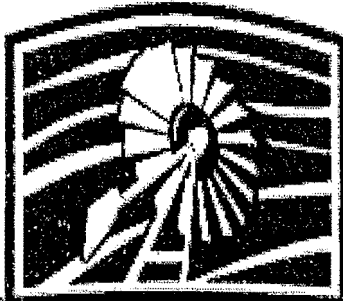




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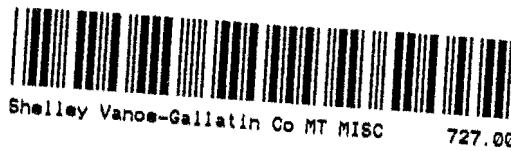
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*West Winds*

Declaration of Covenants,  
Conditions and Restrictions

West Winds Master Homeowners' Association, Inc.



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## Appendices

- Appendix A -- Fencing Details
- Appendix B -- Stormwater Detention Pond Details
- Appendix C -- Lighting Master Plan and Details

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
WEST WINDS MASTER HOMEOWNERS' ASSOCIATION, INC.**

**THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**  
(The "**Declaration**") is made and entered into on this 23 day of Sept., 2005 by *Cascade Development, Inc.*, a Montana corporation ("**Declarant**").

**WHEREAS**, Declarant owns certain real property in Gallatin County, Montana, described in Exhibit "A," attached hereto; and,

**WHEREAS**, Declarant desires to create a master planned Property known as West Winds , on the land described in Exhibit "A" and such other land as may be added thereto pursuant to the terms and provisions of this Declaration;

**NOW THEREFORE**, Declarant declares that the property described in Exhibit "A" will be held, sold, and conveyed subject to the restrictions, covenants, and conditions declared below, which will be deemed to be covenants running with the land and imposed on and intended to benefit and burden each Lot (as hereinafter defined) and other portions of the Property in order to maintain high standards within the Property. Such covenants will be binding on all parties having any right, title, or interest therein or any part thereof, their respective heirs, personal representatives, successors and assigns, and will inure to the benefit of each Owner (as hereinafter defined) thereof.

**I. DEFINITIONS**

The following terms used herein are defined as follows:

- 1.1 "**Additional Property**" refers to any property later annexed by Supplemental Declaration pursuant to Article 17.
- 1.2 "**Architectural Control Committee**" or "**ACC**" or "**Committee**" shall refer to the committee initially consisting of three members established to enforce the Architectural standards of the Property and to approve or disapprove plans for improvements proposed for the Lots, as described in Section 1.29.
- 1.3 "**Articles**" means the Articles of Incorporation of West Winds Homeowners' Association, Inc., as amended from time to time, and of any successor thereto.
- 1.4 "**Assessment Lien**" means the lien created and imposed by Sections 6.2 and 6.11.
- 1.5 "**Assessments**" include the following:





- (a) "**Maintenance Assessment**" as determined in Sections 6.6 and 6.22.
- (b) "**Capital Improvement Assessment**" as determined in Section 6.8.
- (c) "**Special Assessment**" as determined in Section 6.9.
- (d) "**Reimbursement Assessment**" as determined in Sections 6.10 and 6.20.

1.6 "**Association**" means Cascade Development, Inc., a Montana non-profit corporation, its successors and assigns.

1.7 "**Association Land**" means such part or parts of West Winds Property and such buildings, structures and improvements thereon, and other real or personal property or interests therein as the Association may at any time own in fee or in which the Association may at any time have a leasehold interest including, but not limited to, Common Areas, for as long as the Association is the owner of the fee or leasehold interest, including any Private Streets owned by the Association.

1.8 "**Association Rules**" means the rules and regulations adopted by the Board pursuant to Section 4.4, as such rules and regulations may be amended from time to time.

1.9 "**Board of Directors**" or "**Board**" means the body responsible for the Association's general governance and administration, selected as provided in the Bylaws.

1.10 "**Business Use**" shall be construed to have its ordinary, generally accepted meaning and shall include any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to Persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefore. The leasing of an Owner's own Lot for single family residential purposes shall not be considered a trade or business. A permitted Business Use shall mean a "Business Use" which complies with all of the following: (a) the existence or operation of business activity is not apparent or detectable by sight, sound or smell from outside the Lot on which it occurs; (b) business activity does not involve individuals coming onto a Lot who do not reside on the Lot or door-to-door solicitation of residents of Lots; (c) not more than one employee which is not a family member works on the Lot; (d) commercial deliveries are not made to the Lots; and (e) business activity consistent with a residential character of property use and not a nuisance, or a hazardous or offensive use, or a threat to the security or safety of other Owners and Occupants, as may be determined in the sole discretion of the Board.

1.11 "**Bylaws**" means the Bylaws of the Association and its successors adopted in accordance with the Articles, as such Bylaws may be amended or supplemented from time to time.

1.12 "**City**" means the City of Bozeman, Gallatin County, Montana.



1.13 "Common Areas" means all real property interests (not just fee title and leasehold interests) and the improvements or amenities thereon conveyed to the Association free and clear of monetary encumbrances for the common use and enjoyment of the Owners and Occupants. Any real property interests, and improvements or amenities thereon, which are described as part of the "common areas" in a Recorded plat shall, for all purposes, be integrated into and deemed to be a part of the Common Areas subject to this Declaration, unless otherwise specified in the Recorded plat.

1.14 "Common Expenses" means the costs incurred by the Association in conducting its operations and activities, administering, maintaining and operating the Property, and in owning or leasing any portions thereof, including, but not limited to, the following:

(a) The costs of any maintenance, management, operation, repair and replacement of the Common Areas, and all other areas in the Property which are managed or maintained by the Association, other than those areas being managed or maintained as a Reimbursement Assessment pursuant to Sections 6.10 and 6.20;

(b) Unpaid Assessments and Reimbursement Assessments;

(c) The costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees;

(d) The costs of utilities and services (including, but not limited to, water, electricity, gas, sewer, trash pick-up and disposal) which are provided to the Association or the Common Areas, landscaping maintenance and other services which generally benefit and enhance the value and desirability of the Property and which are provided by the Association;

(e) The costs of insurance maintained by the Association as permitted herein;

(f) Reasonable reserves for contingencies, replacements and other proper purposes, if deemed appropriate by the Board, to meet anticipated costs and expenses including, but not limited to, maintenance, repairs and replacement of those Common Areas which must be maintained, repaired, or replaced on a periodic basis;

(g) The costs which the Board may elect to incur to bond the members of the Board, officers of the Association, any professional managing agent or any other Person handling the funds of the Association;

(h) Taxes paid by the Association;

(i) Amounts paid by the Association for discharge of any lien or encumbrance levied against the Common Areas or portions thereof;



- (j) The costs incurred by the ACC;
- (k) The costs incurred by any other committees established by the Board or the President;
- (l) Other expenses incurred by the Association for any reason whatsoever in connection with the Common Areas, or the costs of any other item or items designated by, or to be provided or performed by the Association pursuant to, this Declaration, the Articles, Bylaws, Association Rules, or Design Guidelines, or in furtherance of the purposes of the Association or in the discharge of any duties or powers of the Association.

1.15 "County" means the County of Gallatin, a political subdivision of the State of Montana.

1.16 "Declarant" means Cascade Development, Inc. and its successors and assigns who are designated as such in writing by Declarant, and who consent in writing to assume the duties and obligations of the Declarant with respect to the Lots acquired by such successor or assigns.

1.17 "Declaration" means this Declaration of Covenants, Conditions and Restrictions and all Supplemental Declarations, as such declarations may be amended from time to time.

1.18 "Design Guidelines" means the rules, regulations, restrictions, Architectural standards and design guidelines from time to time adopted by the Committee pursuant to Section 12.

1.19 "Development Plan" means the development plan approved by the City, as the same may be amended from time to time.

1.20 "Developer" means *Cascade Development, Inc.*, a Montana corporation, its predecessors, successors and assigns, or any Person to whom Developer's rights hereunder are hereafter assigned in whole or in part by Recorded instrument, or any Mortgagee of Developer which acquires title to or succeeds to the interest of Developer in any portion of the Project by reason of the foreclosure (or conveyance in lieu of foreclosure) or trustee's sale under the Mortgage of said Mortgagee. The term "Developer", as used herein, shall include not only the named Developer but also any of the foregoing successors, assigns, assignees of right(s) and Mortgagees. An assignment by Recorded instrument of all of Developer's rights shall vest in the assignee all of Developer's rights hereunder (including, but not limited to, all of Developer's easements, rights of consent or approval and voting rights) on the same terms that they were held by Developer hereunder. An assignment by Recorded instrument of part of Developer's rights shall vest in the assignee the specific Developer's right(s) named in the instrument of assignment on the same terms that they were held by Developer hereunder. Notwithstanding anything to the contrary herein, an assignment of all or any portion of Developer's rights shall not deprive the assignor of any protection, indemnity or freedom from liability that would otherwise exist under this Declaration if the assignor had retained all of the Developer's rights hereunder.

1.21 "Exempt Property" means the following parts of the Property:

(a) All land and improvements owned by or dedicated to and accepted by the United States, the State of Montana, the County, the City, or any political subdivision thereof, for as long as any such entity or political subdivision is the owner thereof or for so long as said dedication remains effective;

(b) All Association Land, for as long as the Association is the owner or lessee thereof; and

(c) All land and improvements owned or leased by a public service corporation providing utility services.

1.22 "**First Mortgage**" means a Mortgage which is the first and most senior of all Mortgages upon the same property.

1.23 "**First Mortgagee**" means the holder of a First Mortgage.

1.24 "**Fiscal Year**" means calendar year unless otherwise determined by the Board in accordance with the Bylaws of the Association.

1.25 "**Improvement**" shall mean, but not be limited to buildings, sheds utility buildings, roads, driveway, dams, channels, basins, parking areas, fences, walls, retaining walls, poles, basketball goals, patio covers, antennas, dish antennas, excavations, rocks, hedges, plantings, planted trees, and shrubs, and all other improvements of any type of kind.

1.26 "**West Winds**" is the Master Plan Area approved by the City of Bozeman.

1.27 "**Limited Common Areas**" means Common Area which benefits less than all of the Owners. Each of these Limited Common Areas tracts is for the benefit of the Lots that are provided the benefits of these Limited Common Areas.

1.28 "**Lot**" means any area of the Property designated as a Lot on any subdivision plat subject to this Declaration, recorded by or with the consent of Developer.

1.29 "**Member**" means every Person who is a member of the Association. Each Lot shall have one membership in the Association.

1.30 "**Mortgage**" means any Recorded, filed or otherwise perfected instrument, which is not a fraudulent conveyance under Montana law, given in good faith and for valuable consideration as security for the performance of an obligation including, but not limited to, a deed of trust, but shall not include any instrument creating or evidencing solely a security interest arising under the Uniform Commercial Code.

1.31 "**Mortgagee**" means the holder of a note secured by a Mortgage, including the trustee and beneficiary under any deed of trust.

1.32 "**Mortgagor**" means the party executing a Mortgage as obligor.

1.33 "**Occupant**" means any Person, other than an Owner, in rightful possession of any portion of the Property, whether as a guest, tenant or otherwise.

1.34 "**Owner**" means the Record owner, whether one or more Persons or entities, of fee simple title, whether or not subject to any Mortgage, to any Lot which is a part of the Property, including contract purchasers but excluding those having such interest merely as security for the performance of an obligation. If fee simple title to any Lot is vested of Record in a trustee pursuant to Montana law (as amended from time to time), legal title shall be deemed to be in the beneficiary.

1.35 "**Party Walls**" or "**Party Fences**" shall mean those walls and fences described in Section 13.8.

1.36 "**Person**" means an individual, corporation, partnership, trustee or other entity capable of holding title to real property, and their respective heirs, personal representatives, successors and assigns.

1.37 "**Private Roads**" and "**Private Streets**" are synonymous and mean any street, roadway, drive, sidewalk, walkway, path or other right-of-way within, or partly within, the Property which has not expressly been dedicated to the public use and is required to be maintained under this Declaration (and include, but are not limited to, the streets and rights-of-way within the Property designated as private access ways and public utility easements and which are not required to be maintained under any Declaration). In the event that the Board elects to dedicate or transfer a Private Road to public use and expenses must be incurred for the purpose of bringing the Private Road into conformance with the specifications of the City, the expenses shall be considered costs of capital improvements and subject to the provisions hereof for Capital Improvement Assessments.

1.38 "**Project**" means the development and improvement of the Property which is subject to this Declaration, including all elements reasonable and necessary for its completion.

1.39 "**Property**" means any real property now or hereafter made subject to this Declaration together with all buildings, improvements and other permanent fixtures of whatever kind now or hereafter located thereon, and all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto.

1.40 "**Record**," "**Recording**," "**Recorded**" or "**Recordation**" means an instrument of record in, or the act of recording an instrument with, the office of the County Clerk for Gallatin County, Montana or other officer charged with the duty of recording and maintaining records for real property having jurisdiction of the Property.



- 1.41 **"Single Family"** means one or more individuals, each related to the other by blood, marriage or legal adoption, living together as a "traditional" family. If two unmarried individuals are living together, all other persons living in the home must be related to at least one such individual by blood or legal adoption. "Single family" does not include any group home or similar uses, even though the individuals may have common needs or interests.
- 1.42 **"Special Use Fees"** means special fees which an Owner, Occupant or any other Person is obligated by this Declaration or Association Rules to pay to the Association for use of or access to an amenity, facility or other improvement, including, but not limited to, a Common Area or Association Land, or for the granting of a right or privilege with respect thereto, over, above, and in addition to any Assessment hereunder.
- 1.43 **"Subdivision"** means a group of Lots platted together and given a unique identity.
- 1.44 **"Supplemental Declaration"** means an amendment or supplement to this Declaration filed pursuant to Article XVII which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described therein.
- 1.45 **"Taking"** means condemnation by eminent domain or sale under threat of condemnation of all or any portion of the Common Area.
- 1.46 **"Transition Date"** means the date upon which 100% of the Lots in the Property are sold.
- 1.47 **"Unit"** means any building or portion of a building situated upon a Lot, designed and intended for use and occupancy as a residence by a Single Family.
- 1.48 **"Visible from Neighboring Property"** means with respect to any given object, that the object is or would be visible to a six-foot tall person standing at ground level on any part of the adjoining or neighboring property at an elevation no greater than the elevation of the base of the object being viewed, except where the object is visible solely through a view fence and would not be visible if the view fence were a solid fence.
- 1.49 **"Voting Member"** means the representative selected by the Class "A" Members within each subdivision to be responsible for casting all Class "A" votes attributable to Lots in the Subdivision on all matters requiring a vote of the membership (except as otherwise specifically provided in this Declaration and in the Bylaws). The term "Voting Member" shall also refer to an alternate Voting Member acting in the absence of the Voting Member and any Owners authorized personally to cast the votes for their respective Lots. To be qualified as a Voting Member or an alternate Voting Member a person must be a lot owner in good standing. Good standing means the lot owner has paid all assessments and individual charges and is not currently in default or violation of the Association's Declaration or Architectural Design Guidelines.



Terms used in this Declaration if not otherwise defined shall have the meaning ascribed to such terms in this Declaration.

## II. PROPERTY SUBJECT TO DECLARATION

2.1 General Purpose. Developer intends to develop the Property by platting into various Lots, Subdivisions, and Common Areas, and to develop and/or sell and convey Lots as portions of the Property are developed. All of the real property within the Property is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to this Declaration, and any recorded Supplemental Declarations, as amended or modified from time to time. However, property which is Exempt Property and which is dedicated to the public or a governmental entity shall not be subject to this Declaration while it is thus dedicated, although restrictions imposed in this Declaration upon the Owners and Occupants concerning the use and maintenance of such public areas shall at all times apply to the Owners and Occupants. This Declaration and any Supplemental Declarations are declared and agreed to be in furtherance of a general plan for the subdivision, improvement and sale of the Property and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property and the Project and every part thereof. This Declaration shall run with all Lots, Parcels, and Association Land for all purposes and shall be binding upon and inure to the benefit of Property, Developer, all Owners and Occupants and their successors in interest. NOTHING IN THIS DECLARATION SHALL BE CONSTRUED TO PREVENT DEVELOPER FROM (a) MODIFYING THE DEVELOPMENT PLAN OR ANY PORTIONS THEREOF, OR (b) DEDICATING OR CONVEYING PORTIONS OF THE PROPERTY, INCLUDING STREETS OR ROADWAYS, FREE AND CLEAR OF THIS DECLARATION, AND/OR FOR USES OTHER THAN AS A LOT, OR ASSOCIATION LAND. The Developer, or Developer of Lots in a Subdivision, may from time to time create a separate set of Declarations for governance and maintenance of part or all of the Subdivision. No separate Subdivision Declaration shall be in conflict with or at variance from any of these Declarations; such Subdivision Declarations shall only bind Owners of Lots in said Subdivision.

2.2 Association Bound. This Declaration shall be binding upon and shall benefit the Association and its Members upon filing of record.

## III. THE PROPERTY, RIGHTS OF ENJOYMENT

3.1 Right of Enjoyment. Every Owner and Occupant shall have a nonexclusive license to use and enjoy the Common Areas, subject to all of the easements, covenants, conditions, restrictions and other provisions contained in this Declaration, including, but not limited to, the following provisions:

(a) The right of the Board to impose reasonable limits on the number of guests of Owners and Occupants and to impose reasonable limits on the use of the Common Areas by Persons who are not Owners, and to charge admission, membership and other Special Use Fees for the use of any recreational or other facility situated upon the Common Areas when all or any portion of the costs of



ownership, operation, maintenance and repair of such facilities should, in the opinion of the Board, be borne by users of the facilities rather than by all Members of the Association;

(b) The right of the Board to establish reasonable rules and regulations, which are not inconsistent with this Declaration pertaining to or restricting the use of the Common Areas by Owners, Occupants or other Persons;

(c) The right of the Board to borrow money for the purpose of improving, replacing, restoring or expanding the Common Areas or adding new Common Areas and, in aid thereof, to mortgage said property, provided that the rights of the lender thereunder shall be subordinated to the rights of the Owners;

(d) The right of the Board to suspend the right of an Owner, Occupant or any Person (including, but not limited to, a member of the family of an Owner) to use the Common Areas or any designated portion thereof (and to suspend the Owner's voting rights) during any time in which any Assessment respecting such Owner or such Owner's Lot remains unpaid and delinquent, or for any infraction of the Association Rules or breach of this Declaration, and for any repetition of any such payment delinquency or infraction, in accordance with the provisions of this Declaration and the Bylaws. Notwithstanding the foregoing, the Board shall not have the right hereunder to limit or suspend any Owner's rights to such an extent that the Owner is denied access to his Lot;

(e) The right of the Board to dedicate or transfer all or any part of, or interest in, the Common Areas to any public agency, authority or utility (whether public or private) for such purposes and subject to such conditions as may be agreed to by the Board without the consent or approval of any Member or other Person except as expressly required herein (by way of illustration and not limitation, the Board shall have a right to dedicate or transfer to the public all or any portion(s) of the Private Roads at any time or from time to time), but no such dedication or transfer by the Board shall be effective without the written consent of Developer (so long as Developer owns any property subject to this Declaration); and

(f) The right of the Board to change the size, shape or location of Common Areas, to exchange Common Areas for other lands or interests therein which become Common Areas and to abandon or otherwise transfer Common Areas.

3.2 Delegation of Use. No Owner may delegate his right to use and enjoy the Common Areas to any Person, except to the members of his immediate family, to Occupants of his Lot, or to his invitees, in each case as permitted by the Association Rules.

3.3 Waiver of Use. No Owner may exempt himself, and no Owner shall be exempt, from personal liability for Assessments and Reimbursement Charges, and no Owner may release any Lot owned by him from the liens, charges and other provisions of this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, by voluntary waiver of, or suspension or restriction of the Owner's right to use and enjoy the Common Areas or by the abandonment of the Owner's Lot.





#### IV. ASSOCIATION

4.1 Purpose of Association. The Association has been, or will be, incorporated as a nonprofit corporation to serve as the governing body for all of the Owners for the protection, improvement, alteration, maintenance, repair, replacement, administration and operation of the Property, the assessment of expenses, payment of losses, disposition of casualty insurance proceeds, and other matters as provided in this Declaration, the Articles, Bylaws, Association Rules and Design Guidelines. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the benefit of Owners in accordance with the provisions of this Declaration, the Articles and the Bylaws.

4.2 Articles and Bylaws. In addition to the rights and powers of the Association set forth in this Declaration, the Association and its directors, officers, employees, agents and Members shall have such rights and powers as are set forth in the Articles and Bylaws and are not inconsistent with law or this Declaration. Such rights and powers, subject to the approval thereof by any agencies or institutions deemed necessary by Developer, may encompass any and all things which a natural person could do or which now or hereafter may be authorized by law, provided the Articles and Bylaws are not inconsistent with the provisions of this Declaration and are necessary, desirable or convenient in furtherance of the purposes set forth in this Declaration. A copy of the Articles and Bylaws shall be available for inspection at the office of the Association during reasonable business hours.

4.3 Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws and this Declaration. The initial Board shall be composed of three (3) members appointed by Developer and designated in the Articles. The Board may also appoint various committees (which may consist, in whole or in part, of individuals who are not on the Board) and may appoint a manager or managing agent who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association. The Board shall determine the compensation to be paid to the manager or managing agent.

4.4 Association Rules. The Board shall be empowered to adopt, amend and repeal such rules and regulations as it deems reasonable and appropriate (the "Association Rules"), effective upon adoption or at such later time as may be specified therein, and binding upon all Persons subject to this Declaration, to govern the use and/or occupancy of the Common Areas and any other part(s) of the Property. **The Association Rules may include the establishment of a system of fines and penalties enforceable as Reimbursement Charges.** The Association Rules shall govern such matters in furtherance of the purposes of the Association including, but not limited to, the use of the Common Areas; provided, however, that the Association Rules may not discriminate among Owners, except as expressly provided or permitted herein, and shall not be inconsistent with this Declaration, the Articles, Bylaws or Design Guidelines. The Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration and shall be binding on Owners

and all other Persons having any interest in or making any use of the Property, whether or not actually received thereby. The Association Rules shall be available at the principal office of the Association to each Owner or other Person reasonably entitled thereto, upon request. In the event of any conflict between any provision of the Association Rules and any provisions of this Declaration, or the Articles, Bylaws or Design Guidelines, the provisions of the Association Rules shall be deemed to be superseded by the provisions of (and in the following order of importance) this Declaration, the Articles, Bylaws or Design Guidelines to the extent of any such conflict and in that order.

4.5 Indemnification. To the fullest extent permitted by law, every director and officer of the Association, every member of the Committee, Developer (to the extent a claim may be brought against Developer, by reason of any appointment, removal or control over members of the Board or the Committee) shall be indemnified by the Association, and every other Person serving as an employee or direct agent of the Association, or on behalf of the Association as a member of a committee or otherwise, may, in the discretion of the Board, be indemnified by the Association against all expenses and liabilities including, but not limited to, attorneys' fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party or in which he may become involved, by reason of his being or having served in such capacity on behalf of the Association (or in the case of Developer by reason of having appointed, removed or controlled or failed to control members of the Board or the Committee), or any settlement thereof, whether or not he is a director, officer or member of the Committee or serving in such other specified capacity at the time such expenses are incurred, provided that the Board shall determine, in good faith, that the Person to be indemnified hereunder did not act, fail to act, or refuse to act with gross negligence or fraudulent or criminal intent in the performance of his duties. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such Persons may be entitled at law or otherwise.

4.6 Non-Liability of Officials. To the fullest extent permitted by law, neither Developer, the Committee or any other committees of the Association or any member thereof, nor any directors or officers of the Association, shall be liable to any Member, Owner, Occupant, the Association or any other Person for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of drawings or specifications (whether or not defective), course of action, act, inaction, omission, error, negligence or the like made in good faith and which Developer, the President, the Board, or such committees or Persons reasonably believed to be within the scope of their respective duties.

4.7 Accounting. The Association, at all times, shall keep, or cause to be kept, true and correct records of account in accordance with sound accounting principles, which shall specify in reasonable detail all expenses incurred and funds accumulated from Assessments or otherwise.

4.8 Records. Upon reasonable written request and pursuant to procedures established in the Bylaws, the Association shall make the books, records and financial statements of the Association available for inspection by each Owner and Member together with current copies, as amended from



time to time, of this Declaration and the Articles, Bylaws, Association Rules and Design Guidelines. Developer shall be under no obligation to make its own books and records available for inspection by any Owner, Member or other Person. The books and records of the Association may be audited or unaudited as the Board, from time to time, may determine.

4.9 Manager or Managing Agent. All powers, duties and rights of the Association or the Board, as provided by law and herein, may be delegated to a manager or managing agent; provided, however, that no such delegation shall relieve the Association of its obligation to perform any such delegated duty. Any agreement for management, or any other contract providing for services to the Association, shall not exceed a term of three years, which term may be renewed by agreement of the parties for successive one-year periods.

4.10 Rights of Enforcement. The Board shall have the first right to enforce the provisions of this Declaration and/or any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements provided for in any contract, deed, declaration or other instrument relating to the Property which (a) shall have been executed pursuant to, or subject to, the provisions of this Declaration, or (b) otherwise shall indicate that the provisions of such instrument were intended to be enforced either by the Association or by Developer. If, however, both the Board and the Developer fail or refuse to enforce this Declaration or any provision thereof after reasonably informative written notice of a violation of these Declarations is provided to them, then an Owner may enforce them on behalf of the Association by any appropriate legal action, whether at law or in equity and the Association and the Developer may pursue whatever rights and remedies might be available to them at law or in equity.

4.11 Contracts with Others for Performance of Association's Duties. Subject to the restrictions and limitations contained herein, the Board may enter into contracts and transactions with others, including Developer and any affiliated Persons, for the performance of the Association's duties and other purposes consistent with the Declaration, and such contracts or transactions shall not be invalidated or in any way affected by the fact that one or more directors or officers of the Association or members of any committee may be employed by or otherwise connected with Developer or any affiliated Person, provided that the fact of such interest shall be disclosed or known to the other directors acting upon such contract or transaction, and provided further that the transaction or contract is fair and reasonable. Any such director, officer or committee member may be counted in determining the existence of a quorum at any meeting of the Board or committee of which he is a member, which shall authorize any contract or transaction described above or grant or deny any approval sought by Developer or other Person, and may vote thereon to authorize any such contract, transaction or approval with like force and effect as if he were not so interested.

4.12 Change of Use of Association Land. Prior to the Transition Date, without the approval or consent of any Member or other Person; and after the Transition Date, upon (a) adoption of a resolution by the Board stating that, in the Board's opinion, the then present use of a designated part of the Association Land or of the Association's interest in other Common Areas is no longer in the best interest of the Owners and Occupants or no longer necessary or appropriate for the purposes



intended, and with (b) the approval of such resolution by a Majority of Members (excluding Developer) who are voting in person or by proxy at a meeting duly called for such purpose, and (c) the consent of Developer (so long as Developer owns any property subject to the Declaration); the Board shall have the power and right to sell, exchange, convey or abandon such Association Land or interest or change the use thereof (and, in connection therewith, construct, reconstruct, alter or change the buildings, structures and improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided that any such new use (i) shall be for the benefit of the Owners and Occupants, (ii) shall be consistent with any deed restrictions (and zoning regulations) restricting or limiting the use of the Association Land, and (iii) shall be consistent with the then effective Development Plan. Anything foregoing to the contrary notwithstanding, if the Board determines, and the resolution of the Board recites, that any transaction involving the disposition or exchange of Association Land or the interest of the Association in Common Areas will not have an adverse effect on the Association and the Owners and Occupants of the Property, the Board may, in lieu of calling a meeting pursuant to (b) above, give notice to all Voting Members of the proposed transaction and of any right to object thereto which might be available hereunder and, if no more than 20% of the Members object in writing to the Association within 30 days after the giving of such notice, the transaction shall be deemed approved by the Voting Members and a meeting of the Voting Members shall not be necessary.

4.13 Purposes for which Association's Funds may be Used. The Association, except as otherwise permitted in this Declaration, shall apply all funds and property collected and received by it (including Assessments, Reimbursement Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of the Property and the Owners and Occupants by devoting said funds and property, among other things, to the Common Expenses. Notwithstanding such requirements, all funds of the Association shall be deemed to be the sole property of the Association in its corporate capacity, and not trust funds, and the Association shall not be deemed to hold any such funds as trustee or in any fiduciary capacity, except as expressly provided herein. The Association also may expend its funds for any purposes which any municipality in the State of Montana may expend its funds under the laws of the State of Montana or such municipality's charter.

4.14 Borrowing Power. The Association may borrow money in such amounts, at such rates, upon such terms and security, and for such periods of time as the Board deems necessary or appropriate.

4.15 Association's Rights in Spending Funds From Year to Year. The Association shall not be obligated to spend in any year all the sums received by it in such year, regardless of source, unless specifically provided to the contrary in this Declaration, and may carry forward as additional working capital or reserves any balances remaining. The Association shall not be obligated to reduce the amount of the Maintenance Assessments in the succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year such surplus as the Board, in its discretion, may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

4.16 Special Use Fees. Subject to the provisions hereof including, the Board is authorized to impose, bill for, sue for, collect, administer and disburse Special Use Fees, and the payment thereof shall be secured by the Assessment Lien. In establishing or adjusting the amounts of Special Use Fees from time to time, the Board, in its absolute discretion, may establish reasonable classifications as among Owners, Occupants and other Persons.

