

Mail Original to:
Cattail Creek Community Association
P.O. Box 11842
Bozeman MT 59719



CATTAIL CREEK
*A Community Development
by Sandan, L.L.C.*

**Amended & Restated Covenants
Phases 1, 2 & 3**

Prepared By:
Intrinsic Architecture, Inc.

Prepared For:
Sandan, LLC & the Cattail Creek
Community Association (CCCA)

Date: 14 MAY 2008

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**CATTAIL CREEK
Covenants
Phases 1, 2 & 3**

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**DECLARATION OF AMENDED & RESTATED PROTECTIVE COVENANTS &
RESTRICTIONS FOR CATTAIL CREEK PHASES 1, 2 & 3**

THIS DECLARATION OF THIS AMENDED AND RESTATED PROTECTIVE COVENANTS is made this 14th day of May, 2008, by Sandan, LLC and the Cattail Creek Community Association, hereinafter referred to as "Declarant";

WITNESSETH:

WHEREAS, Sandan, LLC and the Cattail Creek Community Association (hereinafter referred to as Declarant) are, or represent, the owners of the real property located in Cattail Creek Subdivision for the lands more particularly described in Exhibit A, which are located in the City of Bozeman, Gallatin County, Montana; and

WHEREAS, on August 20, 2002, Declarant Sandan, LLC recorded Covenants Cattail Creek Subdivision, Phase 1 as Document Number 2078633 in the office of Gallatin County Clerk and Recorder. With the recording of said covenants, Phase 1 established the Community Association for Cattail Creek Subdivision Phase 1; and

WHEREAS on November 12, 2003, Declarant Sandan, LLC recorded Covenants Cattail Creek Subdivision, Phase 2 as Document Number 2131569 in the office of Gallatin County Clerk and Recorder. With the recording of said covenants, Phase 2 established the Community Association for Cattail Creek Subdivision Phase 2; and

WHEREAS on October 20, 2005, Declarant Sandan, LLC recorded Covenants Cattail Creek Subdivision, Phase 3 as Document Number 2206253 in the office of Gallatin County Clerk and Recorder. With the recording of said covenants, Phase 3 established the Community Association for Cattail Creek Subdivision Phase 3; and

WHEREAS, on March 26, 2008, Phases 1, 2 and 3 of Cattail Creek Community Associations conducted an election and received ballots by more than 75% of their respective members affirmatively voting to consolidate the covenants for each phase of Cattail Creek Subdivision, the Bylaws for each phase of Cattail Creek subdivision and determining for the betterment of all Phases of Cattail Creek Subdivision, the governing Community Associations should be consolidated into one Community Association; and

WHEREAS, Declarant intends to continue to develop the land with single family residences, multi-family residences, neighborhood commercial

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enterprises, compatible light industrial uses, parks, private open space and a variety of uses, and the purpose of this declaration is to create and keep the community area desirable, attractive, beneficial and suitable in architectural design, materials and appearance; and to guard against unnecessary interference with the natural beauty of the community area for all the mutual benefit and protection of owners within the community area; and

WHEREAS, Declarant affirms and further re-declares that all land described in Exhibit "A" shall be held, sold, conveyed, encumbered, leased, occupied and improved, subject to these amended and restated Cattail Creek Covenants meaning the limitations, covenants and restrictions set forth in this declaration and any subsequent amendments hereto, or related documents authorized by the filing of these Covenants, all of which are intended to enhance the desirability and attractiveness of the land. These limitations, covenants and restrictions shall run with the land and shall be binding upon all persons having or who acquire any right, title or interest in and to the land, and shall inure to the benefit of the Declarant, the Association and each person who becomes an owner of the land; and

WHEREAS, Declarant desires to continue to subject all of said real property, together with the lots, phases and subdivisions contained therein, to the covenants, conditions, restrictions and reservations herein set forth and referred to as "Covenants"; and

WHEREAS, the Declarant now records the Amended and Restated Protective Covenants for Cattail Creek Subdivision, Phases 1, 2 and 3; and

NOW THEREFORE, Declarant does hereby amend the previously recorded Covenants for each Phase of Cattail Creek Subdivision as more particularly described above, and impose upon the property the following Amended and Restated Covenants, which shall run with the land and shall be binding upon and be for the benefit and value of the Declarant and persons claiming under them, their grantees, successors and assigns, and shall be for the purpose of maintaining a uniform and stable value, character, architectural design, use and development of the property. The Amended and Restated Protective Covenant shall apply to the entire property and to all improvements placed or erected thereon unless otherwise specifically excepted and shall have perpetual existence, unless terminated by law or amended as herein provided.

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Article 1: Purpose

The purpose of these Covenants is to protect and enhance the Cattail Creek neighborhood and to provide for the maintenance of shared common areas.

Article 2: Property Subject to Covenants

The land described in Exhibit "A" attached hereto shall be held, sold, conveyed, leased, encumbered, occupied and improved subject to this Declaration. The Covenants shall inure to and pass with each and every parcel, tract, lot or division.

Article 3: Relationship to other Documents

3.1 Local Land Use Regulations

All zoning, land use regulations and other laws, rules and regulations of any governing body or agency with jurisdiction over Cattail Creek shall be in full force and effect, including amendments thereto, in addition to these Covenants. All owners of land in Cattail Creek shall be subject to those regulations, laws, rules and regulations. The Bozeman Unified Development Ordinance (UDO) can be found online at www.bozeman.net.

In the event there is a conflict between the Covenants or Design Regulations and any land use regulations, the most restrictive provision shall control.

