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**DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS  
AND RESERVATION OF EASEMENTS  
FOR THE MANHATTAN MEADOWS  
SUBDIVISION**

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*Bylaws of the Manhattan Meadows Homeowners' Association follow immediately.*

**DECLARATION OF COVENANTS, CONDITIONS, AND  
RESTRICTIONS AND RESERVATION OF EASEMENTS  
FOR THE MANHATTAN MEADOWS SUBDIVISION**

This Declaration of Covenants, Conditions, and Restrictions and Reservation of Easements for The Manhattan Meadows Subdivision (“Declaration” or “Covenants”) is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_ (“Declarant”).

**RECITALS**

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

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

C. If developed as currently planned, at full completion the Project will contain 365 lots (individually a “Lot” and collectively the “Lots”) intended for residential use, related common areas, parks and tracts for the construction of common use facilities to serve the Project.

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

**AGREEMENT**

**NOW, THEREFORE,** Declarant hereby declares that the Project shall be held, sold, mortgaged, encumbered, used, occupied, improved and conveyed subject to the following declarations, limitations, easements, restrictions, covenants, and conditions which are imposed as equitable servitudes pursuant to a general plan for the development of the Project. These restrictions, covenants, conditions and easements shall run with the Project and be binding on Declarant and its successors and assigns, and on all parties having or acquiring any right, title or interest in or to the Property comprising the Project or any part thereof, and their respective heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

**ARTICLE I**  
**Definitions**

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

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

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

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

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

1.5 “Association” shall mean and refer to Manhattan Meadows Homeowners’ Association, a Montana nonprofit mutual benefit corporation, the Members of which shall be the Owners of Lots in the Project.

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

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

1.8 “Committee” shall mean and refer to the Architectural Review Committee.

1.9 “Common Area” or “Common Areas” shall mean and refer to the portions of the Project and all improvements thereon designated from time to time in this Declaration or in any supplemental declaration, which is to be owned by the Association for the common use and enjoyment of the Owners. Common Areas within the Initial Phase are indicated on Exhibit B.

1.10 “Common Expenses” means and includes the actual and estimated expenses of operating the Common Area and a reasonable reserve for such purposes as found and determined appropriate by the Board, and all sums designated Common Expenses by or pursuant to this Declaration, the Articles, Bylaws or Rules. Common Expenses shall also include costs and reserves (if appropriate) incurred by the Association in connection with maintaining the Project and any areas at or adjacent to the Project that are required by Gallatin County, Montana, or any other governmental agency with jurisdiction thereof. Funds to pay all Common Expenses may be collected as part of Assessments, as provided herein. Common Expenses include street lighting, maintenance, maintaining the Common Areas, maintaining the streets (including snow removal),



maintenance and upkeep of any recreational facility or parks, if any, and all expenses associated with utilities and water for the Common Areas.

1.11 “Common Well” shall mean and refer to exempt 35 GPM or less wells to be shared for potable water between two lots within the Project, and for use as irrigation water throughout the Project.

1.12 “Declarant” shall mean and refer to \_\_\_\_\_, a Montana limited liability company qualified to do business in the State of Montana, and any successor or assign that expressly assumes the rights and duties of the Declarant hereunder in a recorded written document.

1.13 “Declaration” shall mean and refer to this Declaration, as amended or supplemented from time to time.

1.14 “Design Guidelines” shall mean and refer to the Manhattan Meadows Subdivision Design and Landscape Guidelines dated \_\_\_\_\_, as amended from time to time by Declarant or the Committee.

1.15 “Development Period” shall mean and refer to the period of time during which the Declarant is entitled to exercise Development Rights and Special Declarant Rights. The Development Period commenced on or prior to the recording of this Declaration and shall terminate on the earlier of the following to occur: (a) ninety percent (90%) of the Lots are sold, including subsequently divided or annexed lots made subject to this Declaration (in Declarant’s sole discretion) from Declarant to third parties; or (b) Declarant delivers written notice to the Association that Declarant is voluntarily relinquishing its Development Rights and Special Declarant Rights under this Declaration.

1.16 “Development Rights” shall mean and refer to the rights reserved to the Declarant to: a) submit additional property to be subject to the Declaration; (b) create Lots and Common Area; (c) convert Lots to duplex Lots and vice versa; and (d) subdivide Lots or convert Lots into Common Area. Development Rights may be exercised in all or any portion of the Project at any time within the Development Period.

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

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

1.19 “Initial Phase” shall mean the Final Plat of the Manhattan Meadows Subdivision, Phase 1 & 2, located in the NE¼ and the SE¼ of Section 3, Township 1 North, Range 3 East, P.M.M., Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the County Clerk and Recorder of Gallatin County, Montana.

1.20 “Lot” or “Residential Lot” shall mean any legally subdivided parcel within the Project which is intended for residential use and the development and maintenance thereon of a Residential Unit, as described herein. As used herein, the term “Lot” shall not include Common Areas, Common Area Lots, Parks or Tracts, which are designated on the Plat Maps.

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

1.22 “Mitigated Area” shall mean those areas of Open Space which constitute wetlands or stream site areas.

1.23 “Mortgage” shall include a deed of trust, as well as a Mortgage.

1.24 “Mortgagee” shall include a beneficiary or a holder of a deed of trust, as well as a Mortgage.

1.25 “Mortgagor” shall include the trustor of a deed of trust, as well as Mortgagor.

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

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

1.28 “Person” means a natural person, a corporation, a partnership, a trust, or other legal entity.

1.29 “Plat Map” shall mean and refer to any recorded subdivision Plat Map covering all or any portion of the Project.

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

1.31 “Project Documents” shall mean and refer to the basic organizational and governance documents of the Association, including the Articles, Bylaws, Design Guidelines and this Declaration.

1.32 “Public Records” shall mean and refer to the Public Records, as reflected in the Office of the County Clerk and Recorder of Gallatin County, Montana.

1.33 “Rules” shall mean and refer to the rules adopted from time to time by the Association pursuant to Section 5.2D.

1.34 “Unit” or “Residential Unit” shall mean and refer to any residence and related improvements constructed upon a Residential Lot.

## ARTICLE II

### Description of Project, Division of Property, and Creation of Property Rights

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

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

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

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

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

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

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

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

- A. Whenever utility facilities are installed within the Project, which utility facilities or any portion thereof lie in or upon a Lot of Lots owned by other than the Owner of a Lot served by said utility facilities, the Owners of any Lots served by such utility facilities shall have the right of reasonable access for themselves or for utility companies or providers to repair, to replace and generally maintain said utility facilities as and when the same may be necessary, due to failure or inability of the Board to take timely action to make such repairs or perform such maintenance.
- B. Whenever utility facilities are installed within the Project which serve more than one Lot, the Owner of each Lot served by said utility facilities shall be entitled to the full use and enjoyment of such portions of said utility facilities as service his Lot.
- C. In the event of a dispute between Owners with respect to the repair or rebuilding of said utility facilities, or with respect to the sharing of the cost thereof, then, upon written request of one (1) Owner addressed to the other Owner(s), the matter shall be submitted first to the Board for mediation, and thereafter, if the dispute remains unresolved, to binding arbitration pursuant to the rules of the American Arbitration Association.

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

2.8 Drainage Easements. An easement over and under each Lot as the servient tenement is reserved by Declarant in favor of each other Lot and the Association for the purpose of allowing the Association's agents the right, but not the obligation, to enter the Lot to maintain that portion of any storm drainage system located thereon. No Owner or occupant shall commit any act that would interfere with the operation of any drainage system (including drainage swales) installed on the Owner's Lot. The Owner shall maintain the system free of debris and other obstacles at all times. Reciprocal appurtenant easements between each Lot and the Common area and between adjoining Lots are reserved for the flow of water in the storm drainage system.

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

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

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

2.11 No Subdivision of Lots. There shall be no further division of any Residential Lot.

2.12 No View Rights. This Declaration is not intended and shall not, in any way, confer or grant (or be construed to confer or grant) to any Residential Lot or Residential Unit or the Owner thereof, any right to the maintenance of any view, view scape or scenic corridor or area. Each Owner, by acceptance of a deed to his or her Lot, acknowledges and agrees that no representations

or warranties have been made concerning any view, present or future, that may be enjoyed from all or any portion of the Project or such Owner's Lot or Unit, and that the same may change and/or be affected or obstructed by construction or installation of improvements, structures, fences, walls and/or landscaping by Declarant or other owners of property within or outside the Project and/or the growth of trees, landscaping and/or vegetation within or outside the Project. This Declaration does not contain any provisions intended to protect the view from any Lot or Unit or any other portion of the Project.

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

2.14 Sewer and Water Services. Sewer services for the Project will be provided by the Town of Manhattan. Water for lots within the Initial Phase will initially be supplied through a system of shared wells pursuant to that certain Declaration of Shared Well Easements and Special Covenants recorded \_\_\_\_\_, as Document No. \_\_\_\_\_, records of Gallatin County, Montana ("Shared Well Agreement"), which Shared Well Agreement is incorporated herein by this reference. Once the Town of Manhattan makes municipal water available, use of the shared well system for potable water shall be discontinued and Lot Owners shall be required to hook up to, use and pay for municipal water services provided through the Town of Manhattan. Use of the wells for lawn and garden irrigation may continue provided they are not cross connected to a potable system if, and when, Municipal water becomes available.

2.15 Building Permits. Lot Owners are hereby notified that building permits are required by the Town of Manhattan prior to construction.

### **ARTICLE III**

#### **Association Administration, Membership and Voting Rights**

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

3.2 Membership. The Owner of a Lot shall automatically, upon becoming the Owner of same, be a Member of the Association, and shall remain a Member thereof until such time as his ownership ceases for any reason. Membership shall be appurtenant to and may not be separated from ownership of a Lot. Membership shall be held in accordance with this Declaration, the Articles, Bylaws and Rules. Declarant shall be a Member of the Association for all Lots owned by Declarant and all parcels designated for future phases to become Lots in the future.