## V. MEMBERSHIPS AND VOTING

5.1 Transfer of Membership. The rights and obligations of a Member shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership to an Owner's Lot, and then only to the transferee of ownership to the Lot. A transfer of ownership to a Lot may be affected by deed, intestate succession, testamentary disposition, foreclosure of a Mortgage, or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Montana. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Lot shall operate to transfer the Membership appurtenant to the Lot to the new Owner(s) thereof.

5.2 Use of Membership; Designees. The Board may provide in its rules or Bylaws for the use of Designees and/or proxies by Members.

5.3 Memberships: Every Owner shall be a Member of the Association, and such membership shall be appurtenant to, and inseparable from, ownership of a Lot. There shall be only one membership per Lot. If a Lot is owned by more than one person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 5.4 and in the Bylaws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner that is not a natural person may be exercised by any officer, director, partner or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

5.4 Voting: The Association shall have two classes of membership, Class "A" and Class "B."

(a) Class "A": Class "A" Members shall be all Owners except the Class "B" Member, if any. Class "A" Members shall have one equal vote for each Lot in which they hold the interest required for membership under Section 5.3; provided, there shall be only one vote per Lot and no vote shall be exercised for any property that is exempt from assessment under Section 6.13. All Class "A" votes shall be cast as provided in Section 5.6 (below).

(b) Class "B": The sole Class "B" Member shall be the Declarant. The Class "B" Member may appoint a majority of the members of the Board during the Class "B" Control Period, as specified in the Bylaws. The Class "B" membership shall terminate as provided in the Bylaws. Upon termination of the Class "B" Membership at the Transition Date the Declarant shall become a Class "A" Member entitled to Class "A" votes for each Lot which it owns.



(c) Exercise of Voting Rights: Except as otherwise specified in this Declaration or in the Bylaws, the vote for each Lot owned by a Class "A" Member shall be exercised by the Voting Member representing the Subdivision of which the Lot is a part, as provided in Section 5.6. The Voting Member may cast all such votes as it, in its discretion, deems appropriate.

(d) In any situation where a Member is entitled personally to exercise the vote for his or her Lot and there is more than one Owner of such Lot, the vote for such Lot shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing, prior to the vote being taken. Absent such advice, the Lot's vote shall be suspended if more than one Person seeks to exercise it.

5.5 Subdivisions. West Winds is a planned community that will be comprised of multiple subdivisions. Every Lot shall be located within a Subdivision. The Lots within a particular Subdivision may be subject to additional covenants and the Owners may elect a Subdivision Committee, as described in the Bylaws, to represent the interests of Owners of lots in such Subdivisions.

(a) Each Supplemental Declaration filed to subject additional property to this Declaration, shall identify the property described therein to a specific Subdivision (by name or other identifying designation), which Subdivision, as being within, may be then existing or newly created. So long as it has the right unilaterally to annex additional property pursuant to Article XVII, the Declarant may unilaterally amend this Declaration or any Supplemental Declaration from time to time to redesignate subdivision boundaries; provided, two or more existing subdivisions shall not be combined without the consent of Owners of a majority of the Lots in the affected subdivisions.

(b) Limited Common Area: A Subdivision may contain Limited Common Area. Where the term Common Area is used in this Declaration, it shall include Limited Common Area, however, the Limited Common Area shall be for the benefit of the Owners of Lots served by the Limited Common Area and all costs associated with the maintenance of the Limited Common Area shall be Limited Common Area expenses assessed to the Owners of Lots benefited by the Limited Common Area.

5.6 Voting Members: Each Subdivision shall elect a Voting Member to cast all Class "A" Members' votes in the Subdivision on all Association matters requiring vote, except as otherwise specified in this Declaration or in the Bylaws. An alternate Voting Member shall be elected to cast such votes in the absence of the Voting Member. The Voting Member and alternate Voting Member shall each be elected to serve a two (2) year term. Elections shall be either by written ballot cast by mail, by electronic voting, or at a meeting of the Class "A" Members within such Subdivision, as the Board determines, provided, upon written petition signed by Class "A" Members holding at least ten percent (10%) of the votes within any Subdivision the election shall be held at a meeting of the Class "A" Members owning Lots in the Subdivision. The presence, in person or by proxy, of Class "A"

Members representing at least ten percent (20%) of the total Class "A" votes shall constitute a quorum at any Subdivision meeting.

(a) The Board shall call for the first election of a Voting Member from a Subdivision not later than thirty (30) days after the time that Class "A" Members, other than Builders, own one hundred percent (100%) of the Lots within such Subdivision. Subsequent elections shall be held within thirty (30) days of the same date in each election year. Each Class "A" Member within the Subdivision shall be entitled to cast one vote per Lot owned. The candidate who receives the greatest second number of votes shall be elected as the alternate Voting Member. The Voting Member and the alternate Voting Member shall each serve terms of two (2) years and until their successors are elected.

(b) Any Voting Member or alternate Voting Member may be removed, with or without cause, upon the vote or written petition of Owners of a majority of the total number of Lots owned by Class "A" Members in the Subdivision the Voting Member or alternate Voting Member represents.

(c) Until such time as the Board first calls for the election of a Voting Member for any Subdivision, the Owners within such Subdivision shall be entitled personally to cast the votes attributable to their respective Lots on any issue requiring a vote of the Voting Members under the Governing Documents.

## VI. ASSESSMENTS

6.1 Creation of Assessments. There are hereby created Assessments for Association expenses as the Board may specifically authorize from time to time.

(a) There shall be three (3) types of assessments:

(i) Maintenance Assessments to fund Common Expenses for the general benefit of all Lots within the West Winds PUD.

(ii) Capital Improvement Assessment in Section 6.8; and

(iii) Special Assessments as described in Section 6.9, 6.10; and

(iv) Reimbursement Assessments as described in Section 6.11.

(b) Maintenance Assessments include Assessments to fund Common Expenses for the benefit of Lots within the applicable Subdivision. Each Owner, by accepting a deed or entering into a recorded Montana Real Estate Contract for any portion of the Properties, is deemed to covenant and agree to pay these assessments.

6.2 Assessments as Lien on Lot. All assessments, together with interest (computed from the due date of such assessment at a rate of fifteen percent (15%) per annum or such higher rate as the Board may establish, subject to the limitations of Montana law); late charges in such amount as the Board may establish by resolution; costs; and reasonable attorneys' fees, shall be a charge and continuing lien upon each Lot against which the assessment is made until paid, as more particularly provided in Section 6.6. Each assessment, together with interest, late charges, costs, and reasonable attorney's fees, also shall be the personal obligation of the Owner from and after the time the assessment arises. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Lot by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to the date of its acquisition of title.

6.3 Certificate of Assessment Status. The Association shall, upon request, furnish to any Owner liable for any type of assessment a certificate in writing signed by an Association officer or its authorized representative setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

6.4 Payment of Assessments. Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of an assessment at closing of transfer of title to a Lot and impose special requirements for Owners with a history of delinquent payments. If the Board so elects, assessments may be paid in two (2) or more installments. Unless the Board otherwise provides, the Maintenance Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessment or other charge levied on his/her Lot, the Board may require any unpaid installment of any and all outstanding assessments to be paid in full immediately.

(a) No Owner may exempt himself from liability for assessments by non use of Common Area, abandonment of his Lot, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

(b) The Association is specifically authorized to enter into contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant or other entities for payment of Common Expenses.

6.5 Declarant's Obligation for Assessments. During the Class "B" Control Period, Declarant may annually elect either to pay Maintenance Assessments on all of its unsold Lots or to pay the difference between the amount of assessments levied on all other Lots subject to assessments and the amount of actual expenditures by the Association during the fiscal year, which actual expenditures shall not include the reserve fund. Unless the Declarant otherwise notifies the Board in writing at



least sixty (60) days before the beginning of each fiscal year, the Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. The Declarant's obligations may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. After termination of the Class "B" Control Period, the Declarant shall pay assessments on the unsold Lots in the same manner as any other Owner.

6.6 Computation of Maintenance Assessment. At least sixty (60) days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses including Subdivision Common Expenses during the coming year, including a capital contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 6.8.

(a) Maintenance Assessments shall be levied equally against all Lots and shall be set at a level that is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves. In determining the total funds to be generated through the levy of Maintenance Assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including any surplus from prior years and any assessment income expected to be generated from any additional Lots reasonably anticipated to become subject to assessment during the fiscal year. Subdivision Assessments shall be levied equally against all Lots within the applicable Subdivision.

(b) So long as the Declarant owns any land located within the Property, the Declarant may, but shall not be obligated to, bear a portion of the Maintenance Assessments for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Section 6.5, which may be treated as either a contribution or an advance against future assessments due from the Declarant, or a loan, in the Declarant's discretion. Any such subsidy shall be conspicuously disclosed as a line item in the Common Expense budget and the treatment of such subsidy shall be made known to the membership. The payment of such subsidy in any year shall under no circumstances obligate the Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Declarant.

(c) The Board shall send a copy of the budget and notice of the amount of the Maintenance Assessments and Capital Improvement Assessments, if any, for the following year to each Owner at least thirty (30) days prior to the beginning of the fiscal year for which it is to be effective. If the Maintenance Assessments does not represent more than a twenty percent (20%) increase from the previous year, it shall become effective on the first day of the fiscal year unless disapproved at a meeting by Voting Members representing more than seventy-five percent (75%) of the total number of Voting Members and by the Class "B" Member, if such exists. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Voting Members as provided for special meetings in the Bylaws, which petition must be presented to the Board within ten (10) days after delivery of the notice of assessments.



6.7 Failure to Timely Approve Budget. If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined the budget in effect for the immediately preceding year shall continue for the current year.

6.8 Reserve Budget and Capital Improvement Assessment. The Board shall annually prepare a reserve budget that takes into account the number and nature of replaceable assets within the Common Area, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect to both amount and timing by annual Maintenance Assessments over the budget period.

6.9 Special Assessments by Association. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Except as otherwise specifically provided in this Declaration, any Special Assessments shall require the affirmative vote or written consent of Voting Members representing more than fifty percent (50%) of the total votes allocated to Lots that will be subject to such Special Assessment, and the affirmative vote or written consent of the Class "B" Member, if such exists. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

6.10 Special Assessments by City. In addition to other authorized assessments, the city may levy assessments to cover a lighting district, park improvements, park maintenance, wastewater improvements and transportation improvements. Under such City created assessments current state statute shall be followed for the creation of said assessments. Payment of City created assessments shall be in conformance with City requirements.

6.11 Reimbursement Assessments. The Association shall have the power to levy Reimbursement Assessments against a particular Lot as follows:

(a) to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Lot or occupant thereof upon request of the Owner pursuant to a menu of special services that the Board may from time to time authorize to be offered to Owners and occupants (that might include, without limitation, landscape maintenance and pest control), which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner; and

(b) to cover costs incurred in bringing the Lot or Limited Common Area into compliance with the terms of the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Lot Owner prior written notice and an opportunity for a hearing, in accordance with Section 3.23 of the Bylaws and Article XIX herein before levying any Specific Assessments under this Article VI.

6.12 Lien for Assessments. The Association shall have a lien against each Lot to secure payment of delinquent assessments, as well as interest subject to the limitations of Montana law, late charges and costs of collection (including attorneys' fees).

(a) Such lien shall be superior to all other liens, except:

(i) the liens of all taxes, bonds, assessments, and other levies that by law would be superior; and

(ii) the lien or charge of any first mortgage of record at the time such lien attaches (meaning any recorded mortgage with first priority over other mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by judicial foreclosure.

(b) The Association may bid for the Lot at foreclosure and acquire, hold, lease, mortgage, and convey the Lot. While a Lot is owned by the Association following foreclosure:

(i) no right to vote shall be exercised on its behalf; and

(ii) no assessment shall be levied on it. The Association may sue the Owner(s) for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

(c) The sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any prior or subsequent assessments except pursuant to foreclosure of a first mortgage. A Mortgagee or other purchaser of a Lot who is unrelated to the Owner of the Lot being foreclosed who obtains title pursuant to foreclosure of the mortgage shall not be personally liable for assessments on such Lot due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Lots subject to assessments under Section 6.2, including such acquirer, its successors and assigns.

6.13 Commencement of Assessments.

(a) The obligation to pay assessments shall commence as to each Lot on the first day of the month after all the following have occurred:

(i) the Lot has been made subject to this Declaration;

(ii) the Board has first determined a budget and levied assessments pursuant to this Article; and

(iii) a certificate of occupancy has been issued for the residence constructed upon the Lot.



(b) The first annual Maintenance Assessment levied on each Lot shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Lot.

(c) If a certificate of occupancy is not issued within two (2) years after a Builder becomes the Owner of a Lot, the Builder shall begin paying the Assessment for such Lot commencing on the second anniversary of ownership of the Lot and continuing until a certificate of occupancy is issued for such Lot; provided, however, that any Builder that is the developer of its own Lots, and not a Builder that purchases developed Lots, shall not be subject to this Section 6.12(c).

6.14 Failure to Assess: Failure of the Board to fix assessments amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Maintenance Assessments or whatever other assessments as may be due on the same basis as during the last year for which an assessment was made if any until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

6.15 Exempt Properties. Common Area, and any property dedicated to and accepted by any governmental authority or public utility, shall be exempt from payment of Maintenance Assessments and Special Assessments.

6.16 Capitalization of Association. "The Association shall require every owner (other than the Declarant) upon purchase, to make a non-refundable working capital contribution to the Association in an amount equal to three (3) months of Maintenance Assessments." This amount shall be in addition to, not in lieu of, the annual Maintenance Assessments and shall not be considered an advance payment of such assessment. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to this Declaration and the Bylaws.

6.17 Certificate of Payment. Any Person acquiring an interest in any Lot shall be entitled to a certificate from the Board setting forth the amount of due but unpaid Assessments and Reimbursement Charges relating to the Lot, if any, and such a Person shall not be liable for, nor shall any lien attach to the Lot in excess of the amount set forth in the certificate, except for Assessments and Reimbursement Charges which occur or become due after the date thereof and any interest, costs, attorneys' fees and any late charges related to such Assessments and Reimbursement Charges.

6.18 Rules Regarding Billing and Collection Procedures. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making the Assessments and Reimbursement Charges provided for herein, and for the billing and collection thereof, provided that the procedures are not inconsistent with the provisions hereof. Any failure of the Association to send a bill to an Owner shall not relieve an Owner of his liability for any Assessment or charge under this Declaration, but the Assessment Lien therefore shall not be foreclosed or otherwise enforced until the Owner has been given such notice prior to such foreclosure or enforcement as may be required by

law or provided for in the Bylaws. Such a notice may be given at any time prior to or after delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Lot changes during an assessment period. Successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners.

6.19 Enforcement of Lien. The Assessment Lien may be foreclosed by the Association in any manner provided or permitted for the foreclosure of mortgages or deeds of trust in the State of Montana. All of the provisions of this Article VI relating to the enforcement of Assessment Lien provided for herein shall apply with equal force in each other instance provided for in this Declaration or the Association Rules or Design Guidelines wherein it is stated that payment of a particular Assessment, charge or other sum shall be secured by Assessment Lien. Nothing herein shall be construed as requiring the Association to take any action hereunder in any particular instance, and the failure of the Association to take such action at any time shall not constitute a waiver of the right to take the same or similar action at a later time or in a different instance.

6.20 Pledge of Assessment Rights as Security. The Association shall have the power to pledge the right to exercise its assessment powers and rights provided for in this Declaration as security; provided, however, that any such pledge occurring after the Transition Date shall require (a) the prior affirmative vote or written assent of a majority of Voting Members (except Developer), and (b) the consent of Developer (so long as Developer owns any property subject to this Declaration).

6.21 Exemption of Unsold Lots or Parcels. Notwithstanding anything in this Article VI or in Article IX to the contrary, prior to the Transition Date, no Assessments or Reimbursement Charges shall be levied upon Developer, or payable with respect to any Lot owned by or leased to Developer or by any trustee for any of the aforesaid Persons, until the Lot has been conveyed to a retail purchaser. For all other Lots, Assessments shall commence, and Owners (and their Lots) shall be subject to Reimbursement Assessments, upon the date the Lot is conveyed to a retail purchaser or upon the first day of the month after such a conveyance, as the Board may elect, subject to the provisions of Section 6.12. hereof.

6.22 Other Charges and Costs Assessable. The Association may levy and assess charges, costs, and fees for matters such as, but not limited to, the following, in such reasonable amount(s) as the Board may determine in its discretion at any time and from time to time, including reimbursement of charges that are made to the Association by its managing agent or any other Person: copying of Association or other documents; return check fees; facsimiles; long distance telephone calls, notices and demand letters; transfer charges including but not limited to charges related to transfer of Lot ownership or to the leasing of a Lot and the dwelling located thereon; and other charges incurred by the Association for or on behalf of any Owner (s). All such charges, costs and fees shall be in addition to the Assessments levied by the Association, but shall be subject to all of the Association's rights with respect to the collection and enforcement of Assessments.

6.23 Notice of Annual Assessment. At least 30 days before the expiration of each calendar year, the Board will prepare and distribute to each Owner a proposed budget for the Association's

operations during the next ensuing year. In computing the applicable percentage of the new annual assessment, any increase due to an increase in utility charges, which term includes charges for wet and dry utilities including but not limited to water, sewer, rubbish, gas, electricity, phone services, cable services, high speed data communication services, and satellite services, shall not be included, but shall be automatically passed on as part of the assessment.

6.24 Time and Manner of Payment; Late Charges and Interest. The Board may, in its discretion and without waiving the imposition of a late charge or interest in any other instance, waive the late charge and/or interest in any particular instance. A delinquent Owner shall also be liable for attorney's fees and other related costs incurred by the Association as a result of his delinquency, and if any suit, action or arbitration proceeding is brought to collect and/or foreclose the Assessment Lien for any such Assessment or charge, then there shall be added to the amount thereof costs of suit and reasonable attorney's fees to be fixed by the court and included in any judgment or award rendered thereon.

## VII. MAINTENANCE

7.1 Common Areas, Parks and Public Right of Way. The Association, or its duly delegated representative, shall maintain and otherwise manage all Common Areas, including, but not limited to, any landscaping, walkways, riding/walking paths, park facilities and storm water facilities; provided, however, the Association shall not be responsible for providing or maintaining the landscaping or structures on any Common Areas which are part of Lots unless (a) such landscaping or structures are available for use by all Owners and Occupants or are within easements intended for the general benefit of the Property, and (b) the Association assumes in writing the responsibility for such maintenance, or such responsibility is set forth in a Recorded instrument as hereinafter provided.

The Home Owners Association shall be responsible for maintenance of Park, park fixtures, trails, etc., until such time that a Park Maintenance District, or similar form of funding, is established.

The Home Owners Association shall be responsible for the control of noxious weeds per 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 Association is responsible for control of state and county declared noxious weeds in parks, open space, community areas, trails and roadways.

The Home Owners Association shall be responsible for operation and maintenance of the street (public right-of-way) and park lighting system, light fixtures, etc., until such time that a lighting maintenance district, or similar form of funding is established.

(a) The Board shall use a reasonable standard of care in providing for the repair, management and maintenance of Common Areas so that the Property will reflect a pride of ownership. In this connection the Association may, subject to any applicable provisions relating to Capital Improvement Assessments, in the discretion of the Board:

(i) Construct, reconstruct, repair, replace or refinish any improvement or portion thereof upon Common Areas;



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(ii) Replace injured and diseased trees and other vegetation in any Common Areas.

(iii) Place and maintain upon any Common Area such signs as the Board and Committee may deem appropriate for the proper identification, use and regulation thereof; and

(iv) Do all such other and further acts which the Board deems necessary or appropriate to preserve and protect the Common Areas, the street scapes, and the beauty thereof, in accordance with the general purposes specified in this Declaration.

(b) The Board and the ACC shall be the sole judges as to the appropriate maintenance of all Common Areas and other properties maintained by the Association. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of said properties shall be taken by the Board or by its duly delegated representative.

(c) In the event any subdivision plat, deed restriction, or this Declaration or any Agreement permits or requires the Board to determine whether or not Owners of certain Lots or the Association will be responsible for maintenance of certain Common Areas, Private Streets or public right-of-way areas, the Board shall have exercise its sole discretion to determine whether or not it would be in the best interest of the Owners and Occupants of the Property for the Association or an individual Owner to be responsible for such maintenance, considering cost, uniformity of appearance, location and other factors deemed relevant by the Board. The Board may cause the Association to contract with others for the performance of the maintenance and other obligations of the Association under this Article VII and, in order to promote uniformity and harmony of appearance, the Board also may cause the Association to contract to provide maintenance services to Owners of Lots having such responsibilities in exchange for the payment of such fees as the Board and Owner may agree upon.

#### 7.2 Assessment of Certain Costs of Maintenance and Repair of Common Areas and Public Areas.

In the event that the need for maintenance, repair or replacement of Common Areas and other areas maintained by the Association is caused through the willful or negligent act of any Owner or Occupant or the family, guests, or invitees of either, the cost of such maintenance or repairs shall be a Reimbursement Assessment against the Owner and his Lot secured by Assessment Lien. Any charges or fees to be paid by the Owner of a Lot in connection with a contract entered into by the Association with an Owner for the performance of an Owner's maintenance responsibilities shall also be a Reimbursement Assessment and shall be secured by Reimbursement Assessment Lien.

7.3 Improper Maintenance and Use of Lots. In the event any portion of any Lot is so maintained as to present a public or private nuisance or an unreasonable condition (as determined by the Board and the Committee) with respect to other Owners or Occupants, or as to detract from the appearance or quality of the surrounding Lots or other areas of the Property or the Project which are affected thereby or related thereto, or in the event any portion of a Lot is being used in a manner which



violates this Declaration, or in the event the Owner of any Lot, or portion thereof is failing to perform any of its obligations under the Declaration, or applicable Design Guidelines, the Board may by resolution make a finding to such effect (with the concurrence of the Committee), specifying the particular condition or conditions which exist, and pursuant thereto give notice to the offending Owner that unless corrective action is taken within ten days, the Board may cause such action to be taken at the Owner's cost. If, at the expiration of the ten-day period of time, the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause remedial action to be taken. The cost of any such remedial action shall become a Reimbursement Assessment against the offending Owner and the Owner's Lot and shall be secured by an Assessment Lien. Notwithstanding the foregoing, if the Board believes that immediate action is or may be necessary to avoid a risk of serious physical injury to persons or damage to property, the Board shall be entitled to take whatever action it may believe to be necessary to guard against or prevent such injuries or damage without being required to wait ten days after giving notice to the affected Owner.

7.4 Right of Entry. Representatives and agents of the Association, including, but not limited to, property managers, security patrolmen, shall have the right to enter upon all Lots, and Common Areas when responding to alarms or when otherwise reasonably deemed necessary for the protection of persons or property, and neither the Association, nor any representative or agent thereof, shall have any liability to any person when acting in good faith in effecting such entry.

7.5 Noxious Weeds. The landowner shall be responsible for the control 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 10 days notice from the Association, the Association may cause the weeds to be controlled. The cost of any such remedial action shall become a Reimbursement Assessment against the offending Owner and the Owner's Lot and shall be secured by an Assessment Lien.

## VIII. INSURANCE

8.1 Liability Insurance. From and after the date on which title to any Common Area vests in the Association, the Association will purchase and carry a general comprehensive public liability insurance policy for the benefit of the Association and its Members, covering occurrences on the Common Areas or the Common Maintenance Area (if desired by the Board of Directors). The policy limits will be as determined by the Board of Directors. The Association will use its best efforts to see that such policy will contain, if available, cross-liability endorsements or other appropriate provisions for the benefit of Members, the Directors, and the management company retained by the Association (if any), insuring each against liability to each other insured as well as third parties. Any proceeds of insurance policies owned by the Association will be received, held in a segregated account and distributed to the Association's general operating account, Members, Directors, the management company and other insureds, as their interests may be determined.



8.2 Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not, the most nearly equivalent coverages as are reasonably available:

(a) Blanket property insurance covering "all risks of direct physical loss" on a "special causes of loss form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area and within other portions of the Common Area to the extent that the Association has assumed responsibility in the event of a casualty, regardless of ownership. If such coverage is not generally available at reasonable cost, then "broad causes of loss form" (specified perils) coverage may be substituted. All Association property insurance policies shall have policy limits sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes;

(b) Commercial general liability insurance on the Common Area, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees or agents while acting on its behalf. If generally available at reasonable cost, such coverage (including primary and any umbrella coverage) shall have a limit of at least \$2,000,000.00 per occurrence and in the aggregate with respect to bodily injury, personal injury, and property damage.

(c) With respect to any contractors working on the premises or any third parties holding events on the premises, all such individuals shall be required to carry sufficient similar commercial general liability insurance with minimum limits of \$1,000,000.00 combined single limit per occurrence and \$1,000,000.00 general aggregate limit. The commercial general liability policy shall also be endorsed to include Declarant, its subsidiaries and affiliates and their respective directors, officers, employees, and agents as additional insureds with respect to any claims, losses, expenses or other costs arising out of any Work performed for the Association.

(d) Certificates of insurance evidencing the minimum coverage required herein by any parties described above (other than the Association) shall be filed with the Association at the time of execution of any Agreement for services or events conducted on the premises and shall be maintained in a current status throughout the term of any such Agreement. Such certificates of insurance shall require the insurer(s) to provide not less than thirty (30) days advance written notice to the Association in the event of any cancellation, non-renewal or material (greater than twenty-five percent [25%] reduction) change in the policy limits, terms or conditions. Such third parties shall maintain all of their insurance and at the requested levels described above for not less than five (5) years following the expiration or termination of any agreement with the Association.

(e) Statutory workers' compensation and employer's liability insurance in the amount of the State of Montana's statutory limits to cover all employees engaged in the services.

(f) Earthquake, wind and flood damage coverage, of and to the extent required by law and or appropriate for an Association based in Montana.



(g) Automobile liability insurance for all owned, non-owned and hired vehicles with a minimum limit of \$500,000.00 combined single limit per accident; and

(h) Directors and officers liability coverage; and

(i) Commercial crime insurance covering all persons, including persons serving without compensation, responsible for handling Association funds in an amount determined in the Board's business judgment but not less than an amount equal to one-quarter of the annual Maintenance Assessments on all Lots plus reserves on hand.

(j) All of the coverage required herein shall be maintained with insurers rated B+ or better in the most current edition of Best's Insurance Reports.

(k) Insurance obtained for the Association is not meant to replace any individual's personal liability or property insurance in amounts not less than those stated below.

The Board, in the exercise of its business judgment, may obtain such additional insurance coverage and higher limits.

Premiums for insurance on the Common Area shall be Common Expenses.

8.3 Policy Requirements. All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Member insured. Declarant reserves the right to self-insure, or provide insurance under Declarant's policy, provided that the cost to replace the insurance when such coverage terminates shall be disclosed to the Membership as a footnote to the Budget.

(a) The policies may contain a reasonable deductible which shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of this Article VIII. In the event of an insured loss, the deductible shall be treated as a common expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the Bylaws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or Tenants, then the Board may assess the full amount of such deductible against such Owner(s) and their Lots as a Benefited Assessment.

(b) All insurance coverage obtained by the Board shall:

- (i) be written with a company authorized and licensed to do business in Montana;
- (ii) be written in the name of the Association as trustee for the benefited parties;



(iii) not be brought into contribution with insurance purchased by individual Owners, their mortgagees, or any occupants of a Lot;

(iv) contain an inflation guard endorsement;

(v) include an agreed amount endorsement, if the policy contains a co-insurance clause;

(vi) provide that each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Area as a Member in the Association (provided, this provision shall not be construed as giving an Owner any interest in the Common Area other than that of a Member);

(vii) Unless the Board waives this requirement, it must include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure; and

(viii) include an endorsement precluding cancellation, invalidation, or condition to recovery under the policy on account of any act or omission of any one or more individual Owners, unless such Owner is not acting within the scope of its authority on behalf of the Association.

(c) In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners (as a class) as additional insureds and provide:

(i) a waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager, the Owners and their Tenants, servants, agents, and guests;

(ii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(iii) an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;

(iv) a cross liability provision; and

(v) a provision vesting in the Board or their authorized representative, which shall be Declarant so long as Declarant's policy provides Association coverage, exclusive authority to adjust losses; provided, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

8.4 Owners Insurance. By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry blanket "all-risk" property insurance on its Unit(s)



and structures thereon providing full replacement cost coverage less a reasonable deductible, unless either the Subdivision in which the Unit is located or the Association carries such insurance which they are not obligated to do.

Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his Unit, he shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article II. Alternately, the Owner shall clear the Unit of all debris and ruins and maintain the Unit in a neat and attractive, landscaped condition consistent with the Property-wide standard. The Owner shall pay any costs which are not covered by insurance proceeds.

8.5 Subdivision Insurance. Additional recorded covenants applicable to any Subdivision may establish more stringent requirements regarding the standards for rebuilding or reconstructing structures on the Units within such Subdivision and the standards for clearing and maintaining the Units in the event the structures are not rebuilt or reconstructed.