3.2 Cattail Creek Community Association Bylaws

The procedures and processes for the Cattail Creek Community Association are outlined in a separate document entitled "Cattail Creek Community Association Bylaws" which is authorized by the filing of these Covenants. The Association Bylaws have a separate provision for amendments.

3.3 Cattail Creek Design Regulations

The procedures and processes for the Cattail Creek Design Committee (CCDC) and for all development within Cattail Creek are outlined in a separate document entitled "Cattail Creek Design Regulations" which is authorized by the filing of these Covenants. The Design Regulations have a separate provision for amendments.

No commercial or industrial building, residence(s), fence, wall, parking lot, garage, shed, 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 have been submitted and approved, in writing, by the CCDC, as well as appropriate City of Bozeman review, permitting and fee payment. All plans submitted to the City of Bozeman Planning Department or Building Division must have the Cattail Creek Design Committee Form B stamp of approval. It is the responsibility of the property owner to ensure that he/she has the most recent copy of the Design Regulations. An application shall be processed consistent with the Designs Regulations that are in effect thirty (30) days prior to CCDC receipt of a complete Form A submittal as outlined in the Design Regulations.

Article 4: Cattail Creek Community Association

4.1 Function

The Cattail Creek Community Association is charged with the duties and empowered with the rights set forth herein and in the Cattail Creek Community Association Bylaws.

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

4.2 Membership

The Community Association, which may be incorporated, is hereby established known as "Cattail Creek Community Association" hereinafter referred to as the "Association." The Association shall elect a nine-member Board of Directors whose duties are described in detail in the Bylaws.

Every owner or contract purchaser of a lot or unit shall be a member of the Cattail Creek Community Association. Membership shall be appurtenant to and may not be separate from the ownership of any lot or unit. Each Owner shall be responsible to advise the Association of the Owner's current mailing address and any changes to that address. Upon transfer of any Cattail Creek lot, the Owner is responsible for advising the Association of the name and address of the new Owner. The address of

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the Association shall be: **P.O. Box 11842, Bozeman, Montana 59719**. The address of the Association may be changed by the Board of Directors upon notice to the owners.

For the purpose of determining membership, at any meeting a person or entity shall be deemed to be a member upon the recording of a duly executed deed to that owner, or upon the recording of a Notice of Purchaser's Interest or an Abstract of Contract for Deed showing a contract purchase by an owner. The legal title retained by the vendor selling under contract shall not qualify such vendor for membership. Nothing contained herein shall grant multiple owners of a single lot more than one vote per lot.

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

Voting and membership interest is addressed in Article 6 of the Cattail Creek Community Association Bylaws.

4.3 Board of Directors

The Cattail Creek Community Association shall elect a Board of Directors. The Board shall be comprised of nine members of the Cattail Creek Community Association, including three (3) members from each phase. The Declarant shall have the option to be a member of the Board of Directors so long as he or she owns property in any phase of Cattail Creek.

The Board of Directors shall have the power and responsibility of acting on behalf of the Association and its members as shall be reasonably necessary to carry out the purposes of the Association, including but not limited to take such actions as shall be necessary or reasonable to care for, protect and maintain the parks, open spaces, common areas and facilities, ponds, watercourses, easements, and boundary fences; to enforce these Covenants; to adopt a development review fee schedule; to collect assessments and fines; to adopt a fine schedule; to set annual and/or special meetings; and to act in any other matters set forth herein or which may serve the development, including the formation of special improvement districts, either public or private, for such improvements as the Association shall approve.

The Directors shall act by majority vote.

The Board of Directors shall serve for a term as set by the Bylaws and which may be modified according to the amendment procedures set forth in the Bylaws. The staggering of terms shall be accomplished as set forth in the Bylaws.

Any vacancy on the Board of Directors occurring before the next annual meeting of the members shall be filled by the remaining directors nominating a replacement director (who must be from the same phase as the open position) and the nomination being ratified by a simple majority vote from the corresponding phase of the Community Association. A vacancy in any office of the Association (President, Vice President, Secretary, or Treasurer) shall be filled by appointment by the Board of Directors until the next annual meeting or the successor is duly appointed or elected. In the event that the Board of Directors is unable to replace the vacancy for a specific phase of Cattail Creek, the Board, in its discretion and after a documented attempt to fill the vacancy from the specific phase, may appoint a person from any phase of Cattail Creek Subdivision to fill the vacancy until the term expires. This filling of the vacancy does not require ratification.

4.4 Meetings

The Association shall hold annual meetings. Meeting times, locations, formats and voting shall occur as specified in the Cattail Creek Community Association Bylaws.

4.5 Voting & Membership Interest

Voting and membership interests shall be as specified in the Cattail Creek Community Association Bylaws.

4.6 Annual & Special Assessments

The purpose of annual and specials assessments levied by the Association are to promote the recreation, health, safety, convenience and welfare of the owners, including but not limited to the improvement, repair, operation, and maintenance of easements, parks and common areas, community and park street lights, and for any other purposes, expressed or implied, in these Covenants.

Each owner, whether or not it shall be so expressed in any deed or contract, is deemed to have agreed to these Covenants, and to pay to the Association:

- Annual assessments or charges and fines as may be adopted by the Board of Directors; and
- Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land, and shall be a continuing lien upon the property against which each such assessment is made. Each assessment, together with the interest, costs and reasonable attorney's fees, shall be the personal obligation of the owner of such property at the time when the assessments are due. Assessments shall begin to accrue upon closing on the purchase of a lot.