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

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

#### **ARTICLE IV Maintenance and Assessments**

4.1 Creation of the Lien and Personal Obligation of Assessments. Subject to the exception for Declarant, as provided in Section 4.5A, each Owner of any Lot by acceptance of a deed or conveyance thereto, whether it shall be so expressed in such deed or conveyance, covenants and agrees:

- A. To pay to the Association regular Assessments, to be established and collected as hereinafter provided; and
- B. To allow the Association to enforce any Assessment lien established hereunder by nonjudicial proceedings under a power of sale or by any other means authorized by law.

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

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

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

4.3 Assessments.

- A. Regular Assessments: The Board shall annually establish and levy regular Assessments in an amount that the Board estimates will be sufficient to raise the funds needed to pay Common Expenses and perform the duties of the Association during each fiscal year. The regular Assessments shall include a portion for reserves in such amounts as the Board in its discretion considers appropriate to meet the costs of the future repair, replacement or additions to the major improvements and fixtures that the Association is obligated to maintain and repair. Except to the limited extent otherwise provided herein, reserve funds may not be expended for any purpose other than repairing, restoring, maintaining or replacing the major components that the Association is obligated to maintain without the consent of Owners holding a majority of the voting power either at a duly held meeting or by written ballot.
- B. Special Assessments: In addition to Regular Assessments authorized above, the Board may levy special assessments for the purpose of defraying, in whole or in part, the cost of construction, reconstruction, or other capital improvements on the Property and Open Space, including fixtures and personal property related thereto, provided that any such assessment shall have the approval of two-thirds (2/3) or more of all of the votes of the Members who are present, in person or by proxy, at a meeting duly called for that purpose. Assessments for routine repairs and maintenance shall not require a two-thirds (2/3) vote.
- C. Street Light Maintenance. In addition to Regular and Special Assessments authorized above, the Board may levy assessments for the purpose of street light maintenance. Street lighting will be provided by Northwestern Energy, separately metered and paid for the Association. Maintenance will be provided by Northwestern Energy pursuant to a separate Customer Service Agreement.

4.4 Division of Assessments. All Assessments, both Regular and Special, shall be levied equally among the Lots, except to the extent the Board may fix a different uniform rate for improved and unimproved Lots or as set forth in that certain Shared Well Agreement, as may be amended from time to time. Regular Assessments shall be collected on a monthly basis, unless the Board directs otherwise. Special Assessments may be collected in one (1) payment, or periodically, as the Board shall direct. Different rates of Regular or Special Assessments may be set for different phases of the Project.



4.5 Date of Commencement of Regular Assessment; Due Dates. The Regular Assessments provided for herein shall commence as to each Lot in the Initial Phase on the day of the conveyance from Declarant of the Lot to an Owner in the Initial Phase. In subsequent phases, the Regular Assessments against each Lot in each phase shall be payable as Lots in each annexed phase become subject to Assessments. The Board shall determine whether the amount of Regular Assessments payable by all Owners will change and, if so, the amount of such change.

- A. Assessment on Lots Owned by Declarant or Builder: The Declarant is not obligated to pay any Assessments on any Lot owned by Declarant. The Declarant may likewise designate, in a written notice to the Board, any Builder as exempt from the obligation to pay Assessments in connection with specific Lots owned by such Builder, in which case the designated Builder shall not be obligated to pay Assessments in connection with such specified Lots, until sold as Lots to third parties, or such prior date established by relevant designation. For purposes hereof, “Builder” means any person which purchases one or more Lots for the purpose of constructing improvements for later sale to consumers in the ordinary course of such person’s business and who is approved and designated in writing by the Declarant as a “Builder” under these Covenants.

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

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

4.8 Priorities; Enforcement; Remedies.

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

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

- B. After the expiration of thirty (30) days following the recordation of the lien, the lien may be enforced in any manner permitted by law, including sale by the court or sale by the trustee designated in the lien. Any sale by the trustee shall be conducted in accordance with the provisions of Montana law applicable to the exercise of powers of sale in Mortgages and deeds of trust, or in any other manner permitted by law. Nothing herein shall preclude the Association from bringing an action directly against an Owner for breach of the personal obligation to pay Assessments.
- C. The Association, acting on behalf of the Owners, shall have the power to bid for the Lot at a foreclosure sale, and to acquire and hold, lease, mortgage and convey the same.
- D. The Board may temporarily suspend the voting rights of a Member who is in default in payment of any Assessment, after notice and hearing, as provided in the Bylaws.
- E. To the extent allowed under Montana law, the Association may file a lien against a Lot for fines and penalties for violation of restrictions, as well as monetary penalties imposed by the Association to reimburse the Association for costs incurred for repair of damage to Common Area or facilities for which the Owner, or guests or tenants of an Owner, were responsible.
- F. The Association is not empowered to cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of his Lot on account of the failure by the Owner to comply with provisions of the Project Documents or Rules, except by judgement of a court or a decision arising out of binding

arbitration or on account of a foreclosure or sale under power of sale for failure of the Owner to pay Assessments duly levied by the Association.

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

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

PRESIDENT:

\_\_\_\_\_  
By: \_\_\_\_\_

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

## **ARTICLE V Duties and Powers of the Association**

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

- A. Maintenance; Street Maintenance; Snow Removal: The Association shall maintain and repair the Common Area, all improvements and landscaping thereon, and all property owned by the Association, including, but not limited to, the landscaping contained within the Common Area. The Association shall also pay all Common Expenses, as defined herein, which will include, but not be limited to, road maintenance, Common Area maintenance, irrigation water for Common Areas, snow removal of Common Areas, and arrange for the maintenance of all areas for which Common Expenses are payable. The Association shall be responsible for street maintenance and snow removal in the Subdivision in a manner reviewed and approved by the Town of Manhattan.

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

Owners shall be responsible for keeping their Lots in good maintenance and repair. If the responsible Owner fails to take the necessary steps to keep its Lot in good repair and well maintained, make the repairs within a reasonable time under the circumstances, the Association shall cause the repairs to be made and charge the cost thereof to the responsible Owner, which costs shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate allowed by law) until paid in full. If such repair is covered by the insurance carried by the Association, the Association shall be responsible for making the repairs, and the responsible Owner shall pay any deductible pursuant to the insurance policy. If the Owner fails to make such payment, then the Association may make such payment and shall charge the responsible Owner, which charge shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate allowed by law) until paid in full. The Association may record and enforce a lien against the Owner's Lot in the same manner as set forth at Section 4.10 of these Covenants.

- B. Insurance: The Association shall obtain and maintain such policy or policies of insurance, as are required by Section 10.1 of this Declaration.
- C. Discharge of Liens: The Association shall discharge by payment, if necessary, any lien against the Common Area and charge the cost thereof to the Member or Members responsible for the existence of the lien after notice and hearing, as provided in the Declaration.

- D. Assessments: The Association shall fix, levy, collect and enforce Assessments, as set forth in Article IV hereof.
- E. Payment of Expenses and Taxes: The Association shall pay all expenses and obligations incurred by the Association in the conduct of its business, including, without limitations, all licenses, taxes, assessments and governmental charges levied or imposed upon, or which are or may become a lien against, the property of the Association.
- F. Enforcement: The Association shall be responsible for the enforcement of this Declaration, the Articles, Bylaws and Rules. In the event an Owner fails to comply with any Project Documents, the Association has the right to enter upon such Owner's Lot, remedy the lack of compliance and assess the costs incurred by the Association to such Owner. For any assessments unpaid when due, the Association may record and enforce a lien against such Owner's Lot in the same manner as set forth at Section 4.8 of these Covenants.
- G. Operation of Common Area and Creation of Rules: The Association shall maintain and operate the Common Area of the Project in accordance with all applicable municipal, state, and federal laws, statues and ordinances, as the case may be. The Association shall also, as a separate and distinct responsibility, exert reasonable efforts to endeavor to ensure that third parties (including Owners and their guests) utilize the Common Area, in accordance with the aforementioned regulations. The Association shall, when it becomes aware of any violation of the aforementioned regulations, endeavor to expeditiously correct such violations.
- H. Inspection and Maintenance Guidelines: The Board shall adopt inspection and maintenance guidelines for the periodic inspection and maintenance of the Common Area Improvements and landscaping and any other improvements outside the Common Area, which the Association has the responsibility to maintain. The Board periodically, and at least once every two (2) years, shall review and update the inspection and maintenance guidelines. The Board shall take all appropriate steps to implement and comply with the inspection and maintenance guidelines
- I. Preparation of Financial Documents: The Board shall cause the preparation of budgets and financial statements, as required by the Bylaws.
- J. Tree Maintenance; Replacement: The Association shall be responsible for maintenance as well as replacement, as approved by the Town of Manhattan, Montana, of all dead or destroyed trees and shrubbery within designated boulevards and parks.

- K. Rodent Control Plan. The Association shall be responsible for developing and implementing a rodent control plan for all parks and open space to be reviewed and approved annually by the Town of Manhattan Public Works Department.

