-0700



GROUNDED  
IN MONTANA.  
ROOTED IN  
COMMUNITY.

**Covenants, Conditions  
and Restrictions**



**Important Note:** A preliminary search of the records has indicated that the following covenants affect the land. In order to determine that these are the **ONLY** covenants affecting the subject property, a full search and examination of the Public Record will need to be performed.

Restrictions indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin are hereby deleted to the extent that such restrictions violate 42 USC 3604(c).



2081800

Page: 1 of 4  
09/20/2002 11:45A

Shelley Vance-Gallatin Co MT MISC 24.00

**BAXTER MEADOWS DEVELOPMENT, L.P.  
DECLARATION OF PROTECTIVE COVENANTS  
AS TO WETLAND AREAS**

**BAXTER MEADOWS DEVELOPMENT L.P.**, Montana limited partnership which acquired title as W.B.C., L.P., a Montana limited partnership, of P.O. Box 11060, Bozeman, Montana, 59771 hereafter the Declarant, does hereby make and declare the following Declaration of Protective Covenants to be placed upon portions of the real property owned by the Declarant more particularly described as **Tract 2A, Tract 3A and Tract 4A of Certificate of Survey No. 2202A, located in Section 34, Township 1 South, Range 5 East, and Section 3 of Township 2 South, Range 5 East, Gallatin County, Montana** hereafter referred to as the "property".

These covenants shall apply to the protected areas on the property being those areas within 35 feet from the edge of the ordinary highwater mark for streams (or edge of wetland vegetation adjacent to the stream) and the edge of wetland vegetation for wetland buffers. (Refer to City of Bozeman Ordinance 18.50 for further details.) In the case of stream buffers, the total protected area will be a corridor of 70 feet plus the width of the surface water (adjust outward as determined by slope modifications and edge of wetland vegetation). All other protected areas will have a 35-foot buffer adjusted outward for slope considerations. These protected areas include wetlands, mitigation wetlands, created lakes, and all waterways/streams as shown on Figure 1 attached hereto, as follows: 1) willow/emergent wetland and mitigated portion of that wetland in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  Section 34, Township 1 South, Range 5 East (W-8); 2) spring head and channel (W-3), a tributary of the Baxter-Border ditch and mitigated portion of that wetland in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  Section 34, Township 1 South, Range 5 East; 3) Baxter-Border and Spring ditches, NE $\frac{1}{4}$  Section 3 and S $\frac{1}{2}$  34, Township 1 and 2 South, Range 5 East; and 4) the lakes and connecting stream in the S $\frac{1}{2}$  NE $\frac{1}{4}$  Section 3, Township 2 South, Range 5 East.

These Covenants shall attach to and run with the property and shall constitute an equitable servitude upon the property including all titles, interest and estates as may be held, conveyed, owned, claimed, devised, encumbered, used, occupied and improved, and shall be for the benefit of each owner. They shall constitute benefits and burdens to Declarant and to all persons or entities hereafter acquiring any interest in the property.



1. The following restrictions shall apply to any protected areas within the property:
  - A. 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, in the protected areas, (with the exception of signage and/or benchmarks identifying the boundaries of the wetland areas described in Figure 1).
  - B. There shall be no filling, draining, excavating, dredging, mining, drilling or removal of topsoil, loam, peat, sand gravel, rock, minerals or other materials.
  - C. There shall be no building of roads or paths nor any change in the topography of the protected areas.
  - D. 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 protected area.
  - E. There shall be no operation of snowmobiles, motorcycles, all-terrain vehicles or any other type of motorized vehicles on the protected areas.
2. The City of Bozeman has identified specific zones within the setbacks for native plantings (City of Bozeman Ordinance 18.50 D(2)(g)(i) & (ii). Trails constructed with a non-impermeable surface (e.g. pea-gravel), benches, directional and natural science information are allowed within the 35-foot setbacks (plus adjustments) with permission from the Bozeman City Planning Department.
3. These Covenants 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.
4. These Covenants are made in perpetuity such that the present owner and its heirs, successors and assigns forever shall be bound by the terms and conditions set forth herein.
5. Determination of invalidity of any portion of these Covenants shall not in any manner affect the other portions or provisions.

IN WITNESS WHEREOF, this instrument has been executed this 14 day of Sept., 2002.

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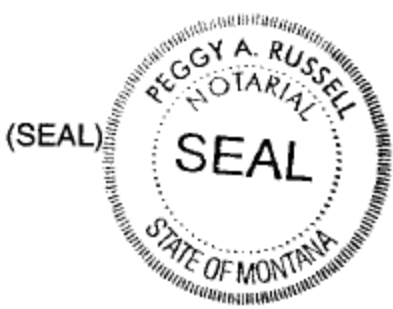
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BAXTER MEADOWS DEVELOPMENT, L.P.

By: *Gerald R. Williams*  
Gerald R. Williams, General Partner

STATE OF MONTANA )  
                              : ss.  
COUNTY OF GALLATIN )

This instrument was acknowledged before me on Sept. 19, 2002, by Gerald R. Williams, as General Partner of Baxter Meadows Development, L.P.

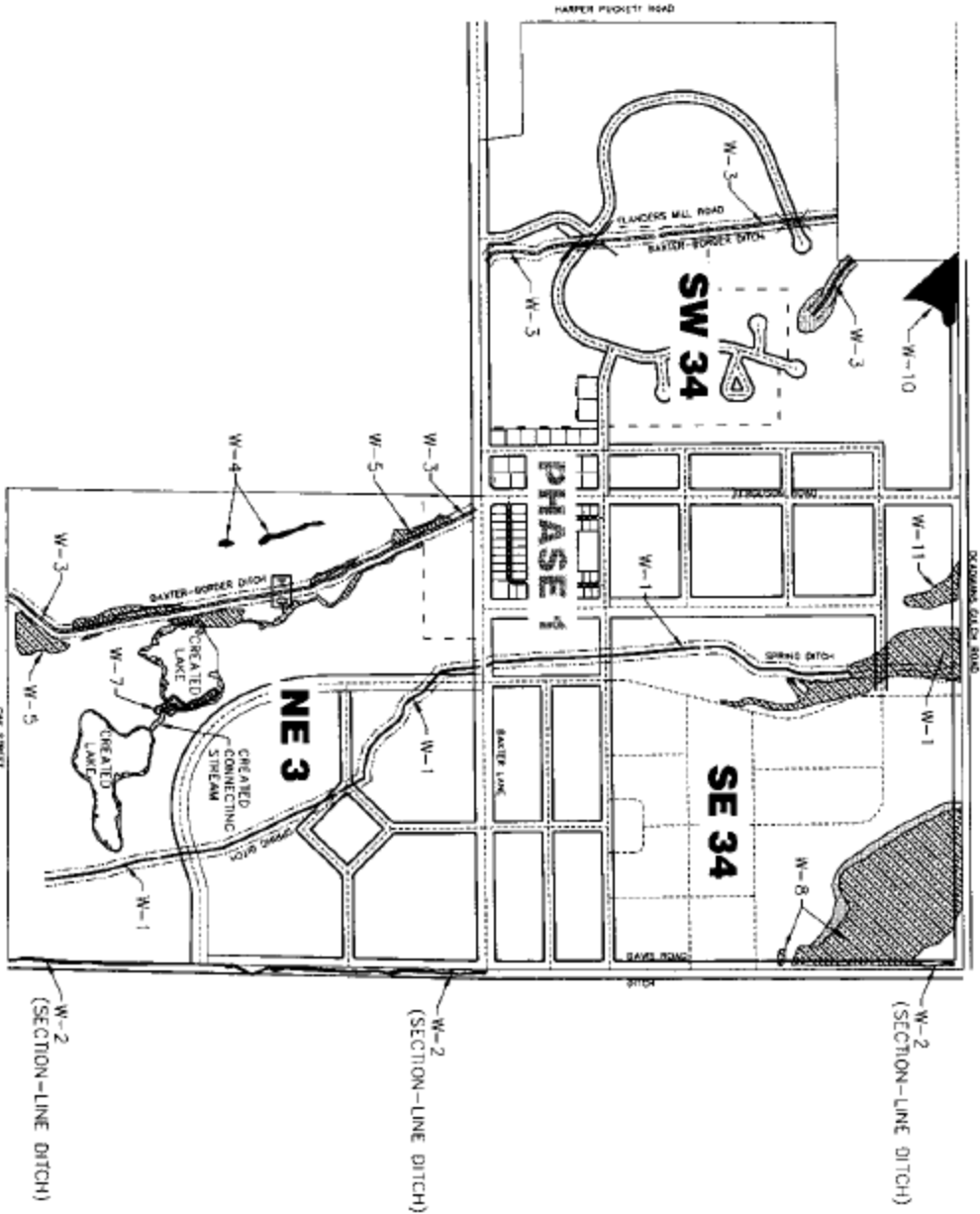


*Peggy A. Russell*

Print Name  
Notary Public for the State of Montana  
Residing at:  
My Commission Expires:  
Peggy A. Russell  
Notary Public for the State of Montana  
Residing at Bozeman, Montana  
My Commission Expires March 16, 2006

# PROTECTED USE AREAS

WETLANDS, MITIGATION WETLANDS, STREAMS, DITCHES, AND CREATED LAKES



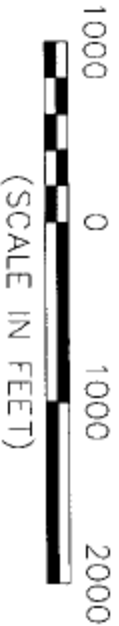
## LEGEND

- WETLAND
- WETLAND TYPE NON-JURISDICTIONAL (NOT REGULATED BY COVENANTS)
- MITIGATION WETLANDS
- BRIDGE (PROPOSED)
- IRRIGATION RIGHT PIPE
- OUTFLOW FROM LAKES
- PHASE 1 BOUNDARY
- HEAD GATE

IN ASSOCIATION WITH



**BAXTER MEADOWS DEV.  
PROTECTED USE AREAS  
FIGURE 1**



**SHEET 1  
SEPT. 2002**

# **BAXTER MEADOWS** **BOZEMAN, MONTANA**

## **HOMEOWNER'S ASSOCIATION SOURCE BOOK**



**Declaration of Residential Protective  
Covenants and Regulations**



**By-Laws of the Baxter Meadows  
Homeowner's Association**



**Design Review Guidelines  
and Regulations**



**Declaration of Protective Covenants  
as to Wetland Areas**



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**COLLABORATIVE  
DESIGN  
ARCHITECTS**  
INC.

*Yesterday, Today & Tomorrow.*





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# BAXTER MEADOWS

BOZEMAN, MONTANA

## PART I

□

### DECLARATION OF RESIDENTIAL PROTECTIVE COVENANTS & RESTRICTIONS

□



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**I. PURPOSE**

Baxter Meadows is a unique mixed residential and commercial development annexed to the northwest portion of the City of Bozeman. Baxter Meadows Development, L.P. is the present owner of all of the property included within the boundaries of the Baxter Meadows Annexation to the City of Bozeman. The primary goal of Baxter Meadows Development, L.P. is to create a development which creatively blends commercial and residential neighborhoods in terms of lot size, home scale and open space. Baxter Meadows strives to achieve this objective through the implementation of these Covenants, the Baxter Meadows Design Review Guidelines and Regulations ("Design Guidelines"), and the By-Laws of the Baxter Meadows Homeowners Association ("By-Laws"), which includes provisions regarding a Design Review Board and should be read and construed in conjunction with these Covenants.

These Covenants and Restrictions are in addition to those requirements set forth in the City of Bozeman Zoning Regulations. In the event there is a conflict between the zoning regulations and these Covenants or the Design Guidelines, the zoning regulations shall control.

Baxter Meadows Development, L.P. hereby adopts the following Declaration of Protective Covenants and Restrictions for Baxter Meadows.

**II. ABBREVIATIONS & DEFINITIONS**

The following abbreviations are used in this document:

- 1) The Baxter Meadows Design Review Board is referred to as the Design Board.
- 2) The Baxter Meadows Design Review Guidelines and Regulations are referred to as the Design Guidelines.
- 3) Baxter Meadows Development, L.P. is referred to as Declarant.
- 4) The Baxter Meadows Homeowners Association is referred to as the HOA.

The following definitions shall apply to these covenants:

- 1) Class A member of the Homeowners Association shall be the owners of lots within Baxter Meadows as further defined in the By-Laws of the Baxter Meadows Homeowners' Association.
- 2) Class B members of the Homeowners Association shall be the Declarant, as further defined in the By-Laws of the Baxter Meadows Homeowners' Association.
- 3) Grade: "Grade" means the lowest point of elevation of the finished surface of the ground between the exterior wall of a building and a point five feet distance from the wall, or the lowest point of elevation of the finished surface of the ground between the exterior wall of the building and the property line if it is less than five feet distance from the wall. If walls are parallel to and within five feet of a public sidewalk, alley or other public way, the grade shall be the elevation of the sidewalk, alley or public way. "Finished surface of the ground" shall not include window wells, stairwells, or other similar features, but shall include features such as usable patio areas.
- 4) Lot: "Lot" means a piece, parcel, plot, tract or area of land occupied or capable of being occupied by one or more principal buildings, and the accessory buildings or uses customarily incidental to them, and including the open spaces required under this title, and having its principal lot frontage on a street.



- 5) Lot Area: "Lot Area" means the total horizontal area within the boundary lines of a lot.
- 6) Lot, corner: A lot at a junction of and fronting on two or more intersecting streets.
- 7) Lot, interior: A lot other than a corner or through lot.
- 8) Lot, through: A lot having frontage on two parallel or approximately, parallel street.
- 9) Lot Coverage: The percentage of the lot area covered by buildings.
- 10) Lot Depth: The horizontal distance of a line measured at a right angle to the front lot line and running between the front lot line and rear lot line of a lot.
- 11) Lot line, front: In the case of an interior lot, a line separating the lot from the street, in the case of a corner lot, a line separating the narrowest street frontage of the lot from the street and in the case of a through lot, a line separating the lot from the street from which a drive access may be permitted by the city.
- 12) Lot line, rear: A lot line which is opposite and most distant from the front lot line and, in the case of an irregular or triangular.

**III. PROTECTIVE COVENANTS**

**A. PROTECTIVE COVENANTS**

It is the purpose of these Covenants to ensure that Baxter Meadows creatively blends residential and commercial uses into its surroundings, complements and enhances the natural environment and preserves and protects the interests and investment of the individual owners.

These Covenants shall attach to and run with the land and shall constitute an equitable servitude upon the real property and every part of it, including all titles, interest and estates as may be held, conveyed, owned, claimed, devised, encumbered, used, occupied and improved. These Covenants are declared for the benefit of the residential property within Baxter Meadows as described and depicted on Exhibit A hereto, and for the benefit of each owner. They shall constitute benefits and burdens to Declarant and to all persons or entities hereafter acquiring any interest in the property.

These covenants provide general restrictions while the Design Guidelines provide appropriate details in order to ensure compliance with these Covenants. The Design Guidelines must be carefully consulted and followed to ensure the requirements of these Covenants are met.

**B. COMBINATION AND DIVISION OF SITES**

Two contiguous lots may be combined to constitute one lot, and that lot will be treated as one lot. Three contiguous lots may be combined to constitute two lots, and those sites will be treated as two lots. Any combination of lots shall be done in accordance with Montana law. No lot may be further subdivided.

**C. RESIDENTIAL USE**

No lots designated as residential shall ever be occupied or used for any commercial or business purpose except for an office or studio fully contained within the [single family] residence, and shall not be used for meeting the general public, customers or clients. Nothing contained herein limits the homeowner's ability to lease the dwelling for residential use. Lots designated as Live/Work properties shall be exempt from these restrictions.



Lots designated for Live/Work units may operate an office or commercial business in such a manner that the average neighbor, under normal circumstances, would not be aware of its existence with the exception of permitted signage. Business operations may be permitted if the following conditions are met:

- No use shall require exterior alterations or require changes to the existing mechanical and electrical systems.
- There shall be no outside storage permitted.
- No use shall create noise, dust, vibration, smell, smoke, glare, electrical interference, fire hazard or other nuisance not normally experienced in the area where the occupation exists.

In lots designated as residential, a home occupation is an occupational use customarily conducted entirely within a dwelling by the inhabitants thereof, which is clearly incidental and secondary to the use of that dwelling as living quarters and in connection with which there are: no on premises sales of products; no on-site employment of persons; no generation of pedestrian or vehicular traffic beyond that customary or incidental to residential use of the dwelling; no employees who do not reside on the premises; no use of commercial vehicles operated and/or owned by the resident or homeowner for deliveries to or from the premises; no signs or structures advertising the occupation; no excessive or unsightly storage of materials or supplies or working on autos, boats, or trailers other than normal maintenance of such vehicles or recreational equipment for the personal use of the resident or homeowner.

For guidance, the following uses are examples of home occupations: the making of clothing; the giving of music lessons; a sole practitioner, professional practice; service or product providers who maintain a telephone and office within the residence but the services and products are provided and sold off the premises; the pursuit of artistic endeavors such as making of pottery, ceramics, paintings or bronzes, and the like, provided that the products are marketed and sold off the premises, and no foundries are located on the premises.

Trailer homes and modular homes are prohibited. Recreational vehicles, motor or mobile homes, vehicle or other trailers, and boats must be kept in a garage or otherwise screened from view and are not permitted in front or side yard setbacks.

**RS Designated Zoning.** One single family dwelling which may include one Accessory Dwelling Unit as described in the Design Guidelines is allowed per lot on those lots within RS designated zoning as described and depicted on Exhibit A hereto. Owners should carefully review the City of Bozeman Zoning Regulations to ensure compliance with all zoning regulations. Only single family homes with attached or non attached garages and Accessory Dwelling Units will be permitted in RS designated zoning. Each single family residence shall be a minimum of 2,500 square feet of finished or conditioned space, excluding garages and other storage spaces.

**R3 Designated Zoning.** Bungalow, village, and traditional homes and condominiums or townhouses may be allowed on those lots within R3 designated zoning as described and depicted on Exhibit A hereto. Owners should carefully review the City of Bozeman Zoning Ordinance to ensure compliance with all zoning regulations. All homes and condominium or townhouse complexes shall be constructed from the particular plans as approved by Design Board prior to any construction on Lots within R3 designated zoning.

**D. MINING PROHIBITED**

No prospecting, mining, quarrying, tunneling, excavating, extracting, or drilling for any substance on or within the earth, including oil, gas, hydrocarbons, minerals, gravels, sand, soil, rock, or earth shall be permitted except as necessary for the construction of buildings, roads or driveways, or fish ponds, ditches or other water ways as approved by the Design Review Board



in open space or park areas and applicable governmental agencies. The HOA may approve irrigation walls on individual private lots.

**E. HOME SITE PREPARATION MAINTENANCE AND LANDSCAPING**

Each owner shall submit a landscape plan as set forth in the site regulations to the Design Review Board at the time the construction plans are submitted. Landscaping shall be done only as approved by the Design Review Board. Owners shall control all noxious weeds and shall destroy them according to county standards. Re-vegetation as approved in advance by the Design Board shall be required for all disturbed areas. Natural and native species are encouraged; non-native species may be restricted or prohibited. The owner must complete the restoration within 45 days following the construction of the residence or within such period as may be reasonably necessary as dictated by weather conditions, but not to extend one (1) year.

**F. OUTBUILDINGS AND TEMPORARY STRUCTURES**

No outbuildings shall be erected or maintained upon any lot before the start of construction of a residence and no trailer, mobile home, basement, shack, garage or other outbuildings shall be erected upon any part of the lot for use as a temporary or permanent residence. Temporary structures shall be removed within thirty (30) days after completion of construction.

**G. EXTERIOR IMPROVEMENTS AND EQUIPMENT**

Application to the Design Board for approval of pools, spas, hot tubs, or fire pits shall contain adequate details to establish sufficient abatement of equipment noise. If deep excavations are required for these improvements, a site evaluation by a geologist or soils engineer may be required.

**H. CONSTRUCTION AND SCHEDULES**

Any and all construction, alterations or improvements shall be subject to advance approval by the Design Board and shall be diligently worked on to completion and shall be completed within eighteen (18) months following commencement. No aspect of construction shall at any time impede, obstruct or interfere with pedestrian or vehicular traffic. No materials shall be placed or stored upon any lot more than thirty days (30) before commencement of construction or more than thirty (30) days following completion of construction as determined by the Design Board. No materials shall be placed or stored in right-of-way.

Each construction site shall have a chemical toilet placed in a location as inconspicuous as possible. During any construction, the site shall be cleaned up weekly and shall be maintained free of trash. Debris and trash shall be removed from Baxter Meadows and shall not be placed or dumped on any common area or other property within Baxter Meadows. The owner shall be responsible to take necessary precautions to prevent debris from blowing off the construction site and shall clean up wind-blown debris both on and off the premises if debris does leave the premises notwithstanding the owner's precautions. Open burning of debris is not permitted.

**I. BUILDING PERMITS AND COMPLIANCE BOND**

No building, structure, road, fence or improvement of any kind shall be erected, placed, altered, added to, reconstructed or permitted to remain on any site, and no construction activities or removal of trees or other vegetation shall be commenced until approved by the Design Board and the appropriate plans have been submitted to the City of Bozeman for building plan review percent and approval. A Compliance Bond may be required with a Security Deposit and will be held in an escrow account administered by the Design Board. Upon completion of construction

and landscaping of the sites the job will be reviewed by the Design Board, and when satisfactorily completed, the Compliance Bond will be released to the home owner. Some or all of the bond may be used by the Design Board to complete unfinished landscaping or other work needed on the site, if not satisfactorily completed by the owner of the site.

**J. CERTIFICATE OF COMPLIANCE**

Before any owner may occupy or otherwise use a residence or other structure in Baxter Meadows, the owner must obtain a Certificate of Compliance from the Design Review Board in the form set forth in the Design Guidelines, acknowledging compliance with the Design Guidelines in the design and construction of any residence or other structure built within the boundaries of Baxter Meadows. In addition, the Owner shall obtain a Certificate of Occupancy from the City of Bozeman.

**K. COMMON AREAS**

The design of Baxter Meadows incorporates Common Areas as shown on the final plat of the Baxter Meadows annexation to the City of Bozeman, attached hereto and incorporated herein by reference. No improvements shall be constructed on such common areas except by the Baxter Meadows Homeowner's Association. No gates or obstructions shall be placed upon or shall impede access to any common area. City standard residential sidewalks are to be provided at all streets adjacent to the common areas by the HOA. The HOA may provide temporary lighting or other holiday decorations within the common areas and street boulevards.

**L. MAINTENANCE OF COMMON AREAS**

The HOA shall maintain the common areas, storm water management system, and easements. The HOA, as determined by the Design Board, may take such steps as are necessary to ensure that all shrubs, trees, and other vegetation do not block, interfere, or hinder the view from any residence. Such steps may include limiting the type of shrubs, trees, and other vegetation planted in the common areas, specifying the location of items to be planted, and/or removing shrubs, trees, and other vegetation in the event such items grow to a level that they block, interfere, or hinder the view from any residence or within traffic areas. Maintenance, repairs, and replacements of Common Area grounds and improvements, including the storm water management system, shall be at the expense of the HOA provided, however, if such damage is caused by a negligent or tortuous act of any owner, members of such owner's family, guest or employee, then such owner shall be responsible and liable for all such damage.

**M. RIGHT OF ACCESS AND PUBLIC DEEDED RIGHT OF WAY INGRESS AND EGRESS**

A right of access shall be reserved and be immediate for making of emergency repairs in improvements and/or within the boundaries of each lot. These repairs may be needed to prevent property damage, personal injury, or continued property damage.

Public deeded right of way for general ingress and egress to each lot and to all common areas for the general use of all owners, their guests and the general public shall exist over all common areas, roads, and trails within Baxter Meadows.

**N. UTILITY EASEMENT**

An utility easement for such utilities as electricity, gas, sewer, communications, telephone, water, television, cable communications and other utility equipment is provided for within Baxter Meadows. All owners shall have the right to enter upon and excavate for electricity, gas, water



and sewer in such easements upon written approval of the Homeowners Association. Vivid Networks will be the sole provider a fiber point enclosure to be mounted to an exterior wall of every home and business. This fiber optic cable carries telephone dial tone, video and audio communications, data, internet and television signals. Each homeowner may contact Vivid Networks to subscribe to the desired services. Satellite dishes and other communication equipment may be installed upon meeting the requirements elsewhere in these covenants and approval of the Homeowner's Association. Easements for ingress and egress and for utilities shall not be moved, deleted or restricted without the written approval of all affected lot owners. Disturbed land must be restored to a condition, as close as possible, to the natural condition of the land before work commenced.

**O. INSTALLATION AND MAINTENANCE OF UTILITIES**

Baxter Meadows shall cause the installation of electric power, telephone, and water line service to the junction of the main access road to each lot and lot driveways. Owners shall bear all responsibility and costs from such junction to home sites.

All utilities of every nature shall be installed and maintained underground. Piping and wiring shall be concealed.

Each owner shall be responsible for utility installation and maintenance in accordance with state and local regulations.

**P. DOMESTIC PETS**

No domestic animals or fowl shall be maintained on any lot except as provided herein. Not more than three generally recognized house or yard pets are permitted, provided that such animals shall at all times be restrained or leashed. Kennels with the appropriate license are allowed only in rear yards. Excessive barking or other animal noises shall not be tolerated. If any animals are caught or identified chasing or otherwise harassing wildlife or people, or barking excessively, the HOA shall have the authority to have such animal(s) impounded at any available location, and may assess a penalty against the Owner of such animal(s) of not more than fifty dollars (\$50.00) plus all costs of impoundment. If any such animal(s) are caught or identified chasing or harassing wildlife or people, or barking excessively on any additional occasion, the HOA shall have the authority to have such animal(s) impounded and may assess a penalty of not more than one hundred dollars (\$100.00) per animal, plus costs of impoundment. No Owner of any animals(s) impounded for chasing or harassing wildlife or people, or for barking excessively, shall have a right of action against the HOA or any member thereof, for the impoundment of any such animal(s).

**Q. MAINTENANCE OF LOTS**

Owners shall maintain lots and improvements in good repair and appearance at all times. All landscaping improvements and property shall be kept and maintained in good, clean, safe, sound, attractive, thriving and slightly condition and in good repair at all times.

**R. NOXIOUS, OFFENSIVE OR HAZARDOUS ACTIVITIES**

No noxious, offensive, or hazardous activities shall be permitted upon any portion of the property nor shall anything be done on or placed upon any portion of the property which is or may become a nuisance to others. No light shall be produced upon any home site or other portion of the property which shall be unreasonably bright or cause unreasonable glare. No sound shall be produced on any home site or other portion of a property which is unreasonably



loud or annoying, including but not limited to speakers, horns, whistles and bells or excessive barking or other animal noises.

All the area of Baxter Meadows shall be controlled by these covenants which run with all the land for the benefit and use of owners. No off-road motorized travel shall be permitted. Use of snowmobiles within the boundaries of Baxter Meadows is also prohibited. Use of motorized vehicles is subject to ordinances and regulations of the City of Bozeman.

Neither hunting nor the discharge of firearms shall be allowed in Baxter Meadows.

**S. SIGNS**

No signs, billboards, posters, displays, advertisements or similar structures shall be permitted except as approved in advance in writing by the Design Board and through proper permitting procedures with City of Bozeman.

**T. ENFORCEMENT ACTION**

The provisions of these protective covenants may be enforced by individual owners, the HOA, Design Board, or Baxter Meadows Development, L.P.

In the event of violation or threatened violation of any of these Covenants, or the Design Guidelines or any other rules or regulation adopted by the HOA, legal proceedings may be brought in a court of law or equity for injunctive relief and damages. In addition, an owner, the HOA, Design Board, or Baxter Meadows Development, L.P. may enforce these Covenants by serving notice in writing on the person or entity violating these Covenants which notice shall specify the offense, identify the location and demand compliance with the terms and conditions of these Covenants. Such notice shall be personally served. In the event personal service cannot be obtained after reasonable efforts, notice shall be posted at a conspicuous place on the property in question and a copy of the notice shall be mailed by certified mail, return receipt requested, to the last known address of the party or entity.

No owner, the Design Board, the HOA, or Baxter Meadows Development, L.P. shall be liable to any person or entity for any entry, self help or abatement of a violation or threatened violation of these Covenants. All owners, invitees and guests shall be deemed to have waived any and all rights or claims for damages for any loss or injury resulting from such action except for intentionally wrongful acts.

Enforcement of these covenants shall be by proceedings either at law or in equity against any person or persons violating or attempting to violate these Covenants; and the legal proceedings may be either to enjoin or restrain violation of the Covenants or to recover damages or both. In the event of action to enforce these Covenants, the prevailing party shall be entitled to costs and a reasonable attorney's fee.

The failure by the Declarant or its assigns, the HOA, the Design Board or any lot owner to enforce any covenants or restrictions contained herein shall in no event be deemed a waiver or in any way prejudice the right to enforce that Covenant at any time against any person breaking the Covenant or any other Covenant breached thereafter or to collect damages for any subsequent breach of Covenants.

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





All of the above described real property and lots shall be subject to the restrictions and Covenants set forth herein whether or not there is a reference to the same in a deed or conveyance.

A breach of any of the foregoing Covenants shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value upon any site or portion of the real property or any improvements thereon. However, these Covenants shall be binding upon and inure to the benefit of any subsequent owner who acquired by foreclosure, trustee sale or otherwise, title to property within Baxter Meadows.

**U. PERPETUITY**

These Covenants shall continue in full force and effect and shall run with land as legal and equitable servitude in perpetuity unless amended or terminated as set forth herein.

**V. AMENDMENT**

These Covenants shall remain in effect until amended or terminated. The Covenants, or any portion thereof, may be amended, terminated or supplemented at any time by the execution of a written document containing the terms of the amendment, supplement or termination of any of the Covenants, duly acknowledged by a Notary Public, and recorded with the office of the Gallatin County Clerk and Recorder, executed (1) by the owners of at least seventy-five percent (75%) of the lots in Baxter Meadows based on one vote per lot, or (2) by the Board of Directors and President of the HOA acknowledging the affirmative vote of three-fourths (3/4) of the total votes of all Class A and Class B members of the HOA. If one or more lots has been combined, the owner thereof shall be entitled to one vote and/or one signature for each original lot which created the combined lot. If there is more than one owner for an individual lot, each owner must execute the amendment, supplement or termination document to count for one vote towards the seventy-five percent (75%) total.

**W. SEVERABILITY**

Captions and paragraph headings are designated herein as a matter of convenience. A determination of invalidity of any portion of these Covenants shall not in any manner affect the other portions or provisions.

**X. DESIGN REVIEW BOARD**

The Design Review Board shall be constituted in accordance with the By-Laws of the Baxter Meadows Homeowners' Association. The Design Review Board shall have the authority and responsibility as provided herein and in the By-Laws for the Baxter Meadows Homeowners' Association.

**Y. BAXTER MEADOWS DESIGN REVIEW GUIDELINES AND REGULATIONS**

The Design Review Board shall conduct business as provided herein and as set forth in the BAXTER MEADOWS DESIGN REVIEW GUIDELINES AND REGULATIONS. In the event of any conflict between the Design Guidelines and these Covenants, the Design Guidelines shall prevail.

**Z. BAXTER MEADOWS HOMEOWNERS' ASSOCIATION**

The Baxter Meadows Homeowners' Association shall be constituted, shall conduct its business, and shall have the authority and responsibility as provided herein and in the BY-LAWS OF THE Baxter Meadows

BAXTER MEADOWS HOMEOWNERS ASSOCIATION. In the event of a conflict between the By-Laws and these covenants, the By-Laws shall prevail.

#### IV. **HOMEOWNER'S ASSOCIATION MAINTENANCE PLAN**

##### A. Homeowner's Association Responsibility

The Baxter Meadows Homeowner's Association (HOA) is responsible for maintenance of parks, open space, common areas and private streets within Baxter Meadows. These responsibilities include maintenance of vegetation, playground areas, playground equipment, sidewalks, stormwater detention basins and the stream/ditch on the west side of the subdivision. The HOA is responsible for maintenance of the pocket parks, the linear park, the stormwater detention basins, the stream/ditch in the linear park between Baxter Lane and Deadman's Road, and the sidewalks adjacent to each of these areas. The HOA is also responsible for costs of irrigation including the cost of water and irrigation system maintenance.

##### B. Landscaping Maintenance

The HOA will provide maintenance of the parks and open space. Specific maintenance activities are presented below, however, other maintenance activities not specified will be provided as required.

##### Mowing/General Maintenance

The maintenance contractor will mow and trim grass within and along the boulevards adjacent to the linear park, Gallatin Green, the stormwater detention basins, and the pocket parks. Mowing and trimming shall be provided as needed during the active growing season.

During each visit, the maintenance contractor will also ensure that the inlets and outlets to the stormwater detention basins are unobstructed will remove any trash from the parks and open space.

##### Trees and Shrubs

The maintenance contractor shall provide maintenance to the trees and shrubs within the parks, open space and boulevards including pruning, watering and fertilizing as needed. Shrubs along the edges of the parks located in Baxter Meadows shall be pruned annually to maintain a maximum height less than 4 feet. The shrubs within the parks will be primarily irrigated by the sprinkler system.

The trees within the parks, open space and boulevards will be irrigated by an automatic irrigation system. The typical irrigation requirement for these trees will be 6 inches of water per tree every two weeks from the middle of June to the middle of September. During periods of unusually dry weather, an additional 2 inches of water per tree shall be provided. During periods of adequate precipitation less frequent or intense irrigation will be acceptable.

##### Sprinkler System Maintenance

The maintenance contractor or a sprinkler system contractor shall provide maintenance to the automated sprinkler system. At a minimum, the contractor will test and inspect the system in the spring to ensure all lines and sprinkler heads are functioning properly and the contractor will blow the water out the systems in the fall. The contractor will provide additional maintenance as required.



Wood Chip Mulch Maintenance

The maintenance contractor will maintain the wood chips within the shrub beds. The wood chips will be raked level during each mowing event. The contractor will also be responsible to ensure that a minimum chip depth of 9 inches is maintained within the protective areas.

Raking/Fall Maintenance

The maintenance contractor will rake and remove leaves from the parks and open space in the fall. Other materials including fallen branches and trash accumulated in the shrubs will also be removed.

C. Snow Removal

The HOA shall retain a snow removal contractor to shovel and/or plow snow from the sidewalks adjacent to parks, open space, common areas and alleys. Specifically, the contractor shall maintain the sidewalks along the east side of the linear park between Baxter Lane and Deadman's Road and the sidewalks within the pocket parks and the stormwater detention basins. The snow removal contractor will also ensure that the inlets and outlets to the stormwater detention basins are unobstructed.

D. Stream/Ditch Maintenance

The stream/ditch along the east side of the Equestrian Center and through the linear park shall be maintained to ensure the flow of water is not inhibited. The maintenance contractor shall be responsible for maintenance during the period of May through October. The snow removal contractor shall be responsible for maintenance November through April. Trash and debris including fallen branches, leaves, and excessive vegetative growth shall be removed and disposed of off-site. The inlets and outlets of culverts shall be cleared of all debris. Mowing will not be required on a regular basis.

E. Playground Equipment Inspection

The HOA shall have all playground equipment inspected annually and have an inspection report submitted to the City of Bozeman Parks and Recreation Department. The HOA shall hire an independent contractor or contract with the City of Bozeman to perform the inspections.

F. Private Streets

The HOA is responsible for maintenance of all private streets within Baxter Meadows including cleaning, striping, repairs and snow removal.



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Shelley Vance-Gallatin Co MT MISC 282.00

IN WITNESS WHEREOF, this instrument has been executed this 21<sup>st</sup> day of MARCH, 2003

**BAXTER MEADOWS DEVELOPMENT, L.P.**

Gerald R. Williams, President

STATE OF MONTANA     )  
  : ss.  
COUNTY OF GALLATIN    )

This instrument was acknowledged before me on March 21, 2003, by Gerald R. Williams, as President of Baxter Meadows Development, L.P.

Notary Public for the State of Montana  
Printed Name: Kathleen M Thorsen  
Residing at: Yellowstone Co  
My Commission Expires: 9-13-03



# BAXTER MEADOWS

BOZEMAN, MONTANA

## PART II



BY-LAWS OF THE BAXTER MEADOWS  
HOMEOWNER'S ASSOCIATION



**2103136**

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Shelley Vance-Gallatin Co MT MISC 292.00





Baxter Meadows Development, L.P. is the present owner in fee simple of all the property included within the boundaries of Baxter Meadows Annexation to the City of Bozeman. Baxter Meadows Development, L.P. does hereby adopt the following By-Laws of the Baxter Meadows Homeowners' Association. Baxter Meadows has also adopted and recorded a Declaration of Residential Protective Covenants and Restrictions for Baxter Meadows (the "Covenants"), and the Baxter Meadows Design Review Guidelines and Regulations (the "Design Guidelines") which operate and should be construed in conjunction with these By-Laws.

**I. MEMBERSHIP**

**A. MEMBERSHIP**

Every owner of property in Baxter Meadows shall be a member of the Baxter Meadows Homeowners' Association (the "HOA"). Membership shall be appurtenant to and may not be separate from the ownership of any lot subject to assessment. Each lot owner shall be responsible for advising the HOA of his or her acquisition of ownership and his or her current address. Each owner shall be bound by these By-Laws and the duly passed Resolutions of the HOA. The HOA may be incorporated as a non-profit homeowners' association.

**B. CLASSES**

There shall be two classes of members in the HOA, Class A and Class B members, which are defined as follows:

**CLASS "A":** Class A membership shall be all lot owners with the exception of Class B members named below. Class A members shall be entitled to one vote for each lot owned. If one or more original lots have been combined, the owner thereof shall be entitled to one vote for each original lot which created the combined lot. When more than one person holds an interest in any individual lot, all such persons shall be members. The vote for such a lot shall be exercised as such owners among themselves determine, but in no event shall more than one (1) vote be cast with respect to any lot.

**CLASS "B":** The Class B member shall be Baxter Meadows Development, L.P., who shall be entitled to seventy-five (75) votes. Class B membership shall cease and be converted to Class A membership when 3/4 of the lots being of the original RS and R3 residential lots in Baxter Meadows are sold to third parties. Thereafter, Baxter Meadows Development, L.P. shall become a Class A member and shall be entitled to one vote for each unsold platted lot.

**II. OPERATIONS**

**A. MEETINGS**

Written notice of any meeting called for the purpose of taking any action authorized hereunder shall be mailed to all members not less than 10 days nor more than 45 days in advance of the meeting. A general description of the items to be considered at such a meeting shall be contained in the notice. At such meeting called, the presence of members or of proxies entitled to cast fifty-one percent (51%) of all the votes of Class A and Class B members combined shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.



**B. DIRECTORS AND OFFICERS**

Members of the HOA shall annually elect three (3) Directors from its membership who shall be responsible for the overall operations of the HOA as described herein. The Directors shall also have the power and responsibility of setting an annual budget. Such Directors shall be elected by a majority of the total votes of Class A and Class B members represented in person or by proxy at an annual meeting of the HOA, or in the absence of an annual meeting, at any meeting at which a quorum is present. The Directors shall serve a term of one year, but may be removed from time to time at any regularly called meeting of the HOA by a vote of two thirds (2/3) of the total votes of Class A and Class B members represented at any meeting in person or by proxy at the meeting, provided that a quorum is present, or immediately, upon termination of the Director's membership. Nothing shall prohibit the re-election of any Director for consecutive terms. The Directors are authorized to manage the business of the HOA and are authorized to take such actions as shall be necessary and reasonable to carry out the functions of the HOA. The Directors shall elect a president and secretary/treasurer from among the Directors or the members to serve as the officers of the HOA. The Directors may also elect such other officers as they deem necessary. The duties of these officers shall be established by the Board of Directors.

The initial Board of Directors shall consist of Gerald R. Williams, Claudia Metzler and Jeff Kanning, AIA, who shall serve until new directors are duly elected by the HOA. Gerald R. Williams shall serve as the president of the HOA and Claudia Metzler as secretary/treasurer, until successors are duly elected by the HOA.

**C. RULES AND REGULATIONS**

The HOA may adopt such additional rules and regulations as shall be reasonable and necessary to carry out its authority and duties under the terms of these By-Laws, the Covenants, or the Design Guidelines, provided that such additional rules and regulations are first adopted by a majority of the Board of Directors and then submitted to a meeting of the HOA for a vote by delivering notice of the meeting together with a copy of the additional rules and regulations to the last known address of each lot owner at least thirty days before the meeting. Additional rules and regulations shall be adopted by a two-thirds (2/3) majority vote of the total votes of all Class A and Class B members represented in person or by proxy at any meeting at which a quorum is present and all members have been notified that such rules or regulations will be up for discussion. Additional rules and regulations shall be effective 30 days after the same are executed and recorded by the Board of Directors of the HOA with the Clerk and Recorder for Gallatin County, Montana, and mailed to each lot owner at their last known address.