8.6 Restoring Damaged Improvements. In the event of damage to or destruction of Common Area or other property which the Association is obligated to insure, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

(a) Damaged improvements on the Common Area shall be repaired or reconstructed unless the Members representing at least 75% of the total Member votes in the Association and the Declarant, if any, decide within 60 days after the loss not to repair or reconstruct. If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such 60-day period, then the period shall be extended for up to 60 additional days until such funds or information are available. No mortgagees shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

(b) If a decision is made not to restore the damaged improvements, and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive condition.

(c) The Association shall retain any insurance proceeds remaining after paying the costs of repair or reconstruction, or after an agreed upon settlement, for the benefit of the Members, and place in a capital improvements account. This is a covenant for the benefit of mortgagees and may be enforced by the mortgagee of any affected Lot.

(d) If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Members, levy Special Assessments to cover the shortfall against those Owners responsible for the applicable insurance coverage premiums.



## IX. DAMAGE AND DESTRUCTION OF COMMON AREAS

9.1 Duty of Association. In the event of partial or total destruction of the Common Areas or landscaped right of ways, or any improvements thereon, the Association may restore and repair the same, subject and pursuant to this Article IX. The proceeds of any casualty insurance maintained by the Association may be used to the extent available for such purpose, subject to the prior rights of Mortgagees whose interests may be protected by the policies as determined in the sole discretion of the Association.

9.2 Vote of Members. If the amount available from the proceeds of any insurance policies for such restoration and repair, together with any uncommitted or unreserved capital of the Association, is less than the estimated cost of restoration and repair, the Common Areas or landscaped right of ways may be replaced or restored unless a majority of Voting Members, at a special meeting held for such purpose, disapprove of such replacement or restoration. If such Voting Members do not disapprove the proposed replacement or restoration, the Board may levy a Reimbursement Assessment against each Owner and his Lot(s), and cause the damaged or destroyed Common Areas or landscaped right of ways to be repaired or restored. If such Voting Members disapprove of the repair or restoration of the damaged or destroyed improvements on the Common Areas or landscaped right of ways as provided above, the Common Areas or landscaped right of way so damaged or destroyed shall be cleared and landscaped for Common Area or landscaped right of ways use or any other use determined by the Board, and the costs thereof shall be paid from insurance proceeds (to the extent available).

9.3 Excess Insurance Proceeds. In the event any excess insurance proceeds remain after any reconstruction by the Association pursuant to this Article IX, the Board, in its sole discretion, may retain such sums in the general funds of the Association or may distribute all or a portion of such excess to the Owners in the ratio that they would pay a Reimbursement Assessment hereunder, subject to the prior rights of Mortgagees whose interest may be protected by the insurance policies carried by the Association and subject to any restrictions under applicable law. The rights of an Owner or the Mortgagee of a Lot to any distribution shall be governed by the provisions of the Mortgage encumbering the Lot or Parcel.

9.4 Use of Reimbursement Assessments. All amounts collected as Reimbursement Assessments pursuant to Section 9.2 above shall only be used for the purposes set forth in this Article IX and shall be deposited by the Association in a separate bank account for such purposes. Such funds shall not be commingled with any other funds of the Association and shall be deemed a contribution to the capital account of the Association by the Owners. Any unpaid Reimbursement Assessment shall be secured by an Assessment Lien.

## X. EMINENT DOMAIN

10.1 Representation in Condemnation Proceedings. The Owners hereby appoint the Association through such Persons as the Board may delegate, to represent all of the Owners in connection with



any threatened Taking. The Board shall act, in its sole discretion, with respect to any awards being made in connection with the Taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action.

10.2 Award for Common Areas. Any awards received by the Association on account of the Taking shall be paid to the Board. The Board may, in its sole discretion, retain any award in the general funds of the Association, expend the funds for restoration and repair of Common Areas or distribute all or any portion thereof to the Owners in the ratio they would pay a Reimbursement Assessment hereunder, or as their interests otherwise may appear. The rights of an Owner and the Mortgagee of his Lot as to any distribution shall be governed by the provisions of the Mortgage encumbering such Lot or Parcel.

### XI. ARCHITECTURAL AND LANDSCAPE CONTROL

11.1 Appointment of Architectural Control Committee ("Committee"). The Association shall have a Committee consisting of no less than three nor more than seven individuals, as specified from time to time by resolution of the Board. Developer initially shall appoint the members of the Committee. Developer shall retain the right to appoint, augment, replace, or remove any and all members of the Committee from time to time until the Transition Date. Thereafter, members of the Committee shall be appointed by the Board. Individuals appointed to the Committee, other than those appointed by Developer, must satisfy such requirements as may be set forth in the Design Guidelines and not be delinquent in any assessments or have any uncured violations of this Declaration, the Design Guidelines, or any other governing documents. Developer voluntarily may (but shall not be required to) permit Members to appoint one or more members of the Committee at any time before the Transition Date. "Committee Members are not required to be members of the Association."

11.2 Design Guidelines. So long as not in conflict with this Declaration or any amendments hereto, the Committee shall establish reasonable procedural rules, regulations, restrictions, architectural standards and design guidelines (the "Design Guidelines"), which the Committee may, from time to time as approved by the Board, amend, repeal or augment and shall not be subject to any of the requirements for amendments stated in this Declaration as amended. Existing homes shall be deemed in compliance with the Design Guidelines. Any change in the Design Guidelines will be effective only if it is approved by Developer (so long as Developer owns any property subject to this Declaration). The Design Guidelines are incorporated herein and shall be deemed to be a part of this Declaration and shall be binding on all Owners, Members and other Persons as if expressly set forth herein; provided, however, that neither the provisions of this Article XII nor the Design Guidelines shall apply to buildings and other structures or improvements constructed by Developer or its agents or employees, and such buildings and other structures may have an architectural style and present general aesthetics which are quite distinct from the architectural styles and aesthetics elsewhere in the Property or the Project. A copy of the current Design Guidelines shall at all times be a part of the Association's records. The Design Guidelines may include, among other things, those restrictions and limitations set forth below:

(a) Designation of a "Building Envelope" within a Lot, thereby establishing the maximum developable area of the Lot where terrain, size or other factors require such designation;

(b) Procedures for assuring conformity of completed improvements to drawings and specifications approved by the Committee; provided, however, as to purchasers and encumbrancers in good faith and for value, unless notice of noncompletion or nonconformance identifying the violating Lot and specifying the reason for the notice, executed by the Committee, is Recorded with the County Recorder of Gallatin County, Montana, and given to the Owner of the Lot within one year following completion of the improvement, or unless legal proceedings shall have been instituted to enforce compliance or completion within said one-year period, the completed improvements shall be deemed to be in compliance with plans and specifications approved by the Committee and in compliance with the architectural standards of the Association and this Declaration, but only with respect to purchasers and encumbrancers in good faith and for value; and

(c) Such other limitations and restrictions as the Committee in its reasonable discretion shall adopt, including, but not limited to, the regulation of all landscaping (including, but not limited to, absolute prohibition of certain types of landscaping, trees and plants), construction, reconstruction, exterior addition, change or alteration to or maintenance of any building, structure, wall or fence, including, but not limited to, the nature, kind, shape, height, materials, exterior color, surface texture, and location of any such improvement, exterior artwork and works of art visible from any other Lots or Common Areas, including, but not limited to, sculpture and statues.

(d) Subjective determinations and/or criteria bearing on compatibility with architecture, style, design, and appearance generally, other residences, the terrain within the property or visible from it and such other matters as the committee may conclude, in good faith but in the exercise of the Committee's abundant discretion, are relevant or appropriate to a harmonious appearance and lifestyle within the Property and the project.

### 11.3 General Provisions Regarding Architectural Control.

(a) The Committee may delegate its responsibilities for reviewing drawings and specifications, except final review and approval as may be required by the Design Guidelines, to one or more of its members or architectural consultants retained by the Committee. Upon any such delegation, the interim approval or disapproval of drawings and specifications by the member or consultants shall be equivalent to interim approval or disapproval by the entire Committee.

(b) The address of the Committee shall be the address established for giving notice to the Association, unless otherwise specified in the Design Guidelines or by written notice to Owners. The Committee's address shall be the place for the submittal of drawings and specifications and the place where the current Design Guidelines shall be kept.



(c) The Design Guidelines shall not apply to, and nothing contained in this Article II shall be construed to prevent or impair in any way, any development, operation, construction or improvement by Developer or any other Person on property that is not made subject to this Declaration.

(d) The establishment of the Committee and the procedures herein for architectural approval shall not be construed as changing any rights or restrictions upon Owners to maintain or repair their Lots as may otherwise be specified in this Declaration, the Bylaws or Association Rules.

(e) The Committee, at the request of an Owner (including, but not limited to, Developer) may, but shall have no obligation to, (i) change the size, configuration or location of any Building Envelope on the Owner's Lot, or (ii) approve the changing of the natural grade of a Lot, or portions thereof, by cut, fill or similar procedures. The Committee may require that some portions of Building Envelopes on Lots adjoining any golf, tennis or similar other recreational facilities remain undeveloped except for such walls, landscaping, swimming pool and similar improvements as the Committee may permit.

#### 11.4 Procedures for Approval.

(a) Except for Improvements constructed by the Developer, no Improvements shall be constructed, erected, placed, planted, applied or installed upon any Lot unless complete plans and specifications therefore shall have been first submitted to and approved in writing by the ACC and the City of Bozeman.

(b) The Committee or a designated representative may conduct a site visit with the Owner or his designated representative, prior to preparation of any plans or drawings.

(c) Plot plans shall show the location on the Lot of any structures proposed to be constructed, placed, altered or maintained; driveways, sidewalks, decks, patios, floor plans, elevations and complete landscape plan; finished grades different from the existing grades on the Lot; proposed colors, including color schemes for roofs and all exteriors, indicating the materials for the same or such other features as required by the Committee. (Scale 1/8"=1'-0")

(d) All plans shall be reviewed and approved by the ACC prior to submitting a site plan application or a building permit application to the City of Bozeman (whichever comes first). The plans shall include a stamp of approval from the ACC prior to City review.

(e) Buildings proposed for construction with crawl spaces or basements shall include Engineer Certification regarding depth of ground water and soil conditions and proposed mitigation methods to be submitted with each Building Permit.

(f) Two complete sets of the final plans and specifications for said work shall be submitted. (Scale 1/4"=1'-0")





(g) No construction, structure, or improvement shall commence or shall be erected, altered, placed or maintained upon any Lot unless and until the final plans, elevations, and specifications therefore have received such written approval as herein provided. All construction, improvements, installations, remodeling, or alterations shall comply strictly with the approved plans and any terms and conditions imposed by the Committee in its written approval. Once approved, no construction, structure, or improvement may vary from the approved plan without further written approval of the Committee. Any person purchasing any portion of the Property subject to this Declaration acknowledges that the breach or violation of this covenant is likely to result in irreparable harm to the rights and interests of other owners in the subdivision and that the Developer, the Committee or the Association, on behalf of such owners, shall be entitled to injunctive relief, temporary or permanent, in order to prohibit such violation; provided, however, that this provision shall be in addition to any other remedies available hereunder or at law or equity.

(h) "The Committee is authorized to charge a reasonable administrative fee for the review of plans and specifications. Payment of the required charge shall be a part of and condition to, the submittal of the application, plans and specifications for committee approval. In addition the Committee may require that the applicant(s) reimburse the Committee for the actual expenses incurred by the Committee in the review and approval process. Such amounts, if any, shall be levied in addition to the assessments against the lot for which the request for approval is made, but subject to the Association's lien for assessments and subject to all other rights of the Association for the collection of such assessments." If the building exceeds four (4) units the review fee will be adjusted accordingly. The Committee shall provide full approval, conditional approval, or disapproval of said plans and specifications in writing within thirty (30) days from the receipt thereof. All conditions of approval and variances shall be confirmed in writing. One set of said plans and specifications with the Committee's approval or disapproval endorsed thereon shall be returned to the Owner and the other copy thereof shall be retained by the Committee. Should the Committee fail either to approve or disapprove any plans or specifications submitted to it within said thirty (30) day period, failure to do so shall not be construed a waiver of the Committee's absolute authority to approve plans and specifications prior to construction, alteration, or placement of improvements and construction shall not commence until approval is obtained in writing. Approval of plans and specifications for all construction, installations, improvements, remodeling or alterations shall be valid only for a period of one year. Failure to commence and/or complete construction within one year following the date of approval shall require reapplication and resubmittal of plans, specifications, and fees to the Committee.

(i) The Committee shall have the right to disapprove any plans, specifications or details submitted to it as aforesaid, in the event, such plans and specifications are not in accord with all the provisions of this Declaration. Considerations may include, but shall not be limited to, the following: if a proposed color is not a natural earth tone (brown) or other color approved in writing by the Committee; if the proposed structure is not in harmony with the general surroundings of such lot or the adjacent structure; if the Committee deems said plans and specifications to be contrary to the interest and the welfare and rights of all or any part of the area annexed into West Winds Homeowners' Association, Inc.. The decision of the Committee in any of these matters shall be



final, and no building or improvement of any kind shall be constructed or placed upon any Lot in the Property Homeowners' Association, Inc., without the prior written consent of the Committee.

(j) In addition to the required approvals by the ACC as provided in this article, the construction, erection, addition, deletion, change or installation of any Improvements shall also require the applicant to obtain the approval of all governmental entities with jurisdiction thereover, and issuance of all required permits, licenses and approvals by all such entities. Without limiting the generality of the preceding sentence, issuance of building permit(s) by the City of Bozeman, Montana, as required, shall be a precondition to commencement of any construction or alteration of, addition to, or change in any Improvement. All work on any improvement once started must be continued on a continuous and diligent basis until completion, which shall not exceed 18 months with out approval from the committee.

11.5 No Waiver of Future Approvals: Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

11.6 Variance. The Committee may authorize variances from compliance with any of its guidelines and procedures when circumstances such as unusual topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may be granted only when unique circumstances dictate, and no variance shall:

(a) be effective unless in writing; or

(b) preclude the Committee from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

11.7 Limitation of Liability. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only, and the Committee shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, or for ensuring compliance with building codes and other governmental requirements. The Declarant, the Association, the Board, the Committee, nor any member of any of the foregoing shall not be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Lot or any failure to approve any Improvement. In all matters, the Committee and its members shall be defended and indemnified by the Association as provided in Section 4.5.

11.8 Enforcement. Any structure or improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the Board or the Declarant, Owners

shall, at their own expense and cost, remove such structure or improvement and restore the Lot to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Board or its designees shall have the right to enter the Lot, remove the violation, and restore the Lot to substantially the same condition as previously existed. All costs, together with the interest at the maximum rate then allowed by law and administration expenses, may be assessed against the benefited Lot and collected as a Reimbursement Assessment.

(a) Unless otherwise specified in writing by the Committee granting approval, all approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Lot, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work, the Association shall be authorized, after notice to the Owner of the Lot an opportunity to be heard in accordance with the Bylaws and Article XIX herein, to enter upon the Lot and remove or complete any incomplete work and to assess all costs incurred against the Lot and the Owner thereof as a Reimbursement Assessment.

(b) The Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the Committee.

11.9 Soils Condition. Declarant, the Association and/or the Committee make no warranty or representation concerning the soil and/or the characteristics or structural stability of the Properties. Each Owner shall assess the sufficiency of the load-bearing capacity of his or her Lot and the effect of possible soil subsidence upon the structures intended to be placed thereon that are, in part, dependent upon the condition of the underlying soils, footing, foundation and structural design and plans used for construction on the Lot. Declarant, the Association and /or the Committee shall not be liable should the footing, foundation or structural design or plan of the structures placed on the Properties prove insufficient to prevent structural distress or damage to the structures erected thereon by the Owners caused by soil subsidence, settlement, collapse or expansion. Each Owner agrees to cause construction upon his or her Lot to be in conformity with the recommendations contained within the soils report prepared for the Properties, available at the office of the Declarant, or recommendations of an independent soils report prepared by a consultant retained by the Owner.

Buildings proposed for construction with crawl spaces or basements shall include Engineer Certification regarding depth of ground water and soil conditions and proposed mitigation methods to be submitted with each Building Permit.

11.10 Non-Liability for Approval of Drawings and Specifications. Drawings and specifications shall be approved by the Committee as to style, exterior design, appearance and location, and are not approved for engineering design or for compliance with zoning and building ordinances. By approving such drawings and specifications neither the Committee, the Association, the Board, the Developer, or any Member, officer or director thereof, assumes any liability or responsibility therefore, or for any defect in any structure constructed from such drawings and specifications. Neither the Committee, the Association, the Board, the Developer, or any Member, officer or



director thereof shall be liable to any Owner or other Person for any damage, loss or prejudice suffered or claimed on account of:

- (a) the approval or disapproval of or failure to approve any drawings and specifications, whether or not defective;
- (b) the construction or performance of any work, whether or not pursuant to approved drawings and specifications;
- (c) the development, or manner of development of any property within the Property;
- (d) the change in the size, configuration or location of any Building Envelope or the changing of the natural grade of any Lot; or
- (e) the execution and filing of an estoppel certificate pursuant to the Design Guidelines (whether or not the facts therein are correct) if the action, with the actual knowledge possessed by him, was taken in good faith.

Approval of drawings and specifications by the Committee, or the approval of any change in the size, configuration or location of any Building Envelope, or a change in the natural grade of any Lot is not, and shall not be deemed to be, a representation or warranty that the drawings, specifications or changes comply with applicable governmental ordinances or regulations including, but not limited to, zoning ordinances and building codes.

11.11 Inspection and Recording of Approval. Any member or authorized consultant of the Committee, or any authorized officer, director, employee or agent of the Association, may at any reasonable time enter, without being deemed guilty of trespass, upon any Lot, except the interior of any occupied Unit, after reasonable notice to the Owner, in order to inspect improvements constructed or being constructed on such Lot, or any changes in the grade thereof, to ascertain that such improvements or changes have been or are being built or changed in compliance with the Design Guidelines and this Declaration. The Committee shall cause such an inspection to be undertaken within 30 days of a request from any Owner as to his Lot. If such an inspection reveals that the improvements or changes located on such Lot have been completed in compliance with this Article XI and the Design Guidelines, the Committee shall provide the Owner a notice of approval in Recordable form which, when Recorded, shall be conclusive evidence of compliance with the provisions of this Article II and the Design Guidelines as to the improvements or changes described in the Recorded notice, but as to such improvements or changes only.

11.12 Reconstruction of Common Areas. Any reconstruction by the Association or Developer after destruction by casualty or otherwise of Common Areas, which is accomplished in substantial compliance with "as built" plans for the Common Areas, shall not require compliance with the procedural provisions of this Article II or the Design Guidelines.



11.13 Emergencies. Notwithstanding the foregoing, in the event of an emergency or the sudden occurrence of unanticipated conditions which threaten the health, safety or physical well-being of Persons or property within the Property, the Board, the Committee and Developer shall have authority (without the prior approvals described above) to take whatever remedial action may be necessary anywhere in the Property to protect Persons and property until such time as applicable approval procedures provided for in this Article can reasonably be utilized.

11.14 Fines. The Committee may levy a fine in an amount determined by the Committee and approved by the Board against any Owner and any Lot subject to assessments hereunder for failure to obtain required approval from the Committee or for failure to comply with the requirements of such approvals or Article IV hereof and may require security deposits to assure compliance with Property restoration and other requirements.

## XII. ACC GUIDELINES

12.1 Residential Use. Lots within the Property are classified as Residential and may be used only for the construction and occupancy as stated in the Unified Development Ordinance under the R-3 and R-4 Zoning Designations and those permitted under the West Winds Planned Unit Development; related buildings and typical residential activities incidental thereto, such as the construction and use of a family swimming pool and any permitted tennis court and a permitted Business Use. All such property shall be used, improved, and devoted exclusively to those uses. Single Family lots may not be further subdivided or combined to build more than one dwelling.

12.2 Minimum Residence Requirements. All single family dwellings shall have a minimum of one thousand three hundred fifty (1,350) square feet of floor space and all town-home duplex dwellings shall have a minimum of one thousand one hundred (1,100) square feet of floor space, together with at least a single-car attached or detached garage. The required square feet must be at daylight level or above grade and is excluding basements, garages, carports, porches, etc. The main portion of the single family dwellings shall be a minimum of thirty five feet (35') wide and the main portion of the town-home duplex dwellings shall be a minimum of twenty five feet (25') wide. All multi-family lots will have a minimum and a maximum size as allowed or required pursuant to Sec. 18.16 of the Bozeman Unified Development Ordinance. Lots identified as RSL (Restricted Size Lots) shall comply to current city standards. It is the intention of this covenant to insure that all dwellings shall be of a quality workmanship and material substantially the same as, or better than, other dwellings in the West Winds area and conform to the Uniform Building Code (UBC). Applicable requirements of Gallatin County and the Montana Building Code shall also be met. The Architectural Control Committee must approve all plans. All building construction and landscaping must conform to both the final approved plans by the Committee.

12.3 Building Setbacks. All buildings shall have applicable required setback as set forth in Sec. 18.16.050 of the Bozeman Unified Development Ordinance.



(a) Dwellings. Each dwelling which shall be erected on any Lot shall be situated on such Lot in accordance with the building and setback lines shown on the Plat and or required by Law. In no event shall any dwelling be erected and located upon any such Lot in a manner which violates or encroaches upon the building and setback lines shown on the Plat, specified in a Supplemental Declaration, or required by Law, unless the Law allows for such variance and the Association approves such a variance.

(b) Walls and Fences. All fences and walls shall be subject to the prior written approval of the Architectural Control Committee, and shall comply with all laws and applicable Supplemental Declaration. All fences and walls located anywhere on a Lot must comply with site distance requirements established by Subdivision or City of Bozeman ordinances or other applicable laws. No fence or wall shall be erected, placed, or altered on any Lot nearer to the street than the minimum building setback line unless the same be a retaining wall of masonry construction which does not rise above the finished elevation of the earth embankment retained, reinforced, or stabilized, except that this restriction shall not apply to fences or walls which have been approved by the Architectural Control Committee pursuant to this Declaration.

12.4 Building Height Limits. All buildings shall have maximum height as set forth in Sec. 18.16.060 of the Bozeman Unified Development Ordinance.

12.5 Roofs. Roofs are a major part of the over all design and therefore will be emphasized by the Architectural Control Committee. Early structures in the Gallatin Valley responded to severe climate with traditional roof forms that dealt with the sometimes heavy snow loads. It is the intention of these guidelines to require traditional gable, hip, and shed roof designs used in creative and aesthetically pleasing combinations. Secondary roof forms are highly recommended for West Winds.

(a) Pitches. The minimum roof pitch shall be 6:12 for the major components of any roof. Minor components and secondary roofs structures, such as shed roofs and dormer roofs may have pitches as low as 4:12. No component of any roof shall have a pitch less than 4:12. Although, under certain special circumstances the roof design may incorporate as a minor component of the overall roof design a flat roof.

(b) Secondary Roof Structures. Dormers, skylights, chimneys, and solar collectors are considered secondary roof structures. Dormers and most other secondary roof structures are encouraged, both to add interest and scale to major roof areas and to make habitable use of space within the roofs. Dormers and other secondary roofs may have gable, hip, or shed forms and may be stacked in multiple forms.

When designing the location of skylights, consideration should be given to both the interior and the exterior appearance of the unit. Locations should also be coordinated with window and door locations. Skylights shall be located away from valleys, ridges and other



areas where drifting snow and snow ice may hinder the performance and safety of the unit.

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

(c) Eaves, Soffits, and Fascias. All major roof components shall have a minimum horizontal eave projection of 12 inches measured from the wall. Minor roof structures may have a reduced eave projection as necessary to maintain proper proportion or for a specific architectural effect demonstrated to the Committee. Eaves may have a horizontal or angled return to the wall. Soffits shall be required to cover all rafter tails a rough framing material except where framing members are finished and protected from exposure. All roof edges shall have a minimum fascia of 6 inches in height.

12.6 Terraces, Eaves, and Detached Garages. For the purpose of determining compliance or noncompliance with the foregoing building line requirements, side yard set backs shall be measured from the outside edge of the wall of dwellings and structures. Otherwise, terraces, stoops, eaves, wing walls, and steps extending beyond the outside wall of a Structure shall not be detached garage or accessory outbuilding which has been approved, in writing, by the Architectural Control Committee; provided all such detached Structures must not encroach upon any side or rear setback line or upon the Lot of an adjacent Owner or upon any easement as set forth herein.

12.7 Roofing Materials. Roofing materials enhance the building and need to be compatible with residential neighborhoods. Fiberglass or asphalt composite shingles in an "architectural" grade are acceptable with approval from the Committee. Other materials may also be considered, but must have written approval from the Committee.

12.8 Gutters, Down Spouts and Flashing. Gutters and down spouts are allowed but they must be of a color and finish that blends with the finish colors of the structure. Unpainted gutters, down spouts and flashing will not be allowed. Flashing materials shall be of copper or painted or anodized sheet metal.

12.9 Roof Mounted Machinery. All roof mounted machinery, mechanical equipment, vent pipes, duct work, exhaust fans and other protrusions must be painted to match the finish color of the house, the house trim or the roof covering material so that it blends in and is compatible with the parent structure.

12.10 Perimeter Walls. Perimeter walls which have been constructed by the Developer to the Master Planned Property design standard, may not be raised, lowered or otherwise modified in any way. If any of these walls are damaged, the owner shall be required to reconstruct them within 15 business days to the same original height and using the same colors, patterns, textures and materials as the original.



12.11 Exterior Walls. The exterior walls are one of the most important aesthetic elements in the building design and will reflect the image of the entire subdivision. Elements of specific concern are scale, proportion, texture, and color. The scale and proportion of the exterior walls must have inherent interest and diversity, and harmonize with the high quality nature of the subdivision.

(a) Material. The materials that are acceptable to provide the desired texture are real stone and brick, or veneers that appropriately replicate the same, wood siding which is painted or stained, and stucco. Masonite lap siding, vinyl siding, and aluminum siding are acceptable provided it is of high quality and simulates wood materials faithfully. All products used are intended to maintain the aesthetic character of the subdivision and will be reviewed and approved on a case by case basis.

(b) Colors. The colors used shall be earth tones and should harmonize and compliment the surrounding site and neighboring buildings. Off whites, shade of grey, as well as pale blue and green are considered acceptable. Trim may be more colorful and contrasting in order to add visual interest. Garage doors shall be the same color as the main body of the home.

(c) Concrete. Exposed concrete shall be limited to a maximum of 8 inches from the bottom of the siding to the finish grade. Exposures of more than 8 inches shall be covered by shrubs, masonry veneer, texture concrete surfaces such as exposed aggregate or synthetic stucco.

(d) Chimneys. Chimneys, other than those used to ventilate heating systems exhausts, may exit the building on an exterior wall or within the same structure. When part of an exterior wall they may be used as an accent form to break up the mass of the wall. They shall be of a material that compliments other exterior finishes. Acceptable materials include brick, natural stone, stucco, or wood framing when the finished wood material is the same as the siding.

(e) Windows and Doors. Windows are an important architectural element and therefore significant numbers are highly encouraged. Low "E" coatings are permitted, but no mirror glazing shall be allowed. All windows and sliding glass, French or atrium doors shall be vinyl, aluminum clad wood or similar material acceptable to the Committee.

The patterns, sizing, symmetry (or asymmetry) of windows and doors determines the scale and feel of a home. The Committee will require that the following aspects be carefully addressed in the window and door design:

- 1) Consistency of types and shapes.
- 2) Special shapes for "future" windows in appropriate areas.
- 3) Window patterns consistent with design of the structure.

12.12 Decks, Balconies and Porches. Decks, balconies and porches shall be designed to enhance the overall architecture of the building by creating variety and detail on exterior elevations. Combination of covered decks, projecting balconies and bay windows shall be



encouraged. Incorporating a covered entry porch shall architecturally enhance the main entrance to the living structure and is therefore required for all single family and town-home duplex structures. All other multi-family dwellings shall conform to the over all design and theme as set by the rest of the subdivision. Recognizing that a covered porch is not always attainable with multi family dwellings, covered porches may not be required; non the less each will be reviewed on case by case basis with a certain continuity in mind as it relates to the entire subdivision and is up to the sole discretion of the committee.

Low level decks shall be skirted to grade. Decks which are on the second story (that are not cantilevered) and high off the ground shall either be sided down to a continuous grade beam and sided with the same siding as the main body of the structure, or they shall be required to have additional mass and size in the vertical support posts and a soffit treatment to the under side of the deck which is approved by the Committee. Treated Douglas Fir, except in certain structural members, is not an appropriate decking material.

12.13 Garages. Garages are not to be the predominate feature on the front elevation of a dwelling. Architectural creativity in roof design and height as well as the garage being recessed from the remaining front elevation is encouraged.

12.14 Sidewalks. Sidewalks, constructed to City standards, shall be installed at the time dwelling units are constructed. Upon the third anniversary (3 years) of the final plat recordation, any lot owners who have not constructed their sidewalks shall be required to install sidewalks on their lots, regardless of whether a dwelling is constructed on the lot or not. There may be an exception to this requirement for the large multi-family parcels, with specific regard to the Senior Living Campus.

