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Shelley Vance-Gallatin Co MT MISC 349.00

***DECLARATION
OF
BAXTER MEADOWS WEST
PROPERTY OWNERS ASSOCIATION***

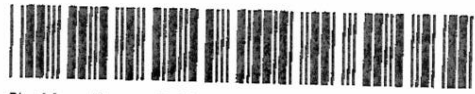


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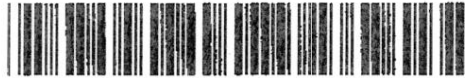
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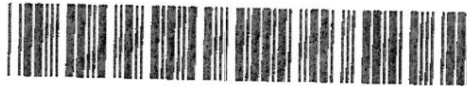
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**DECLARATION
OF
BAXTER MEADOWS WEST
PROPERTY OWNERS ASSOCIATION
(A PLANNED COMMUNITY)**

THIS DECLARATION is made on the date hereinafter set forth by Baxter Meadows West LLC, a Montana limited liability company (“Declarant”).

RECITALS

A. Declarant is the owner of certain real estate in the Gallatin County, State of Montana, which is more particularly described as set forth in *Exhibit A* attached hereto and by reference made a part hereof.

B. Declarant desires to create a planned community on the real estate described in *Exhibit A* under the name of “Baxter Meadows West Property Owners Association, Inc.,” in which portions of the real estate described in *Exhibit A* will be designated for separate ownership and uses of a residential nature and in which portions of the real estate are to be owned by an owners’ association.

C. Declarant has caused the “Baxter Meadows West Property Owners Association, Inc.,” a Montana nonprofit corporation, to be incorporated under the laws of the State of Montana, as an owners’ association, for the purpose of exercising the functions set forth in this Declaration.

NOW, THEREFORE, Declarant declares and states as follows:

**ARTICLE 1.
SUBMISSION/DEFINED TERMS**

Section 1.1 Submission of Property. The Declarant hereby submits the real estate described in *Exhibit A* and such additional real property as may be subsequently added, pursuant to the expansion rights reserved in this Declaration, together with and subject to all easements, rights, and appurtenances thereto and the buildings and improvements erected or to be erected thereon (collectively, the “Property”), and to the terms and conditions of this Declaration and the Baxter Meadows Master Community Declaration. Declarant hereby declares that all of the Property described in *Exhibit A*, and as added by expansion, shall be held or sold, and conveyed subject to the following easements, restrictions, covenants, and conditions. Declarant further declares that this Declaration is made for the purpose of protecting the value and desirability of the Property, that this Declaration shall run with the Property and shall be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, legal representatives, successors, and assigns and shall inure to the benefit of each Lot Owner thereof.

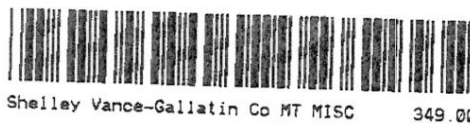
Section 1.2 Name and Type. The type of common interest community is a Planned Community. The name of the Association is the “Baxter Meadows West Property Owners Association, Inc.”



Section 1.3 Property. The Community is located in the Gallatin County, State of Montana. The initial Property of the Community is described in *Exhibit A*. The Community may be subject to easements or licenses granted pursuant to this Declaration, or granted by authority reserved in any recorded document.

Section 1.4 Defined Terms. Each capitalized term in this Declaration or in the Plat shall have the meaning specified below, unless otherwise defined in this Declaration:

- A) **Baxter Meadows Master Community Association Building and Landscape Review Committee**, or "**BLRC**", means the committee appointed by the President of the Board of Directors of the Baxter Meadows Master Community Association whose function is to review and approve or disapprove plans, specifications, designs, landscaping, sites and locations of improvements to be constructed or erected on any lot within the Property as such applications may relate to the Baxter Meadows Master Community Association Building and Landscape Design Regulations and Guidelines. At the BLRC's discretion, said functions may be performed by a contracted party suitably qualified for performance of such roles.
- B) "**Assessment**" shall include all common expense assessments, insurance assessments, utility assessments, and any other expense levied to a Lot pursuant to this Declaration or the Act.
- C) "**Association**" shall mean Baxter Meadows West Property Owners Association, Inc., a Montana nonprofit corporation, and its successors.
- D) "**Common Elements**" shall mean all real property owned by the Association for the common use and enjoyment of the Owners and such property as Declarant may convey to the Association.
- E) "**Common Expense**" shall mean any expenditure made or a liability received by or on behalf of the Association, together with any allocations to reserves.
- F) "**Common Expense Assessment**" shall mean the Assessment for allocation of Common Expenses among the Lots and Owners, as provided in this Declaration and the Act.
- G) "**Community**" shall mean the planned community known as "Baxter Meadows West," and the real property subject to this Declaration and as further defined by the recorded plats and the legal descriptions contained therein, and the Members of the Association.
- H) "**Declarant**" shall mean the Declarant named in this Declaration, and any successor and/or assignee designated by written notice or assignment executed by the Declarant designated in this Declaration and executed by the transferee and recorded, to the extent any rights or powers reserved to Declarant are transferred or assigned to that party.
- I) "**Development**" or "**Special Declarant Rights**" shall mean those rights set forth in this Declaration.



- J) **“Executive Board,” “Board” or “Board of Directors”** shall mean the body, regardless of name, consisting of five members, designated in this Declaration to act on behalf of the Association.
- K) **“Exhibit B”** shall mean and refer to *Exhibit B* as attached to and incorporated in this Declaration, and as Exhibit B may be amended or supplemented, from time to time.
- L) **“Governing Documents”** shall mean this Declaration, the Plat, any Map, the Articles of Incorporation, the Bylaws, and any Rules and Regulations of the Association, as all of the foregoing may be amended from time to time.
- M) **“Improvement(s)”** shall include, but not exclusively, all buildings, outbuildings, bridges, roads, trails, pathways, driveways, parking areas, fences, screening walls and barriers, retaining walls, stairs, decks, water lines, sewer lines, springs, ponds, swimming pools, tennis courts, lagoons, ditches, viaducts and electrical, gas and TV distribution facilities, hedges, windbreaks, plantings, natural or planted turf, trees and shrubs, poles, signs, loading areas and all other structures, installations and landscaping of every type and kind, whether above or below the land surface.
- N) **“Limited Common Elements”** shall mean those portions of the Common Elements, if any, designated by Declarant for the exclusive use of one or more but fewer than all of the Lots.
- O) **“Lot” or “Unit”** shall be defined to enable these terms to be used interchangeably, as appropriate, and shall mean and refer to any plot of land shown upon any recorded subdivision Map or Plat of the Property with the exception of Common Elements, if any.
- P) **“Map”** shall mean and refer to recorded map(s) of the Property and Improvements that are subject to this Declaration. More than one map or supplement thereto may be recorded, and, if so, then the term “Map” shall collectively mean and refer to all maps and supplements thereto.
- Q) **“Master Declaration”** shall mean the Community Declaration for Baxter Meadows Master Community.
- R) **“Member”** shall mean and refer to those persons entitled to membership as provided in the Bylaws and as set forth in this Declaration.
- S) **“Owner”** shall mean any person or entity that owns a Lot.
- T) **“Pet”** shall mean and include cats, dogs, birds, reptiles or other household animals, as may be further defined in or supplemented by the Rules and Regulations.
- U) **“Period of Declarant Control”** shall mean the period of time commencing on the date of recordation of this Declaration and expiring on the earlier of seven years thereafter, or 60 days after conveyance of 75% of the Lots that may be made subject to this Declaration. The Period of Declarant Control shall in any case terminate on the date upon which all property subject to annexation to the Community has become a part of the Community and the last Lot within the Community has been conveyed by the Declarant.



V) "Plat" shall mean and refer to the plat(s) of the Property and Improvements that are subject to this Declaration. More than one Plat or supplement thereto may be recorded, and, if so, then the term "Plat" shall collectively mean and refer to all plats and supplements thereto.

W) "Property" or "Real Estate" shall mean the property described in this Declaration together with all easements, rights, and appurtenances thereto and the buildings and Improvements erected or to be erected thereon.

X) "Rules and Regulations" shall mean any instruments, however denominated, which are adopted by the Association for the regulation and management of the Community, including architectural guidelines, and including any amendment to those instruments.