**III. DESIGN REVIEW BOARD**

**A. COMPOSITION**

The Design Review Board for Baxter Meadows shall initially be composed of Gerald R. Williams, Claudia Metzler and Jeff Kanning, AIA. These members shall serve until twenty-five lots in Baxter Meadows have been conveyed to third parties. After that time, the Design Review Board shall be composed of not more than three (3) members selected by the Board of Directors of Baxter Meadows Homeowners' Association. Two (2) of the members of the Design Review Board shall be members of Baxter Meadows Homeowners' Association, and one (1) shall be a disinterested, outside third party. Each member of the Design Review Board shall serve for a term of one year, unless re-appointed.



Each member of the board shall have one vote. Action approved by the vote of two of the three members shall be the act of the Design Review Board. A written permanent record shall be kept of all action taken by the Board which shall include the date, the action taken, and a short statement of the reason for such actions.

**B. ADDITIONAL PROCEDURES AND DESIGN REGULATIONS**

The Design Review Board shall proceed in accordance with the provisions of the Design Guidelines, and shall have the authority to adopt construction regulations and such other regulations as shall be reasonable and necessary to exercise its authority and its duties set forth in this Declaration, the Design Guidelines, the Covenants and the By-Laws.

Any additional procedures or design regulations adopted by the Design Review Board shall not be effective until thirty days after mailing a copy of the additions to the last known address of the current site owners.

**C. FINAL PLANS**

Approval by the Design Review Board neither represents, nor shall the Design Review Board offer any opinion as to whether plans and specifications conform to building codes or State and Local Regulatory requirements. Approval does not include examination for errors or omissions. Appropriate plans shall be submitted to the City of Bozeman for building plan review approval and necessary fees and permits paid for and be obtained.

Approval granted by the Design Review Board for any plans shall remain effective only in the event that construction is commenced within six (6) months of the date of the approval, after which time the approval shall lapse and be of no further force or effect.

**D. ADDITIONS, CHANGES, REFINISHING**

No additions, changes, (including remodeling) or changes of any portion of the home site except the interior structures of the residence shall be commenced without approval of the Design Review Board. The approval shall be sought by submissions of final working plans and drawings. No preliminary plans need be submitted.

**E. CERTIFICATE OF COMPLIANCE**

Before any owner may occupy or otherwise use a residence or other structure in the Baxter Meadows, the owner must obtain a Certificate of Compliance from the Design Review Board in the form set forth in the Design Guidelines, acknowledging compliance with the Design Guidelines in the design and construction of any residence or other structure built within the boundaries of Baxter Meadows. A Certificate of Occupancy must also be obtained from the City of Bozeman.

**F. COMMUNICATIONS**

Communications with the Design Review Board shall be initiated by directing inquiries and submissions to:

DESIGN REVIEW BOARD  
Baxter Meadows  
P.O. Box 11060  
Bozeman, Montana 59719





IV. ASSESSMENTS

A. LEVYING ASSESSMENTS

The Directors shall have the authority to levy assessments on each lot and the owner thereof for the purposes of improvement, repair and maintenance of roads, common areas, snow removal, administration, accounting and legal fees. There shall be three types of assessments: "Annual Assessments", which shall be a pro-rata portion of anticipated expenses for the coming year based upon the budget prepared by the Directors; "Capital Improvement and Compliance Assessments" approved by a two-thirds (2/3) majority of the total votes of Class A and Class B members; and "Emergency Assessments" levied at the discretion of the Directors without submitting the assessment to a vote of the members, in order to rectify and/or address emergencies. Each type of assessment is described below. The total assessment shall be divided and paid equally by the owners of each lot, including unsold lots owned by Developer, regardless of the size of the lot.

The Owner of each lot, hereby covenants and agrees, by the acceptance of a deed therefore (regardless of whether it shall be so expressed in such deed) to all matters set forth in these By-Laws, the Covenants, the Design Guidelines and the Design Board Declaration, and to pay to the HOA such assessments as the HOA shall levy against each lot. No owner shall be entitled to a reduced assessment because such owner does not reside upon the property or does not use the roads or other amenities. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use or abandonment of his or her lot or because he or she believes that these By-Laws are not being properly enforced.

Assessments shall be due and payable within thirty (30) days of the date of the notice of such assessment. An assessment shall be a charge upon the land and shall be a continuing lien upon the property and lot upon which the assessments are made. Each assessment shall also be a personal obligation of the person who is the owner of the property at the time the assessment falls due.

Upon delivery of the notice of assessment to the owner, the assessment shall be a lien upon the owner's lot until paid. The HOA may record a notice of the lien with the Clerk and Recorder of Gallatin County, Montana. In the event of non-payment within thirty (30) days after recording the notice of the lien, the HOA may foreclose the lien in a manner set forth under Montana law for the foreclosure of liens against real property. The recording of the notice of lien shall be notice to all third parties of the assessment outstanding against the lot.

The HOA may bring an action at law against the owners personally obligated to pay the same or may foreclose the lien against the property. In the event of an action to collect a past due assessment, the HOA shall be entitled to recover any or all of the following costs, in addition to the amount of the past due assessment: (1) the costs of filing the lien including interest at the rate of the then prevailing prime rate of interest plus two percent (2%) from the date due; (2) all costs of the action; (3) reasonable attorneys fees incurred in preparation for filing the lien; (4) reasonable attorneys fees incurred in preparing and prosecuting the action.

The sale, transfer or encumbrance of any lot shall not affect the assessment lien or the personal liability of the owner except to the extent such lien is extinguished by Montana law. No sale, transfer or encumbrance shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof, provided that if the assessment lien has not been recorded with the Clerk and Recorder of Gallatin County, a good faith purchaser or encumbrancer without actual notice of the outstanding assessment shall take the property free of the lien.



**B. ANNUAL ASSESSMENTS**

The owner of each lot, including Baxter Meadows Development, L.P. with respect to all unsold lots, shall be assessed annually for a pro-rata portion of anticipated expenses for the coming year based upon the budget prepared by the Directors. After the initial Annual Assessment is set, the assessment against any lot shall not be increased more than 20 percent (20%) per year without the approval of two-thirds (2/3) of the total votes of Class A and Class B members represented at any meeting in person or by proxy, unless the increase is required to comply with a mandatory rule, regulation, or order of municipal, county, state or federal government.

The Annual Assessments provided for herein shall commence as to each lot on the date of closing on the sale of such lot from Baxter Meadows Development, L.P. to a third party. The Board of Directors shall fix the amount of the annual assessment against each lot based upon a budget of the estimated expenses of the HOA for each year. At least thirty (30) days in advance of the due date of each annual assessment, written notice of the annual assessment and the due date shall be mailed to every lot owner at their last known address. The due dates shall be established by the Board of Directors. The HOA shall, upon demand, and for a reasonable charge, furnish a certificate signed by the Directors of the HOA, setting forth whether the assessment of a specified lot has been paid.

**C. CAPITAL IMPROVEMENTS AND COMPLIANCE ASSESSMENTS**

i) **Capital Improvements.** The HOA may levy assessments for construction or reconstruction or unexpected repair or replacement of a capital improvement or equipment for use consistent with the purposes of the HOA.

ii) **Compliance.** The HOA may levy assessments for purposes of defraying costs, including legal fees to enforce any protective covenant or to exercise any authority or responsibility granted to the HOA, including but not limited to enforcement of all rules and regulations adopted by the HOA, or to pay for the necessary repair or maintenance of a property or residence which an owner has otherwise refused to repair or maintain.

**D. EMERGENCY ASSESSMENTS**

Emergency assessments shall be levied only to meet the costs and expenses precipitated by a condition which must be remedied promptly to ensure the safe and adequate discharge of the responsibilities of the HOA. This may include items which would otherwise be considered as Capital Improvement and Compliance Assessments, if the Board determines (1) that the capital improvement or compliance action is absolutely necessary; and (2) that circumstances make it impractical to put the matter to a vote of the members due to timing or other constraints. Any improvements or other work required by local, state, or federal agencies which must be completed in a timely fashion and cannot be included in the Annual Assessment for the following year shall also be considered Emergency Assessments.

**V. FORECLOSURE AND EXECUTION**

As further security for payment of assessments levied by the HOA, the HOA may, in addition to foreclosing upon the lien as described above, execute upon a judgment through all remedies provided at law and equity, including sale of the liened parcel in accordance with the laws of the State of Montana. At such a sale, the HOA may bid upon and acquire such lot.



**VI. ACCUMULATION OF REMEDIES**

All remedies provided under the Covenants, these By-Laws, and the Design Guidelines, as well as all of the rules and regulations of the HOA and remedies and authority granted to individual owners to enforce covenants shall be cumulative and shall be in addition to, and not in substitution of, all other rights and remedies which the HOA may have under law.

In addition, any owner, Baxter Meadows Development, L.P. or the HOA, may bring an action for damages for injunctive relief to abate a nuisance, to restrain any threatened or prospective violation or continuing violation of any portion of these By-Laws, the Covenants, or the Design Guidelines. In any such enforcement action, the prevailing party shall be entitled to recover all costs, court costs, costs of discovery and reasonable attorney fees.

**VII. NOTICES**

Each owner shall register with the HOA, a current mailing address and shall promptly notify the HOA of any change. All notices, demands, and other communication to any owner shall be sufficient for all purposes if personally served or if delivered by postage pre-paid United States Mail, Certified, return receipt requested, addressed to the owner at the last mailing address registered with the HOA.

**VIII. SEVERABILITY**

Invalidity or un-enforceability of any provision of this instrument determined by a Court shall not affect the validity or enforceability of any other provision.

**IX. NO WAIVER**

Failure to enforce any provision, restriction, covenant or condition of these By-Laws, the Covenants or the Design Guidelines shall not create a waiver of any such provision, restriction, covenant or condition or of any other provision, restriction, covenant or condition.

**X. AMENDMENT OR TERMINATION**

These By-Laws shall remain in effect until amended or terminated which shall occur only upon the affirmative vote of three fourths (3/4) of the total votes of all Class A and Class B members of the HOA.

IN WITNESS WHEREOF, the By-Laws have been executed this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

BAXTER MEADOWS DEVELOPMENT, L.P.

Gerald R. Williams  
Gerald R. Williams, Director

STATE OF MONTANA     )  
  : ss.  
COUNTY OF GALLATIN    )

This instrument was acknowledged before me on March 21 2003 by Gerald R. Williams, as Director of Baxter Meadows Development, L.P.

Kathleen M. Thorson  
Notary Public for the State of Montana  
Print Name: Kathleen M Thorson  
Residing at: Yellowstone Co  
My Commission Expires: 9-13-03  
20



# BAXTER MEADOWS

BOZEMAN, MONTANA

## PART III



### DESIGN REVIEW GUIDELINES AND REGULATIONS



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Shelley Vance-Gallatin Co MT MISC 282.00





I **SITE DESIGN REGULATIONS**

The integration of buildings into the landscape of Baxter Meadows is essential to the success and appearance of the community. Site Design Regulations specifically serve to protect and enhance the natural landscape, stream corridors, view sheds and natural habitat.

A. **TOPOGRAPHY AND SITE FEATURES**

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

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

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

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

3. **Stream Corridor Protection:**

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

4. **Driveways & Parking:**

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

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

Driveway and parking surfaces shall be constructed of concrete paving units, stone cobbles, asphalt or concrete. Any other material shall be approved by the BMHOA. Materials shall restrict weed growth and maintain a clearly defined



edge between the landscaped area and the driveway surface. Materials shall withstand deterioration from winter snow plowing and erosion.

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

5. Privacy Screens and Retaining Walls:

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

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

6. Walkways, Paths and Trails:

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

**B. UTILITIES AND SITE DETAILS**

1. Utilities:

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

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

2. Radon:

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



3. Wood Storage:

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

4. Garbage and Refuse Disposal:

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

C. LANDSCAPE CONTROLS FOR BUNGALOW, VILLAGE, TRADITIONAL HOME STYLES, CONDOMINIUMS AND LIVE/WORK UNITS

1. Definitions:

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

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

Mulched Bed: An area within a yard with no turf and 3" minimum depth landscape mulch. Landscape mulches include but are not limited to river rock (typ) or landscape bark (typ) etcetera.

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

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

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

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





2. Installation:

\*Note: Baxter Meadows Development when used in the following paragraphs represents the current development L.P. Beginning with 75% property sales, the responsibilities of Baxter Meadows Development becomes those of Baxter Meadows Homeowners Association (HOA) as described in the Declaration of Residential Protective Covenants and Restrictions for Baxter Meadows.

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

Sodding:

*Bungalow and Village Style Home:* Sodding of front and side yards to fences and in any property right-of-way shall be the responsibility of Baxter Meadows Development. In the case of corner lots where no fences occur, the sodding shall extend to a point 10' into the side yard from the front yard.

*Traditional Style Homes:* Sodding of front yards and in any property right-of-way shall be the responsibility of Baxter Meadows Development.

*Condominiums and Live/Work Units:* Sodding of front, side and rear yards as well as any property right-of-way shall be the responsibility of Baxter Meadows Development.

On any yards where sodding has not been provided by Baxter Meadows Development, the homeowners are responsible for sodding or seeding within one (1) year of property purchase.

Mulched Beds:

*Bungalow, Village and Traditional Style Homes:* Front yards will be installed with 4-8 shrubs within a mulched bed and shall be the responsibility of Baxter Meadows Development. Homeowners are encouraged to install similar beds in rear and side yards to reduce water and mowing damage to the architectural siding.

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

*Condominium and Live/Work Units:* Front, rear and side yard landscaping shall be the responsibility of Baxter Meadows Development. Each unit will have 18"-24" min. wide mulched bed surrounding its perimeter to reduce water and mowing damage to the architectural siding.

All property owners may further plant shrubs on their properties in mulched bed areas given that shrubs do not exceed the width of mulched bed area. Shrubs must be planted within a newly established mulched bed a minimum of 6" diameter wider than the mature diameter size of the shrub planted. Perennials



and annuals may be planted within mulched beds provided they are within bed edges by 6" or more and are 6" or more away from architectural structures.

Trees:

Each homeowner with the exception of Condominium and Live/Work Property owners, shall be responsible for the installation of one 1.5" minimum trunk caliper shade tree within 18 months of purchasing property in Baxter Meadows. Recommended species include: Ash (Fraxinus), Honeylocust (Gleditsia Triacanthos), Linden (Tilia), Locust (Robinia Pseudoacacia), Maple (Acer), Mountain Ash (Sorbus Aucuparia), Oak (Quercus), Walnut (Juglans Nigra).

Trees installed by homeowner are to be planted within property lines.

*Bungalow and Village Style Home:* Trees must not be planted in front yards where they may conflict with utility lines. Trees must be located in back yard areas in designated Landscape Pods.

*Traditional Style Homes:* Will be allotted (3) small shade trees of 1-2" caliper or one 5' high conifer (evergreen) by Baxter Meadows Development, L.P. The required installation of a shade tree within 18 months of purchasing property in Baxter Meadows may be substituted for one non-canopy tree (evergreen/conifer). The non-canopy tree must have a min. height of 5'. Heights are measured from the top of the root ball to the plants highest point. Trees installed by homeowners may be planted in front, side or rear yards as long as they are not in conflict with the utility lines and are on the owner's property.

3. Maintenance:

Maintenance includes lawn care, irrigation and weed control. Mulched beds shall be weed controlled by a consistent spray regime or manual weeding. Pesticides, herbicides, fertilizers, etc. If used shall be applied in strict accordance with the manufacturer's instructions and all applicable laws and in accordance with USDA and the EPA.

*Bungalow and Village Style Homes:* Every homeowner shall be responsible for the care of his or her lot excluding front and side yards up to fence lines where Baxter Meadows Development will be responsible for maintaining. In the case of corner lots where no fences occur, the maintenance by Baxter Meadows Development shall extend to a point 10' into the side yard from the front yard.

*Traditional Style and Estate Homes:* Every homeowner shall be responsible for the care of his or her entire lot excluding only the street right-of-way.

*Condominiums and Live/Work Units:* Baxter Meadows Development shall be responsible for the landscape maintenance of each property including the right-of-way.

4. Irrigation Installation and Maintenance:

Baxter Meadows Development shall be responsible for the installation of irrigation systems within the areas described below:



*Bungalow and Village Style Homes:* Baxter Meadows shall install and maintain irrigation systems in front yards, right-of-ways, boulevards and side yards from the front yard to fence line. In the case of corner lots where no fences occur, the irrigation shall extend to a point 10' into the side yard from the front yard.

*Traditional Style Homes:* Baxter Meadows shall install and maintain irrigation in front yards and right-of-ways.

*Estate Style Homes:* Baxter Meadows shall install and maintain irrigation in front yards and right-of-ways.

*Condominiums and Live/Work Unit:* Baxter Meadows shall install and maintain Irrigation in front, side and rear yards as well as right-of-ways.

Irrigation systems controlled by Baxter Meadows Homeowners Association will be separately metered.

5. Landscape Controls for Estate Style Homes:

Installation:

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

Sodding:

*Estate Style Homes:* Sodding of front yards and in any property right-of-way shall be the responsibility of Baxter Meadows Development.

On any yards where sodding has not been provided by Baxter Meadows Development, the homeowners are responsible for sodding or seeding within one (1) year of property purchase.

Mulched Beds: Each home shall have 18"-24" min. wide mulched bed surrounding its perimeter to reduce water and mowing damage to the architectural siding.

All property owners may plant shrubs on their properties in mulched bed areas given that shrubs do not exceed the width of mulched bed area. Shrubs must be planted within a newly established mulched bed a minimum of 6" diameter wider than the mature diameter size of the shrub planted. Perennials and annuals may be planted within mulched beds provided they are within bed edges by 6" or more and are 6" or more away from architectural structures.

Trees: Trees installed by homeowner are to be planted within property lines.

**II. BUILDING FORM REGULATIONS**

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

A. **BUILDING HEIGHT**

1. **Residential Buildings:**

Building heights within all residential areas of the BMHOA shall be limited to a maximum of 38 feet except areas designated for Live/Work units shall be limited to a maximum of 55 feet. Building height shall be measured from the highest ridge to the adjacent grade.

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

With the approval of the BMHOA, chimneys, cupolas, and other architectural features may exceed the given height limitations by no more than 4 feet.

B. **ROOF FORM**

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

1. **Shape and Pitch:**

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

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

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

The BMHOA reserves the right to waive the minimum or maximum roof pitch requirement when, in its sole judgment, a lower or steep roof pitch is more appropriate for the design of a building, and does not compromise the integrity of the development district. This privilege may be exercised by the BMHOA without



relinquishing its right to enforce the minimum or maximum requirements on other projects.

2. Entry Definition, Overhangs & Fascia:

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

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

3. Dormers and Secondary Roofs:

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

4. Skylights and Solar Collectors:

When designing the location of skylights, consideration shall be given to both the interior and exterior appearance of the unit. Locations shall also be coordinated with window and door locations. Skylights shall be located away from valleys, ridges and all other areas where drifting snow may hinder the performance and safety of the unit. Skylights shall be of high quality, insulated, double pane construction.

Solar collectors shall be integrated into the overall roof design, and shall be placed flush with the slope of the roof or wall of the building.

5. Chimney Composition, Proportion and Materials:

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

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



C. **EXTERIOR WALL FORM**

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

III. **MATERIAL AND DETAIL REGULATIONS**

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

The following are the only allowable materials in Baxter Meadows:

A. **ROOF MATERIALS**

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

The following are the only acceptable roof materials:

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

B. **EXTERIOR WALL MATERIALS**

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

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

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



1. Stonework:

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

2. Concrete/Stucco:

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

3. Wood and Wood Product Siding:

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

4. Shingles:

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

5. Natural Log:

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

C. EXTERIOR WINDOWS AND DOORS

1. Scale, Composition and Proportion:

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

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

2. Solar Orientation and Exposure:

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



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

3. Materials:

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

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

4. Garage Doors:

Garage doors shall not be oriented toward the street, and shall be de-emphasized in the elevation of the building and screened. Garage doors should be the same color as the building, and shall not be lighter in color than the building.

**D. DECKS, BALCONIES, TERRACES AND PORCHES**

1. Design:

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

2. Materials:

Low level decks shall be skirted to grade, while providing proper ventilation and access. Decks which are not practical to skirt shall be designed to assure that the underside of the deck is integrated with the design of the building. Exposed anodized aluminum joist hangers shall not be allowed. Posts shall be a minimum of eight inches square, and shall be paired together to diminish a thin visual appearance. The dimensions of two-story columns shall be increased to account for the great height. Materials and colors shall be consistent with the building and surrounding landscape.





**E. BUILDING COLOR**

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

**F. NIGHT SKY REQUIREMENTS**

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

- a. Fully-shielded lights: Outdoor light fixtures shielded or constructed so that no light rays are emitted by the installed fixture at angles above the horizontal plane as certified by a photometric test expert.
- b. Indirect light: Direct light that has been reflected or has scattered off of other surfaces.
- c. Glare: Light emitting from a luminaire with an intensity great enough to reduce a viewer's ability to see, and in extreme cases, causing momentary blindness.
- d. Outdoor lighting: The nighttime illumination of an outside area or object by any manmade device located outdoors that produces light by any means.



IN WITNESS WHEREOF, the Design Review Guidelines and Regulations have been  
executed this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

**BAXTER MEADOWS DEVELOPMENT, L.P.**

\_\_\_\_\_  
Gerald R. Williams, Director

STATE OF MONTANA     )  
                                      : ss  
COUNTY OF GALLATIN    )

This instrument was acknowledged before me on March 21, 2003, by  
Gerald R. Williams, as Director of Baxter Meadows Development, L.P.

\_\_\_\_\_  
Notary Public for the State of Montana  
Print Name: Kathleen M Thorson  
Residing at: Yellowstone Co  
My Commission Expires: 9-13-03  
20



# BAXTER MEADOWS

BOZEMAN, MONTANA

## PART IV

□

DECLARATION OF PROTECTIVE COVENANTS  
AS TO WETLANDS AREAS

□



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**I. DECLARATION OF PROTECTIVE COVENANTS AS TO WETLAND AREAS**

Baxter Meadows Development, L.P., Montana limited partnership which acquired title as W.B.C., L.P., a Montana limited partnership, of PO Box 11060, Bozeman, Montana, 59771 hereafter the Declarant, does hereby make and declare the following Declaration of Protective Covenants to be placed upon portions of the real property owned by the Declarant more particularly described as Tract 2A, Tract 3A and Tract 4A of Certificate of Survey No. 2202A, located in Section 34, Township 1 South, Range 5 East, and Section 3 of Township 2 South, Range 5 East, Gallatin County, Montana hereafter referred to as the "property".

These covenants shall apply to the protected areas on the property being those areas within 35 feet from the edge of the ordinary highwater mark for streams (or edge of wetland vegetation adjacent to the stream) and the edge of wetland vegetation for wetland buffers. (Refer to City of Bozeman Ordinance 18.50 for further details). In the case of stream buffers, the total protected area will be a corridor of 70 feet plus the width of the surface water (adjust outward as determined by slope modifications and edge of wetland vegetation). These protected areas include wetlands, mitigation wetlands, created lakes, and all waterways/streams as shown on Figure 1 attached hereto, as follows: 1) willow/emergent wetland and mitigated portion of that wetland in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  Section 34, Township 1 South, Range 5 East (W-8); 2) spring head and channel (W-3), a tributary of the Baxter-Border ditch and mitigated portion of that wetland in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  Section 34, Township 1 South, Range 5 East; 3) Baxter-Border and Spring ditches, NE $\frac{1}{4}$  Section 3 and S $\frac{1}{2}$  34, Township 1 and 2 South, Range 5 East; and 4) the lakes and connecting stream in the S $\frac{1}{2}$  NE $\frac{1}{4}$  Section 3, Township 2 South, Range 5 East.

These Covenants shall attach to and run with the property and shall constitute an equitable servitude upon the property including all titles, interest and estates as may be held, conveyed, owned, claimed, devised, encumbered, used, occupied and improved, and shall be for the benefit of each owner. They shall constitute benefits and burdens to Declarant and to all persons or entities hereafter acquiring any interest in the property.

1. The following restrictions shall apply to any protected areas within the property:
  - A. 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, in the protected areas, (with the exception of signage and/or benchmarks identifying the boundaries of the wetland areas described in Figure 1).
  - B. There shall be no filling, draining, excavating, dredging, mining, drilling or removal of topsoil, loam, peat, sand gravel, rock, minerals or other materials.
  - C. There shall be no building of roads or paths nor any change in the topography of the protected areas.
  - D. 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 protected area.
  - E. There shall be no operation of snowmobiles, motorcycles, all-terrain vehicles or any other type of motorized vehicles on the protected areas.



- 2. The City of Bozeman has identified specific zones within the setbacks for native plantings (City of Bozeman Ordinance 18.50 D(2)(g)(i) & (ii). Trails constructed with a non-impermeable surface (e.g. pea-gravel), benches, directional and natural science information are allowed within the 35-foot setbacks (plus adjustments) with permission from the Bozeman City Planning Department.
- 3. These Covenants 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.
- 4. These Covenants are made in perpetuity such that the present owner and its heirs, successors and assigns forever shall be bound by the terms and conditions set forth herein.
- 5. Determination of invalidity of any portion of these Covenants shall not in any manner affect the other portions or provisions.

IN WITNESS WHEREOF, the Design Review Guidelines and Regulations have been

executed this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

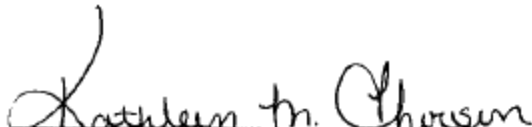
**BAXTER MEADOWS DEVELOPMENT, L.P.**

  
 \_\_\_\_\_  
 Gerald R. Williams, Director

STATE OF MONTANA        )  
                                       : ss  
 COUNTY OF GALLATIN    )

This instrument was acknowledged before me on March 21, 2003 by Gerald R. Williams, as Director of Baxter Meadows Development, L.P.



  
 Notary Public for the State of Montana  
 Print Name: Kathleen M. Thorson  
 Residing at: Yellowstone Co  
 My Commission Expires: 9-13-03  
 20

# BAXTER MEADOWS

BOZEMAN, MONTANA

## PART V



### APPENDIX



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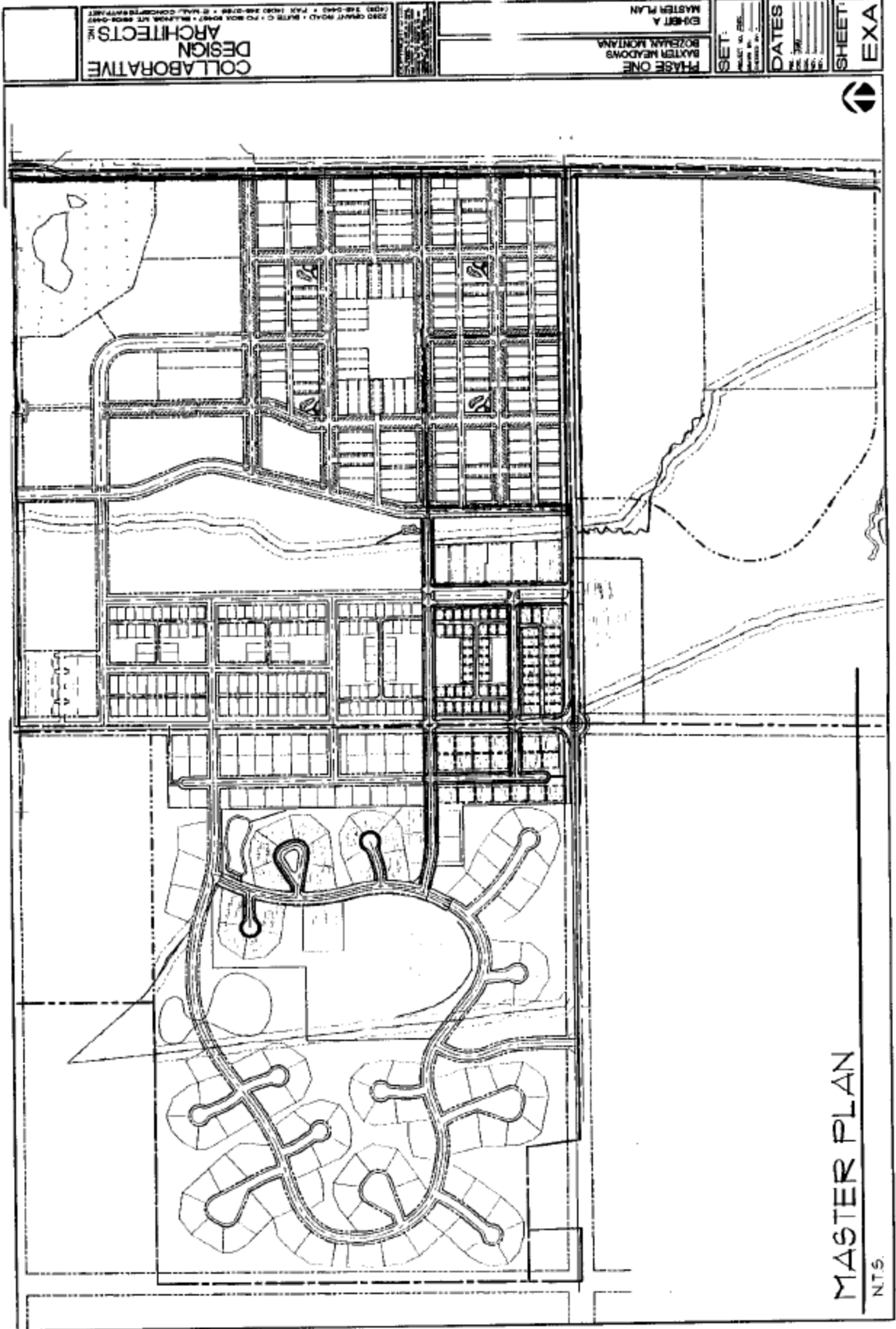
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Shelley Vance-Gallatin Co MT MISC 282.00



MASTER PLAN

NTS

1/4" = 1'-0" (AS SHOWN)

COLLABORATIVE  
DESIGN  
ARCHITECTS, INC.  
2280 GREAT ROAD • SUITE C • PO BOX 9087 • BILLINGS MT 59107-0087  
(406) 248-2440 • FAX (406) 248-2788 • E-MAIL: COLLAB@CDAA.NET

PHASE ONE  
BOZEMAN MONTANA  
EXHIBIT A  
MASTER PLAN

SET:  
PROJECT NO. 03-01  
SHEET NO. 42

DATES  
DATE: 04/03/2003  
BY: [Signature]

SHEET:  
EXA





**PLAN REVIEW APPLICATION**

**BAXTER MEADOWS DESIGN REVIEW BOARD**

New Construction & Building Alterations:

Project Description: \_\_\_\_\_  
\_\_\_\_\_

Property Legal Description/Address: \_\_\_\_\_

Owner's Name: \_\_\_\_\_ Date: \_\_\_\_\_

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

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_ E-Mail: \_\_\_\_\_

If an Agent is submitting on behalf of the Owner, also complete the following:

Agent's Name: \_\_\_\_\_ Date: \_\_\_\_\_

Business: \_\_\_\_\_

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

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_ E-Mail: \_\_\_\_\_

Plan Review Submittal Requirements:

- Site Plans indicating easements, setbacks, utility locations, water shed corridors, landscape plan, site drainage, parking areas, driveways, snow storage areas, fence details and finished floor elevation.
- Floor Plans and exterior building elevations showing square footage, finished grade, exterior materials, windows, doors, building address location and size, exterior lighting fixture cutsheets, roof pitches and building height.
- Colored elevation or perspective of proposed house.
- Material and finish schedule with samples of all exterior finishes.







**VARIANCE APPLICATION**

**BAXTER MEADOWS DESIGN REVIEW BOARD**

In accordance with the Baxter Meadows Review Guidelines and Regulations, application is hereby made for the requested variance described as follows:

\_\_\_\_\_  
\_\_\_\_\_

Property Legal Description/Address: \_\_\_\_\_

Owner's Name: \_\_\_\_\_ Date: \_\_\_\_\_

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

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_ E-Mail: \_\_\_\_\_

If an Agent is submitting on behalf of the Owner, also complete the following:

Agent's Name: \_\_\_\_\_ Date: \_\_\_\_\_

Business: \_\_\_\_\_

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

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_ E-Mail: \_\_\_\_\_

Variance Request Submittal Requirements:

Drawings and Materials as necessary to depict requested variance.

The variance is requested for the following reasons:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
SIGNATURE OF OWNER (S)

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE OF AGENT

\_\_\_\_\_  
DATE

\_\_\_\_\_  
APPLICATION APPROVED BY BMHOA

\_\_\_\_\_  
DATE



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**COMPLIANCE AGREEMENT AND BOND**

This Agreement, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, by and between \_\_\_\_\_, herein referred to as Property Owner, and the Design Review Board of the Baxter Meadows Homeowner's Association, Inc.

1. Property Owner intends to build a building, together with landscaping located at \_\_\_\_\_ (legal description), Bozeman, Montana, in accordance with the drawings and specifications prepared by \_\_\_\_\_ (licensed architect), and which building, landscaping, plan and specifications have been reviewed and approved by the Design Review Board on \_\_\_\_\_ (date).
2. Based upon the review of the foregoing, the parties mutually agree that as security for the performance of the building and landscaping referred to herein, the sum of \$\_\_\_\_\_ in the form of \_\_\_\_\_ (check, certificate of deposit, or letter of credit) shall be deposited on behalf of the Baxter Meadows Homeowner's Association at \_\_\_\_\_ (name of financial institution).
3. The parties agree that the building and landscaping referred to herein shall be completed no later than \_\_\_\_\_ (date). In the event that this project is not substantially completed in such time, in accordance with the approved plans, subdivision covenants and the BMHOA's Design Regulations, and absent any written extensions of time granted by the Design Review Board, the parties agree that the deposit mentioned in Number 2 above shall be forfeited to the Bozeman Homeowner's Association. If work on the project has ceased or if the project has been abandoned in the early stages of construction, the Design Review Board may elect to demolish the improvements and/or restore the site so as not to be unsightly to surrounding properties. It is further understood that the deposit mentioned above may be withdrawn on the sole signature of the appropriate officer or representative of the Design Review Board, but may not be withdrawn on the sole signature of the Property Owner.
4. The condition of this obligation is such that if the Property Owner shall promptly and faithfully perform the building and landscaping in accordance with the approved final plans, the subdivision covenants, and the Design Regulations, then this obligation shall be deemed satisfied.
5. No right of action shall accrue under this Compliance Agreement or on this Bond to or for the use of any person or a corporation other than the Baxter Meadows Homeowner's Association, its successors or assigns.

In WITNESS WHEREOF, the parties have executed this Compliance Agreement the day and year first above written.

\_\_\_\_\_  
for the Design Review Board

\_\_\_\_\_  
Owner

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



**CERTIFICATION OF COMPLIANCE**

**BAXTER MEADOWS DESIGN REVIEW BOARD**

The Design Review Board of the Baxter Meadows Homeowner's Association hereby acknowledges compliance with the Baxter Meadows Design Review Guidelines and Regulations for the following property:

Property Legal Description/Address: \_\_\_\_\_

Owner's Name: \_\_\_\_\_ Date: \_\_\_\_\_

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

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_ E-Mail: \_\_\_\_\_

If a Compliance Bond was required, it shall be released to the Owner immediately.

It is hereby understood and agreed that receipt of this Certificate of Compliance does not constitute approval as to compliance with applicable State law, County or City regulations. The Owner or Owner's agent is responsible for obtaining any and all permits required by all governmental agencies pertaining to building occupancy.

\_\_\_\_\_  
SIGNATURE OF OWNER (S)

\_\_\_\_\_  
DATE

\_\_\_\_\_  
for the DESIGN REVIEW BOARD

\_\_\_\_\_  
DATE



**RESTATED DECLARATION OF RESIDENTIAL  
PROTECTIVE COVENANTS & RESTRICTIONS**

**This document replaces pp. 4 through 15 of those Covenants recorded on April 3, 2003, as part of document No. 2103136, records of Gallatin County, Montana.**

***I. PURPOSE***

Baxter Meadows is a unique mixed residential and commercial development annexed to the northwest portion of the City of Bozeman. Baxter Meadows Development, L.P. is the present owner of all of the property included within the boundaries of the Baxter Meadows Annexation to the City of Bozeman. The primary goal of Baxter Meadows Development, L.P. is to create a development which creatively blends commercial and residential neighborhoods in terms of lot size, home scale and open space. Baxter Meadows strives to achieve this objective through the implementation of these Covenants, the Baxter Meadows Design Review Guidelines and Regulations ("Design Guidelines"), and the By-Laws of the Baxter Meadows Homeowners Association ("By-Laws"), which includes provisions regarding a Design Review Board and should be read and construed in conjunction with these Covenants.

These Covenants apply to Baxter Meadows Phase I being comprised of Tract 1; Block 1, Lot 1; Block 2, Lots 1-6; Block 3, Lots 1-21; Block 4, Lots 1-40; Block 5, Lots 1-13, Block 6, Lots 1-8; Block 7, Lots 1-6; Block 8, Lots 1-13, which property is hereby made subject to the conditions, covenants and restrictions contained herein, which are deemed to run with the land and each and every parcel thereof. These Covenants and Restrictions are in addition to those requirements set forth in the City of Bozeman Zoning Regulations. In the event there is a conflict between the zoning regulations and these Covenants or the Design Guidelines, the zoning regulations shall control.

Baxter Meadows Development, L.P. hereby adopts the following Declaration of Protective Covenants and Restrictions for Baxter Meadows.

***II. ABBREVIATIONS & DEFINITIONS***

The following abbreviations are used in this document:

- 1) The Baxter Meadows Design Review Board is referred to as the Design Board.
- 2) The Baxter Meadows Design Review Guidelines and Regulations are referred to as the Design Guidelines.
- 3) Baxter Meadows Development, L.P. is referred to as Declarant.
- 4) The Baxter Meadows Homeowners Association is referred to as the HOA.
- 5) Baxter Meadows Phase I is referred to as Baxter Meadows.

The following definitions shall apply to these covenants:

- 1) Class A member of the Homeowners Association shall be the owners of lots within Baxter Meadows Phase I as further defined above and in the By-Laws of the Baxter Meadows Homeowners' Association.



2) Class B members of the Homeowners Association shall be the Declarant, as further defined in the By-Laws of the Baxter Meadows Homeowners' Association.

3) Grade: "Grade" means the lowest point of elevation of the finished surface of the ground between the exterior wall of a building and a point five feet distance from the wall, or the lowest point of elevation of the finished surface of the ground between the exterior wall of the building and the property line if it is less than five feet distance from the wall. If walls are parallel to and within five feet of a public sidewalk, alley or other public way, the grade shall be the elevation of the sidewalk, alley or public way. "Finished surface of the ground" shall not include window wells, stairwells, or other similar features, but shall include features such as usable patio areas.

4) Lot: "Lot" means a piece, parcel, plot, tract or area of land occupied or capable of being occupied by one or more principal buildings, and the accessory buildings or uses customarily incidental to them, and including the open spaces required under this title, and having its principal lot frontage on a street.

5) Lot Area: "Lot Area" means the total horizontal area within the boundary lines of a lot.

6) Lot, corner: A lot at a junction of and fronting on two or more intersecting streets.

7) Lot, interior: A lot other than a corner or through lot.

8) Lot, through: A lot having frontage on two parallel or approximately, parallel street.

9) Lot Coverage: The percentage of the lot area covered by buildings.

10) Lot Depth: The horizontal distance of a line measured at a right angle to the front lot line and running between the front lot line and rear lot line of a lot.

11) Lot line, front: In the case of an interior lot, a line separating the lot from the street, in the case of a corner lot, a line separating the narrowest street frontage of the lot from the street and in the case of a through lot, a line separating the lot from the street from which a drive access may be permitted by the city.

12) Lot line, rear: A lot line which is opposite and most distant from the front lot line and, in the case of an irregular or triangular.

13) "Individual residential unit" means any building or portion thereof providing complete, independent and permanent living facilities for one family.

14) "Individual business unit" means any building or portion thereof used by a person, persons or entity for purposes of conducting his, her or its business which includes but is not limited to retail sales, services, and professional offices.

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**III. PROTECTIVE COVENANTS**

**A. PROTECTIVE COVENANTS**

It is the purpose of these Covenants to ensure that Baxter Meadows creatively blends residential and commercial uses into its surroundings, complements and enhances the natural environment and preserves and protects the interests and investment of the individual owners.

These Covenants shall attach to and run with the land and shall constitute an equitable servitude upon the real property and every part of it, including all titles, interest and estates as may be held, conveyed, owned, claimed, devised, encumbered, used, occupied and improved. These Covenants are declared for the benefit of the residential property within Baxter Meadows as described and depicted on Exhibit A hereto, and for the benefit of each owner. They shall constitute benefits and burdens to Declarant and to all persons or entities hereafter acquiring any interest in the property.