To “create ownership of the boulevard” all multi-family parcels are to demonstrate a pattern of connectivity for pedestrian traffic between structures to all arterial and collector streets, specifically Oak St., 27<sup>th</sup> Street, Davis Lane, and Baxter.

12.15 Fencing. Backyards and side yards may be fenced with wood or materials that look like wood or certain types of vinyl. The front yard toward the public road shall not be fenced. No chain link or wire fences shall be allowed. Fences shall be maintained in good condition at all times. Fences cannot be higher than six feet. If sight distance becomes an issue as sated in Sec. 13.15 of this declaration or any condition as set by the City of Bozeman allowable fence height may be reduced. All fencing designs and layouts need to be approved by the Committee.

For all multi-family lots (excepting town-home duplex lots) boundary fences between or around units shall be prohibited, although the owners or builders may erect privacy screening around their individual patios, which shall encompass the patio; provided, however, that in the event the owners or builders extend the patios beyond the area provided by the developer, neither the patio nor the privacy screening shall be any further than twelve feet (12’) out from the building and no further than twelve feet (12’) in width. Any privacy fence so erected shall not be



taller than four feet (4'). For those owners or builders that own units with a condominium association and are desirous of privacy screening or a change in the size of the privacy screening originally provided, all such screening must be in uniformity to all other units with in the condominium association and must have full approval and review of the condominium association. All lots adjacent to Oak St., 27<sup>th</sup> Street, Davis Lane, and Baxter, and are considered double frontage lots, regardless of the housing type shall conform to the requirement as set forth in this paragraph. The design and installation shall be per Exhibit A of Appendix I.

An amendment as it relates to the distance from the building may be requested for any single family or town-home that falls under this requirement. Any change or alteration after preliminary site plan approval to any patio or porch will need the approval from both the Committee as well as the City of Bozeman.

12.16 Building Orientation. The City of Bozeman does not allow individual drive accesses on Oak St., 27<sup>th</sup> Street, Fowler Lane, and Baxter therefore the rear facades of the dwellings will be oriented towards the street. In an attempt to "create ownership of the boulevard," all fences shall be constructed in compliance with sub section 12.15 and the rear facades of the dwellings will incorporate small porches, patios, or breaks in the roofline in an attempt to give an inviting appearance with characteristics similar to a front elevation.

12.17 Kennels. In general kennels are discouraged. Kennels shall have a maximum size not exceed 150 square feet. Kennels, dog runs or tethered animals must be placed in lots allowable for rear yard fencing only. Kennels cannot be any higher than the height of the rear yard fencing that contains them. In all other areas or lots, kennels, dog runs or tethered animals are not allowed.

12.18 Landscaping. Landscaping will be required to enhance the value of the property and the aesthetics of the site. Landscape, grading and irrigation plans shall be submitted and approved by the Committee concurrently with the building plans and conform to section 18.48 of the BMC. As a part of the landscape plan, sod (Not Seed) is required for all lawn areas visible from the street. All areas visible from the street where lawn, shrubs, trees or any vegetation is planted shall be required to have permanent underground irrigation installed. Suggested deciduous trees are Aspen, European Green Birch, Rocky Mountain and Big Tooth Maple, and other recommended by the City of Bozeman Zone Code. Suggested evergreen trees are Colorado Spruce, Lodge Pole Pine, Engle Man and White Spruce, Sub Alpine Fir, and Scotch Pine.

12.19 Storm Water Detention/Retention. Storm water detention or retention facilities shall be required for all subdivisions and site plans in compliance with current City of Bozeman and Montana Department of Environmental Quality regulations. Storm water management plans shall be submitted to and approved by the Committee concurrently with City review of subdivision and site plans. Storm water facilities shall be designed and installed in conformance with the approved Storm water Investigation Report prepared by HKM Engineering, Inc. and approved by the City of Bozeman through the Master West Winds PUD review process. All storm water ponds shall have an

organic shape and be designed per Exhibit B of Appendix I.

12.20 Street Lighting. Street Lights shall be required for all subdivisions and site plans in compliance with current City of Bozeman regulations. Street Light plans shall be submitted to and approved by the Committee concurrently with City review of subdivision and site plans.

Streetlights within publicly dedicated street right-of-ways (R/W) shall be constructed and maintained through the City of Bozeman Special Lighting Improvement District (SLID) process. All streetlights within the public R/W shall be installed per current City of Bozeman regulations and the details provided within Exhibit C of Appendix I.

Street lighting within private site plan developments shall be privately funded and maintained by the specific site plan project. Multi-family or senior developments may fund the maintenance and operation of the on-site street and parking lighting system through a site-specific homeowners association. Street Light plans including location, pole type and luminary model shall be submitted to and approved by the Committee prior to City review of site plans.

These standards may differ for any Unit of the Property as stated in the Supplemental Declaration making such Unit subject to this Declaration.

### **XIII. USES AND RESTRICTIONS**

The following covenants, conditions, restrictions and reservations of easements and rights shall apply to all Lots and Common Areas, the Owners thereof, and all occupants.

13.1 Signs, Flags, Flagpoles and Statues. No sign or emblem of any kind may be kept or placed upon any Lot or mounted, painted or attached to any Unit, fence or other improvement upon such Lot so as to be visible from public view or mounted on any vehicle or trailer parked or driven in the Property or the subdivision or carried by any person or by any other means displayed within the Property or the subdivision except the following of which shall be in conformance with the PUD Sign Plan and the City of Bozeman Sign Code:

(a) For Sale or For Rent Signs. An Owner may erect one sign not exceeding 2 feet by 3 feet in area, fastened only to a stake in the ground and extending not more than 3 feet above the surface of the ground advertising the property for sale.

(b) Declarant's Signs. Signs or billboards may be erected by the Declarant.

(c) Political Signs. Political signs may be erected upon a Lot by the Owner of such Lot advocating the election of one or more political candidates or the sponsorship of a political party, issue or proposal provided that such signs will not be erected more than 90 days in advance of the election to which they pertain and are removed within 15 days after the election.



(d) School and Business Logos. Emblems or bumper stickers advertising a resident's school or business mounted upon vehicles parked or driven in the subdivision.

Declarant or its agents will have the right to remove any sign, billboard or other advertising structure that does not comply with the foregoing requirements; and in so doing, will not be subject to any liability in connection with such removal.

(e) Such signs as may be required by legal proceedings, or prohibition of which is precluded by law

(f) Such signs as may be required for traffic control and regulation of Common Areas

(g) As may be approved by Declarant, street and directional signs Security monitoring signs – one per lot, Security monitoring window emblems – maximum of one per window.

(i) Flags and Flagpoles. Within the front yard area, but set back at least 15 feet from the front property line, homeowners may display a standard sized American Flag from a wall mounted standard or from a residentially scaled flag pole, not to exceed 18 feet in height. Proper flag etiquette must be observed (flag not torn or faded, right side up, lighted at night etc.) Except as used by the Declarant, no advertising flagpoles, standards, flags, banners, balloons, billboards, flashing lights or lighted panel signs are allowed to be placed anywhere within the Subdivision or in the public right-of-ways or landscape areas immediately adjacent to the Subdivision.

(j) Statues. Statues, lawn ornaments and yard decorations of any size or type must be placed so as not to be Visible from Neighboring Property. However, this restriction shall not apply to the display of exterior holiday decorations.

13.2 Antennae. Except as may otherwise be permitted by the ACC, subject to any provisions of any guidelines or standards adopted by the ACC, no exterior radio antenna, television antennae, or other antennae, satellite dish, or audio or visual reception device of any type shall be placed, erected, or maintained on any Lot except inside a Unit concealed from view; provided, however, that any such devices may be erected or installed by the Declarant during its sales or construction upon the Lots; and provided further, however, that the requirements of this subsection shall not apply to those “antennae” (including certain satellite dishes) which are specifically covered by the Telecommunications Act of 1996 and/or applicable regulations, as amended from time to time. As to “antennae” (including certain satellite dishes) which are specifically covered by the Telecommunications Act of 1996 and/or applicable regulations, as amended, the Association shall be empowered to adopt rules and regulations governing the types of “antennae” (including certain satellite dishes) that are permissible hereunder and, to the extent permitted by the Telecommunications Act of 1996 and/or applicable regulations, as amended, establishing reasonable, nondiscriminatory restrictions or requirements relating to appearance, safety, location and maintenance. Notwithstanding the above, a satellite dish antennae eighteen inches (18”) in diameter or smaller may be installed (a) on the rear of the dwelling of a Lot or on the enclosed garage located



on a Lot, and (b) at an elevation no higher than thirty-six inches (36”) above the eaves of the roof. The satellite dish antennae should be in the least conspicuous location on the roof when viewed from the street in front of the dwelling from where an acceptable quality signal can be received, or in the rear yard of the Lot with landscape screening and with approval of the Architectural Control Committee.

13.3 Gas Containers. Propane and butane and other compressed or liquid gas containers larger than 20 pound capacity are prohibited, unless approved in writing by the ACC.

13.4 Clothes Hanging Devices. No clothes hanging devices exterior to a dwelling are to be constructed on the Lot except those of a temporary nature that are screened from view from the front of the Lot.

13.5 Basketball Backboards. “Only permanent basketball backboards are permitted. Written approval from the Architectural Control Committee is required prior to installation.”

13.6 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except (a) such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of a building, appurtenant structures, or other improvements; or (b) that which Developer or the Association may require for the operation and maintenance of the Property.

13.7 Approvals. Walls, fences, porches and patios must be pre approved by the ACC.

13.8 Party Fences and Party Walls. For purposes of this Declaration, Party Walls and Party Fences shall mean those walls and fences which are generally characterized by one of the following:

(a) any wall or fence which lies over the line dividing one piece of real property from another piece of real property owned by a different Person, with some portion of the wall or fence falling on each side of the dividing line;

(b) any wall or fence which lies immediately adjacent to and abutting (but not over) such a dividing line so that the edge of the wall or fence closest to the dividing line falls at or forms the dividing line; or

(c) any wall or fence which forms part of one continuous structure running across more than one Lot without a physical break or separation occurring at property lines.

(d) Except as hereinafter provided, the rights and duties of Owners with respect to Party Walls and Party Fences between Lots shall be as follows:

(i) The Owners of contiguous Lots who have a Party Wall or Party Fence shall both equally have the right to use such wall or fence, provided that such use by one Owner does not interfere with the use and enjoyment of the wall or fence by the other Owner.



(ii) In the event that any Party Wall or Party Fence is damaged or destroyed through the act of an Owner or any Occupants, agents, guests or invitees of the Owner, or members of the Owner's family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to rebuild and repair the Party Wall or Party Fence without cost to the Owner of the adjoining Lot. Any dispute over an Owner's liability for such damage shall be resolved as provided in paragraph (v) below, but any liability imposed on an Owner hereunder shall not prevent the Owner from seeking indemnity therefore from the Persons causing such damage.

(iii) In the event any Party Wall or Party Fence is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act of an adjoining Owner, or any Occupants, agents, guests or invitees of the Owner or members of the Owner's family, it shall be the obligation of all Owners whose Lots adjoin the Party Wall or Party Fence to rebuild and repair it at their joint expense, with the expense being allocated among the Owners in accordance with the frontage of their Lots on the Party Wall or Party Fence.

(iv) Notwithstanding anything to the contrary herein, there shall be no impairment of the structural integrity of any Party Wall or Party Fence without the prior consent of all Owners of any interest therein, whether by way of easement, fee or otherwise.

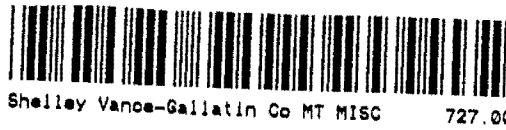
(v) Subject to the Developer's exemption in Section 15.7, any dispute between Owners with respect to the construction, repair or rebuilding of a Party Wall or Party Fence, or with respect to the sharing of the cost thereof, shall be submitted to the Board, the decision of which shall be binding.

Anything in the foregoing to the contrary notwithstanding:

(vi) In the case of Party Walls and Party Fences between Common Areas and Lots, or constructed by Developer or the Association on Common Areas within a Lot, the Association shall be responsible for all maintenance thereof, subject to the provisions of Sections 13.8, except that each Owner of a Lot shall be responsible for patching, painting or otherwise maintaining the portion of any Party Fence or Party Wall facing his Lot or the portion thereof which is not a portion of the Common Area.

13.9 Retaining Walls and Side Yard Walls and Fences. Retaining walls and side yard walls and fences shall not be removed. Any retaining wall or property line wall constructed on side lot lines adjacent to another Lot must have the prior written approval of the adjacent Lot Owner and submitted to the Committee for approval with initial submittal for approval of the house plans in terms of the following:

- (a) Profile of the wall or fence including height and length dimensions.



(b) Bid estimates for the wall and how costs will be shared between Lot Owners (usually 50/50).

(c) It is understood that if Declarant or a builder is the Lot Owner, the same process of contacting the Owner will remain in force.

13.10 Sidewalks. All sidewalks will conform to City specifications and regulations. If a homeowner, its representative, agent or employee, causes damage to any sidewalk located on or adjacent to such homeowner's Lot, the homeowner must repair or replace the sidewalk so that it will be returned to its original condition. Sidewalk maintenance and repair including ice and snow removal are the Lot Owner's responsibility.

13.11 Parking

(a) No storage or long term parking of boats, campers, trailers, recreational or commercial vehicles is permitted on any lot, except they may be stored within an enclosed garage or in side and rear yard areas where they would not be visible to a person driving on the public streets. Short term, infrequent parking (not to exceed 24 hours) of these vehicles is permitted for loading, unloading, cleaning or maintenance.

(b) No parking of inoperable motorized vehicles of any kind shall be allowed on the streets within the subdivision or on any lot in an area where they would be visible to a person driving on the public streets including but not limited to vehicles with expired license plates, unregistered vehicles, or vehicles on jacks.

(c) No vehicles, trailers, implements or apparatus may be driven or parked in the Common Areas, the Common Maintenance Areas or on any easement unless such vehicle, trailer, implement or apparatus is in use for maintaining such area or easement, provided, however, that this restriction will not apply to driveways or streets intended for vehicular use.

13.12 Garbage. No garbage or trash shall be kept, maintained or contained in or upon the Property so as to be visible from a Lot or the Common Areas or the street except temporarily, in containers approved by Association Rules, for the day of pickup. No incinerators shall be kept or maintained on the Property and no trash or garbage shall be burned on the premises. No refuse pile, garbage, compost pile or unsightly objects shall be allowed to be placed, accumulated or suffered to remain anywhere on the Property. No cans, bags, containers or receptacles for the storing or disposal of trash, garbage, refuse, rubble, or debris will be stored, kept, placed or maintained on any Lot where visible from any street except solely on a day designated for removal of garbage and rubbish and on which days only such cans, bags, containers, and receptacles may be placed in front of a residence and beside a street for removal but will be removed from view before the following day. Materials incident to construction of improvements may be stored on Lots during construction by Declarant. Notwithstanding the foregoing, the Architectural Control Committee may (but shall not be obligated



to) designate one or more locations within the Property to be centralized collection points for recycling of trash, garbage, or similarly reusable materials.

13.13 Removal of Debris. In the event any Owner fails to remove debris or unsightly material, the Developer or the Association may remove said debris or unsightly material and assess the cost of removal, including reasonable overhead charge, against the Owner as a Reimbursement Assessment.

13.14 Air-Conditioning Units. No air-conditioning apparatus will be installed on the ground in front of a residence nor will any air-conditioning apparatus or evaporative cooler be attached to any front wall or any window of a residence.

13.15 Sight Distance at Intersections. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways will be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them. No tree will be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines. Street vision triangle requirements are out lined in Section 18.44.100 BMC.

13.16 Commercial or Institutional Use. No Lot, and no building erected or maintained on any Lot, will be used for manufacturing, industrial, business, professional, commercial, institutional or other non-residential purposes, except as set forth in Section 15.7. Nothing in this Section shall prohibit an Owner's use of a residence for conducting a business such as an office type business with no more than one (1) employee, so long as (i) activities of such business do not materially increase the number of cars parked on the street; (ii) interfere with adjoining homeowners' use and enjoyment of their residences and yards; (iii) the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (iv) the business activity complies with applicable zoning requirements; (v) the business activity does not involve regular visitation of the Unit by clients, customers, suppliers, or other business invitees or door-to-door solicitation within the Property; and (vi) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of others within the Property, as determined in the Board's sole discretion.

"Business" shall have its ordinary, generally accepted meaning and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the family of the producer and for which the producer receives a fee, compensation, or other form of consideration, regardless of whether (a) such activity is engaged in full or part time, (b) such activity is intended to or does generate a profit, or (c) a license is required.

This Section shall not apply to restrict Declarant's activities in the Property, nor shall it restrict the activities of persons approved by Declarant involved with the development and sale of property in the Property. Additionally, this Section shall not apply to any Association activity relating to operating and maintaining the Property, including, if any, the Property's recreational and



other amenities.

Leasing a Unit for a period of at least six (6) months is not a "business" within the meaning of this subsection.

13.17 Detached Buildings. No detached accessory buildings, including, but not limited to, detached garages (other than provided herein) and storage buildings, will be erected, placed or constructed upon any Lot without the prior consent of the ACC and the City of Bozeman. Every outbuilding, inclusive of such structures as a storage building, or greenhouse will be compatible with the dwelling to which it is appurtenant in terms of its design and material composition. Exterior paint and roofing materials of such outbuildings shall be consistent with the existing paint and roofing materials of the dwelling.

13.18 Window Treatment. No aluminum foil, reflective film or similar treatment will be placed on windows or glass doors. Temporary window treatments must be removed within forty-five (45) days from close of escrow.

13.19 Athletic and Recreational Facilities. Outdoor athletic and recreational facilities such as playscapes, swing sets and sport courts of a permanent nature will not be placed on any Lot within the Property or the subdivision between the street right-of-way and the front of a Unit unless approved by the ACC pursuant to Article II. Notwithstanding the foregoing, portable basketball goals may be temporarily placed adjacent to the driveway but within the Lot, subject to Board-adopted rules and regulations.

13.20 Security. The Association is not responsible for security of any Subdivision or any Unit and each Owner and occupant of a Lot, and their respective guests and invitees, and each is responsible for their own personal safety and the security of their property. The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to enhance the level of safety or security which each person provides for himself and his property. Neither the Association nor Declarant shall in any way be considered insurers or guarantors of safety or security within the Property, 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.

13.21 Security Waiver of Liability. No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to the Property, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing its Tenants and all occupants of its Lot that the Association, its Board and committees, and Declarant are not insurers or guarantors of security or safety and that each Person within the Property assumes all risks of personal injury and loss or damage to property, including Lots and the contents of Lots, resulting from acts of third parties.

13.22 Construction Activities. This Declaration will not be construed so as to unreasonably interfere with or prevent normal construction activities during the remodeling of or making of additions to improvements by a Lot Owner (including Declarant) upon any Lot within the Property. Specifically, no such construction activities will be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with diligence and conforms to usual construction practices in the area. If construction upon any Lot does not conform to usual practices in the area as determined by the ACC in its sole good faith judgment, the ACC will have the authority to obtain an injunction to stop such construction. In addition, if during the course of construction upon any Lot, there is an excessive accumulation of debris of any kind that is offensive or detrimental to the Property or any portion thereof, then the ACC may contract for or cause such debris to be removed, and the Lot Owner will be liable for all expenses incurred in connection therewith.

13.23 Prohibited Structures. The following structures are prohibited on any Lot:

(a) Guest Houses (except as initially constructed by Declarant or approved by Declarant and the City of Bozeman as part of the initial construction of a Unit on a Lot);

(b) Dog Runs and animal pens of any kind, if such structures are Visible from Neighboring Property;

(c) Temporary Structures, including, without limiting the generality thereof, any trailer, tent, shack, garage, barn, motor home or mobile home or other outbuilding, and no prefabricated or relocated structure shall be used on any Lot at any time as a residence, either temporarily or permanently. This restriction shall not be interpreted to limit the right of Declarant or any Builder to use trailers or outbuildings as sales offices, selection center offices, construction offices or material storage facilities.

13.24 Occupants Bound. The Governing Documents apply to all occupants of and visitors to any Lot. Every Owner shall cause anyone occupying or visiting his or her Lot to comply with the Governing Documents/Use Restrictions and shall be responsible for all violations and losses to the Common Area caused by such persons, notwithstanding the fact that such persons also are fully liable and may be sanctioned for any violation.

13.25 Storage of Goods. Storage (except in approved structures or containers) of furniture, fixtures, appliances, machinery, equipment, or other goods and chattels on the Common Area (except by the Association), or, if not in active use, any portion of a Lot which is visible from outside the Lot is prohibited. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot or Parcel, except: (a) such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction or modification) of a building, appurtenant structures or other Improvements; and (b) that which Declarant or Association may permit or require for the development, operation and maintenance of

the Property.

13.26 Pool Equipment. All pool equipment stored on any Lot shall be screened so as to be neither Visible from Neighboring Property nor able to be seen through any view fence.

13.27 Unsightly or Unkempt Conditions. All portions of a Lot outside enclosed structures shall be kept in a clean and tidy condition at all times. No rubbish or debris of any kind shall be placed or permitted to accumulate within, upon or adjacent to any Lot so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other portion of the Property.

(a) Woodpiles or other material shall be stored in a manner so as not to be Visible from Neighboring Property and not to be attractive to rodents, snakes, and other animals and to minimize the potential danger from fires.

(b) No nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other portion of the Property.

(c) No activities shall be conducted upon or adjacent to any Lot or within improvements constructed thereon which are or might be unsafe or hazardous to any person or property.

(d) No open fires shall be lighted or permitted, except in a contained outdoor fireplace or barbecue unit while attended and in use for cooking purposes.

13.28 Repair of Building. No building or structure on the Property shall be permitted to fall into disrepair. Each such building and structure shall at all times be kept by the Owner in good condition and repair and adequately painted or otherwise finished. In the event any building or structure is damaged or destroyed, then, subject to the approvals required by Article VIII, such building or structure shall be promptly repaired or rebuilt, or shall be removed within twelve (12) months of the incident and the portion of the Property upon which such improvements were located shall be cleared and restored to a presentable and safe condition.

13.29 Violation of Law. No Owner shall permit anything to be done or kept in or upon his Lot or in or upon any Common Areas which will result in the violation of any law or other applicable requirement of governmental authorities.

13.30 Animals. No animals, including, but not limited to, horses or other domestic farm animals, fowl or poisonous reptiles of any kind, may be kept, bred or maintained in any Lot or in or upon any Common Area, except a reasonable number of commonly accepted household pets as determined in the Board's discretion. No animals shall be kept, bred or raised within the Property for commercial purposes. In no event shall any domestic pet, to include cats, be allowed to run free away from its owner's Lot without a leash, or conduct itself so as to create an unreasonable annoyance. All City and County animal and animal control ordinances shall be complied with. Pets which are permitted to roam free, or, in the Association's sole discretion, endanger the health, make objectionable noise,



or constitute a nuisance or inconvenience to other Owners or residents of any portion of the Property shall be removed upon the Board's request at the Owner's expense. If the Owner fails to honor such request, the Board may cause the pet to be removed at the Owner's expense.

13.31 Nuisances. No Owner shall permit or suffer anything to be done or kept about or within his Lot, or on or about the Property, which will obstruct or interfere with the rights of Developer, other Owners, Occupants or authorized Persons to use and enjoy the Common Areas, or annoy them by unreasonable noises or otherwise, nor shall an Owner commit or permit any nuisance. The foregoing shall include a prohibition against speakers, horns, whistles, bells or other devices, except security devices used solely for security purposes, which are audible from neighboring lots. No Owner shall engage in any activity which materially disturbs or destroys the vegetation, wildlife, or air quality within the Property or which results in unreasonable levels of sound or light pollution. Nothing shall be done or maintained on any part of a Lot which emits foul or obnoxious odors outside the Lot or creates noise or other conditions which tend to disturb the peace, quiet, safety, comfort, or serenity of the occupants and invitees of other Lots. No noxious, illegal, or offensive activity shall be carried on upon any portion of the Property, which in the Board's reasonable determination tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the occupants and invitees of other Lots.

Normal construction activities and parking in connection with the building of improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration unless they are in violation of the Design Guidelines or requirements of the Architectural Control Committee. The Board, in its sole discretion and power, but subject to the provisions hereof, shall have the right to determine the existence of any unreasonable annoyance or nuisance under this Declaration.

13.32 Vehicles.

(a) Campers, Boats, Snowmobiles, and Recreational Vehicles. No campers, boats, marine craft, hovercraft, boat trailers, travel trailers, motor homes, snowmobiles, camper bodies, golf carts, and other types of recreational vehicles and non-passenger vehicles, equipment, implements or accessories may be kept on any Lot unless the same are fully enclosed within a garage located on such Lot and/or said vehicles and/or accessories are screened from view from the front as approved by the ACC, and said vehicles and accessories are in operable condition. The ACC, as designated in this Declaration, will have the absolute authority to determine from time to time whether a vehicle and/or accessory is operable and fully enclosed and/or screened. Upon an adverse determination by said ACC, the vehicle and/or accessory will be removed and/or otherwise brought into compliance with this subsection. No dismantling or assembling of motor vehicles, boats, trailers, snow mobiles, recreational vehicles, or other machinery or equipment will be permitted in any driveway or yard adjacent to a street. This Section shall not apply to emergency vehicle repairs. Notwithstanding the foregoing, for the purposes of cleaning, loading, unloading, and short-term parking, RVs not exceeding twenty feet (20') feet may be parked on the Lot's driveway for a period not exceeding 24 hours no more frequently than once every 30 days. Owners must obtain written permission from the Association for such short-term parking.



(b) Commercial Vehicles. No commercial vehicle with a gross vehicle weight rated greater than one (1) ton will be parked on any street right-of-way or Lot except within an enclosed structure which prevents such view thereof from adjacent lots and streets, unless such vehicle is temporarily parked and in use for the construction, maintenance or repair of a residence in the immediate vicinity. No trucks or vehicles of any size which transport inflammatory or explosive cargo may be kept on the Property at any time. No vehicles or similar equipment may be parked on the landscaped areas of any Lot or Common Area, except as provided by Section 13.22.

(c) Motor Vehicles. No vehicles or similar equipment will be parked or stored in an area visible from any street except passenger automobiles, passenger vans, motorcycles, pick-up trucks, and pick-up trucks with attached bed campers that are in operating condition and have current license plates and are in daily use as motor vehicles on the streets and highways of the State of Montana. No abandoned, derelict or inoperable vehicles may be stored or located on any Lot.

(d) Unused Vehicles. No unused automobiles or vehicles of any kind shall be stored or parked on any lot except in a closed garage. An "unused vehicle" shall be defined as any vehicle which has not been driven under its own power of a period of thirty (30) consecutive days or longer. In the event any unused vehicle remains parked on any tract or Lot within the Property boundaries, the Developer or the Association shall have the right to remove the same after forty-eight (48) hours notice to the owner thereof, the expenses to be charged against the owner thereof, and such charges shall become Reimbursement Assessments against the Lot Owner.

13.33 Leasing. For purposes of this Declaration, "leasing" is defined as regular, exclusive occupancy of a Unit by any person other than the Owner, for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or compensation. A Lot may be leased only in its entirety (*e.g.*, separate rooms within the same Unit may not be separately leased). No fraction or portion may be leased.

(a) No structure on a Lot other than the primary Unit shall be leased or otherwise occupied for residential purposes, except that structures used for ancillary purposes, such as an "in-law suite" or detached "guest house," may be occupied, but not independently leased. There shall be no subleasing of a Unit or assignment of leases except with the Board's prior written approval.

(b) All leases shall require that Tenants and all occupants of the leased Lot are bound by and obligated to comply with the Governing Documents. The restrictions on lease terms set forth in this paragraph shall not apply to Lots owned by Declarant.

(c) A copy of the lease, receipt signed by tenant acknowledging receipt of the governing documents and agreement to abide by same and address and contact information of the property owner together with such other additional information as the Board may require, shall be given to the Board or its designee by the Owner within ten days of execution of the lease. The Board may adopt reasonable use restrictions and rules regulating leasing and subleasing and the activities of Tenants

and subtenants.

(d) No transient Tenants may be accommodated in a Unit. All leases, including approved subleases, shall be in writing and shall be for an initial term of at least six (6) months, except with the Board's prior written consent.

(e) The Association has the authority to charge additional fees, including but not limited to increased assessments, fines and/or reimbursement costs to the owner of a unit for non-compliance by this tenant.

13.34 Subdivision of a Lot and Time-Sharing. Single Family Lots may not be subdivided or their boundary lines changed; provided, Declarant may subdivide, change the boundary line of, and replat any Lot(s) it owns, and, for so long as Declarant owns any portion of the Property, convert Lots into Common Area or Common Area to Lots at any time prior to the transfer of title to the Association.