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

- A. Utility Service: The Association shall have the authority (but not the obligation) to obtain, for the benefit of all of the Owners, all utilities and utility services including, without limitation, water, sewer, gas, electric service.
- B. Easements: The Association shall have the right to grant easements under, in, upon, across, over, above or through any portion of the Common Area for reasonable purposes, as approved by the Board, which are beneficial to the Association or the Project or the development of same.
- C. Manager: The Association may employ a Manager or other Persons and contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, except for the responsibility to levy fines, impose discipline, hold hearings, file suit, record or foreclose liens, or make capital expenditures.
- D. Adoption of Rules: The Board shall have the right to adopt, promulgate and enforce reasonable rules and regulations (“Rules”), not in conflict or inconsistent with this Declaration relating to the Project and aspects thereof, including, without limitation, the operation, maintenance, use and enjoyment of the Project, the Common Areas and individual Lots. It is the intent of this section that the Board have broad discretion with respect to the Rules and that the Board’s authority in this regard be construed liberally in order to effectuate the objectives of the Board with respect to the Rules. In general, the objectives of the Board should be to promote and enhance the Project, its attractiveness and economic viability, and provide for the orderly operation, maintenance, repair and upkeep of the Project, including procedures relating to the conduct of Association business. Written copies of such rules and any schedule of fines and penalties adopted by the Board shall be furnished to Owners. Anything contained herein to the contrary notwithstanding, until ninety percent (90%) of the Lots planned for the overall Project (including subsequently planned phases), the adoption or amendment of any Rules shall require the consent of Declarant.
- E. Access: For the purpose of performing construction, maintenance or emergency repair for the benefit of the Common Area or the Owners in common and/or perform maintenance work which the Lot Owner has failed

to perform, as provided herein, the Association's agents or employees shall have the right, after reasonable notice to the Owner thereof, to enter any Lot at reasonable hours and at any necessary time in the event of an emergency. Such entry shall be made with as little inconvenience to the Owner as practicable and, except as otherwise provided herein, any damage caused thereby shall be repaired by the Board at the expense of the Association.

- F. Assessments, Liens, Penalties and Fines: The Board shall have the power to levy and collect Assessments in accordance with the provisions of Article IV hereof. The Association may impose fines or take disciplinary action against any Owner for failure to pay Assessments or for violation of any provision of the Project Documents and the unrecorded Rules adopted by the Board or the Association. Penalties may include, but are not limited to, fines, temporary suspension of voting rights, rights to the use of recreational facilities, if any, or other appropriate discipline, provided the Member is given notice and a hearing, as provided in the Bylaws, before the imposition of any fine or disciplinary action. The Board shall have the power to adopt a schedule of reasonable fines and penalties for violations of the terms of this Declaration, and for violations of any Rules adopted pursuant to Section 5.2D. The penalties prescribed may include suspension of all rights and privileges of Membership; provided, however, that suspension for failure to pay Assessments shall be for a maximum period of thirty (30) days, renewable by the Board for an additional thirty (30) day period or periods until paid; and provided further that suspension for infraction of Rules or violation of this Declaration, other than for failure to pay Assessments, shall be limited to a maximum period of thirty (30) days per infraction or violation, and shall be imposed only after a hearing before the Board. The Board may extend said period for an additional period or periods in the case of a continuing infraction or violation, and no hearing need to be held for such extension. Written copies of Rules and the schedule of penalties shall be furnished to Owners. The Board shall assess fines and penalties and shall enforce such Assessments, as appropriate under applicable law.
- G. Enforcement: The Board shall have the power to enforce this Declaration, the Articles, Bylaws and rules.
- H. Dedication: The Association shall have the power to dedicate, sell, or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication shall be effective, unless an instrument has been signed or approved by two-thirds (2/3) of the total voting power of the Members of the Association.
- I. Contracts: The Board shall have the power to contract for goods and/or services for the Project, including Common Areas subject to limitations set forth in the Bylaws, or elsewhere herein.

- J. Delegation: The Association, the Board, and the officers of the Association shall have the power to delegate their authority and powers to committees, officers, or employees of the Association, or to a manager employee by the Association, provided that the Board shall not delegate its responsibility
- (1) to make expenditures for capital additions or improvements chargeable against the reserve funds.
  - (2) to conduct hearings concerning compliance by an Owner or his tenant, lessee, guest or invitee with the Declaration, Bylaws or Rules promulgated by the Board.
  - (3) to make a decision to levy monetary fines, impose special Assessments against individual Lots, temporarily suspend an Owner's rights as a Member of the Association or otherwise impose discipline.
  - (4) to make a decision to levy regular or special Assessments; and
  - (5) to make a decision to bring suit, record a claim of lien or institute Foreclosure proceedings for default in payment of Assessments.
- K. Appointment of Trustee: The Association, or the Board acting on behalf of the Association, has the power to appoint or designate a trustee to enforce Assessment liens by sale as provided in Section 4.8.
- L. Litigation/Arbitration: Subject to the terms and provisions of Article XIV, the Association shall have the power to institute, defend, settle or intervene in litigation, arbitration, mediation or administrative proceedings in matters pertaining to (a) enforcement of the Project Documents, (b) damage to the Common Areas, (c) damage to the separate interest which the Association is obligated to maintain or repair, or (d) damage to the separate interests which arises out of or is integrally related to damage to the Common Areas or separate interests that the Association is obligated to maintain or repair.
- M. Other Powers: In addition to the powers contained herein, the Board may exercise the powers granted to a non-profit mutual benefit corporation under Montana law.
- N. Implied Rights: The Association may exercise any other right or privilege given to it expressly by these Covenants or the Bylaws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege.
- O. Governmental Interests: For so long as the Declarant owns any Lot, the Declarant may designate any sites it owns within the Project for fire, police, water and sewer facilities, parks, and other facilities. The Board shall have the rights, obligations, and duties, subject to these Covenants, to contract and pay for, or otherwise provide for fire, police and such other protection



services as the Board deems necessary and to pay and discharge any and all liens placed upon any Common Area due to any work done or performed by the Association in fulfillment of any obligation and duty of maintenance, repair, operation or administration.

- P. Indemnification: The Association shall indemnify every officer, director, and committee member against all expenses, including without limitation, attorneys' fees reasonably incurred in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member. The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and directors shall have no personal liability with respect to any contract or commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers and directors may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director and committee member harmless from any and all liability to others on account of any such contract, commitment or action. Any right to indemnification for herein shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a common expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonable available. In the sole discretion of the Board, the Association may agree to extend the indemnification provided in this paragraph to other associated agents or employees not otherwise covered by this indemnification, when appropriate.

## **ARTICLE VI**

### **Architectural Control**

6.1 Purpose of Architectural Controls. The purpose and intent of this Article VI and the Design Guidelines is to empower the Declarant to preserve property values within the Project. The Declarant has the ultimate responsibility but may delegate that authority to an Architectural Review Committee ("Committee"). All Lots are subject to the provisions of this Article VI and the Design Guidelines; provided, however, model homes constructed for Declarant do not require Committee approval. A current copy of the Design Guidelines may be obtained from the Declarant or the Committee. To the extent any building or landscape design provisions in this Declaration conflict with the Design Guidelines, the Design Guidelines shall control, except to the extent the Design Guidelines contradict state or local laws or regulations, or conditions of final Plat Map approval by the Town of Manhattan. In such event the state or local laws or regulations or the provisions required for final Plat Map approval shall control.

6.2. Requirement for Approval of Plans. No Residential Unit, fence, wall, pool, spa, obstruction, satellite dish, outside or exterior wiring, balcony, screen, patio, patio cover, tent, awning, carport, carport cover, trellis, landscaping, structure or improvement of any kind shall be commenced, installed, erected, painted or maintained upon the Project, nor shall any alteration or improvement of any kind be made thereto, or to any Lot, until the same has been approved in writing by the Declarant, or the Committee appointed by the Declarant or the Board. Plans and specifications showing the nature, kind, shape, color, size, materials and location of such improvements, alterations, etc., shall be submitted to the Declarant or to the Committee appointed by the Declarant for approval of the submitted plans and specifications, including approval as to quality of workmanship and design and harmony of external design with existing structures, and as to location in relation to surrounding structures, topography, and finish grade elevation. All such applications shall be made in conformance with the requirements and procedures set forth in the Design Guidelines, including, but not necessarily limited to, payment of a review fee and any conformance deposit. No permission or approval shall be required to repaint in accordance with a color scheme previously approved by the Declarant or the Committee, or to rebuild in accordance with plans and specifications previously approved by the Declarant or the Committee. The Declarant or the Committee shall have the right to adopt, amend and promulgate reasonable architectural rules and guidelines to implement the intents, purposes and provisions hereof, which, upon adoption, shall have the same force and effect as other Rules, as provided herein. All plans and specifications for a Residential Unit or other improvement proposed to be built on a Lot shall comply with all applicable zoning laws and regulations, building codes and regulations and building height restrictions.

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

6.4 Architectural Review Committee Action. Approval of any plan submitted to the Committee shall be made by the Declarant, or by the majority vote of the Committee in accordance with the provisions set forth in the Design Guidelines.

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

6.6 Solar Energy, Water Saving Devices. The Declarant or the Committee may impose such restrictions on the installation of solar panels as are permitted by applicable state laws, and

properly screened. Water saving devices shall be required on all dishwashers, washing machines, toilet flushing mechanisms, showers and sink heads.

6.7 Governmental Approval. Before commencement of any alteration or improvements approved by Declarant or the committee, the Owner shall comply with all appropriate governmental laws and regulations, including, but not limited to, any zoning ordinances or regulations then in effect in Gallatin County, including, without limitation, the requirement to obtain any governmental issued permit(s) prior to commencement of construction. Approval by the Committee does not satisfy the appropriate approvals that may be required by any governmental entity with appropriate jurisdiction.

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

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

6.10 Architectural Review and Review Fee. Design submittal requirements are set forth in the Design Guidelines. A design review fee, as determined by the Committee, shall be deposited with the Committee at the time of submission of all design submittal documents. The purpose of the design review fee shall be to defray the Association's cost of review of all proposed site plans and specifications submitted to them. The amount of the fee may be adjusted by the Committee from time to time.

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

6.12 Completion. All work on any improvements in the residential property once started must be continued on a continuous and diligent basis until completion, which shall not exceed eighteen (18) months without approval from the Committee.