These covenants provide general restrictions while the Design Guidelines provide appropriate details in order to ensure compliance with these Covenants. The Design Guidelines must be carefully consulted and followed to ensure the requirements of these Covenants are met.

**B. COMBINATION AND DIVISION OF SITES**

Two or more contiguous lots may be combined to constitute fewer lots. Any combination of lots shall be done in accordance with Montana law. No lot may be further subdivided.

**C. RESIDENTIAL USE**

No lots designated as residential shall ever be occupied or used for any commercial or business purpose except for an office or studio fully contained within the [single family] residence, and shall not be used for meeting the general public, customers or clients. Nothing contained herein limits the homeowner's ability to lease the dwelling for residential use. Lots designated as Live/Work properties shall be exempt from these restrictions.

Lots designated for Live/Work units may operate an office or commercial business in such a manner that the average neighbor, under normal circumstances, would not be aware of its existence with the exception of permitted signage. Business operations may be permitted if the following conditions are met:

- No use shall require exterior alterations or require changes to the existing mechanical and electrical systems.
- There shall be no outside storage permitted.
- No use shall create noise, dust, vibration, smell, smoke, glare, electrical interference, fire hazard or other nuisance not normally experienced in the area where the occupation exists.

In lots designated as residential, a home occupation is an occupational use customarily conducted entirely within a dwelling by the inhabitants thereof, which is clearly incidental and secondary to the use of that dwelling as living quarters and in connection with which there are: no on premises sales of products; no on-site employment of persons; no generation of pedestrian or vehicular traffic beyond that customary or incidental to residential use of the dwelling; no employees who do not reside on the premises; no use of commercial vehicles



operated and/or owned by the resident or homeowner for deliveries to or from the premises; no signs or structures advertising the occupation; no excessive or unsightly storage of materials or supplies or working on autos, boats, or trailers other than normal maintenance of such vehicles or recreational equipment for the personal use of the resident or homeowner.

For guidance, the following uses are examples of home occupations: the making of clothing; the giving of music lessons; a sole practitioner, professional practice; service or product providers who maintain a telephone and office within the residence but the services and products are provided and sold off the premises; the pursuit of artistic endeavors such as making of pottery, ceramics, paintings or bronzes, and the like, provided that the products are marketed and sold off the premises, and no foundries are located on the premises.

Trailer homes and modular homes are prohibited. Recreational vehicles, motor or mobile homes, vehicle or other trailers, and boats must be kept in a garage or otherwise screened from view and are not permitted in front or side yard setbacks.

RS Designated Zoning. One single family dwelling which may include one Accessory Dwelling Unit as described in the Design Guidelines is allowed per lot on those lots within RS designated zoning as described and depicted on Exhibit A hereto. Owners should carefully review the City of Bozeman Zoning Regulations to ensure compliance with all zoning regulations. Only single family homes with attached or non attached garages and Accessory Dwelling Units will be permitted in RS designated zoning. Each single family residence shall be a minimum of 2,500 square feet of finished or conditioned space, excluding garages and other storage spaces.

R3 Designated Zoning. Bungalow, village, and traditional homes and condominiums or townhouses may be allowed on those lots within R3 designated zoning as described and depicted on Exhibit A hereto. Owners should carefully review the City of Bozeman Zoning Ordinance to ensure compliance with all zoning regulations. All homes and condominium or townhouse complexes shall be constructed from the particular plans as approved by Design Board prior to any construction on Lots within R3 designated zoning.

**D. MINING PROHIBITED**

No prospecting, mining, quarrying, tunneling, excavating, extracting, or drilling for any substance on or within the earth, including oil, gas, hydrocarbons, minerals, gravels, sand, soil, rock, or earth shall be permitted except as necessary for the construction of buildings, roads or driveways, or fish ponds, ditches or other water ways as approved by the Design Review Board in open space or park areas and applicable governmental agencies. The HOA may approve irrigation wells on individual private lots.

**E. HOME SITE PREPARATION MAINTENANCE AND LANDSCAPING**

Each owner shall submit a landscape plan as set forth in the site regulations to the Design Review Board at the time the construction plans are submitted. Landscaping shall be done only as approved by the Design Review Board. Owners shall control all noxious weeds and shall destroy them according to county standards. Re-vegetation as approved in advance by the Design Board shall be required for all disturbed areas. Natural and native species are encouraged; non-native species may be restricted or prohibited. The owner must complete the restoration within 45 days following the construction of the residence or within such period





as may be reasonably necessary as dictated by weather conditions, but not to extend one (1) year.

#### **F. OUTBUILDINGS AND TEMPORARY STRUCTURES**

No outbuildings shall be erected or maintained upon any lot before the start of construction of a residence and no trailer, mobile home, basement, shack, garage or other outbuildings shall be erected upon any part of the lot for use as a temporary or permanent residence. Temporary structures shall be removed within thirty (30) days after completion of construction.

#### **G. EXTERIOR IMPROVEMENTS AND EQUIPMENT**

Application to the Design Board for approval of pools, spas, hot tubs, or fire pits shall contain adequate details to establish sufficient abatement of equipment noise. If deep excavations are required for these improvements, a site evaluation by a geologist or soils engineer may be required.

#### **H. CONSTRUCTION AND SCHEDULES**

Any and all construction, alterations or improvements and front yard landscaping shall be subject to advance approval by the Design Review Board and shall be diligently worked on to completion and shall be completed within eighteen (18) months following commencement. Any deviation from the approved plans shall be re-submitted to the Design Review Board for approval. The DRB may establish and collect a fee for the design review process, in accordance with Part III of the By-Laws. No aspect of construction shall at any time impede, obstruct or interfere with pedestrian or vehicular traffic. No materials shall be placed or stored upon any lot more than thirty days (30) before commencement of construction or more than thirty (30) days following completion of construction as determined by the Design Board. No materials shall be placed or stored in right-of-way.

Each construction site shall have a chemical toilet placed in a location as inconspicuous as possible. During any construction, the site shall be cleaned up weekly and shall be maintained free of trash. Debris and trash shall be removed from Baxter Meadows and shall not be placed or dumped on any common area or other property within Baxter Meadows. The owner shall be responsible to take necessary precautions to prevent debris from blowing off the construction site and shall clean up wind-blown debris both on and off the premises if debris does leave the premises notwithstanding the owner's precautions. Open burning of debris is not permitted.

#### **I. BUILDING PERMITS AND COMPLIANCE BOND**

No building, structure, road, fence or improvement of any kind shall be erected, placed, altered, added to, reconstructed or permitted to remain on any site, and no construction activities or removal of trees or other vegetation shall be commenced until approved by the Design Board and the appropriate plans have been submitted to the City of Bozeman for building plan review percent and approval. A Compliance Bond may be required with a Security Deposit and will be held in an escrow account administered by the Design Board. Upon completion of construction and landscaping of the sites the job will be reviewed by the Design Board, and when satisfactorily completed, the Compliance Bond will be released to the home owner. Some or all



of the bond may be used by the Design Board to complete unfinished landscaping or other work needed on the site, if not satisfactorily completed by the owner of the site.

**J. CERTIFICATE OF COMPLIANCE**

Before any owner may occupy or otherwise use a residence or other structure in Baxter Meadows, the owner must obtain a Certificate of Compliance from the Design Review Board in the form set forth in the Design Guidelines, acknowledging compliance with the Design Guidelines in the design and construction of any residence or other structure built within the boundaries of Baxter Meadows. In addition, the Owner shall obtain a Certificate of Occupancy from the City of Bozeman.

**K. COMMON AREAS**

The design of Baxter Meadows incorporates Common Areas as shown on the final plat of the Baxter Meadows annexation to the City of Bozeman, attached hereto and incorporated herein by reference. No improvements shall be constructed on such common areas except by the Baxter Meadows Homeowner's Association. No gates or obstructions shall be placed upon or shall impede access to any common area. City standard residential sidewalks are to be provided at all streets adjacent to the common areas by the HOA. The HOA may provide temporary lighting or other holiday decorations within the common areas and street boulevards.

**L. MAINTENANCE OF COMMON AREAS**

The HOA shall maintain the common areas, storm water management system, and easements. The HOA, as determined by the Design Board, may take such steps as are necessary to ensure that all shrubs, trees, and other vegetation do not block, interfere, or hinder the view from any residence. Such steps may include limiting the type of shrubs, trees, and other vegetation planted in the common areas, specifying the location of items to be planted, and/or removing shrubs, trees, and other vegetation in the event such items grow to a level that they block, interfere, or hinder the view from any residence or within traffic areas. Maintenance, repairs, and replacements of Common Area grounds and improvements, including the storm water management system, shall be at the expense of the HOA provided, however, if such damage is caused by a negligent or tortuous act of any owner, members of such owner's family, guest or employee, then such owner shall be responsible and liable for all such damage.

**M. RIGHT OF ACCESS AND PUBLIC DEEDED RIGHT OF WAY INGRESS AND EGRESS**

A right of access shall be reserved and be immediate for making of emergency repairs in improvements and/or within the boundaries of each lot. These repairs may be needed to prevent property damage, personal injury, or continued property damage.

Public dedeed right of way for general ingress and egress to each lot and to all common areas for the general use of all owners, their guests and the general public shall exist over all common areas, roads, and trails within Baxter Meadows.

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**N. UTILITY EASEMENT**

A utility easement for such utilities as electricity, gas, sewer, communications, telephone, water, television, cable communications and other utility equipment is provided for within Baxter Meadows Phase I. All owners shall have the right to enter upon for the purpose of excavation, installation, operation, maintenance, repair, and replacement of water drainage systems or structures, water mains, sewers, telephones, electrical conduits and systems, gas mains and lines, communication lines and other public or private utilities (collectively "utility lines") such easements upon written approval of the Homeowners Association.

Vivid Networks will provide high-speed fiber optic connectivity to each residential or commercial building within Baxter Meadows Annexation. This fiber optic cable carries telephone, data, high-speed Internet, television and other signals. Each individual residential unit or individual business unit within the Homeowners Association shall pay a minimum monthly service charge toward Vivid Networks Services as required by the Homeowners Association. At the time of this Declaration, the minimum monthly service charge shall be \$45 per each individual residential unit and \$100 for each individual business unit, which will be invoiced directly to the unit owner by Vivid Networks and will apply to services of the unit owner's choice. These minimum service charges may be amended by the Homeowners Association in accordance with these covenants and the by-laws. Vivid Networks shall use its best efforts to install requested services within a reasonable time after receipt of a service order. Should requested services be unavailable due to delays or other circumstances under Vivid Networks control, the minimum monthly service charge shall be waived on a month-to-month basis until services are available and installed.

Satellite dishes and other communication equipment may be installed upon meeting the requirements elsewhere in these covenants and approval of the Homeowners Association.

Easements for ingress and egress and for utilities shall not be moved, deleted or restricted without the written approval of all affected owners. Any property owner with Baxter Meadows Phase I who causes damage to another owner's property because of its installation, operation, maintenance, repair, or replacement of utility lines shall repair such damage, and incur expenses of such damage, within thirty (30) days.

**O. INSTALLATION AND MAINTENANCE OF UTILITIES**

Baxter Meadows shall cause the installation of electric power, telephone, and water line service to the junction of the main access road to each lot and lot driveways. Owners shall bear all responsibility and costs from such junction to home sites.

All utilities of every nature shall be installed and maintained underground. Piping and wiring shall be concealed.

Each owner shall be responsible for utility installation and maintenance in accordance with state and local regulations.

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**P. DOMESTIC PETS**

No domestic animals or fowl shall be maintained on any lot except as provided herein. Not more than three generally recognized house or yard pets are permitted, provided that such animals shall at all times be restrained or leashed. Kennels with the appropriate license are allowed only in rear yards. Excessive barking or other animal noises shall not be tolerated. If any animals are caught or identified chasing or otherwise harassing wildlife or people, or barking excessively, the HOA shall have the authority to have such animal(s) impounded at any available location, and may assess a penalty against the Owner of such animal(s) of not more than fifty dollars (\$50.00) plus all costs of impoundment. If any such animal(s) are caught or identified chasing or harassing wildlife or people, or barking excessively on any additional occasion, the HOA shall have the authority to have such animal(s) impounded and may assess a penalty of not more than one hundred dollars (\$100.00) per animal, plus costs of impoundment. No Owner of any animals(s) impounded for chasing or harassing wildlife or people, or for barking excessively, shall have a right of action against the HOA or any member thereof, for the impoundment of any such animal(s).

**Q. MAINTENANCE OF LOTS**

Owners shall maintain lots and improvements in good repair and appearance at all times. All landscaping improvements and property shall be kept and maintained in good, clean, safe, sound, attractive, thriving and sightly condition and in good repair at all times.

**R. NOXIOUS, OFFENSIVE OR HAZARDOUS ACTIVITIES**

No noxious, offensive, or hazardous activities shall be permitted upon any portion of the property nor shall anything be done on or placed upon any portion of the property which is or may become a nuisance to others. No light shall be produced upon any home site or other portion of the property which shall be unreasonably bright or cause unreasonable glare. No sound shall be produced on any home site or other portion of a property which is unreasonably loud or annoying, including but not limited to speakers, horns, whistles and bells or excessive barking or other animal noises.

All the area of Baxter Meadows shall be controlled by these covenants which run with all the land for the benefit and use of owners. No off-road motorized travel shall be permitted. Use of snowmobiles within the boundaries of Baxter Meadows is also prohibited. Use of motorized vehicles is subject to ordinances and regulations of the City of Bozeman.

Neither hunting nor the discharge of firearms shall be allowed in Baxter Meadows.

**S. SIGNS**

No signs, billboards, posters, displays, advertisements or similar structures shall be permitted except as approved in advance in writing by the Design Board and through proper permitting procedures with City of Bozeman.

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**T. ENFORCEMENT ACTION**

The provisions of these protective covenants may be enforced by individual owners, the HOA, Design Board, or Baxter Meadows Development, L.P.

In the event of violation or threatened violation of any of these Covenants, or the Design Guidelines or any other rules or regulation adopted by the HOA, legal proceedings may be brought in a court of law or equity for injunctive relief and damages. In addition, an owner, the HOA, Design Board, or Baxter Meadows Development, L.P. may enforce these Covenants by serving notice in writing on the person or entity violating these Covenants which notice shall specify the offense, identify the location and demand compliance with the terms and conditions of these Covenants. Such notice shall be personally served. In the event personal service cannot be obtained after reasonable efforts, notice shall be posted at a conspicuous place on the property in question and a copy of the notice shall be mailed by certified mail, return receipt requested, to the last known address of the party or entity.

No owner, the Design Board, the HOA, or Baxter Meadows Development, L.P. shall be liable to any person or entity for any entry, self help or abatement of a violation or threatened violation of these Covenants. All owners, invitees and guests shall be deemed to have waived any and all rights or claims for damages for any loss or injury resulting from such action except for intentionally wrongful acts.

Enforcement of these covenants shall be by proceedings either at law or in equity against any person or persons violating or attempting to violate these Covenants; and the legal proceedings may be either to enjoin or restrain violation of the Covenants or to recover damages or both. In the event of action to enforce these Covenants, the prevailing party shall be entitled to costs and a reasonable attorney's fee.

The failure by the Declarant or its assigns, the HOA, the Design Board or any lot owner to enforce any covenants or restrictions contained herein shall in no event be deemed a waiver or in any way prejudice the right to enforce that Covenant at any time against any person breaking the Covenant or any other Covenant breached thereafter or to collect damages for any subsequent breach of Covenants.

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

All of the above described real property and lots shall be subject to the restrictions and Covenants set forth herein whether or not there is a reference to the same in a deed or conveyance.

A breach of any of the foregoing Covenants shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value upon any site or portion of the real property or any improvements thereon. However, these Covenants shall be binding upon and inure to the benefit of any subsequent owner who acquired by foreclosure, trustee sale or otherwise, title to property within Baxter Meadows.

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**U. PERPETUITY**

These Covenants shall continue in full force and effect and shall run with land as legal and equitable servitude in perpetuity unless amended or terminated as set forth herein.

**V. AMENDMENT**

These Covenants shall remain in effect until amended or terminated. The Covenants, or any portion thereof, may be amended, terminated or supplemented at any time by the execution of a written document containing the terms of the amendment, supplement or termination of any of the Covenants, duly acknowledged by a Notary Public, and recorded with the office of the Gallatin County Clerk and Recorder, executed (1) by the owners of at least seventy-five percent (75%) of the lots in Baxter Meadows based on one vote per lot, until construction is complete on a Lot(s) at which point the By-Law provision under Part II, Section I, Paragraph B (Classes) shall apply, or (2) by the Board of Directors and President of the HOA acknowledging the affirmative vote of three-fourths (3/4) of the total votes of all Class A and Class B members of the HOA. If one or more lots have been combined, the owner thereof shall be entitled to one vote for each lot in existence after the combination. If there is more than one owner for an individual lot, each owner must execute the amendment, supplement or termination document to count for one vote towards the seventy-five percent (75%) total.

**W. SEVERABILITY**

Captions and paragraph headings are designated herein as a matter of convenience. A determination of invalidity of any portion of these Covenants shall not in any manner affect the other portions or provisions.

**X. DESIGN REVIEW BOARD**

The Design Review Board shall be constituted in accordance with the By-Laws of the Baxter Meadows Homeowners' Association. The Design Review Board shall have the authority and responsibility as provided herein and in the By-Laws for the Baxter Meadows Homeowners' Association.

**Y. BAXTER MEADOWS DESIGN REVIEW GUIDELINES AND REGULATIONS**

The Design Review Board shall conduct business as provided herein and as set forth in the BAXTER MEADOWS DESIGN REVIEW GUIDELINES AND REGULATIONS. In the event of any conflict between the Design Guidelines and these Covenants, the Design Guidelines shall prevail.

**Z. BAXTER MEADOWS HOMEOWNERS' ASSOCIATION**

The Baxter Meadows Homeowners' Association shall be constituted, shall conduct its business, and shall have the authority and responsibility as provided herein and in the BY-LAWS OF THE BAXTER MEADOWS HOMEOWNERS ASSOCIATION. In the event of a conflict between the By-Laws and these covenants, the By-Laws shall prevail.

#### **IV. HOMEOWNER'S ASSOCIATION MAINTENANCE PLAN**

##### **A. Homeowner's Association Responsibility**

The Baxter Meadows Homeowner's Association (HOA) is responsible for maintenance of parks, open space, common areas and private streets within Baxter Meadows. These responsibilities include maintenance of vegetation, playground areas, playground equipment, sidewalks, stormwater detention basins and the stream/ditch on the west side of the subdivision. The HOA is responsible for maintenance of the pocket parks, the linear park, the stormwater detention basins, the stream/ditch in the linear park between Baxter Lane and Cattail Street, and the sidewalks adjacent to each of these areas. The HOA is also responsible for costs of irrigation including the cost of water and irrigation system maintenance.

The property owners in Phase I are dependent on the sewage lift station and the HOA shall be responsible for financing its proportionate costs of its operation and maintenance, which will be the responsibility of the City. The Declarant shall agree in writing to a surcharge to cover the costs of operating and maintaining the lift station. At such time as the Baxter Meadows Homeowners Association takes ownership and control of all Common Areas, the Baxter Meadows Homeowners Association shall cover its proportionate share of the operation and maintenance costs of lift station.

##### **B. Landscaping Maintenance**

The HOA will provide maintenance of the parks and open space. Specific maintenance activities are presented below, however, other maintenance activities not specified will be provided as required.

##### **Mowing/General Maintenance**

The maintenance contractor will mow and trim grass within and along the boulevards adjacent to the linear park, Gallatin Green, the stormwater detention basins, and the pocket parks. Mowing and trimming shall be provided as needed during the active growing season.

During each visit, the maintenance contractor will also ensure that the inlets and outlets to the stormwater detention basins are unobstructed will remove any trash from the parks and open space.

##### **Trees and Shrubs**

The maintenance contractor shall provide maintenance to the trees and shrubs within the parks, open space and boulevards including pruning, watering and fertilizing as needed. Shrubs along the edges of the parks located in Baxter Meadows shall be pruned annually to maintain a maximum height less than 4 feet. The shrubs within the parks will be primarily irrigated by the sprinkler system.

The trees within the parks, open space and boulevards will be irrigated by an automatic irrigation system. The typical irrigation requirement for these trees will be 6 inches of water per tree every two weeks from the middle of June to the middle of September. During periods of



unusually dry weather, an additional 2 inches of water per tree shall be provided. During periods of adequate precipitation less frequent or intense irrigation will be acceptable.

Sprinkler System Maintenance

The maintenance contractor or a sprinkler system contractor shall provide maintenance to the automated sprinkler system. At a minimum, the contractor will test and inspect the system in the spring to ensure all lines and sprinkler heads are functioning properly and the contractor will blow the water out the systems in the fall. The contractor will provide additional maintenance as required.

Wood Chip Mulch Maintenance

The maintenance contractor will maintain the wood chips within the shrub beds. The wood chips will be raked level during each mowing event. The contractor will also be responsible to ensure that a minimum chip depth of 3 inches is maintained within the protective areas.

Raking/Fall Maintenance

The maintenance contractor will rake and remove leaves from the parks and open space in the fall. Other materials including fallen branches and trash accumulated in the shrubs will also be removed.

C. Snow Removal

The HOA shall retain a snow removal contractor to shovel and/or plow snow from the sidewalks adjacent to parks, open space, common areas and alleys. Specifically, the contractor shall maintain the sidewalks along the east side of the linear park between Baxter Lane and Deadman's Road and the sidewalks within the pocket parks and the stormwater detention basins. The snow removal contractor will also ensure that the inlets and outlets to the stormwater detention basins are unobstructed.

D. Stream/Ditch Maintenance

The stream/ditch along the east side of the Equestrian Center and through the linear park shall be maintained to ensure the flow of water is not inhibited. The maintenance contractor shall be responsible for maintenance during the period of May through October. The snow removal contractor shall be responsible for maintenance November through April. Trash and debris including fallen branches, leaves, and excessive vegetative growth shall be removed and disposed of off-site. The inlets and outlets of culverts shall be cleared of all debris. Mowing will not be required on a regular basis.

E. Playground Equipment Inspection

The HOA shall have all playground equipment inspected annually and have an inspection report submitted to the City of Bozeman Parks and Recreation Department. The HOA shall hire an independent contractor or contract with the City of Bozeman to perform the inspections.

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F. Private Streets

The HOA is responsible for maintenance of all private streets within Baxter Meadows including cleaning, striping, repairs and snow removal.

IN WITNESS WHEREOF, this instrument has been executed this 13<sup>th</sup> day of Sept, 2004.

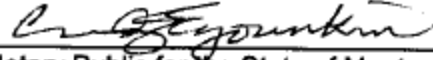
**BAXTER MEADOWS DEVELOPMENT, L.P.**

  
\_\_\_\_\_  
Gerald R. Williams, Limited Partner

STATE OF MONTANA )  
                                  : ss.  
COUNTY OF GALLATIN )

This instrument was acknowledged before me on Sept 13, 2004, by Gerald R. Williams, as Limited Partner of Baxter Meadows Development, L.P.



  
\_\_\_\_\_  
Notary Public for the State of Montana  
Printed Name: Cindy E. Younkin  
Residing at: Bozeman  
My Commission Expires: 9-11-2007

After recording, return to:  
Pam Halse, Property Manager  
The Baxter Meadows Homeowners Association  
P.O. Box 5298  
Bozeman, MT 59717-5298

**AMENDMENT TO  
RESTATED DECLARATION OF RESIDENTIAL PROTECTIVE  
COVENANTS & RESTRICTIONS  
FOR THE BAXTER MEADOWS HOMEOWNER'S ASSOCIATION**

The undersigned Board of Directors of the Baxter Meadows Homeowner's Association certify that at least 90 percent of lot owners have voted in favor of the following amendment to the Baxter Meadows Homeowners' Association Restated Declaration of Residential Protective Covenants & Restrictions ("Covenants"), recorded on the 15<sup>th</sup> day of September 2004 and filed with the Gallatin County Clerk and Recorder on as document no. 2163416.

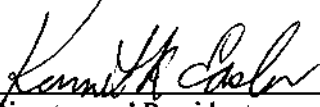
Therefore, upon the recording of this Certificate, the Covenants, Article III, section N, paragraph 2, shall be amended as follows:

*LightNex Communications (formerly Vivid Networks) and its successors or assigns will provide high-speed fiber optic connectivity to each residential or commercial building within Baxter Meadows Annexation. This fiber optic cable carries telephone, data, high speed Internet, television and other signals. Each individual residential unit or individual business unit may elect to purchase LightNex Communications' services for a minimum monthly service charge to be determined between LightNex Communications and the purchaser. LightNex Communications shall use its best efforts to install requested services within a reasonable time after receipt of a service order. Should requested services be unavailable due to delays or other circumstances under LightNex Communications' control,*


2332486  
Page: 1 of 5  
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Charlottesville - Gallatin County, MT  
Fee: \$35.00  
MISC

the minimum monthly service charge shall be waived on a month-to-month basis until services are available and installed.

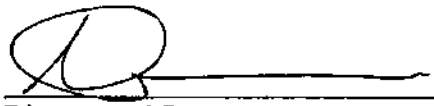
Except as amended herein, the Covenants shall remain in full force and effect and are incorporated herein by this reference.

  
\_\_\_\_\_  
Director and President,  
Baxter Meadows Homeowner's Association

5-30-2009  
Date

  
\_\_\_\_\_  
Director and Vice President,  
Baxter Meadows Homeowner's Association

5-30-2009  
Date

  
\_\_\_\_\_  
Director and Secretary  
Baxter Meadows Homeowner's Association

30 MAY 2009  
Date

State of Montana )  
 : ss  
County of Gallatin )

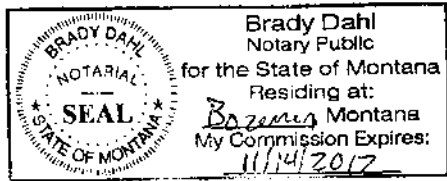
The undersigned, Kenneth R. Easter, after first being duly sworn, does hereby certify that he/she is a Director for the Baxter Meadows Homeowner's Association and that the foregoing Amendment and statements made therein are true and correct. He/she further certifies that he/she is authorized to execute this Amendment on the Association's behalf.

Kenneth R. Easter  
Director and President  
Baxter Meadows Homeowner's Association

State of Montana  
County of Gallatin

Subscribed and sworn to me Brady Dahl before this 1<sup>st</sup> day of June, 2009, by Kenneth R. Easter, known to me to be the person described herein.

Brady Dahl  
Notary Public for the State of Montana  
My Commission Expires: 11/14/2012



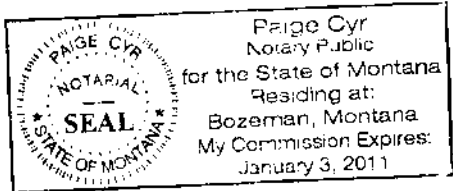
State of Montana )  
 : ss  
County of Gallatin )

The undersigned, Cain Daniel, after first being duly sworn, does hereby certify that he/she is a Director for the Baxter Meadows Homeowner's Association and that the foregoing Amendment and statements made therein are true and correct. He/she further certifies that he/she is authorized to execute this Amendment on the Association's behalf.

Cain Daniel  
Director and Vice President  
Baxter Meadows Homeowner's Association

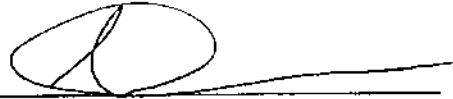
Subscribed and sworn to me Paige Cyr before this 1 day of June, 2009, by Cain Daniel P.C., known to me to be the person described herein.

Paige Cyr  
Notary Public for the State of Montana  
My Commission Expires: January 3 2011



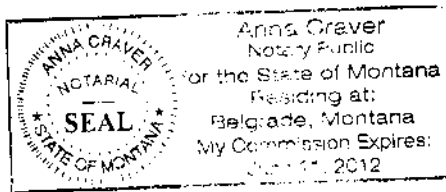
State of Montana )  
 : ss  
County of Gallatin )

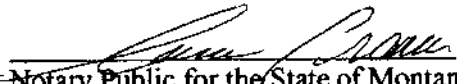
The undersigned, AARON R. ANDERSON, after first being duly sworn, does hereby certify that he/she is a Director for the Baxter Meadows Homeowner's Association and that the foregoing Amendment and statements made therein are true and correct. He/she further certifies that he/she is authorized to execute this Amendment on the Association's behalf.



Director and Secretary  
Baxter Meadows Homeowner's Association

Subscribed and sworn to me ANNA CRAVER before this 5 day of June, 2009, by AARON ANDERSON, known to me to be the person described herein.



  
Notary Public for the State of Montana  
My Commission Expires: \_\_\_\_\_



**RESTATED BY-LAWS OF THE BAXTER MEADOWS  
HOMEOWNERS' ASSOCIATION**

**This document replaces pp. 16 through 23 of those By-Laws recorded on April 3, 2003 as part of Document No. 2103136, records of Gallatin County, Montana.**

Baxter Meadows Development, L.P. does hereby adopt the following By-Laws of the Baxter Meadows Homeowners' Association which applies to Baxter Meadows Phase I. Baxter Meadows has also adopted and recorded a Restated Declaration of Residential Protective Covenants and Restrictions for Baxter Meadows Phase I (the "Covenants"), and the Baxter Meadows Design Review Guidelines and Regulations (the "Design Guidelines") which operate and should be construed in conjunction with these By-Laws.

**I. MEMBERSHIP**

**A. MEMBERSHIP**

Every owner of property in Baxter Meadows Phase I shall be a member of the Baxter Meadows Homeowners' Association (the "HOA"). Membership shall be appurtenant to and may not be separate from the ownership of any lot subject to assessment. Each lot owner shall be responsible for advising the HOA of his or her acquisition of ownership and his or her current address. Each owner shall be bound by these By-Laws and the duly passed Resolutions of the HOA. The HOA may be incorporated as a non-profit homeowners' association.

**B. CLASSES**

There shall be two classes of members in the HOA, Class A and Class B members, which are defined as follows:

**CLASS "A":** Class A membership shall be all lot owners in Phase I with the exception of Class B members named below. Class A members shall be entitled to one vote for each lot owned if such lot is occupied by a single family dwelling or if such lot is vacant. At the time construction of a multi-family dwelling or business/commercial structure on any lot is completed and ready for occupancy, there shall be one vote for each of the following:

One vote per each separately titled individual dwelling unit (e.g. condominium unit)

One vote for each separately titled individual business unit (IBU) up to 2500 square feet plus one vote per each additional complete increment of 2500 square feet. The following examples would apply:

- 1 vote: 1000 s.f. IBU
- 1 vote: 2700 s.f. IBU
- 2 votes: 5000 s.f. IBU
- 2 votes: 6000 s.f. IBU
- 3 votes: 7500 s.f. IBU
- 3 votes: 9000 s.f. IBU



**CLASS "B"**: The Class B member shall be Baxter Meadows Development, L.P., who shall be entitled to seventy-five percent (75%) of the votes. Class B membership shall cease and be converted to Class A membership when 3/4 of the lots being of the original RS and R3 residential lots in Baxter Meadows are sold to third parties. Thereafter, Baxter Meadows Development, L.P. shall become a Class A member and shall be entitled to one vote for each unsold platted lot.

**II. OPERATIONS**

**A. MEETINGS**

Written notice of any meeting called for the purpose of taking any action authorized hereunder shall be mailed to all members not less than 10 days nor more than 45 days in advance of the meeting. A general description of the items to be considered at such a meeting shall be contained in the notice. At such meeting called, the presence of members or of proxies entitled to cast fifty-one percent (51%) of all the votes of Class A and Class B members combined shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**B. DIRECTORS AND OFFICERS**

Members of the HOA shall annually elect three (3) Directors from its membership who shall be responsible for the overall operations of the HOA as described herein. The Directors shall also have the power and responsibility of setting an annual budget. Such Directors shall be elected by a majority of the total votes of Class A and Class B members represented in person or by proxy at an annual meeting of the HOA, or in the absence of an annual meeting, at any meeting at which a quorum is present. The Directors shall serve a term of one year, but may be removed from time to time at any regularly called meeting of the HOA by a vote of two thirds (2/3) of the total votes of Class A and Class B members represented at any meeting in person or by proxy at the meeting, provided that a quorum is present, or immediately, upon termination of the Director's membership. Nothing shall prohibit the re-election of any Director for consecutive terms. The Directors are authorized to manage the business of the HOA and are authorized to take such actions as shall be necessary and reasonable to carry out the functions of the HOA. The Directors shall elect a president and secretary/treasurer from among the Directors or the members to serve as the officers of the HOA. The Directors may also elect such other officers as they deem necessary. The duties of these officers shall be established by the Board of Directors.

The initial Board of Directors shall consist of Gerald R. Williams, Rebekah Williams, and Thomas Miller who shall serve until new directors are duly elected by the HOA. Gerald R. Williams shall serve as the president of the HOA, Thomas Miller as secretary, and Rebekah Williams as treasurer, until successors are duly elected by the HOA.

**C. RULES AND REGULATIONS**

The HOA may adopt such additional rules and regulations as shall be reasonable and necessary to carry out its authority and duties under the terms of these By-Laws, the Covenants, or the Design Guidelines, provided that such additional rules and regulations are





first adopted by a majority of the Board of Directors and then submitted to a meeting of the HOA for a vote by delivering notice of the meeting together with a copy of the additional rules and regulations to the last known address of each lot owner at least thirty days before the meeting. Additional rules and regulations shall be adopted by a two-thirds (2/3) majority vote of the total votes of all Class A and Class B members represented in person or by proxy at any meeting at which a quorum is present and all members have been notified that such rules or regulations will be up for discussion. Additional rules and regulations shall be effective 30 days after the same are executed and recorded by the Board of Directors of the HOA with the Clerk and Recorder for Gallatin County, Montana, and mailed to each lot owner at their last known address.

**III. DESIGN REVIEW BOARD**

**A. COMPOSITION.**

The Design Review Board for Baxter Meadows shall initially be composed of Gerald R. Williams, Michael McGullam, and Gregory J. Allen. These members shall serve until twenty-five lots in Baxter Meadows have been conveyed to third parties. After that time, the Design Review Board shall be composed of not more than three (3) members selected by the Board of Directors of Baxter Meadows Homeowners' Association. Two (2) of the members of the Design Review Board shall be members of Baxter Meadows Homeowners' Association, and one (1) shall be a disinterested, outside third party. Each member of the Design Review Board shall serve for a term of one year, unless re-appointed.

Each member of the board shall have one vote. Action approved by the vote of two of the three members shall be the act of the Design Review Board. A written permanent record shall be kept of all action taken by the Board which shall include the date, the action taken, and a short statement of the reason for such actions.

**B. ADDITIONAL PROCEDURES AND DESIGN REGULATIONS**

The Design Review Board shall proceed in accordance with the provisions of the Design Guidelines, and shall have the authority to assess a fee for design review, adopt construction regulations and such other regulations as shall be reasonable and necessary to exercise its authority and its duties set forth in this Declaration, the Design Guidelines, the Covenants and the By-Laws.

Any additional procedures or design regulations adopted by the Design Review Board shall not be effective until thirty days after mailing a copy of the additions to the last known address of the current site owners.

**C. FINAL PLANS**

Approval by the Design Review Board neither represents, nor shall the Design Review Board offer any opinion as to whether plans and specifications conform to building codes or State and Local Regulatory requirements. Approval does not include examination for errors or omissions. Appropriate plans shall be submitted to the City of Bozeman for building plan review approval and necessary fees and permits paid for and be obtained.



Approval granted by the Design Review Board for any plans shall remain effective only in the event that construction is commenced within six (6) months of the date of the approval, after which time the approval shall lapse and be of no further force or effect.

**D. ADDITIONS, CHANGES, REFINISHING**

No additions, changes, (including remodeling) or changes of any portion of the home site except the interior structures of the residence shall be commenced without approval of the Design Review Board. The approval shall be sought by submissions of final working plans and drawings. No preliminary plans need be submitted.

**E. CERTIFICATE OF COMPLIANCE**

Before any owner may occupy or otherwise use a residence or other structure in the Baxter Meadows, the owner must obtain a Certificate of Compliance from the Design Review Board in the form set forth in the Design Guidelines, acknowledging compliance with the Design Guidelines in the design and construction of any residence or other structure built within the boundaries of Baxter Meadows. A Certificate of Occupancy must also be obtained from the City of Bozeman.

**F. COMMUNICATIONS**

Communications with the Design Review Board shall be initiated by directing inquiries and submissions to:

DESIGN REVIEW BOARD  
Baxter Meadows  
P.O. Box 81487  
Billings, Montana 59108

**IV. ASSESSMENTS**

**A. LEVYING ASSESSMENTS**

The Directors shall have the authority to levy assessments on each lot and the owner thereof for the purposes of improvement, repair and maintenance of roads, common areas, snow removal, administration, accounting and legal fees. Assessments shall be made on a per vote basis as established in these By-Laws. However, once Baxter Meadows Development, LP has sold 50 percent of the original Lots, for purposes of assessment only, it shall be assessed as if it were a Class A member.

There shall be three types of assessments:

- 1) "Annual Assessments", which shall be a pro-rata portion of anticipated expenses for the coming year based upon the budget prepared by the Directors;
- 2) "Capital Improvement and Compliance Assessments" approved by a two-thirds (2/3) majority of the total votes of Class A and Class B members; and
- 3) "Emergency Assessments" levied at the discretion of the Directors without submitting the assessment to a vote of the members, in order to rectify and/or



address emergencies. Each type of assessment is described below. The total assessment shall be divided and paid by the owners of each lot, on a per vote basis including unsold lots owned by Developer.

The Owner of each lot, hereby covenants and agrees, by the acceptance of a deed therefore (regardless of whether it shall be so expressed in such deed) to all matters set forth in these By-Laws, the Covenants, the Design Guidelines and the Design Board Declaration, and to pay to the HOA such assessments as the HOA shall levy against each lot. No owner shall be entitled to a reduced assessment because such owner does not reside upon the property or does not use the roads or other amenities. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use or abandonment of his or her lot or because he or she believes that these By-Laws are not being properly enforced.

Assessments shall be due and payable in the method determined by the Board of Directors. An assessment shall be a charge upon the land and shall be a continuing lien upon the property and lot upon which the assessments are made. Each assessment shall also be a personal obligation of the person who is the owner of the property at the time the assessment falls due.

Upon delivery of the notice of assessment to the owner, the assessment shall be a lien upon the owner's lot until paid. The HOA may record a notice of the lien with the Clerk and Recorder of Gallatin County, Montana. In the event of non-payment within thirty (30) days after recording the notice of the lien, the HOA may foreclose the lien in a manner set forth under Montana law for the foreclosure of liens against real property. The recording of the notice of lien shall be notice to all third parties of the assessment outstanding against the lot.

The HOA may bring an action at law against the owners personally obligated to pay the same or may foreclose the lien against the property. In the event of an action to collect a past due assessment, the HOA shall be entitled to recover any or all of the following costs, in addition to the amount of the past due assessment: (1) the costs of filing the lien including interest at the rate of the then prevailing prime rate of interest plus two percent (2%) from the date due; (2) all costs of the action; (3) reasonable attorneys fees incurred in preparation for filing the lien; (4) reasonable attorneys fees incurred in preparing and prosecuting the action.

The sale, transfer or encumbrance of any lot shall not affect the assessment lien or the personal liability of the owner except to the extent such lien is extinguished by Montana law. No sale, transfer or encumbrance shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof, provided that if the assessment lien has not been recorded with the Clerk and Recorder of Gallatin County, a good faith purchaser or encumbrancer without actual notice of the outstanding assessment shall take the property free of the lien.

**B. ANNUAL ASSESSMENTS**

The owner of each lot, including Baxter Meadows Development, L.P. with respect to all unsold lots, shall be assessed annually for a pro-rata portion of anticipated expenses for the coming year based upon the budget prepared by the Directors. After the initial Annual Assessment is set, the assessment against any lot shall not be increased more than 20 percent (20%) per year without the approval of 80% of the total votes of Class A and Class B members represented at any meeting in person or by proxy, unless the increase is required to comply with a mandatory rule, regulation, or order of municipal, county, state or federal government.



The Annual Assessments provided for herein shall commence as to each lot on the date of closing on the sale of such lot from Baxter Meadows Development, L.P. to a third party. The Board of Directors shall fix the amount of the annual assessment against each lot based upon a budget of the estimated expenses of the HOA for each year. At least thirty (30) days in advance of the due date of each annual assessment, written notice of the annual assessment and the due date shall be mailed to every lot owner at their last known address. The due dates shall be established by the Board of Directors. The HOA shall, upon demand, and for a reasonable charge, furnish a certificate signed by the Directors of the HOA, setting forth whether the assessment of a specified lot has been paid.