The following subsections address the details of assessments:

- (a) The Declarant for each lot owned by it within Cattail Creek hereby covenants, and each Owner of any lot by acceptance of a purchase and sale agreement, deed or lease therefore, whether or not it shall be so expressed in any such deed, lease or any other conveyance, shall be deemed to covenant and agree to pay to the Association the Owner's proportionate share of assessments established and collected from time to time as hereinafter provided.
- (b) Each owner or member will be assessed a proportionate share based on the number of dwelling units built per developed residential lot and on a dwelling unit equivalent on vacant, commercial and industrial properties as specified below:

Zone	Assessment(s)
R-1 Lot	1 share
R-2 Lot	1 share (if undeveloped) -OR- 1 share per unit (if developed)
R-3 Lot	8 shares per acre (if undeveloped) -OR- 1 share per unit (if developed)
R-O Lot	10 shares per acre (if undeveloped) -OR- 1 share per unit (if developed)
B-1 Lot M-1 Lot	4 shares per acre

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Assessments to Owners will commence immediately after the transfer of title from the Declarant to the Owner. No assessments will be levied against lots owned by the Declarant.

The Board shall have the right to determine and refine the specifics and timing of assessments within the parameters of the preceding statements.

- (c) At least 30 days prior to the commencement of each fiscal year, the Board shall fix the amount of the assessment for such fiscal year and shall, at that time, prepare a roster of the lots and assessments applicable thereto. Written notice of the assessment shall be sent to every Owner subject thereto.
- (d) The assessments levied by the Board on behalf of the Association shall be used exclusively for the purpose of financing the Association functions and duties.
- (e) If at any time and from time to time during any fiscal year, the assessment proves inadequate for any reason, including nonpayment of any Owner's share thereof, the Board may levy a further assessment in the amount of such actual or estimated inadequacy which shall be assessed to the Owners in the manner set forth herein.
- (f) In addition to the assessment authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Parks, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of members who vote in person or by proxy at a meeting duly called for this purpose.
- (g) The Board shall also levy an assessment against any Owner, as a direct result of whose acts or failure or refusal to act or otherwise to comply with the Cattail Creek Covenants for monies expended by the Association in performing its functions under Cattail Creek Covenants and Board Bylaws. Such assessment shall be in the amount so expended and shall be due and payable to the Association when levied. Monies so expended shall include, without limitation, reasonable engineers', architects', attorneys' and accountants' fees incurred by the Association.
- (h) Each assessment shall be a separate, distinct and personal debt and obligation of the Owner against who it is assessed, and each Owner

by acceptance of a purchase and sale agreement, deed or lease, shall be deemed to covenant and agree to pay the same to the Association. If the Owner does not pay such assessment or any installment thereof when due, the Owner shall be deemed in default and the amount of the assessment not paid, together with the amount of any subsequent default, plus interest at 12 percent per annum and costs, including reasonable attorney's fees, shall be and become a lien upon the lot of such Owner upon recordation by the Association of a notice of default. The Association assessment lien may be foreclosed through suit by the Association in like manner as a mortgage of real property, and the Association shall have power to bid on the lot at foreclosure sale and to acquire and hold, lease, mortgage or convey the lot. A suit to recover a money judgment of unpaid assessments shall be maintainable without foreclosing or waiving the lien securing the same. The foregoing remedies shall be in addition to any other remedies provided by law for the enforcement of such assessment obligation.

- (i) The Parks as defined herein and such portions of Cattail Creek as may be conveyed or dedicated to and accepted by a municipality, public utility, State of Montana, the County of Gallatin shall be exempt from assessments.
- (j) When requested by an Owner, the Association shall execute a certificate stating the indebtedness secured by the Association lien upon the lot of the Owner, and such certificate shall be conclusive upon the Association and the Owners in favor of such persons who rely therein in good faith as to the amount of such indebtedness as of the date of the certificate. The Association shall be entitled to a reasonable fee as a condition to issuing the certificate.

Article 5: General Restrictions & Notices

5.1 General Use Restrictions

The following general use restrictions shall apply to Cattail Creek:

- (a) No construction, development, excavation, landscaping, or like activities shall occur on any lot within Cattail Creek without prior written approval from the Cattail Creek Design Committee (CCDC).
- (b) Each building or other structure shall be constructed, erected and maintained in strict accordance with the plans and specifications approved by the CCDC.

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- (c) No animals, livestock or poultry of any kind shall be raised, bred, or kept on any land in the subdivision, except that a reasonable number of cats, dogs or other common household pets may be kept; provided, however that they are not kept, bred or maintained for any commercial purpose. Exterior Dog kennels are strongly discouraged. If needed, kennels must be in an inconspicuous location and screened from neighbor's property.
- (d) All pets shall be on a leash at all times when off the owner's property. Cattail Parkway contains considerable wildlife habitat, and all pets must be restrained and controlled when near ponds, creeks, in open space, in parks or on the trail system. NO dogs are allowed in creeks or ponds.
- (e) No hunting of, shooting at or harassing of birds, animals or any wildlife will be permitted. Skunks, gophers and rodents may be trapped; however, poison may not be used.
- (f) With ongoing construction and permanent residents occupying finished projects, it is imperative to keep construction materials covered and/or tied down, and debris and trash contained until properly disposed of. Violations will be subject to cleanup fees and/or fines of up to \$500 per occurrence.
- (g) No building materials, trash, gravel, excess soils, job trailers, or dumpsters are allowed to obstruct the public rights-of-way unless necessary permits are obtained from the City of Bozeman Engineering Office and the required barricades/safety markers are in place. Violations will be subject to fines of up to \$500 per occurrence.
- (h) No snowmobiles, recreational ATV's, or trail bikes shall be operated within Cattail Creek Subdivision. ATV's used on an owner's property for the purpose of snow removal are acceptable.
- (i) Recreational vehicles, boats, trailers, snowmobiles, and other rolling equipment other than automobiles and pick up trucks shall not be stored in open view on any residential lot, driveway, or road. Parked cars shall not obstruct pedestrian traffic. Vehicles parked in violation of these Covenants will be notified by means of a verbal notice to the vehicle owner or verbal notice to the lot owner, or by written notice from the CCDC stating that the

vehicle is in violation of these Covenants and requesting immediate removal of the vehicle. If the violation is not corrected within twenty-four (24) hours of notification, the CCDC may cause the vehicle to be towed and impounded at the expense of the vehicle's owner. The Homeowner's Association may cause a vehicle to be towed immediately without notification if the CCDC determines the vehicle impedes emergency vehicles or, in any way, represents a threat to health and safety.