6.13 Compliance with Approved Plans. The Board or Committee may inspect all work in progress and completed improvements and give notice of any noncompliance as set forth below.

During the construction or upon completion of any improvements, if the Board or Committee finds that such work was not done in strict compliance with all approved plans and specifications

submitted or required to be submitted for its prior approval, it shall notify the Owner of such noncompliance, and may, in its discretion, require the Owner to remedy the same. If upon the expiration of seven (7) business days from the date of such notification, the Owner has failed to commence to remedy such noncompliance, the Board or Committee shall determine the nature and extent of noncompliance, and the estimated cost of completion. The Board or Committee shall notify the Owner in writing of the estimated cost of correction or removal. The Owner shall then have five (5) business days to commence such remedy and thirty (30) calendar days to complete such remedy.

If the Owner does not comply with the Board or Committee's ruling within the five (5) business day period, the Board, or Committee, at their option, may stop construction of the improvements, remove the noncomplying improvements, or remedy the noncompliance and the Owner shall reimburse the Association upon demand for all expenses incurred therewith. If such expenses are not promptly repaid by Owner to the Association, the Board shall levy an assessment and file a lien against such Owner and the Lot upon which the improvement was situated, for reimbursement, and the same shall be enforced and/or foreclosed upon in the manner provided for by law.

6.14 Compliance with Codes. All structures shall be constructed in compliance with the Uniform Building Codes, the International Residential Code (IRC) and the National Fire Protection Association (NFPA) codes as currently adopted by the Town of Manhattan.

6.15 Construction of Sidewalks. Sidewalks shall be construed on all public street frontages prior to occupancy of any structure. Additionally, not later than \_\_\_\_\_ (the third anniversary of recording the final Plat Map), any Lot Owner who has not constructed said sidewalk shall without further notice, construct the sidewalk within thirty (30) days. All sidewalks shall be constructed according to the construction details provided by the Committee.

## **ARTICLE VII Use Restrictions**

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

7.1 Use of Lot. Lots in the Project shall be used for purposes of constructing and maintaining Residential Units and purposes reasonably incidental thereto and for no other purposes and shall be used and maintained in compliance with this Declaration, the Articles, Bylaws and Rules. At all times the use shall be in compliance with the conditions of approval of the Project by Gallatin County, Montana. Modular homes built to UBC or IRC standards are allowed on Residential Lots. The manufacturer must certify modular units as conforming to UBC or IRC. Certain Lots within the Project have been designated to allow for the construction of duplexes or multi-family residential dwellings. If so designated, such designation shall appear on the final Plat Map. **Lot Owners are hereby notified and advised that obtaining the requisite permitting from the Town of Manhattan for the construction of any single family, duplexes or multi-family residential dwellings is the sole responsibility of the Lot Owner.**

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

7.3 Vehicle Restrictions and Towing. Vehicles may be operated, maintained, parked or stored in the Project only in strict compliance with the Rules and to the extent allowed by the Rules. In general, only normal and reasonable transportation vehicles shall be allowed. Inoperable, noisy, smoky, unregistered, unlicensed vehicles shall not be allowed.

- A. The Association may cause the removal of any vehicle wrongfully parked on the Project, including a vehicle owned by an occupant. If the identity of the registered owner of the vehicle is known or readily ascertainable, the Association shall, within a reasonable time, notify the owner of the removal in writing by personal delivery or first-class mail. In addition, notice of the removal shall be given to the local traffic law enforcement agency immediately after the vehicle has been removed. The notice shall include a description of the vehicle, license plate number and the address from where the vehicle was removed. If the identity of the owner is not known or readily ascertainable and the vehicle has not been returned to the owner within one hundred and twenty (120) hours after its removal, the Association immediately shall send or cause to be sent a written report of the removal by mail to the Montana Department of Justice and shall file a copy of the notice with the proprietor of the public garage in which the vehicle is stored. The report shall be made on a form furnished by the Department of Justice and shall include a complete description of the vehicle, the date, time and place from which the vehicle was removed, the amount of mileage on the vehicle at the time of removal, the grounds for removal and the name of the garage or place where the vehicle is stored.
- B. Notwithstanding the foregoing, the Association may cause the removal, without notice, of any vehicle parked in a marked fire lane, within fifteen feet (15') of a fire hydrant, in a parking space designated for handicapped without proper authority or in a manner which interferes with any entrance to, or exit from the Project or any Lot, parking space or garage located thereon. The Association shall not be liable for any damages incurred by the vehicle owner because of the removal in compliance with this section or for any damage to the vehicle caused by the removal, unless such damage resulted from the intentional or negligent act of the Association or any Person causing the removal of or removing the vehicle. If requested by the owner of the vehicle, the Association shall state the grounds for the removal of the vehicle.

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

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

7.6 Machinery and Recreational Vehicles. No machinery, equipment, trailer, boats, recreational vehicles, snowmobiles, motor homes, motorcycles, four-wheelers, ATVs, or any type of vehicle or similar item used for recreational purposes shall be used for habitation, and may not be placed or left upon a Lot, driveway, garage approach, street, or alley for a period of longer than fourteen (14) days in any given calendar year unless it is stored in a garage, and is not visible from other Lots, neighboring properties, sidewalks or streets.

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

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

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

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

7.11 Power Equipment and Car Maintenance. No offensive power equipment, hobby shops, or recreational vehicle, truck, car, motorcycle or boat maintenance (other than emergency

work) or similar maintenance shall be conducted or stored outside of a garage. The Association shall have sole discretion in determining what constitutes “offensive” under this Section 7.11; provided, however, the Association recognizes that the reasonable use of power washers and other power tools that do not disturb neighbors are not offensive. All hazardous waste shall be disposed of property by each Owner.

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

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

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

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

7.16 Temporary Structures. No structure, facility or appurtenance of a temporary character shall be placed upon any Lot, except in accordance with the Rules and no such structure shall be used as a residence on any Lot.

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

unpaid within thirty days of the date of delivery to the Owner, may be filed with the Clerk and Recorder's Office of Gallatin County, Montana, by the Association as a lien against the Owner's Lot. Such lien may be foreclosed in accordance with the proceedings established for the foreclosure of a Trust Indenture under the Montana Small Tract Financing Act, §71-1-301, MCA. The Association shall have the right to bid at any such foreclosure proceeding.

7.18 Owner's Maintenance of Sidewalks and Other Items Specifically. In addition to the general maintenance provisions set forth at Section 7.17 above, every Owner shall be responsible for maintenance of the sidewalk located on, adjacent to and between the Owner's Lot and the nearest right of way. Maintenance shall include, but not be limited to, snow and ice removal as required by the Town of Manhattan. It shall also be the responsibility of each Owner to maintain their own driveways from the edge of the paved street or alley to their own garage. The boulevards, rights of way, and ditches on a Lot are to be mowed and maintained by the Owner. The Association shall mow and maintain the open space, common area and trail systems. Boulevards, rights of way and ditches may not be blocked or filled.

7.19 Recreational and Play Equipment. All recreational and play equipment, including, but not limited to swing sets, playhouses, tee-pees, trampolines, and tennis or badminton nets, shall be limited to the backyard of the Lot.

## **ARTICLE VIII**

### **Project Development and Landscape Guidelines**

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

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

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

8.3 Fences. One of the primary goals of the Project is to create an atmosphere that is open and friendly. Fencing requirements are set forth in the Design Guidelines and may be approved by the Committee consistent with the Design Guidelines. Notwithstanding anything to the contrary contained in the Design Guidelines, any fencing located adjacent to Nixon Gulch Road (Blocks 1, 6, 11, 18, 19, 27 and 31) and Greenspur Road (Blocks 13, 14, 15 and 16) shall be required to utilize "post-and-rail fences" which may be "lined with inconspicuous wire fencing less than six feet high" adjacent to Nixon Gulch Road and Greenspur Road.



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

8.5 Satellite Dishes. Only smaller dishes of the latest technology (not exceeding two feet (2') in diameter) will be allowed. Such dishes must be hidden from view and shall require Committee approval.

8.6 Exterior Lighting. Incandescent or residential fluorescent lighting is encouraged, and the use of mercury vapor, and obtrusive flood lighting is prohibited. Fixtures should be compatible with architecture and site design. Luminaries shall not be visible from adjacent streets or properties. Locations must be approved by the Committee.

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

8.8 Storage Sheds. Storage needs should be anticipated in the planning stage and will be required to be an integral part of the design of the garage so that all storage is within the garage or attached structure.

8.9 Solid Waste Containers. All solid waste containers must be stored out of view, except during reasonable periods prior to and after pickup, and only on the day of pickup.

8.10 Planting Trees. A minimum of two (2) medium or large street trees shall be planted in the boulevard adjacent to each individual Lot spaced the minimum planting distances identified in the Town of Manhattan "Guidelines for Location, Placement and Spacing of Landscape Trees." The minimum number of trees as required in this paragraph shall be completed within one (1) year of the completion of the residence.

**ARTICLE IX**  
**Weed Control**  
**(Gallatin County, Montana Required Covenant)**

The control of noxious weeds by the Property Owner's Association on those areas for which the Association is responsible (right(s)-of-way, easement(s), parks, and any other common areas) and the control of noxious weeds by individual owners on their respective lots shall be as set forth and specified under the Montana Noxious Weed Control Act (MCA 7-22-2101 through 7-22-2153) and the rules and regulations of the Gallatin County Weed Control District.