**C. CAPITAL IMPROVEMENTS AND COMPLIANCE ASSESSMENTS**

i) **Capital Improvements.** The HOA may levy assessments for construction or reconstruction or unexpected repair or replacement of a capital improvement or equipment for use consistent with the purposes of the HOA.

ii) **Compliance.** The HOA may levy assessments for purposes of defraying costs, including legal fees to enforce any protective covenant or to exercise any authority or responsibility granted to the HOA, including but not limited to enforcement of all rules and regulations adopted by the HOA, or to pay for the necessary repair or maintenance of a property or residence which an owner has otherwise refused to repair or maintain.

**D. EMERGENCY ASSESSMENTS**

Emergency assessments shall be levied only to meet the costs and expenses precipitated by a condition which must be remedied promptly to ensure the safe and adequate discharge of the responsibilities of the HOA. This may include items which would otherwise be considered as Capital Improvement and Compliance Assessments, if the Board determines (1) that the capital improvement or compliance action is absolutely necessary; and (2) that circumstances make it impractical to put the matter to a vote of the members due to timing or other constraints. Any improvements or other work required by local, state, or federal agencies which must be completed in a timely fashion and cannot be included in the Annual Assessment for the following year shall also be considered Emergency Assessments.

**V. FORECLOSURE AND EXECUTION**

As further security for payment of assessments levied by the HOA, the HOA may, in addition to foreclosing upon the lien as described above, execute upon a judgment through all remedies provided at law and equity, including sale of the liened parcel in accordance with the laws of the State of Montana. At such a sale, the HOA may bid upon and acquire such lot.

**VI. ACCUMULATION OF REMEDIES**

All remedies provided under the Covenants, these By-Laws, and the Design Guidelines, as well as all of the rules and regulations of the HOA and remedies and authority granted to individual owners to enforce covenants shall be cumulative and shall be in addition to, and not in substitution of, all other rights and remedies which the HOA may have under law.

In addition, any owner, Baxter Meadows Development, L.P. or the HOA, may bring an action for damages for injunctive relief to abate a nuisance, to restrain any threatened or prospective



violation or continuing violation of any portion of these By-Laws, the Covenants, or the Design Guidelines. In any such enforcement action, the prevailing party shall be entitled to recover all costs, court costs, costs of discovery and reasonable attorney fees.

**VII. NOTICES**

Each owner shall register with the HOA, a current mailing address and shall promptly notify the HOA of any change. All notices, demands, and other communication to any owner shall be sufficient for all purposes if personally served or if delivered by postage pre-paid United States Mail, Certified, return receipt requested, addressed to the owner at the last mailing address registered with the HOA.

**VIII. SEVERABILITY**

Invalidity or un-enforceability of any provision of this instrument determined by a Court shall not affect the validity or enforceability of any other provision.

**IX. NO WAIVER**

Failure to enforce any provision, restriction, covenant or condition of these By-Laws, the Covenants or the Design Guidelines shall not create a waiver of any such provision, restriction, covenant or condition or of any other provision, restriction, covenant or condition.

**X. AMENDMENT OR TERMINATION**

These By-Laws shall remain in effect until amended or terminated which shall occur only upon the affirmative vote of three fourths (3/4) of the total votes of all Class A and Class B members of the HOA.

IN WITNESS WHEREOF, the By-Laws have been executed this 13<sup>th</sup> day of Sept, 2004.

**BAXTER MEADOWS DEVELOPMENT, L.P.**

[Signature]  
Gerald R. Williams, Limited Partner

STATE OF MONTANA     )  
  : ss.  
COUNTY OF GALLATIN    )

This instrument was acknowledged before me on Sept 13, 2004, by Gerald R. Williams, as Limited Partner of Baxter Meadows Development, L.P.



[Signature]  
Notary Public for the State of Montana  
Print Name: Cindy E. Younkin  
Residing at: Bozeman  
My Commission Expires: 9-13-2007

**DELINQUENCY POLICY & VIOLATION POLICY OF  
THE RESTATED BY-LAWS OF THE BAXTER MEADOWS HOMEOWNERS' ASSOCIATION**

**This Delinquency Policy is an addendum** to File No. 2163417 filed with the Gallatin County Clerk & Recorder on September 15, 2004. This policy is pursuant to the Declaration of Covenants, Conditions and Restrictions for Baxter Meadows Homeowners' Association ("Covenants"), recorded in the real property records of the County Clerk of Gallatin County, Montana on September 15, 2004, Document No. 2163416.

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

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

ADOPTED: August 18, 2005

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## VIOLATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS POLICY

**This Violation Policy is an addendum** to File No. 2163417 filed with the Gallatin County Clerk & Recorder on September 15, 2004. This policy is pursuant to the Declaration of Covenants, Conditions and Restrictions for Baxter Meadows Homeowners' Association ("Covenants"), recorded in the real property records of the County Clerk of Gallatin County, Montana on September 15, 2004, Document No. 2163416.

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

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

Baxter Meadows Homeowners' Association  
c/o Association Management Services, LLC  
P.O. Box 5298  
Bozeman, MT 59717-5298

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

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

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Page: 2 of 3  
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Charlotte Mills-Gallatin Co MTHISC 21.00

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

ADOPTED: July 15, 2005

Baxter Meadows Owners' Association, Inc.  
BOARD OF TRUSTEES  
By: ASSOCIATION MANAGEMENT SERVICES,  
LLC, a Montana limited  
liability company

By: Pamela Halse  
Its: Community Manager

**ACKNOWLEDGEMENT**

STATE OF MONTANA )  
COUNTY OF GALLATIN ) ss.

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

Residing BOZEMAN, MT

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



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

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Page: 3 of 3  
10/01/2007 01:43P

Charlotte Mills-Gallatin Co MTMISC 21.00



After recording return to:  
Pamela Halse  
Association Management Services, LLC  
P.O. Box 5298  
Bozeman, MT 59717-5298

**2413788**

Page: 1 of 3 04/25/2012 03:20:29 PM Fee: \$21.00  
Charlotte Mills - Gallatin County, MT MISC



## **BAXTER MEADOWS HOMEOWNERS' ASSOCIATION DELINQUENCY POLICY**

This Delinquency Policy, dated this 18th day of January 2012, supersedes and replaces any prior delinquency policy adopted by the Board of Directors for the Baxter Meadows Homeowners' Association.

The Restated By-Laws of the Baxter Meadows Homeowners' Association ("BY-LAWS") were recorded by the Gallatin County Clerk and Recorder's Office on September 15, 2004 as Document No. 2163417. Pursuant to Article IV, Section A, of the By-Laws, the Board of Directors ("BOARD") has the power to determine the method upon which assessments are due and payable. Pursuant to this power, the Board herein establishes the following method for paying assessments:

1. **Assessments.** The Baxter Meadows Homeowners' Association ("HOA") assessments are billed to each owner before the 1<sup>st</sup> day of each month. Assessments are due on the 1<sup>st</sup> day of each month. Assessments are delinquent if not received by the 30<sup>th</sup> day of the month.
2. **Interest.** If an assessment is delinquent, interest may accrue from the date the assessment became due at the prevailing prime rate of interest plus 2%. Interest shall be compounded monthly. Interest at the same rate may also accrue on any other charges applied to the owner's account, as described below.
3. **Demand Letter.** If an assessment becomes more than five (5) months delinquent, a Demand Letter may be provided to the owner via U.S. mail (certified letter, return receipt requested) to the owner's last known address. The Demand Letter should set forth the amount owed by the owner. If a Demand Letter is sent, the owner will incur an \$80.00 charge, to be applied to the owner's account, plus postage costs.

4. **Additional delinquent assessments.** If additional assessments become delinquent while any part of the original delinquent assessment, interest, charges, and other related costs remain outstanding, no new Demand Letter is required to enforce payment, and the additional delinquent assessments plus interest will automatically become part of the amount owed by the owner.
5. **Notice of Lien.** If the assessment, additional delinquent assessments, interest, charges, and any other related costs are not paid in full within 30 days of the date of the Demand Letter, the HOA may file a Notice of Lien with the Gallatin County Clerk and Recorder. If a lien is filed, the owner will incur a \$150.00 charge, to be applied to the owner's account. The HOA has the right to inform any other lien holder of the owner's delinquency.
6. **Continuing Lien.** If a Notice of Lien is filed, the lien shall be continuing so as to include any additional delinquent assessments, interest, charges, costs, and attorney fees. The HOA is not required to release any lien until the owner pays the entire amount owed to the HOA. The HOA has the right to file updated liens to insure that 3<sup>rd</sup> parties are apprised of the current amount owed by the owner. The owner shall incur an additional charge of \$40.00 for each updated lien filed with the Gallatin County Clerk and Recorder.
7. **Further Action.** If the amount owed is not paid in full within 30 days of the Notice of Lien, the Association may:
  - Bring an action at law against the owner personally obligated to pay, and/or
  - Foreclose the lien against the Lot, and/or
  - Any other action not prohibited by the By-Laws, Declaration, or Montana law.
8. **Costs.** If the Baxter Meadows Homeowners' Association is required to take any of the above steps against an owner to enforce payment of assessments, interest, charges, or other related costs, the owner shall be obligated to pay any other costs incurred to collect the amount owed, including, but not limited to, all collection costs, court costs, and reasonable attorney's fees and costs.
9. **No waiver.** No owner may waive or otherwise escape liability for the assessments by abandonment of his or her Lot. All owners shall remain personally liable for all assessments, interest, charges, or other related costs owed to the HOA until fully paid, unless the owner's liability is extinguished by law.
10. **Successive Owners.** All successive owners of a Lot shall be responsible for paying any assessments, interest, charges, or other related costs owed on a Lot. All successive owners have the duty and responsibility to contact the HOA to learn if any assessments, interest, charges, or other related costs are owed on the Lot.

11. **Conflicts.** If any provision of this Delinquency Policy shall be in conflict with the By-Laws, the By-Laws shall control. The invalidity or un-enforceability of any provision of this Delinquency Policy shall not affect the validity or enforceability of any other provision.

Adopted by the Board of Directors for the Baxter Meadows Homeowners' Association.

By:



Colin Daniel, President and Director  
Baxter Meadows Homeowners' Association

STATE OF MONTANA )  
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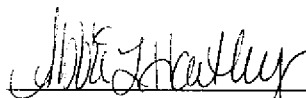
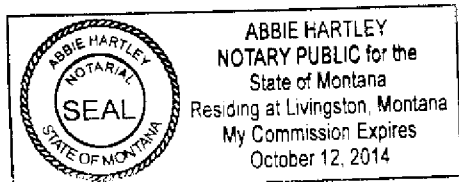
COUNTY OF GALLATIN )

This undersigned, Colin Daniel, after first being duly sworn, does hereby certify that he is the President for the Baxter Meadows Homeowners' Association, and the foregoing Delinquency Policy and statements made therein are true and correct. He further certifies that he is authorized to execute this Amendment on the Association's behalf.



Colin Daniel, President and Director  
Baxter Meadows Homeowners' Association

Subscribed and sworn to me Abbie L Hartley before  
this 20 day of April, 2012, by Colin Daniel, known to me to be the  
person described herein.



Notary Public for the State of Montana



## RESTATED DESIGN REVIEW GUIDELINES AND REGULATIONS

This document replaces pp. 24 through 37 of those Design Review Guidelines recorded on April 3, 2003, as part of Document No. 2103136, records of Gallatin County, Montana.

### I. SITE DESIGN REGULATIONS

The integration of buildings into the landscape of Baxter Meadows is essential to the success and appearance of the community. As provided in III. H. of the Covenants, any and all construction, alterations or improvements, and front yard landscaping shall be subject to advance approval by the Design Review Board. Any deviation from the approved plans shall be re-submitted to the Design Review Board for approval. Site Design Regulations specifically serve to protect and enhance the natural landscape, stream corridors, view sheds and natural habitat.

#### A. TOPOGRAPHY AND SITE FEATURES

1. Response to Character of Land Form:

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

2. Relationship to Open Space: Estate Homes

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

3. Stream Corridor Protection:

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

4. Driveways & Parking:

Site access, when entered from the street, shall be perpendicular to the street. Parking areas and garage doors shall not be the primary visual element of any residence. Landscaping materials shall be used to diminish the impact of the entry to the garage. All parking shall be within the lot boundary, off public and private rights-of-way. No driveway or



access shall be allowed to encroach into the side yard setbacks other than those on shared driveway easements filed of record.

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

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

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

5. Privacy Screens and Retaining Walls:

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

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

6. Walkways, Paths and Trails:

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

**B. UTILITIES AND SITE DETAILS**

1. Utilities:

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



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

2. Radon:

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

3. Wood Storage:

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

4. Garbage and Refuse Disposal:

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

**C. LANDSCAPE CONTROLS FOR BUNGALOW, VILLAGE, TRADITIONAL HOME STYLES, CONDOMINIUMS AND LIVE/WORK UNITS**

1. Definitions:

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

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

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

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



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

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

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

2. Installation:

Upon the sale of 75% of the lots owned by Baxter Meadows Development, L.P., the responsibilities of Baxter Meadows Development become those of Baxter Meadows Homeowners Association (HOA) as described in the Declaration of Residential Protective Covenants and Restrictions for Baxter Meadows.

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

Sodding:

*Bungalow and Village Style Home:* Sodding of front and side yards to fences shall be the responsibility of the builder. In the case of corner lots where no fences occur, the sodding shall extend to a point 10' into the side yard from the front yard.

*Traditional Style Homes:* Sodding of front yards shall be the responsibility of the builder.

*Condominiums and Live/Work Units:* Sodding of front, side and rear yards shall be the responsibility of the builder.

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

Mulched Beds:

*Bungalow and Village Style Homes:* Front yards will be installed with 4-8 shrubs within a mulched bed and shall be the responsibility of the builder. Homeowners are encouraged to install similar beds in rear and side yards to reduce water and mowing damage to the architectural siding.

*Traditional Style Homes:* Front yards will be installed with 4-8 shrubs within a mulched bed and shall be the responsibility of the builder. In addition, each

home will have a meandering 18"-24" min. wide mulched bed around its perimeter in the rear and side yards to reduce water and mowing damage to the architectural siding.

*Condominium and Live/Work Units:* Front, rear and side yard landscaping shall be the responsibility of the builder. Each unit will have 18"-24" min. wide mulched bed surrounding its perimeter to reduce water and mowing damage to the architectural siding.

All property owners may further plant shrubs on their properties in mulched bed areas given that shrubs do not exceed the width of mulched bed area. Shrubs must be planted within a newly established mulched bed a minimum of 6" diameter wider than the mature diameter size of the shrub planted. Perennials and annuals may be planted within mulched beds provided they are within bed edges by 6" or more and are 6" or more away from architectural structures.

#### Trees:

Each homeowner with the exception of Condominium and Live/Work Property owners, shall be responsible for the installation of one 1.5" minimum trunk caliper shade tree within 18 months of purchasing property in Baxter Meadows. Recommended species include: Ash (*Fraxinus*), Honeylocust (*Gleditsia Triacanthos*), Linden (*Tilia*), Locust (*Robinia Pseudoacacia*), Maple (*Acer*), Mountain Ash (*Sorbus Aucuparia*), Oak (*Quercus*), Walnut (*Juglans Nigra*).

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

*Bungalow and Village Style Home:* Trees must not be planted in front yards where they may conflict with utility lines. Trees must be located in back yard areas.

*Traditional Style Homes:* The minimum required installation shall be (3) small shade trees of 1-2" caliper or one 5' high conifer (evergreen). Installation shall be the responsibility of the builder. The required installation of a shade tree within 18 months of purchasing property in Baxter Meadows may be substituted for one non-canopy tree (evergreen/conifer). The non-canopy tree must have a min. height of 5'. Heights are measured from the top of the root ball to the plants highest point. Trees installed by homeowners may be planted in front, side or rear yards as long as they are not in conflict with the utility lines and are on the owner's property.

#### Fencing:

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





3. Maintenance:

Maintenance includes lawn care, irrigation and weed control. Mulched beds shall be weed controlled by a consistent spray regime or manual weeding. Pesticides, herbicides, fertilizers, etc. If used shall be applied in strict accordance with the manufacturer's instructions and all applicable laws and in accordance with USDA and the EPA.

*Bungalow and Village Style Homes:* Every homeowner shall be responsible for the care of his or her lot excluding front and side yards up to fence lines where Baxter Meadows HOA will be responsible for maintaining. In the case of corner lots where no fences occur, the maintenance by Baxter Meadows HOA shall extend to a point 10' into the side yard from the front yard.

*Traditional Style and Estate Homes:* Every homeowner shall be responsible for the care of his or her entire lot excluding only the street right-of-way.

*Condominiums and Live/Work Units:* Baxter Meadows HOA shall be responsible for the landscape maintenance of each property including the right-of-way.

4. Irrigation Installation and Maintenance:

The builder shall be responsible for the installation of irrigation systems within the areas described below. Landscaping plans (including the proposed irrigation equipment to be installed) must be provided to the Design Review Board for approval prior to installation. On homes that are irrigated from the HOA system, a list of compatible equipment will be required for installation to ensure proper watering.

*Bungalow and Village Style Homes:* The Builder shall install and the HOA shall maintain irrigation systems in front yards, right-of-ways, boulevards and side yards from the front yard to fence line. In the case of corner lots where no fences occur, the irrigation shall extend to a point 10' into the side yard from the front yard.

*Traditional and Estate Style Homes:* The builder shall install separately metered irrigation systems which are controlled by each individual owner. At a minimum, builder shall install front yard piping, heads, and a controller with sufficient capacity for the owner to install an irrigation system in the rear yard. Every homeowner shall be responsible for the maintenance of their entire system excluding only the street right of way. Baxter Meadows Development shall install systems on the street rights of way and the Baxter Meadows HOA shall maintain the same.

*Condominiums and Live/Work Unit:* The builder shall install and Baxter Meadows HOA shall maintain irrigation in front, side and rear yards as well as right-of-ways.



Irrigation systems controlled by Baxter Meadows Homeowners Association will be separately metered.

5. Landscape Controls for Estate Style Homes:

Installation:

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

Sodding:

**Estate Style Homes:** Sodding of front yards shall be the responsibility of the builder.

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

**Mulched Beds:** Each home shall have a meandering 18"-24" min. wide mulched bed surrounding its perimeter to reduce water and mowing damage to the architectural siding.

All property owners may plant shrubs on their properties in mulched bed areas given that shrubs do not exceed the width of mulched bed area. Shrubs must be planted within a newly established mulched bed a minimum of 6" diameter wider than the mature diameter size of the shrub planted. Perennials and annuals may be planted within mulched beds provided they are within bed edges by 6" or more and are 6" or more away from architectural structures.

**Trees:** Trees installed by homeowner are to be planted within property lines.

**Fencing:** The owners shall submit plans for proposed fencing to the Design Review Board for approval.

**II. BUILDING FORM REGULATIONS**

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

**A. BUILDING HEIGHT**

1. Residential Buildings:

Building heights within all residential areas of the BMHOA shall be limited to a maximum of 38 feet except areas designated for Live/Work units shall be limited to a maximum of 55 feet. Building height shall be measured from the highest ridge to the adjacent grade.



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

With the approval of the BMHOA, chimneys, cupolas, and other architectural features may exceed the given height limitations by no more than 4 feet.

## **B. ROOF FORM**

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

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

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

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

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

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

### **2. Entry Definition, Overhangs & Fascia:**

Snow in the Bozeman area often builds up on roof surfaces and slides off at irregular intervals. Such slides can damage property, decks, balconies and even



injure people. No roof without adequate protection from snow slides shall slope toward driveways, sidewalks, porches, decks, balconies or any other areas that may be damaged or cause injury through the shedding of snow or ice from the roof.

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

3. Dormers and Secondary Roofs:

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

4. Skylights and Solar Collectors:

When designing the location of skylights, consideration shall be given to both the interior and exterior appearance of the unit. Locations shall also be coordinated with window and door locations. Skylights shall be located away from valleys, ridges and all other areas where drifting snow may hinder the performance and safety of the unit. Skylights shall be of high quality, insulated, double pane construction.

Solar collectors shall be integrated into the overall roof design, and shall be placed flush with the slope of the roof or wall of the building.

5. Chimney Composition, Proportion and Materials:

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

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

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C. **EXTERIOR WALL FORM**

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

**III. MATERIAL AND DETAIL REGULATIONS**

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

The following are the only allowable materials in Baxter Meadows:

A. **ROOF MATERIALS**

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

The following are the only acceptable roof materials:

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

B. **EXTERIOR WALL MATERIALS**

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

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

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



1. Stonework:

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

2. Concrete/Stucco:

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

3. Wood and Wood Product Siding:

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

4. Shingles:

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

5. Natural Log:

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

**C. EXTERIOR WINDOWS AND DOORS**

1. Scale, Composition and Proportion:

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

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

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2. Solar Orientation and Exposure:

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

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

3. Materials:

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

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

4. Garage Doors:

Garage doors shall not be oriented toward the street, and shall be de-emphasized in the elevation of the building and screened. Garage doors should be the same color as the building, and shall not be lighter in color than the building.

D. DECKS, BALCONIES, TERRACES AND PORCHES

1. Design:

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

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2. Materials:

Low level decks shall be skirted to grade, while providing proper ventilation and access. Decks which are not practical to skirt shall be designed to assure that the underside of the deck is integrated with the design of the building. Exposed anodized aluminum joist hangers shall not be allowed. Posts shall be a minimum of eight inches square, and shall be paired together to diminish a thin visual appearance. The dimensions of two-story columns shall be increased to account for the great height. Materials and colors shall be consistent with the building and surrounding landscape.

**E. BUILDING COLOR**

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

**F. NIGHT SKY REQUIREMENTS**

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

- a. Fully-shielded lights: Outdoor light fixtures shielded or constructed so that no light rays are emitted by the installed fixture at angles above the horizontal plane as certified by a photometric test expert.
- b. Indirect light: Direct light that has been reflected or has scattered off of other surfaces.
- c. Glare: Light emitting from a luminaire with an intensity great enough to reduce a viewer's ability to see, and in extreme cases, causing momentary blindness.
- d. Outdoor lighting: The nighttime illumination of an outside area or object by any manmade device located outdoors that produces light by any means.

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Shelley Vance-Gallatin Co MT MISC 04.00

IN WITNESS WHEREOF, the Design Review Guidelines and Regulations have been executed this 13<sup>th</sup> day of Sept., 2004.

**BAXTER MEADOWS DEVELOPMENT, L.P.**

\_\_\_\_\_  
Gerald R. Williams, Limited Partner

STATE OF MONTANA     )  
                                      : ss  
COUNTY OF GALLATIN    )

This instrument was acknowledged before me on Sept 13, 2004 by Gerald R. Williams, as Limited Partner of Baxter Meadows Development, L.P.



Notary Public for the State of Montana  
Print Name: Cindy E. Younkin  
Residing at: Bozeman  
My Commission Expires: 9-11-2007

**AMENDMENT TO**  
**DECLARATION OF RESIDENTIAL PROTECTIVE COVENANTS & RESTRICTIONS**  
**and**  
**BY-LAWS OF THE BAXTER MEADOWS HOMEOWNER'S ASSOCIATION**  
**and**  
**RESTATED DECLARATION OF RESIDENTIAL PROTECTIVE COVENANTS &**  
**RESTRICTIONS**  
**AND**  
**RESTATED BY-LAWS OF THE BAXTER MEADOWS HOMEOWNER'S ASSOCIATION**

Baxter Meadows Development, L.P. was the declarant of the following documents recorded with the Gallatin County, Montana, Clerk and Recorder:

- 1) **Declaration of Residential Protective Covenants & Restrictions and By-laws of the Baxter Meadows Homeowner's Association, (hereafter "Covenants and By-Laws") recorded 4-3-2003, document No. 2103136, and**
- 2) **Restated Declaration of Residential Protective Covenants & Restrictions, (hereafter "Restated Covenants") recorded 9-15-2004, document No. 2163416, and**
- 3) **Restated By-laws of the Baxter Meadows Homeowner's Association, (hereafter "Restated By-Laws") recorded 9-15-2004, document No. 2163417,**

Baxter Meadows Development, L.P. in accordance with paragraph V, page 1-8, paragraph I.B., page 2-1, and paragraph X, page 2-6, of the Covenants and By-Laws and paragraph V, page 1-10 of the Restated Covenants and paragraph I.B., page 2-1 of the Restated By-Laws, hereby amends said Covenants and By-Laws, Restated Covenants, and Restated By-Laws as follows:

1. Paragraph I. B. Class "B" of the By-Laws (page 2-1) and Restated By-Laws (page 2-2) is hereby amended to read as follows (deleted language is ~~interlined~~ and added language is ***bold italics***):

**CLASS "B"**: The Class B member shall be Baxter Meadows Development, L.P., who shall be entitled to ~~seventy-five percent (75%)~~ ***ninety percent (90%)*** of the votes. Class B membership shall cease and be converted to Class A membership when ~~3/4~~ ***9/10*** of the lots being of the original RS and R3 residential lots in Baxter Meadows are sold to third parties.



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Thereafter, Baxter Meadows Development, L.P. shall become a Class A member and shall be entitled to one vote for each unsold platted lot.

2. Paragraph V. Amendment, Covenants page 1-8, and Restated Covenants 1-10, is hereby amended as follows (deleted language is ~~interlined~~ and added language is in ***bold italics***): :

V. **AMENDMENT**

These Covenants shall remain in effect until amended or terminated. The Covenants, or any portion thereof, may be amended, terminated or supplemented at any time by the execution of a written document containing the terms of the amendment, supplement or termination of any of the Covenants, duly acknowledged by a Notary Public, and recorded with the office of the Gallatin County Clerk and Recorder, executed (1) by the owners of at least ~~seventy-five percent (75%)~~ ***ninety percent (90%)*** of the lots in Baxter Meadows based on one vote per lot, until construction is complete on a Lot(s) at which point the By-Law provision under Part II, Section I, Paragraph B (Classes) shall apply, or (2) by the Board of Directors and President of the HOA acknowledging the affirmative vote of ~~three-fourths (3/4)~~ ***9/10 (90%)*** of the total votes of all Class A and Class B members of the HOA. If one or more lots have been combined, the owner thereof shall be entitled to one vote for each lot in existence after the combination. If there is more than one owner for an individual lot, each owner must execute the amendment, supplement or termination document to count for one vote towards the ~~seventy-five percent (75%)~~ ***ninety percent (90%)*** total.

IN WITNESS WHEREOF, this instrument has been executed this 14 day of MARCH, 2005.

**BAXTER MEADOWS DEVELOPMENT, L.P.**



Gerald R. Williams, Limited Partner

STATE OF MONTANA        )  
  : ss.  
COUNTY OF GALLATIN    )

This instrument was acknowledged before me on March 14<sup>th</sup>, 2005, by Gerald R. Williams, as Limited Partner of Baxter Meadows Development, L.P.



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Connie J. Thompson  
Connie J. Thompson  
Notary Public for the State of Montana  
Residing at: Belgrade, Montana  
My commission expires: 9-19-2006

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**BAXTER MEADOWS NEIGHBORHOOD CENTER  
DESIGN REVIEW GUIDELINES AND REGULATIONS**

Baxter Meadows Development when used in the following paragraphs represents the current Baxter Meadows Development, L.P., Declarant, Beginning with 75% property sales, the responsibilities of Baxter Meadows Development becomes those of Baxter Meadows Neighborhood Center Association (NCA) as described in the Declaration of Protective Covenants and Restrictions for Baxter Meadows Neighborhood Center.

**I. ARCHITECTURAL CONTROL**

**A. INTENT**

All initial or subsequent improvements to the privately owned lots shall be subject to the following architectural and landscaping requirements and guidelines. Approval by the Baxter Meadows Neighborhood Center Design Review Board shall be obtained prior to application to the City of Bozeman for a building permit and/or site plan review. The submittal requirements for review by the BMNC Design Review Board are specified within the Covenants. The BMNC Design Review Board shall have no power to approve any structure failing to meet, at a minimum, the conditions set forth in this Declaration.

The architectural and design Covenants and guidelines which follow are intended to compliment the Bozeman Zoning Code and any future protective covenants which govern this Project, and to clarify the intention for the design of buildings for Baxter Meadows Neighborhood Center. Specifically, these guidelines set forth design criteria which address the building design and location, site work, landscaping, Parcel density, accessory structures, parking areas, signage, and other improvements. The intent of these guidelines is to allow as much flexibility as possible while at the same time define a minimum level of quality and consistency of building design which will be consistent with and maximize the quality of the overall Project. The unique design elements of the Developer, Building Contractor, Architect, and Owners for both the landscaping and the buildings will be respected, and individual expression is encouraged, provided they are harmonious with the overall plan of the area and the Project.

Except insofar as its duties may be extended with respect to a particular area by the NCA, the Committee shall review and approve or disapprove all plans and specifications submitted to it for any proposed improvement.

No construction or alteration of any improvement or any work affecting the external appearance of any improvement shall be made, erected, altered, placed or permitted to remain upon the Parcel until a site plan, floor plans, elevations, trim details, specifications and landscaping showing the design, location, material(s), and color(s) together with the name of the contractor has been submitted to, and such site plan and specifications are approved in writing by, the BMNC Design Review Board and the City of Bozeman.

In addition to these Regulations, building design may be regulated by City, County, State and Federal regulatory agencies having jurisdiction. The Owner or his or her agent shall be responsible to ensure conformance with all applicable regulations. No construction of, or alteration to, any improvements, whether temporary or permanent, including but not necessarily limited to buildings, fences, walls, earthwork, paving, vegetation, signs, or secondary structures such as utility or trash enclosures, antennas and storage tanks shall be commenced on any lot prior to receiving the written approval of the BMNC Design Review Board and the City of Bozeman. All lands within the Baxter Meadows Neighborhood Center are subject to the zoning regulations of the City of Bozeman except for any variances thereto granted by the City of Bozeman. As such, variances to the zoning requirements of the City of Bozeman shall be specified on the final plat noted above or within the body of this Declaration.



Interior modification and/or improvements that do not alter the exterior appearance of a building, or the site improvements, shall not require the approval of the BMNC Design Review Board. Although an Owner is responsible to check with the City of Bozeman to see if such interior modification and/or improvements requires their approval.

**B. OBJECTIVES**

1. Promote a unique, attractive, and distinctive neighborhood;
2. Promote and assist in the orderly development of land within Baxter Meadows Neighborhood Center;
3. Promote aesthetically pleasing development by encouraging abundant landscaping, attractive building design, preservation of scenic vistas, and other beneficial development practices;
4. Encourage creativity and continuity in design, quality and character of new development;
5. Provide for harmonious land design and quality site planning, which will produce a desirable and attractive environment;
6. Promote compatible land use transitions between different uses within Baxter Meadows Neighborhood Center;
7. Minimize adverse aesthetic impacts associated with excessive lighting, signage, and other design features; and
8. Encourage reciprocal access and parking between adjacent properties.

**C. CONCURRENT CONSTRUCTION**

If a lot owner desires to conduct concurrent construction and concurrent construction is approved for any phases within the Neighborhood Center Association area, a concurrent construction plan, for an approved final site-specific plan, that addresses all aspects of Section 18.74.030.D of the Bozeman Unified Development Ordinance must be submitted to the City of Bozeman for review, evaluation and consideration by Baxter Meadows Development, L.P., further Baxter Meadows Development, L.P. shall remain responsible for all building permits during concurrent construction. It must be understood that no occupancy shall be permitted in any structure until all required infrastructure improvements have been completed or are financial guaranteed by Baxter Meadows Development, L.P.

**D. DISCRETION OF THE BMNC DESIGN REVIEW BOARD**

The BMNC Design Review Board maintains full and complete discretion to interpret this Agreement and may, in its sole discretion, approve or deny any proposed signage and/or the design of projects proposed for property within Baxter Meadows Neighborhood Center.

**E. STANDARDS FOR REVIEW**

It shall be the applicant's responsibility to ensure that all proposed construction shall comply



with all applicable national and local codes and the Design Guidelines. All plans must be harmonious with the overall plan for the development. All plans, materials and specification must be suitable to the site, adjacent properties and the neighborhood. All improvements must be compatible with the surrounding properties so as to not impair or degrade property or aesthetic values. The applicant should also take into account when designing any improvement the ADA Accessibility Guidelines.

**F. DESIGN SUBMITTAL**

All property owners and/or developers within Baxter Meadows Neighborhood Center who desire to build or materially alter any building, structure, landscaping, parking area, fence, or other improvement shall first submit all plans, specifications, and information for review and written approval by the BMNC Design Review Board ("submittals"), unless this Agreement specifically provides that such approval is not required. The BMNC Design Review Board must approve all development plans prior to construction. Construction permits shall not be issued until the Design Review Board has certified approval of the plans.

Following is the minimum Submittal required by the Design Review Board:

1. The Plan Review Application, provided herein as an appendix to the Covenants, shall identify the name and address of the property owner and applicant, and shall set forth the legal and general description of the tracts or lots proposed for development. The applicant shall certify that the proposed development is in compliance with this Agreement and the Covenants for Baxter Meadows Neighborhood Center.
2. A statement of the intended use of all structures.
3. Site plans showing the property upon which the proposed project will be built; any proposed phasing of the construction; building footprints with locations, lot coverage, alignment, and dimensions of all existing and proposed buildings and structures; landscaping; walks; and decks. (Scale: 1/8" = 1'0" or similar engineering scale) This site plans shall also include:
  - a) Plans for proposed storm water drainage systems sufficient to drain and dispose of all surface water accumulation within the area, or retain such storm water as required by regulatory agencies or departments;
  - b) The location of sanitary sewer, water, gas, electric, and any other utility easements (whether or not such utilities will be installed);
  - c) Plans for landscape development, including irrigation, drainage, grading, and planning detail showing species, size, and spacing of trees and shrubs meeting the landscaping requirements of the Guidelines;
  - d) Dimension and location of all existing and proposed buildings, storage areas, recreation areas, utility and service areas, trash storage areas, fire hydrants, access drives, full width of streets and adjacent drives, parking areas, existing utility lines, loading areas, and easements;
  - e) Dimensions, location and description of all other existing a proposed site improvements, including fences, walls, walkways, patios, decks, and barriers;



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- f) A clear delineation of all areas to be paved or surfaced, including a description of surfacing materials to be used;
  - g) Location and description of all off-site improvements and right-of-way dedication;
  - h) Location and type of lighting, including a scaled or dimensioned elevation of each type of lighting fixture.
4. Complete Construction Drawings - At least two (2) sets shall be submitted to the Committee for approval. This includes floor plans, exterior elevations of all sides, roof design, specifications and any construction details. (Scale 1/4" = 1'0")
  5. Samples of all exterior materials with their respective color proposals in an adequate size to evaluate properly.
  6. Signage plans describing specifications and locations of all signage.
  7. A timetable for the proposed construction project.
  8. The Variance Application, provided herein as an appendix to the Covenants, if applicant is requesting a variance from any of the guidelines or regulations described herein. One application per variance request is required.
  9. Additional submittal elements may be requested by the Committee for clarification of the design if needed and shall be supplied by the applicant.
  10. A review fee will be required at the time of submission, and each time of resubmission, of all the design submittal documents and materials. The Owner shall submit the required design review fee to the BMNC Design Review Board. It shall be the duty of the NCA to establish the amount of the design review fee. The purpose of the design review fee shall be to defray the NCA's cost of review of the application, related materials, and all proposed site plans and specifications submitted to them.

**F. APPROVAL OR DISAPPROVAL BY THE BMNC DESIGN REVIEW BOARD**

BMNC Design Review Board has fifteen (15) business days to approve or disapprove the location, construction design, landscaping, and materials used for the building. This fifteen (15) day approval 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 plan have all been submitted to the Committee. The Committee will then notify the Owner, in writing, of the date of the start of the fifteen (15) day approval period. The time for plan review shall be adjusted accordingly if plans are submitted during the holidays.

If the Committee feels that insufficient plans, project specifications, color samples, sample materials or landscaping plans have been submitted either by the Parcel owner or the Owner's representative, then the fifteen (15) day time period will not begin until the Committee informs the Owner, in writing that all plans, samples, and materials provided are complete. The Committee may refuse to approve or deny an application if it determines in its sole and exclusive discretion that the application is incomplete.

Once the BMNC Design Review Board approves the submitted project, it shall issue a Certification of Compliance, provided herein as an appendix to the Covenants.





Upon approval, the applicant and the BMNC Design Review Board shall complete the Compliance Agreement and Bond, as provided herein as an appendix to the Covenants. This action shall then permit the Owner to commence construction in accordance with said submittal, but any deviation from said submittal which, in the judgment of the Committee, is also; a) a deviation of substance from the Design Guidelines; b) a deviation of substance from the requirements of this Declaration; or c) a detriment to the appearance of the structure or to the surrounding area shall be promptly corrected to conform with the submitted plan by the Owner or corrected by the NCA at the Owner's expense.

**G. CITY APPROVAL**

Upon receipt of an "approved" submittal, an applicant is permitted to proceed with securing a Building Permit from the City, providing the applicant complies with the conditions, if any, specified by the Committee at the time of "approval". Development on all lots shall be subject to appropriate site-specific plan review by the City of Bozeman, in accordance with the City of Bozeman Unified Development Ordinance. A Certification of Compliance from the BMNC Design Review Board shall be provided to the City prior to their approval of any application.

Any improvement placed in the public right-of-way shall be approved by the City Engineering Office.

Development on all lots shall be subject to appropriate site-specific plan review in accordance with Chapter 18.34 of the Bozeman Unified Development Ordinance and a letter of approval from the BMNC Design Review Board shall be provided prior to approval of any site-specific plan application by the City of Bozeman.

**H. CONSTRUCTION WITHOUT APPROVAL OR IN VIOLATION OF THIS AGREEMENT**

If any construction is completed, any improvement is erected or placed upon, or any new use is commenced upon any property in Baxter Meadows Neighborhood Center without prior approval from the Committee or in violation of this Agreement, other than as set forth herein, such alteration, construction, erection, placement, or use shall be deemed to have been undertaken in violation of this Agreement and, upon written notice by the Committee, any such alteration, construction, erection, placement, or use shall cease, be removed, or be amended so as to conform to this Agreement at the sole expense of the property owner.

**I. CONSTRUCTION AFTER APPROVAL**

There shall be no construction work initiated without a building permit issued by the City of Bozeman and without written approval of the plans by the BMNC Design Review Board. All building construction and landscaping must conform to both the final approved plans by the City of Bozeman and the BMNC Design Review Board. The Owner will be required to submit in writing a Parcel maintenance program that is acceptable to the BMNC Design Review Board. Such a program will minimally include but is not limited to: killing and removing all existing weeds on the Parcel, finish grading the Parcel if deemed necessary by the BMNC Design Review Board, planting an acceptable seeding program as a new ground cover, providing a mowing maintenance schedule, mowing in accordance to the maintenance schedule, and otherwise keeping the Parcel in an attractive and presentable condition at all times. Storage of anything on the Parcel during this time is completely forbidden. No construction equipment or materials can be moved onto any property in Baxter Meadows Neighborhood Center prior to thirty (30) days before the start of construction.



**J. INSPECTION WORK**

Upon the completion of any Improvement, if the Committee finds that such work was not done in strict compliance with all approved plans and specifications submitted or required to be submitted for its prior approval, it shall notify the Owner and the NCA of such noncompliance, and shall require the Owner to remedy the same. If, upon the expiration of (7) days from the date of such notification, the Owner has failed to commence to remedy such noncompliance, the NCA shall determine the nature and extent of noncompliance thereof and the estimated cost of correction or removing the same (this (7) day period does not apply to any case as described in Paragraph II. D. which shall be subject to remedy within 2 hours of the infraction). The NCA shall notify the Owner in writing of the estimated cost of correction or removal. The Owner shall then only have five (5) days to commence such remedy and thirty (30) days to complete such remedy. If the Owner still does not comply with the NCA's ruling within five (5) day period, the NCA, at their option, may either remove the non-complying improvement or remedy the non-compliance, and the Owner shall reimburse the NCA upon demand for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the NCA, the NCA shall levy an assessment and file a lien against such Owner and the Improvement in question and the land on which the same is situated for reimbursement and the same shall be enforced and/or foreclosed upon in the manner provided for by law for mortgages. The Committee may inspect all work in progress and give notice of noncompliance as provided above.

**K. COMPLETION**

All work on any improvement in the Baxter Meadows Neighborhood Center must be complete within twelve (12) months of the date of commencement unless the Committee agrees in writing to an extension.

**L. LIABILITY**

Neither the City, the Declarant and any appointed agent of the Declarant, nor the BMNC Design Review Board shall be liable to anyone submitting plans for approval, or to any owner of property within Baxter Meadows Neighborhood Center, by reason of a mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any plans or specification. Every person who submits plans to the Committee for review agrees, by submission of such plans and specification, and every owner of property within Baxter Meadows Neighborhood Center agrees, that he will not bring any action or suit against the City, the Declarant and any appointed agent, or the Committee to recover any such damages by reason of the Declarant or appointed agent, the NCA, or the Committee's actions in reviewing any plans and specification. The owner of each lot in Baxter Meadows Neighborhood Center hereby expressly consents to the Committee reviewing, approving, modifying, and denying all development applications. The Committee is expressly authorized, in its sole and exclusive discretion, to grant, approve, deny, or to require modifications to any development proposal in Baxter Meadows Neighborhood Center. All decisions of the Committee shall be final and non-appealable.