**ARTICLE 2.
EASEMENTS**

Section 2.1 Utility, Map and Plat Easements. Easements for utilities and other purpose over and across the Lots and Common Elements may be as shown upon the recorded Plats of the Community, and as may be established pursuant to the provisions of this Declaration, or granted by or under the authority reserved in any recorded document.

Section 2.2 Owners' Easements of Enjoyment/Acknowledgments.

A) Every Owner shall have a right and easement access to their Lot and of enjoyment in and to any Common Elements, and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

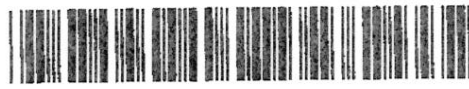
1. the Development and Special Declarant Rights of the Declarant reserved in this Declaration;
2. the right of the Association to promulgate and publish Rules and Regulations with which each Owner and their tenants, invitees, licensees and guests shall strictly comply;
3. the right of the Association to close or limit the use of the Common Elements while maintaining, repairing and making replacements in the Common Elements, and the right of the Association to close or limit the use of any Common Elements;
4. the right of the Association to suspend the voting rights and, after notice and the opportunity for a hearing, the right to use any Common Elements, for a period not to exceed 60 days or during any period of violation of any other provision of the Governing Documents, whichever is greater;
5. the right of the Association, upon approval of at least 67% of the total Association vote, to mortgage the Common Elements as security for that purpose, provided, that the rights of such mortgage shall be subordinate to the rights of the homeowners;



6. the right, power and authority of the Association to grant any easement, right-of-way, license, lease, dedication or similar interest through, over or in the Common Elements;
7. the right of the Association to transfer or convey ownership of the Common Elements, or any portion thereof, subject to the prior approval of 67% of the total Association vote;
8. the right of the Association to change use of, add or remove improvements to the Common Elements.

Section 2.3 Drainage Easements. An easement is hereby granted to the Association and Declarant and local government, their officers, agents, employees, successors and assigns to enter upon, across, over, in and under any portion of the Property subject to this Declaration for the purpose of changing, correcting or otherwise modifying the grade of the Property, the Lots or drainage channels so as to improve the drainage of water. Said easements shall be deemed to also include easements for the collection of storm water runoff. Every Lot and the Common Elements shall be burdened with easements for natural drainage of storm water runoff from other portions of the Property, provided, no Person shall alter the natural drainage on any Lot so as to materially increase the drainage of water onto adjacent portions of the Property or any Lot without the consent of the Owner of the affected property. Any damage to any Improvement caused by Declarant or the Association in exercising its rights under this Section will be repaired promptly by the entity causing the damage. The foregoing, however, shall not be deemed to render the Association or Declarant liable for any damage caused by any third party, including, without limitation, any utility company.

Section 2.4 Utilities. Declarant hereby creates and reserves to the Association, a blanket easement upon, across, over and under the Association for access, utilities, drainage and the installation, replacement, repair and maintenance of utilities, including but not limited to water, sewer, waste water treatment, effluent irrigation systems, gas, telephone, electricity and master television antenna or cable systems, if any, provided, however, such easement shall not encumber or affect any portion of the Real Estate that is anticipated to be improved, or that has been improved, with a residence, improvement or any related structure, such as a patio or garage. By virtue of this blanket easement, it shall be expressly permissible for the Association to erect and maintain the necessary facilities, equipment and appurtenances on the Property and to affix, repair, and maintain landscaping, fencing, water, treated waste water, effluent irrigation and sewer pipes, gas, electric, telephone and television wires, circuits, conduits and meters, and such other improvements or facilities. If any utility or quasi-utility company furnishing a service covered by the general easement created in this Section requests a specific easement, a separate right and authority to grant such easement upon, across, over or under any part or all of the Property is reserved, provided the easement granted does not conflict with the terms hereof. The easement provided for in this Section shall in no way affect, avoid, extinguish or modify any other recorded easement on the Property. Any damage to any improvement caused by Declarant or the Association in exercising its rights under this Section will be repaired promptly by the entity



causing the damage. The foregoing, however, shall not be deemed to render the Association or Declarant liable for any damage caused by any third party, including, without limitation, any utility company.

Section 2.5 Emergency Easements. A nonexclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons, now or hereafter servicing the Community, to enter upon any part of the Community in the performance of their duties.

Section 2.6 Delegation of Use. Any Member may delegate, in accordance with the Bylaws and Rules and Regulations adopted by the Executive Board, his right of enjoyment to the Common Elements to the members of his family, his tenants, or contract purchasers who reside on the Property. If the Owner delegates rights to use the Common Elements and facilities to tenants or contract purchasers who reside on the Property, the Owner shall not be entitled to use the Common Elements and facilities.

**ARTICLE 3.
THE ASSOCIATION**

Section 3.1 Membership. Every person who is a record Lot Owner of a fee interest in any Lot which is subject to this Declaration shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of such Lot shall be the sole qualification for such membership. Where more than one person holds an interest in any Lot, all such persons shall be Members.

Section 3.2 General Purposes and Powers of the Association. The Association, through its Executive Board, shall perform functions and manage the Community as provided in this Declaration so as to protect the value and desirability of the Community and the Lots and to further the interests of the residents, occupants, tenants and guests of the Community and members of the Association. Any purchaser of a Lot shall be deemed to have assented to, ratified and approved such designation and management. The Association shall have all power necessary or desirable to effectuate such purposes.

Section 3.3 Authority of the Association. The business affairs of the Community shall be managed by the Association. The Association shall be governed by this Declaration, the Plat Map, Articles of Incorporation and Bylaws, Rules and Regulations adopted by the Executive Board, and all publically recorded documents defining the Baxter Meadows Master Community Association to the extent that they affect the Community. All corporate or other powers of the Association, unless otherwise specified or expressly reserved to the Members in the Governing Documents, shall be exercised by or under the authority of the Executive Board, and the business and affairs of the Association shall be managed under the direction of the Executive Board. The Executive Board may, by written resolution, delegate authority to a manager or managing agent for



the Association, provided no such delegation shall relieve the Board of final responsibility. The Association may exercise any right or privilege expressly granted to the Association in the Governing Documents, and every other right or privilege reasonably implied from the existence of any right or privilege given to the Association under the Governing Documents or reasonably necessary to effect any such right or privilege. The Association shall perform all of the duties and obligations expressly imposed upon it by the Governing Documents, and every other duty or obligation implied by the express provisions of the Governing Documents or necessary to reasonably satisfy any such duty or obligation.

Section 3.4 Association Agreements. Any agreement for professional management of the Community must provide for termination by either party with or without cause and without payment of a termination fee or penalty upon 30 days written notice. The Association shall not be bound either directly or indirectly to contracts or leases (including management contracts) entered into during the Declarant Control period unless the Association is provided with a right of termination of any such contract or lease without cause, which is exercisable without penalty at any time after the turnover date upon not more than 30 days' notice to the other party thereto.

Section 3.5 Bulk Service Agreements. The Association shall have the power and authority to enter into bulk service agreements for such terms and rates as it deems appropriate in order to provide the Owners with any of the following services: cable television, community satellite television, electronic entertainment, information or communication services, trash removal or any other service the Association believes to be in the best interests of the Owners. If such a bulk service agreement is executed, the costs shall be allocated a Common Expense of the Association.

Section 3.6 Allocated Interests.

- A) Common Expense liability and votes in the Association allocated to Lots are as follows:
 - 1. The percentage of liability for Common Expenses, on an equal basis between each Lot in the Community;
 - 2. The percentage of liability for expenses related to a Limited Common Element, shall be allocated on an equal basis to those to whom the Limited Common Element is assigned.
- B) If Lots are added to the Community, pursuant to the provisions of this Declaration, the formulas set forth above, or then in use, shall be used to reallocate the Allocated Interests.
- C) Declarant reserves the right to change the above formulas for allocation of the Allocated Interests, based on possible future annexations to the property.