- (j) The Owners, Declarant and Association are hereby prohibited and precluded from engaging in any activity that would affect or impact any downstream water user facilities and irrigation ditches for downstream water rights.
- (k) All properties and existing waterways are subject to City of Bozeman applicable ordinances pertaining to watercourse setbacks.
- (l) There is "No Parking" along Davis Lane and Catamount Street. See Final plat for additional information.
- (m) City sewer and water lines, power, natural gas, cable television, and telephone primary service lines are provided to each lot. However, each lot owner is responsible for the costs of connecting to the main utility lines to his or her improvements from the primary line near his or her lot, including any additions to the primary line that may be required by location of the improvements on the lot. All utility lines shall be underground.
- (n) No signs shall be erected on the property or lot thereof, except to identify the owner of the property. Typical "For Sale" signs shall be allowed during the sale of a lot. Additional signage details are addressed in the Design Regulations.
- (o) There are reserved, as shown in the plat and as may otherwise be reserved, easements for the purposes of constructing, operating, maintaining, enlarging, reducing, removing, laying or relaying lines and related facilities and equipment for utilities, including, but not limited to, those providing gas, communication and electrical power. Fencing, hedges and other items allowed by the Covenants may be placed along and in the easements, with permission from the City of Bozeman

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Engineering Division, as long as the intended use of such easements are not prevented.

5.2 Restricted Size Lots (RSL) & Units (RSU)

Lots 5 and 6, Block 21, Phase 3 are designated "RSL" must comply with appropriate City restrictions for square footage restrictions.

5.3 Notice of Adjacent Agricultural Uses

Property owners and residents of Cattail Creek are informed that adjacent uses may be agricultural. Lot and unit owners accept and are aware that standard agricultural and farming practices can result in dust, animal odors and 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. All new fences bordering agricultural lands shall be maintained by the property owners in accordance with state law.

5.4 Notice of Water Features

(a) Notice: Each owner of property within Cattail Creek, as individuals and as members of the Association, acknowledges the presence of water features within the subdivision. Each owner of property within Cattail Creek, as individuals and as members of the Association, acknowledges that water could pose a danger to humans, animal life and property. By this acknowledgment, each owner of property within Cattail Creek, as individuals and as members of the Association assumes the normal and ordinary consequences of their actions when in, next to or in the vicinity of water features within Cattail Creek.

(b) Hold Harmless: Each owner of property within Cattail Creek, as individuals, agrees by acceptance of this covenant to hold harmless Covenant Investments, Inc., its officers and directors, and successors in interest, the Community Association, adjacent property owners, and the Farmer Canal Company and its successors in interest for any water related injury to persons, property and animals and damage due to acts of God and nature, including but not limited to a flood from the canal and other water features resulting from circumstances beyond the control of the parties listed herein.

(c) Insurance: Each owner of property within Cattail Creek acknowledges that it is advisable to seek insurance to protect the owner's property in the case of a water event relating to the water features.

5.5 Weed Control



The control of noxious weeds by the Community Association on those areas for which the Community Association is responsible and the control of noxious weeds by individual owners on their respective lots shall be as set forth and specified under the Montana Noxious Weed Control Act (MCA 7-22-2101 through 7-22-2153) and the rules and regulations of the Gallatin County Weed Control District.

The landowner shall be responsible for the control of the state and county declared noxious weeds on his or her own lot. Both unimproved and improved lots shall be managed for noxious weeds. In the event a landowner does not control the noxious weeds, after ten (10) days notice from the Community Association, the Community Association may cause the noxious weeds to be controlled. The cost and expense associated with such weed management shall be assessed to the lot and such assessment may become a lien if not paid within thirty (30) days of the mailing of such assessment.

The Community Association is responsible for control of state and county declared noxious weeds in the subdivision parks, open spaces, community areas, trails, and roadways.

5.6 Garbage

Property owners and residents of the neighborhood are informed that all garbage must be promptly removed from the property. There shall be no incineration or burning of garbage, trash or other waste or debris on, or coming from any lot. No junk, garbage, trash, equipment, non-working or out-of-use vehicles, parts, metals, lumber, debris or other waste shall be allowed to accumulate on any lot or originate from any lot during construction. All garbage and trash requirements of the City of Bozeman shall be observed. Garbage containers shall be kept in the garage or other enclosures except on garbage pick-up day. Each lot owner shall maintain the alley right-of-way adjacent to the owner's property. Such maintenance shall include, but not be limited to, picking up and appropriately disposing of debris and garbage, mowing and trimming of the alley right-of-way.

All construction dumpsters must be protected from wind. Owners with unsecured dumpsters or building materials will be subject to fines.

In the event an owner shall not control waste on or coming from their property, the Association, after ten (10) days written notice to an owner to control the same, may cause the waste to be controlled or collected, and will assess the lot owner for the costs thereof and or fined.



Refuse within the parks and open space will be collected by a service retained by the Community Association.