**II. SITE DESIGN REGULATIONS**

The integration of buildings into the landscape of Baxter Meadows Neighborhood Center is essential to the success and appearance of the community. Site Design Regulations specifically serve to protect and enhance the natural landscape, stream corridors, view sheds and natural habitat.



All site plans with residential uses on the ground floor shall be required to meet all lot coverage and yard requirements in accordance with Chapter 18.18 of the Bozeman Unified Development Ordinance.

All site plans with residential uses on the ground floor shall also be required to provide landscaping in accordance with Section 18.48.060 of the Bozeman Unified Development Ordinance.

All site improvement plans shall be reviewed and approved by the BMNC Design Review Board and the City of Bozeman prior to commencement of construction or alteration. Minor adjustments to the building 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 Site Development and Landscape Guidelines.

**A. TOPOGRAPHY AND SITE FEATURES**

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

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

**2. Relationship to Open Space:**

The Master Plan recognizes the importance of trails and open space within the Baxter Meadows community. Buildings shall be located in a manner that preserves the character of the open space within the development. In addition, indigenous landscape materials shall be introduced to minimize exposure of the building.

**3. Stream Corridor Protection:**

All buildings and improvements shall maintain a minimum setback of 50 feet from the annual high water line of all streams, rivers, creeks and water courses within all development districts of Baxter Meadows, unless determined otherwise by the City of Bozeman. Uses within the stream setback shall be limited to planting of native riparian vegetation, maintenance of existing non-native vegetation, and the control and maintenance of noxious weeds. The removal of existing native vegetation within the stream shed protection area is not permitted. Refer to the Declaration of Protective Covenants as to Wetland Areas for all requirements.

**4. Parking:**

Baxter Meadows Neighborhood Center has on-street parking throughout which is available for use by all. In addition to the street parking, the Neighborhood Center Association will provide association owned parking areas throughout, which are also available for all to use. Individual landowners may and/or may be required to provide their own parking on their own lot(s) for their exclusive use. No driveway or access shall be allowed to encroach into the side yard setbacks other than those on shared driveway easements filed of record. Minimum parking requirement for all uses in the Neighborhood Center area are found in the Bozeman Unified Development Ordinance Section 18.46.040.



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

5. Retaining Walls:

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

6. Accessory Structures, Screening Elements, and Fences.

Construction shall be according to the following standards.

- a. All fences shall comply with the City of Bozeman, Montana clear vision standards;
- b. No fence or wall shall exceed a height of six feet (6'), except at trash enclosures or as otherwise approved in writing by the Declarant; or the BMNC Design Review Board;
- c. No fence or wall shall be constructed between a street and the front of the building, unless otherwise approved in writing by the Declarant; or the BMNC Design Review Board;
- d. Accessory structures, fences, and walls shall be of a character, color, and material to match the adjacent buildings and shall coordinate with the overall architectural scheme of the adjacent buildings and shall be integrated into the landscape of the lot;
- e. Plant material screens must develop, with reasonable expectation, to a mature height within three (3) years from the time of planting.
- f. Property owners within Baxter Meadows Neighborhood Center are required to seek the Declarant's or the BMNC Design Review Board's written approval prior to erecting or constructing accessory structures, fences, and walls as set forth herein.
- g. Chain link fencing shall not be permitted in Baxter Meadows Neighborhood Center.

7. Exterior Lighting:

a. Lot Lighting:

All exterior building lighting shall be designed to enhance the appearance of the property and Baxter Meadows Neighborhood Center as a whole. The lighting source for exterior building lighting shall be concealed and be appropriate in density of the surface being illuminated. In addition, all outdoor lighting (residential, commercial, or otherwise) shall be free of glare, and shall be fully shielded or shall be indirect lighting.

All outdoor pole lighting, mounted or ground-mounted, shall be cut-off lighting. Pole lighting shall be designed, located, and mounted at heights no greater than twenty feet (20') above grade. All outdoor lighting shall be designed and located such that



the maximum luminance in maintained foot candles at the property line does not exceed one and five tenths (1.5) foot candles unless reciprocal parking areas are provided or the landscaping and path system connects at adjacent lots. The BMNC Design Review Board's and adjacent property owner's approval shall be required for lighter levels.

No unshielded lights shall be permitted. No mercury vapor or high-pressure sodium fixtures shall be permitted. Canopy, marquis and "wall pack" lighting shall be allowed. Indirect accent lighting is acceptable.

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

1. Fully-shielded lights: Outdoor light fixtures shielded or constructed so that no light rays are emitted by the installed fixture at angles above the horizontal plan as certified by a photometric test expert.
2. Indirect light: Direct light that has been reflected or has scattered off other surfaces.
3. Glare: Light emitting from a luminaire with an intensity great enough to reduce a viewer's ability to see, and in extreme cases, causing momentary blindness.
4. Outdoor lighting: The nighttime illumination of an outside area or object by any manmade device located outdoors that produces light by any means.

b. Subdivision Public Lighting:

Subdivision lighting shall be incorporated into the subdivision by a Street Improvement Lighting District (SILD) for the provision of street and pathway lighting pursuant to Section 16.14.230 of the Bozeman Subdivision Regulations. All subdivision lighting provided shall conform to Section 16.14.230 of the Bozeman Subdivision Regulations. A lighting plan including isofotocandle plots and description of the proposed equipment, with details and specifications (cut sheets), bulb type and size, and locations shall be provided with the final plat and subject to review and approval by the Planning Department.

8. Walkways, Paths and Trails:

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

**B. UTILITIES AND SITE DETAILS**

1. Utilities:

All utilities (natural gas, electric, telephone and television cable) shall be installed underground. All exterior mechanical and electrical equipment and transformers shall be screened. Screening may consist of either plantings, shrubbery, or durable



enclosure. Property owners within Baxter Meadows Neighborhood Center are required to seek the Declarant's or BMNC Design Review Board's written approval prior to erecting or constructing screening devices as set forth herein. Chain link fencing shall not be permitted in Baxter Meadows Neighborhood Center.

No antenna or satellite dish shall be installed on any structure or lot so that it is visible from any street. 18" satellite dishes shall not be required to be screened from adjacent property. Larger satellite dishes are not permitted.

Meters shall be placed in a location so as to be accessible to the meter reader and yet not visible from adjoining streets. All conduit wires servicing the meter are to be beneath the exterior wall sheathing or enclosed. Meters, transformers and other utility boxes shall be concealed with landscaping or screening walls when appropriate or visible from adjacent streets or Common Areas.

2. Radon:

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

3. Garbage and Refuse Disposal:

Trash, garbage and other waste shall not be kept except in sanitary containers. All equipment, garbage cans or storage piles shall be screened or concealed from view of other buildings and Common Areas within appropriate trash enclosures consistent with the character of the buildings which they serve.

Garbage Collection Areas shall adhere to the following standards:

- a. All outdoor garbage containers and collection areas shall be screened visually with at least a six foot (6') enclosure, so that outdoor garbage containers and collection areas are not visible from adjacent properties or Common Areas;
- b. No garbage container or collection areas shall be located between a street and the front of a building, unless otherwise approved in writing by the NCA;
- c. Garbage containers and collection areas should be appropriately designed to contain all garbage generated on site and deposited between collections. Deposited garbage should not be visible from outside the garbage container or collection area;
- d. Garbage containers and collection areas should be designed with durable materials and finishes and colors which coordinate with the overall architectural scheme of the adjacent buildings;
- e. Refuse collection areas should be located upon the lot as to provide clear and convenient access to refuse collection vehicles and thereby minimize wear and tear to on-site and off-site developments.



C. **LANDSCAPE CONTROLS**

1. Definitions:

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

Mulched Bed: An area within a yard with no turf and 3" minimum depth landscape mulch. Landscape mulches include but are not limited to river rock (typ) or landscape bark (typ) etcetera.

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

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

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

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

2. Installation:

Street Trees: Baxter Meadows Development, L.P. shall control the installation of street and boulevard trees.

Sodding/Seeding: Baxter Meadows Development, L.P. will provide sodding or seeding in the Common Areas within the Neighborhood Center. Individual land owners shall provide to the BMNC Design Review Board a landscape plan and schedule of plants for review and approval.

3. Irrigation Installation and Maintenance:

Baxter Meadows Development will be responsible for the installation of irrigation systems for the street and boulevard trees and the landscape materials in the Common Areas.

The NCA will provide maintenance for the irrigation systems, the street and boulevard trees and the landscape materials in the Common Areas.

4. Landscaping Standards

The following standards shall govern landscaping for all publicly and privately owned property within Baxter Meadows Neighborhood Center, unless otherwise approved in



writing by the Declarant.

- a. Upon development all lots in Baxter Meadows Neighborhood Center shall, at a minimum, be landscaped to comply with the requirements and standards herein.
- b. All landscaping shall be completed within thirty (30) days after the substantial completion of the building(s) constructed of the property, provided however that if weather conditions do not permit such landscaping to be completed within thirty (30) days, then such landscaping shall be completed as soon thereafter as weather conditions permit. Bonds shall be required if landscape completion is delayed.
- c. The Owner or Lessee of any property has sole financial responsibility for the installation of all landscape improvements within the public right-of-way adjacent to their property with the exception of street trees provided by Baxter Meadows Development. The landscaping within the remaining front yard will be installed by each Owner or Lessee so as to blend with the landscaping installed in the right-of-way easement.
- d. All landscaping must be irrigated with an underground sprinkler system, which must be maintained so as to provide sufficient water for landscaping growth.
- e. Property owners within Baxter Meadows Neighborhood Center are required to seek the Declarant's or BMNC Design Review Board's written approval prior to establishing landscaping as set forth herein.
- f. All surface areas of lots not covered by structures, parking, and circulation surfaces, or pedestrian, bicycle, and equestrian paths shall be developed with vegetative landscaping to building walls and edges of paving area. The landscaped area's vegetative mixed may be mixed with areas of stone, rock, bark ground cover, decorative structures, water features, benches, or other landscape structures appropriately dispersed and coordinated throughout the live vegetation.
- g. Any demolition in the right-of-way of the landscape and irrigations system installed by the Declarant or the NCA at vehicular access points or by other construction-related disturbances shall be repaired and restored by the property owner as part of the construction efforts in the development of the lot. The property owner shall maintain water flow within the irrigation system during construction and re-establish the existing plantings, grading, and irrigation system altered during the construction process.
- h. All plant materials, installation, and irrigation details and specifications should conform to all appropriate industry standards to assure acceptable quality of materials and adequacy of installation and performance. Live landscape materials shall be appropriate for the micro-climate of Bozeman, Montana and shall be properly nurtured, watered, and fertilized to maintain and sustain healthy growth.
- i. It is recommended that the developer work with the City Parks Department, county extension agent, a local greenhouse operator, landscape architect, or other professional designer to determine the species of trees that are most





suitable for each situation. The use of native, drought tolerant plant material is strongly encouraged. Evergreen trees are discouraged for internal parking areas if they limit sight lines. The planting of trees should be done in such a manner as to provide maximum solar efficiency throughout the site. A list of recommended plant material shall be available at the Planning Department.

**D. CONSTRUCTION MATERIALS**

Clean up and Debris. A list of acceptable procedures and guidelines will be given to the Owner prior to the actual commencement of construction and will require the written acceptance by the Owner prior to starting construction, or construction will not be approved. Construction materials shall not at any time prior to or during construction be placed or stored in the street or placed anywhere else so as to impede, obstruct or interfere with pedestrians within the street right of way. Absolutely all construction materials shall be removed from the entire Parcel within thirty (30) days of substantial completion of construction.

Construction sites shall be kept clean, neat and well organized at all times. Any construction debris shall be the responsibility of the Building Contractor and Owner and shall be kept clean and properly stored on a daily basis. If construction debris blows onto another Owners Parcel, it is the responsibility of the Owner's contractor to clean it up immediately. Of particular concern to the Declarant is street cleanliness. Any construction debris, and especially dirt, gravel, rocks, and concrete which find their way into the street, shall be removed immediately (within two hours of the start of the infraction) from the street and be brought back to a broom clean condition or clean up costs and a fine may be levied and enforced by the NCA. Owners are highly encouraged to notify their building contractors of this important condition prior to signing their construction contracts.

**E. HIGH GROUND WATER**

Due to relatively high ground water table within the areas of the subdivision, it is not recommended that residential dwellings with full basements be constructed without first consulting a professional engineer. If daylight basements are incorporated in the construction of residential dwellings, they should not have a depth greater than three (3) feet below the top of the curb or crown of the street from which it is served.

**G. ACCESS**

Access to all lots within Baxter Meadows Neighborhood Center shall be from internal public and private streets. Shared accesses are encouraged. If a traffic accessibility study is required for a proposed use on a lot, the study shall include traffic from an adjacent lot if the driveway is proposed to be shared.

One-foot wide "no access" strips shall be placed along both sides of Baxter Lane to preclude direct lot access onto Baxter Lane.

**H. PRIVATE PARKING**

The non-residential parking requirement for site-specific plan(s) shall be based on Section 18.46.040 of the Bozeman Unified Development Code. A 10% adjustment will be given in addition to the standard Community Commercial adjustment. The additional 10% adjustment will not be given to a structure with a maximum building height of greater than 38 feet for a roof pitch of less than 3:12 and 44 feet for a roof pitch of 3:12 or greater.

All off-street parking, access drives, and loading areas shall be paved and properly graded to



ensure adequate drainage. All parking lots must be developed with proper integration of landscape and screening elements as provided herein. Minimum parking requirements shall meet the standards of the City of Bozeman for each use proposed for a lot, but shall not exceed 110% of the City's minimums.

**I. COMMON PARKING**

All on-street parking and parking provided in NCA parking lots is available for common use. While these common parking spaces are assigned to individual lots their use is intended to be in common. No common parking spaces can have their use or access restricted by the assigned owner. Common use and access is necessary for the reduced parking requirements approved by the City of Bozeman.

**J. LOADING, STORAGE, AND SERVICE AREAS**

Loading and service areas shall not be permitted in the front portion of any lot within Baxter Meadows Neighborhood Center. Proper integration of landscape and screening elements must be provided between loading and service areas. Loading, storage, and service areas shall be carefully planned, positioned, and screened from off-site ground level view and streets. On-site views of loading and service areas shall be minimized as much as possible.

**K. BICYCLE PARKING**

Each on-site parking lot in Baxter Meadows Neighborhood Center shall provide bike parking space equipped with bicycle racks permanently anchored in marked areas out of the parking area.

**L. SNOW STORAGE**

Areas adjacent to parking lots shall be provided for on-site snow storage. The snow storage area shall not be adjacent to the streets or within the site triangle as described in the Bozeman Municipal Code. Common storage areas between adjacent lots are encouraged. Minimum parking requirements shall not be reduced for snow storage.

**M. TRAFFIC STUDIES**

Some proposed uses may generate traffic levels different than anticipated by Baxter Meadows Neighborhood Center Master Plan Traffic Analysis. In such cases, the Declarant, BMNC Design Review Board, or the City of Bozeman may require a traffic study to analyze the impact of the proposed use on the streets and intersections in the Baxter Meadows Neighborhood Center and at the access points to Baxter Meadows Neighborhood Center. The lot owner or developer shall commission and be responsible for the analysis and the modifications of the street system as required to mitigate any adverse affects identified by the analysis.

**N. PROHIBITED USES**

Proposed uses must comply with these Covenants and the authorized uses of the City of Bozeman Unified Development Ordinance. The following operations and uses shall not be permitted on any property in Baxter Meadows, unless otherwise approved in writing by the Declarant:

- ◆ Amusement park services or facilities;
- ◆ Animal Kennels. Commercial and/or public animal kennels or shelters;



- ◆ Apparel fabrication, except ancillary services associated with retail;
- ◆ Beverage bottling plant;
- ◆ Billboard sign;
- ◆ Brewer (except as incidental to a restaurant, such as a brew pub);
- ◆ Campground;
- ◆ Cellular towers;
- ◆ Commercial excavation of building or construction materials, providing that this prohibition shall not be construed to prohibit any excavation necessary in the course of approved construction;
- ◆ Electronic component manufacturing;
- ◆ Exotic Dancing. Any establishment permitting exotic dancing, including semi-nude and nude clubs;
- ◆ Fire sale or bankruptcy sale;
- ◆ Fireworks. Fireworks manufacture and/or sales;
- ◆ Food processing, except ancillary services associated with retail, restaurant, and grocery operations;
- ◆ Foundries and plant operations;
- ◆ Fraternity or sorority house;
- ◆ Furniture fabrication, except ancillary services associated with retail;
- ◆ Garbage. Any dumping, disposing, incineration or reduction of garbage; provided, however this prohibition shall not be applicable to garbage compactors located near the rear of any building;
- ◆ Gas stations;
- ◆ Go-cart tracks;
- ◆ Greenhouses for commercial or retail purposes, except ancillary services associated with retail;
- ◆ Gun and archery range;
- ◆ Guns & Ammunition. The sale of firearms and ammunition, unless incidental to a general retail store or sporting goods store;
- ◆ Heavy equipment sales and service;
- ◆ Ice manufacturing;



- ◆ Illegal Drugs. The sale, manufacture, or possession of illegal drugs;
- ◆ Incinerator;
- ◆ Jails. Jails, prisons, half-way houses for pre-release inmates, and/or detention facilities;
- ◆ Labor or migrant worker camps;
- ◆ Manufactured Housing. The sale, maintenance, and repair and/or storage of manufactured housing, mobile homes, boats, trailers, or recreational vehicles;
- ◆ Material testing laboratories unless incidental to a medical or clinical facility;
- ◆ Metal fabrication and manufacturing;
- ◆ Mill work and cabinet shops, except ancillary services associated with retail;
- ◆ Mineral Extraction. Any establishment engaged in the sale, extraction, or storage of sand, gravel, or minerals;
- ◆ Mining & Related Activities. Mining, drilling for, or removing oil, gas, or other hydrocarbon substances;
- ◆ Mortuary or crematorium;
- ◆ Motor cross tracks;
- ◆ Motorcycle super cross;
- ◆ Obnoxious Odors, etc. Any use which emits and obnoxious odor, noise, or sound which can be heard or smelled outside of any building in Baxter Meadows Development;
- ◆ Paper warehouse;
- ◆ Parking Limitations. No parking shall be permitted on any street or any place other than in paved and designated parking spots. Each owner of property within Baxter Meadows Development shall be responsible for compliance with the foregoing by all customers, visitors and employees. All off-street parking, access drives, and loading areas shall be paved and properly graded to ensure adequate drainage. All parking lots must be developed with proper integration of landscaping and screening elements;
- ◆ Pornographic Materials. Any establishment selling or exhibiting pornographic materials or drug-related paraphernalia, except that such prohibition shall not limit the sale of books, periodicals, music products, and video products, by a bookstore and/or music store carrying a full line of adult and/or children's titles, such as, by way of example, but not limited to, Borders or Barnes and Noble bookstores;
- ◆ Product manufacturing;
- ◆ Propane sales;
- ◆ Race tracks;



- ◆ Recycling centers;
- ◆ Roller skating rinks;
- ◆ Sanitary dumps;
- ◆ Scrap or waste material processing;
- ◆ Septic systems;
- ◆ Sexually Oriented Businesses. Sexually oriented businesses as defined by Section 27-611 of the Bozeman, Montana City Code;
- ◆ Skateboard parks;
- ◆ Stables;
- ◆ Storage rental facilities;
- ◆ Taxidermists;
- ◆ Tire sales, except as incidental to the operation of a general retail store;
- ◆ Towers and Dishes. Communication and satellite towers or dishes greater than eight (8) feet in diameter;
- ◆ Trailer Parks & Campgrounds. Mobile home parks, trailer parks, or recreational vehicle campgrounds;
- ◆ Truck Stop. Truck stop, as defined by Section 27-201 of the Bozeman, Montana City Code;
- ◆ Truck Terminals. Truck terminals, cartage operations, and similar uses;
- ◆ Truck Wash. Truck wash as defined by Section 27-201 of the Bozeman, Montana City Code;
- ◆ Trucks. Sale, leasing, manufacture, and repair of trucks;
- ◆ Trucking operation offices and warehouses;
- ◆ Utility service facilities;
- ◆ Warehouses;
- ◆ Wholesale lumber and building materials;
- ◆ Wild Animals and Livestock. Any establishment, structure, or enterprise housing any wild animals, poultry, or domestic livestock and Any establishment engaged in livestock production or slaughter;
- ◆ Wholesale distribution and sales;



**O. PERMITTED USES**

Baxter Meadows Neighborhood Center shall support diversified commercial and residential uses, including retail, office, hotel, community services, medium density housing, and high density housing. Baxter Meadows Neighborhood Center is located in a PUD District under the zoning and use regulations of Bozeman, Montana. Proposed uses must comply with these Covenants and the authorized uses of the City of Bozeman Unified Development Ordinance. The Neighborhood Center is subject to the approval process required hereunder except for any variances thereto granted by the City of Bozeman as shown on the Baxter Meadows Neighborhood Center plat as filed with the Gallatin County Clerk and Recorder. As such, variances to the zoning requirements of the City of Bozeman shall be specified on the final plat noted above or within the body of this Declaration.

Lots in the Mixed Use Neighborhood of Baxter Meadows Neighborhood Center are intended for use as: retail, office and medium density housing (10-18 dwelling units per acre).

Lots in the Commercial Neighborhood of Baxter Meadows Neighborhood Center are intended for use as: retail, office, hotel, community services, and high density housing (16-24 dwelling units per acre).

Keeping within their intended use as described above, all lots in Baxter Meadows Neighborhood Center, unless otherwise prohibited herein, may be used for any use permitted in a B-2 community business district by the Bozeman Unified Development Ordinance as of the date of this agreement. Medium Density-High Density Housing Residential uses will also be permitted.

Residential uses on the ground floor may be allowed on Blocks 15, 16, 18, 20 and 21. On Blocks 17 and 19, residential uses (with the exception of apartments and apartment buildings) shall be restricted to the second or subsequent floors.

The above said uses will be permitted provided that such use is not detrimental to Baxter Meadows Development and it meets all lot coverage and yard requirements in accordance with Chapter 18.18 of the Bozeman Unified Development Ordinance.

Any non-conforming uses existing on any lot located within Baxter Meadows, including but not limited to continued farming operations, shall be permitted as described in Chapter 18.60 of the Bozeman Unified Development Ordinance.

**III. BUILDING FORM REGULATIONS**

**A. INTENT**

The intent of the following Building Guidelines is to provide for a degree of continuity throughout the built-up setting of the Baxter Meadows Neighborhood Center without stifling personal taste in choice of building style. Furthermore, the intent is to establish minimum standards to ensure that the type of building constructed is at least comparable to and blends with the eclectic styles of architecture found in the surrounding developments. The purpose of the design theme is to produce functional and cost effective structures that have a light commercial character with residential accents, including protected entrances, varying roof lines (including multiple roofs and dormers), and exterior spaces such as decks.

All initial or subsequent improvements to publicly and privately owned buildings shall be subject to the following architectural and landscaping requirements and guidelines. Approval by the BMNC Design Review Board shall be obtained prior to application to the City of Bozeman for a building permit. The submittal requirements for review by the BMNC Design Review Board are



specified herein. The BMNC Design Review Board shall have no power to approve any structure failing to meet, at a minimum, the conditions set forth in this Declaration.

All permanent buildings shall be of new construction and shall be constructed with concrete basements or concrete footings and foundation walls or other appropriately designed permanent foundation system. Temporary Structures used for construction may be used only during the period of construction and shall be removed from Baxter Meadows Neighborhood Center immediately following completion of construction.

No building shall be built in a manner which will adversely affect the structural integrity of another building.

**B. DESIGN CONCEPTS**

The architecture of the buildings shall contribute interesting three dimensional shapes, forms and profiles to the context of Baxter Meadows Neighborhood Center through the inclusion of roof line articulation, varying façade depths, interesting color patterns, entryway elements, canopies, balconies, and other methods of architectural expression in a manner that integrates the structure and its landscaping into the context of the Baxter Meadows Development.

1. **Aesthetically Compatible Buildings.** All buildings shall be designed, constructed, and maintained so that the exterior appearance, including design, color, material, architectural theme, and elevations, is architecturally and aesthetically compatible with adjacent buildings. All buildings shall be designed for full view from all directions and shall be completed on all sides with an acceptable finishing material.
2. **Articulation of Main Entrances.** Each building shall have a clearly defined main entrance that is articulated by roof and building massing as well as landscaped design elements such as sidewalks, planting, lighting elements, etc.
3. **Orientation of Buildings.** Each building shall be orientated toward the front lot line facing the adjacent street.
4. **Scale and Massing of Buildings.** Each building design must address the scale and massing not only of the particular building itself but also of adjacent buildings. Each building will be reviewed by the Design Review Board on this basis.

**C. BUILDING HEIGHT**

Building heights within the Neighborhood Center shall be limited to a maximum of 38 feet for a roof pitch of less than 3:12, and 44 feet for a roof pitch of 3:12 or greater in accordance with Section 18.18.060 of the Bozeman Unified Development Ordinance at the time of this agreement. Building height shall be measured from the highest ridge to the adjacent grade.

This restriction will not preclude applicant from applying for and receiving CUP for extra height as allowed in B-2 districts by the City of Bozeman.

On complex buildings with multiple heights, the building height shall be determined by the method established in the Bozeman Unified Development Ordinance at the time of this agreement. The final elevation of the finished surface materials, whether soil, paving, or decking shall be indicated as the finished grade, and shall be shown on the architect's drawings when submitted to the BMNC Design Review Board for review and approval.



**D. ROOF FORM**

The architecture within Baxter Meadows shall complement and respond to the natural qualities of Bozeman. The consistency and compatibility of roof shapes, pitches and materials will contribute significantly to the continuity of the character of Baxter Meadows Neighborhood Center. The following design regulations have been developed to allow for distinct building forms while addressing the character of the entire community. When refining roof forms consideration shall also be given to the prevention of excessive snow build-up and snow shedding.

**1. Shape and Pitch:**

Variation in orientation of the dominant roof form is essential to the successful design of large buildings. Dominant roof forms shall not exceed 80 feet in length without a change in orientation or introduction of dormers.

The BMNC Design Review Board reserves the right to waive the minimum or maximum roof pitch requirement when, in its sole judgment, a lower or steep roof pitch is more appropriate for the design of a building, and does not compromise the integrity of the development district. This privilege may be exercised by the BMNC Design Review Board without relinquishing its right to enforce the minimum or maximum requirements on other projects or on other elements within the same project review.

**2. Entry Definition, Overhangs & Fascia:**

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

Entrances shall be specifically expressed and protected with adequate overhangs. All roofs shall have overhangs of at least 16 inches.

**3. Chimney Composition, Proportion and Materials:**

All chimney forms shall relate to the overall building and shall be covered with stone, stucco or wood siding materials to match exterior finishes of the building.

Building vents and flues for such functions as ventilation and exhaust shall be consolidated into enclosures wherever possible and shall typically be concealed from public view. Place roof penetrations on the rear side of the building whenever possible. All exposed metal shall be copper, a pre-finished metal color or painted in a color compatible with the color scheme of the building.

**4. Equipment and Ventilating Roof Projections.**

All roof-mounted equipment shall be integrated into the overall roof design and screened. All roof mounted HVAC equipment will be screened from view with an architectural element consistent with the design of the building, oriented away from the street side of the building, and of a height at least equal to the height of the mechanical equipment. Such screening device shall coordinate with the overall architectural scheme or the equipment shall be completely enclosed within the





structure of the building. Property owners within Baxter Meadows Neighborhood Center shall obtain the BMNC Design Review Board's written approval prior to erecting or constructing rooftop equipment. All sewer, bath fan, hot water heater, stove, or other roof venting stacks shall be painted a color as similar as possible to the roof material color. Other non-roof mounted equipment shall likewise be screened from view either with architectural elements such as approved fencing or with the use of landscaping.

**E. EXTERIOR WALL FORM**

Exterior Wall surfaces shall be no longer than 80 feet in length without the introduction of a minimum 4-foot recess, 4-foot projection or change in orientation. Two story exterior wall forms shall be interrupted similarly.

**F. EXTERIOR WINDOWS AND DOORS**

**1. Scale, Composition and Proportion:**

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

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

**2. Solar Orientation and Exposure:**

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

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

**G. DECKS, BALCONIES, TERRACES AND PORCHES**

Decks, balconies, terraces and porches shall be designed to enhance the overall architecture of the building by creating variety and detail on exterior elevations. Covered decks, projecting balconies and bay windows shall be integrated with, rather than randomly placed throughout, the building. Terraces shall be used to integrate the building and landscape by creating a transition between the built and natural character of the site. No deck, balcony or porch shall be used for the storage of any items except normal furniture.

No exterior carpeting may be used if it is visible from any neighboring lot or the street.

**H. DETACHED BUILDINGS**



Detached accessory buildings must receive approval of the BMNC Design Review Board prior to construction within Baxter Meadows Neighborhood Center.

#### **IV. BUILDING MATERIAL AND DETAIL REGULATIONS**

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

##### **A. ROOF MATERIALS**

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

The following are the only acceptable roof materials:

1. Treated wood shakes or shingles
2. Synthetic shakes and shingles
3. Natural and synthetic slate shingles
4. Asphalt random tab shingles
5. Pre-finished metal roofing
6. Single-ply or built-up roofing
7. Other similar materials, as allowed by the Design Review Board
8. All roof flashing, vents, hoods, flues, and roof accessories shall be copper or a pre-finished metal that blends with the color of the roofing material selected.

##### **B. EXTERIOR WALL MATERIALS**

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

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

The BMNC Design Review Board shall consider materials not listed below that maintain the aesthetic continuity of Baxter Meadows, including pre-finished composite wood products, synthetic siding materials, metals and glass.

##### **1. Stonework:**

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



2. Concrete/Stucco:

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

3. Wood and Wood Product Siding:

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

4. Shingles:

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

5. Natural Log:

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

**C. EXTERIOR WINDOWS AND DOORS**

Windows and doors shall be constructed of natural, stained or painted wood, or pre-finished aluminum, enamel or vinyl cladding. All glazing shall be framed in walls of stone, stucco or wood. Glass curtain walls and mirror glass may be approved by the BMNC Design Review Board on a case by case basis.

**D. BUILDING COLOR**

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

**V. SIGNAGE REGULATIONS**

The following standards shall govern signage for all property within Baxter Meadows Neighborhood Center and shall apply to all ground-mounted, pole-mounted, and building-mounted signs, unless otherwise approved in writing by the Declarant or the BMNC Design Review Board.

Prior to the construction and installation of any signage on-site, a Sign Permit Application shall be reviewed and approved by the Planning Office of the City of Bozeman in accordance with Chapter 18.52 of the Bozeman Unified Development Ordinance; including but not limited to



contractor, real estate and lending institution signs temporarily posted on-site during and after construction of the building. A letter of approval from the BMNC Design Review Board shall be provided prior to approval of any Sign Permit Application.

#### **A. PURPOSE, INTENT, AND SCOPE**

The purpose and intent of this section is to promote commerce, traffic safety, and community identity while improving the visual environment of residential, commercial, and industrial area.

This section of the Design Review Guidelines and Regulations shall not regulate traffic and directional signs installed by a governmental entity or in a private parking lot; signs not readable from nor intended to be viewed from a public right-of-way; merchandise displays; point-of-purchase advertising displays such as product dispensers; national flags; flags of a political subdivision; symbolic flags of an institution; legal notices required by law; barber poles; historic site monuments and plaques; gravestones; structures intended for a separate use such as phone booths, donation and recycling containers; lettering or symbols applied directly onto or flush-mounted magnetically to a motor vehicle operating in the normal course of business.

#### **B. MASTER SIGNAGE PLAN**

The signage plan for the Baxter Meadows Neighborhood Center incorporates:

1. Baxter Meadows Neighborhood Center Identification. One sign located at the main entrance located off Baxter Lane Road. The location is noted on the Final site plan and details are shown.
2. Building identification signs. Signs are located on the interior streets as noted on the Final site plan. The information on the signs will be limited to the name of the building complex and the number range of the units serviced by that entrance.
3. Unit identification signs are individual signs for each unit within the buildings showing the name of the particular business and the number of the unit. An example would be: XYZ Technologies, 123 Vaquero Parkway. All signs must be approved by the Design Review Board and receive a permit from the City of Bozeman.
4. Entrance and directional signs. The Declarant and/or the NCA may develop marquis and directional sign elements at the major points of entrance to Baxter Meadows and Baxter Meadows Neighborhood Center. These signs shall be designed as monument signs depicting the character of Baxter Meadows, providing direction to the different use zones within Baxter Meadows, providing public service information and announcements related to the community and Baxter Meadows, and giving identity to Baxter Meadows in general. The foregoing signs shall be maintained by the NCA part of the annual budget for annual assessments.
5. The maximum square feet of allowable signage per building based on the City of Bozeman formula of 1.5 X the length of the building, not to exceed 400 sf, shall be equally distributed among the total number of building owners. The owners may then apply their allowable signage square footage as allowed in these guidelines and by the Bozeman Unified Development Ordinance. If at any time one or more signs shall not be in compliance, such sign(s) shall be correctly removed as described under the provision "Non-conforming Signs".



**C. GENERAL PROVISIONS**

1. **Sign Approval.** All signage in Baxter Meadows Neighborhood Center is subject to approval by the BMNC Design Review Board established pursuant to the Covenants. The BMNC Design Review Board, in its sole and exclusive discretion, may further limit or condition the use of any sign in Baxter Meadows Neighborhood Center that it deems to be inconsistent with the objectives for Baxter Meadows Neighborhood Center as set forth in the Design Review Guidelines and Regulations and these Covenants.
2. **Permits.** Permitting is required per the City of Bozeman. Prior to the construction and installation of any signage on-site, a Sign Permit Application shall be reviewed and approved by the Planning Office. On-site signage may include, but not be limited to, contractor, real estate and lending institution signs temporarily posed on-site during and after construction of the building. A Certification of Compliance from the Design Review Board shall be provided to the City prior to approval of any Sign Permit Application by the City of Bozeman. "For Sale", "For lease" and "For Rent" and non-commercial signs under 9 sf do not require a permit from the City of Bozeman
3. **City Ordinances.** All signage shall comply with Chapter 18.52 of the City of Bozeman Unified Development Ordinance, unless further limited herein.
4. **Construction.** All signage shall be constructed of durable, non-rusting, first-class quality materials constructed by a qualified sign builder. All signage must be of material, color, and detail consistent with the architectural design of the building and site.
5. **Collective Signage.** Adjacent property owners in Baxter Meadows Neighborhood Center are encouraged to utilize collective signage which contains the names of more than a single owner, business, tenant, or store.
6. **Directional Signage.** A parking directional sign shall be permitted at each major entrance to a parking lot, provided that such signs not exceed six feet in height and four square feet per face, and are located within a landscaped area.

**D. CONTRACTOR, ARCHITECT, SURVEYOR, OR ENGINEER SIGNS**

1. One (1) on-premises sign identifying the project, developers, building contractor and/or subcontractors, architect, surveyor, and engineer engaged in the construction may be permitted on a property during the period of construction, provided that:
  - a. Location and size of the sign shall be approved by the City-County Planning Department and a sign permit has been issued prior to installation;
  - b. An application has been submitted and approved by the BMNC Design Review Board;
  - c. The sign shall be removed prior to final building inspections. However, no such sign shall be maintained for a period in excess of twelve months without approval from the BMNC Design Review Board and the City of Bozeman Planning Department. The Planning Department may extend the one-year time period upon written request of the BMNC Design Review Board.

**E. SIGN LOCATION AND SETBACK**

1. All signs shall be located so that they:
  - a. Do not interfere with vehicular or pedestrian accessibility or sign distance;
  - b. Conform to the provisions of clear vision triangles and visibility at intersections as described in the Bozeman Unified Development Ordinance;
  - c. Do not overhang or be located in any public right-of-way; and
  - d. Do not conflict with other setback restrictions defined in this document or the Unified Development Ordinance.
  
2. All signs shall be located and set back as follows:
  - a. Any portion of a sign (including structural supports) that is higher than three feet and less than seven feet above grade shall be located a minimum of ten feet back from any property line abutting a public right-of-way;
  - b. Structural supports less than two feet in width or diameter, measured at any point on the support, and three to seven feet above grade, shall be located a minimum of ten feet back from any property line abutting a public right-of-way.

**F. MAINTENANCE OF SIGNS**

1. Any sign that has been approved or that has been issued a permit shall be maintained by the owner or person in possession of the property on which the sign is located. Maintenance shall be such that the signage continues to conform to the conditions imposed by the sign permit and these Covenants.
2. Any damaged sign base shall be repaired within thirty (30) days.
3. Any signage which has been damaged to such extent that it may pose a hazard to passersby shall be repaired or removed immediately.

**G. NONCONFORMING SIGNS**

Nonconforming signs are not permitted. If any sign is erected or installed without proper permits or approvals, it shall be considered nonconforming and shall be removed. All signs which do not conform to these sign standards are nonconforming and shall be removed or changed to conform to these standards. Any sign not removed within thirty (30) days of notice of nonconformance will be removed by the NCA, and the costs for removal shall be the responsibility of the owner of the sign.

**H. LANDSCAPING FOR MONUMENT SIGNS**

All monument signs shall be located in a landscaped area. Landscaping should be appropriately sited to ensure that signs are not blocked or obscured by trees or bushes.

**I. SIGN ILLUMINATION**

Externally illuminated signs shall have low intensity lighting, confined to the sign, and positioned and shielded to minimize impacts to the surrounding area(s). Internally illuminated signs shall have low intensity lighting.



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Shelley Vance-Gallatin Co MT MISC 162.00

IN WITNESS WHEREOF, this instrument has been executed this 14 day of June, 2004.

**BAXTER MEADOWS DEVELOPMENT, L.P.**

Dale R. Williams

Baxter Meadows Construction, Inc., General Partner  
By: Gerald R. Williams, President

STATE OF MONTANA     )  
                                      : ss.  
COUNTY OF GALLATIN    )

This instrument was acknowledged before me on June 14, 2004 on behalf of Baxter Meadows Development, L.P. by Gerald R. Williams, as President of Baxter Meadows Construction, Inc., General Partner

J. Acker

Notary Public for the State of Montana  
Printed Name: J Acker  
Residing at: Bozeman  
My Commission Expires: 01/16/2006

(SEAL)





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Shelley Vance-Gallatin Co MT MISC 168.00

**RESTATED  
DECLARATION OF MIXED USE PROTECTIVE COVENANTS AND RESTRICTIONS  
FOR BAXTER MEADOWS NEIGHBORHOOD CENTER**

This RESTATED declaration of conditions, covenants and restrictions is made this 21<sup>ST</sup> day of JULY, 2004, by Baxter Meadows Development, L.P., a Montana Limited Partnership, with principle office at 3864 East Baxter Lane, Bozeman, Montana, 59718, hereinafter referred to as "Declarant".

**This document replaces, in its entirety, that Declaration recorded on July 9, 2004, as document No. 2156016, records of Gallatin County, Montana.**

**I. RECITALS**

WHEREAS, Declarant is the owner approximately 460 acres of real property in Gallatin County, Montana; more particularly described as: Baxter Meadows Subdivision, located in the S 1/2 of Section 34, Township 1S, Range 5E, and the NE 1/4 of Section 3, Township 2S, Range 5E.

The foregoing property shall be known as "Baxter Meadows".

WHEREAS, Declarant intends to sell, dispose of, divide into Parcels, or develop the real property described above and more specifically described in the final plat of Baxter Meadows Annexation to the City of Bozeman, Gallatin County, Montana, for multiple use purposes, including possible retail, commercial, community service, and medium and high density residential uses.

WHEREAS, a portion of the property within Baxter Meadows, will be divided into two separate zones: Neighborhood Mixed Use and Neighborhood Commercial, together known as and hereafter referred to as Baxter Meadows Neighborhood Center.

NOW, THEREFORE, Declarant desires to subject the Baxter Meadows Neighborhood Center(BMNC), as described below, to the following covenants, conditions, restrictions, guidelines and reservations herein set forth and referred to as "Covenants", each and all of which is and are for the benefit of the BMNC described below and the owners thereof, and which shall run with the land, applying and binding all the present property owners and tenants, and all future owners and tenants, and successors in interest.