Section 3.7 Duty to Accept Common Elements and Facilities Transferred by Declarant. The Association shall accept any Common Elements or property, including any Improvements thereon, and personal property transferred to the Association by Declarant and equipment related thereto, together with the responsibility to perform any and all functions associated therewith, provided that such property and functions are not inconsistent with the terms of this Declaration. Any property or interest in property transferred to the Association by Declarant shall, except to the extent otherwise specifically approved by resolution of the Executive Board, be transferred to the Association free and clear of all liens (other than the lien of property taxes and Assessments not then due and payable), but shall be subject to the terms of this Declaration and any Supplemental Declaration applicable thereto.

Section 3.8 Power to Operate and Charge for Facilities and Services. The Association shall have the power to acquire, create, own and operate any and all such facilities and services as it deems appropriate, including, without limitation, landscape maintenance and refuse collection, or any other similar or dissimilar function, and to establish charges for the use of facilities and services. The charges may include admission, rental or other fees and charges for any use of property, facilities or services of the Association. Such charges or fees shall be as determined from time to time by the Executive Board.

Section 3.9 Indemnification. To the full extent permitted by law, each officer, director, committee member or volunteer of the Association shall be and hereby are indemnified by the Owners and the Association against all expenses and liabilities including attorney fees, reasonably incurred by or imposed upon them in any proceeding to which they may be a party, or in which they may become involved, by reason of being or having been an officer, director, committee member or volunteer of the Association, or any settlements thereof, whether or not they are an officer, director, committee member or volunteer at the time such expenses are incurred; except in such cases wherein such officer, director, committee member or volunteer is adjudged guilty of breaching his or her duty of care in the performance of his or her duties.

Section 3.10 Security Disclaimer. The Association may, but shall not be required to, from time to time, provide measures or take actions which directly or indirectly improve security in the Community; however, each Owner, for himself or herself and his or her tenants, guests, licensees and invitees, acknowledges and agrees that the Association is not a provider of security and shall have no duty to provide security in the Community. Furthermore, the Association does not guarantee that non-residents will not gain access to the Community and commit criminal acts in the Community, nor does the Association guarantee that criminal acts in the Community will not be committed by residents. It shall be the responsibility of each Owner to protect his or her person and property and all responsibility to provide such security shall lie solely with each Owner. The Association shall not be held liable for any loss or damage by reason of failure to provide security or the ineffectiveness of measures taken.



Section 3.11 Declarant's Right to Appoint During Period of Declarant Control. The Declarant shall have the reserved power to appoint and remove officers and members of the Board as allowed under this Declaration and more particularly provided for in the Bylaws, based on the total number of Lots that may be created within the Community pursuant to this Declaration. The Declarant may voluntarily surrender any or all of the foregoing rights to appoint and remove officers and members of the Board before termination of the Period of Declarant Control. In that event, the Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

**ARTICLE 4.
LOTS AND COMMON ELEMENTS**

Section 4.1 Number of Lots. The number of Lots initially included in the Community is one hundred twenty-nine (129). Declarant has the reserved right to create and add additional Lots up to a total of one hundred fifty (150) Lots or such larger or smaller number as established by local government.

Section 4.2 Common Elements. The property described in *Exhibit D*, including Open Spaces A, B, C, D, E, F, G and H, as recorded on the Plat Map, and any improvements thereon are the initial Common Elements within the Baxter Meadows West Property Owners Association, which may be deeded by the Declarant to the Baxter Meadows Master Community Association. The improvements on the Common Elements may be changed from time to time by the Executive Board of the Baxter Meadows Master Community Association. Portions of the Common Elements may be designated by Declarant as a part of a Lot or as a Limited Common Element to a Lot or Lots.

**ARTICLE 5.
MAINTENANCE**

Section 5.1 Association Responsibility. The Baxter Meadows Master Community Association shall repair, replace, improve and maintain the Common Elements and public open spaces within the Baxter Meadows West Property Owners Association (including perimeter fencing and other fences designated as Common Elements on the Map) and all improvements located thereon, including without limitation, any common landscaping, common sprinkler system, common private roadways, common light fixtures, common sidewalks, stormwater facilities and common pathways. Public park areas dedicated to the City of Bozeman shall be maintained by the Baxter Meadows Master Community Association until such time that a city park maintenance district may be established.



Section 5.2 Association Discretion. The Baxter Meadows Master Community Association shall, in its sole discretion, ascertain whether any given maintenance obligation is the duty of the Master Community Association and is necessary. The Baxter Meadows Master Community Association shall, in its sole discretion, assume the obligation for repair or maintenance of other exterior features not expressly included in this Declaration. The Master Association, in its sole discretion, shall determine the time and manner in which such maintenance shall be performed as well as the color or type of materials used.

Section 5.3 Common Area and Facility Maintenance Guarantee. In the event the Association established to own and maintain commonly owned open spaces, recreational areas, facilities, private streets, and parking lots, shall at any time fail to maintain the common areas or facilities in reasonable order and condition in accordance with the approved plan, the Bozeman City Commission may cause written notice to be served upon the Association or upon the owners or property in the development. The written notice shall set forth the manner in which the common areas or facilities have failed to be maintained in reasonable condition. In addition, the notice shall include the demand that the deficiencies noted to be cured within thirty days thereafter and shall state the date and place of a hearing to be held within fourteen days of the notice. At the time of hearing, the City Commission may modify the terms of the original notice as to deficiencies and may extend the time within which the same may be cured. If the deficiencies set forth in the original notice or modifications are not cured within the time set, the City may enter upon such common facilities and maintain the same for a period of one year, in order to preserve the taxable values of properties within the development and to prevent the common facilities from becoming a public nuisance. Such entry and maintenance shall not vest in the public any right to use the common facilities not dedicated to public use. Before the one year period expires, the Commission shall, upon its own initiative or upon written request of the organization theretofore responsible for maintenance or the property owners of the development. At the hearing, the organization responsible for maintenance and/or the residents of the development may show cause why maintenance by the City should not be continued for a succeeding year. If the City Commission determines that it is not necessary for the City to continue such maintenance, the City shall cease such maintenance at the time established by the City Commission. Otherwise the City shall continue maintenance for the next succeeding year subject to a similar hearing and determination at the end of each year thereafter.

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- A) The cost of maintenance by the City shall be a lien against the common facilities of the development and the private properties within the development. The City Commission shall have the right to make assessments against properties in the development on the same basis that the Association makes assessments. Any unpaid assessment shall be a lien against the property responsible for the same, enforceable the same as a mortgage against such property. The City may further foreclose its lien on the common facility by certifying the same to the County Treasurer for collection as in the case of collection of general property taxes.

- B) Should the Association request that the City assume permanent responsibility for maintenance of facilities, all facilities shall be brought to City standards prior to the City assuming responsibility. The assumption of responsibility must be by action of the City Commission and all costs to bring facilities to City standards shall be the responsibility of the property owners association. The City may create special financing mechanisms so that those properties within the area affected by the Association continue to bear the costs of maintenance.

Section 5.4 Access. For the purpose of performing the maintenance referred to in this Article, and inspections related thereto, the Executive Board, through its duly authorized agents, contractors, employees and the Master Community Association BLRC, shall have the right, after reasonable notice to the Owner or occupants thereof and during regular business hours, to enter upon any Lot and improvements thereon, and such entry shall not be deemed a trespass. In emergency situations, the Executive Board or its agents, contractors or employees, may enter without notice at any time, but the Owner or other occupants thereof shall be notified as soon as reasonably possible thereafter. In performing repairs or maintenance authorized under this Article, the Association shall not be liable for any loss, cost or damage caused by its actions, except on account of its willful misconduct.

Section 5.5 Owner Maintenance.

- A) Each Owner shall have the obligation to maintain, repair and replace all portions of the Owner's Lot appurtenant thereto. No changes affecting the exterior appearance of any improvements shall be made unless prior written approval is obtained from the BLRC prior to making such changes. Such maintenance shall include, but not be limited to the following:

1. all paint, repair, replace, maintain and care for roofs, gutters, downspouts, fences, patios, decks, balconies, railings and exterior building surfaces on each Lot.
2. owners shall be responsible for maintaining water and electricity to any automatic sprinkler systems, timers, clocks or related equipment, as located in or on their Lot;
3. all glass surfaces, windows, window frames, casings and locks;
4. all lights, exterior light fixtures and exterior light bulbs on each Lot;
5. any patio, balcony, yard or deck enclosure, and any fence or wall enclosing a patio, balcony, yard or deck;
6. all utilities, fixtures and equipment servicing a Lot, commencing at a point where the utility lines, pipes, wires, conduits or systems serving such Lot connects with a main line shall be maintained and kept in repair by the Owner thereof; all utility meters or other apparatus serving only their home; and communications, television, telephone and electrical lines, receptacles and boxes serving their home;
7. all vehicular driveway and pedestrian walkway surfaces on each Lot;
8. any Association approved additions or alterations made by the Owner to the Lots.