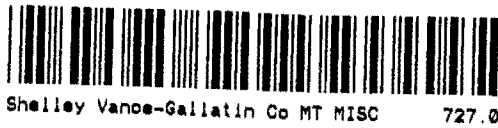
Except in Senior Designated Areas if the West Winds PUD timesharing, fraction-sharing, or similar programs whereby the right to exclusive use of the Lot rotates among members of the program on a fixed or floating time schedule over a period of years is prohibited, except by Declarant, while Declarant owns any property within the Property.

13.35 Lights. No spotlights, flood lights, neon lamps, mercury lights or other high intensity lighting shall be placed or utilized upon any Lot which, in any manner, will allow light to be directed or reflected on the Common Areas, or any part thereof, or any other Lot or Parcel, except as may be expressly permitted by the Association Rules or the Design Guidelines. All exterior lighting shall be maintained and installed to minimize light pollution. All lighting to conform to Section 18.42.150 BMC.

13.36 Exterior Holiday Decorations. Lights or decorations may be erected on the exterior of Units in commemoration or celebration of publicly observed holidays provided that such lights or decorations do not unreasonably disturb the peaceful enjoyment of adjacent Owners by illuminating bedrooms, creating noise or attracting sightseers. All lights and decorations must be removed within thirty (30) days after the holiday has ended. Christmas decorations or lights may not be displayed prior to November 1st of any year. For other holidays, decorations or lights may not be displayed more than four (4) weeks in advance of the holiday. The Association will have the right, upon thirty (30) days prior written notice, to enter upon any Lot and summarily remove exterior lights or decorations displayed in violation of this provision. The Association, and the individuals removing the lights and decorations, will not be liable to the Owner for trespass, conversion or damages of any kind except in the case of intentional misdeeds and gross negligence.

13.37 Garage Doors.

(a) Garages and Driveways. Garages may be used as a builder's sales offices prior to permanent occupancy of the main structure; and sales offices will be converted to garages prior to permanent occupancy. With the exception of periods when garages are used by Builders as sales



offices, all garages will be maintained for the storage of automobiles, and no garage may be enclosed or otherwise used for habitation, office, or business purposes.

- (b) Garage doors will be kept closed at all times except when in immediate use.
- (c) No carport will be permitted on a Lot.

13.38 Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operation of any kind will be permitted upon or in any Lot, nor will oil wells, tanks, tunnels, mineral excavations, or shafts be permitted upon any Lot. No derrick or other structure designed for use in boring for oil or natural gas will be erected, maintained or permitted upon any Lot. No tank for the storage of oil or other fluids may be maintained on any of the Lots above the surface of the ground.

13.39 Mineral Exploration. No Lot or other Property shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, gas, earth or any earth substance of any kind, except for the drilling, operation and maintenance of any testing, inspection or other water wells approved by the Declarant.

13.40 Fires. Other than barbecues, in properly constructed barbecue pits or grills, and fire pits in compliance with the Association Rules and the Design Guidelines, or as otherwise expressly permitted in the Association Rules, no open fires shall be permitted on the Property nor shall any other similar activity or condition be permitted.

13.41 No Obstructions to Drainage. No Owner shall erect, construct, maintain, permit or allow any fence or other improvement or other obstruction which would interrupt the normal drainage of the land or within any area designated by Recorded plat, or other Recorded instrument, as a "drainage easement" except that, with the prior consent of the County and the Committee, nonpermanent structures, including fences, may be erected in those areas which contain only underground closed conduit storm drainage facilities.

13.42 Maintenance of Grounds. Each Owner shall keep all shrubs, trees, hedges, grass and plantings of every kind located on his Lot(s) or Parcel(s) (including setback areas, easements and Common Areas) neatly trimmed, shall keep all such areas properly cultivated and free of trash, weeds and other unsightly material and shall maintain all paved, concrete and other synthetically surfaced areas, including, but not limited to, driveways, roadways and parking areas, in good condition and repair.

- (a) All dead vegetation, including trees, shall be removed and replaced by the owner within thirty (30) days. Plantings are to be trimmed and cut by the owner as necessary at regular intervals to maintain them in a neat and attractive manner. All landscaping to be installed by an Owner on any Lot shall be first approved by the ACC pursuant to Article II above.



(b) All landscaping located on any Lot will be properly maintained at all times by the Lot Owner. Each Lot Owner will keep all shrubs, trees, grass, and plantings of every kind on his Lot cultivated, pruned, free of trash, and other unsightly material. All improvements upon any Lot will at all times be kept in good condition and repair and adequately painted or otherwise maintained by the Lot Owner. The owner at the owner's expense shall maintain vacant lots, in accordance w/ these covenants including mowing for fire safety and the control of noxious weeds. Declarant, the Association, and the ACC will have the right at any reasonable time to enter upon any Lot to replace, maintain, and cultivate shrubs, trees, grass, or other plantings as deemed necessary; and to paint, repair, or otherwise maintain any improvements in need thereof, and to charge the cost thereof to the Lot Owner.

(c) 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 weeding and snow and ice removal.

(d) Noncompliance and correction to the above section shall be addressed through Section 7.3

13.43 Diseases and Insects. No Owner shall permit any thing or condition to exist upon the Property which shall induce, breed or harbor infectious plant disease or noxious insects.

13.44 Restriction on Further Subdivision, Property Restrictions and Rezoning.

(a) No Single Family lot shall be further subdivided or separated into smaller lots or parcels by any Owner, and no portion less than all of any such Lot, nor any easement or other interest therein, shall be conveyed or transferred by any Owner, without the prior written approval of the Board, which approval must be evidenced on the plat or other instrument creating the subdivision, easement or other interest. However, this restriction shall not apply where part of a Lot is transferred to an adjacent Lot Owner for the purpose of increasing the size of the adjacent Lot. This provision shall not, in any way, limit Developer from (a) re-platting, subdividing or separating into Lots any property at any time owned by Developer, or (b) Recording an instrument to fix the location of any easement reserved by Developer in this Declaration not previously depicted with certainty on a plat, map or other instrument of Record.

(b) No further covenants, conditions, restrictions or easements shall be Recorded by any Owner (except Developer) or other Person against any Lot without the provisions thereof having been first approved in writing by the Board and Developer (until the Transition Date occurs and Developer no longer owns any property subject to this Declaration) for consistency with this Declaration and the general plan of development for the project reflected by this Declaration and the Development Plan. Any covenants, conditions, restrictions or easements Recorded without such approval being evidenced thereon shall be null and void.



(c) No application for rezoning of any Lot or Parcel, and no application for any variance or use permit, shall be filed with any governmental authority by any Owner (except Developer) unless the proposed use of the Lot has been approved by the Board and the proposed use otherwise complies with this Declaration.

(d) An Owner may own more than one Lot which if contiguous, may be combined into a single Lot with the consent of the City and the Board and Developer (until the Developer no longer owns any property subject to this Declaration). However, any such combination of Lots, except as hereinafter provided, shall not reduce or alter the voting rights obtained by ownership of each Lot nor shall it reduce or otherwise alter the amount which would have been assessed against the Owner of such Lots pursuant to the terms hereof in the absence of combination. The Owner of such Lots will be entitled to one Membership in the Association for each Lot that was combined (so long as Memberships may be held by Owners hereunder). The combined Assessments attributable to each of the former separate Lots shall be attributable to the entire combination of Lots and the entire combination shall be subject to the Assessment Lien.

13.45 Utility Service. No lines, wires, or other services for the communication or transmission of electric current or power or electromagnetic impulses, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon the Property unless they are contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Committee. Notwithstanding the foregoing but subject to any applicable requirements of the City, the Committee may authorize the erection of microwave towers and similar structures on Association Land for centralized reception, transmission and retransmission of microwave and similar signals. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Committee. No individual water supply system or sewage disposal system will be permitted on any Lot, including, but not limited to, water wells, cesspools or septic tanks.

13.46 Overhead Encroachments. No tree, shrub, or planting of any kind on any Lot shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way, intersection, adjacent Lot, or other Common Area from ground level to a height of eight feet without the prior approval of the Committee.

13.47 Development Activity. Notwithstanding any other provision herein, Declarant and its successors and assigns, will be entitled to conduct on the Property all activities normally associated with and convenient to the development of the Property and the construction and sale of single-family or multi-family dwelling units on the Property. Notwithstanding any provision in this Declaration, including Rules and Regulations to the contrary, Declarant and Builders may construct and maintain upon portions of the Common Area and other property owned by Declarant or the Builder such facilities, activities, and things as, in Declarant's opinion, may reasonably be required, convenient, or incidental to the construction or sale of Lots. Such permitted facilities, activities, and things shall include, without limitation, business offices, signs, flags (whether hung from flag poles or attached to a structure), model Lots, sales offices, holding or sponsoring special events, and

exterior lighting features or displays. In addition, if reasonably required, convenient, or incidental to construction or sales activities, Declarant and Builders may park vehicles in areas other than garages or driveways, including on streets. Declarant and Builders shall have easements for access to and use of such facilities at no charge. Builder's rights under this Section are subject to Declarant's approval.

13.48 Health, Safety and Welfare. In the event any uses, activities, and facilities are deemed by the Board to be an unreasonable annoyance or a nuisance, or to adversely affect the health, safety or welfare of Owners or Occupants, the Board may make such rules restricting or regulating their presence on the Property as part of the Association Rules or may direct the Committee to make rules governing their presence on Lots as part of the Design Guidelines. Any such rules shall be consistent with the provisions of this Declaration.

13.49 Model Homes. The provisions of this Declaration which prohibits nonresidential use of Lots and regulates parking of vehicles shall not prohibit the construction and maintenance of model homes by Persons engaged in the construction of Units on the Property and parking incidental to the visiting of such model homes so long as the location of such model homes is approved by the Committee, the opening and closing hours are approved by the Board, and the construction, operation (including means of access thereto, amount of lighting and number and appearance of signs) and maintenance of such model homes otherwise comply with all of the provisions of this Declaration and the Association Rules. The Committee may also permit Lots and other areas to be used for parking in connection with the showing of model homes so long as such parking and parking areas are in compliance with the ordinances of the County and any rules of the Committee. Any homes constructed as model homes shall cease to be used as model homes at any time the Owner or Occupant thereof is not actively engaged in the construction and sale of single family residences on the Property or the Project and no home shall be used as a model home for the sale of homes not located on the Project. Notwithstanding the foregoing, the provisions of this Section shall at all times be subject and subordinate to the provisions of Section 13.37.

13.50 Safe Condition. Without limiting any other provision in this Section, each Owner shall maintain and keep his Lot at all times in a safe, sound and sanitary condition and repair and shall correct any condition or refrain from any activity which might interfere with the reasonable enjoyment by other Owners and Occupants of their respective Lots or the Common Areas.

#### XIV. EASEMENTS

14.1 Blanket Easements and Utility Construction Easements. There is hereby created a blanket easement upon, across, over and under the Property for ingress and egress for the purposes of installing, constructing, replacing, repairing, maintaining and operating all utilities (whether public or private) including, but not limited to, water, sewer, gas, telephone, electricity, cable (including, but not limited to, television cable), security systems, and communication lines and systems, and in addition thereto for the use of emergency vehicles of all types. By virtue of the easement, it shall be expressly permissible for Developer and its contractors and/or the Association, and/or the providing

utility company to construct (including, but not limited to, underground installation) and maintain the necessary facilities, wires, circuits, conduits, cables and related appurtenances, facilities and equipment for the project on every part of the Property including, but not limited to, the Lots, and to enter upon every part of the said Property to accomplish the foregoing.

Without limiting the generality, scope or duration of the easements described above in this Section 14.1, there is hereby additionally created the following temporary construction easement for the purpose of the construction of the improvements contemplated by the underlying permanent easement described on any plat, map of dedication or similar Recorded instrument relating to the Property, including the right to enter upon the hereinafter described land and to clear, grade, level, excavate, fill, install and build the improvements contemplated for the underlying permanent easement:

A strip of land 20 feet on each side of the center line of, and which shall overlay, each easement designated as a water line easement, a sewer line easement, a public or private utilities easement, or any similar easement on a plat, map of dedication or similar Recorded instrument relating to the Property;

provided, however, the easement granted in this sentence shall automatically terminate and be of no further force and effect at such time as the improvements defined by the underlying permanent easement are complete and accepted by Developer, the Board and the County or any utility company having a right of approval.

14.2 Use of Common Areas. Except for the provisions hereof permitting Special Use Fees, each Owner shall have the nonexclusive right to use the Common Areas in common with all other Owners as required for the purposes of access and ingress to and egress from (and use, occupancy and enjoyment of) any Lot owned by the Owner or Common Areas available for the Owner's use. This right to use the Common Areas for purposes of access and ingress and egress shall, subject to the Association Rules, extend to each Owner, Occupant and the agents, servants, tenants, family members and invitees of each Owner, and shall be appurtenant to each respective Lot, subject to and governed by the provisions of this Declaration, the Articles, Bylaws and Association Rules and such reasonable limitations and restrictions as may from time to time be contained therein.

14.3 Wall or Fence Easement. There is hereby created an affirmative easement in favor of Developer, the Association, and their employees and agents, upon, over and across each Lot affected, for reasonable ingress, egress, installation, replacement, maintenance and repair of a perimeter wall, fence or other boundary control for the Property.

14.4 Developer Easement. There is hereby created an affirmative, nonexclusive easement appurtenant to the Property and to those portion(s) of any annexed property which, by amendment hereto, Developer specifies as benefited by this easement (whether or not ever annexed or ever withdrawn from being annexed property), for ingress, egress and the installation and maintenance by Developer (and its agents, employees and invitees) of utilities and drainage facilities over all

Common Areas including, but not limited to, Private Streets, and for Developer (and such agents, employees and invitees) to go over, under and across, and to enter and remain upon all Common Areas and all unoccupied Lots (to the minimum extent reasonably required) for all purposes reasonably related to Developer's rights and obligations hereunder, and Developer's development, operation, maintenance, management, administration, advertisement, sale, rental and use of the Property and any portion(s) of the annexed Property which Developer specifies by amendment hereto as benefited hereby.

14.5 Association Easement. There is hereby created an affirmative, nonexclusive easement in favor of the Association for ingress and egress over all the Property for the purpose of enabling the Association and its contractors, employees, representatives and agents to implement the provisions of this Declaration.

14.6 Revegetation Easement. There is hereby created an affirmative, nonexclusive easement in favor of Developer and the Association, and their contractors and employees, to go upon any Lot to plant or seed, and to provide temporary maintenance for, indigenous vegetation and grasses of Developer's choice (so long as Developer owns any property subject to this Declaration and thereafter, indigenous vegetation and grasses of the Board's choice) on any areas of the Lot in order to (a) replant areas that were cleared, or partially cleared, of vegetation in the past for some reason, or (b) maintain the aesthetic integrity of the Property; and to provide temporary water to such vegetation at the expense of the party causing the revegetation to be performed or at the expense of the Owner, as a Reimbursement Assessment, if the area was cleared by the Owner or Occupant of such Owner's Lot, or the invitee, guest, contractor, or other authorized visitor of either in violation of this Declaration or the Design Guidelines.

14.7 Information Center Easement. Developer shall have the right, from time to time, to erect, operate and maintain on any property within the Project owned or leased by Developer one or more information center(s), administrative office(s) and/or sales office(s) which are necessary or convenient to the administration, development, sale, resale, leasing or other marketing of property within the Project (an "Information Center"). Without limiting the generality, scope or duration of the provisions in Article XIV hereof, there is hereby established an easement appurtenant to each Information Center over the Private Streets between the Information Center and all public streets or roadways adjacent to or serving the Project for the purposes of ingress, egress, utilities and such other purposes as may be reasonably required for the full use and enjoyment, and the operation, repair and maintenance of the Information Center by the owner thereof and by the owner's employees, agents, guests and invitees, in any manner consistent with the Development Plan, applicable zoning, and applicable laws and other requirements of governmental authorities having jurisdiction.

14.8 Roads. Access roads are dedicated and reserved as shown on the recorded plats of the Property. No additional access roads or driveways, public or private, shall be constructed directly from any Lot or tract to any dedicated right of way, other than as shown on the Plats of the Property.

14.9 Access Roads and Utility Easements. Access roads and utility easements are dedicated and reserved as shown on the Plat of the subdivision. All rights to minerals, water, oil and natural gas underlying the property are reserved to the Developer.

14.10 Miscellaneous Easements. In addition to the blanket easements granted in Article XIV hereof, the Board is authorized and empowered to grant upon, across or under real property owned or controlled by the Association such permits, licenses, easements and rights-of-way for sewer lines, water lines, underground conduits, storm drains, television cable and other similar public or private utility purposes, security lines, roadways or other purposes as may be reasonably necessary and appropriate for the orderly maintenance, preservation and enjoyment of the Common Areas or for the preservation of the health, safety, convenience and welfare of the Owners, provided that any damage to a Lot resulting from such grant shall be repaired by the Association at its expense.

## **XV. RIGHTS OF MORTGAGEES**

15.1 General Provisions. Notwithstanding and prevailing over any other provisions of this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, the following provisions shall apply to and benefit each holder of a First Mortgage (and, in the case of Sections 15.4 and 15.6, to the holder of any Mortgage) upon a Lot.

15.2 Subordination of Lien. The Assessment Lien against a Lot shall be subordinate to the lien of a prior Recorded First Mortgage on the Lot, acquired in good faith and for value, except to the extent it secures the amount of any unpaid Assessment or Reimbursement Assessment (together with any interest, costs, reasonable attorneys' fees and any late charges related thereto) which accrues from and after the date on which a First Mortgagee comes into possession of or acquires title to the Lot, whichever occurs first. If the Assessment Lien for unpaid Assessments or Reimbursement Assessments that become payable after Recordation of the First Mortgage and prior to the date the First Mortgagee comes into possession of or acquires title to the Lot is not extinguished to the extent it secures said unpaid Assessments or Reimbursement Assessments by the process by which the First Mortgagee acquired title to the Lot, neither the First Mortgagee nor a third-party purchaser who acquires title through foreclosure of a Mortgage and the subsequent foreclosure or trustee's sale (or through any equivalent proceedings), shall be liable for the unpaid Assessments or Reimbursement Assessments. Upon written request to the Association by the First Mortgagee or purchaser who acquires title through foreclosure of a Mortgage and the subsequent foreclosure or trustee's sale (or through any equivalent proceedings), the Assessment Lien shall be released in writing by the Association to the extent it secures such unpaid Assessments or Reimbursement Assessments. Nevertheless, if the Owner against whom the original Assessment or Reimbursement Assessment was made is the purchaser or redemptioner, the lien shall continue in effect and may be enforced by the Association, or by the Board, for the respective Lot's Assessment or Reimbursement Assessment including those due prior to the final conclusion of any such foreclosure or equivalent proceedings. Further, any such unpaid Assessment or Reimbursement Assessment shall continue to exist as the personal obligation of the defaulting Owner of the respective Lot to the Association, and the Board may use reasonable efforts to collect the same from the Owner even after he is no longer the Owner

of the Lot. Any unpaid Assessments or Reimbursement Assessments which are extinguished pursuant to this Section 15.2 may also be reallocated by the Board among all Owners as part of the Common Expenses. Except as above provided (and except for liens for taxes and other public charges which by applicable law are made prior and superior), the Assessment Lien shall be prior and superior to any and all charges, liens or encumbrances which hereafter in any manner may arise or be imposed on any Lot.

15.3 No Personal Liability. A First Mortgagee shall not in any case or manner be personally liable for the payment of any Assessment or charge, nor the observance or performance of any covenant, restriction, or rule and regulation of the Association, or any provision of the Articles or Bylaws, or any management agreement, except for those matters which are enforceable by prohibitory injunction or other equitable actions, not requiring the payment of money, except as specifically provided in this Article XIII.

15.4 Enforcement After Foreclosure Sale. An action to recover assessments imposed after the foreclosure sale or to abate the breach of any of the covenants, conditions, restrictions, servitudes and reservations in this Declaration may be brought against any purchaser who acquires title through foreclosure of a Mortgage and the subsequent foreclosure or trustee's sale (or through any equivalent proceedings), and the successors in interest to any such purchaser, even though the breach existed prior to the time the purchaser acquired an interest in the Lot or Parcel.

15.5 Exercise of Owner's Rights. During the pendency of any proceedings to foreclose a First Mortgage (including any period of redemption), the First Mortgagee, or a receiver appointed in any such action, may, but shall not be required to, exercise any or all of the rights and privileges of the Owner in default including, but not limited to, the right to vote as a Member of the Association in the place and stead of the defaulting Owner if the First Mortgagee or receiver gives the Association written notice of its claimed rights and such evidence as the Board may reasonably request demonstrating the existence of the claimed rights.

15.6 Subject to Declaration. At such time as a Mortgagee comes into possession of or becomes Record Owner of a Lot or Parcel, the Mortgagee shall be subject to all of the terms and conditions of this Declaration including, but not limited to, the obligation to pay (and be personally liable for) all Assessments and charges accruing thereafter, and the obligation to cure any physical conditions on the Lot which constitute a default under or violation of this Declaration or the Design Guidelines in the same manner as any other Owner, whether or not the condition existed before the Mortgagee came into possession of or became the Record Owner of the Lot.

15.7 Exemption of Developer From Restriction. Notwithstanding anything to the contrary in this Declaration, none of the covenants, conditions, restrictions, easements or other provisions in this Declaration shall be construed or deemed to limit or prohibit any act of Developer, its employees, agents and contractors, or parties designated by it in connection with

(a) the construction, administration, management, completion, sale or leasing of Lots, Association Land, the Property, any property annexed by the Developer into the Project, or

(b) the administration, management, development or other activities with respect to facilities outside the Property (including, but not limited to, any golf facilities).

## XVI. LIMITATION ON DEVELOPER'S LIABILITY

Notwithstanding anything to the contrary in this Declaration, each Owner, by accepting title to any portion of the Property and becoming an Owner, and each other Person acquiring an interest in the Property including, but not limited to Mortgagees, acknowledges and agrees that neither Developer (including, but not limited to, any assignee of the interest of Developer hereunder) nor any related entity (or any partner, shareholder, trustee, officer, director, principal or similar Person holding an interest or position in any such assignee of the interest of Developer) shall have any personal liability to the Association, or any Owner, Member, or Mortgagee or other Person, arising under, in connection with, or resulting from (including, but not limited to, resulting from action or failure to act with respect to) this Declaration, the Association or the Committee except to the extent of such Person's interest in the Property; and, in the event of a judgment, no execution or other action shall be sought or brought thereon against any other assets, nor be a lien upon such other assets, of the judgment debtor.

## XVII. AMENDMENT

17.1 Amendment to Declaration. Amendments to this Declaration shall be made by an instrument in writing entitled "Amendment to Declaration" which sets forth the entire amendment. Prior to the Transition Date, amendments may be adopted only by Developer as provided in Section 17.3(b) (and subject to any provisions of Section 17.3(b) requiring the consent of Members). The City of Bozeman shall be party to any changes or modifications made to the restrictive covenants and Architectural Guidelines as they relate to any zoning and/or planning bylaws. After the Transition Date, amendments may be adopted only with the affirmative vote or written consent of a Majority of all of the Voting Members except Developer and with the affirmative vote or written consent of Developer so long as Developer owns any property subject to this Declaration. In any vote by Voting Members, the percentage of Voting Members necessary to amend a specific clause or provision of this Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under the clause or provision. In all events, the amendment when adopted shall bear the signature of the president or a vice president of the Association and shall be attested by the secretary or an assistant secretary of the Association, who shall state whether the amendment was properly adopted, and shall be acknowledged by them as officers of the Association. Amendments once properly adopted shall be effective upon Recording in the appropriate governmental offices, or at such later date as may be specified in the amendment.

17.2 Effect of Amendment. It is specifically covenanted and agreed that any amendment to this Declaration properly adopted will be completely effective to amend any and all provisions of this

Declaration which may be affected and any or all clauses of this Declaration, unless otherwise specifically provided in the Section being amended or the amendment itself.

17.3 Required Approvals. Notwithstanding the foregoing provisions of this Article XVII:

(a) The provisions of this Declaration may not be amended at any time (including after the Transition Date) without the written consent of Developer. Developer may, but shall not be obligated to, release any or all of its consent rights under this Section 17.3(a) by Recorded instrument.

(b) Until the Transition Date, Developer reserves the right to amend this Declaration without the approval of the Board or the other Members; provided, however, that after the issuance of the first Certificate of Occupancy, Developer may not amend the following provisions of this Declaration without the following approvals:

(i) With the affirmative vote or written consent of a majority of Voting Members (excluding Developer), Developer may amend: (a) Section 6.8 to make a Capital Improvement or Reimbursement Assessment against any Owner greater than any other Owner (other than Developer) of a Lot in the Property; or (b) this Section 17.3(b)(i) to diminish the rights given therein to the benefited Members.

17.4 Requested Amendment; Legislative Change. Subject to the limitation on Developer's right to amend this Declaration in Section 17.3(b), but without limiting Developer's reserved right to amend this Declaration as provided in Section 17.3(b) except as expressly limited thereby, Developer specifically reserves the right to amend all or any part of this Declaration to such an extent and with such language as may be requested by the Federal Housing Administration ("FHA") or the Veterans Administration ("VA") and to further amend to the extent requested by any other federal, state or local governmental agency, department, board or commission which requests such an amendment as a condition precedent to such entity's approval of this Declaration (for example, but not as a limitation, to obtain authorization from state or federal authorities to sell or offer to sell any portion(s) of the Project within the state or in interstate commerce), or by any federally or state chartered lending institution as a condition precedent to lending funds upon the security of any Lot(s) or any portions thereof. It is the desire of Developer to retain control of the Association and its activities for so long as Developer desires to do so. If any amendment requested pursuant to the provisions of this Section 17.4, or if any federal, state or other legislation hereafter enacted, diminishes or alters such control, Developer shall have the right to prepare, provide for and adopt as an amendment hereto, other and different control provisions to achieve said control or equivalent control.

17.5 Addition of Property Without Approval of Membership: Until all of the Additional Property has been subjected to this Declaration or twenty-five (25) years after the recording of this Declaration



in the Real Estate Records, whichever is earlier, Declarant may unilaterally subject to the provisions of this Declaration all or any portion of the Additional Property.

(a) The Declarant may transfer or assign this right to annex property, provided that the transferee or assignee is the developer of at least a portion of the Properties and that such transfer is memorialized in a written, recorded instrument executed by Declarant.

(b) Addition of Property shall be accomplished by filing a Supplemental Declaration in the Real Estate Records describing the property being annexed and shall not require the consent of Voting Members, but it shall require the consent of the Owner of the property being added if other than the Declarant.

(c) Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any of the Additional Property.

17.6 Addition of Property With Approval of Membership: After the Transition Date the Association may subject any real property to the provisions of this Declaration with the consent of the owner of the property being annexed, the affirmative vote of Voting Members representing more than 50% of the Class "A" votes of the Association represented at a meeting duly called for such purpose, and the consent of the Declarant so long as Declarant owns any of the Additional Property. Such annexation shall be accomplished by filing a Supplemental Declaration describing the property being annexed in the Real Estate Records. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the Owner of the annexed property, and by the Declarant, if the Declarant's consent is required.

17.7 Withdrawal of Property. Before the Transition Date, the Declarant reserves the right to amend this Declaration for the purpose of removing any portion of the Properties from the coverage of this Declaration, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Properties. Such amendment shall not require the consent of any Person other than the Owner of the property to be withdrawn, if not the Declarant. If any of the withdrawn property is Common Area, the Association shall consent to such withdrawal.

17.8 Additional Covenants and Easements. The Declarant may unilaterally subject any portion of the Properties to additional covenants and easements. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrent with or after the annexation of the subject property, and shall require the written consent of the Owner(s) of such property, if other than the Declarant. Any such Supplemental Declaration may supplement, create exceptions to, create new, different, or additional restrictions, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

17.9 Amendment. During the Class "B" Control Period, this Article shall not be amended without the prior written consent of Declarant.



17.10 Sub association(s). West Winds is divided into several areas in the Master Plan some of which are zoned or otherwise designated or limited for development and use as other than single family use. Several may be developed through major developers. As each such area is developed, Declarant, or if the area is owned by a major developer, West Winds and such major developer, may record one or more Supplemental Declarations with respect thereto which will refer to this Declaration and designate the use classification for such area, and which may dedicate or designate common areas for such area and which may supplement this Declaration with such additional covenants, conditions and restrictions as Declarant or the Association, and if owned by a major developer, such major developer may deem appropriate for that area. Such Supplemental Declaration may, but need not, provide for the establishment of a Sub association to be comprised of Owners within the area subject thereto. Any Supplemental Declaration may provide its own procedure for the amendment of any provisions thereof, subject to the consent of either Declarant or West Winds . All lands, Improvements and uses in each area so developed shall be subject to both this Declaration and the Supplemental Declaration, if any, for that area. In the event of any conflict between any such Supplemental Declaration and this Declaration, the terms and provisions of this Declaration shall govern.

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

17.11 Every Owner and any Mortgagee of a Lot, by acceptance of a deed or other conveyance therefore, thereby agrees that this Declaration may be amended as provided in this Section.