5.7 Sidewalks

All lot owners are required to install city standard concrete sidewalks, along all lot street frontages, at the time of construction (prior to occupancy) or by July 1, 2008, whichever occurs first.

Every lot owner shall be responsible for maintenance of the sidewalk located on, adjacent to and between the owner's lot and the nearest right-of-way. Maintenance shall include, but not be limited to snow and ice removal.

The Community Association shall be responsible for maintenance of the sidewalks located on and adjacent to parks and open space. Maintenance shall include, but not be limited to snow and ice removal.

Article 6: Common Areas

6.1 Use

Each property or unit owner has the right to use and enjoy the common properties or facilities. No property owner shall have the right to occupy or possess any of the open space and common area by reason of owning a lot in Cattail Creek. No Owner, guest or invitee may use or occupy the common area, trails, roads, open space, parking area or any lot in such a manner as to disturb or interfere with the peaceful use, occupancy or enjoyment of any other owner, guest or invitee. General use restrictions are listed in Article 5. In addition to the other restrictions stated herein, no motorcycles, snowmobiles or similar means of transportation are permitted in parks or common areas. Motorized vehicles are allowed exclusively for snow removal.

Violations shall be enforced as provided for in Article 7 of these Covenants.

The Open Space within Cattail Creek as designated on a final plat or approved site plan shall be preserved in perpetuity. Open space shown on the approved final plan or plat shall not be used for the construction of any structures not shown or approved in the final parks plan. The Board, among its other duties, shall establish assessments for the taxes, insurance, and maintenance of all open spaces, parks, trails, roads, medians and easements.

6.2 Control and Management

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The Association shall have the exclusive right and obligation to manage, control and maintain the Open Spaces and Common Areas.

6.3 Maintenance

Parks and open space shall be maintained as specified in the Cattail Creek Parks Master Plan.

The Community Association shall be responsible for liability insurance, local taxes and maintenance of recreation and other facilities in the common space areas. The assessments levied by the Board for the maintenance, upkeep, repair and operation of common areas like all other assessments, become a lien on each lot within the Cattail Creek. The Board may, in its discretion, adjust the assessments to meet the changing needs of the community and the areas serving the community.

The Community Association will be responsible for park maintenance until such time a City wide Park Maintenance District is created. The Community Association shall also be responsible for the maintenance of all common properties, paths and trails, facilities, centers, and adjacent sidewalks and/or landscaping in street boulevards.

6.4 Maintenance Guarantee

In the event the organization or any successor organization established to own and maintain commonly owned open spaces, recreational areas, facilities, private streets, and parking lots common areas and facilities, shall at any time fail to maintain the common areas or 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 areas or 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.

- (a) 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.
- (b) 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.
- (c) These common areas and facilities shall include but are not limited to commonly owned open spaces, recreational areas, facilities, private streets and parking lots. These common areas and facilities shall also include but are not limited to public parks, squares, open space, recreation areas, trails, as well as any public streets, avenues and alleys not accepted by the City for maintenance.
- (d) The City shall assume permanent responsibility for maintenance of public areas and facilities when a dedicated funding mechanism is adopted.

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Article 7: Disputes, Enforcement, & Fines

7.1 Enforcement

Each Owner grants to Declarant and reserves to Declarant, a lien upon the lot of the Owner to secure the faithful performance by the Owner of the requirements and restrictions contained in these Covenants and in the Design Regulations and Bylaws. If any Owner shall fail to comply with these Covenants, the Design Regulations, or the Bylaws within ten (10) days after Declarant shall have deposited in the United States postal system a notice to the Owner of the failure to comply, Declarant shall have the right to cause the necessary work to be done and to have a lien upon the land of the non-complying Owner for the reasonable cost of such work plus an additional amount equal to ten (10) percent of the cost of such work.

If within thirty (30) days the non-complying Owner does not pay to Declarant the sum secured by the lien, then Declarant may foreclose the lien in compliance with the mortgage foreclosure laws of the State of Montana for the aggregate of (I) the reasonable cost of such work (II) a sum equal to ten (10) percent of such work, and (III) all cost incurred by Declarant in foreclosing the lien, including a reasonable attorney's fee. Declarant is in no way precluded from seeking any remedy available to Declarant pursuant to the laws of Montana, including but not limited to immediate, temporary and permanent injunctive relief.

Enforcement of these Covenants by the Declarant, CCDC, Board of Directors, Owner or any party having standing, shall include for the party seeking enforcement and prevailing in such enforcement, an award of costs, fees and reasonable attorney's fees.

Should any lawsuit or other legal proceeding be instituted by the Association or an owner against an owner alleged to have violated one or more of the provisions of these Covenants and should the Association or owner enforcing the provisions of the Covenants be wholly or partially successful in such proceedings, the offending owner shall be obligated to pay the costs of such proceeding, including reasonable attorney's fees for all time associated with the action.

The failure of Declarant, the Association or an owner, to enforce any Covenant or restriction contained herein shall not be deemed a waiver or in any way prejudice the rights to later enforce that Covenant, or any other Covenant thereafter, or to collect damages for any subsequent breach of Covenants.



The waiver or approval of a variance of a Covenant provision by the Board of Directors or the Cattail Creek Review Committee, or non-action of the Association or Declarant in the event of a violation of a Covenant by a particular owner or lot, shall not be deemed to delete or waive the Covenant or enforcement thereof as it pertains to other owners or lots.

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

In any conveyance of the above described real property or of any lot thereon, it shall be sufficient to insert a provision in any deed or conveyance to the effect that the property is subject to protective or restrictive Covenants without setting forth such restrictions and Covenants verbatim or in substance in said deed nor referring to the recording data. 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 specific reference to the same in a deed or conveyance.