- B) An Owner shall do no act nor any work that will impair any easement or utility



service, nor do any act or allow any conditions to exist which will adversely affect the use and enjoyment of the other Lots or the provision of utility services to such Lots.

C) No Owner shall, in whole or in part, change the landscaping or drainage pattern adjacent to his Lot by the addition or removal of any items thereon without the prior written consent of the BLRC.

D) If an Owner fails to fulfill his responsibilities under this Section, the Board may, at its option, take such action as it deems appropriate, including without limitation performing the Owner's obligations, after 10 days notice to such Owner, except in emergencies, and any costs resulting therefrom shall be an Assessment against such Owner and his Lot.

Section 5.6 Negligence. In the event that the need for maintenance or repair of the Common Elements or any portion of the Property is caused through the willful or negligent act of the Owner, his family, guests, tenants, or invitees, then the cost of such maintenance or repairs shall be the personal obligation of such Owner, and if not repaid to the Association within 10 days after the Association shall have given notice to the Owner of such expenses, costs and fees, then failure to so repay shall be a default by the Owner under the provisions of this Declaration, and such expenses, costs and fees shall automatically become an Assessment determined and levied against such Lot, and the Association may proceed in accordance with the applicable provisions of this Declaration to collect the Assessment.

**ARTICLE 6.
COVENANT FOR COMMON EXPENSE ASSESSMENTS**

Section 6.1 Creation of Association Lien and Personal Obligation to Pay Common Expense Assessments. Declarant, for each Lot, shall be deemed to covenant and agree, and each Owner, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association annual Common Expense Assessments, insurance Assessments, and such other Assessments as imposed by the Association. Such Assessments, including fees, charges, late charges, attorney fees, taxes on common elements (Open Spaces A,B,C,D,E,F,G &H), fines and interest charged by the Association shall be the personal obligation of the Owner of such Lot at the time when the Assessment or other charges became or fell due. The Association annual Common Expense Assessments and such other Assessments as imposed by the Association, including fees, charges, late charges, attorney fees, fines and interest charged by the Association, shall be a charge on each Lot and shall be a continuing lien upon the Lot against which each such Assessment or charge is made. If any Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment becomes due. The personal obligation to pay any past due sums owed to the Association shall not pass to a successor in title unless expressly assumed by them. No Owner may become exempt from liability for payment of the Common Expense Assessments by waiver of the use or enjoyment of the Common Elements or by abandonment of the Lot against which the Common Expense Assessments are made. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted by any

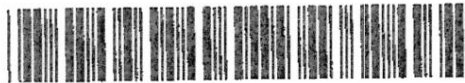
reason including, without limitation, any claim that the Association or the Executive Board is not properly exercising its duties and powers under this Declaration. Except as provided in this Declaration, all Common Expense Assessments shall be assessed against all Lots equally.

Section 6.2 Basis of Assessments. The Common Expense Assessment may be made on an annual basis against all Lots and shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such Assessment year.

Section 6.3 Annual Assessment. The budget for annual Assessments may be submitted to the Lot Owners for ratification and as set forth in the Bylaws, as the Bylaws may be amended from time to time. If submitted, the budget may be vetoed by votes of Owners representing a majority of the total Association vote. Assessments for Common Expenses shall be due and payable in monthly, quarterly, or annual installments, or in any other manner, as determined by the Executive Board. The omission or failure of the Executive Board to levy the Assessment for any period shall not be deemed a waiver, modification or a release of the Lot Owners from their obligation to pay.

Section 6.4 Special Assessments. In addition to other authorized Assessments, the Association may levy Special Assessments from time to time to cover previously unbudgeted expenses or expenses in excess of those budgeted, including, without limitation, the costs of any construction, restoration, or unbudgeted repairs or replacements of capital improvements that are not covered by the general reserve fund. The proposed Special Assessment shall be submitted to the Lot Owners for ratification and as set forth in the Bylaws, as the Bylaws may be amended from time to time. The proposed Special Assessment may be vetoed by a majority of the total Association vote. A proposed Special Assessment will be ratified unless Owners representing more than a majority of the votes allocated to the Lots that will be subject to the special Assessment vote, either in person or by proxy, to reject the Special Assessment at a meeting called for such purpose. Special Assessments may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. The Board shall have the right to require that Special Assessments be paid in advance of the provision of the subject services or materials.

Section 6.5 Commencement of Assessments. The obligation to pay Assessments against fewer than all of the Lots as provided for in this Declaration shall commence as to each Lot upon conveyance of Property to first Owner. The first annual Common Expense Assessment levied on each Lot, whether levied at partial or full rate as provided in this Declaration, shall be prorated according to the number of months remaining in the fiscal year at the time Assessments commence on the Lot. The omission or failure of the Executive Board to levy the Assessment for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay.



Section 6.6 Effect of Non-Payment of Assessments. Any Assessment, charge or fee provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid within 10 days after the due date thereof, as established by the Executive Board, shall bear interest at the rate established by the Executive Board, on a per annum basis from the due date, and the Association may assess a reasonable late charge thereon as determined by the Executive Board. Failure to make payment within 10 days of the due date thereof shall cause the total amount of such Owner's Common Expense Assessment for the remainder of that fiscal year to become immediately due and payable at the option of the Board. Further, the Association may bring an action at law or in equity, or both, against any Owner personally obligated to pay such overdue Assessments, charges or fees, or monthly or other installments thereof, and may also proceed to foreclose its lien against such Owner's Lot. An action at law or in equity by the Association against an Owner to recover a money judgment for unpaid Assessments, charges or fees, or monthly or other installments thereof, may be commenced and pursued by the Association without foreclosing, or in any way waiving, the Association's lien therefor. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent Assessment, charges or fees, or monthly or other installments thereof, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Lot at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, vote the Association votes appurtenant to ownership thereof, convey or otherwise deal with the same. If a foreclosure action is filed to foreclose any Assessment lien, and an Owner abandons or leaves vacant his or her Lot, the Board may take possession and rent said Lot or apply for the appointment of a receiver for the Lot without prior notice to the Owner. The rights of the Association shall be expressly subordinate to the rights of any holder of a first lien security interest as set forth in its deed of trust or mortgage (including any assignment of rents).

Section 6.7 Lien Priority. The lien of the Association under this Section is prior to all other liens and encumbrances on a Lot except: (1) liens and encumbrances recorded before the recordation of the Declaration; (2) a first lien security interest on the Lot (except as may be allowed by the Act with regard to a limited lien priority allowed to the Association); and (3) liens for real estate taxes and other governmental assessments or charges against the Lot. This Section does not affect the priority of mechanics' or materialmen's liens. The lien of the Association under this Article is not subject to the provision of any homestead exemption as allowed under state or federal law. Sale or transfer of any Lot shall not affect the lien for said Assessments or charges except that sale or transfer of any Lot pursuant to foreclosure of any first lien security interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the lien of Assessment charges as provided by applicable state law. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Lot from continuing liability for any Assessment charges thereafter becoming due, nor from the lien thereof.



Section 6.8 Working Fund. The Association may require every Owner of a Lot (other than Declarant) to make a non-refundable payment to the Association in an amount equal to three months of the annual Common Expense Assessment against that Lot in effect at the closing thereof, which sum shall be held, without interest, by the Association as a working fund. Said working fund shall be collected and transferred to the Association at the time of closing of the initial sale by Declarant of each Lot, as aforesaid, and shall be for the use and benefit of the Association. Such payment shall not relieve an Owner from making regular payments of Assessments as the same become due.