**II. PURPOSE**

Baxter Meadows is a unique mixed residential and commercial development annexed to the northwest portion of the City of Bozeman. Baxter Meadows Development, L.P. is the present owner of all of the property included within the boundaries of the Baxter Meadows Annexation to the City of Bozeman. The primary goal of Baxter Meadows Development, L.P. is to create a development which creatively blends commercial and residential neighborhoods in terms of lot size, building scale and open space. Baxter Meadows strives to achieve this objective with respect to Baxter Meadows Neighborhood Center through the

ALB-1-77423





implementation of these Covenants, the Baxter Meadows Design Review Guidelines and Regulations ("Design Guidelines"), Declaration of Protective Covenants as to Wetland Areas, and the By-Laws of the Baxter Meadows Neighborhood Center Association ("By-Laws"), which includes provisions regarding a Design Review Board and should be read and construed in conjunction with these Covenants.

**Baxter Meadows Neighborhood Center, comprised of the collective area of both the Neighborhood Mixed Use area and the Neighborhood Commercial area being: Lot 1, Block 15; Lots 1 through 7, Block 16; Lots 1 through 8, Block 17; Lots 1 through 10, Block 18; Lots 1 through 11, Block 19; Lots 1 through 12, Block 20; Lots 1 through 12, Block 21 of Phase 2, of the Baxter Meadows Subdivision;** is hereby made subject to the conditions, covenants, and restrictions contained herein. All conditions, covenants and restrictions shall be deemed to run with the land, and each and every parcel thereof.

These Covenants and Restrictions are in addition to those requirements set forth in the City of Bozeman Zoning Regulations. In the event there is a conflict between the zoning regulations and these Covenants or the Design Guidelines, the zoning regulations shall control. In such cases when zoning regulations take precedence over these Covenants or the Design Guidelines, it does not relieve any Owner, Occupant, or other persons from receiving approval from the Design Board prior to any said Improvements.

The purpose of this Declaration is to ensure proper use and development of Baxter Meadows Neighborhood Center so as to:

- 1) Allow the development of a compatible mixture of retail, commercial, community service, and residential uses in a pedestrian oriented development;
- 2) Afford the developer maximum flexibility for future development within a framework that will ensure sound development;
- 3) To create a notable Bozeman, Montana landmark;
- 4) To provide for leisurely circulation patterns in order to create a pedestrian-friendly environment;
- 5) Increase property values; and
- 6) Protect the owners and tenants of Baxter Meadows Neighborhood Center against improper development and use of surrounding lots that may depreciate the value and use of the lots in Baxter Meadows Neighborhood Center. This Planned Unit Development (PUD) is created so Baxter Meadows Neighborhood Center will be a multi-use and mixed-use interactive "Lifestyle" Neighborhood Center. Baxter Meadows Neighborhood Center character will provide an environment to meet the needs of the surrounding community. These Covenants are intended to promote smart building development in terms of orientation, access, energy consumption and efficiency, and create great places to live and work with many necessary services and business within easy walking distance of



each other and the adjacent residential area. Furthermore, this PUD shall permit maximum flexibility to meet the demands of the commercial, business, and residential markets as they change over time to provide connectivity to other adjacent neighborhoods and subdivisions as they develop and to complement and enhance the area;

Baxter Meadows Development, L.P. hereby adopts the following Declaration of Protective Covenants and Restrictions for Baxter Meadows Neighborhood Center.

**III. AUTHORITY**

These guidelines shall apply to the subdivision plats for Baxter Meadows Neighborhood Center as will be recorded at the Gallatin County Clerk and Recorder. Declarant hereby declares that the entire Baxter Meadows Neighborhood Center, more particularly described above, is, and shall be conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved, or transferred in whole or in part, subject to this Declaration. All of the covenants, conditions and restrictions set forth herein are declared and agreed to be in furtherance of a general plan for the division, improvement and sale of the property and are established for the purpose of enhancing, conserving, and protecting the value, desirability and attractiveness of the property and every part thereof. All of the covenants, conditions and restrictions herein shall run with all of the property for all purposes and shall be binding upon and inure to the benefit of the Declarant, the Baxter Meadows Neighborhood Center Association and all Owners, Occupants, and their successors in interest as set forth in the Declaration.

The Baxter Meadows Design Review Board and the Baxter Meadows Neighborhood Center Association is established under the authority of these Restrictive Covenants for the Baxter Meadows Neighborhood Center property, By-Laws of the Owners' Association, and the Montana Non-Profit or the Montana Limited Liability Company Act, if applicable.

**IV. ABBREVIATIONS & DEFINITIONS**

All abbreviations and definitions in these Covenants shall first be defined as provided in this section or as otherwise described throughout these Covenants, the By-Laws for the Baxter Meadows Neighborhood Center Association, and the Design Review Guidelines and Regulations for Baxter Meadows Neighborhood Center.

If abbreviations and definitions are not defined in these Covenants, or the Baxter Meadows Neighborhood Center Association By-Laws or the Design Guidelines, then they shall be defined as provided for in the City of Bozeman Unified Development Ordinance.

The following abbreviations are used in this document:

- 1) The BMNC Design Review Board is referred to as the BMNC Design Review Board.



- 2) The BMNC Design Review Guidelines and Regulations are referred to as the Design Guidelines.
- 3) Baxter Meadows Development, L.P. is referred to as Declarant.
- 4) The Baxter Meadows Neighborhood Center Association is referred to as the NCA.
- 5) The Conditions, Covenants and Restrictions is referred to as The Covenants.

The following definitions shall apply to these covenants:

- 1) Class A member of the Baxter Meadows Neighborhood Center Association shall be the owners of lots within Baxter Meadows Neighborhood Center as further defined in the By-Laws of the Baxter Meadows Neighborhood Center Association.
- 2) Class B members of the Baxter Meadows Neighborhood Center Association shall be the Declarant, as further defined in the By-Laws of the Baxter Meadows Neighborhood Center Association.
- 3) Lot Coverage: The percentage of the lot area covered by buildings.
- 4) Baxter Meadows Neighborhood Center: The collective area of both the Neighborhood Mixed Use area and the Neighborhood Commercial area being: Lot 1, Block 15; Lots 1 through 7, Block 16; Lots 1 through 8, Block 17; Lots 1 through 10, Block 18; Lots 1 through 11, Block 19; Lots 1 through 12, Block 20; Lots 1 through 12, Block 21 of Baxter Meadows.
- 5) "Neighborhood Mixed Use" means Lot 1, Block 15; Lots 1 through 7, Block 16; Lots 1 through 10, Block 18; Lots 1 through 12, Block 20; Lots 1 through 12, Block 21 of Baxter Meadows. These blocks may include retail uses, office use and medium density housing at about 10-18 dwelling units per acre.
- 6) "Neighborhood Commercial" means Lots 1 through 8, Block 17; Lots 1 through 11, Block 19 of Baxter Meadows. These blocks may include retail uses, office use, hotel, community services and high density housing at about 16-24 dwelling units/acre.
- 7) "Individual residential unit" means any building or portion thereof providing complete, independent and permanent living facilities for one family.
- 8) "Individual business unit" means any building or portion thereof used by a person, persons or entity for purposes of conducting his, her or its business which includes but is not limited to retail sales, services, and professional offices.
- 9) "Common Area" means those areas designated by the Declarant as community spaces to be used by members of Baxter Meadows and their invitees and guests. Community spaces may include parkland, open space, watercourse setbacks, boulevards/medians, center areas, active recreation areas, bike and equestrian



trails, and pedestrian walks/pathways. Community spaces or common areas shall be the parts of the land within the zoned property which are not specifically owned by any individual parcel owners.

- 10) "Owner" or "Property Owner" shall mean the person or persons owning a fee simple absolute, under the laws of the State of Montana, in one or more Parcels within the Baxter Meadows Neighborhood Center.
- 11) "Board of Directors" shall mean those who has the complete, final, and binding authority over all matters and decisions of the Baxter Meadows Neighborhood Center Association as set forth in the By-Laws
- 12) "Declaration" shall mean this Declaration of Covenants, Conditions, and Restrictions for the Baxter Meadows Neighborhood Center and as it may, from time to time, be amended or supplemented.
- 13) "Property" shall mean all the land, buildings, improvements and structures thereon and all easements, rights and appurtenances belonging thereto
- 14) "Project" shall mean the organization, division, improvement, operation and/or sale of property in Baxter Meadows Neighborhood Center.
- 15) "Common Area Management Plan" shall mean the management plan for the Common Area conveyed for use by the Baxter Meadows Neighborhood Center Association and its Members and the Owners in common.
- 16) "Architect" shall mean a person holding a certificate of registration to practice architecture in the State of Montana.
- 17) "Improvement (s)" shall include, but not exclusively, all building, outbuildings, bridges, roads, paths, pathways, driveways, parking areas, fences, screening walls and barriers, retaining walls, stairs, decks, water lines, sewer lines, springs, ponds, lagoons, ditches, viaducts and electrical, gas and TV distribution facilities, hedges, windbreaks, natural and or planted trees and shrubs, poles, signs, loading areas and all other structures, installations and landscaping of every type and kind, whether above or below the land surface.
- 18) "Occupant" shall mean a lessee or licensee of an Owner, or any other person or entity other than the Owner in lawful possession of a Parcel with the permission of the Owner.
- 19) "Record", "recording", "recorded" or "recordation", shall mean, with respect to any document, the recordation of said document, the recordation of said document in the office of the Clerk and Recorder of Gallatin County, Montana.
- 20) "Detrimental" shall mean obviously harmful or damaging.



- 21) The term "Hazardous Materials" shall mean: petroleum products, asbestos, polychlorinated biphenyls, radioactive material, and all other dangerous, toxic, or hazardous pollutants, contaminants, chemicals, material or substances listed or identified in, or regulated by, any Environmental Law. The term "Environmental Law" shall mean all federal, state, county, city, local, and other statutes, laws, ordinances, and regulations which relate to or deal with human health or the environment, all as may be amended from time to time.

**V. GENERAL PROVISIONS**

**A. NEUTRAL INTERPRETATION**

Declarant hereby provides that these covenants shall be construed using neutral interpretation and that these covenants shall not be construed in favor of or against any particular entity or person.

**B. ENFORCEMENT ACTION**

This Declaration is for the benefit of the Declarant and the property owners within Baxter Meadows Neighborhood Center, and their heirs, devisees, assigns, and trustees, and may only be enforced by such parties. No other person or entity shall be entitled to claim a breach of this Declaration or to enforce the covenants, conditions, and restrictions contained herein, judicially or otherwise.

In the event of violation or threatened violation of any of these Covenants, or the Design Guidelines or any other rules or regulations adopted by the Baxter Meadows Neighborhood Center Association legal proceedings may be brought in a court of law or equity for injunctive relief and damages. In addition, an owner, the Baxter Meadows Neighborhood Center Association, BMNC Design Review Board, or Baxter Meadows Development, L.P. may enforce these Covenants by serving notice in writing on the person or entity violating these Covenants. This notice shall specify the offense, identify the location and demand compliance with the terms and conditions of these Covenants or the Design Guidelines. Such notice shall be personally served. In the event personal service cannot be obtained after reasonable efforts, notice shall be posted at a conspicuous place on the property in question and a copy of the notice shall be mailed by certified mail, return receipt requested, to the last known address of the party or entity.

No owner, the Design Review Board, the Baxter Meadows Neighborhood Center Association, or Baxter Meadows Development, L.P. shall be liable to any person or entity for any entry, self-help or abatement of a violation or threatened violation of these Covenants. All owners, invitees and guests shall be deemed to have waived any and all rights or claims for damages for any loss or injury resulting from such action except for intentionally wrongful acts by others.

Enforcement of these covenants shall be by proceedings either at law or in equity against any person or persons violating or attempting to violate these Covenants; and the legal proceedings may be either to enjoin or restrain violation of the Covenants or to recover



damages or both. In the event of action to enforce these Covenants, the prevailing party shall be entitled to costs and a reasonable attorney's fee.

The failure by the Declarant or its assigns, the Baxter Meadows Neighborhood Center Association, the BMNC Design Review Board or any lot owner to enforce any covenants or restrictions contained herein shall in no event be deemed a waiver or in any way prejudice the right to enforce that Covenant at any time against any person breaking the Covenant or any other Covenant breached thereafter or to collect damages for any subsequent breach of Covenants.

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

All of the above described real property and lots shall be subject to the restrictions and Covenants set forth herein whether or not there is a reference to the same in a deed or conveyance.

A breach of any of the foregoing Covenants shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value upon any site or portion of the real property or any improvements thereon. However, these Covenants shall be binding upon and inure to the benefit of any subsequent owner who acquired by foreclosure, trustee sale or otherwise, title to property within Baxter Meadows Neighborhood Center.

**C. PERPETUITY**

These Covenants shall continue in full force and effect and shall run with land as legal and equitable servitude in perpetuity unless amended or terminated as set forth herein with the exception of Common Area restrictions which are permanent and can not be terminated.

**D. AMENDMENT**

These Covenants shall remain in effect until amended or terminated. The Covenants, or any portion thereof, may be amended, terminated or supplemented at any time by the execution of a written document containing the terms of the amendment, supplement or termination of any of the Covenants, duly acknowledged by a Notary Public, and recorded with the office of the Gallatin County Clerk and Recorder, executed (1) by the owners of at least seventy-five percent (75%) of the lots in Baxter Meadows Neighborhood Center based on one vote per lot, until construction is complete on a lot(s) are developed at which point the by-Law provisions under Part II, Section I, Paragraph B (Classes) shall apply, or (2) by the Board of Directors and President of the Baxter Meadows Neighborhood Center Association acknowledging the affirmative vote of three-fourths (3/4) of the total votes of all Class A and Class B members of the Baxter Meadows Neighborhood Center Association.

Any covenant which is required as a condition of the preliminary plat approval by the City Commission may not be amended or revoked without the mutual consent of the Owners in accordance with the amendment procedures in these Covenants and the City Commission.



**E. NOTICES**

All notices or demands required to be given hereunder shall be in writing and shall be served either personally or by registered or certified mail. Service by registered or certified mail shall be conclusively deemed made three (3) days after deposit thereof in the United States Mail, postage prepaid, addressed to the party to whom service is to be given, as hereinafter provided, and the issuance of the registry or certification receipt therefore. All notices or demands to the Declarant shall be given to the following address:

Baxter Meadows Development, L.P.  
PO Box 81487  
Billings, Montana 59108

With copies to :

Baxter Meadows Development, L.P.  
PO Box 11060  
Bozeman, Montana 59719

**F. WAIVER**

Failure of the Declarant to notify any owner of property within Baxter Meadows Neighborhood Center of a default in the manner provided in this Declaration shall not be deemed a waiver of any rights which the Declarant may otherwise have at law or in equity.

**G. GOVERNING LAW**

This Declaration shall be governed by and construed in accordance with the laws of the State of Montana.

**H. FORCE MAJEURE**

Any prevention, delay or stoppage due to strikes, lock outs, labor disputes, Acts of God, inability to obtain labor or materials or reasonable substitute therefore, governmental restriction, terrorist acts, governmental regulations, governmental controls, enemy or hostile government action, civil commotion, fire or other casualty and other causes beyond the reasonable control of the party obligated to perform, shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage. All persons shall use reasonable efforts to overcome whatever may be impeding their performance of any obligation hereunder.

**I. ATTORNEY'S FEES AND COSTS**

In the event the Declarant, or the BMNC Association shall file a proceeding against any owner of property within Baxter Meadows Neighborhood Center, whether at law or in equity, the prevailing party shall be entitled to receive reimbursement of reasonable outside attorney's fees and court costs, if any, from the other party.



**J. SEVERABILITY**

Should any provision of this Declarant be or become invalid, void, illegal or unenforceable, it shall be considered separate and severable from this Declaration and the remaining provisions shall remain in force and be binding as though such invalid, void, illegal or unenforceable provision had not been included.

**K. NO PARTNERSHIP**

The provisions of this Declaration are not intended to create, nor shall they in any way be interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the Declarant and any owners of property within Baxter Meadows Neighborhood Center.

**L. CAPTIONS AND HEADINGS**

The paragraph headings used throughout this instrument are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction, or meaning of the provisions of this Declaration.

**M. ENTIRE DECLARATION**

This Declaration contains the entire declaration of the Declarant and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Declaration shall be construed as a whole and not strictly for or against any party.

**N. CONSTRUCTION**

In construing the provisions of the Declaration whenever the context has required, the use of a gender shall include all other genders, and the use of the singular shall include the plural, and the use of the plural shall include the singular.

**O. JOINT AND SEVERAL OBLIGATIONS**

In the event any person referred to herein is composed of more than one person, the obligations of said party shall be joint and several.

**P. RECORDATION**

This Declaration and any amendments or modifications shall be recorded in the office of the clerk and recorder of the County of Gallatin, State of Montana.

**NOTICE:**

**THIS DECLARATION SHALL SERVE AS NOTICE TO ALL THIRD PARTIES, INCLUDING THOSE PURCHASING OR ACQUIRING AN INTEREST IN ANY OF THE PROPERTY WITHIN BAXTER MEADOWS NEIGHBORHOOD CENTER, OF THE EXPRESS COVENANTS,**





**CONDITIONS, AND RESTRICTONS PLACED UPON THE PROPERTY WITHIN BAXTER MEADOWS NEIGHBORHOOD CENTER, AND SHALL FURTHER SERVE AS NOTICE THAT, SHOULD THE TERMS OF THIS DECLARATION BE VIOLATED, THE DECLARANT MAY ENFORCE ANY AND ALL LEGAL RIGHTS AND REMEDIES SPECIFIED HEREIN AND PROVIDED BY LAW AND EQUITY.**

**Q. RUN WITH THE LAND**

All of the special conditions listed in these Covenants shall constitute restrictions running with the land use, shall apply and be adhered to by the owner of the land, successors or assigns, shall be binding upon the owner of the land, his successors or assigns, shall be consented to in writing, and shall be recorded as such with the County Clerk and Recorder's Office by the property owner prior to the issuance of any building permits, final site plan approval or commencement of the conditional use pursuant to Section 18.34.100.C.2 of the Bozeman Unified Development Ordinance. Failure of the property owner to consent shall result in no issuance of a building permit.

**R. DESIGN REVIEW BOARD**

The BMNC Design Review Board shall be constituted in accordance with the By-Laws of the Baxter Meadows Neighborhood Center Association. The Design Review Board shall have the authority and responsibility as provided herein and in the By-Laws for the Baxter Meadows Neighborhood Center Association.

The Design Review Board shall conduct business as provided herein and as set forth in the BAXTER MEADOWS DESIGN REVIEW GUIDELINES AND REGULATIONS. In the event of any conflict between the Design Guidelines and these Covenants, the Design Guidelines shall prevail.

**S. BAXTER MEADOWS NEIGHBORHOOD CENTER ASSOCIATION**

The Baxter Meadows Neighborhood Center Association shall be constituted, shall conduct its business, and shall have the authority and responsibility as provided herein and in the BY-LAWS OF THE BAXTER MEADOWS NEIGHBORHOOD CENTER ASSOCIATION. In the event of a conflict between the By-Laws and these covenants, the By-Laws shall prevail.

**T. CONTACT PERSON**

The Declarant shall designate contact person who may be contacted with respect to any question, comments, or concerns. The contact person shall be the President of Baxter Meadows Development, L.P., or his/her designee. At the time of recording, the contact person shall be:

Michael McGullam  
P.O. Box 11060  
Bozeman, Montana 59719  
(406) 582-7523



**VI. PROTECTIVE COVENANTS**

**A. PURPOSE**

It is the purpose of these Covenants to ensure that Baxter Meadows creatively blends residential and commercial uses into its surroundings, complements and enhances the natural environment and preserves and protects the interests and investment of the individual owners.

These Covenants shall attach to and run with the land and shall constitute an equitable servitude upon the real property and every part of it, including all titles, interest and estates as may be held, conveyed, owned, claimed, devised, encumbered, used, occupied and improved. These Covenants are declared for the benefit of the mixed use property within Baxter Meadows Neighborhood Center as described and depicted hereto, and for the benefit of each owner. They shall constitute benefits and burdens to Declarant and to all persons or entities hereafter acquiring any interest in the property.

The property affected by these covenants shall not conduct the "PROHIBITED USES" as specifically described in the Design Review Guidelines, found in Part III of this source book.

**B. RESIDENTIAL USE**

Residential use is encouraged in all developments within the Neighborhood Center.

**C. MINING PROHIBITED**

No prospecting, mining, quarrying, tunneling, excavating, extracting, or drilling for any substance on or within the earth, including oil, gas, hydrocarbons, minerals, gravels, sand, soil, rock, or earth shall be permitted except as necessary for the construction of buildings, roads or driveways, or fish ponds, ditches or other water ways as approved by the BMNC Design Review Board and applicable governmental agencies. The BMNC Design Review Board may approve irrigation wells on individual private lots.

**D. AGRICULTURAL USES OF NEIGHBORING PROPERTIES**

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

Agricultural uses within the City of Bozeman may include but not be limited to barns and animal shelters and the keeping of animals and fowl, together with their dependent young, as set forth in the City of Bozeman Uniform Development Ordinance per 2.5 acres: one horse or one cow; two sheep or two goats; ten rabbits; thirty-six fowl (chickens, pheasants, pigeons, etc.) or six larger fowl (ducks, geese, turkeys, etc.). For larger parcels of land, the



City of Bozeman may determine that a larger number of livestock is consistent with their requirements.

All fences bordering agricultural lands shall be maintained by the landowners in accordance with state law.

**E. SITE PREPARATION, MAINTENANCE AND LANDSCAPING**

Each owner shall submit a landscape plan as set forth in the Site Design Regulations of the Design Guidelines to the BMNC Design Review Board at the time the construction plans are submitted. Landscaping shall be done only as approved by the BMNC Design Review Board. Owners shall control all noxious weeds and shall destroy them according to county standards. Re-vegetation as approved in advance by the BMNC Design Review Board shall be required for all disturbed areas. Natural and native species are encouraged; non-native species may be restricted or prohibited. The owner must complete the restoration within 45 days following the completion of construction or within such period as may be reasonably necessary as dictated by weather conditions, but not to exceed one (1) year.

**F. OUTBUILDINGS AND TEMPORARY STRUCTURES**

No outbuildings shall be erected or maintained upon any lot before the start of construction and no trailer, mobile home, basement, shack, garage or other outbuildings shall be erected upon any part of the lot for use as a temporary or permanent residence. Temporary structures shall be removed within thirty (30) days after completion of construction.

**G. EXTERIOR IMPROVEMENTS AND EQUIPMENT**

Application to the BMNC Design Review Board for approval of pools, spas, hot tubs, fire pits, or other similar improvements shall contain adequate details to establish sufficient abatement of equipment noise. If deep excavations are required for these improvements, a site evaluation by a geologist or soils engineer may be required.

**H. CONSTRUCTION AND SCHEDULES**

Any and all construction, alterations or improvements shall be subject to advance approval by the Design Review Board and shall be diligently worked on to completion and shall be completed within eighteen (18) months following commencement. No aspect of construction shall at any time impede, obstruct or interfere with pedestrian or vehicular traffic on the public right-of-way or off site. No materials shall be placed or stored upon any lot more than thirty days (30) before commencement of construction or more than thirty (30) days following completion of construction as determined by the Design Review Board. No materials shall be placed or stored in right-of-way.

Each construction site shall have a chemical toilet placed in a location as inconspicuous as possible. During any construction, the site shall be cleaned up weekly and shall be maintained free of trash. Debris and trash shall be removed from Baxter Meadows and shall not be placed or dumped on any common area or other property within Baxter



Meadows. The owner shall be responsible to take necessary precautions to prevent debris from blowing off the construction site and shall clean up wind-blown debris both on and off the premises if debris does leave the premises notwithstanding the owner's precautions. Open burning of debris is not permitted.

**I. BUILDING PERMITS AND COMPLIANCE BOND**

The right to a use and occupancy permit shall be contingent upon the fulfillment of all general and special conditions imposed by the conditional use permit procedure pursuant to Section 18.34.100.C.1 of the Bozeman Unified Development Ordinance.

No building, structure, road, fence or improvement of any kind shall be erected, placed, altered, added to, reconstructed or permitted to remain on any site, and no construction activities or removal of trees or other vegetation shall be commenced until approved by the BMNC Design Review Board and the appropriate plans have been submitted to the City of Bozeman for building plan review and approval. A Compliance Agreement Bond may be required with a Security Deposit and will be held in an escrow account administered by the BMNC Design Review Board. Upon completion of construction and landscaping of the site the job will be reviewed by the BMNC Design Review Board, and when satisfactorily completed, the Compliance Bond will be released to the owner. Some or all of the bond may be used by the Design Review Board to complete unfinished landscaping or other work needed on the site, if not satisfactorily completed, to the approval of the BMNC Design Review Board, by the owner of the site.

**J. CERTIFICATE OF COMPLIANCE**

Before any owner may occupy or otherwise use a structure in Baxter Meadows, the owner must obtain a Certificate of Compliance from the BMNC Design Review Board in the form set forth in the Design Guidelines, acknowledging compliance with the Design Guidelines in the design and construction of any building, residence or other structure built within the boundaries of Baxter Meadows. In addition, the Owner shall obtain a Certificate of Occupancy from the City of Bozeman.

**K. OWNER'S RIGHT TO COMMON AREA, PATHS AND ROADS**

Every Owner, tenant, contractor, employee, agent, customer, licensee, invitee, and successor shall have a right to use a non-exclusive easement for ingress, egress, parking, Common Areas, pedestrian walkways, bike paths, and public and private roads as shown on the approved final plat of Baxter Meadows Neighborhood Center. These common lands and facilities shall be reserved in perpetuity as approved by the City of Bozeman. The Owner's right to use the common areas, paths and roads shall be appurtenant to and shall pass with the title to every parcel, subject to the following provisions:

- 1. It is the right of the Baxter Meadows Neighborhood Center Association to provide reasonable restrictions on the use of the Common Areas, Paths, and Roads for the overall benefit of the Baxter Meadows Neighborhood Center Association and its members including limitations on the number of guests permitted to use the

Common Area and restrictions or prohibitions on the type of activity and use including, but not limited to, the use of firearms, fireworks, all motor driven vehicles, loud music, and loud parties in the Common Area or as otherwise specified in the Common areas Management Plan;

- 2. The design of Baxter Meadows incorporates Common Areas as shown on the final plat of the Baxter Meadows Neighborhood Center, attached hereto and incorporated herein by reference. Baxter Meadows Neighborhood Center Association, or the Declarant, is solely responsible for installation of all common areas, including landscaping and irrigation systems, and no improvements shall be constructed on such common areas except by the Baxter Meadows Neighborhood Center Association. No gates or obstructions shall be placed upon or shall impede access to any common area. City standard sidewalks are to be provided at all streets adjacent to, or through, the Common Areas by the Baxter Meadows Neighborhood Center Association. All landscaped common areas shall have underground irrigation systems provided by the Baxter Meadows Neighborhood Center Association. The Baxter Meadows Neighborhood Center Association may provide temporary lighting or other holiday decorations within the common areas and street boulevards. Construction of, and improvements to, all common areas shall be to the standards of the City of Bozeman, or as otherwise approve by the City of Bozeman.
- 3. The Common Areas Management Plan and any other reasonable restrictions on the use of the Common Areas and Paths shall be enforced and implemented by the Baxter Meadows Neighborhood Center Association;
- 4. The right of the Baxter Meadows Neighborhood Center Association to dedicate or transfer all or any part of its right to the Common Area and Trails to any public agency, authority, utility, person, corporation or other entity for such purposes and subject to such conditions as may be agreed to by the Baxter Meadows Neighborhood Center Association. No such dedication or transfer shall be effective unless approved by sixty seven percent (67%) of Class A and Class B members and the City of Bozeman.
- 5. Additional Restrictions include:  
  
Motorized vehicles are prohibited within the common areas except for maintenance and construction of landscaping, facilities or structures related to the function or intent of the common areas.

No open burning shall be permitted within Baxter Meadows.

**L. OWNERS RIGHT TO PARKING AREA**

Every Owner shall have a right to use the common parking areas. The Owner's right to use the commonly owned parking areas shall be appurtenant to and shall pass with the title to every Parcel and / or Unit subject to the following provisions:



1. Compliance with the Bozeman City Zone Code.
2. The right of the Baxter Meadows Neighborhood Center Association to provide reasonable restrictions on the use of the parking areas for the overall benefit of the Baxter Meadows Neighborhood Center Association and its members including restrictions or prohibitions on the type of activity and use including, but not limited to, special sales events, merchandise display stands or tables, signs, fireworks, loud music, and loud parties in the parking area.
3. The right of the Baxter Meadows Neighborhood Center Association to suspend the voting rights and right to use of the parking areas of any Owner, Tenant, and/or Occupant for any period during which any assessments against his Parcel or person remains unpaid and for any infraction of its published rules and regulations for any period of time the Baxter Meadows Neighborhood Center Association deems necessary.
4. No parking shall be permitted on any street or at any place other than in paved and designated parking spots. Each owner of property with Baxter Meadows Neighborhood Center shall be responsible for compliance with the foregoing by all customers, visitors, and employees. All off-street private parking, access drives, and loading areas shall be paved and properly graded to ensure adequate drainage. All private parking lots must be developed with proper integration of landscaping and screening elements, as provided herein and adequate snow storage areas outside the sight triangles, as described by the City of Bozeman, or as otherwise approved by the City. On-street parking is not prohibited or restricted so long as it is in a designated parking area.

**M. CONTROL AND MANAGEMENT**

The Baxter Meadows Neighborhood Center Association shall have the exclusive right and obligation to manage, control, and maintain the subdivision streets, Common Areas, centers, pathways, landscaping in street boulevards and/or parks and parking areas including, but not limited to, the layout, design, and installation of any improvements in accordance with these Covenants and the Common Areas Management Plan. The Baxter Meadows Neighborhood Center Association, as determined by the Design Review Board, may take such steps as are necessary to ensure that all shrubs, trees, and other vegetation do not block, interfere, or hinder the view from any structure. Such steps may include limiting the type of shrubs, trees, and other vegetation planted in the common areas, specifying the location of items to be planted, and/or removing shrubs, trees, and other vegetation in the event such items grow to a level that they block, interfere, or hinder the view from any building, office, residence or within traffic areas. Maintenance, repairs, and replacements of Common Area grounds and improvements, including the storm water management system, shall be at the expense of the Baxter Meadows Neighborhood Center Association provided, however, if such damage is caused by a negligent or tortuous act of



any owner, members of such owner's family, guest or employee, then such owner shall be responsible and liable for all such damage.

**N. COMMON AREA AND FACILITY MAINTENANCE GUARANTEE**

If the Baxter Meadows Neighborhood Center Association fails to maintain improvements according to approved plans, the City of Bozeman may, at its option, complete the construction of improvements and/or maintain improvements in compliance with the City's Unified Development Ordinance. The City of Bozeman and all Owners of property shall maintain all right and obligations as let forth in the Unified Development Ordinance Sections 18.72.040.

The City's representative, contractors and engineers shall have the right to enter upon the property and perform such work, and the Baxter Meadows Neighborhood Center Association shall permit and secure any additional permission required to enable them to do so. The city shall bill the Baxter Meadows Neighborhood Center Association for any costs associated with the installation or maintenance of improvements. These costs shall be distributed and paid for as described herein under Annual Assessment or, if required, under Emergency Assessments.

**O. DELEGATION OF USE**

Any Owner may delegate, upon notification to the Baxter Meadows Neighborhood Center Association, to the members of his immediate family, or contract purchasers, his right of enjoyment to the Common Area, Paths, Roads, and facilities.

**P. RIGHT OF ACCESS AND PUBLIC DEEDED RIGHT OF WAY INGRESS AND EGRESS**

The Baxter Meadows Neighborhood Center Association or the Declarant shall have the irrevocable right to have access across any road, parcel(s), parking areas, path and Common Area to each building or improvement from time to time during reasonable hours as may be necessary for the inspection, maintenance, repair, or replacement of any improvements. Such right of access therefore, shall be for the purpose of ensuring compliance with these Covenants and architectural controls in the subdivision. Except for improvements owned by the Baxter Meadows Neighborhood Center Association or used by the Baxter Meadows Neighborhood Center Association for its benefit or that of its members, all maintenance, repairs, or replacements on any Parcel or on any structure thereon belonging to any Owner shall, as otherwise provided herein, be at the expense of the Owner thereof. A similar right of access shall also be reserved and be immediate for the making of emergency repairs therein in order to prevent property damage, personal injury, or continued property damage. All damage improvements shall be restored to substantially the same condition in which they existed prior to the damage. All maintenance, repairs, and replacements of the Common Area, Paths, and Improvements shall be the common expense of the Baxter Meadows Neighborhood Center Association and all of the Owners as provided in the Common Area Maintenance Plan; provided however, if such damage is caused by a negligent or tortuous act of any Owner, members



of his family, his Occupant, agents, employees, invitee(s), or licensee(s), then such Owner shall be responsible and liable for all such damage.

Public deeded right of way for general ingress and egress to each lot and to all common areas for the general use of all owners, their guests, tenants and the general public shall exist over all common areas, roads, and trails within Baxter Meadows.

**Q. UTILITY EASEMENT**

A utility easement for such utilities as electricity, gas, sewer, communications, telephone, water, television, cable communications and other utility equipment is provided for within Baxter Meadows Neighborhood Center. All owners shall have the right to enter upon for the purpose of excavation, installation, operation, maintenance, repair, and replacement of water drainage systems or structures, water mains, sewers, telephones, electrical conduits and systems, gas mains and lines, communication lines and other public or private utilities (collectively "utility lines") such easements upon written approval of the Neighborhood Center Association.

Vivid Networks will provide high-speed fiber optic connectivity to each residential or commercial building within Baxter Meadows. This fiber optic cable carries telephone, data, high-speed Internet, television and other signals. Each individual residential unit or individual business unit within the Neighborhood Center Association shall pay a minimum monthly service charge toward Vivid Networks Services as required by the Neighborhood Center Association. At the time of this Declaration, the minimum monthly service charge shall be \$45 per each individual residential unit and \$100 for each individual business unit, which will be invoiced directly to the unit owner by Vivid Networks and will apply to services of the unit owner's choice. These minimum service charges may be amended by the Neighborhood Center Association in accordance with these covenants and the by-laws. Vivid Networks shall use its best efforts to install requested services within a reasonable time after receipt of a service order. Should requested services be unavailable due to delays or other circumstances under Vivid Networks control, the minimum monthly service charge shall be waived on a month-to-month basis until services are available and installed.

Satellite dishes and other communication equipment may be installed upon meeting the requirements elsewhere in these covenants and approval of the Neighborhood Center Association.

Easements for ingress and egress and for utilities shall not be moved, deleted or restricted without the written approval of all affected owners. Any property owner with Baxter Meadows Neighborhood Center who causes damage to another owner's property because of its installation, operation, maintenance, repair, or replacement of utility lines shall repair such damage, and incur expenses of such damage, within thirty (30) days.

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**R. INSTALLATION AND MAINTENANCE OF UTILITIES**

Baxter Meadows shall cause the installation of electric power, telephone, and water line service to the junction of the main access road to each lot and lot driveways. Owners shall bear all responsibility and costs from such junction to building or home sites.

All utilities of every nature shall be installed and maintained underground. Piping and wiring shall be concealed.

Each owner shall be responsible for utility installation and maintenance in accordance with state and local regulations.

**S. DOMESTIC PETS**

No domestic animals or fowl shall be maintained on any lot except as provided herein. Not more than three generally recognized house or yard pets are permitted, provided that such animals shall at all times be restrained or leashed. Kennels with the appropriate license are allowed only in rear yards. Excessive barking or other animal noises shall not be tolerated. No pets shall be raised or cared for on a commercial basis.

If any animals are caught or identified chasing or otherwise harassing wildlife or people, or barking excessively, the Baxter Meadows Neighborhood Center Association shall have the authority to have such animal(s) impounded at any available location, and may assess a penalty against the Owner of such animal(s) of not more than fifty dollars (\$50.00) plus all costs of impoundment. If any such animal(s) are caught or identified chasing or harassing wildlife or people, or barking excessively on any additional occasion, the Baxter Meadows Neighborhood Center Association shall have the authority to have such animal(s) impounded and may assess a penalty of not more than one hundred dollars (\$100.00) per animal, plus costs of impoundment. No Owner of any animal(s) impounded for chasing or harassing wildlife or people, or for barking excessively, shall have a right of action against the Baxter Meadows Neighborhood Center Association or any member thereof, for the impoundment of any such animal(s).

**T. INOPERABLE VEHICLES**

No inoperable vehicle shall be permitted to park on any property within Baxter Meadows for a period of more than one (1) day.

**U. NOXIOUS, OFFENSIVE OR HAZARDOUS ACTIVITIES**

No noxious, offensive, or hazardous activities shall be permitted upon any portion of the property within Baxter Meadows Neighborhood Center nor shall anything be done on or placed upon any portion of the property which is or may become a nuisance to others. A nuisance includes, but is not limited to, any operations or uses which create vibration, electro-magnetic disturbances, radiation, air or water pollution, dust, emissions of odorous, toxic or nontoxic matter (including steam), and excessive noise.



No light shall be produced upon any site or other portion of the property within Baxter Meadows which shall be unreasonably bright or cause unreasonable glare. No sound shall be produced on any site or other portion of a property which is unreasonably loud or annoying, including but not limited to speakers, horns, whistles and bells or excessive barking or other animal noises.

No off-road motorized travel shall be permitted. Use of snowmobiles within the boundaries of Baxter Meadows Neighborhood Center is also prohibited. Use of motorized vehicles is subject to ordinances and regulations of the City of Bozeman.

Neither hunting nor the discharge of firearms shall be allowed in Baxter Meadows.

**V. SIGNS**

No signs, billboards, posters, displays, advertisements or similar structures shall be permitted except as provided for in the Design Guidelines, approved in advance in writing by the Design Review Board and through proper permitting procedures with City of Bozeman.

**W. STREET AND COMMON AREA LIGHTING**

Baxter Meadows Development L.P. is responsible for installing the street lighting throughout the Baxter Meadows Neighborhood Center. Once installation is complete The Baxter Meadows Neighborhood Center Association will be responsible for the maintenance and upkeep of the system until such time a Street Improvement Lighting District (SILD) is applied for and granted by the City of Bozeman.

**X. SPECIAL IMPROVEMENTS DISTRICTS**

All Owners of property within Baxter Meadows Neighborhood Center will be required to sign waivers of right to protest on all future Special Improvement Districts (SID's) in which the City of Bozeman may require them to participate. This waiver acknowledges that the City will not assume dedication and/or maintenance of the local subdivision streets that vary from City standards unless the street(s) are brought up to City standards, or the property owners agree to an assessment to fund improvements required to bring the street(s) up to City standards. The waivers shall include all SID's including, but not limited to, those for a park maintenance district, Baxter Lane and North 19<sup>th</sup> Avenue signal improvements, Baxter Lane and Baxter Parkway signal improvements, and North 19<sup>th</sup> Avenue improvements.

**Y. CONDITION OF PROPERTY AND BUILDINGS**

Owners shall maintain lots and improvements in good repair and appearance at all times. All landscaping improvements and property shall be kept and maintained in good, clean, safe, sound, attractive, thriving and sightly condition and in good repair at all times.

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1. Maintenance of Building

It shall be the sole responsibility of the owner of any property within Baxter Meadows Neighborhood Center to keep and maintain all property buildings and structures, improvements, and appurtenances located thereon in a good, safe, and clean state of repair at the property Owner's sole expense. This shall be done in all respects in accordance with all applicable governmental, health, fire, and safety ordinances, regulations, requirements, directives, and the Declaration of Covenants of record for Baxter Meadows Neighborhood Center. The property owner shall at regular and frequent intervals remove, at the property owners' sole expense, any garbage or rubbish that may accumulate upon such property.

2. Maintenance of Unimproved Sites

Property that is not improved or built upon shall be maintained in a good and clean appearance by the property owner. Weeds, brush, trash, and rubbish must be removed at least every three (3) months. Declarant and the Baxter Meadows Neighborhood Center Association retain the right to perform the necessary maintenance and clean-up on any property that is not maintained as set forth herein and may charge the property owner for all costs incurred in doing so.

3. Sewer and Water Facilities

All new development shall be served by public sewer facilities and public water service.

4. Utilities to be Buried

All utilities, including but not limited to electrical distribution and transmission lines, shall be buried.

5. Weed Management

All noxious weeds on the latest Gallatin County Noxious Weed List must be controlled on all properties in Baxter Meadows Neighborhood Center. All costs associated with noxious weed control shall be the responsibility of the property owners of record.

6. Outside Storage

Outside storage shall not be permitted in Baxter Meadows Neighborhood Center except for limited, short-term outside storage during construction. No trailer (horse, boat, snowmobile, etc), boat, camper, motor home, recreational vehicle, snowmobile, vehicle or other equipment generally associated with recreation and leisure time activity shall be situated or parked on any lot or street in Baxter Meadows Neighborhood Center for more than five (5) days in any calendar year, unless it is enclosed by a garage meeting the design requirements of the Design Guidelines, at the minimum, and any provision of these covenants.