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

7.2 Fine Schedule

For any Violation of the terms, conditions, restrictions and protections contained within the Covenants, and upon written complaint signed by the author.

Upon receipt of complaint and the finding of violation, the Association has the authority to assess fines. The Association shall notify the Owner upon receipt of a complaint of violation and allow a reasonable time for response by the Owner. The Association's agent may determine if a violation occurred. Upon determination of a violation, the Association shall notify the Owner of the violation, the fine and the date of payment for the fine and the ability of the Association to file a lien against the Owner's property without further notice.

Failure to pay the fine when due shall subject the Owner to interest on the unpaid portion of the fine at a rate of not less than ten (10) percent per

annum. Said rate may be amended without an amendment of this Declaration.

In addition to the fine schedule set forth above, the Homeowner's Association may assess fines of up to \$50,000.00 (note that this is in addition to the terms outlined for unfinished structures against any Owner who constructs, remodels or modifies a structure without written approval from the CCDC.

7.3 Dispute Resolution

If a dispute still exists after all proper procedures outlined in this document and in the Design Regulations have been exhausted, mediation should be the next step in dispute resolution before any lawsuits are filed.

Article 8: Term

All the limitations, conditions, and restrictions contained in these Covenants of Cattail Creek shall run with the land and shall be binding on all parties and persons claiming under them for a 10 year period beginning at the date of filing of this document, at which time the same shall be automatically extended for successive periods of 10 years, unless the record Owners of lots then within Cattail Creek having not less than three-fourths (3/4) of the total votes record an instrument terminating the Cattail Creek Covenants within one (1) year prior to the commencement of any such period. Any such termination shall take effect upon expiration of the period during which it is given. Prior to the expiration of these Covenants, the Association may vote, pursuant to the provisions allowing amendment hereto, to extend these Covenants.

Article 9: Amendments

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 owners in accordance with the amendment procedures in the Covenants, and the City Commission.

The Cattail Creek Covenants, may, at any time, be amended or replaced upon the happening of all the following events:

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- A. The vote of Owners having not less than two-thirds (2/3) of the total votes within Cattail Creek at a meeting of the Association duly held. The notice of the meeting shall state that the purpose of the meeting is to consider the amendment or repeal of the Cattail Creek Covenants, giving the substance of any proposed amendments or indicating the provisions to be repealed, as the case may be; and
- B. The recordation of a certificate of the Secretary or an Assistant Secretary of the Association setting forth in full the amendment or amendments to the Cattail Creek Covenants so approved, including any portion or portions thereof repealed, and certifying that said amendment or amendments have been approved by vote of the Owners pursuant these Covenants.
- C. The President or Vice-President shall execute and record the amendment, change or addition with the Clerk and Recorder of Gallatin County, Montana.

Any change of these Covenants shall be effective upon the filing and recording of such an instrument in the office of the Gallatin County Clerk and Recorder. No improvements that were constructed and approved in accordance with the Covenants shall be required to be changed because such standards are thereafter amended. All lots within all phases of Cattail Creek shall be required to adhere to these Covenants.



Article 10: Definitions

The words and terms used in this document shall be defined as in the latest edition of the City of Bozeman Unified Development Ordinance unless defined below. If not defined below or in the Unified Development Ordinance, words and terms shall have their customary dictionary definitions.

- **Architect** shall mean a person registered to practice architecture in the State of Montana.
- **Association** shall mean the Cattail Creek Community Association, and its successors and assigns which shall serve and may be referred to as the Homeowners' Association. The Association may be incorporated as a Montana nonprofit corporation, with its members as the lot owners.
- **Board** shall mean the Board of Directors of the Association. (Also see "Directors" definition below.)
- **Bylaws** shall mean the bylaws of the Association.
- **Cattail Creek Design Committee**, also referred to as CCDC, shall consist of the Design Liaison (from the Board of Directors), an at-large member of the Association appointed by the Board of Directors and an architect. The CCDC has the right to exercise control over all construction in the Cattail Creek Subdivision. The architect member of the committee shall conduct all design reviews (Form A, Form B & Form C) with consultation, as desired or necessary, from the other members of the CCDC.
- **Cattail Creek** shall include all land described in Exhibit "A."
- **Contract purchaser** shall mean a person buying a lot pursuant to a contract for deed, Montana Trust Indenture or mortgage.
- **Declarant** shall mean SANDAN, LLC or such other person entity or corporation who SANDAN, LLC may be, by a recorded document, designated as the Declarant.
- **Development** shall mean any building, construction, renovation, or material change in the use or appearance of structures or land. Development includes the construction of fences and paving and significant landscape changes.
- **Directors** shall mean the Board of Directors of the Association, comprised of nine members of the Cattail Creek Community Association, including



three (3) members from each phase. The Declarant shall have the option to be a member of the Board of Directors so long as he or she owns property in any phase of Cattail Creek. Directors shall be elected at the annual meeting by a simple majority of the members of the Association. Power and Duties of the Board of Directors.