Section 6.9 Owner's Negligence or Misconduct. In the event that the need for maintenance, repair, or replacement of the Common Elements, or any portion thereof, is caused through or by the negligent or willful act or omission or misconduct of an Owner, or the Owner's agents, employees, guests, customers, or invitees, then the expenses, costs, and fees incurred by the Association for such maintenance, repair, or replacement shall be a personal obligation of such Owner. If such expenses, costs and fees incurred by the Association are not repaid to the Association within seven days after the Association shall have given notice to the Owner of such expenses, costs, and fees, then the failure to so repay shall be a default by the Owner under the provisions of this Declaration. Such expenses, costs, and fees shall automatically become a default Assessment determined and levied against such Lot, and the Association may proceed in accordance with the applicable provisions of this Declaration.

Section 6.10 Supplemental Assessments. The Association shall have the right to add to any Owner's Assessment as provided in this Article the following:

- A) those amounts expended by the Association for the benefit of any individual Lot or any occupant thereof, including but not limited to: Lot insurance; improvement, repair, replacement and maintenance specific to a Lot; improvement, repair, replacement and maintenance caused by the negligent or willful acts of any Owner, his or her guest, employee, licensee, lessee or invitee as set forth in this Declaration;
- B) any extraordinary maintenance, repair, improvement and replacement costs of any area which the Association maintains required on fewer than all the Lots;
- C) all fines and costs assessed against an Owner pursuant to the Governing Documents; and
- D) any other expenditures or charges which the Board, in its sole discretion, chooses to allocate to a Lot and are reasonably determined to be allocable to a particular Lot.

Section 6.11 Borrowing. The Association shall have the power to assign its right to future income, including the right to assign its right to receive Common Expense Assessments, but only upon the affirmative vote of a majority of the Owners present and voting, in person or by proxy, at a duly constituted meeting called for that purpose.

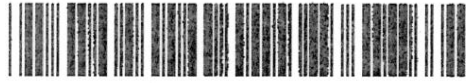


**ARTICLE 7.
RESTRICTIONS ON USE, ALIENATION AND OCCUPANCY**

All Property within the Community shall be held, used and enjoyed subject to the following limitations and restrictions. The strict application of the following limitations and restrictions in any specific case may be modified or waived, in whole or in part, by the Executive Board or by an appropriate committee (subject to review by the Executive Board) if such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing or must be contained in written guidelines or rules. The following use restrictions are also subject to the Development Rights and Special Declarant Rights reserved by the Declarant.

Section 7.1 Use of Lots/Occupancy of Improvements on Lots. All Lots within the Community shall be used only for those uses and/or purposes as allowed by the local zoning, control and regulation. Occupancy may also be subject to any Rules and Regulations adopted by the Association and the Baxter Meadows Master Community Association. Lots shall not be used for any purpose other than a single residential dwelling except as set forth in this Section. Home occupations shall be allowed so long as such use is incidental and secondary to the use of the Lot and does not change the residential character thereof and complies with local zoning ordinances and regulations. In no event shall external advertising, of any kind, be permitted. Uses which have one or more of the following characteristics are not permitted: (1) manufacturing or fabrication of any kind; (2) storage of hazardous materials; (3) increased traffic or parked vehicles beyond that reasonable and customary to a residential dwelling use; (4) permanent or long term parking of heavy equipment, including semi trailers; (5) the use or rental of any structure on a Lot for any transient, hotel, motel, bed and breakfast, restaurant, bar or other commercial purposes. In no instance shall a home occupation be visible externally, nor shall any home occupation employ any person other than the Owner.

Section 7.2 Design Approval Required/BLRC Construction of or significant changes to improvements upon the Lot must first be approved by the Building and Landscape Review Committee (BLRC). Property added to the Community by Declarant may be exempt from this Article, initially, and for subsequent Improvements. Specifically, no structure, temporary building, trailer, improvements, landscaping change shall be commenced, constructed, erected, placed or installed, including, but not limited to, a change in painting and/or staining of exterior siding, unless first submitted to and approved in writing by the BLRC. No shed or other outbuilding shall be used or permitted to be kept or stored on any portion of a Lot, either temporarily or permanently, unless approved by the BLRC. All additions to improvements on a Lot shall be of new construction. . Owners of Lots undergoing construction of new residences shall first receive written acknowledgment of compliance from the BLRC prior to requesting a certificate of occupancy from the City of Bozeman. In order to present attractive architectural forms to the public, the architectural designs constructed upon Lots backing to Baxter Lane or Harper Pucket Road shall include rear elevation architectural features of similar detail and design to that of the front elevation (for example, covered porches, varied roof lines, multiple siding materials, varied facade planes, and decorative lighting) .



Section 7.3 Landscaping Covenants and Restrictions. Within six months upon completion of construction, all portions of a Lot which are not improved with a residence, driveway, walkways, patios or decks (referred to as the unimproved area of a Lot) shall be landscaped by and maintained, repaired, replaced and improved by the Owner. No Owner may make significant changes to existing landscaping without the prior written approval of the BLRC.

Section 7.4 Plat Restrictions. The restrictions, if any, included on the plat for the Property are incorporated in this Declaration by this reference.

Section 7.5 Guarantee for Open Space Preservation. Open Space shown on the approved final plan or plat shall not be used for the construction of any structures not shown on the final plan.

Section 7.6 Lot Maintenance.

A) 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. If a lot must be cleared of weeds, mowed, or otherwise maintained and the owner fails to do so after notice from the Association, the maintenance functions shall be performed by the Baxter Meadows Master Community Association, and the cost and expense associated with such maintenance 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.

B) Owners are responsible for the maintenance, repair and replacement of the Improvements and properties located within their Lot boundaries which are not specifically the obligation of the Association to maintain, replace and keep in good repair, as set forth in other sections of this Declaration.

C) Each Lot, at all times, shall be kept well maintained, in good repair, and replacement, and in a clean, sightly and wholesome condition.

D) Trash, litter, junk, boxes, containers, bottles, cans implements, machinery, lumber or other building materials shall not be permitted to remain exposed upon or within any Lot so that the same are visible from any neighboring Lot, or any street, except as necessary during a period of construction.

E) During construction of or remodeling of Improvements on a Lot, the Owner and their contractors, if any, shall keep the Owner's Lot in a neat and maintained order, without construction debris on the Lot, and without debris blown or otherwise deposited or left elsewhere in the Community. Owners constructing improvements upon Lots shall ensure that all common areas, open spaces, and all right-of-ways, including but not limited to roads and sidewalks, shall be kept free of refuse, building materials, debris, and mud and gravel at all times.



F) The Association and its agents, after 30 days notice to the Owner, shall have the authority to enter, replace, maintain, repair and clean up Lots which do not conform to the provisions of this Section, and to charge and collect from the Lot Owners thereof all reasonable costs related thereto as an Assessment hereunder.

Section 7.7 Fences and Privacy Walls. Fences, and/or privacy walls must have written approval of the BLRC prior to commencement of construction or significant change. Fences located in the side or rear yard setback areas of properties adjacent to any park or open space shall not exceed a maximum of four (4) feet, and shall be of open construction.

Section 7.8 Restrictions on Vehicles, Vehicular Parking, Storage and Repairs.

A) Parking upon any areas within the Common Elements which are not intended for vehicular use is prohibited at all times, except as provided in (B), (ii) below.

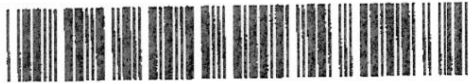
B) The following may not be parked or stored within the Community, unless such parking or storage of such is completely within a garage on a Lot or authorized in writing by the Association:

- 1. List of precluded vehicles, trailers, etc:
 - i oversized vehicles;
 - ii trucks or pickup trucks over 3/4 ton;
 - iii commercial delivery vans or delivery vehicles;
 - iv commercial vehicles;
 - v vehicles with commercial writing on their exteriors;
 - vi trailers, including but not limited to camping trailers, boat trailers, hauling trailers;
 - vii all boats and accessories thereto;
 - viii self-contained motorized recreational vehicles; or
 - ix other oversized types of vehicles or equipment as prohibited by rule or regulation.

2. Any of the foregoing may be parked temporarily, for not longer than 48 hours within any given month for loading, delivery of goods or services, or emergencies.

3. Overnight parking of the foregoing is prohibited. This restriction shall not apply to trucks or other commercial vehicles temporarily located within the Community which are necessary for construction or for the maintenance of any Common Elements, Lots, or any improvement located thereon.