The control of Noxious Weeds is the responsibility of the Property Owner whether the lot is improved or unimproved and shall be as set forth and specified under the Montana Noxious Weed Control Act (MCA 7-22-2101 through 7-22-2153 as amended) and the rules, regulations and management Plans of the Gallatin County Weed Control District. The Property Owner shall be responsible for the control of state and county-declared noxious weeds on his or her lot, and the Subdivision road right-of-way and/or road easement(s) adjoining their property. In the event a Property Owner does not control the noxious weeds, after 10 days' notice from the Property Owners Association, the Association may cause the noxious weeds to be controlled. The cost and expense associated with such weed management shall be assessed to the lot and such assessment may become a lien if not paid within thirty (30) days of the mailing of such assessment.

Nothing herein shall require or obligate the Gallatin County Weed District to undertake any management or enforcement on behalf of the Property Owners Association or Property Owners that is not otherwise required by law, or the rules, regulations, and management Plans of the Gallatin County Weed District.

**ARTICLE X**  
**Insurance; Damage or Destruction; Condemnation**

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

- A. A hazard policy insuring all improvements, equipment, and fixtures owned by the Association, unless the Board determines, in its' sole discretion, that such insurance is not necessary;
- B. A comprehensive general liability policy insuring the Association, its agents, the Owners and their respective family Members, against liability incident to the ownership or use of the Common Area or any other Association owned or maintained real or personal property (in occurrence version form, if obtainable); the amount of general liability insurance which the Association shall carry at all times shall be not less than the minimum amounts required by Montana law;
- C. Workers' compensation insurance to the extent required by law (or such greater amount as the Board deems necessary); the Association shall obtain a Certificate of Insurance naming it as an additional insured in regard to workers' compensation claims from any independent contractor who performs any service for the Association, if the receipt of such a certificate is practicable;
- D. Fidelity bonds or insurance covering officers, directors, and employees that have access to any Association funds;
- E. Officers and directors liability insurance in the minimum amounts required by Montana law;

- F. Such other insurance as the Board in its discretion considers necessary or advisable.

Each Owner appoints the Association or any insurance trustee designated by the Association to act on behalf of the Owners in connection with all insurance matters arising from any insurance policy maintained by the Association, including, without limitation, representing the Owners in any proceeding, negotiation, settlement or agreement. Any insurance maintained by the Association shall contain “waiver of subrogation” as to the Association and its officers, directors and Members, the Owners and occupants of the Lots (including Declarant) and Mortgagees, and cross-liability and severability of interest coverage insuring each insured against liability to each other insured. The Association shall periodically (and not less than once every three (3) years) review all insurance policies maintained by the Association to determine the adequacy of the coverage and to adjust the policies accordingly.

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

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

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

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

## **ARTICLE XI**

### **Annexation and Withdrawal Of Property**

11.1 Annexation Without Approval of Owners. So long as Declarant owns any property described in Exhibit A (as amended from time to time), Declarant may from time to time unilaterally subject all or any portion of any other property to the provisions of these Covenants. 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 Project and that such transfer is memorialized in a written instrument executed by Declarant and recorded in the records of the Gallatin County Clerk and Recorder's Office in Gallatin County, Montana. Annexation shall be accomplished by recording supplemental covenants in the records of the Gallatin County Clerk and Recorder's Office in Gallatin County, Montana, annexing such property into Exhibit A of these Covenants.

11.2 Annexation With Approval of Owners. The Association may annex real property pursuant to the provisions of these Covenants by the affirmative vote (in person or by proxy) or written consent of Members representing a majority of the total voting power of the Association and the consent of the Declarant (so long as Declarant owns property subject to these covenants or which may be subject to these Covenants in accordance with Section 11.1). Annexation shall be accomplished by recording a supplemental covenants in the records of the Gallatin County Clerk and Recorder's Office in Gallatin County, Montana, annexing such property into Exhibit A to these Covenants. Any such supplemental covenants shall be signed by the President and Secretary of the Association, and by the Owner of the annexed property. Any such annexation shall be effective upon filing unless otherwise provided therein.

11.3 Withdrawal of Property. Declarant reserves the right to amend these Covenants so long as it has a right to annex additional property pursuant to this Article XI, without the prior notice or consent of any person, for the purpose of removing property then owned by the Declarant, its affiliates, or the Association from the coverage of these Covenants, to the extent originally included in error or as a result of any changes in Declarant's plans for the Project. Common Areas designated as open space on any final plat for the Project, as approved by Gallatin County, Montana and recorded in the records of the Gallatin County Clerk and Recorder's Office in Gallatin County, Montana may be withdrawn only if restricted as permanent open area upon which future inconsistent development would not be permitted.

11.4 Additional Covenants and Easements. Declarant may unilaterally subject any portion of the Project submitted to these Covenants initially or by supplemental covenants to additional covenants and easements, including without limitation, covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay costs incurred by the Association. Such additional covenants and easements shall be set forth in a supplemental covenants 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.

11.5 Amendment. This Article shall not be amended without the prior written consent of Declarant so long as Declarant owns any of the Project or has the right to annex additional property into these Covenants.

## **ARTICLE XII**

### **Mortgagee Provisions**

12.1 Notice. An institutional holder, insurer, or guarantor of a first Mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates, thereby becoming an “Eligible Holder”), will be entitled to timely written notice of:

- A. Any condemnation loss or any casualty loss which affects a material portion of the Common Area or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder.
- B. Any delinquency in the payment of assessments or charges owed by a Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Covenants or Bylaws relating to such Lot or the Owner or occupant which is not cured within sixty (60) days. Notwithstanding this provision, any Eligible Holder is entitled to written notice upon request from the Association of any default in the performance by an Owner of a Lot of any obligation under the Covenants or Bylaws which is not cured within sixty (60) days.
- C. Any lapse, or cancellation without renewal or replacement, or material adverse modification of any insurance policy maintained by the Association.
- D. Any proposed action which would require the consent of a specified percentage of Eligible Holders.

## **ARTICLE XIII**

### **General Provisions**

13.1 Enforcement. Subject to the provisions and requirements of this Declaration, the Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration, the Articles and the Bylaws, and in such action, shall be entitled to recover reasonable attorney’s fees, as are ordered by the Court. The Association has the right to record a Notice of Violation against the Lot of an Owner who is not in compliance with

the provisions of the Project Documents. Failure by the Association, or by any Owner, to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

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

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

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

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

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

as a residential community and disposing of the same by sale, including a sales office and design center; or

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

The foregoing rights of Declarant shall, except as provided in Section 13.5F, terminate upon the sale by Declarant of all Lots in the Project. Until such time, said rights shall constitute easements reserved by Declarant for the benefit of Declarant and any Lots or property owned by Declarant with the Project.

So long as Declarant, or its successors or assigns, owns one (1) or more of the Lots described herein, Declarant, or its successors and assigns, shall be subject to the provisions of this Declaration. Declarant shall make reasonable efforts to avoid disturbing the use and enjoyment of Lots and the Common Area by their Owners, while completing any work necessary to said Lots or Common Area.

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

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

In the event of a violation of the Project Documents, the Association may record a Notice of Violation against the Lot of the noncomplying Owner. Upon recording a Notice of Violation,

the Association shall have complete discretion in deciding whether, when and how to proceed with enforcement, and any delay after recording a Notice of Violation shall not give rise to a defense of waiver or estoppel in favor of a noncomplying Owner. The Association may take action to enforce compliance against a subsequent Owner who acquires a Lot with a recorded Notice of Violation. The right of the Association to record a Notice of Violation shall be in addition to all other rights and remedies the Association may have a law or under the Project Documents.

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

13.8 Notice. Any notice permitted or required by the Declaration, Articles or Bylaws may be delivered either personally, by mail or by email. If delivery is by mail, it shall be deemed to have been delivered three (3) days after a copy of the same has been deposited in the United States mail, first class or registered, postage prepaid, addressed to the person to be notified at the current address given by such person to the Secretary of the Board or addressed to the Lot of such person if no address has been given to the Secretary. If delivery is by email, it shall be deemed to have been delivered upon confirmation of receipt indicated by the sender's computer, sent to the email address given by the person to the Secretary of the Board.

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

13.10 Alternative Dispute Resolution. Alternative dispute resolution procedures shall be applicable and implemented, as provided in Article XIV hereof.

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

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

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

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

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



## **ARTICLE XIV Enforcement**

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

### 14.2 Enforcement and Non-Waiver.

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

14.3 Agreement to Avoid Litigation. The Declarant, the Association, its officers, directors, and committee members, all Persons subject to this Declaration, any Builder, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively “Bound Parties”) agree to encourage the amicable resolution of disputes involving the Properties, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that those claims, grievances or disputes described in Section 14.4 (“Claims”) shall be resolved using the procedures set forth in Section 13.6 in lieu of filing suit in any court.

14.4 Claims. Unless specifically exempted below, all claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of the Project Documents, or the rights and duties of any Bound Party under the Project Documents or relating to the design or construction of improvements on the Lots shall be subject to the provisions of Section 14.5.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be claims and shall not be subject to the provisions of Section 14.5:

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

- B. any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article VI (Architectural Controls) and Article VII (Use Restrictions);
- C. any suit between Owners, which does not include Declarant or the Association as a part, if such suit asserts a Claim which would constitute a cause of action independent of the Project Document; and
- D. any suit in which any indispensable party is not a Bound Party.

14.5 Mandatory Procedures.

- A. Notice: Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (collectively the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:
  - (1) the nature of the Claim, including the Persons involved and Respondent's role in the Claim;
  - (2) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
  - (3) Claimant's proposed remedy; and
  - (4) that Claimant will meet the Respondent to discuss in good faith ways to resolve the Claim.
- B. Negotiation and Mediation:
  - (1) The parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation.
  - (2) If the parties do not resolve the Claim within thirty (30) days of the date of the Notice (or within such period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have thirty (30) days to submit the Claim to mediation under the auspices of an independent agency providing dispute resolution services in Montana.
  - (3) If Claimant does not submit the Claim to mediation within 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.