**XVIII. GENERAL PROVISIONS**

18.1 Notices. Notices to the Association provided for in this Declaration, the Bylaws, or Association Rules, shall be in writing and shall be addressed to the Association at the address specified in the Bylaws. The Association may designate a different address or addresses for notice by giving written notice to all Owners. If applicable law, this Declaration or a resolution of the Board requires notice of any meeting or of any action or proposed action by the Association, the Board or any committee, to be given to any Owner or Occupant then, unless otherwise specified herein or in the resolution of the Board, or in the Bylaws, such notice requirement shall be deemed satisfied if notice of such action or meeting is published once in any newspaper in general circulation within the County or the project. This Section shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other manner.

18.2 Captions and Exhibits; Construction. Captions given to various Sections herein, and the Table of Contents for this Declaration, are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof. Any exhibits referred to herein are incorporated as though fully set forth where such reference is made. The provisions of this



Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the Property as hereinabove set forth.

18.3 Severability. If any provision of this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, or any section, clause, sentence, phrase or word, or the application thereof in any circumstance, is held invalid, the validity of the remainder of this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, and of the application of any such provision, section, sentence, clause, phrase or word in any other circumstances, shall not be affected thereby, and the remainder of this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines shall be construed as if such invalid part were never included therein.

18.4 Mortgage of Lots and Parcels. Each Owner shall have the right, subject to the provisions hereof, to make separate Mortgages for his respective Lot. No Owner shall have the right or authority to make or create or cause to be made or created any Mortgage or other lien or security interest, on or affecting the Property or any part thereof, except only to the extent of his Lot.

18.5 Power of Attorney. Unless otherwise specifically restricted by the provisions of this Declaration, in any instance in which the Association is empowered to take any action or do any act including, but not limited to, action or acts in connection with the Common Areas or sale thereof, which may at any time be deemed to require the act of an Owner or Member, the Owners and Members and each of them hereby constitute and appoint the Association (acting through the Board) as their attorney-in-fact, as may be appropriate, for the purposes of taking such action or doing such acts including, but not limited to, executing, acknowledging and delivering any instruments or documents necessary, appropriate or helpful for such purposes. It is acknowledged that this power of attorney is irrevocable and coupled with an interest and by becoming an Owner or a Member of the Association or by the acceptance of a deed for a Lot or by signing a contract for purchase of a Lot or by succeeding in any other manner to the ownership of a Lot, or any interest therein, or a Membership in the Association, each Owner and Member shall be deemed and construed to have ratified and expressly granted the above power of attorney.

18.6 Gender. Masculine, feminine and neuter references herein each shall include the others as the context requires.

18.7 Interpretation. Except for judicial construction, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by the provisions hereof.

18.8 References to Declaration in Deeds. Deeds to and instruments affecting any Lot or any part of the Property may contain the provisions herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any deed or instrument, all of the provisions hereof shall be binding upon the grantee-Owner or other person claiming through any instrument and

his heirs, executors, administrators, successors and assigns as though set forth at length in such instrument.

18.9 Montana Law. This Declaration, the Articles, Bylaws, Association Rules and Design Guidelines shall be subject to, and construed in accordance with, Montana law.

18.10 Conflicts. In the event of conflict between the terms of this Declaration and the Bylaws, Rules, Regulations, or Articles of Incorporation of the Association, this Declaration will control.

18.11 Right to Use Common Area for Special Events. As long as Declarant owns any property described in Exhibit "A" or "B," Declarant shall have the right to use all Common Areas, including recreational facilities, to sponsor special events for charitable, philanthropic, and social purposes as determined by Declarant in its sole discretion. Any such event shall be subject to the following conditions:

(a) the availability of the facilities for the period of time requested of the Association by the Declarant, provided that the request is not submitted more than six (6) months prior the actual special event.

(b) Declarant shall pay all costs and expenses incurred and shall indemnify the Association against any loss or damage resulting from the special event (as per the insurance requirements for such events set forth herein) other than customary use charges that shall be waived; and

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

18.12 Enforcement. Each Lot Owner shall comply strictly with the covenants, conditions, restrictions, and easements set forth in this Declaration. In the event of a violation or breach, or threatened violation or breach, of any of the same, the Declarant, the Architectural Control Committee, the Association, or any Lot Owner, jointly or severally, shall have the right to proceed at law or in equity for the recovery of damages, reasonable monetary fines and other sanctions for violations of this Declaration or any Supplemental Declaration hereto, for injunctive or other equitable relief, or all of the foregoing. If any Owner or the Association is the prevailing party in any litigation involving this Declaration, then that party also has a right to recover all costs and expenses incurred (including reasonable attorney's fees and paralegal fees together with any applicable sales or use tax thereon.) Failure by the Declarant, the Architectural Control Committee, the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so hereafter.

In addition to the above rights, the Association and the Architectural Control Committee shall have a Right of Abatement if the Owner fails to take reasonable steps to remedy any



violation or breach within 30 days after written notice sent by certified mail. A Right of Abatement, as used in this Section means the right of the Association or Architectural Control Committee, through its agents and employees, to enter at all reasonable times upon any Lot or Structure, as to which a violation, breach or other condition to be remedied exists, and to take the actions specified in the notice to the Owner to abate, extinguish, remove or repair such violation, breach, or other condition which may exist thereon contrary to the provisions hereof, without being deemed to have committed a trespass or wrongful act by reason of such entry and such actions; provided such entry and such actions are carried out in accordance with the provisions of this Article. The cost thereof including the costs of collection and reasonable attorneys' fees shall be a binding personal obligation of such Owner, enforceable at law, and shall be a lien on such Owner's Lot enforceable as provided herein.

18.13 Term; Termination. Unless terminated as provided in this Section, this Declaration shall have perpetual duration. If Montana law hereafter limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration shall automatically be extended at the expiration of such period for successive periods of twenty (20) years each, unless terminated as provided herein.

This Declaration shall be effective upon the date of Recordation hereof and, as amended from time to time, shall continue in full force and effect until January 1, 2029, and thereafter shall continue for consecutive periods of 25 years each, unless there is an affirmative vote, not more than 360 days prior to the date otherwise scheduled for commencement of the next extension of the term of this Declaration, to terminate this Declaration by a vote of a Majority of Members at a duly held meeting of the Members, or without any meeting if all Members have been duly notified and if a majority of Members consent in writing to such termination within said 360-day period. This Declaration may be terminated and the Plat may be withdrawn by Developer without the approval or consent of any other Person if such action is taken before any sale to a retail purchaser. Thereafter, this Declaration may be terminated at any time upon a vote in favor of termination, after the Transition Date, by 90% of all of the Members except Developer and by the Developer. Developer may, but shall not be obligated to, release its consent rights under the preceding sentence by recorded instrument. Anything in the foregoing to the contrary notwithstanding, no vote to terminate this Declaration shall be effective unless and until the written consent to such termination has been obtained, within a period of 180 days prior to such vote to 180 days after such vote, from the holders of recorded First Mortgages on 90% of the Lots upon which there are such recorded First Mortgages. If the necessary votes and consents are obtained, the Board shall cause to be Recorded with the County Clerk of Gallatin County, Montana, and/or other appropriate governmental offices, a Certificate of Termination, duly signed by the president or a vice president of the Association and attested by the secretary or an assistant secretary of the Association, with their signatures acknowledged. Thereupon, this Declaration, as of the date of Recordation of the Certificate of Termination (or such later date as may be specified in the Certificate of Termination), shall have no further force and effect, and the Association shall be dissolved.

18.14 Developer's Disclaimer of Representations. Notwithstanding anything to the contrary in this Declaration, Developer makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of the Project and West Winds Homeowners' Association, Inc. can or will be carried out, or that any land now owned or hereafter acquired by Developer is or will be subjected to this Declaration, or that any such land (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or that if such land is once used for a particular use, such use will continue in effect.

18.15 Zoning and Plan. Each Owner, by accepting title to a Lot and becoming an Owner, and each other Person, by acquiring any interest in the Property, acknowledges awareness that the project is an extensive project, the development of which is likely to extend over many years, and agrees, so long as he is the Owner of the Lot, or holds any other interest in the Property, not to protest or otherwise object to (a) zoning or changes in zoning or to uses of, or changes in density of the Property, or (b) changes in any conceptual plan for Property, provided, in either case, the zoning, use, density, or conceptual, development or plan revision is or would be lawful (including, but not limited to, lawful by special use permit, variance or the like) and is not inconsistent with what is permitted by this Declaration (as amended from time to time). Notwithstanding anything to the contrary in this Article XVIII, the provisions of this Article shall be enforceable only to the extent not in violation of any applicable provision of law.

## **XIX. DISPUTE RESOLUTION AND LIMITATION ON LITIGATION**

19.1. Agreement to Avoid Litigation. The Declarant, the Association, its officers, directors, and committee members, all Persons subject to this Declaration, any Builder, and any person or persons not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Properties without the emotional and financial costs of litigation. Accordingly each Bound Party covenants and agrees that those claims, grievances or disputes described in Sections 19.2 shall use the procedures set forth in Section 19.3 in a good-faith effort to resolve such claims.

19.2 Claims. Unless specifically exempted below, all claims, grievances a disputes arising out of or relating to the interpretation, application or enforcement of the Governing Documents, or the rights, obligations and duties of any Bound Party under the Governing Documents or relating to the design or construction of improvements on the Properties, shall be subject to the provisions of Section 19.4.

19.3. Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 19.4:

(a) Any suit by the Association or the Declarant against any Bound Party to enforce the provisions of Article VI;

(b) any suit by the Association to obtain a temporary restraining order (or equivalent

emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article XI and Article XIII ;

(c) any suit between Owners that does not include Declarant or the Association as a party, if such suit asserts a Claim that would constitute a cause of action independent of the Governing Documents;

(i) any claim that the Committee has improperly approved plans for construction of improvements pursuant to Article XI hereof;

(ii) any suit in which any indispensable party is not a Bound Party; and

(iii) any suit that otherwise would be barred by any applicable statute of limitations.

(d) any fine imposed on the Lot of an Owner pursuant to Article 3.23 of the Bylaws by the Board, which shall be governed by the appeal procedures in Article 3.23 of the Bylaws.

#### 19.4 Mandatory Procedures.

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

(i) the nature of the Claim, including the Persons involved and Respondent's role in the Claim.

(ii) the legal basis of the Claim (i.e., the specific authority upon which the Claim arises);

(iii) Claimants proposed remedy; and

(iv) that Claimant will meet with Respondent to discuss, in good faith, ways to resolve the Claim.

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

19.6 Unresolved Claims. If the Parties do not resolve the Claim within thirty (30) days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"). Claimant shall have thirty (30) additional days to submit the Claim to mediation

under the auspices of an independent agency providing dispute resolution services in the Bozeman area or to appeal the matter to the Board for a final decision.

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

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

19.9 Allocation of Costs of Resolving Claims. Each Party shall bear its own, costs of mediation, including any attorneys' fees incurred, and each Party shall share equally all charges rendered by the mediator(s) and all filing fees and costs of conducting the arbitration proceeding ("Post Mediation Costs").

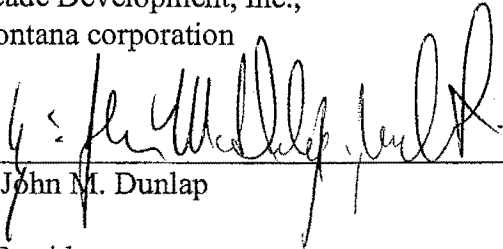
19.10 Enforcement of Resolution. After resolution of any Claim through negotiation or mediation, if any Party fails to abide by the terms of any agreement, then any other Party may file suit to enforce such agreement. In such event, the Party taking action to enforce the agreement shall be entitled to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





IN WITNESS WHEREOF, Declarant has caused this instrument to be duly executed on this 23<sup>rd</sup> day of September, 2005.

Cascade Development, Inc.,  
a Montana corporation

By:   
John M. Dunlap


Its: President

**ACKNOWLEDGMENT**

STATE OF MONTANA     )  
  ) ss.  
COUNTY OF GALLATIN)

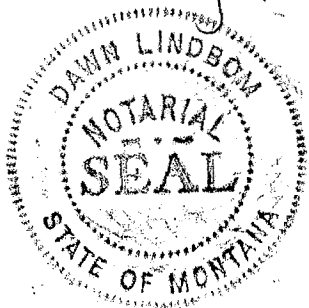
On this 23<sup>rd</sup> day of September, 2005, before me, the undersigned, a Notary Public of the State of Montana, John M. Dunlap, the President of Cascade Development, Inc., known to me to be the person that executed this instrument and acknowledged to me he executed the same.

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

  
Dawn Lindbom  
Notary Public for the State of Montana  
County of Gallatin  
Resides at Bozeman

My commission expires:

January 8, 2007





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Shelley Vance-Gallatin Co MT MISC 727.00

## Appendix A -- Fencing Details

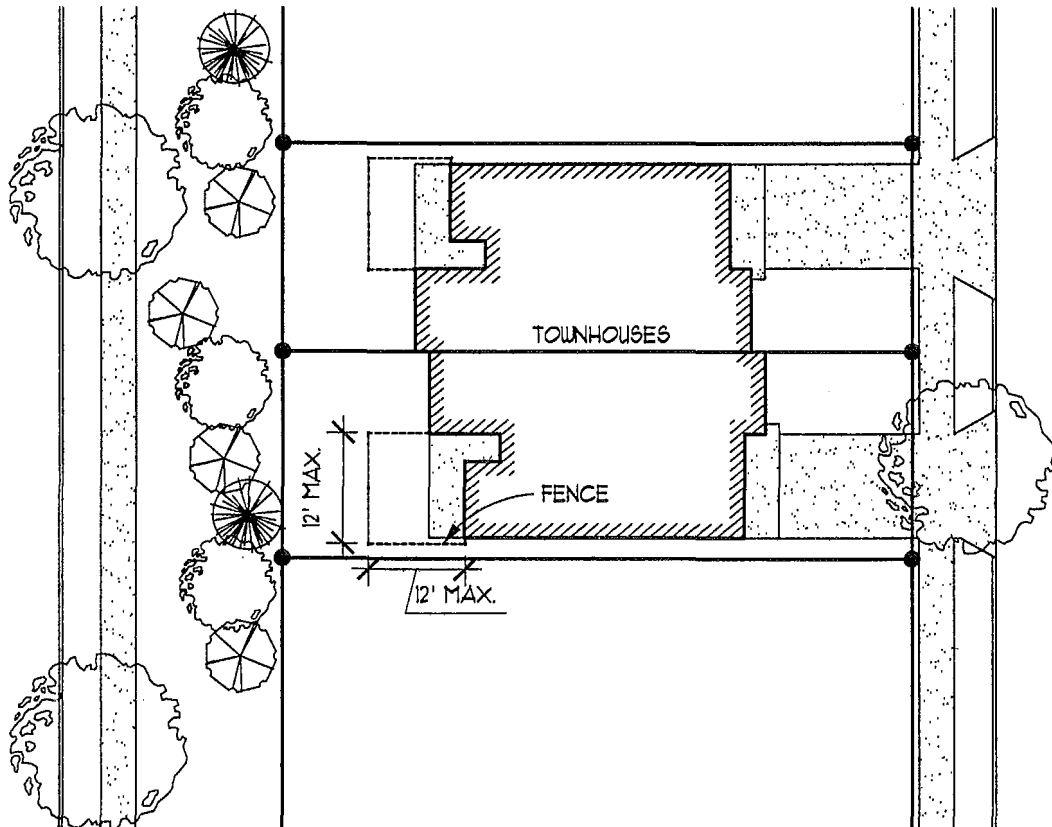
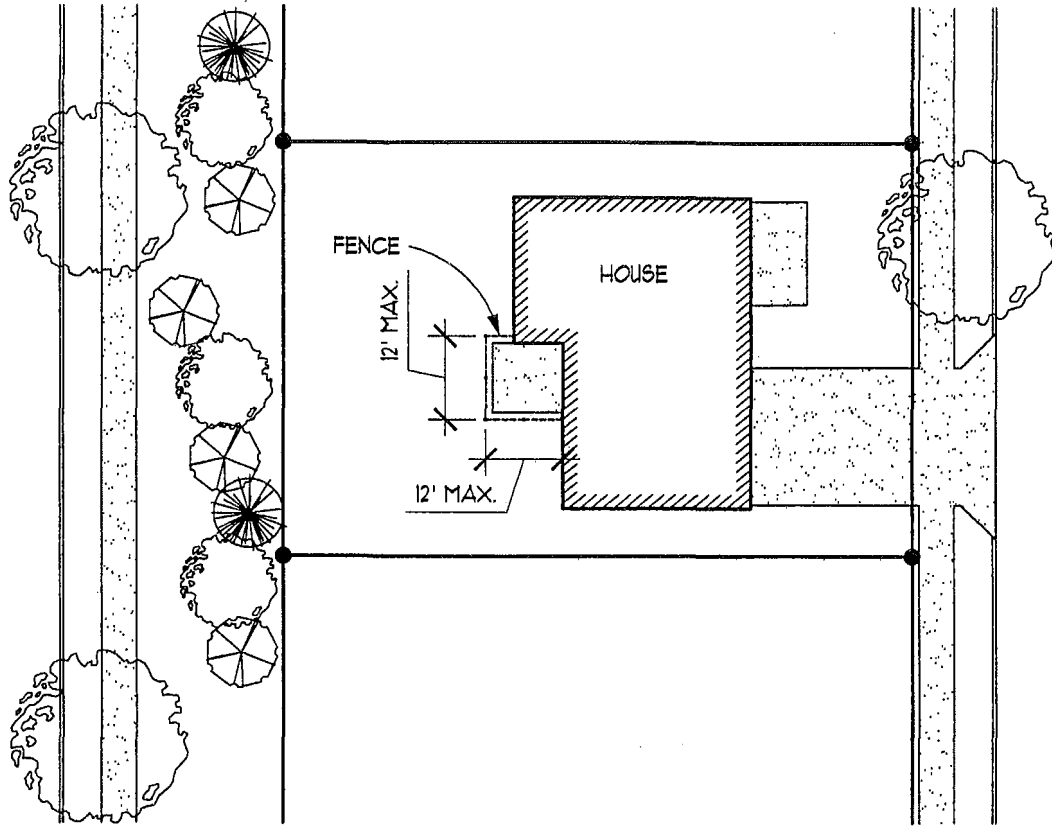


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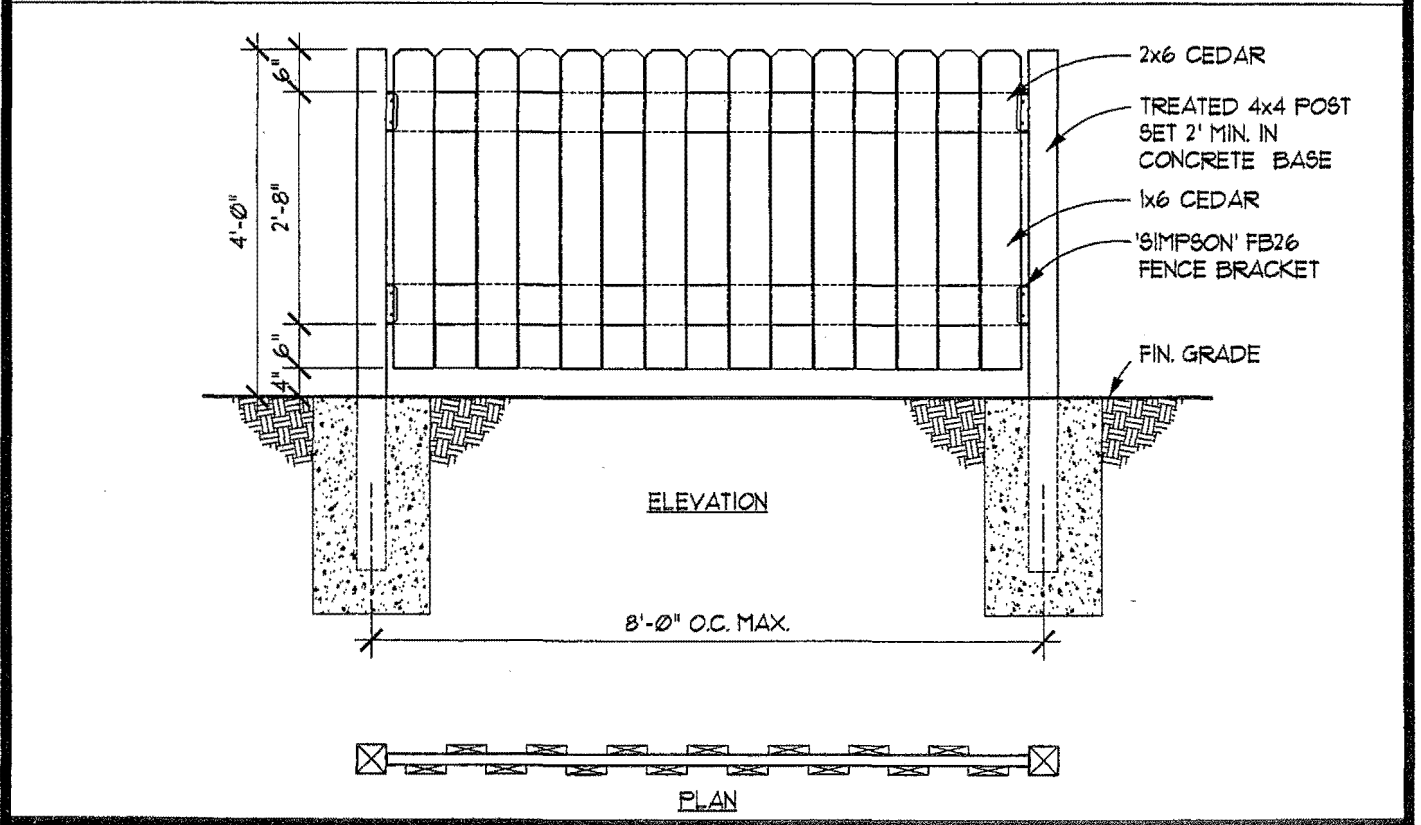
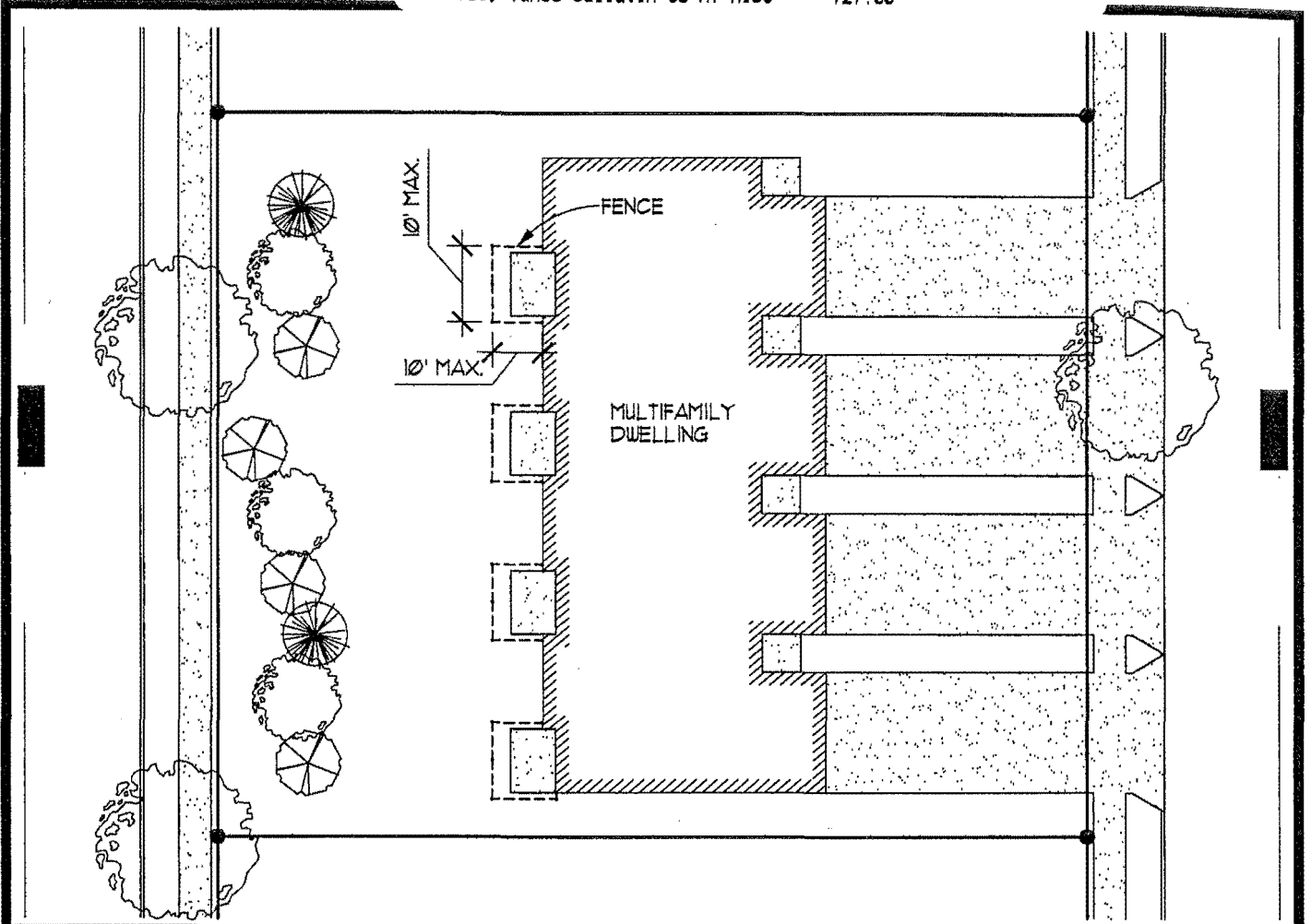
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09/23/2005 12:06P

Shelley Vance-Gallatin Co MT MISC 727.00

## Appendix B – Stormwater Detention Pond Details

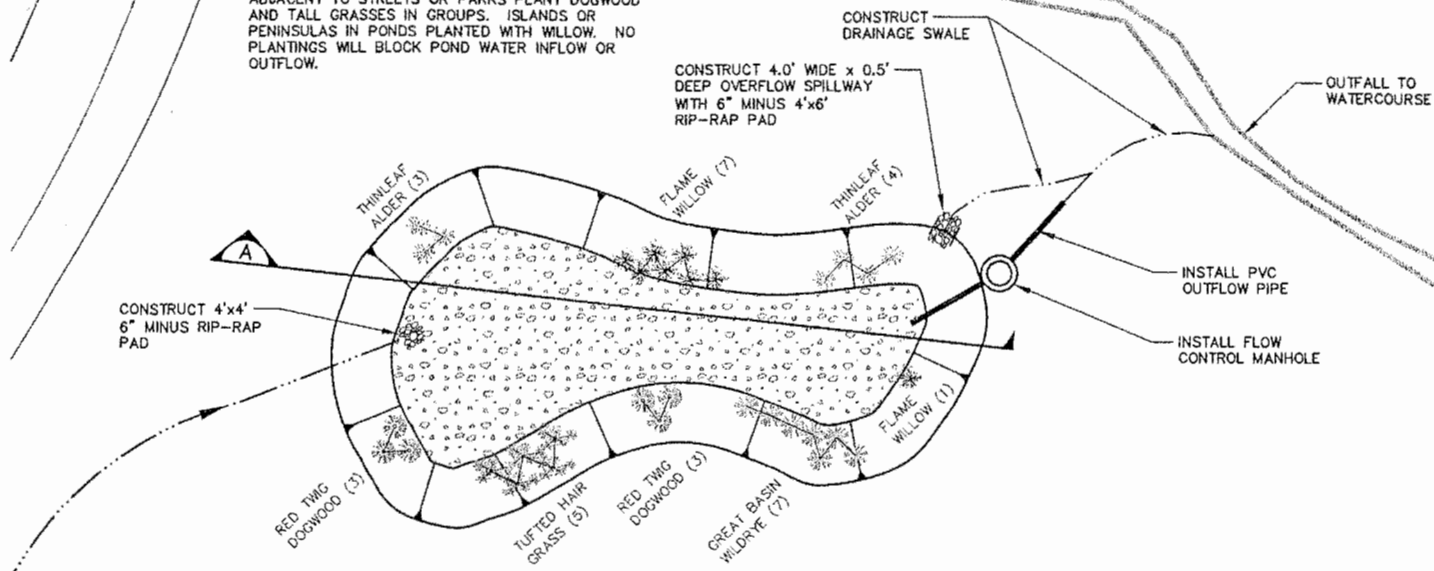


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NOTE:  
PLANT POND SLOPES IN CLUSTERS WITH IRREGULAR SPACING. ON THE SIDES ADJACENT TO WETLAND AREAS PLANT WILLOWS AND ALDERS. ON SIDES ADJACENT TO STREETS OR PARKS PLANT DOGWOOD AND TALL GRASSES IN GROUPS. ISLANDS OR PENINSULAS IN PONDS PLANTED WITH WILLOW. NO PLANTINGS WILL BLOCK POND WATER INFLOW OR OUTFLOW.