C) No abandoned, unlicensed or inoperable automobiles or vehicles of any kind shall be stored or parked on a Lot or within the Community unless parked or stored within a garage. An "abandoned or inoperable vehicle" shall be defined by Montana statutes governing inoperable or abandoned vehicles on public streets, or as defined by rule or



regulation adopted by the Association. In the event that the Association shall determine that a vehicle is an abandoned or inoperable vehicle, then a written notice describing said vehicle shall be personally delivered mailed to the Owner thereof or shall be conspicuously placed upon the vehicle. If the abandoned or inoperable vehicle is not removed within 72 hours after providing such notice, the Association shall have the right to remove the vehicle, and the owner thereof shall be solely responsible for all towing, fines and storage charges.

D) No parked vehicle may impede the safe and efficient use of the streets by residents, obstruct emergency access to/from the Community, or interfere with the reasonable needs of other residents to use their driveway, including driveways that are shared by two, three or four Lots or Community streets.

E) No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting, or servicing of any kind of vehicle, trailer or boat, may be performed or conducted outside of garages.

F) Parking in fire lanes (as designated by the Association or as designated by local government or a local fire protection authority) shall not be permitted.

G) If any vehicle is parked on any portion of the Community in violation of this Section or in violation of the Association's Rules and Regulations, the Board may place a notice on the vehicle specifying the nature of the violation and stating that after 72 hours the vehicle may be towed or booted. The notice shall include the name and telephone number of a person to contact regarding the alleged violation. A notice also shall be conspicuously placed at the Community stating the name and telephone number of the person or entity which will do the towing hereunder. If 72 hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six months of such notice, the vehicle may be towed in accordance with the notice, without further notice to the vehicle owner or user.

H) If a vehicle is parked in a fire lane, is blocking another vehicle or access to another Owner's or occupant's Lot, is obstructing the flow of traffic, is parked on any grassy area, or otherwise creates a hazardous condition, no notice shall be required and the vehicle may be towed immediately. If a vehicle is towed in accordance with this subparagraph, neither the Association nor any officer or agent of the Association shall be liable to any person for towing and storage costs or for any claim of damage as a result of the towing activity. The Association's right to tow is in addition to, and not in limitation of all other rights of the Association, including the right to assess fines. Notwithstanding anything to the contrary in this Section, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow.

Section 7.9 No Temporary Structures/Sheds. Except during construction of Improvements on a Lot, no trailer, mobile home, tent or shack or other temporary building or similar structure shall be placed upon any Lot. Sheds or storage areas may be allowed subject to application to the BLRC.



Section 7.10 Roof Apparatus. No types of refrigerating, cooling or heating apparatus shall be permitted on a roof or in a window, and no such apparatus shall be permitted elsewhere on a Lot, except when appropriately screened and approved by the Architectural Review Committee and Association.

Section 7.11 No Wind Generators. No wind generators of any kind shall be constructed, installed, erected, or maintained on the Lots.

Section 7.12 Clotheslines and Storage. No clotheslines, equipment or storage areas shall be so located on any Lot as to be visible from a street and/or public view.

Section 7.13 Restrictions on Animals and Pets.

- A) Pets may be kept in a home or on a Lot, if no more than two (2) Pets are kept if and the Pet is not a nuisance to other Owners or occupants.
- B) No Owner or resident shall maintain or keep any Pet which, in the sole discretion of the Baxter Meadows Master Community Association Executive Board, is considered to be a danger to the Owners, management staff or occupants in the Community or is otherwise considered to be a dangerous breed, as may be further defined in the Rules and Regulations.
- C) If a Pet is deemed a nuisance by the Master Community Association, the Owner or person having control of the Pet shall be given a written notice to correct the problem and if not corrected, that Owner will be required to remove the Pet from the Community pursuant to, and in accordance with, any dispute resolution procedures as may be set forth in this Declaration or the Rules and Regulations, Any Pet that makes disturbing noises, including but not limited to continued and repeated howling, barking, whining, or other utterances, or causes injury or property damage, is considered a "nuisance animal", and is prohibited.
- D) Pets may not be kept for any commercial purposes.
- E) While on a street, sidewalk, any public way, park or other public space, all pets shall be secured by a leash.
- F) Feces left by Pets, whether within a Lot or within Common Areas in the Community must be removed promptly by the owner of the Pet or the person responsible for the Pet. Owners in violation will be fined.
- G) Owners shall hold the Association harmless from any claim resulting from any action of their Pets.
- H) All dogs and cats over the age of six months must be licensed in the City of Bozeman, and ownership of Pets shall be regulated by the City of Bozeman's Pet Ordinances.

Section 7.14. Garbage / Refuse. There shall be no incineration or burning of garbage, trash or other waste or debris on, or coming from any lot, at any time. No junk, garbage, trash, equipment, non-working or out-of-use vehicles, parts, metals, lumber, debris or other waste shall be allowed to accumulate on any lot or originate from any lot during construction. All garbage and trash requirements of the City of Bozeman shall be observed. Garbage containers shall be maintained out of sight (in the garage or other enclosures) except on garbage pick-up day. No building materials, trash, gravel, job trailers, dumpsters, or snow and ice plowed from private property are allowed to obstruct the public right-of-way. Written in the event an owner shall not control waste on or coming from their property, the Association, after ten days written notice to an owner to control the same, may cause the waste to be controlled or collected, and may assess the lot owner for the costs thereof.

Construction materials must be covered and/or tied down, and debris and trash contained until proper disposal. Violations will be subject to cleanup fees and/or fines as determined by the Association.

Section 7.15 Restriction on Further Subdivision of Lots. Lots in the Community may not be further subdivided into smaller or a larger tracts or Lots, without the written approval of the Baxter Meadows Master Community Executive Board.

Section 7.16 Nuisances. No nuisance shall be permitted within the Community, nor any use, activity or practice which is the source of unreasonable annoyance or embarrassment to, or which unreasonably offends or disturbs, any Owner or which may unreasonably interfere with the peaceful enjoyment or possession of the proper use of a Lot or Common Elements, or any portion of the Community by Owners. Further, no improper, offensive or unlawful use shall be permitted within the Community or any portion thereof. As used in this Declaration, the term "nuisance" shall not include activities of Declarant or its assignees which are reasonably necessary to the development and construction of Improvements within this Community; *provided, however*, that such activities shall not reasonably interfere with any Owner's use and enjoyment of their Lot, or any Owner's ingress and egress to or from their Lot or a public way.

Section 7.17 Use of Common Elements. There shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements without the prior written approval of the Association. Nothing shall be altered on, constructed in, or removed from the Common Elements without the prior written approval of the Association.

Section 7.18 Antenna. "Permitted Antennas" are defined as (1) an antenna which is 24" or less in diameter and is used to receive direct broadcast satellite service, including direct-to-home satellite services, or is used to receive or transmit fixed wireless signals via satellite; (2) an antenna which is 24" or less in diameter and is used to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instruction television fixed services, and local multipoint distribution services or is used to receive or transmit fixed

wireless signals other than via satellite; (3) an antenna which is designed to receive broadcast television signals; or (4) other antennas which are expressly permitted under applicable federal statutes or regulations. In the event a Permitted Antenna is no longer expressly permitted under applicable federal statutes or regulations, such antenna will no longer be a Permitted Antenna for purposes of this Section.

Permitted Antennas shall be installed in the least conspicuous location available on a Lot which permits acceptable signals, without unreasonable delay or increase in the cost of installation, maintenance or use of the Permitted Antenna. The Association may adopt rules regarding location and installation of Permitted Antennas, subject to limitations of applicable federal law. Except as allowed by federal statutes and regulation, no exterior television or any other antennae, microwave dish, satellite dish, satellite antenna, satellite earth station or similar device of any type shall be erected, installed or maintained on a Lot.

Section 7.19 No Unsightliness. All unsightly conditions, structures, facilities, equipment, objects and conditions shall be enclosed within an approved structure.