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7. Drainage Ditch

The owner of any lot in Baxter Meadows Neighborhood Center shall at all times conduct its use and activities in a manner that will preserve the integrity of the Drainage Ditch, including the prevention of any degradation of water quality, any reduction in the flow of water, and any damage to the bed or banks of the Drainage Ditch. The owner of any lot in Baxter Meadows Neighborhood Center shall not conduct or permit the conduct of the following activities:

- a. The discharge of any liquid, solid, or gas including but not limited to polluting substances or hazardous materials into the Drainage Ditch;
- b. The dumping of grass clippings or landscaping material or debris in the Drainage Ditch;
- c. Any refuse dumping-encouraging activities

8. Wetlands

The owner of any lot in Baxter Meadows Neighborhood Center shall at all times conduct its use and activities in a manner that will preserve the integrity of the Wetlands.

9. The Lack of Maintenance

If the owner of any property within Baxter Meadows Neighborhood Center shall, at any time, fail to keep and maintain property, building, improvements, and appurtenances in a first-class condition as specified herein, the Baxter Meadows Neighborhood Center Association may provide written notice to the property owner regarding the lack of maintenance. The property owner shall have seven (7) days to provide the necessary maintenance. If the property owner fails to correct any maintenance issue within seven (7) days of written notice from the Baxter Meadows Neighborhood Center Association the Baxter Meadows Neighborhood Center Association is authorized to provide the maintenance or to contract with third parties for the maintenance. The property owner shall then reimburse the Baxter Meadows Neighborhood Center Association for all of the costs and expenses that it incurs in providing or arranging maintenance for the property owner. The property owner shall reimburse the Baxter Meadows Neighborhood Center Association within ten (10) days of being invoiced. If the property owner does not reimburse the Baxter Meadows Neighborhood Center Association within ten (10) days of the date of its invoice, interest shall accrue upon the outstanding balance due at fifteen (15) percent interest per annum.

**VII. NEIGHBORHOOD CENTER ASSOCIATION MAINTENANCE PLAN**

**A. INTENT**

The intent of this section is for Baxter Meadows Neighborhood Center Owners' Association to establish a maintenance plan for the Common Areas within the subdivision in accordance with Section 16.14.130 of the Bozeman Municipal Code, as the date of this Agreement. The purpose of the management plan shall be to provide for the long term maintenance, reconstruction and replacement of all surfaces located in the Common Areas in the



subdivision. These Common Areas include: Public Linear Park (bordering Vaquero Parkway), Private Trail Corridor 1 (located in the 15' utility easement traveling north/south between Blocks 16, 18 & 20), Private Trail Corridor 2 (located in the 15' utility easement traveling north/south between Blocks 19 & 21), Lot 2 Block 16, Lot 3 Block 17, Lot 8 Block 17, Lot 9 Block 18, Lot 7 Block 19, Lot 8, Block 19, Lot 3 Block 20, and Lot 3 Block 21 of Phase 2 as shown in the Final Plat.

**B. ASSOCIATION RESPONSIBILITY**

The Baxter Meadows Neighborhood Center Association is responsible for permanent care and maintenance of all common areas and subdivision streets within Baxter Meadows. These responsibilities include maintenance of vegetation, playground areas, playground equipment, sidewalks, common open space, center areas, public parking facilities, paths and trails, boulevards and medians, alleys, all storm water facilities and recreational areas and all liability insurance and applicable taxes. The Baxter Meadows Neighborhood Center Association is responsible for maintenance of the Common Areas listed above and the storm water detention basins, storm water facilities, the stream/ditch in the Public Linear Park as well as the sidewalks adjacent to each of these areas. The Baxter Meadows Neighborhood Center Association is also responsible for costs of irrigation including the cost of water and irrigation system maintenance.

The property owners dependent on the sewage lift station shall be responsible for financing the costs of its operation and maintenance, which will be the responsibility of the City. The Declarant shall agree in writing to a surcharge to cover the costs of operating and maintaining the lift station. At such time as the Baxter Meadows Neighborhood Center Association takes ownership and control of all Common Areas, the Baxter Meadows Neighborhood Center Association shall cover its proportionate share of the operation and maintenance costs of lift station.

**C. MAINTENANCE BUDGET**

On an annual basis, the Baxter Meadows Neighborhood Center Association will prepare or cause to be prepared an annual budget for the Maintenance Expenses. The budget shall be sent to all of the owners of property in Baxter Meadows Neighborhood Center as part of the Baxter Meadows Neighborhood Center Association's Annual Assessments. The Baxter Meadows Neighborhood Center Association shall use its diligent, good-faith efforts to operate and maintain the Common Areas in accordance with the budget. Notwithstanding the foregoing, the Baxter Meadows Neighborhood Center Association shall have the right to make emergency repairs to the Common Areas to prevent injury or damage to persons or property, it being understood that the Baxter Meadows Neighborhood Center Association shall nevertheless advise all property owners of such emergency condition as soon as reasonably possible, including the corrective measures taken and the costs thereof.

Each property owner shall have the right to audit the Baxter Meadows Neighborhood Center Association's books and records pertaining to the operation and maintenance of the Common Areas for the calendar year covered by such reconciliation(s). A property owner shall notify the Baxter Meadows Neighborhood Center Association of such party's intent to



audit at least sixty (60) days prior to the designated audit date. Copies of all audits shall be provided to the Baxter Meadows Neighborhood Center Association. The cost of the audit shall be assumed by the auditing party.

**D. MAINTENANCE EXPENSES**

The Baxter Meadows Neighborhood Center Association shall assume and perform maintenance operations with respect to the Common Areas and all incurred costs shall be classified as "Maintenance Expenses". These Maintenance Expenses are deemed a benefit to all of the owners of property in Baxter Meadows Neighborhood Center and the cost of providing such services shall be prorated among the owners of the property in Baxter Meadows Neighborhood Center in accordance with the by-laws.

These expenses shall include but not be limited to: real estate taxes, liability insurance, assessments, lighting, landscaping, and signage.

1. If any of the Baxter Meadows Neighborhood Center Association's personnel perform services, functions, or tasks in connection with the maintenance of the Common Areas then the cost of such personnel shall be included in the Maintenance Expenses and shall be equitably allocated according to the time spent performing such duties.
2. The Baxter Meadows Neighborhood Center Association shall pay any and all taxes and assessments levied against the Common Areas. The taxes and assessments paid by the Baxter Meadows Neighborhood Center Association shall be considered Maintenance Expenses to be reimbursed by the property owners on a prorate basis as provided herein.
3. The Baxter Meadows Neighborhood Center Association may purchase liability insurance to insure the Baxter Meadows Neighborhood Center Association any personnel, and the Baxter Meadows Neighborhood Center Association in connection with the Common areas. The costs of such insurance shall be a Common Areas Expense and shall be prorated among the property owners as provided herein.
4. The Baxter Meadows Neighborhood Center Association shall pay its proportionate share of the costs of the sewage lift station's operation and maintenance, which will be the responsibility of the City of Bozeman. The costs paid by the Baxter Meadows Neighborhood Center Association shall be considered Maintenance Expenses and be reimbursed by the property owners on a prorated basis for those Owners dependant on the sewage lift station.

**E. LANDSCAPING MAINTENANCE**

The Baxter Meadows Neighborhood Center Association shall provide maintenance of all Common Areas comparable to the standard of maintenance followed in other first-class developments of comparable size within the Bozeman, Montana area. All



community spaces within Baxter Meadows Neighborhood Center shall be built and maintained to meet or exceed the subject City-defined standards. All community spaces shall be built and maintained in order to implement and achieve the purposes set forth in this Declaration.

The Baxter Meadows Neighborhood Center Association shall provide maintenance of the Common Area. The Baxter Meadows Neighborhood Center Association may employ one or several maintenance contractors to provide such services, to the full extent required herein, by the Baxter Meadows Neighborhood Center Association. The use of a maintenance contract does not release the Baxter Meadows Neighborhood Center Association of any duties or obligations listed herein. Specific maintenance activities and standards are presented below, however, other maintenance activities not specified shall be provided as required.

1. Mowing and General Maintenance

The maintenance contractor shall mow and trim grass within and along the boulevards adjacent to the linear park, Gallatin Green, the storm water detention basins, and the pocket parks. Mowing and trimming shall be provided as needed during the active growing season.

During each visit, the Baxter Meadows Neighborhood Center Association shall also ensure that the inlets and outlets to the storm water detention basins are unobstructed, shall remove any trash from the parks and open spaces, and remove any clippings and debris caused by maintenance.

2. Trees and Shrubs

The maintenance contractor shall provide maintenance to the trees and shrubs within the parks, open space and boulevards including pruning, watering and fertilizing as needed. Shrubs along the edges of the parks located in Baxter Meadows shall be pruned annually to maintain a maximum height less than 4 feet. The shrubs within the parks will be primarily irrigated by the sprinkler system.

The trees within the parks, open space and boulevards will be irrigated by an automatic irrigation system. The typical irrigation requirement for these trees will be 6 inches of water per tree every two weeks from the middle of June to the middle of September. During periods of unusually dry weather, an additional 2 inches of water per tree shall be provided. During periods of adequate precipitation less frequent or intense irrigation will be acceptable. Trees along boulevards and in Common Areas located in Baxter Meadows shall be pruned annually to maintain shape and spread and care will be taken to remove dead or injured branches. Trees that are located on land dedicated to the City of Bozeman must be cared for by a certified arborist.

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3. Sprinkler System Maintenance

The maintenance contractor or a sprinkler system contractor shall provide maintenance to the automated sprinkler system. At a minimum, the contractor will test and inspect the system in the spring to ensure all lines and sprinkler heads are functioning properly and the contractor will blow the water out the systems in the fall. The contractor will provide additional maintenance as required.

4. Wood Chip Mulch Maintenance

The maintenance contractor shall maintain the wood chips within the shrub beds. The wood chips will be raked level during each mowing event. The contractor will also be responsible to ensure that a minimum chip depth of 3 inches is maintained within the protective areas.

5. Raking/Fall Maintenance

The maintenance contractor shall rake and remove leaves from the parks and open space in the fall. Other materials including fallen branches and trash accumulated in the shrubs shall also be removed.

6. Noxious Weeds

Noxious weeds shall be controlled on all common areas by the Baxter Meadows Neighborhood Center Association. Records will be kept of any pesticide applications the records will include: date, location, time, method used, weather conditions, product used and name of applicator.

7. Manholes

All manholes shall be maintained as to be accessible to the City's large flusher truck at all times.

F. SNOW REMOVAL

The Baxter Meadows Neighborhood Center Association shall retain a snow removal contractor to shovel and/or plow snow from all Baxter Meadows Neighborhood Center streets and alleys, and from the sidewalks adjacent to Common Areas. The snow removal contractor will also ensure that the inlets and outlets to the storm water detention basins are unobstructed.

G. DIRECTIONAL SIGNS AND MARKERS

The Baxter Meadows Neighborhood Center Association shall arrange for maintaining, cleaning, and replacing any appropriate directional signs, stop signs, or markers in the Common Areas and driveways as appropriate.



**H.     LIGHTING**

The Baxter Meadows Neighborhood Center Association shall maintain, clean and replace lighting facilities (to the extent the same exist), including light standards, wires, conduits, lamps, ballasts and lenses, time clocks and circuit breakers located in the Common Areas. Lighting located upon the property of any Owner of Baxter Meadows Neighborhood Center and/or any lights that are metered to any property Owner shall not be considered a Common Area improvement and the maintenance and replacement of such light standards and the cost of illumination shall be the obligation of each party upon whose lots such lighting is located.

**I.     FIRE LINES**

Maintaining the fire lines to fire hydrants which service Baxter Meadows Neighborhood Center and paying all fire line charges to the City of Bozeman related to the fire hydrants, if any, shall be the responsibility of the Baxter Meadows Neighborhood Center Association. The costs of maintaining and testing fire lines dedicated to interior sprinkler systems shall be assessed only to those lots that are directly serviced by such fire lines. Nothing herein shall relieve the City from any responsibility that it may have to provide water service and maintenance to buildings.

**J.     DEBRIS AND REFUSE**

The Baxter Meadows Neighborhood Center Association shall provide periodic removal of papers, debris, filth, refuse, ice, and snow to the extent necessary to keep the Common Areas in a first-class clean and orderly condition; provided, however, that trash and/or garbage removal from a property owner's building shall not be considered a Common Areas Maintenance Expense since such removal obligation is the responsibility of each property owner as lined out herein.

**K.     STREAM/DITCH MAINTENANCE**

The stream/ditch through the linear park shall be maintained to ensure the flow of water is not inhibited. The maintenance contractor shall be responsible for maintenance during the period of May through October. The snow removal contractor shall be responsible for maintenance November through April. Trash and debris including fallen branches, leaves, and excessive vegetative growth shall be removed and disposed of outside of Baxter Meadows. The inlets and outlets of culverts shall be cleared of all debris. Mowing will not be required on a regular basis, but only as appropriate for first class upkeep of the area.

**L.     PLAYGROUND EQUIPMENT INSPECTION**

The Baxter Meadows Neighborhood Center Association shall have all playground equipment inspected annually and have an inspection report submitted to the City of Bozeman Parks and Recreation Department. The Baxter Meadows Neighborhood Center Association shall hire an independent contractor or contract with the City of Bozeman to



perform the inspections. The inspector hired must be a National Certified Playground Safety Inspector.

**M. ANIMAL CONTROL**

Domestic pets shall not be allowed at any time in the Common Areas or paths unless on a leash. Temporary fencing around shrubs and trees to prevent animal depredation shall be permitted for the period of time necessary to ensure survival of the plantings.

Rodents may be controlled if levels of predation threaten the survival of plantings or constitute a health hazard. Poisons may not be used on City of Bozeman or state owned or dedicated land.

Pesticides may be used to control insect populations that are a nuisance, threaten the survival of plantings or constitute a health hazard. Pesticides may be applied only in accordance with applicable State laws.

**N. PRIVATE STREETS**

The Baxter Meadows Neighborhood Center Association is responsible for maintenance of all subdivision streets within Baxter Meadows Neighborhood Center including cleaning, striping, repairs and snow removal. All manholes shall be maintained as to be accessible to the City's large flusher truck at all times.

**CONTINUED ON NEXT PAGE**



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Shelley Vance-Gallatin Co MT MISC 168.00

IN WITNESS WHEREOF, this instrument has been executed this 21 day of July, 2004.

**BAXTER MEADOWS DEVELOPMENT, L.P.**

Gerald R. Williams  
Baxter Meadows Construction, Inc., General Partner  
By: Gerald R. Williams, President

STATE OF MONTANA        )  
  : ss.  
COUNTY OF GALLATIN    )

This instrument was acknowledged before me on July 21<sup>st</sup>, 2004 on behalf of Baxter Meadows Development, L.P, by Gerald R. Williams, as President of Baxter Meadows Construction, Inc., General Partner

Rebekah Williams  
Notary Public for the State of Montana  
Printed Name: Rebekah Williams  
Residing at: Billings, MT  
My Commission Expires: Nov. 18, 2007

(SEAL)





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**RESTATED BY-LAWS OF THE NEIGHBORHOOD CENTER ASSOCIATION**

428 1-77423

This document replaces, in its entirety, those By-Laws recorded on July 9, 2004, as Document No. 2156017, records of Gallatin County, Montana.

Baxter Meadows Development, L.P. is the present owner in fee simple of all the property included within the boundaries of Baxter Meadows annexation to the City of Bozeman. Baxter Meadows Development, L.P. does hereby adopt the following By-Laws of the Baxter Meadows Neighborhood Center Association. Baxter Meadows Development, L.P., as Declarant, has also adopted and recorded a Declaration of Protective Covenants and Restrictions for Baxter Meadows Neighborhood Center (the "Covenants"), and the Baxter Meadows Neighborhood Center Design Review Guidelines and Regulations (the "Design Guidelines") which operate and should be construed in conjunction with these By-Laws.

**I. MEMBERSHIP**

**A. MEMBERSHIP**

Every owner of a lot or portion thereof, within Baxter Meadows Neighborhood Center (BMNC) shall be a member of the Baxter Meadows Neighborhood Center Association (the "NCA"). Membership shall be appurtenant to and may not be separate from the ownership of any lot subject to assessment. Each subsequent owner of a lot(s) within Baxter Meadows Neighborhood Center shall, upon the sale or other disposition of a lot(s) within Baxter Meadows Neighborhood Center, automatically becomes a member of the NCA, and the previous owner will cease to be a member of the NCA, unless the previous owner continues to own a lot(s) within Baxter Meadows Neighborhood Center. Each owner shall be responsible for advising the NCA of his or her acquisition of ownership and his or her current address. Each owner shall be bound by these By-Laws and the duly passed Resolutions of the NCA. The NCA may be incorporated as a non-profit Montana Corporation.

**B. CLASSES**

There shall be two classes of members in the NCA, Class A and Class B members, which are defined as follows:

**CLASS "A":** Class A membership shall be all lot owners with the exception of Class B members named below. Class A members shall be entitled to one vote for each lot owned if such lot is occupied by a single family dwelling or if such lot is vacant. At the time construction of a multi-family dwelling or business/commercial structure on any lot is completed and ready for occupancy, there shall be one vote for each of the following:

One vote per each separately titled individual dwelling unit (e.g. condominium unit)

One vote for each separately titled individual business unit (IBU) up to 2500 square feet plus one vote per each additional complete increment of 2500 square feet. The following examples would apply:



|          |               |
|----------|---------------|
| 1 vote:  | 1000 s.f. IBU |
| 1 vote:  | 2700 s.f. IBU |
| 2 votes: | 5000 s.f. IBU |
| 2 votes: | 6000 s.f. IBU |
| 3 votes: | 7500 s.f. IBU |
| 3 votes: | 9000 s.f. IBU |

**CLASS "B":** The Class B member shall be Baxter Meadows Development, L.P., which shall be entitled to three quarters (3/4) of all votes. Class B membership shall cease and be converted to Class A membership when three quarters (3/4) of the lots being of the original lots in Baxter Meadows Neighborhood Center are sold to third parties or within five years of final approval whichever comes first. Thereafter, Baxter Meadows Development, L.P. shall become a Class A member and shall be entitled to one vote for each unsold platted lot at such time Baxter Meadows Development, L.P. transfers ownership and control of all Common Areas to the NCA.

**II. OPERATIONS**

**A. MEETINGS**

There shall be an annual meeting conducted in accordance with the By-Laws. Written notice of any meeting called for the purpose of taking any action authorized hereunder shall be mailed to all members not less than 10 days or more than 45 days in advance of the meeting. A general description of the items to be considered at such a meeting shall be contained in the notice. At such meeting called, the presence of members or of proxies entitled to cast fifty-one percent (51%) of all the votes of Class A and Class B members combined shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**B. DIRECTORS AND OFFICERS**

Members of the NCA shall annually elect five (5) Directors, to form the "Board of Directors", from its membership who shall be responsible for the overall operations of the NCA as described herein. The Directors shall also have the power and responsibility of setting an annual budget. Such Directors shall be elected by a majority of the total votes of Class A and Class B members represented in person or by proxy at an annual meeting of the NCA, or in the absence of an annual meeting, at any meeting at which a quorum is present and all members have been notified that such elections will be up for discussion. The Directors shall serve a term of one year, but may be removed from time to time at any regularly called meeting of the NCA by a vote of two thirds (2/3) of the total votes of Class A and Class B members represented at any meeting in person or by proxy, provided that a quorum is present, or immediately, upon termination of the Director's membership. Nothing shall prohibit the re-election of any Director for consecutive terms.

The Directors are authorized to manage the business of the NCA and are authorized to take such actions as shall be necessary and reasonable to carry out the functions of the NCA. The Directors shall have the authority to hire additional professional officers or other personnel which they deem necessary for the smooth, efficient, and professional functioning of the NCA. It is the general intent of this paragraph that these professional officers or other personnel are hired because they serve some specific function which is not able to be professionally performed by a regular member of the



NCA. Although, if one of the NCA members is professionally qualified to perform a specific function which the NCA needs, then it is permissible for a member to also be hired on this specific professional capacity. These hired officers or other personnel shall not have a vote, unless they are a member of the NCA. They may include, but not be limited to the manager, secretary, treasurer, accountant, and maintenance personnel. The NCA shall also have the authority to make contractual arrangements with outside entities, including but not limited to an attorney, accountant, engineer, maintenance contractors, and building contractors to provide for the smooth, efficient, and professional function of the NCA.

The Directors shall elect a president and secretary/treasurer from among the Directors or the members to serve as the officers of the NCA. The Directors may also elect such other officers as they deem necessary. The duties of these officers shall be established by the Board of Directors.

The initial Board of Directors shall consist of Gerald R. Williams, who shall serve as president of the board, Michael McGullam, who shall serve as secretary/treasurer of the board and Gregory J. Allen, who shall serve until new directors and officers are duly elected by the NCA.

**C. RULES AND REGULATIONS**

The NCA may adopt such additional rules and regulations as shall be reasonable and necessary to carry out its authority and duties under the terms of these By-Laws, the Covenants, or the Design Guidelines, provided that such additional rules and regulations are first adopted by a majority of the Board of Directors and then submitted to a meeting of the NCA for a vote by delivering notice of the meeting together with a copy of the additional rules and regulations to the last known address of each lot owner at least thirty days before the meeting. Additional rules and regulations shall be adopted by a two-thirds (2/3) majority vote of the total votes of all Class A and Class B members represented in person or by proxy at any meeting at which a quorum is present and all members have been notified that such rules or regulations will be up for discussion. Additional rules and regulations shall be effective 30 days after the same are executed and recorded by the Board of Directors of the NCA with the Clerk and Recorder for Gallatin County, Montana, and mailed to each lot owner at their last known address.

**D. DISAGREEMENTS**

Any disputes or disagreements among members of the NCA shall be presented to the Board of Directors, who shall in turn decide a reasonable resolution to be taken before the NCA for voting. This resolution shall then be submitted to a meeting of the NCA for a vote. The notice and terms of which are described under Meetings above. This resolution shall be deemed acceptable by all parties by a 2/3 majority vote of the total votes of all Class A and Class B members represented in person or by proxy at any meeting at which quorum is present and all members have been notified that such dispute will be up for discussion.

**III. DESIGN REVIEW BOARD**

**A. COMPOSITION.**

The Design Review Board for Baxter Meadows Neighborhood Center shall initially be composed of Gerald R. Williams, Michael McGullam and Gregory J. Allen. These members shall serve until twenty-five lots in Baxter Meadows Neighborhood Center have been conveyed to third parties. In the event that one member cannot serve until twenty-five lots are sold, then the Declarant shall



appoint another person to take their place. After the required lots have been sold, the BMNC Design Review Board shall be composed of not more than three (3) members selected by the Board of Directors of Baxter Meadows Neighborhood Center Association. Two (2) of the members of the BMNC Design Review Board shall be members of Baxter Meadows Neighborhood Center Association, and one (1) shall be a disinterested, outside third party. Each member of the BMNC Design Review Board shall serve for a term of one year, unless re-appointed.

Each member of the BMNC Design Review Board shall have one vote. Action approved by the vote of two of the three members shall be the act of the Design Review Board. A written permanent record shall be kept of all action taken by the Board which shall include the date, the action taken, and a short statement of the reason for such actions.

**B. ADDITIONAL PROCEDURES AND DESIGN REGULATIONS**

The BMNC Design Review Board shall proceed in accordance with the provisions of the Design Guidelines, and shall have the authority to adopt construction regulations and such other regulations as shall be reasonable and necessary to exercise its authority and its duties set forth in these By-laws, the Design Guidelines, and the Covenants.

Any additional procedures or design regulations adopted by the BMNC Design Review Board shall not be effective until thirty days after mailing a copy of the additions to the last known address of the current lot owners.

**C. FINAL PLANS**

Approval by the BMNC Design Review Board neither represents, nor shall the BMNC Design Review Board offer any opinion as to whether plans and specifications conform to building codes or State and Local Regulatory requirements. Approval does not include examination for errors or omissions. Appropriate plans shall be submitted to the City of Bozeman for building plan review, site plan review, and any additional reviews as required by the City for approval and necessary fees and permits paid for and be obtained.

Approval granted by the BMNC Design Review Board for any plans shall remain effective only in the event that construction is commenced within six (6) months of the date of the approval, after which time the approval shall lapse and be of no further force or effect. If the six (6) months time frame is allowed to lapse without construction commencing then the applicant must re-apply for approval from the BMNC Design Review Board, as if applying for review of a new project.

**D. ADDITIONS, CHANGES, REFINISHING**

No additions or changes (including remodeling) of any portion of the lot except the interior finishes of the structure shall be commenced without approval of the BMNC Design Review Board. The approval shall be sought by submissions of final working plans and drawings. No preliminary plans need be submitted, but it is suggested that the applicant submit a schematic set of drawings for review by the BMNC Design Review Board. While this preliminary submittal is optional, it can be used by the applicant to determine aspects of the design that might be changed to assure later approval prior to the time and expense of a complete set of Construction Drawings.

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**E. CERTIFICATE OF COMPLIANCE**

Before any owner may occupy or otherwise use a residence or other structure in the Baxter Meadows Neighborhood Center, the owner must obtain a Certificate of Compliance from the BMNC Design Review Board in the form set forth in the Design Guidelines, acknowledging compliance with the Design Guidelines in the design and construction of any residence or other structure built within the boundaries of Baxter Meadows Neighborhood Center. A Certificate of Occupancy must also be obtained from the City of Bozeman.

**F. COMMUNICATIONS**

Communications with the BMNC Design Review Board shall be initiated by directing inquiries and submissions to:

BMNC DESIGN REVIEW BOARD  
Baxter Meadows  
P.O. Box 11060  
Bozeman, Montana 59719

**IV. ASSESSMENTS**

**A. LEVYING ASSESSMENTS**

The Directors shall have the authority to levy assessments on each lot and the owner or owners thereof for the purposes of improvement, repair and maintenance of roads, common areas, snow removal, administration, accounting and legal fees. Assessment shall be made on a per vote basis as established under Roman Numeral I, Paragraph B (Classes) of these By-laws. However, once Baxter Meadows Development, L.P. has sold fifty percent (50%) of the original lots, for purposes of assessments only, Baxter Meadows Development, L.P. shall be assessed as if it were a Class A member. There shall be three types of assessments:

1. "Annual Assessments", which shall be a pro-rata portion of anticipated expenses for the coming year based upon the budget prepared by the Directors;
2. "Capital Improvement and Compliance Assessments" approved by a two-thirds (2/3) majority of the total votes of Class A and Class B members; and
3. "Emergency Assessments" levied at the discretion of the Directors without submitting the assessment to a vote of the members, in order to rectify and/or address emergencies.

Each type of assessment is described below. The total assessment shall be divided and paid equally by the owners of each lot, including unsold lots owned by Developer, regardless of the size of the lot.

The Owner(s) of any lot or portion thereof, hereby covenants and agrees, by the acceptance of a deed therefore (regardless of whether it shall be so expressed in such deed) to all matters set forth in these By-Laws, the Covenants, and the Design Guidelines, and to pay to the NCA such assessments as the NCA shall levy against each lot. No owner shall be entitled to a reduced assessment because such owner does not reside upon the property or does not use the roads or other amenities. No owner may waive or otherwise escape liability for the assessments provided





for herein by non-use or abandonment of his or her lot or because he or she believes that these By-Laws are not being properly enforced.

Assessments shall be due and payable in the method determined by the Board of Directors. An assessment shall be a charge upon the land and shall be a continuing lien upon the property which the assessments are made. Each assessment shall also be a personal obligation of the person who is the owner of the property at the time the assessment falls due.

Upon delivery of the notice of assessment to the owner, the assessment shall be a lien upon the owner until paid. The NCA may record a notice of the lien with the Clerk and Recorder of Gallatin County, Montana. In the event of non-payment within thirty (30) days after recording the notice of the lien, the NCA may foreclose the lien in a manner set forth under Montana law for the foreclosure of liens against real property. The recording of the notice of lien shall be notice to all third parties of the assessment outstanding against the property.

The NCA may bring an action at law against the owners personally obligated to pay the same or may foreclose the lien against the property. In the event of an action to collect a past due assessment, the NCA shall be entitled to recover any or all of the following costs, in addition to the amount of the past due assessment: (1) the costs of filing the lien including interest at the rate of the then prevailing prime rate of interest plus two percent (2%) from the date due; (2) all costs of the action; (3) reasonable attorneys fees incurred in preparation for filing the lien; (4) reasonable attorneys fees incurred in preparing and prosecuting the action.

The sale, transfer or encumbrance of any lot shall not affect the assessment lien or the personal liability of the owner except to the extent such lien is extinguished by Montana law. No sale, transfer or encumbrance shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof, provided that if the assessment lien has not been recorded with the Clerk and Recorder of Gallatin County, a good faith purchaser or encumbrancer without actual notice of the outstanding assessment shall take the property free of the lien.

Liability for any assessment or from a lien thereof shall rest with all the property owners on said lot equally, in the case of condos/units. Levying assessments shall be done in accordance with ownership documents and agreements that run with said development. Each owner or the association as a whole, shall be liable to the NCA for any or all of the costs of collecting a past due assessment, as described herein, on their portion of the lot.

**B. PURPOSE OF ASSESSMENTS**

The assessments levied by the NCA shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners of the property within the Baxter Meadows Neighborhood Center and the NCA for the improvement, repair, maintenance, and protection of the roads, Paths, Parking Areas, Common Areas and facilities. As such, these purposes may also include, but shall not be limited to, funding for: the payment of taxes; the purchase of insurance for the Common Area and risks involving the NCA maintenance (including snow removal) of roads, parking areas, utilities, streams, creeks, drainage ditches, ponds, paths, bridges and other improvements or easements owned by the NCA or used by the Owners in common; the maintenance and protection of pasture lands, crops, streams, creeks, drainage ditches, ponds, lagoons, timber, wildlife and animals within the property; the planting, cultivating, mowing, maintenance, harvesting and cutting of fields, grass, weeds or lands within the property; the construction, maintenance and repair of all Improvements, including buildings, structures, ponds, lagoons, drainage ditches, utilities, recreational facilities



owned by the NCA and constructed on the Common Area or elsewhere for the benefit of the NCA; and the cost of labor, equipment, services, materials, management, protection and supervision of the assets and interests of the NCA.

**C. ANNUAL ASSESSMENTS**

The owner of each lot or portion thereof, including Baxter Meadows Development, L.P. with respect to all unsold lots, shall be assessed annually on a per-vote basis for a pro-rata portion of anticipated expenses for the coming year based upon the budget prepared by the Directors. After the initial Annual Assessment is set, the assessment against any lot shall not be increased more than 20 percent (20%) per year without the approval of eighty percent (80%) of the total votes of Class A and Class B members represented at any meeting in person or by proxy, and all members have been notified that such increase will be made, unless the increase is required to comply with a mandatory rule, regulation, or order of municipal, county, state or federal government.

Annual assessments shall made on each lot on a per vote basis pursuant to Roman Numeral I, Paragraph B (classes) of these by-laws and be apportioned among the individual Property Owners on a per vote basis. Proximity to the Common Area, percentage of street use, or any other variables which may seem more or less favorable to an individual Parcel Owner will not be valid in the determination of the annual assessments.

The Annual Assessments provided for herein shall commence as to each lot on the date of closing on the sale of such lot from Baxter Meadows Development, L.P. to a third party. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each lot based upon a budget of the estimated expenses to cover the normal operating expenses of the NCA for each year as determined in conformity with standard accounting practices, together with such additional amounts as may, in their reasonable judgment, be necessary to cover any past deficits from operations or to create reasonable reserves for the future cost of operations of the NCA for each year. At least thirty (30) days in advance of the due date of each annual assessment, written notice of the annual assessment and the due date shall be mailed to every owner at their last known address. The due dates shall be established by the Board of Directors. The NCA shall, upon demand, and for a reasonable charge, furnish a certificate signed by the Directors of the NCA, setting forth whether the assessment of a specified lot has been paid.

**D. CAPITAL IMPROVEMENTS AND COMPLIANCE ASSESSMENTS**

**1. Capital Improvements**

The NCA may levy assessments for construction or reconstruction or unexpected repair or replacement of a capital improvement or equipment for use consistent with the purposes of the NCA.

**2. Compliance**

The NCA may levy assessments for purposes of defraying costs, including legal fees to enforce any protective covenant or to exercise any authority or responsibility granted to the NCA, including but not limited to enforcement of all rules and regulations adopted by the NCA, or to pay for the necessary repair or maintenance of a property or residence which an owner has otherwise refused to repair or maintain.

**E. EMERGENCY ASSESSMENTS**

Emergency assessments shall be levied only to meet the costs and expenses precipitated by a condition which must be remedied promptly to ensure the safe and adequate discharge of the responsibilities of the NCA. This may include items which would otherwise be considered as Capital Improvement and Compliance Assessments, if the Board of Directors determines (1) that the capital improvement or compliance action is absolutely necessary; and (2) that circumstances make it impractical to put the matter to a vote of the members due to timing or other constraints. Any improvements or other work required by local, state, or federal agencies which must be completed in a timely fashion and cannot be included in the Annual Assessment for the following year shall also be considered Emergency Assessments.

**V. FORECLOSURE AND EXECUTION**

Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at a rate of five (5) percentage points above the Prime Rate for Bank Lending in the *Wall Street Journal* on the due date.

As further security for payment of assessments levied by the NCA, the NCA may, in addition to foreclosing upon the lien as described above, execute upon a judgment through all remedies provided at law and equity, including sale of the liened parcel in accordance with the laws of the State of Montana. At such a sale, the NCA may bid upon and acquire such lot.

No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Parcel.

**VI. ENFORCEMENT**

**A. ENFORCEMENT**

The Conditions, Covenants, and Restrictions contained herein shall run with the land, and be binding upon and insure to the benefit of the parties hereto and the owners of property within Baxter Meadows Neighborhood Center. The Conditions, Covenants, and Restrictions may be enforced by the NCA, as well as owners of property within Baxter Meadows Neighborhood Center.

All remedies provided under the Covenants, these By-Laws, and the Design Guidelines, as well as all of the rules and regulations of the NCA and remedies and authority granted to individual owners to enforce covenants shall be cumulative and shall be in addition to, and not in substitution of, all other rights and remedies which the NCA may have under law.

In addition, any owner, Baxter Meadows Development, L.P. the NCA or the City of Bozeman may bring an action for damages for injunctive relief to abate a nuisance, to restrain any threatened or prospective violation or continuing violation of any portion of these By-Laws, the Covenants, or the Design Guidelines. In any such enforcement action, the prevailing party shall be entitled to recover all costs, court costs, costs of discovery and reasonable attorney fees.

**B. VIOLATIONS AND REMEDIES**

Violation by an Owner, Occupant, Licensee, Architect, or representative of the Owner ("Defaulting Party") of any restrictions, conditions, covenants or agreements herein contained shall give the NCA (acting on behalf of one or more members) right to provide a reasonable notice to the Owner

specifying the particulars in respect to which its performance is deemed to be unsatisfactory and requesting that the Defaulting Party either correct the problem or contact the NCA in order to attempt to resolve any disagreements which may exist.

If during the thirty (30) day period prior from the date of such notice such performance continues to be unsatisfactory, and the Defaulting Party has failed to respond or refused to negotiate, the NCA shall give a second notice of dissatisfaction in the same manner. If during the fifteen (15) day period from the date of such second notice the performance continues to be unsatisfactory, the NCA shall then have the right to enter upon the property concerned, and to summarily perform maintenance, repair, abate, and/or remove at the expense of the Owner any erection, thing, or condition that may be in, or upon the Parcel, building, Common Areas, road or right of ways contrary to the provisions hereof without being deemed guilty of trespass. This action shall not relieve the Defaulting Party of the obligation to perform, keep and observe such requirements as to future maintenance, performance, or construction. The Defaulting Party agrees to promptly pay to the NCA, on demand, the costs of performing such repair or maintenance or other curative action, together with interest therein at a rate equal to fifteen percent (15%) per annum from the date of disbursement of such costs until paid.

The NCA may terminate any obligations to perform maintenance or repair or other curative action as to the Defaulting Party's Lot upon ten (10) days prior written notice to the Defaulting Party.

The result of every act or omission whereby restrictions, condition, covenant, or agreement is violated in whole, or in part, is hereby declared to be and constitute a nuisance, and every remedy allowed by law against a nuisance, either public or private, shall be applicable against every such result. The NCA, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, fines and charges now or hereafter imposed. Failure by the NCA or by any Owner to enforce, or delay to enforce, any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**C. COSTS OF ENFORCEMENT**

The Declarant or Neighborhood Center Association shall be entitled to recover its reasonable attorney's fees and costs in enforcing this Declaration, including but not limited to any attorney's fees and costs that the Declarant may incur in collection of annual assessments and Common Area expenses from the Owner of any lot within Baxter Meadows Neighborhood Center.

Should any lawsuit or other legal proceeding be instituted by the NCA against an Owner alleged to have violated one or more of the provisions of this Declaration and should the NCA (or any member thereof) be wholly or partially successful in such proceeding, the offending Owner shall be obligated to pay the costs of such proceeding, including reasonable attorney's fees at both the trial and appellate level.

**D. SEVERABILITY**

Invalidation of any of these covenants or restrictions by legal judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

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**E. RIGHT TO A LIEN**

The NCA performing maintenance and/or repair shall, with respect to such work, and so long thereafter as any charge for such remains unpaid as provided above, have a lien on the lot of the Defaulting Party to secure payment of the costs and interest set forth above, together with all costs and fees incurred in preparing, filing and enforcing said lien (including reasonable attorney's fees). This lien shall be in the nature of a contractual lien under Montana law and shall be performed by the recording of the Statement of Lien signed by the NCA (or any one member) or its agent, in the real estate record of Gallatin County, Montana, and may be foreclosed as a contractual lien in accordance with the procedures applicable to such liens or, at the option of the holder of the lien, as a mortgage under Montana law. Such lien shall be junior to and will in no way impair any lien or charge of any first mortgage or first trust indenture on the Lot, recorded prior to or subsequent to the recording of the Statement of Lien.

**F. INJUNCTIVE RELIEF**

In addition to the remedies set forth above, in the event of any violation or threatened violation by any Owner, lessee, or occupant of any portion of the Development of any of the terms, covenants and conditions of this Declaration, any or all of the Owners of the lots shall have the right to judicially enjoin such violation or threatened violation by the NCA. Further, any or all of the Owners of the lots shall be entitled to institute proceedings for full and adequate relief from the consequences of said violation or threatened violation, including without limitation a claim for damages, specific performance or any other remedy available at law or in equity. The unsuccessful party in any such action shall pay to the prevailing party a reasonable sum for costs and fees of such action, including attorney's fees.

**G. LIMITATION OF ENFORCEMENT**

This Declaration is for the benefit of the Declarant, the NCA, and the Owners of the lots and may only be enforced by such parties. No other person or entity shall be entitled to claim a breach of this Declaration or to enforce this Declaration, judicially or otherwise.

**H. AMENDMENT**

Unless specifically provided otherwise herein, any provision herein may be amended or revoked and additional provisions added, at any time by a written instrument recorded in the office of Clerk and Recorder of Gallatin County, Montana, duly signed and acknowledged by the Owners of record of not less than seventy-five (75) percent of the votes subject to this Declaration.

Any covenant which is required as a condition of the preliminary plat approval and required by the City Commission may not be amended or revoked without the mutual consent of the owner in accordance with these amendment procedures and the City Commission.

**I. NON-TERMINABLE DECLARATION**

It is expressly agreed that no breach of the provisions of this Declaration shall entitle any party to cancel, rescind or otherwise terminate this Declaration; but such limitation shall not affect, in any manner any other rights or remedies which any party may have hereunder by reason of any breach of the provisions of this Declaration. No breach of the provisions of this Declaration shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value covering



any part of the Development, and any improvements thereon. The provisions of this Declaration shall be binding upon and effective against any Owner of the Development, or any portion thereof, whose title is acquired by foreclosure or trustee's sale or any grantee by deed in lieu of foreclosure or trustee's sale.

**J. NON-LIABILITY OF COMMITTEE MEMBERS**

Neither the Design Review Board nor any member thereof, nor the NCA nor any member thereof shall be liable to the NCA or to any Owner or to any other person of any loss, damage or injury arising out of or in any way connected with the performance of the Board's or the NCA's respective duties under this Declaration unless such loss, damage or injury is due to the willful misconduct of the Board or its members or of the NCA or its members.

**K. RESERVATION OF AUTHORITY**

Notwithstanding anything contained herein to the contrary, the Declarant hereby reserves all rights and authorities granted to him in this declaration, to the NCA and to the Design Review Board until such time as the Declarant waives such reservation of rights in a writing recorded at the Gallatin County Clerk & Recorder's office.

**VII. NOTICES**

Each owner shall register with the NCA, a current mailing address and shall promptly notify the NCA of any change. All notices, demands, and other communication to any owner shall be sufficient for all purposes if personally served or if delivered by postage pre-paid United States Mail, Certified, return receipt requested, addressed to the owner at the last mailing address registered with the NCA.