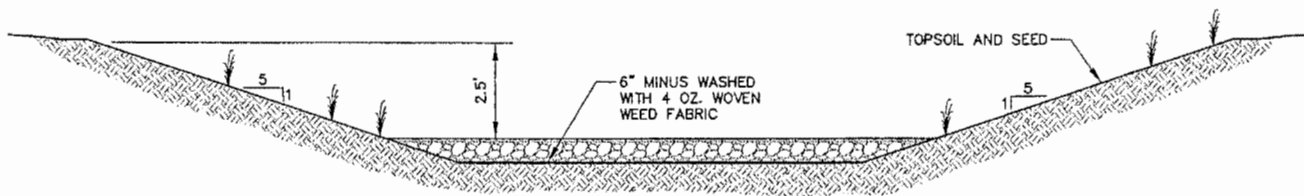


**TYPICAL STORMWATER DETENTION POND**

Scale 1"=20'

ISLANDS, PENINSULAS AND WETLAND SIDE:  
THINLEAF ALDER, OR  
FLAME WILLOW

STREET, PARK SIDE:  
RED OR YELLOW TWIG DOGWOOD, OR  
GREAT BASIN WILDRYE, OR  
TUFTED HAIRGRASS



**A TYPICAL DETENTION POND SECTION**

Not to Scale

D:\A\3967110-PUB-F\1\dep\A\Exhibit-B-Stormwater-Detention-Ponds.dwg 3/15/2005 10:52:00 AM HST



HKM Engineering Inc.  
McChesney Professional Bldg.  
601 Nikles Dr., Suite 2  
Bozeman, MT 59715  
(406) 586-8834  
FAX (406) 586-1730

**WEST WINDS COMMUNITY**  
NW 1/4 SECTION 2, T.2.S., R.5.E., P.M.M.  
GALLATIN COUNTY, MONTANA

**STORMWATER  
DETENTION PONDS**

**EXHIBIT B**

DATE: MAR. 15, 2005

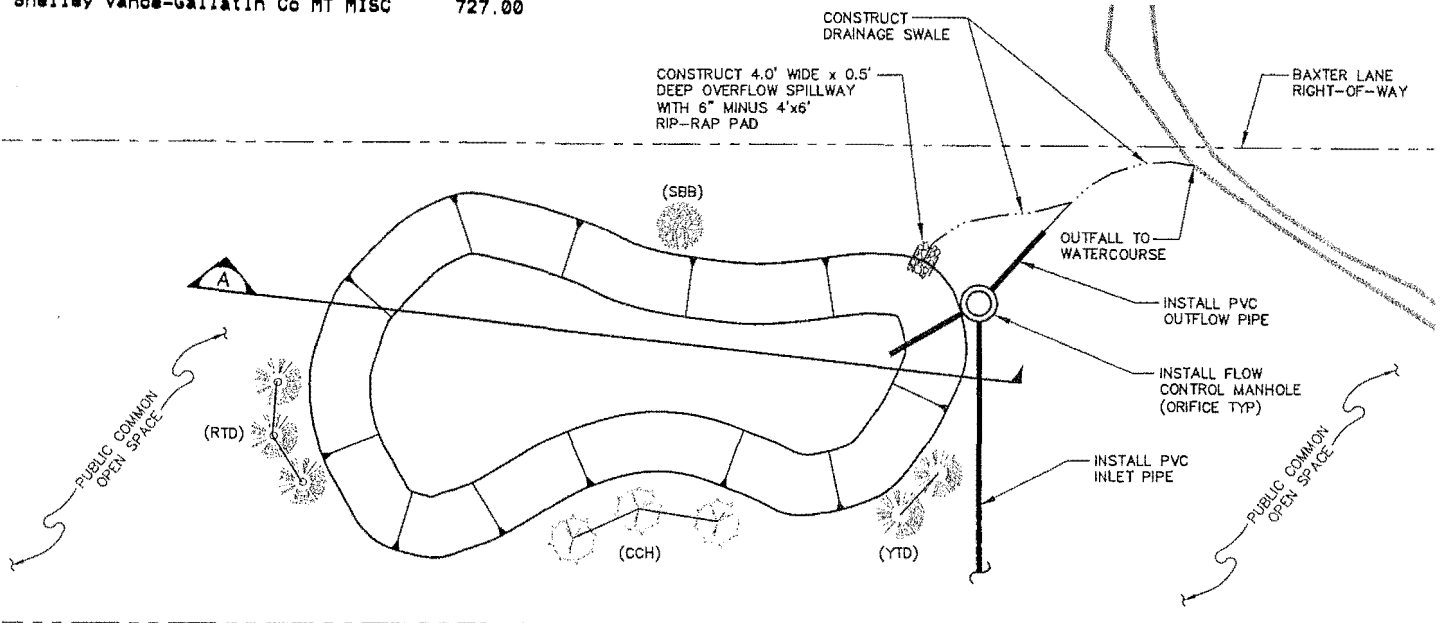
PROJECT NO. 04S067.110



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Shelley Vance-Gallatin Co MT MISC 727.00



**NOTES:**

1. PLANT POND SLOPES AND BOTTOM WITH TURF (SOD) GRASS AND PROVIDE POSITIVE DRAINAGE TO OUTFLET PIPE.

2. DETENTION PONDS ADJACENT TO BAXTER LANE SHALL BE DRY TYPE PONDS WITH LANDSCAPING INTEGRATED INTO STREET LANDSCAPE PLAN. STORMWATER WILL NOT BE ROUTED DIRECTLY THROUGH POND, RATHER STORMWATER WILL BACK INTO PONDS DURING 10-YEAR STORM EVENTS. POND WILL BE MOWED AND MAINTAINED AS A TYPICAL LAWN AREA BY HOME OWNERS ASSOCIATION.

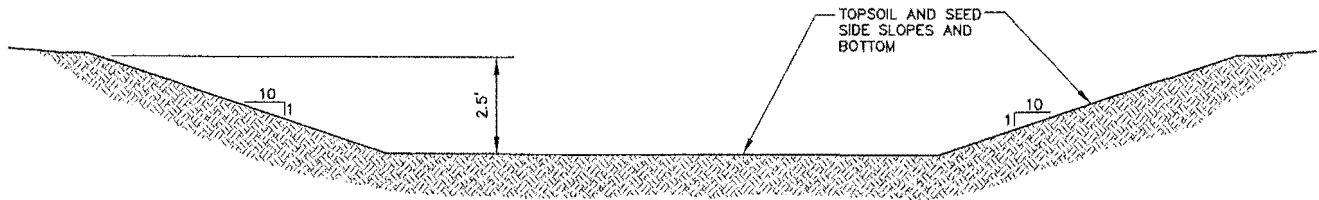


**TYPICAL STORMWATER DETENTION POND (DRY POND)**

Scale 1"=20'

ISLANDS, PENINSULAS AND WETLAND SIDE:  
THINLEAF ALDER, OR  
FLAME WILLOW

STREET, PARK SIDE:  
RED OR YELLOW TWIG DOGWOOD, OR  
GREAT BASIN WILDRYE, OR  
TUFTED HAIRGRASS



**A TYPICAL DETENTION POND SECTION**

Not to Scale



HKM Engineering Inc.  
McChesney Professional Bldg.  
601 Nikles Dr., Suite 2  
Bozemon, MT 59715  
(406) 586-8834  
FAX (406) 586-1730

**WEST WINDS COMMUNITY**  
NW 1/4 SECTION 2, T.2.S., R.5.E., P.M.M.  
GALLATIN COUNTY, MONTANA

**BAXTER LANE STORMWATER  
DETENTION PONDS**

**EXHIBIT C**

DATE: MAR. 31, 2005

PROJECT NO. 04S067.110

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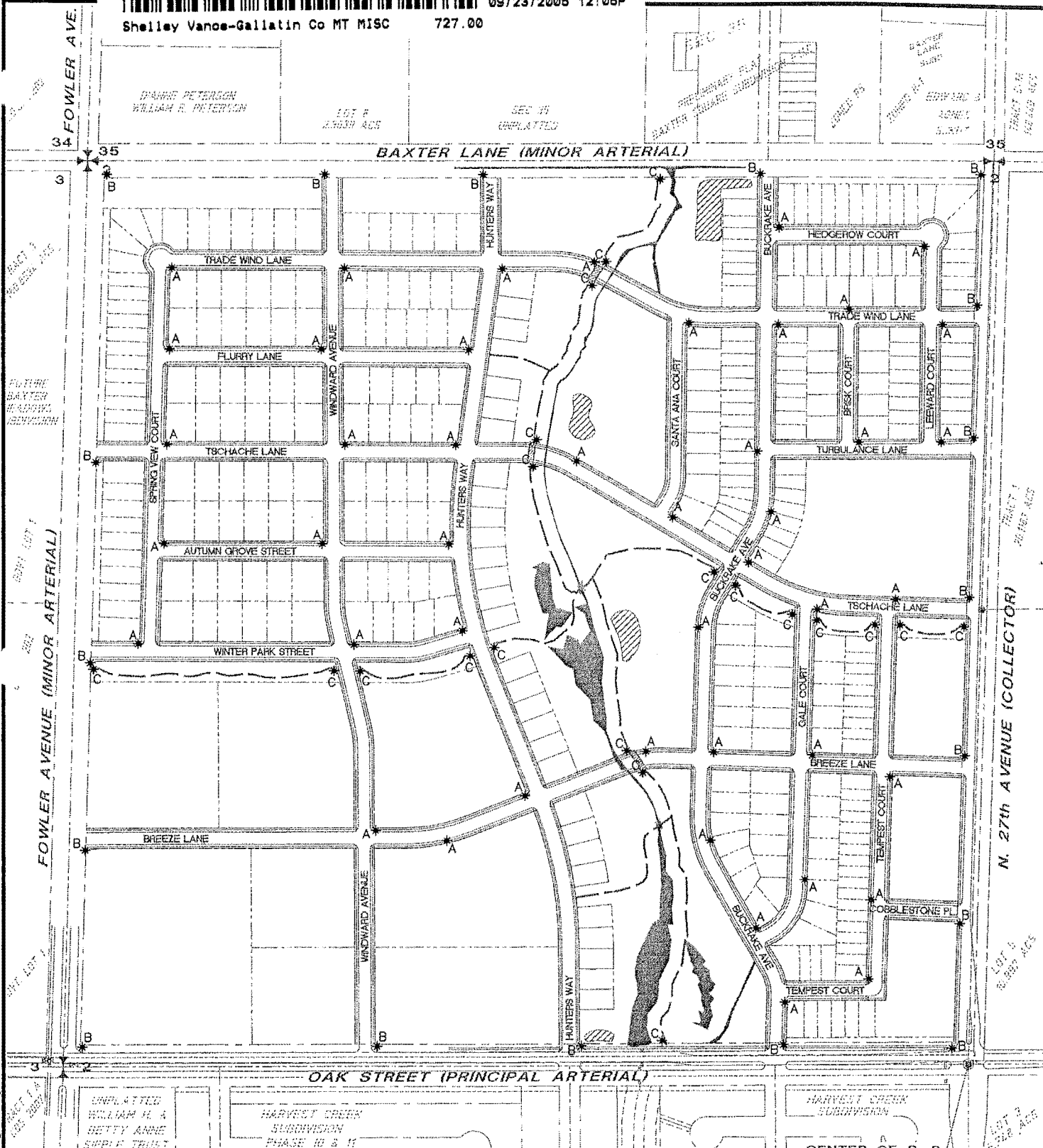
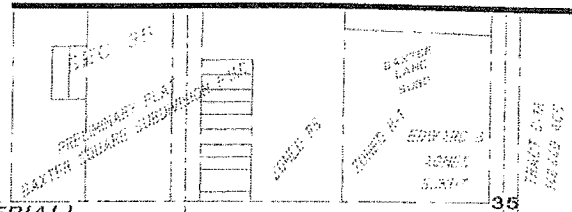
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Shelley Vance-Gallatin Co MT MISC 727.00

DANNE PETERSON  
WILLIAM R. INTERVIEW

LOT #  
2.5539 ACES

SEC #5  
UNPLATTED



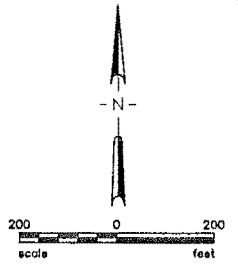
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HKM Engineering Inc.  
Chesney Professional Bldg.  
601 Nikles Dr., Suite 2  
Bozeman, MT 59715  
(406) 586-8834  
FAX (406) 586-1730

**LEGEND**

- PROPOSED ROAD RIGHT OF WAY
- PROPOSED TRAIL SYSTEM
- PROPOSED EASEMENT
- PROPOSED LOT LINE
- PROPOSED ROAD CENTERLINE
- EXISTING WETLANDS
- 25' TALL LIGHT POLE
- 38' TALL LIGHT POLE
- PARK/TRAIL BOLLARD



**WEST WINDS COMMUNITY**  
NW 1/4 SECTION 2, T.2.S., R.5.E., P.M.M.  
GALLATIN COUNTY, MONTANA

**MASTER LIGHTING PLAN**

**FIGURE LP-1A**

DATE: MAR. 28, 2005 PROJECT NO. 04S087.110





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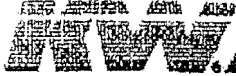
## Appendix C -- Lighting Master Plan and Details



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# RSP Round Non-Tapered Steel Poles



RSP

### Pole Shaft

The pole shaft is one piece construction, being fabricated from a weldable grade carbon steel structural tubing which has a uniform wall thickness of 11 gauge (0.1196") steel. The pole shaft material shall conform to ASTM A-500 Grade C with a minimum yield strength of 50,000 psi. The pole shaft has a full length longitudinal resistance weld and is uniformly cylindrical in cross-section with round sides and excellent torsional properties.

### Base Plate

The anchor base is fabricated from a structural quality hot rolled carbon steel plate that meets or exceeds a minimum yield strength of 36,000 psi. The anchor base telescopes the pole shaft and is circumferentially welded top and bottom. All welds are performed in accordance with the American Welding Society specification AWS D1.1, latest edition.

**Bolt Circle: 8.00" Sq. Dim. : 8.00" Thickness: 0.75" Conduit Opening: 3.00"**  
Consult KW representative for non-standard dimensions.

### Anchor Bolts

Anchor bolts are fabricated from commercial quality hot rolled carbon steel bar that meets or exceeds a minimum yield strength of 55,000 psi. Four properly sized anchor bolts, each with two regular hex nuts and washers, are furnished and shipped with all poles unless otherwise specified. Anchor bolts shall have the threaded end galvanized a minimum of 8 inches in accordance with ASTM A-153. Fully galvanized anchor bolts are available upon request.

### Handhole

An oval reinforced gasketed handhole, having a nominal 2" x 4" inside opening, located 1' - 6" above base, is standard on all poles. A grounding provision is welded inside the handhole ring.

### Finish

**Standard** - The exterior surface is cleaned with an alkaline rinse to remove surface contaminants and shot blasted to specifications as published by the Steel Structures Painting Council Standards SSPC-SP10. The exterior surface is chemically pretreated with an iron phosphate conversion coating then rinsed with ambient fresh water containing special surfactants and sealers forming a dry tight micro-crystalline coating. A polyester thermosetting powder coating applied to the surface of the substrate to a minimum of 3 mils is standard on all color finishes. The internal surface including the powder coated area at the base-end is coated with ~~ASTM A-153~~, a thermoplastic hydrocarbon resin system specially formulated for application over untreated steel surfaces, to a thickness of 3 mils. The internal coating shall contain special corrosion inhibitors and is capable of passing 1000 hours of salt spray exposure (ASTM B-117).

Job Name: West Winds

Series: RSP - Round Non-Tapered Steel Poles

Nominal Height: 25' Base Diameter: 4.0" Gauge: 11

Finish: BRZ - Standard - Bronze

Mounting Designation: DM10 Drilled for 1 Luminaire

Options: BC - Base Cover

Type	Height (ft.)	Pole Shaft (in.) x (in.) x (ft.)	Gauge	Handhole Size (in.)	Anchor Bolt (in.) x (in.) x (in.)	Bolt Circle (in.)	80 MPH (ft. <sup>2</sup> )	90 MPH (ft. <sup>2</sup> )	100 MPH (ft. <sup>2</sup> )	Ship WT. (lbs.)
	25	4.00 x 25.0	11	2 x 4	0.75 x 30 x 3	8	7	5.1	3.7	148

RSP25-4.0-11-BRZ-DM10-BC

Please type your comment below:

Drill for Gardco G13 Gullwings

Notes:

Job: West Winds

Mounting on round pole non-tapered

Type:

# GULLWING

## G13 AREA LUMINAIRES



**GENERAL DESCRIPTION:** The Gardco Gullwing is an area luminaire defined by its sleek profile and rugged construction. The housing is one-piece, diecast aluminum and mounts directly to a pole or wall without the need of a separate support arm. The multifaceted arc-image duplicating optical systems provide IES Types II, III, and IV distributions. The door frame is single-piece diecast aluminum and retains an optically clear tempered flat glass lens. The luminaire is completely sealed and gasketed preventing intrusion from moisture, dust and insects. The Gullwing luminaires are finished with a fade and abrasion resistant TGIC powdercoat.

### ORDERING

PREFIX	CONFIGURATION	DISTRIBUTION	WATTAGE	VOLTAGE	FINISH	OPTIONS
G13	1	2XL	100MH	120	BRP	

Enter the order code into the appropriate box above. Note: Gardco reserves the right to refuse a configuration. Not all combinations and configurations are valid. Refer to notes below for exclusions and limitations. For questions or concerns, please consult the factory.

### PREFIX

→ G13 13" Gullwing Luminaire

### CONFIGURATION

→ 1 Single Assembly 3@120 Triple at 120°  
 2 Twin Assembly 4 Quad Assembly  
 2@90 Twin Assembly at 90° W Wall Mount, Recessed J-Box  
 3 Triple at 90° WB Wall Mount, Surface Conduit

### DISTRIBUTION

→ 2XL Type II, Horizontal Lamp  
 3XL Type III, Horizontal Lamp  
 4XL Type IV, Horizontal Lamp  
 MTS Medium Throw with Solite Lane (Fluorescent only)

### WATTAGE

50HPS' 50MH' MTS Optics Only  
 70HPS 70MH (2)60CF (120V through 277V only, 50/60Hz.)  
 100HPS 100MH (Starting temperature is -22° F)  
 150HPS 150MH (2)42TRF (120V through 277V and 347V only, 50/60Hz.)  
 175MH (Starting temperature is 0° F)  
 (3)42TRF (120V through 277V and 347V only, 50/60Hz.)  
 (Starting temperature is 0° F)

MH Metal Halide CF Compact Fluorescent  
 HPS High Pressure Sodium TRF Triple Tube Fluorescent

1. 120 and 277V only.  
 2. All G13 HID optics require medium base lamps.

### VOLTAGE

120  
 208  
 240  
 277  
 347  
 480

### FINISH

BRP Bronze Paint ← OC Optional Color Paint  
 BLP Black Paint specify RAL designation as shown in  
 Color Selection Guide.  
 WP White Paint ex: OC-RAL7034  
 NP Natural Aluminum Paint BC Special Color Paint  
 (Specify. Must supply color chip)

### OPTIONS

F Fusing (In Head)  
 LF In-Line/In-Pole Fusing  
 PC Photocontrol and Receptacle  
 (N/A with 480V.)  
 PCR Photocontrol Receptacle only  
 POLY Polycarbonate Sag Lens (100w max)  
 HS Internal House/ide Shield  
 QS Quartz Standby (100w max)  
 SG Sag Glass Lens (in lieu of flat glass)

PTF2 Pole Top Fitter - 2 3/8" Dia. Tenon  
 PTF3 Pole Top Fitter - 3-3 1/2" Dia. Tenon  
 PTF4 Pole Top Fitter - 3 1/2-4" Dia. Tenon  
 SPA Square Pole Adaptor  
 (Required for Straight square poles.)

Gardco Lighting reserves the right to change materials or modify the design of its product without notification as part of its company's continuing product improvement program. The Gullwing design is protected by U.S. patent number DE8,391,850. The XL optical system is protected by U.S. patent number 5890422.

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A Ganlyte Company

Gardco Lighting  
 2881 Alvarado Street  
 San Leandro, CA 94677

800/227-0758  
 510/357-8900 In California  
 Fax: 510/357-3088  
 www.site-lighting.com



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Shelley Vance-Gallatin Co MT MISC



# GULLWING

## G13 AREA LUMINAIRES

### SPECIFICATIONS

**GENERAL DESCRIPTION:** The Gardco Gullwing is an area luminaire defined by its sleek profile and rugged construction. The housing is one-piece, diecast aluminum and mounts directly to a pole or wall without the need of a separate support arm. The multifaceted arc-image duplicating optical systems provide IES Types II, III, and IV distributions. The door frame is single-piece diecast aluminum and retains an optically clear tempered flat glass lens. The luminaire is completely sealed and gasketed preventing intrusion from moisture, dust and insects. The Gullwing luminaires are finished with a fade and abrasion resistant TGIC powdercoat.

**HOUSING:** A one-piece diecast aluminum housing mounts directly to a pole or wall without the need for a support arm. The low profile rounded form reduces the effective projected area of the luminaire to only .8 ft<sup>2</sup>.

**LENS ASSEMBLY:** A single-piece diecast aluminum lens frame hinges down from the housing and is secured by a stainless steel lanyard and hinge pin.

An optically clear, heat and impact resistant tempered flat glass lens is mechanically secured with six retainers. The electrical and optical chambers are thoroughly sealed with a one-piece memory retentive hollow-core EPDM gasket to prevent intrusion by moisture, dust, and insects.

**OPTICAL SYSTEMS:** The segmented optical systems are manufactured from homogenous sheet aluminum which has been electrochemically brightened, anodized and sealed. The multifaceted arc image duplicating systems are designed to produce IES Types II (2XL), III (3XL), and IV (4XL). The reflector facets form a conical fan around the arc tube with each facet positioned to be precisely tangent to the top of the arc tube. The lampholder is glazed porcelain with a nickel plated screw shell. Units feature porcelain medium base lampholders.

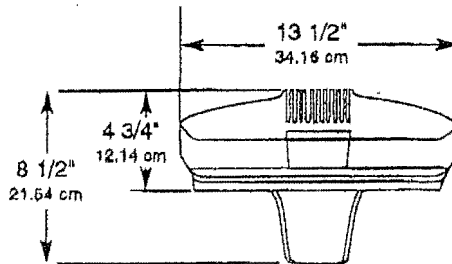
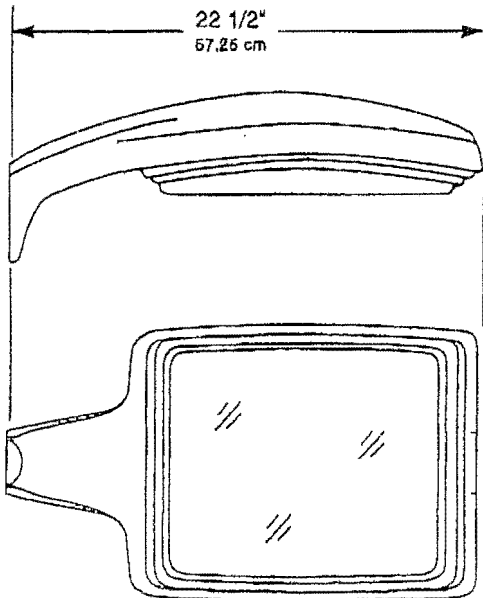
Fluorescent luminaires use a Medium Throw reflector with a Solita® glass lens (MTS).

**ELECTRICAL:** All electrical components are UL recognized, factory tested, and mounted on a unilized plate with quick electrical disconnects. Each HID high power factor ballast is the separate component type capable of providing reliable lamp starting down to -20(F). Standard fluorescent ballasts are solid state.

**FINISH:** Each standard color luminaire receives a fade and abrasion resistant, electrostatically applied, thermally cured, triglycidal isocyanurate (TGIC) textured polyester powdercoat finish. Standard colors include bronze (BRP), black (BLP), white (WP), and natural aluminum (NP). Consult factory for specs on optional or custom colors.

**LABELS:** All fixtures bear UL or CUL (where applicable) Wet Location labels.

### DIMENSIONS



EPA (ft <sup>2</sup> )		
1	2	3-4
.8	1.8	2.2

Gardco Lighting reserves the right to change materials or modify the design of its product without notification as part of the company's continuing product improvement program. The Gullwing design is protected by U.S. patent number D29 301,869. The XL optical system is protected by U.S. patent number 680422.

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79115-130/0804



## RTSP Round Tapered Steel Poles



RTSP

### Pole Shaft

The pole shaft is a one section design, each section being fabricated from standard 11 gauge (0.1196") steel. The pole shaft material is a weldable grade hot rolled commercial quality carbon steel with a guaranteed minimum yield strength of 55,000 psi after fabrication. Each section is one-piece construction with a full length longitudinal weld and is cylindrical in cross-section having a uniform taper of 0.14 inches of diameter change per foot of length.

### Base Plate

The anchor base is fabricated from commercial quality hot rolled carbon steel plate that meets or exceeds a minimum yield strength of 36,000 psi. The anchor base telescopes the pole shaft and is circumferentially welded top and bottom. All welds are performed in accordance with the American Welding Society specification AWS D1.1, latest edition.

**Bolt Circle: 11.0" Sq. Dim. : 11.5" Thickness: 0.88" Conduit Opening: 7.86"**  
 Consult KW representative for non-standard dimensions.

### Anchor Bolts

Anchor bolts are fabricated from commercial quality hot rolled carbon steel bar that meets or exceeds a minimum yield strength of 55,000 psi. Four properly sized anchor bolts, each with two regular hex nuts and washers, are furnished and shipped with all poles unless otherwise specified. Anchor bolts shall have the threaded end galvanized a minimum of 8 inches in accordance with ASTM A-153. Fully galvanized anchor bolts are available upon request.

### Handhole

An oval reinforced gasketed handhole, having a nominal 4" x 6.5" inside opening, located at 1' - 6" above base, is standard on all poles. A grounding provision is located inside the handhole ring.

### Finish

**Standard** - The exterior surface is cleaned with an alkaline rinse to remove surface contaminants and shot blasted to specifications as published by the Steel Structures Painting Council Standards SSPC-SP10 (near white). The exterior surface is chemically pretreated with an iron phosphate conversion coating then rinsed with ambient fresh water containing special surfactants and sealers forming a dry tight micro-crystalline coating. A polyester thermosetting powder coating applied to the surface of the substrate to a minimum of 3 mils is standard on all color finishes. The internal surface including the powder coated area at the base-end is coated with ~~WSPAL~~, a thermoplastic hydrocarbon resin system specially formulated for application over untreated steel surfaces, to a thickness of 3 mils. The internal coating shall contain special corrosion inhibitors and is capable of passing 1000 hours of salt spray exposure (ASTM B-117).

West Winds

Series: **RTSP** - Round Tapered Steel Poles  
 Nominal Height: **39'** Base Diameter: **8.1"** Gauge: **11**  
 Finish: **BRZ** - Standard - Bronze  
 Mounting Designation: **DM10** - Drilled for 1 Luminaire  
 Options: **BC** - Base Cover

Type	Height (ft.)	Pole Shaft (in.) x (in.) x (ft.)	Gauge	Handhole Size (in.)	Anchor Bolt (in.) x (in.) x (in.)	Bolt Circle (in.)	80 MPH (ft. <sup>2</sup> )	90 MPH (ft. <sup>2</sup> )	100 MPH (ft. <sup>2</sup> )	Ship WT. (lbs.)
P2	39	8.1 x 2.6 x 39.0	11	4 x 6.5	1.00 x 36 x 4	11	13.7	10.5	8	327

**RTSP39-8.1-11-BRZ-DM10-BC**

we are getting this cut down to 38ft

Notes:

Job: West Winds

Mounting on square pole non-tapered

Type:

# GULLWING

## G18 AREA LUMINAIRES



**GENERAL DESCRIPTION:** The Gardco Gullwing is an area luminaire defined by its sleek profile and rugged construction. The housing is one-piece, diecast aluminum and mounts directly to a pole or wall without the need of a separate support arm. The multifaceted arc-image duplicating optical systems provide IES Types I, II, III, IV and V distributions. The door frame is single-piece diecast aluminum and retains an optically clear tempered flat glass lens. The luminaire is completely sealed and gasketed preventing intrusion from moisture, dust and insects. The Gullwing luminaires are finished with a fade and abrasion resistant TGIC powdercoat.

### ORDERING

PREFIX	CONFIGURATION	DISTRIBUTION	WATTAGE	VOLTAGE	FINISH	OPTIONS
G18	1	2XL	400MH	120	BRP	

Enter the order code into the appropriate box above. Note: Gardco reserves the right to refuse a configuration. Not all combinations and configurations are valid. Refer to notes below for exclusions and limitations. For questions or concerns, please consult the factory.