Section 7.20 Restriction on Signs and Advertising Devices. Signs shall not be permitted on the private, public, or commonly-owned lands within Baxter Meadows West Property Owners Association, except as follows:

- A) One address and family name sign shall be allowed. It shall be no more than two (2) square feet of surface area in size, and must be attached to the front of the principle residence.
- B) One temporary construction sign shall be allowed on the same lot as the construction activity provided that they are removed upon substantial completion of the home.
- C) One temporary sign advertising a lot or home for sale or rent shall be allowed providing that it does not exceed six (6) square feet on any one face, and that it is promptly removed when the lot or home is sold. The sign must be placed only upon the lot or home for sale.
- D) Directional signs may be placed within the common area or open space as the BLRC decides is necessary. Directional signs must be combined with landscaping features, be no more than three (3) square feet in surface area in size, made of wood or other material as approved by the BLRC, and meet the provision of the City of Bozeman sign code and appropriate sign permit fee requirements.
- E) Nighttime illumination of all signs must comply with the lighting guidelines described herein .
- F) During the period in which the property is being sold, the declarant may erect "Subdivision For Sale" type signs in accordance with City of Bozeman sign regulations in the common areas or other locations as deemed necessary by the declarant.



Section 7.21 Restriction on Sale of a Lot. The right of an Owner to sell, transfer or otherwise convey their Lot shall not be further restricted or subject to any right of first refusal or similar restriction.

Section 7.22 No Restrictions on Mortgaging of a Lot. There are no restrictions on the right of the Owners to mortgage or otherwise encumber their Lot. There is no requirement for the use of a specific lending institution or particular type of lender.

Section 7.23 Rules and Regulations. In furtherance of the provisions of this Declaration, and the general plan, Rules and Regulations concerning and governing the Community or any portion thereof may be adopted, amended, or repealed from time to time by either the Baxter Meadows Master Community Association or the Baxter Meadows West Property Owners Association Executive Boards, or its successors and assigns. The Executive Boards shall establish and enforce penalties for the infraction thereof.

Section 7.24. Alleyways. Each lot owner shall maintain the alley right-of-way adjacent to the owner's property. Such maintenance shall include, but not be limited to, picking up and appropriately disposing of debris and garbage, mowing and trimming of the alley right-of-way.

Section 7.25 Declarant's Use. Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible for Declarant, its assigns, employees and agents, and any others with reserved Development Rights (as and if allowed for under this Declaration) to perform such reasonable activities, and to maintain upon portions of the Community such facilities as deemed reasonably necessary or incidental to the construction and sale of Lots in the development of the Community, specifically including, without limiting the generality of the foregoing, the maintenance of temporary business offices, storage areas, trash bins, construction yards and equipment, signs, models, temporary sales offices, parking areas and lighting facilities.

Section 7.26 Use of the Words Baxter Meadows West and Baxter Meadows West Property Owners Association, Inc., and Baxter Meadows Master Community Association. No resident shall use the words Baxter Meadows West or Baxter Meadows West Property Owners Association, Inc., Baxter Meadows Master Community Association or the logo(s) of the Community or Associations, if any, or any derivative thereof, in connection with any goods, materials or services, the use of which is likely to cause confusion, mistake or deception as to the source or origin of such goods, materials or services, without the prior written consent of the Association.



ARTICLE 8.

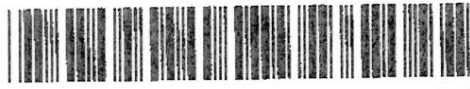
BUILDING AND LANDSCAPE REVIEW COMMITTEE

Section 8.1 Building and Landscape Review Committee. The Baxter Meadows Master Community Association Building and Landscape Review Committee (BLRC) and or its assigns shall review and approve or disapprove all plans and specifications submitted to it for any proposed improvement or landscape development to be performed within the Property.

Section 8.2 Membership of Building and Landscape Review Committee The BLRC shall consist of a minimum of three members. It is suggested that at least one of the members of the Committee have professional qualifications in the area of architecture or landscape architecture. During the Period of Declarant Control, Declarant shall appoint all members of the BLRC and may remove any appointee at any time upon written notice to such appointee. After expiration of Period of Declarant Control, the BLRC may then be comprised completely of Lot Owners without regard to special qualifications and the members shall then be appointed by the Baxter Meadows Master Community Association Executive Board of Directors annually. Until that date, Declarant, in its sole discretion, may at any time grant the power of appointment of the members of the BLRC, and the chairman thereof, to another or to the Association. Notwithstanding the above, appointments shall be for staggered terms of a year different in termination so as to provide reasonable continuity to the architectural review process.

Section 8.3 Required Approval No Improvements, including, but not limited to, primary residences, accessory buildings, sheds, swimming pools, antennas, flag poles, fences, walls, exterior lighting, landscaping, yard or decorative ornaments or any other Improvement shall be constructed erected or installed on a Lot, nor shall any significant alteration or change to the exterior of the Improvements, the exterior of a residence, to a Lot or to any structure or any attachment to the exterior of a residence (including paint, awnings, patios, decks, or shutters) be commenced within the Community unless complete plans and specifications shall have been first submitted to and approved in writing by the Baxter Meadows Master Community Association Building and Landscape Review Committee (BLRC).

Section 8.4 Architectural Criteria. The BLRC shall exercise its reasonable judgment to the end that all attachments, Improvements, construction, landscaping and alterations to Improvements on a Lot or landscaping of a Lot shall comply with the requirements set forth in this Declaration and the Baxter Meadows West Property Owners Association Building and Landscape Design Regulations and Guidelines. The approval or consent of the BLRC on matters properly coming before it shall not be unreasonably withheld, and actions taken shall not be arbitrary or capricious. Approval shall be based upon, but not limited to, conformity and harmony of exterior appearance of structures with neighboring structures, effective location and use of Improvements on nearby Lots, preservation of aesthetic beauty, and conformity with the specifications and purposes generally set out in this Declaration.



Section 8.5 Architectural Guidelines. The Baxter Meadows West Property Owners Association BLRC may propose changes and additions to the Baxter Meadows West Property Owners Association Building and Landscape Design Regulations and Guidelines from time to time, which changes and additions shall be approved by the Baxter Meadows West Property Owners Association Executive Board, and may be included in or with any Rules and Regulations of the Association.

Section 8.6 Reply and Communication. The BLRC shall reply to all submittals of plans made in accordance herewith in writing within 30 days after receipt. In the event the BLRC fails to take any action on submitted plans and specifications within 30 days after the BLRC has received the plans and specifications, approval shall be deemed to be denied; provided, however, even if the requirements of this Section are satisfied, nothing in this Section shall authorize anyone to construct or maintain any structure or Improvement that is otherwise in violation of the Declaration, architectural guidelines or Rules and Regulations then in effect. All communications and submittals shall be addressed to the BLRC such address as the chairman of the BLRC shall hereafter designate in writing addressed and mailed to the Owners.

Section 8.7 Variances. The BLRC may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Declaration in order to overcome practical difficulties and unnecessary hardships arising by reason of the application of the conditions and restrictions contained in these covenants or in architectural guidelines. Such variances or adjustments shall be granted only when the granting thereof shall not be materially detrimental or injurious to the other Lots or Common Elements nor deviate substantially from the general intent and purpose of this Declaration.

Section 8.8 Right to Appeal. An Owner may appeal any decision of the BLRC to the Baxter Meadows Master Community Association Executive Board. The Board shall review the decision of the BLRC pursuant to the criteria set forth in this Declaration the architectural guidelines, and the Rules and Regulations. Any decision of the BLRC may be overruled and reversed by a majority of the Directors by a written decision setting forth the reasons for the reversal when the Directors conclude that the BLRC decision was inconsistent with the criteria set forth in this Article and the guidelines.

Section 8.9 Waivers. The approval or consent of the BLRC, or appointed representative thereof, to any application for architectural approval shall not be deemed to constitute a waiver of any right to hold or deny approval or consent by the BLRC as to any application or other matters subsequently or additionally submitted for approval or consent.



Section 8.10 Liability. The BLRC and the members thereof, as well as any representative of the Executive Board designated to act on its behalf, shall not be liable in damages to any person submitting requests for approval or to any approval, or failure to approve or disapprove in regard to any matter within its jurisdiction under these covenants.

Section 8.11 Records. The BLRC shall maintain written records of all applications submitted to it and of all actions taken by it with respect thereto. Such records shall be open and available for inspection by any interested party during reasonable hours of the business day.