**VIII. NO WAIVER**

Failure to enforce any provision, restriction, covenant or condition of these By-Laws, the Covenants or the Design Guidelines shall not create a waiver of any such provision, restriction, covenant or condition or of any other provision, restriction, covenant or condition or of the authority to enforce any such provision, restriction, covenant, or condition.

**IX. AMENDMENT OR TERMINATION**

These By-Laws shall remain in effect until amended or terminated which shall occur only upon the affirmative vote of three fourths (3/4) of the total votes of all Class A and Class B members of the NCA.

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IN WITNESS WHEREOF, this instrument has been executed this 21 day of July, 2004.

**BAXTER MEADOWS DEVELOPMENT, L.P.**

Baxter Meadows Construction, Inc., General Partner  
By: Gerald R. Williams, President

STATE OF MONTANA        )  
  : ss.  
COUNTY OF GALLATIN    )

This instrument was acknowledged before me on July 21<sup>st</sup>, 2004 on behalf of Baxter Meadows Development, L.P., by Gerald R. Williams, as President of Baxter Meadows Construction, Inc., General Partner

REBEKAH K. WILLIAMS  
NOTARY PUBLIC for the State of Montana  
Residing in Billings, Montana  
My Commission expires Nov. 18, 2007

(SEAL)

Notary Public for the State of Montana  
Printed Name: Rebekah Williams  
Residing at: Billings, MT  
My Commission Expires: Nov. 18, 2007



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**COMMUNITY DECLARATION  
FOR  
BAXTER MEADOWS MASTER COMMUNITY**



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**COMMUNITY DECLARATION  
FOR  
BAXTER MEADOWS MASTER COMMUNITY**

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

**RECITALS**

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

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

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

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

E. Declarant, by this Community Declaration, desires:

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

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

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



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

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

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

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

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

Now, therefore, Declarant declares as follows:

#### ARTICLE 1 SUBMISSION/DEFINED TERMS

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

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

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



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

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

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

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

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

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

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



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





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

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



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



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



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

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

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

## ARTICLE 2

### THE COMMUNITY ASSOCIATION OPERATIONS

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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



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

### ARTICLE 3

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

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

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





Section 3.3 Voting Rights of Members.

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

Section 3.4 Voting Allocations.

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



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

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

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

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

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

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

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

Section 3.9 Assessment Allocations. Assessments are allocated as follows:

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



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

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

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

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

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

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

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

#### ARTICLE 4

##### UNIT DESCRIPTIONS/COMMON

##### ELEMENTS/EASEMENTS

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



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

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

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

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

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



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

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

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



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

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

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

## ARTICLE 5

### COMMUNITY ASSOCIATION MAINTENANCE RESPONSIBILITIES

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



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

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

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

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

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





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

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

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

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

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



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

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

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

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



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

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

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

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

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



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

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

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

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

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

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



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

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

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

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



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

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

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



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

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

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

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

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

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

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

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

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

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

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

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





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

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

## ARTICLE 7

### GENERAL RESTRICTIONS

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



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

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

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

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

Section 7.6 Architectural Review by the DRB/Required Approval.

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



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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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

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



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

Section 7.8 Subdivision of Units.

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

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

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

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

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

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

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



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

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

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

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

## ARTICLE 8

### INSURANCE/CONDEMNATION

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



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





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

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

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

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

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

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

## ARTICLE 9

### DEVELOPMENT RIGHTS

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

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



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



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



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

Supplemental Declarations must meet or include the following criteria:

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

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



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

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

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

## ARTICLE 10

### GENERAL PROVISIONS

#### Section 10.1 Compliance and Enforcement.

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



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

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

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

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

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

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

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

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

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



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

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

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





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

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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

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

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

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

Master Declaration, FINAL .wpd



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

Baxter Meadows West, LLC,  
a Montana limited liability company

Thomas L. Clinton

Thomas L. Clinton

Gerald R. Williams

Gerald R. Williams

STATE OF MONTANA )

) ss.

COUNTY OF Gallatin )

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

Witness my hand and official seal.

Terri Bullo  
Terri Bullo

Notary Public for the State of Montana

Residing at Bozeman

My Commission expires: July 31, 2007



***EXHIBIT A***

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

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



**EXHIBIT B**

**INITIAL REAL PROPERTY**

1. Legal description:

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

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

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

Master Declaration, FINAL .wpd



*EXHIBIT C*

**ADDITIONAL PROPERTIES THAT MAY BE ADDED**

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



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Shelley Vance-Gallatin Co MT MISC 601.00

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



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

**ARTICLE 1  
INTRODUCTION, PURPOSES AND DEFINITIONS**

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

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

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

**ARTICLE 2  
MEMBERSHIP**

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

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



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

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

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

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

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



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

### ARTICLE 3 MEETINGS OF OWNERS

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

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

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

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

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



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

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

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

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



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

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

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

#### **ARTICLE 4 DELEGATES**

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

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





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

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

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

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

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

## ARTICLE 5 MEETINGS OF DELEGATES

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

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

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





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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

## ARTICLE 6 EXECUTIVE BOARD

### Section 6.1 Number and Potential Classes.

- (a) The affairs of the Community and the Community Association shall be governed by an Executive Board which shall initially consist of three (3) members, elected or appointed as provided in the Community Declaration and these Bylaws.
- (b) From and after the date of recordation of the Community Declaration until the date which is sixty (60) days after the date of conveyance of twenty-five percent (25%) of the Units That May Be Created to Owners other than the Declarant, the Declarant, or persons appointed by the Declarant, may appoint and remove all officers and members of the Board.
- (c) From and after the date which is sixty (60) days after the date of conveyance by Declarant of twenty-five percent (25%) of the Units That May Be Created to Owners other than Declarant until the date which is sixty (60) days after the date of conveyance by Declarant of fifty percent (50%) of the Units That May Be Created to Owners other than Declarant, the number of members of the Board shall be increased to four (4), and the

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

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

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

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

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

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

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



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

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

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

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

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

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



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

**ARTICLE 7**  
**MEETINGS OF THE EXECUTIVE BOARD**

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

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

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

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

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





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

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

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

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

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

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

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



**ARTICLE 8  
POWERS AND DUTIES OF THE EXECUTIVE BOARD**

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

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



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



**ARTICLE 9  
OFFICERS AND THEIR DUTIES**

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

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

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

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

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

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

- (a) President. The president shall have all of the general powers and duties which are incident to the office of president of a Montana nonprofit corporation. The president may cause to be prepared and may execute amendments, attested by the secretary, to the Community Declaration and these Bylaws on behalf of the Community Association, following authorization or approval of the particular amendment as applicable.
- (b) Vice President. The vice president shall take the place of the president and perform the president's duties whenever the president is absent or unable to act. If neither the president nor the vice president is able to act, the Executive Board shall appoint some other Director to act in the place of the president on an interim basis. The vice president shall also perform other duties imposed by the Executive Board or by the president.



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

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

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

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

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

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

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

**ARTICLE 10  
COMMITTEES**

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

**ARTICLE 11  
ENFORCEMENT**

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

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

**ARTICLE 12  
BOOKS AND RECORDS**

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

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



(h) Minutes of proceedings of meetings of the Owners, Directors, committees of Directors and waivers of notice; and

(i) A copy of the most current versions of the Community Declaration, Articles, Bylaws, and Resolutions of the Executive Board, along with their exhibits and schedules.

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

**ARTICLE 13  
INDEMNIFICATION**

Section 13.1 Obligation to Indemnify.

(a) The Association shall indemnify any person:

(i) Who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association);

(ii) By reason of the fact that that person is or was a Director, Officer or committee member of the Association;

(iii) Provided that the person is or was serving at the request of the Association in such capacity;

(iv) But no indemnification shall be made with respect to any claim, issue or matter in any threatened, pending or completed action or suit where such person has been adjudged to be liable for gross negligence or gross misconduct in the performance of his or her duty to the Association, unless a court determines that, despite the adjudication of liability, but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expenses if such court deems proper.

(b) The Association's obligation for indemnification shall include: (i) actual and reasonable expenses (including expert witness fees, attorneys' fees and costs); (ii) judgments and fines; and (iii) reasonable amounts paid in settlement.



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

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

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

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

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



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

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

**ARTICLE 14  
MISCELLANEOUS**

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

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

**ARTICLE 15  
AMENDMENTS**

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

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





**CERTIFICATION**

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

  
\_\_\_\_\_  
Rebekah Williams, Secretary





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Shelley Vance-Gallatin Co MT MISC 33.00

**SUPPLEMENTAL AND WITHDRAWAL DECLARATION  
 TO THE  
 COMMUNITY DECLARATION  
 FOR**

American Land Title Company  
 1800 West Koch / P.O. Box 396  
 Bozeman, Montana 59715 / 59771-0396  
 Order No. 1-83109

**BAXTER MEADOWS MASTER COMMUNITY**

THIS SUPPLEMENTAL AND WITHDRAWAL DECLARATION is made and entered by Baxter Meadows West, L.L.C. ("Declarant").

**RECITALS**

A. Declarant has executed that certain Community Declaration for the Baxter Meadows Master Community ("Community Declaration" or "Declaration"), which Declaration has been recorded in the records in the Office of the Clerk and Recorder.

B. The Declaration provides withdrawal, enlargement, expansion and other reserved rights of the Declarant.

C. The undersigned Declarant desires to withdraw a portion of the lands and real estate made subject to the Community Declaration, all pursuant to terms and provisions of the Community Declaration.

D. The undersigned Declarant has complied with all conditions set forth in the Community Declaration to implement withdrawal of a portion of the lands and real estate made subject to the Community Declaration.

The undersigned hereby declares as follows:

1. Withdrawal of Property. Pursuant to the Community Declaration, the property described in **Exhibit A** attached hereto and incorporated herein by this reference, being a portion of the lands and real estate subject to the Community Declaration, is withdrawn from the Community Declaration, the Master Planned Community and the "Real Estate." The property described in Exhibit A is confirmed as withdrawn from the Community Declaration, the Master Planned Community and the Real Estate. The property described in **Exhibit A** shall hereafter be held, sold, conveyed, encumbered, leased, rented, occupied and improved free and clear of the terms and provisions of the Community Declaration (except for possible re-annexation, with the consent of the owner of the property described in **Exhibit A**).

2. Definitions. Unless otherwise defined herein, initially capitalized terms defined in the Declaration shall have the same meaning herein.



IN WITNESS WHEREOF, the undersigned Declarant has hereunto set its hand and seal as of the day and year first above written.

Baxter Meadows West, LLC,  
A Montana limited liability company

By: Thomas L. Clinton  
Thomas L. Clinton

By: Gerald R. Williams  
Gerald R. Williams

Baxter Meadows Development, L.P.  
A Montana limited partnership

By: Gerald R. Williams  
Gerald R. Williams

STATE OF MONTANA )  
COUNTY OF Gallatin ) ss.

The foregoing acknowledged before me on this 29<sup>th</sup> day of March, 2006, by Thomas L. Clinton and Gerald R. Williams, as managing members of Baxter Meadows West and Baxter Meadows Development.  
Witness my hand and official seal.

My commission expires: July 31, 2007

Terri Zullo, Terri Zullo  
Notary Public

NOTARY PUBLIC for the State of Montana  
Residing at Bozeman, Montana  
My Commission Expires July 31, 2007



*EXHIBIT A*

**LEGAL DESCRIPTION OF PROPERTY WITHDRAWN HEREBY**

Tract A and Tract B of the Amended Plat of Baxter Meadows Subdivision P.U.D. Phase 1, Tract 1A (J-353A), also including a portion of Tract 2A of Certificate of Survey No. 2202A, located in the SW 1/4 of Section 34, Township 1 South, Range 5 East, P.M.M., City of Bozeman, 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, J353-C.

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

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

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

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

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

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

ADOPTED: July 10, 2006

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10/01/2007 01:40P  
Charlotte Mills-Gallatin Co MTRISC 21.00

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

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

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

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

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

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

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

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10/01/2007 01:40P



Charlotte Mills-Gallatin Co MTHISC 21.00

Adopted July 10, 2006

Baxter Meadows Master Community Association,  
Inc.

BOARD OF TRUSTEES

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

By: *Pamela Halse*  
Its: Community Manager

**ACKNOWLEDGEMENT**

STATE OF MONTANA     )  
  )     ss.  
COUNTY OF GALLATIN    )

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

Residing BOZEMAN, MT

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



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

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Charlotte Mills-Gallatin Co MTMISC 21.00



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



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Charlotte Mills-Gallatin Co MTMISC 14.00

BAXTER MEADOWS MASTER COMMUNITY ASSOCIATION  
FISCAL POLICY

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

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



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

Adopted; January 23, 2008

BAXTER MEADOWS MASTER COMMUNITY  
BOARD OF DIRECTORS

Mary Meissner, President

Jerry Williams, Vice President

Marjorie Seymour, Secretary

ACKNOWLEDGMENT

STATE OF MONTANA )

SS.

COUNTY OF GALLATIN )

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

Resident Bozeman

Notary Public Shoni Whiteside  
My Commission Expires 11.02.2011

ACKNOWLEDGMENT

STATE OF MONTANA )

COUNTY OF GALLATIN )

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

Resident Billings, MT

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

Jamie Hixson



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



2297090

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04/14/2008 03:38P

Charlotte Mills-Gallatin Co MTMISC 14.00

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

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

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

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

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

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

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

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

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

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

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

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Shelley Vance-Gallatin Co NT MISC 140.00

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

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

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

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

**I. DESIGN REVIEW PROCESS**

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

No residence, fence, wall, garage, outbuilding or other structure shall be made, erected, altered or permitted to remain upon the properties until written plans and specifications showing the design, nature, kind, color, dimensions, shape, elevations, material, use and location of the same shall have been submitted and approved, in writing, by a majority of the DRB as to compliance with these Covenants, as well as appropriate City of Bozeman review, permitting and fee payment. All plans submitted to the City of Bozeman Building Division must have the Baxter Meadows Design Review Board stamp of approval.

**Section 2. General Requirements.**

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

*Deliver or mail to:*

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

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



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

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

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

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

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

### **Section 3. Construction Completion.**

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

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

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

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



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

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

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

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

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

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

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

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

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

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

**Forms Required:** Acknowledgement Form

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Master Design Review Guidelines\_FINAL.wml



## Form A - Construction Design Review Application

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

### Minimum Drawings Required:

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

### STEP 2: Construction Commencement.

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





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

## II. Topography and Features

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

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

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

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

### 3. Stream Corridor Protection:

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

## III. Improvements

### 1. Driveways & Parking:

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

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

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



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

2. Privacy Screens and Retaining Walls:

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

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

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

3. Walkways, Paths and Trails:

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

### III. Utilities and Site Details

1. Utilities:

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

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

2. Radon:

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

3. Wood Storage:

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

4. Garbage and Refuse Disposal:

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

#### IV. Landscape Controls

1. Definitions:

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

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

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

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

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

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

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

2. Installation:

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





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

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

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

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

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

**Fencing:**

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

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

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

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



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

**II. BUILDING FORM REGULATIONS**

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

**A. Building Height**

**1. Residential Buildings:**

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

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

**B. Roof Form**

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

**1. Shape and Pitch:**

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

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



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

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

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

2. Entry Definition, Overhangs & Fascia:

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

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

3. Dormers and Secondary Roofs:

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

4. Skylights and Solar Collectors:

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

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

5. Chimney Composition, Proportion and Materials:

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

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

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

6. Exterior Wall Form:

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

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

**III. MATERIAL AND DETAIL REGULATIONS.**

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

The following are the only allowable materials in Baxter Meadows:

A. Roof Materials

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

The following are the only acceptable roof materials:

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

**B. Exterior Wall Materials**

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

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

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

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







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

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

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

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

**C. Exterior Windows and Doors**

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

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

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

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

3. Materials:

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

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

4. Garage Doors:

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

D. Decks, Balconies, Terraces and Porches:

1. Design:

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

2. Materials:

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

E. Night Sky Requirements

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

- a. Fully-shielded lights: Outdoor light fixtures shielded or constructed so that no light rays are emitted by the installed fixture at angles above the horizontal plane as certified by a photometric test expert.
- b. Indirect light: Direct light that has been reflected or has scattered off of other surfaces.
- c. Glare: Light emitting from a luminaire with an intensity great enough to reduce a viewer's ability to see, and in extreme cases, causing momentary blindness.
- d. Outdoor lighting: The nighttime illumination of an outside area or object by any manmade device located outdoors that produces light by any means.



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

Baxter Meadows West, LLC,  
a Montana limited liability company

Thomas L. Clinton  
Authorized Agent

STATE OF MONTANA        )  
                                      : ss  
COUNTY OF GALLATIN    )

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



Terri Bulbo  
Notary Public for the State of Montana  
Terri Bulbo  
Print Name:  
Residing at: Bozeman  
My Commission Expires: July 31, 2007



**ACKNOWLEDGMENT FORM**

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

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

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

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

Date: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Signature-Contractor: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_ FAX: \_\_\_\_\_  
Email: \_\_\_\_\_



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

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

Owner: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_ FAX: \_\_\_\_\_  
Email: \_\_\_\_\_

BUILDER: \_\_\_\_\_  
Firm: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_ FAX: \_\_\_\_\_  
Email: \_\_\_\_\_

ARCHITECT: \_\_\_\_\_  
Firm: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_ FAX: \_\_\_\_\_  
Email: \_\_\_\_\_

LANDSCAPE ARCHITECT: \_\_\_\_\_  
Firm: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_ FAX: \_\_\_\_\_

**INFORMATION**

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



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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Items submitted (please check):

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

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

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

**NOTICE TO TITLE COMPANIES OF LIEN RIGHT**

**TO: ALL PROSPECTIVE PURCHASERS OF LOTS IN BAXTER MEADOWS MASTER  
COMMUNITY SUBDIVISION**

**FROM: BAXTER MEADOWS MASTER COMMUNITY ASSOCIATION, INC., A  
MONTANA NON-PROFIT CORPORATION (THE "ASSOCIATION"), ON THIS  
25TH DAY OF MAY 2006.**

**WHEREAS, the following property (Baxter Meadows Master Community Subdivision):**

**Real property described as:**

**Baxter Meadows Sub., Ph. 1  
S 1/2, Sec. 34, T1S, R5E  
J-353, J-353-A, J-353B, J-353-C**

**Baxter Meadows Sub., Ph. 2A  
S1/2, Sec. 34, T1S, R5E  
J-383**

**Baxter Meadows Sub., Ph. 2C & 2D  
S1/2, Sec. 34, T1S, R5E  
J-410**

**Remainder Tract 2A, Tract 3A (Regional Park), and Tract 4A, - COS 2202A  
S1/2, Sec 34, T1S, R5E, -and- NE ¼, Sec 3, T2S, R5E  
Doc. #2067061 - 4/24/02**

**is encumbered and subject to a lien for homeowners' association assessments pursuant to the protective  
covenants and restrictions of the Community Declaration for Baxter Meadows Master Community  
Homeowners' Association, recorded as Document 2202825 in the office of the Gallatin County Clerk and  
Recorder on September 22, 2005 ("the Restriction").**

**WHEREAS, Owners of lots within the Baxter Meadows Master Community are members of the  
Association and are obligated to pay assessments to the Association, which assessments are liens against an  
Owner's lot and it is necessary for the Association to keep accurate membership records;**

**2231362**  
Page: 1 of 2  
06/15/2006 03:05P



Shelley Vance-Gallatin Co MT MISC 14.00





Return To Baxter Meadows Master  
3701 Tracker Trail Suite 10  
Bozeman MT 59716

RELEASE OF LIEN

This Release of Lien is pursuant to the Declaration of Covenants, Conditions and Restrictions for the Community Declaration for Baxter Meadows Master Community, recorded in the real property records of the County Clerk of Gallatin County, Montana on September 22, 2005, Document No. 2202825. Notice is hereby given that the Baxter Meadows Master Community Association, Inc. releases a lien filed by the Baxter Meadows Master Community Association, Document No. 2231362 filed on June 15, 2006 at 3:06 p.m. against the real property ("Property") particularly described as:

Baxter Meadows Sub. Ph 1  
S ½ Section 34, T1S, R5E  
J-353, J-353A, J-353B, J-353C

Baxter Meadows Sub. Ph 2C and 2D  
S 1/2 Sec. 34, T1S R5E  
J-410

Baxter Meadows Sub. Ph 2A  
S ½ Sec. 34, T1S, R5E  
J-383

Remainder Tract 2A, Tract 3A (Regional Park), and Tract 4A – COS 2202A  
S ½ Sec. 34, T1S, R5E and NE 1/4, Sec. 3, T2S, R5E  
Doc. #2067061 – 4/24/02



2309098

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09/27/2006 04:21P

Charlotte Mills-Gallatin Co MTMISC 14.00

Baxter Meadows Master Community Association Inc.

By: Ellen Woodbury  
Ellen Woodbury, Manager

ACKNOWLEDGMENT  
STATE OF MONTANA )  
  
COUNTY OF GALLATIN )

SS.

This instrument was acknowledged before me on August 27, 2008, by Ellen Woodbury, the Manager of the Baxter Meadows West Community Association, Inc.

Notary Public Connie J. Thompson

Connie J. Thompson

Residing at: Belgrade

My Commission Expires 9-19-2010



**2309098**

Page: 2 of 2  
08/27/2008 04:21P

Charlotte Mills-Gallatin Co MTMISC 14.00

**MEMORANDUM OF HOMEOWNERS ASSOCIATION CONTRACT AND  
NOTICE OF INCLUSION IN HOMEOWNERS ASSESSMENTS FOR  
MANDATORY TELECOMMUNICATION SERVICES**

This MEMORANDUM OF HOMEOWNERS ASSOCIATION CONTRACT AND NOTICE OF INCLUSION IN HOMEOWNERS ASSESSMENTS FOR MANDATORY TELECOMMUNICATION SERVICES ("Memorandum") is made as of the 10<sup>th</sup> day of January, 2006, by and between Baxter Meadows West LLC, a Montana limited liability company, Baxter Meadows Development, L.P., a Montana limited partnership (together known as "Developer"), and Baxter Meadows Master Community Homeowners Association, Inc., a Montana nonprofit corporation (the "HOA").

WHEREAS, Developer is the developer of a master planned mixed use real estate development project located in Bozeman, Montana and known as "Baxter Meadows" (the "Development"); and

WHEREAS, the Development is a mixed use community, the legal description of which is attached as Exhibit A; and

WHEREAS, Developer has entered into a contract with Vivid Networks, Inc a Montana corporation ("VNI") to provide telecommunication infrastructure and provide telecommunications services to the Development; and

WHEREAS, telecommunication services may include but are not limited to include, telephone, cable and or satellite television, home security monitoring, high-speed internet access services and wireless communications services.

WHEREAS, the HOA is a homeowners association solely for the Development pursuant to the Declaration of Covenants, Conditions and Restrictions for the Development recorded by Developer as Declarant among the Land Records (the "Covenants"); and

WHEREAS, the HOA on its behalf and on behalf of all future owners of homes within the Development (individually "Owner" and collectively "Owners") entered into an Agreement to Obtain Telecommunications Services (the "Agreement"), whereby the HOA engaged VNI to provide telecommunication infrastructure and telecommunications services to Owners hereinafter "Services".

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto give notice of the following:

- 1) The foregoing Recitals are hereby incorporated into this Memorandum as if fully restated and set forth in this first Paragraph.

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07/26/2006 10:48A  
Shelley Vance-Gallatin Co MT MISC 55.00

- 2) The Agreement obligates the HOA to make payments to VNI for Services, as designated by VNI regardless of whether Owners use such Services or obtain equivalent services from another provider. To fund such obligation, the Covenants will require all Owners to pay dues and/or assessments for such Services, which may increase from time to time, regardless of whether Owners use such Services or obtain equivalent services from one or more other providers. The obligation of each Owner to pay dues and/or assessments for such Services will be a mandatory obligation that runs with the land and will be secured by a lien on each Owner's home. The Agreement has an initial term of twenty-five (25) years, and no change in control of the HOA shall terminate or modify the Agreement or each Owner's obligation to pay dues and/or assessments for such Services. The HOA's failure to collect dues/assessments for Services will not affect the HOA's obligation to pay the Service Provider(s) as designated by VNI under the Agreement.
- 3) This Memorandum is solely for recording and notice purposes, and does not alter, modify, limit, amend or supplement the Covenants or Agreement in any respect.
- 4) This Memorandum is not a summary of the Agreement or the Covenants. Reference should be made to the Agreement and Covenants for each of their respective terms, provisions and conditions thereof.

IN WITNESS WHEREOF, the parties have executed this Memorandum as of the date first set forth above.

DEVELOPER:

BAXTER MEADOWS WEST, L.L.C.  
a Montana limited liability company

By: Thomas L. Clinton  
Thomas L. Clinton

By: Gerald R. Williams  
Gerald R. Williams

STATE OF MONTANA     )  
  ) ss.  
COUNTY OF GALLATIN    )

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of January, 2006, by THOMAS L. CLINTON and GERALD R. WILLIAMS as managing members of Baxter Meadows West, L.L.C., a Montana limited liability company, on behalf of such company.

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 Shelley Vance-Gallatin Co MT MISC 55.00





HOA:

BAXTER MEADOWS MASTER COMMUNITY  
ASSOCIATION, INC.,  
a Montana nonprofit corporation

By: David Blanksma

Name: David L. Blanksma

Title: President / Director

STATE OF MONTANA  
COUNTY OF GALLATIN

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of  
January, 2006, by David Blanksma, as President of  
The Baxter Meadows Master Community Association, Inc., a Montana nonprofit  
corporation, on behalf of such company.

Witness my official hand and seal.



Terri Zullo  
Terri Zullo

Notary Public for the State of Montana  
Residing in Bozeman, Montana

My commission expires: July 31, 2007

**Exhibit A**

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

2235980  
Page: 5 of 5  
07/26/2006 10:48A  
  
Shelley Vance-Gallatin Co MT MISC 55.00





**PARKING AGREEMENT**

This Agreement is entered into this 9th day of July, 2004, by and between **BAXTER MEADOWS DEVELOPMENT, L.P.**, a Montana Limited Partnership, of P.O. Box 11060, Bozeman, MT 59771, hereinafter referred to as "Baxter Meadows," and the **CITY OF BOZEMAN**, a municipal corporation of the State of Montana, of P.O. Box 1230, Bozeman, MT 59771, hereinafter referred to as "the City."

WHEREAS Baxter Meadows is the owner of real property annexed into the City of Bozeman more particularly known as Baxter Meadows Subdivision Phase II;

WHEREAS as part of the Preliminary Plat Review for Phase II of the Baxter Meadows Subdivision, Findings of Facts and Conclusions of Law dated June 14, 2004, condition no. 2, provides for the following:

- Option 1. Applicant shall construct surface parking. Construction shall include but not be limited to continuous concrete curbs, asphalt, striping, drive approach, landscaping, and irrigation. Pursuant to Condition # 44, surface parking shall be constructed within 1 year of final plat approval and prior to occupancy of any structure.
  - Option 2. Applicant shall construct a parking garage. Pursuant to Condition # 44, parking garage shall be constructed within 1 year of final plat approval and prior to occupancy of any structure.
  - Option 3. Applicant shall establish an escrow account in the name of the POA for the sole purpose of providing parking, applicant shall place in the escrow account 150% of the cost of constructing the surface parking, applicant shall restrict on the plat all lots required to meet the surface parking needs, and applicant may reserve air space for other uses. Pursuant to Condition # 43, all parking facilities shall be constructed within 4 years of preliminary plat approval.
-



- Option 4. Applicant shall establish an escrow account in the name of the POA for the sole purpose of providing parking, applicant shall place in the escrow account 150% of the cost of constructing a parking structure, applicant shall restrict on the plat all lots required to meet the parking structure needs, and applicant may reserve air space above the height of the parking structure for other uses. Pursuant to Condition # 43, all parking facilities shall be constructed within 4 years of preliminary plat approval.

WHEREAS, Baxter Meadows has simultaneously herewith submitted to the City its final plat for approval of Phase IIA of Baxter Meadows Development.

NOW, THEREFORE, Baxter Meadows hereby agrees as follows:

1. The applicant will construct 362 surface parking spaces and nine disabled accessible parking spaces. Construction will include but not be limited to continuous concrete curbs, asphalt, striping, drive approach, landscaping, and irrigation. Surface parking will be constructed within one year of final plat approval and prior to occupancy of any structure. The 362 parking spaces to be constructed as set forth above shall be allocated to lots within Phase IIA as set forth in the parking calculations for Phase IIA, Baxter Meadows Development, attached hereto as Exhibit A. Baxter Meadows covenants and agrees that each purchaser of the lots described in Exhibit A shall be provided the parking spaces set forth on Exhibit A. The conveyance of rights to use of the parking spaces included in Exhibit A shall be made by deed to the purchaser of each lot.

Individual parking requirements for lots shall be based on section 18.46.040.B of the Bozeman Unified Development Code.

2. This Agreement shall apply to the heirs, successors, and assigns of Baxter Meadows Development, L.P.
-



3. In the event it is necessary for any of the parties hereto to bring any action to enforce the terms and covenants of this Agreement, it is agreed that the prevailing party shall be entitled to reasonable attorney fees to be set by the Court, including the salary of the City Attorney or that of a staff attorney.

WHEREAS, Baxter Meadows Development, L.P. has set its hand and seal this 21<sup>st</sup> day of June, 2004.

BAXTER MEADOWS DEVELOPMENT, L.P.  
formerly known as W.B.C., L.P., a Montana Limited Partnership,

By: Baxter Meadows Construction, Inc.,  
Its: General Partner

BY: [Signature]  
Gerald R. Williams, President

STATE OF MONTANA )  
: ss.  
COUNTY OF GALLATIN )

On this 21 day of June, 2004, before me, a Notary Public for the State of Montana, personally appeared Gerald R. Williams known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same as President of Baxter Meadows Construction, Inc., a Montana Corporation, the general partner of Baxter Meadows Development, L.P., formerly known as W.B.C., L.P. for the purpose herein contained.

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

(SEAL)



[Signature]  
Notary Public for the State of Montana  
Printed Name: J. Acker  
Residing at: Bozeman  
My Commission Expires: 01/16/06



2156020

Page: 4 of 6  
07/09/2004 12:21P

Shelley Vano-Gallatin Co MT MISC 30.00

ACCEPTED:

CITY OF BOZEMAN  
By: Ron Brey  
Its: Acting City Mgr.

ATTEST:

Robin L Sullivan  
CLERK OF THE CITY COMMISSION

STATE OF MONTANA )  
 )  
 ) :ss.  
COUNTY OF GALLATIN )

On this 9th day of July, 2004, before me, a Notary Public for the State of Montana, personally appeared RON BREY and ROBIN L. SULLIVAN, known to me to be the City Manager and Clerk of the City Commission for the City of Bozeman and the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same for and on behalf of the City of Bozeman.

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

Helene Greninger  
Notary Public for the State of Montana  
Printed Name: Helene Greninger  
Residing at: Bozeman  
My Commission Expires: 3/25/2007

(SEAL)





EXHIBIT A

**Parking Calculations for Phase 2A Baxter Meadows Development**  
Spaces have been assigned to lots based on the developers discretion

|   |        |
|---|--------|
| Total Assignable Spaces Provided This Phase | 362.00 |
| Total Handicap Space Provided this Phase    | 9.00   |
| Total Assignable Spaces Assigned This Phase | 362.00 |

| Lot                 | Lot Area   | Provided Spaces Assigned |
|---------------------|------------|--------------------------|
| Blk 16 Lot 1        | 18,366.52  | 26.00                    |
| Blk 16 Lot 2        | 10,757.84  | -                        |
| Blk 16 Lot 3        | 15,403.53  | 25.00                    |
| Blk 16 Lot 4        | 12,390.40  | 21.00                    |
| Blk 16 Lot 5        | 13,391.40  | 21.00                    |
| Blk 16 Lot 6        | 14,092.28  | 23.00                    |
| Blk 16 Lot 7        | 13,076.42  | 21.00                    |
| Blk 18 Lot 1        | 5,056.33   | 19.00                    |
| Blk 18 Lot 2        | 5,406.77   | 14.00                    |
| Blk 18 Lot 3        | 6,023.54   | 14.00                    |
| Blk 18 Lot 4        | 5,907.40   | 9.00                     |
| Blk 18 Lot 5        | 5,289.62   | 9.00                     |
| Blk 18 Lot 6        | 5,288.15   | 9.00                     |
| Blk 18 Lot 7        | 6,505.83   | 11.00                    |
| Blk 18 Lot 8        | 6,505.83   | 10.00                    |
| Blk 18 Lot 9        | 8,051.97   | -                        |
| Blk 18 Lot 10       | 19,111.49  | 53.00                    |
| Blk 20 Lot 1        | 5,135.15   | 9.00                     |
| Blk 20 Lot 2        | 5,734.85   | 9.00                     |
| Blk 20 Lot 3        | 6,711.14   | -                        |
| Blk 20 Lot 4        | 4,956.40   | 16.00                    |
| Blk 20 Lot 5        | 5,474.16   | 16.00                    |
| Blk 20 Lot 6        | 5,474.16   | 15.00                    |
| Blk 20 Lot 7        | 5,311.85   | 2.00                     |
| Blk 20 Lot 8        | 5,679.95   | 2.00                     |
| Blk 20 Lot 9        | 6,327.55   | 2.00                     |
| Blk 20 Lot 10       | 6,204.58   | 2.00                     |
| Blk 20 Lot 11       | 5,557.06   | 2.00                     |
| Blk 20 Lot 12       | 5,557.06   | 2.00                     |
| Totals for Phase 2A | 238,749.23 | 362.00                   |

**BAXTER MEADOWS PHASE 1 HOMEOWNERS ASSOCIATION**

**DELINQUENCY POLICY**

This Delinquency Policy, dated this 14<sup>th</sup> day of November 2016, supersedes and replaces any prior delinquency policy adopted by the Board of Directors for the Baxter Meadows Phase 1 Homeowners' Association.

**This Delinquency Policy updates** File No. 2413788 filed with the Gallatin County Clerk & Recorder on April 25, 2012 and is an addendum to File No. 2163417 filed with the Gallatin County Clerk & Recorder on September 15, 2004. This policy is pursuant to the Declaration of Covenants, Conditions and Restrictions for Baxter Meadows Homeowners' Association ("Covenants"), recorded in the real property records of the County Clerk of Gallatin County, Montana on September 15, 2004, Document No. 2163416.

1. **Assessments.** The Baxter Meadows Phase 1 Homeowners' Association ("HOA") assessments are billed to each owner before the 1<sup>st</sup> day of each month. Assessments are due on the 1<sup>st</sup> day of each month. Assessments are delinquent if not received by the 30<sup>th</sup> day of the month.
2. **Interest.** If an assessment is delinquent, interest may accrue from the date the assessment became due at the prevailing prime rate of interest plus 2%. Interest shall be compounded monthly. Interest at the same rate may also accrue on any other charges applied to the owner's account, as described below.
3. **Demand Letter.** If an assessment becomes more than five (5) months delinquent, a Demand Letter may be provided to the owner via U.S. mail (certified letter, return receipt requested) to the owner's last known address. The Demand Letter should set forth the amount owed by the owner. If a Demand Letter is sent, the owner will incur an \$80.00 charge, to be applied to the owner's account, plus postage costs.
4. **Additional delinquent assessments.** If additional assessments become delinquent while any part of the original delinquent assessment, interest, charges, and other related costs remain outstanding, no new Demand Letter is required to enforce payment, and the additional delinquent assessments plus interest will automatically become part of the amount owed by the owner.
5. **Notice of Lien.** If the assessment, additional delinquent assessments, interest, charges, and any other related costs are not paid in full within 30 days of the date of the Demand Letter, the HOA may file a Notice of Lien with the Gallatin County Clerk and Recorder. If a lien is filed, the owner will incur a \$150.00 charge, to be applied to the owner's account. The HOA has the right to inform any other lien holder of the owner's delinquency.

6. **Continuing Lien.** If a Notice of Lien is filed, the lien shall be continuing so as to include any additional delinquent assessments, interest, charges, costs, and attorney fees. The HOA is not required to release any lien until the owner pays the entire amount owed to the HOA. The HOA has the right to file updated liens to ensure that 3<sup>rd</sup> parties are apprised of the current amount owed by the owner. The owner shall incur an additional charge of \$40.00 for each updated lien filed with the Gallatin County Clerk and Recorder.
7. **Further Action.** If the amount owed is not paid in full within 30 days of the Notice of Lien, the Association may:
  - Bring an action at law against the owner personally obligated to pay, and/or
  - Foreclose the lien against the Lot, and/or
  - Any other action not prohibited by the By-Laws, Declaration, or Montana law.
8. **Costs.** If the Baxter Meadows Homeowners' Association is required to take any of the above steps against an owner to enforce payment of assessments, interest, charges, or other related costs, the owner shall be obligated to pay any other costs incurred to collect the amount owed, including, but not limited to, all collection costs, court costs, and reasonable attorney's fees and costs.
9. **No waiver.** No owner may waive or otherwise escape liability for the assessments by abandonment of his or her Lot. All owners shall remain personally liable for all assessments, interest, charges, or other related costs owed to the HOA until fully paid, unless the owner's liability is extinguished by law.
10. **Successive Owners.** All successive owners of a Lot shall be responsible for paying any assessments, interest, charges, or other related costs owed on a Lot. All successive owners have the duty and responsibility to contact the HOA to learn if any assessments, interest, charges, or other related costs are owed on the Lot.
11. **Conflicts.** If any provision of this Delinquency Policy shall be in conflict with the By-Laws, the By-Laws shall control. The invalidity or un-enforceability of any provision of this Delinquency Policy shall not affect the validity or enforceability of any other provision.

ADOPTED:

By:

  
\_\_\_\_\_  
Colin Daniel, President and Director  
Baxter Meadows Phase 1 Homeowners' Association





Legacy Properties LLC  
2504 W. Main St. Suite 2B  
Bozeman, MT 59718

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Page 1 of 3 02/06/2017 11:20:32 AM Fee: \$31.00  
Charlotte Mills - Gallatin County, MT MISC

## BAXTER MEADOWS PHASE 1 HOMEOWNERS ASSOCIATION

### VIOLATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS POLICY

This Violation Policy, dated this 14<sup>th</sup> day of November 2016 supersedes and replaces any prior violation policy adopted by the Board of Directors for the Baxter Meadows Phase 1 Homeowners' Association.

This Violation Policy is an addendum to File No. 2163417 filed with the Gallatin County Clerk & Recorder on September 15, 2004. This policy is pursuant to the Declaration of Covenants, Conditions and Restrictions for Baxter Meadows Homeowners' Association ("Covenants"), recorded in the real property records of the County Clerk of Gallatin County, Montana on September 15, 2004, Document No. 2163416.

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

1. **Determination of Violation.** The Baxter Meadows Board of Directors and/or its managing agent, or Design Review Board will make the final determination of whether a violation of the Protective Covenants (CC&Rs) exists.
2. **Curing the Violation.** If it is determined that a violation (Type 1 or Type 2) does exist, then the Homeowner will be sent a First Violation Notice letter or email describing the violation, the applicable CC&Rs regulation that is being violated, and a requirement that the violation be cured within the time period specified in this policy.

#### Time Periods for Curing Violation:

**Type 1 Violation:** 5 days – These include violations such as, but not limited to, garbage & recycle cans, parking violations, animal control, nuisances, etc.

**Type 2 Violation:** 3 months – These include violations such as, but not limited to, landscape improvements, trees, irrigation, etc.

3. **Uncured Violations.** If the violation has not been cured within the time period specified in the First Violation Notice, then the following will occur:
  - Second Violation Notice letter or email will be sent after the specified time period has expired and a \$25.00 fine assessed.
  - Third Violation Notice letter or email will be sent, if not cured after Second Violation Notice, within 14 days of Second Violation Notice and a \$100.00 fine assessed.
  - Subsequent Violation Notice letter or email will be sent, for the same violation, every 14 days and a \$100.00 fine assessed per subsequent violation notice.

4. **Hearing.** The Homeowner may request a hearing with the Board of Directors. The request must be by email or in writing and properly signed by the homeowner, dated and postmarked within the time specified in the violation notice. Failure of the homeowner to request a hearing by email or in writing within the required time period shall constitute a waiver of the right to a hearing.

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

- a. Fines assessed from sent violation notices.
- b. Cure of the violation, all costs of which will be charged back to the owner. If not paid, then a lien will be put on the owner's property for the amount owed.
- c. Injunctive relief against the continuance of such violation through the court system; all costs will be charged to the owner.


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

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

5. The titled owner of the property is ultimately responsible for insuring a tenant is adhering to the Covenants and is ultimately responsible for any assessments or fines which the Board may impose.

ADOPTED:

By:

  
\_\_\_\_\_  
Colin Daniel, President and Director  
Baxter Meadows Phase I Homeowners' Association