- (4) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within 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.
- (5) Within five (5) days of the Termination of Mediation, the Claimant shall make a final settlement demand (“Settlement Demand”) to the Respondent and Respondent shall make a final written settlement offer (“Settlement Offer”) to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant’s original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a “zero” or “take nothing” Settlement Offer.

C. Arbitration:

- (1) If the parties do not agree in writing to a settlement of the Claim within fifteen (15) days of the Termination of Mediation, the Claimant shall have fifteen (15) additional days to submit the Claim to arbitration in accordance with the rules of the American Arbitration Association. If not timely submitted to arbitration or if the Claimant fails to appear for the arbitration proceeding, the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided nothing herein shall release or discharge Respondent from any liability to Persons other than Claimant.
- (2) This subsection (C) is an agreement to arbitrate and is specifically enforceable under applicable arbitration laws. The arbitration award (the “Award”) shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Montana.

14.6 Allocation of Costs of Resolving Claims.

- A. Subject to Section 14.6(B), each party shall bear its own costs, including any attorney’s fees incurred, and each Party shall share equally all charges rendered by the mediator(s) and all filing fees and costs of conducting the arbitration proceeding (“Post Mediation Costs”).

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

14.7 Enforcement of Resolution. After resolution of any Claim, if any Party fails to abide by the terms of any agreement or binding Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the noncomplying Party (or if more than one (1) noncomplying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorney's fees and court costs.

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

## **ARTICLE XV Special Declarant Rights**

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

- A. To complete any improvements indicated on Plat Maps or development plans filed with the Declaration or the Master Plan on the Property or any Annexed Property;
- B. To exercise a Development Right;
- C. To maintain sales offices, management offices, signs advertising on the Project, as set forth in Section 15.3;
- D. To use easements through the Common Area for the purpose of making improvements within the Project;

- E. To operate a resale or rental office onsite after all the Lots have been developed, sold and completed; and
- F. To exercise any rights granted to the Declarant by these Covenants.

15.2 Transfer of Special Declarant Rights.

- A. Assignment: Declarant may assign any Special Declarant Rights, Development Rights, or other special rights and obligations of Declarant set forth in this Declaration or the Bylaws to any affiliate of Declarant, or Declarant may allow any affiliate of Declarant to exercise such rights on behalf of Declarant. The method of exercising such rights shall be subject to the agreement of the parties thereto, which shall not require recordation in the Public Records.
- B. Transfer: Any or all Special Declarant Rights identified in this section, Development Rights, or any of the other special rights and obligations of Declarant set forth in this Declaration or the Bylaws may be transferred in whole or in part to other Persons, provided that the transfer shall not reduce an obligation, nor enlarge a right beyond that which Declarant has under this Declaration or the Bylaws. No such transfer shall be effective, unless it is in a written instrument signed by Declarant and duly recorded in the Public Records.

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

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

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

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

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

- A. Limits the access of Declarant, its successors, assigns and/or affiliates or their personnel from advertising, marketing, or using the Association or its Common Areas or any property owned by any of them in promotional materials;
- B. Limits or prevents Declarant, its successors, assigns and/or affiliates or their personnel from advertising, marketing, or using the Association or its Common Areas or any property owned by any of them in promotional materials;
- C. Limits or prevents Owners of Units from becoming members of the Association or enjoying full use of its Common Areas, subject to the membership provisions of this Declaration and the Bylaws;
- D. Discrimination against or singles out any group of Association members or prospective members or Declarant that discriminates against or singles out any group or Association members or Declarant;
- E. Impacts the ability of Declarant, its successors, assigns and/or affiliates, to carry out to completion its development plan and related construction activities for the Project as such may be amended and updated from time to time, including Declarant's right to easements for development and construction of residential units and related landscaping activities; or
- F. Impacts the ability of Declarant, its successors, assigns and/or affiliates to develop and conduct customer service programs and activities in a customary and reasonable manner. The Association shall not exercise its authority over the Common Areas (including, but not limited to, any gated entrances and other means of access to the Project) to interfere with the rights of Declarant set forth in this Declaration or to impede across to any portion of the Project over the streets and other Common Areas within the Project.

15.8 Amendment. This Article shall not be amended without the prior written consent of Declarant, so long as Declarant owns any property described in Exhibit A (as amended from time to time). The rights contained in this Article shall terminate as specifically provided in the Act, or upon the earlier of (a) twenty (20) years after the conveyance of the first Lot to an Owner, or (b) upon recording by Declarant of a written statement that all sales activity has ceased. Thereafter, Declarant may continue to use the Common Area for purposes stated in this Article only pursuant to a rent or lease agreement between Declarant and the Association, which provides for rental payments based on the fair market value of any such portion of the Common Areas.

## **ARTICLE XVI Requirements of Gallatin County**

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

### **PART I:**

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

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

- D. Lot owners and residents of the subdivision are informed that nearby uses may be agricultural. Lot owners accept and are aware that standard agriculture and farming practices can result in smoke, dust, animal odors, flies and machinery noise. Standard agricultural practices feature the use of heavy equipment, burning, chemical sprays and the use of machinery early in the morning and sometimes late into the evening.
- E. All fences bordering agricultural lands shall be maintained by the property owners, in accordance with state law.

- F. All garbage shall be stored in animal proof containers or be made unavailable to animals.
- G. All areas disturbed by construction shall be reseeded with vegetation types approved by the Gallatin County Weed Control Officer.

PART II:

The Declarant hereby agrees to restrict the use and title of the real property within the Project as follows:

- A. There shall be no construction or placement of buildings or mobile homes, fences, signs, billboards or other advertising material, or other structures, whether temporary or permanent on the Land (with the exception of signage and/or benchmarks identifying the boundaries of the areas described as the Stream Mitigation Areas on Exhibit B.)
- B. There shall be no filling, draining, excavating, dredging, mining, drilling or removal of topsoil, loam, peat, sand, gravel, rock, minerals or other material.
- C. There shall be no building of roads or paths, nor any change in the topography of the Land.
- D. There shall be no removal, destruction, or cutting of trees or plants, spraying with biocides, insecticides, pesticides, or herbicides (except to control noxious weeds), grazing of animals, farming, tilling of soil, or other agricultural activity.
- E. There will be no operation of snowmobiles, motorcycles, all terrain vehicles or any other type of motorized vehicles within the Project.
- F. No water may be removed from any irrigation ditch, canal, or other water conveyance facility without a water right, permit, or written lease agreement with the appropriate water users and/or water conveyance facility's authorized representatives.
- G. The Association shall remove any trash or debris that originated from within the subdivision and has accumulated in the water conveyance facilities passing through the subdivision by no later than May 1<sup>st</sup> of each year. If the Association fails to remove the trash or debris as described above, the water users and/or water conveyance facility's authorized representatives may cause the trash or debris to be removed and bill the Association for such efforts.
- H. The Association shall be financially responsible for installing, maintaining, and repairing all irrigation ditches or water lines to insure adequate water flow to the downstream water rights holders. This includes removal of any trash or debris that



originated from within the Subdivision and has accumulated in the water conveyance facilities passing through the property by no later than May 1<sup>st</sup> of each year. If the Association fails to remove the trash or debris as described above, the water users and/or water conveyance facility's authorized representative may cause the trash or debris to be removed and bill the Association for such efforts.

- I. Lot Owners are hereby notified of the water users, water conveyance facility's authorized representatives and/or their designee's right to access the property to maintain and repair the water conveyance facilities (this includes, but is not limited to, placement of excavated material, removal of vegetation and debris along the water conveyance facility); to install, repair, and or adjust headgates and other diversion structures; and to carry out other normal means of repair and maintenance related to the ditch/canal.
- J. To assure non-interference with water conveyance facilities, any new structures (other than structures for the maintenance and operation of the water conveyance facility), fences, landscaping (other than grass), or roads, may not be installed or erected within the water conveyance facility, except where agreed to in writing by the water users and/or water conveyance facilities authorized representatives.
- K. No water may be removed from any irrigation ditch, canal, or other water conveyance facility without a water right, permit, or written water lease agreement with the appropriate water users and/or water conveyance facility's authorized representative.
- L. Lot purchasers are hereby notified that Montana law provides specific protections in regard to liability and nuisance claims for agricultural operations and irrigators. Those specific protections include, but are not limited to Section 85-7-2211, MCA; Section 85-7-2212, MCA; and Section 27-30-101, MCA.
- M. Any covenant which is included herein as a condition of the preliminary plat approval and required by the Manhattan Town Council shall not be amended or revoked without the mutual consent of the owners, in accordance with the amendment procedures in the covenants, and the Manhattan Town Council.

## **ARTICLE XVII**

### **Fire Protection**

The Project receives fire protection services from the Manhattan Fire District ("Fire District"). The Project has adopted a comprehensive First Protection Plan (Plan) for protection of the Project. The Plan is shown on Exhibit C attached and may be modified from time to time by the Declarant or the Association working in conjunction with the Fire District.

*[Instrument Continues on Following Page]*

IN WITNESS WHEREOF, Declarant has executed this Declaration this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

DECLARANT:

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
:ss  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_ by \_\_\_\_\_ in his/her capacity as \_\_\_\_\_ of \_\_\_\_\_, Declarant .

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

\_\_\_\_\_  
\_\_\_\_\_  
Notary Public for the State of \_\_\_\_\_  
Residing at \_\_\_\_\_ (City/State)  
My Commission Expires: \_\_\_\_\_

**EXHIBIT A**  
**(Legal Description Initial Phase)**

**EXHIBIT B**  
**(see attached Plat of Project)**

**EXHIBIT 1**  
**(see attached Map)**

**EXHIBIT C**  
**(Fire Protection Plan)**

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

2.0 With the final plat approval, a summary fire protection note approved by the FPAHJ Manhattan Fire District, was recorded in the final plat. The following language shall appear on the final plat stating:

3.0 Fire protection Water Supply System.

3.1 The developer shall provide a Fire Protection Water System in The Manhattan Meadows Subdivision consisting of:

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

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

4.0 Fire Protection Covenants for The Manhattan Meadows Subdivision.

4.1 General Fire Protection Requirements:

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

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

Any action by the FPAHJ required to enforce any of these fire protection requirements and covenants shall be at the expense of the property owners.