- **Lot** shall mean and refer to only that land so divided into a lot, tract or parcel that is (a) described in Exhibit "A" and (b) designated as the Declarant for residential, commercial or industrial use. The term lot does not include any portion of the Parks or open space.
- **Member** shall mean any owner or lot owner. Each member or owner agrees to abide and be bound by these Covenants, the Articles of Incorporation, Design Regulations, Bylaws and the Resolutions of the Community Association, if any.
- **Open space** means those areas set aside for the use of all of the owners and the public, including roads, trails, easements, parks, open spaces, and medians. The terms "open space" and "common area" or "common open space" are used interchangeably.
- **Owner** also referred to as lot owner, member and home owner, shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to or leasehold interest in any land which is a part of Cattail Creek, including contract purchasers, but excluding those having such interest merely as security of the performance of an obligation.
- **Parks** shall mean all land and interest therein which has or may be conveyed to the Association or City of Bozeman, including but not limited to all lands identified as common open space, trails, public park, park, private open space, and detention / retention ponds as delineated on the final plats Phases 1, 2 and 3. The word park when used herein in the singular form may be referring a portion of the total parks delineated on the final plats of Cattail Creek Subdivision. Any portion of the designated parks not specifically designated as common open space may be transferred to an appropriate organization subject to the restriction governing the maintenance and improvements of parks contained herein. Common open space, including the detention / retention ponds, shall remain in the ownership and control of the Association. Parks shall be maintained and improved consistent with the provisions of these Covenants governing maintenance of parks and improvements of parks. All Parks are hereby declared to be dedicated to be public use and available for the use and enjoyment of the public.

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- **Properties** and "lots" shall mean all of the real property herein described and subsequently surveyed and platted into lots as Cattail Creek or a phase thereof, according to the official plats thereof filed of record in the office of the Clerk and Recorder of Gallatin County, Montana.
- **UDO** shall mean the current City of Bozeman Unified Development Ordinance or other current land use regulations as adopted by the City of Bozeman.



IN WITNESS WHEREOF, Declarant has hereunto set its hand as of this 23
day of April, 2008.

DECLARANT:

Sandra Hamilton
Sandan, LLC
Title: Member

STATE OF Montana

County of Gallatin) :SS

On this 23 day of April, 2008, before me, a Notary Public of
the State of Montana, personally appeared Sandra Hamilton, member
me to be the person described in and who executed the foregoing instrument
as member of Sandan, LLC whose name is
subscribed to the within instrument and acknowledged to me he/she executed
the same for and on behalf of Sandan, LLC.

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



Diana C Hill
Printed Name: _____
NOTARY PUBLIC for the State of: _____
Residing at: _____
Commission expires _____ (use 4 digits)

DIANA C. HILLMAN
NOTARY PUBLIC for the State of Montana
Residing at Livingston, Montana
My Commission Expires June 22, 2010

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DECLARANT:

Sandra F. Rummel
Cattail Creek Community Association Phase 1
Authorized Representative

STATE OF Montana
County of Gallatin)

SS

On this 6 day of May, 2008, before me, a Notary Public of the State of MT, personally appeared Sandra Rummel known to me to be the person described in and who executed the foregoing instrument as an authorized representative of Cattail Creek Community Association, Phase 1, whose name is subscribed to the within instrument and acknowledged to me he/she executed the same for and on behalf of Cattail Creek Community Association Phase 1.

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



Diana C. Hillman
Printed Name: _____
NOTARY PUBLIC for the State of: _____
Residing at: _____
Commission expires _____ (use 4 digits)

DIANA C. HILLMAN
NOTARY PUBLIC for the State of Montana
Residing at Livingston, Montana
My Commission Expires June 22, 2010

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DECLARANT:

[Signature]
Cattail Creek Community Association Phase 2
Authorized Representative

STATE OF Montana

County of Gallatin

:SS

On this 25 day of April, 2008, before me, a Notary Public of the State of Montana, personally appeared Jeremy Ryan Maup known to me to be the person described in and who executed the foregoing instrument as an authorized representative of Cattail Creek Community Association, Phase 2, whose name is subscribed to the within instrument and acknowledged to me he/she executed the same for and on behalf of Cattail Creek Community Association Phase 2.

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



[Signature]
Printed Name: _____
NOTARY PUBLIC for the State of: _____
Residing at: _____
Commission expires _____ (use 4 digits)

DIANA C. HILLMAN
NOTARY PUBLIC for the State of Montana
Residing at Livingston, Montana
My Commission Expires June 22, 2010

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DECLARANT:

[Signature]
Cattail Creek Community Association Phase 3
Authorized Representative

STATE OF Montana
County of Gallatin)

:SS

On this 7th day of May, 2008, before me, a Notary Public of the State of _____, personally appeared Justin Tribitt known to me to be the person described in and who executed the foregoing instrument as an authorized representative of Cattail Creek Community Association, Phase 3, whose name is subscribed to the within instrument and acknowledged to me he/she executed the same for and on behalf of Cattail Creek Community Association Phase 3.

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



[Signature]
Printed Name: _____
NOTARY PUBLIC for the State of: _____
Residing at: _____
Commission expires _____ (use 4 digits)



DIANA C. HILLMAN
NOTARY PUBLIC for the State of Montana
Residing at Livingston, Montana
My Commission Expires June 22, 2010

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Exhibit A: Legal Description of Subdivision

Description of Cattail Creek – Phase 1

A parcel of land being Lot B of Minor Subdivision No. 45B, said parcel being located in the Northwest Quarter of Section 35, Township 1 South, Range 5 East, Principal Meridian Montana, City of Bozeman, Gallatin County, Montana and being more particularly described as follows:

Beginning at the southeast corner of said Northwest Quarter of Section 35, said corner being marked by a found 2" brass cap; thence South 89°41'58" West, along the south line of Lot 2A of Minor Subdivision No. 145A, a distance of 1126.15 feet; Thence in generally northwesterly and northerly directions through the following 10 courses:

North 30°22'19" West, 483.25 feet;
North 59°37'41" East, 87.36 feet;
North 30°22'19" West, 65.00 feet;
South 59°37'41" West, 87.36 feet;
North 30°22'19" West, 236.99 feet;
North 00°13'52" East, 893.36 feet;
South 89°46'08" East, 58.43 feet;
North 00°13'52" East, 60.00 feet;
North 89°46'08" West, 58.43 feet;
North 00°13'52" East, 194.08 feet

to a point on the south line of Tract 1 of Certificate of Survey No. 2050; thence North 89°44'23" East, along said south line, a distance of 1525.91 feet to a point on the east line of said Northwest Quarter of Section 35; thence South 00°13'52" West, along said east line, a distance of 1825.94 feet to the Point of Beginning.