### PREFIX

G18 18" Gullwing Luminaire

### CONFIGURATION

1 Single Assembly 3@120 Triple at 120°  
 2 Twin Assembly 4 Quad Assembly  
 2@90 Twin Assembly at 90° W Wall Mount, Recessed J-Box  
 3 Triple at 90° WS Wall Mount, Surface Conduit

### DISTRIBUTION

1 Type I, Horizontal Lamp (N/A above 400w)  
 2XL Type II, Horizontal Lamp  
 3XL Type III, Horizontal Lamp  
 4XL Type IV, Horizontal Lamp  
 Q Type V, Horizontal Lamp (N/A above 400w)

### WATTAGE

100MH<sup>1</sup> 250PSMH<sup>1</sup> 150HPS  
 150MH<sup>1</sup> 320PSMH<sup>1</sup> 250HPS MH Metal Halide  
 175MH 350PSMH 400HPS PSMH Pulse Start Metal Halide  
 250MH 400PSMH<sup>1,2</sup> 500HPS HPS High Pressure Sodium  
 400MH<sup>1</sup> 750PSMH<sup>1,7</sup> 750HPS<sup>1</sup>  
 1000MH<sup>1,4</sup> 1000PSMH<sup>1,8</sup>

- Requires ED28 or BT28 reduced jacketed lamp
- Furnished with sag glass lens only
- Venture mogul base lamps required
- M138 or M149
- M132 or M134
- M135 or M136
- M149 only. Requires MS750PS/BU-HOR/BT37 lamp.

Notes 9 and 8:

For 1000 Metal Halide, use:

Brand	Product Code	Catalog Number
Venture	53702	MS1000W/HOR/BT37/3K
G.E.	18205	MVR1000W/H137
Venture	15332	MH1000W/LU/BT37

For 1000 Pulse Start, use:

Brand	Product Code	Catalog Number
G.E.	10389	MVR1000W/BT37/PA
Venture	49111	MS1000W/HOR/BT37/PS

WARNING: Use of other lamps voids warranty

### VOLTAGE

120  
 208  
 240  
 277  
 347  
 480

### FINISH

BRP Bronze Paint  
 BLP Black Paint  
 WP White Paint  
 NP Natural Aluminum Paint  
 OC Optional Color Paint  
 Specify AAL designation as shown in Color Selection Guide, ex: OC-PAL7024  
 SC Special Color Paint  
 (Specify. Must supply color chip)

### OPTIONS

F Fusing (in Hood)  
 (N/A with 750w and 1000w)  
 LF In-Line/In-Pole Fusing  
 PC Photocontrol and Receptacle  
 (N/A with 480V)  
 PCR Photocontrol Receptacle only  
 POLY Polycarbonate Sag Lens (250W max)  
 HS Internal Housewide Shield  
 QS Quartz Standby (400W max)  
 SG Sag Glass Lens (in lieu of flat plate)  
 (Supplied standard with 750w and 1000w)  
 RPA1 3" Round Pole Adapter  
 (Required for 3" OD round or tapered round poles where top OD is less than 4")  
 RPA2 4" and 5" Round Pole Adapter  
 (Required for 4"-5" OD round poles)  
 PTF2 Pole Top Filter - 2 3/8" Dia. Tenon  
 PTF3 Pole Top Filter - 3-3 1/2" Dia. Tenon  
 PTF4 Pole Top Filter - 3 1/2-4" Dia. Tenon  
 SQPTF Square Pole Top Filter

Gardco Lighting reserves the right to change materials or modify the design of its product without notification as part of its company's continuing product improvement program. The Gullwing design is protected by U.S. patent number 069,391,638. The XL optical system is protected by U.S. patent number 5890422.

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# GULLWING

## G18 AREA LUMINAIRES

### SPECIFICATIONS

**GENERAL DESCRIPTION:** The Gardco Gullwing is an area luminaire defined by its sleek profile and rugged construction. The housing is one-piece, diecast aluminum and mounts directly to a pole or wall without the need of a separate support arm. The multifaceted arc-image duplicating optical systems provide IES Types I, II, III, IV and V distributions. The door frame is single-piece diecast aluminum and retains an optically clear tempered flat glass lens. The luminaire is completely sealed and gasketed preventing intrusion from moisture, dust and insects. The Gullwing luminaires are finished with a fade and abrasion resistant TGIC powdercoat.

**HOUSING:** A one-piece diecast aluminum housing mounts directly to a pole or wall without the need for a support arm. The low profile rounded form reduces the effective projected area of the luminaire to only 1.2 ft<sup>2</sup>.

**LENS ASSEMBLY:** A single-piece diecast aluminum lens frame hinges down from the housing and is secured by a stainless steel lanyard and hinge pin.

An optically clear, heat and impact resistant tempered flat glass lens is mechanically secured with eight retainers. The electrical and optical chambers are thoroughly sealed with a one-piece memory retentive hollow-core EPDM gasket to prevent intrusion by moisture, dust, and insects.

**OPTICAL SYSTEMS:** The segmented optical systems are manufactured from homogenous sheet aluminum which has been electrochemically brightened, anodized and sealed. The multifaceted arc image duplicating systems are designed to produce IES Types I (1), II (2XL), III (3XL), IV (4XL), and V (Q). With the 2XL, 3XL and 4XL luminaires, the reflector facets form a conical fan around the arc tube with each facet positioned to be precisely tangent to the top of the arc tube.

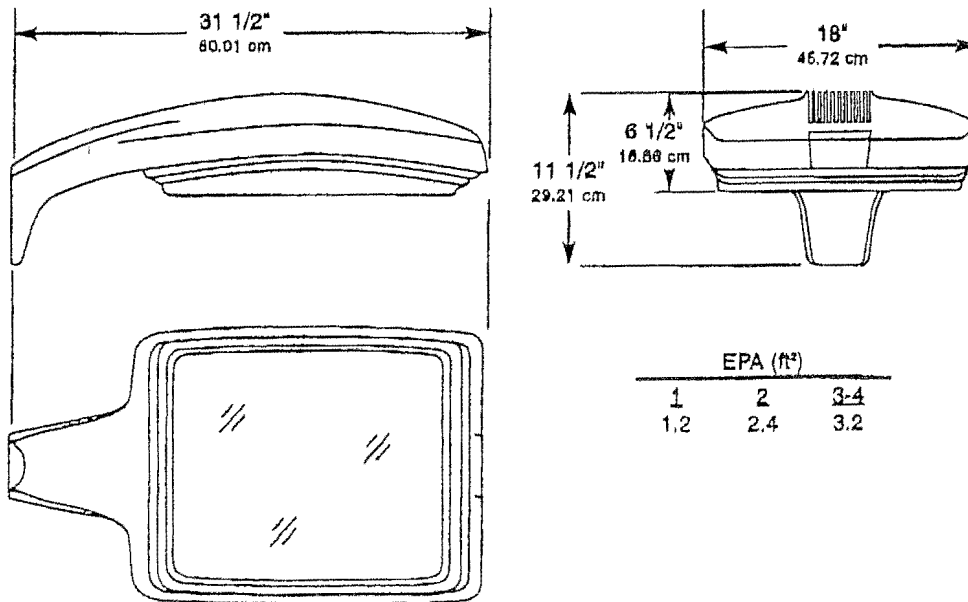
The lampholder is glazed porcelain with a nickel plated screw shell. Position-oriented mogul base sockets to accept high output horizontal metal halide lamps are supplied standard.

**ELECTRICAL:** All electrical components are UL recognized, factory tested, and mounted on a unitized plate with quick electrical disconnects. Each high power factor ballast is the separate component type capable of providing reliable lamp starting down to -20(F).

**FINISH:** Each standard color luminaire receives a fade and abrasion resistant, electrostatically applied, thermally cured, triglycidal isocyanurate (TGIC) textured polyester powdercoat finish. Standard colors include bronze (BRP), black (BLP), white (WP), and natural aluminum (NP). Consult factory for specs on optional or custom colors.

**LABELS:** All fixtures bear UL or CUL (where applicable) Wet Location labels.

### DIMENSIONS



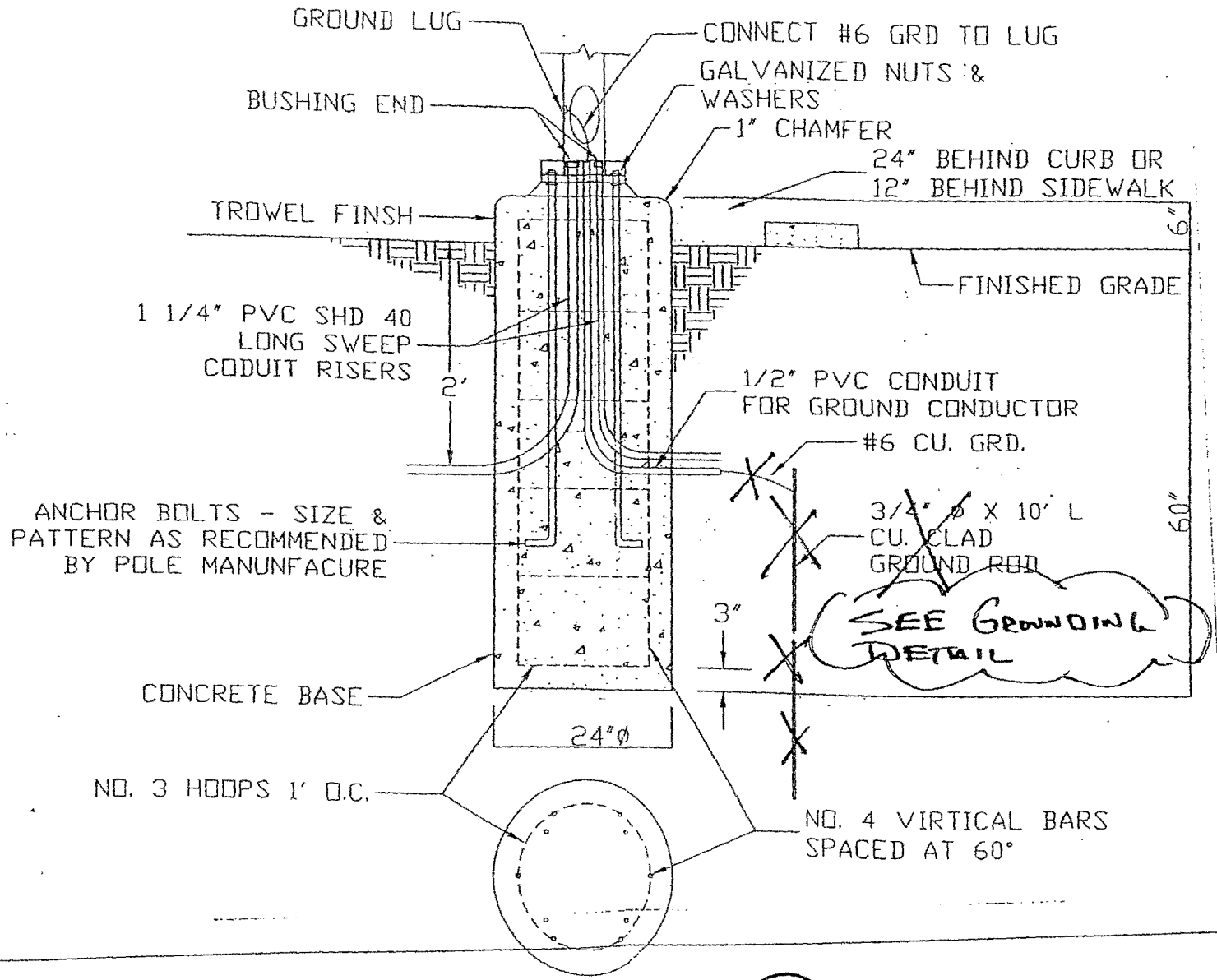
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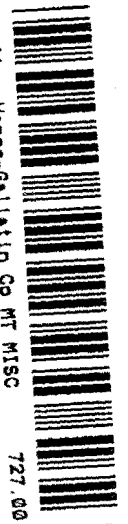




POLE BASE DETAIL

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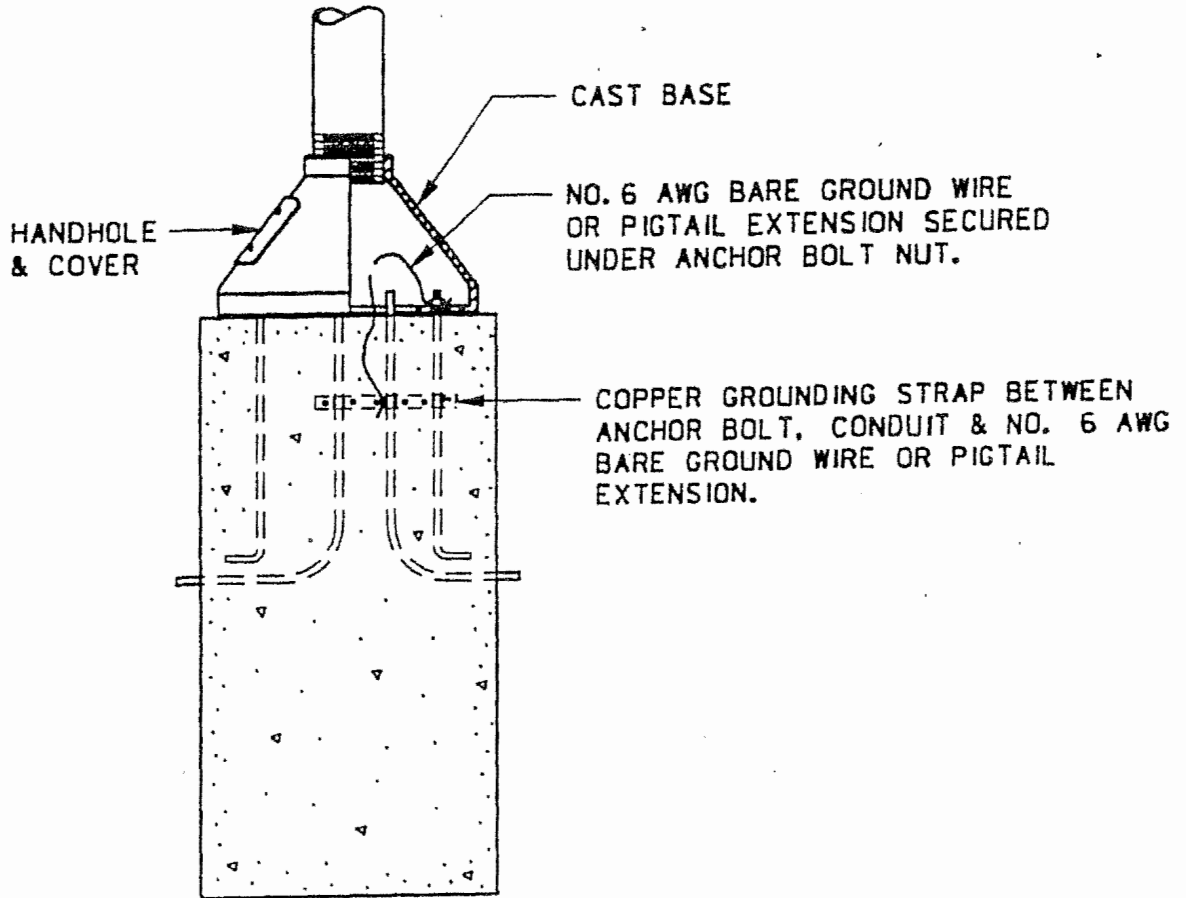


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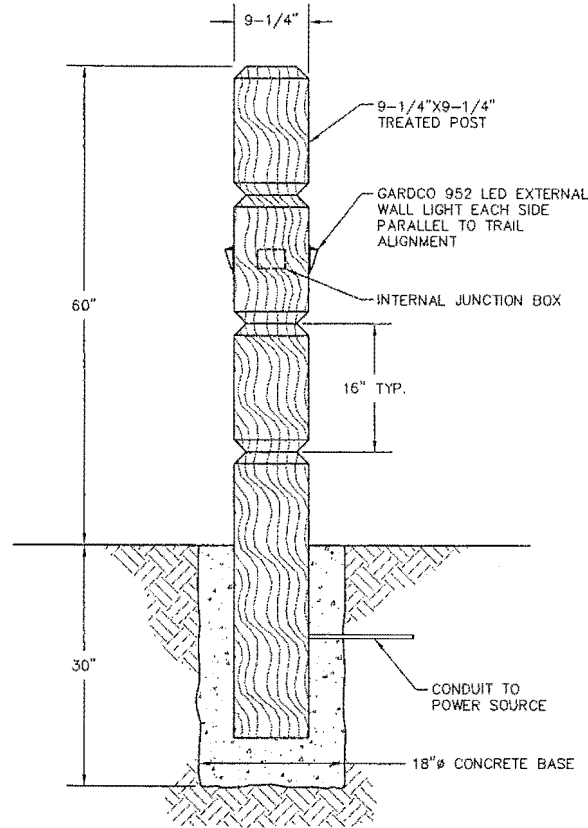
GROUNDING DETAIL



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**TRAIL BOLLARD DETAIL**

SCALE : NONE

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**WEST WINDS COMMUNITY**  
NW 1/4 SECTION 2, T.2.S., R.5.E., P.M.M.  
GALLATIN COUNTY, MONTANA

**TRAIL BOLLARD DETAIL**

**FIGURE 3**

DATE: MAR 17, 2005

PROJECT NO. 045067.110

# THE 95 LINE - ONE INCREDIBLE

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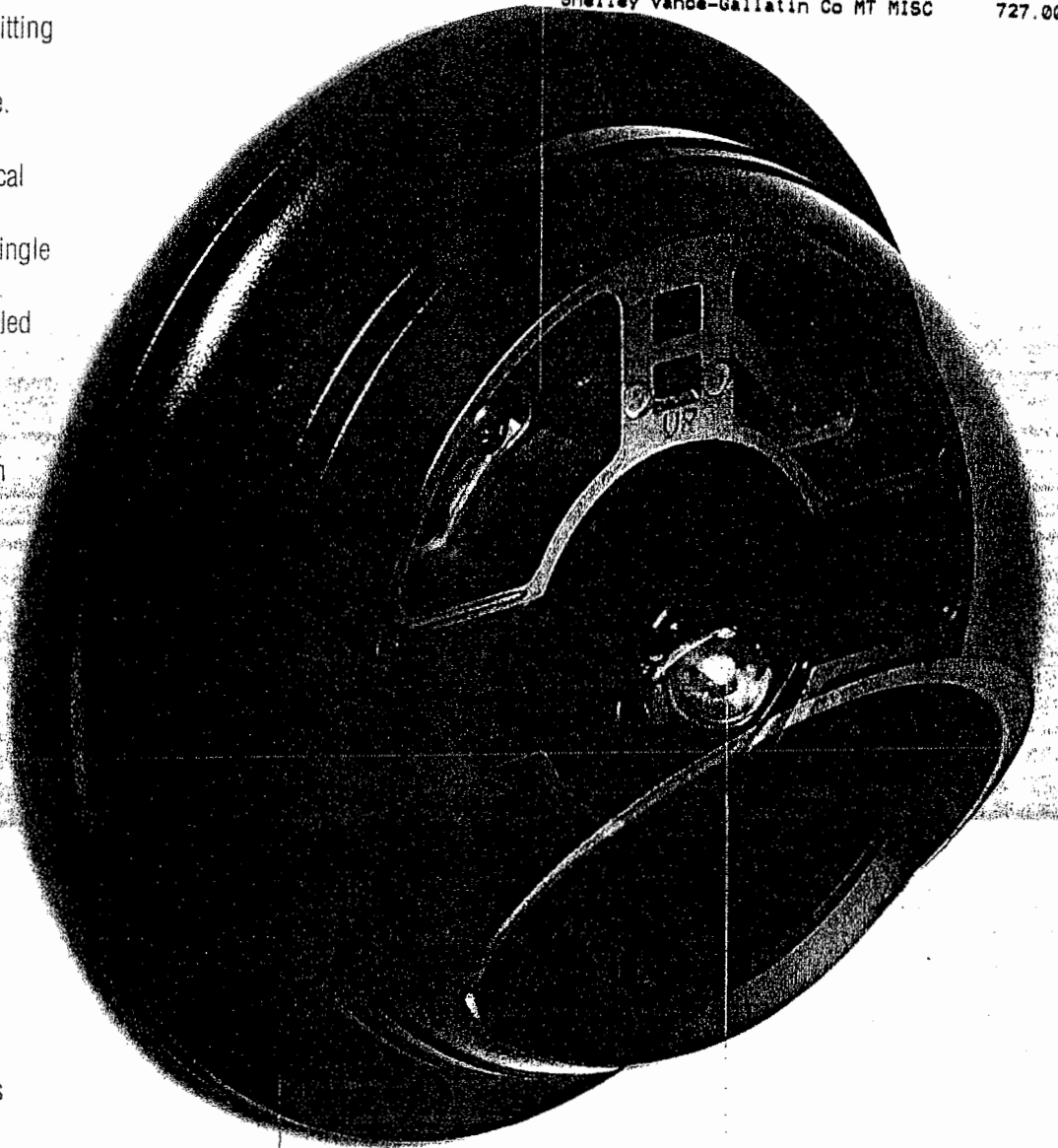
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The diecast brass base and LED optical system are an integrated component package. To replace the LED, simply remove the faceplate, and snap in a new module. Plug and play. Fast, simple, easy does it.



Shelley Vance-Gallatin Co MT MISC 727.00

rdco Lighting introduces a remarkable advance in architectural lighting elegantly built around the latest advances in LED (Light Emitting Diodes) technology – the 95 Line. With an integrated lamp and optical system package that relies on a single watt of energy, this minimally scaled luminaire achieves a remarkable level of illumination. In pedestrian thoroughfares, along stairways, emergency lighting situations, the new 95 Line is an exciting new design option.



Pure shapes. Soft corners. Uniform distribution. Concealed mounting hardware. Consistent visual styling cues. The 95 Line is scaled to make a tasteful and discreet design statement. That it so elegantly meets code requirements for minimum light levels makes it a very smart, if inconspicuous choice for step and aisle lighting.

The minimally scaled faceplate is available in four different designs, two Round and two Square. A black finish is integral to the injection molded faceplate. All other finishes are applied using a liquid polyurethane, UV resistant, paint.

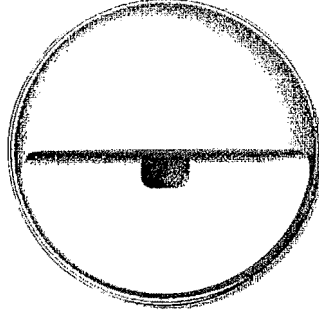
An integrated LED, driver and optic allows the 95 Line to accomplish the paradox of maximum performance from minimal power. The LED is available in six colors: white, amber, blue, green, orange, and red. Naturally, light output is maximized using the white LED. Color LEDs can be used to add accent and interest to a project.

The 95 Line presents superior illumination from the power of only one watt (input watts = 2.4). The mounting base is constructed of diecast brass and the cover is molded, high impact resistant, polycarbonate. The all-weather steplights are listed for Wet Locations.

# WATT OF ILLUMINATION



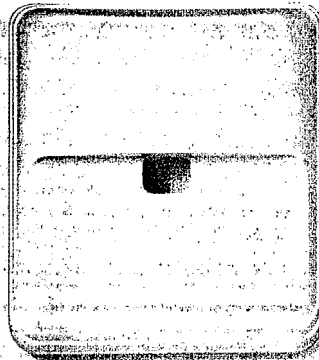
Round (951)



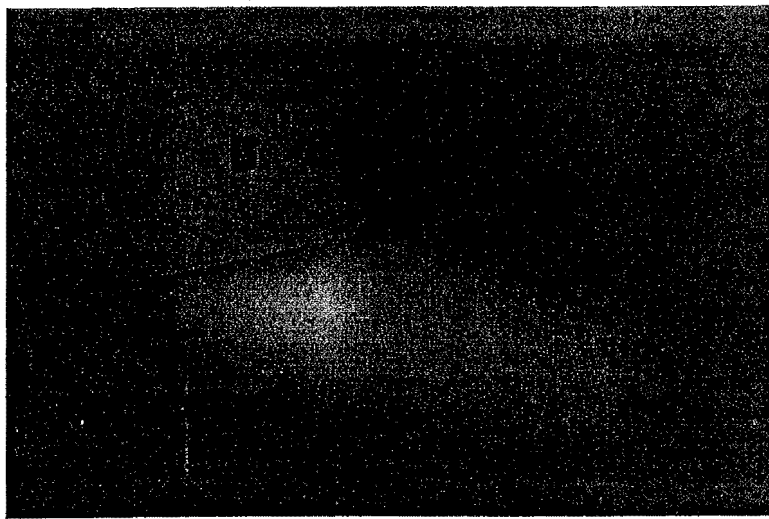
Round (950)



Square (953)



Square (952)



Subtle wall washing is an ancillary benefit of the luminaires.

The 95 Line was designed to take advantage of LEDs as its source. Designing around the miniature LED source results in not only a small, ADA compliant luminaire, but one that provides the necessary light levels required from a step and aisle product.

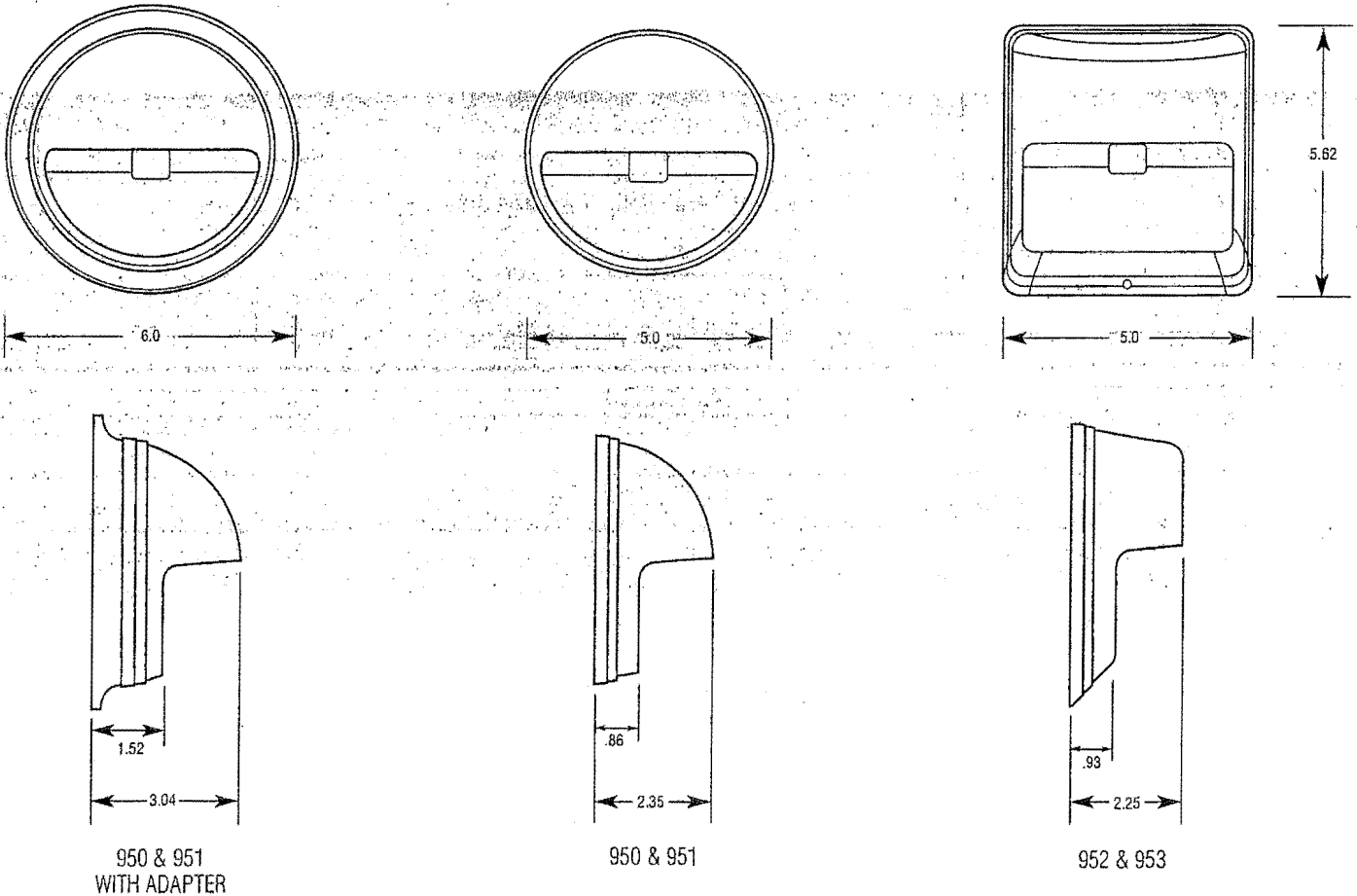
The patent-pending optic uniquely distributes light forward and away from the luminaire, placing the light on the walkway or interior floor. The 95 Line is optimally placed at only 18" above grade, making it ideal for both interior and exterior applications.

The graphic to the left illustrates the pattern of light achieved at the 18" mounting height.

# 95 LINE ORDERING

PREFIX	MOUNTING	WATTAGE	VOLTAGE	LED COLOR	FINISH
Example 950	S	1	120V	LEA	BLP
950 951 952 953	S = Surface Mount for Wall or Ceiling	1 = 1 watt	120 12	LEA Amber LEB Blue LEG Green LEO Orange LER Red LEW White	BLP Black Paint Standard material color BRP Bronze Paint WP White Paint OC Optional Color Paint Specify RAL designation as shown in the Color Selection Guide ex: OC-RAL7024 SC Special Color Paint (Must supply color chip)

# 95 LINE DIMENSIONS



Note: Adapter is used when mounting over a 4-0 Junction Box.  
Product mounts directly over a 3-0 Junction Box without adapter.



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