- 4.1.3 Private property driveways shall be installed and operational prior to occupancy.
- 4.1.4 Residential address signage shall incorporate six-inch (6”) address numbers, with such numbers being made of material with the same reflectivity as Scotch lite 3M products, on a contrasting metal surface, supported by a three foot (3’) above grade elevation by a metal support. Signs shall be posted at the intersection of the driveway and the subdivision roadway. The address signs shall face both directions of travel of the roadway serving the driveway. Driveways off cul-de-sac roadways shall post a minimum of one (1) sign facing the direction of travel toward the driveway. The address sign shall be posted a minimum of three feet (3’) above ground level. Addresses shall be posted at the street prior to any construction activity.
- 4.1.5 All buildings shall be built in compliance with the current editions of the Uniform Fire Code and Uniform Building Code or successor fire and/or building codes adopted by the authorities having jurisdiction.
- 4.1.6 Maintenance and fire department use of Fire Protection Features, such as fire suppression water supply, accesses to open spaces, etc., must be maintained at a minimum of the original performance capability, in perpetuity by and at the expense of the property owners. Performance of all fire protection water supply features shall be tested (using accepted field measures) and certified annually by a professional engineer. Said engineer must be licensed in Montana and approved by the FPAHJ. The results of the annual test shall be submitted in writing to the FPAHJ.
- 4.1.7 The fire department shall have unrestricted use, in perpetuity and at no cost to the fire department, of the fire protection features described herein, including, but not limited to, water sources pumps, and hydrants.
- 4.1.8 Alternative Fire Protection Features or Systems may be approved by the FPAHJ. The alternative may be approved only where they provide fire protection equivalent to or greater than specific features required in these regulations.
- 4.1.9 Fire Apparatus shall be able to park on a roadway, driveway, or parking area within one hundred and fifty feet (150’) of all parts of the exterior of the building.

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

## 4.2 Construction Requirements for Structures

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

4.2.2 Attic and Sub-Floor Ventilation: Vents shall be screened with a corrosion-resistant, noncombustible wire mesh with the mesh opening not to exceed nominal 1/4 inches (1/4") (6.35mm) in size.

4.2.3 Eaves: Eaves shall be constructed with a two-inch (2") (12.7mm) nominal sheathing or noncombustible materials, or otherwise designed to minimum the potential to trap burning embers.

4.2.4 Overhanging Projections: Porches, decks, patios, balconies, and similar undersides of overhangs shall be enclosed or constructed in a manner similar to 4.2.3 above, to minimize the potential trap burning embers.

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

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

4.2.6 Windows: Exterior windows, window walls and skylights shall be tempered or multilayered glazed panels.

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

4.2.8 Chimney and Flues:

4.2.8.1 Outlet Screen: Every fireplace and wood stove chimney and flue shall be provided with an approved spark arrestor, constructed of a minimum of twelve (12) gauge welded wire or woven wire mesh, with openings not to exceed two inches (2") (12.7mm) in size.



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

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

4.3 The Design Review Committee shall develop a list of recommended trees and shrubs and ground cover, in consultation with local Landscape Architects, landscape horticulturists, and other professionals having knowledge of plant performance. The purpose of this list is twofold:

To assure that plants chosen for The Manhattan Meadows Subdivision are visually appropriate to the setting and well adapted to the soils and climate conditions there.

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

**BYLAWS OF  
THE MANHATTAN MEADOWS  
HOMEOWNERS' ASSOCIATION**

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# **BYLAWS OF THE MANHATTAN MEADOWS HOMEOWNERS' ASSOCIATION**

## **ARTICLE I**

### **Name**

The name of the corporation is The Manhattan Meadows Homeowners' Association, hereinafter referred to as the "Association."

## **ARTICLE II**

### **Definitions and Governance**

2.1 The definitions contained in the Declaration are incorporated by reference herein.

2.2 "Declaration" shall mean and refer to the First Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for The Manhattan Meadows Subdivision recorded on \_\_\_\_\_, as Document No. \_\_\_\_\_, in the Office of the Clerk and Recorder of Gallatin County, state of Montana, as such may be amended from time to time ("Declaration.")

## **ARTICLE III**

### **Declarant to Initially Control**

3.1 Declarant to Control Association. Declarant shall control all rights and privileges set forth in the Declaration and these Bylaws until the earlier of the following to occur: (a) ninety percent (90%) of the Lots are sold from Declarant to third parties; or (b) Declarant delivers written notice to the Association that Declarant is voluntarily relinquishing its rights set forth in this Section 3.1. Until such time, no Member, other than Declarant, shall be entitled to vote and Declarant shall be solely entitled to elect and remove all directors and officers and enforce all of the obligations set forth in the Declaration and these Bylaws. When ninety percent (90%) of the Lots are sold from Declarant to third parties, or Declarant relinquishes its rights as described herein, then the Members shall obtain the voting rights set forth in the Declaration and these Bylaws.

## **ARTICLE IV**

### **Meeting Of Members And Voting**

4.1 Membership and Voting. Membership shall be held as provided in the Declaration. Each Member shall be entitled to one (1) vote for each Lot or Unit (in the event of a duplex or multi-family dwelling) owned within the Property, as set forth in the Declaration. Notwithstanding the foregoing, Declarant shall be a Member and shall be entitled to two (2) votes for each Lot owned within the Property and each Lot planned in the Master Plan, including subsequently planned future phases of the Project.

4.2 Annual Meeting. The annual meeting of the Members shall be held in the month of December, at a date, time and place to be set by the Board. The first annual meeting shall be

held in December following the date when either (i) ninety percent (90%) of the Lots are sold from the Declarant to a third party, or (ii) Declarant voluntarily relinquishes its rights under Section 3.1.

4.3 Special Meetings. Special meetings of the Members shall be promptly scheduled at any time by the Board in response to the vote of the Board, or a request by the President, or upon written request of five percent (5%) of total Lot votes of the Members.

4.4 Notice and Place of Meetings. Written notice of each meeting of the Members, annual or special, shall be given by, or at the direction of, the secretary or manager, by personal delivery or mailing a copy of such notice, first class mail, postage prepaid, at least thirty (30) days, but not more than sixty (60) days before such meeting to each first lienholders requesting notice and to all Members, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting. If action is proposed to be taken at any meeting for approval of any proposals, the notice shall also state the general nature of the proposal. Member action on the following items is invalid, unless the notice states the general nature of the proposal(s): (a) removing or electing a director; (b) amending the Declaration or Bylaws ("Governing Documents"); (c) approving a conflict of interest transaction with a director; (d) indemnification of officers, employees or agents; (e) merger; (f) sale of assets; (g) dissolution; or (h) increasing the regular Assessment by over twenty percent (20%), or imposing a special Assessment in excess of ten percent (10%) of the budgeted gross expenses of the Association. Meetings shall be held within the Property or at a meeting place within the same county, as close to the Property as possible.

4.5 Quorum. The presence, either in person or by proxy, at any meeting, of a majority of the total outstanding Lot votes of the Members shall constitute a quorum for any action, except as otherwise provided in the Governing Documents. If, however, such quorum shall not be present or represented at any meeting, the Members thereat shall have power to adjourn the meeting to a date not less than five (5) days and not more than thirty (30) days later. Notice of the time and place of the adjourned meeting shall be given to Members in the manner prescribed for special meetings. The quorum for such adjourned meeting shall not be less than one third (1/3) of the Lot votes of the Members.

4.6 Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his or her Unit, or upon receipt of written notice by the secretary or the manager of the death or judicially declared incompetence of a Member, or upon the expiration of eleven (11) months from the date of the proxy. Any form of proxy distributed by any persons to the Members shall afford the opportunity to specify a choice between approval and disapproval of each matter to be acted upon. The proxy shall provide that, where the Member specifies a choice, the vote shall be cast in accordance with that choice. The proxy also shall identify the person or persons authorized to exercise the proxy and the length of time it will be valid. In addition, voting by proxy shall comply with any other applicable requirements of Montana Code Annotated Section 35-2-539.

4.7 Conduct of Meetings. Meetings of the Members shall be conducted in accordance with a recognized system of parliamentary procedure adopted by the Board. Notwithstanding any other provision of law, notice of meetings of the Members shall specify those matters the Board intends to present for action by the Members, but, except as otherwise provided by law, any proper matter may be presented at the meeting for action.

4.8 Action Without Meeting. Any action that may be taken at any annual or special meeting of Members (except for the election or removal of directors) may be taken without a meeting in accordance with the provisions of Montana Code Annotated Section 35-2-529. Any form of written ballot distributed by any persons to the Members shall afford the opportunity to specify a choice between approval and disapproval of each matter to be acted upon.

## **ARTICLE V**

### **Directors**

5.1 Number and Qualification. The affairs of this Association shall be managed by a Board of at least three (3), and not more than five (5), Directors and other than Directors appointed or elected by Declarant, all Directors must be Members in good standing. For the purposes of this section, good standing means current in the payment of Assessments and in compliance with the Governing Documents. Where more than one (1) person owns a Lot, only one (1) owner from that Lot may serve on the Board.

5.2 Election. Initially, the directors shall be appointed by the Declarant and need not be Members. After the date when ninety percent (90%) of the Lots planned for the overall Project (including subsequently planned phases) are sold from the Declarant to a third party or Declarant voluntarily relinquishes its rights pursuant to Section 3.1, the election of the Board shall be conducted at the annual meeting of the Members. At such election, the Members or their proxies may cast their vote(s) for each vacancy. The persons receiving the largest number of votes shall be elected. There shall be no cumulative voting. Voting for directors or for their removal shall be by secret written ballot.