The described parcel is along with and subject to any existing easements and contains 60.650 acres, more or less.

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Description of Cattail Creek – Phase 2

A tract of land being Lot 1A of Minor Subdivision No. 145A and Lot A of Minor Subdivision No. 145B, and the property described on the plat of record Film 12, Page 1159, Gallatin County records; the herein described tract being located in the Northwest Quarter and the Southwest Quarter of Section 35, Township 1 South, Range 5 East, Principal Meridian Montana, Gallatin County, Montana, and being more particularly described as follows:

Beginning at the west 1/4 corner of said Section 35; thence North 89°41'24" East, along the generally westerly boundary of Lot 1A of Minor Subdivision No. 145A, a distance of 30.00 feet; thence North 00°09'17" East, along the west line of said Lot 1A, a distance of 360.24 feet, to a point on the south line of a plat recorded on Film 12, Page 1159 of Gallatin County records; thence North 89°48'56" West, along the south line of said plat, a distance of 30.00 feet; thence North 00°09'17" East, along the west line of Section 35, a distance of 149.89 feet; thence South 89°50'32" East, along the north line of said plat, a distance of 30.00 feet to the southwest corner of Lot A of Minor Subdivision No. 145B; thence North 00°09'17" East, along said west line of Lot A, a distance of 291.90 feet, to the southwest corner of Lot 1, Minor Subdivision No. 145; thence North 89°43'57" East, along the south line of said Lot 1, a distance of 223.37 feet; thence North 00°13'52" East, along the east line of said Lot 1, a distance of 195.10 feet, to the northeast corner of said Lot 1; thence South 89°42'52" West, along the north line of said Lot 1 and its westerly prolongation, a distance of 253.63 feet; thence North 00°09'17" East, along the west line of Section 35, a distance of 830.93 feet, to the southwest corner of Tract 1 of Certificate of Survey No. 2050; thence North 89°44'23" East, along the south line of said Tract 1, a distance of 1126.47 feet; thence along the westerly and southwesterly boundary of Lot B of Minor Subdivision No. 145B through the following 10 courses:

- South 00°13'52" West, a distance of 194.08 feet;
- South 89°46'08" East, a distance of 58.43 feet;
- South 00°13'52" West, a distance of 60.00 feet;
- North 89°46'08" West, a distance of 58.43 feet;
- South 00°13'52" West, a distance of 893.36 feet;
- South 30°22'19" East, a distance of 236.99 feet;
- North 59°37'41" East, a distance of 87.36 feet;
- South 30°22'19" East, a distance of 65.00 feet;
- South 59°37'41" West, a distance of 87.36 feet;
- South 30°22'19" East, a distance of 483.25 feet

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to the southeast corner of said Lot A of Minor Subdivision No. 145B; thence South 89°41'58" West, along the south line of said Lot A, a distance of 198.91 feet; thence South 00°13'15" West, along the east line of Lot 1A, of Minor Subdivision No. 145A, a distance of 331.47 feet; thence South 89°41'44" West, along the south line of said Lot 1A, a distance of 1324.60 feet; thence North 00°10'12" East, along the west line of Lot 1A, a distance of 331.34 feet to the Point of Beginning.

The described tract is along with and subject to any existing easements and contains 59.03 acres more or less.

Description of Cattail Creek – Phase 3

A tract of land being Tract 1, Certificate of Survey No. 2050, said tract being located in the Northwest Quarter of Section 35, Township 1 South, Range 5 East, Principal Meridian Montana, City of Bozeman, Gallatin County, Montana.

The described tract is along with and subject to any existing easements and contains 50.58 acres more or less.

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ZONING / LAND USE KEY

- M-1 LIGHT MANUFACTURING DISTRICT
- B-1 NEIGHBORHOOD BUSINESS DISTRICT
- R-O RESIDENTIAL OFFICE DISTRICT
- R-3 RESIDENTIAL MEDIUM DENSITY DISTRICT
- R-2 RESIDENTIAL TWO-HOUSEHOLD MEDIUM DENSITY DISTRICT
- R-1 RESIDENTIAL SINGLE-HOUSEHOLD LOW DENSITY DISTRICT
- PARKS/Common OPEN SPACE
- WETLANDS/POND

PHASE III

NOTE:
AREAS, LAYOUTS, DIMENSIONS,
EASEMENTS AND SETBACKS ARE
FOR INFORMATIONAL PURPOSES ONLY.
SEE CURRENT CITY LAND USE
REGULATIONS, FINAL PLATS AND
CURRENT COVENANTS, ETC., FOR
DESIGN REGULATIONS FOR SPECIFIC
INFORMATION.

CATALINA CREEK

GALLATIN CENTER

TARGET

BOB WINDS

PETSMAART

STAPLES

DRAKE LANE (MINOR ARTERIAL)

CATAMOUNT STREET (MAJOR ARTERIAL - TDD ROW #)

PHASE I

PHASE II

intrinsic ARCHITECTURE

TD&H

Schematic Master Plan
NMS January 2008 Draft Revised

Catalina Creek

NTS
Schematic Master Plan
January 2008 Draft Revised

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