5.3 Term. After the date when ninety percent (90%) of the Lots planned for the overall Project (including subsequently planned phases) are sold from the Declarant to a third party or Declarant voluntarily relinquishes its rights pursuant to Section 3.1, the term of three (3) directors shall be for a term of two (2) years, and two (2) directors shall be elected for a term of one (1) year. Unless vacated sooner, each director shall hold office until the director's term expires and a successor is elected.

5.4 Removal; Vacancies. Any director may resign by giving notice to the Board. Any director, except a director appointed by the Declarant, may be removed by the vote of a majority of the Members. Notwithstanding anything to the contrary contained in this paragraph, any director, except a director appointed by the Declarant, who fails to attend three (3) consecutive Board meetings or becomes ninety (90) days delinquent in the payment of assessments may be removed from office by a vote of the Board, and the successor director shall be chosen by the Board. If a director dies or resigns, the vacancy shall be filled by the Board at a duly held meeting, or by the sole remaining director. The Members may elect a director at any time to fill any vacancy

not filled by the Board. A vacancy created by the removal of a director by the Members can only be filled only by election by the Members. A successor director shall serve for the unexpired term of his or her predecessor.

5.5 Compensation. No director shall receive compensation for any service rendered to the Association as a director. However, any director may be reimbursed for his or her actual expenses, if reasonable, incurred in the performance of his or her duties.

5.6 Indemnification. The Association shall indemnify any present or former director or officer of the Association to the fullest extent authorized under Montana Code Annotated Sections 35-2-447 and 35-2-452, or any successor statutes.

## **ARTICLE VI Meeting Of Directors**

6.1 Regular Meetings. Regular meetings of the Board shall be held quarterly, or as often as deem necessary by the Board, at such time as may be fixed from time to time by resolution of the Board.

6.2 Special Meetings. Special meetings of the Board may be called by the president, vice president, or any two (2) Directors.

6.3 Notice and Place. Board meetings shall be held on the Property, or a meeting within the County, as close to the property as possible. Notice of the time and place of regular and special meetings of the Board shall be given to each director at least four (4) days by first class mail, or two (2) days if delivered personally, or by telephone or other electronic means prior to the meeting. For a special meeting, the notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director by one (1) of the following methods: (a) by personal delivery; (b) written notice by first class mail, postage prepaid; (c) by telephone communication, including a voice message system or other system or technology designed to record and communicate messages, telegraph, facsimile, electronic mail or other electronic means, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director. All such notices shall be given or sent to the director's address, email address, or telephone number, as shown on the records of the Association. Notice of all Board meetings, except emergency meetings, shall be given to the Members by posting in prominent places in the Common Element, by mail, or by newsletter, at least four (4) days prior to the meeting. In addition, notice shall be mailed at least four (4) days prior to the meeting to any Member who has requested notification of Board meetings by mail, at the address requested by the Member.

6.4 Quorum. A majority of the directors shall constitute a quorum for the transaction of business. Every act performed, or decision made, by a majority of the directors present a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

6.5 Open Meetings. All meetings of the Board shall be open to all Members, and the Board shall permit any Member to speak at any meeting of the Board, except for meetings of the



Board held in executive session. The board shall establish a reasonable time limit for all Members to speak before a meeting of the Board.

6.6 Executive Session. The Board may meet and convene in executive session to discuss and vote upon personnel matters, litigation in which the association is or may become involved, and matters relating to the formation of contracts with third parties. Matters involving Member discipline or assessment payments shall be held in executive session and the Members involved are entitled to attend. Any matter discussed in executive session shall be generally noted in the minutes of the immediately following open meeting.

6.7 Telephone Attendance. In the case of absence, a director may participate in a Board meeting by conference telephone, so long as all directors and Members participating in the meeting can communicate with one another.

6.8 Action Without Meeting. In the case of an emergency, any action required or permitted to be taken by the Board may be taken without a meeting if all directors consent in writing to the action. Such action by written consent shall have the same force and effect as a unanimous vote of the Board. Such written consent or consents shall be filed with the minutes of the proceedings of the Board. An explanation of the action taken shall be reported in the minutes and posted at a prominent place or places with the Common Elements within seven (7) days after the written consent of all directors have been obtained.

## **ARTICLE VII**

### **Powers and Duties of the Board Of Directors**

7.1 Powers and Duties. It shall be the exclusive duty of the Board to exercise all powers and duties of the Association, as expressed in the Governing Documents, and to manage and conduct the affairs of the Association, except as expressly reserved to a vote of the Members. Such powers and duties shall include, but are not limited to, the following:

- A. To enforce the provisions of the Governing Documents by appropriate action.
- B. To levy Assessments as allowed by the Declaration, these Bylaws and the State of Montana, and to provide for the collection, expenditures and accounting of said Assessments.
- C. To pay for the expenses of the maintenance, repair and upkeep of the common roads and parks.
- D. To provide a means of hearing grievances and foreclosure proceedings of Unit Owners and to observe all due process requirements imposed upon owners associations for condominiums.
- E. To meet at regularly scheduled times and hold such meetings open to all Members or their agents.

- F. To levy and collect special Assessments whenever, in the opinion of the Board, it is necessary to do so in order to meet increased operation or maintenance expenses, costs, or additional capital expenses, or because of emergencies.
- G. To take appropriate legal action to collect any delinquent Assessments, payments or amounts due from Lot Owners or from any person or persons owning money to the Association, and to levy a penalty and to charge interest on unpaid amounts due and owing.
- H. To defend in the name of the Association any and all lawsuits wherein the Association or Condominium is a party defendant.
- I. To enter into contracts with third parties to carry out the duties herein set forth, for and on behalf of the Association.
- J. To establish bank accounts and to keep therein all funds of the Association. Withdrawal of monies from such accounts shall only be by checks signed by such persons as are authorized by the Board of Directors.
- K. To establish rules and regulations for conduct, behavior and use of any common areas.
- L. In general, to act for and carry on the administration and affairs of the Association, as authorized and prescribed by the Declaration and to do all those things which are necessary and reasonable in order to carry out the governance and operation of The Manhattan Meadows Subdivision.
- M. To exercise all the powers generally granted to a Montana nonprofit corporation under Montana Code Annotated Section 35-2-118.

7.2 Enforcement (Notice and Hearing). The Board shall have the power to enforce the Governing Documents, provided that any Lot Owner charged with violating the Governing Documents, except for default in payment of Assessments, shall be entitled to a hearing before the Board. Notice of the hearing that shall include a description of the alleged violation and the potential remedies, therefore, shall be given to the Member at least ten (10) days prior to the meeting. Notice shall be given by personal delivery or by first class mail. The Board shall inform the Member of any disciplinary action within fifteen (15) days following the hearing.

## **ARTICLE VIII**

### **Officers and their Duties**

8.1 Enumeration of Officers. The officers of this Association shall be a president, treasurer and secretary. The Directors may also elect such other officers as they deem necessary. The duties of these officers shall be established by the Board of Directors.

8.2 Election and Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year and until his or her successor is elected.

8.3 Resignation and Removal. Any officer may be removed from office (but not from the Board if he or she is also a director) either with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, or the manager. Such resignation shall take effect at the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

8.4 Vacancies. A vacancy in any office may be filled by the Board. The officer appointed to such vacancy shall serve the remainder of the term of the officer he or she replaces.

## **ARTICLE IX Books and Records**

9.1 Inspection by Members. The membership register (including names, mailing addresses, and voting rights), accounting books and records, and minutes of meetings of the Members, of the Board (including drafts and summaries), and of committees shall be made available for inspection and copying by any Member, or by his or her duly appointed representative, at any reasonable time and for a purpose reasonably related to his or her interest as a Member, at the office of the Association.

9.2 Rules for Inspection. The Board shall establish reasonable rules with respect to: (a) notice to be given to the custodian of the records by the Member desiring to making the inspection; (b) hours and days of the week when such an inspection may be made; and (c) payment of the cost of assembling and reproducing copies of documents requested by a Member.

9.3 Inspection by Director. Every director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extracts and copies of documents, at the expense of the Association.

## **ARTICLE X Miscellaneous**

10.1 Amendment of These Bylaws. Until ninety percent (90%) of the Lots planned for the overall Project (including subsequently planned phases) are sold from the Declarant to a third party of Declarant voluntarily relinquishes its rights under Section 3.1, Declarant may amend these Bylaws. After ninety percent (90%) of the Lots planned for the overall Project (including subsequently planned phases) are sold from the Declarant to a third party or Declarant voluntarily relinquishes its rights under Section 3.1, these Bylaws may be amended only by the affirmative vote or written consent of sixty-six and two thirds percent (66 2/3%) of the total available Lot votes of the Members.

10.2 Conflicts. In the case of any conflict between the Articles and the Bylaws, the Articles shall control, and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

10.3 Fiscal Year. The fiscal year of the Association shall begin on the first day of January and end on the thirty first (31<sup>st</sup>) day of December of every year.

I, the undersigned, do hereby certify that these Bylaws were adopted as the Bylaws of The Manhattan Meadows Homeowners' Association on the \_\_\_\_\_ (\_\_\_<sup>th</sup>) day of \_\_\_\_\_, and that the same do hereby supersede and replace all previous Bylaws of said corporation.

**DECLARANT:**

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

**ATTEST**

**PRESIDENT:**

\_\_\_\_\_  
Todd Waller

**VICE PRESIDENT:**

\_\_\_\_\_  
Mark Easton

**SECRETARY/TREASURER:**

\_\_\_\_\_  
Jesse Chase