Section 8.12 Enforcement. Enforcement of these covenants, restrictions, charges and other provisions, as amended, may be by any proceeding at law or in equity against any person or persons violating or attempting to violate any such provision. The Association shall have the right but not the obligation to institute, maintain and prosecute any such proceedings. In any action instituted or maintained under this Section, the Association shall be entitled to recover its costs and reasonable attorney fees incurred pursuant thereto, as well as any and all other sums awarded by the court. Failure of the Association to enforce any covenant or restriction contained in this Section shall in no event be deemed a waiver of the right to do so thereafter.

**ARTICLE 9.
DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS**

Section 9.1 Development Rights and Special Declarant Rights. The Declarant reserves, through seven years after the recording of this Declaration, the following Development Rights and Special Declarant Rights:

- A) the right to relocate boundaries between adjoining Lots owned by the Declarant, subdivide Lots owned by Declarant or complete or make improvements, as the same may be indicated on Maps or Plats filed of record;
- B) the right to enlarge or reduce the Common Elements and to create additional Lots, subject to the limitations set forth in Section 4.1 of this Declaration;
- C) the right to add Lots and to subject all or any part of the property described in *Exhibit B* attached hereto and hereby incorporated by reference and additional unspecified real estate to the provisions of this Declaration subject to the limitations set forth in this Declaration;
- D) the right to exercise any additional reserve right created by any other provision of this Declaration;
- E) the right to withdraw Lots owned by Declarant from the Community and the terms of this Declaration, except for lots with dwellings once a dwelling on that Lot has been conveyed, and with the withdrawal rights of the Declarant. Such withdrawal may be accomplished by the execution, acknowledgment and recordation of a notice of withdrawal. The notice of withdrawal (1) shall be executed and acknowledged by the Owner or Owners



of the property to be withdrawn; (2) shall, if not then owned by Declarant, contain the executed and acknowledged written consent of Declarant for so long as Declarant owns any property in the Community and has the power to annex additional property to the Community; (3) shall contain an adequate legal description of the property to be withdrawn; (4) shall contain a reference to the Supplemental Declaration for the portion of the Real Property to be withdrawn, which reference shall state the date thereof and the date of recordation thereof; and (5) shall contain a statement and declaration that the property sought to be withdrawn is withdrawn from the Community and from the effect of this Declaration;

- F) the right to amend the use restrictions included in this Declaration, together with the right to add new use restrictions;
- G) the right to amend the Declaration in connection with the exercise of any development right;
- H) the right to amend the Maps or Plats in connection with the exercise of any development right;
- I) the right to make amendments to the Declaration, Bylaws or Articles of Incorporation to meet or comply with any requirement of FHA or VA; and
- J) the rights reserved to Declarant, for itself, its successors and assigns, shall expire as set forth above, unless (1) reinstated or extended by the Association, subject to whatever terms, conditions, and limitations the Board may impose on the subsequent exercise of the expansion rights by Declarant, (2) extended as allowed by law, or (3) terminated by written instrument executed by the Declarant, recorded in the real property records of the Gallatin County.

Section 9.2 Additional Reserved Rights. In addition to the rights set forth above, Declarant also reserves the following additional rights:

- A) *Sales*. The right to maintain mobile and other sales offices, parking lots, management offices and models on Lots of the Declarant.
- B) *Construction Easement*. Declarant and its assignees expressly reserve to itself the right to perform warranty work, and repairs and construction work, and to store materials in secure areas, in Lots and in Common Elements, and the future right to control such work and repairs and the right of access thereto, until completion. All work may be performed without the consent or approval of any Owner or holder of a security interest. Declarant and its assignees have such an easement through the Common Elements as may be reasonably necessary for exercising reserved rights in this Declaration. Such easement includes the right to construct underground utility lines, pipes, wires, ducts, conduits, and other facilities across the Property.



Section 9.3 Rights Transferrable/Rights Transferred. Any rights created or reserved under this Article for the benefit of Declarant may be transferred to any person by an instrument describing the rights transferred recorded in the real property records of the Gallatin County. Such instrument shall be executed by the transferor Declarant and the transferee. Any rights created or reserved under this Article for the benefit of Declarant may also be transferred to the Association by an instrument describing the rights transferred recorded in the real property records of the Gallatin County. Such instrument shall be executed by the transferor Declarant and the Association as transferee.

Section 9.4 No Further Authorizations Needed. Except as set forth in this Declaration, the consent of Owners or holders of security interests shall not be required for exercise of any reserved rights, and Declarant or its assignees may proceed without limitation at its sole option. Declarant or its assignees may exercise any reserved rights on all or any portion of the property in whatever order determined. Declarant or its assignees shall not be obligated to exercise any reserved rights or to expand the Community beyond the number of Lots initially submitted.

Section 9.5 Interpretation. Recording of amendments to the Declaration and the plat or plats pursuant to reserved rights in this Declaration shall automatically effectuate the terms and provisions of that amendment. Further, such amendment shall automatically (a) vest in each existing Owner the reallocated Allocated Interests appurtenant to their Lot, and (b) vest in each existing security interest a perfected security interest in the reallocated Allocated Interests appurtenant to the encumbered Lot. Further, upon the recording of an amendment to the Declaration, the definitions used in this Declaration shall automatically be extended to encompass and to refer to the Community as expanded and to any Additional Improvements, and the same shall be added to and become a part of the Community for all purposes. All conveyances of Lots after such amendment is recorded shall be effective to transfer rights in all Common Elements, whether or not reference is made to any Amendment of the Declaration or Plat. Reference to the Declaration and Plat in any instrument shall be deemed to include all Amendments to the Declaration, and the Plat without specific reference thereto.

Section 9.6 Construction. Subsequent to the initial Property and improvements made subject to this Declaration, any additional buildings, structures and types of improvements to be placed on the Property or any part thereof may be of such quality and type as the persons developing the same may determine, and those improvements need not be of the same quality or type as the Improvements previously constructed on the Property, nor of the same size, style or configuration. The improvements may be located anywhere in the Common Elements of the Community, the same being reserved for future development, or on the additional Property as may be added or as shown on the Plat.



Section 9.7 Termination of Reserved Rights. The rights reserved to Declarant, for itself, its successors and assigns, shall expire as set forth above, unless (1) reinstated or extended by the Association, subject to whatever terms, conditions, and limitations the Executive Board may impose on the subsequent exercise of the expansion rights by Declarant, (2) extended as allowed by law or, (3) terminated by written instrument executed by the Declarant, recorded in the records of the Clerk and Recorder of the Gallatin County, State of Montana.

**ARTICLE 10.
INSURANCE/CONDEMNATION**

Section 10.1 Insurance to be Carried by the Association. The Association shall obtain and maintain in full force and effect to the extent reasonably available, and at all times, the insurance coverage set forth in this Declaration, which insurance coverage shall be provided by financially responsible and able companies duly authorized to do business in the State of Montana. All insurance purchased by the Association shall be purchased from companies with ratings of "A" or better, to the extent that insurance is available at reasonable cost to the Association through such companies.

Section 10.2 Real Property Insurance of Owners on their Homes. Each Owner is advised to obtain insurance providing all risk coverage or the nearest equivalent available for the full replacement cost, without deduction for depreciation, for all insurable improvements located on their Lot. Such insurance should include furnishings and personal or other property in the home and liability insurance for injury, death or damage in the home or upon the Lot.

Section 10.3 Liability Insurance of the Association. The Association shall obtain a comprehensive policy of public liability and property damage liability insurance covering all of the Common Elements, in such limits as the Board may from time to time determine, but not in any amount less than \$1,000,000.00 per injury, per person, and per occurrence, and in all cases covering all claims for bodily injury or property damage. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other uses of the Lots and the Common Elements. The foregoing liability insurance shall name the Association as the insured.

Section 10.4 Fidelity Insurance of the Association. The Association shall obtain fidelity coverage or fidelity bonds to protect against dishonest acts on the parts of its officers, directors, trustees, volunteers and employees and on the part of all others who handle or are responsible for handling the funds of the Association, including persons who serve the Association with or without compensation. The clause "officers, directors, trustees and employees" shall not include any officer, director, agent or employee of any independent, professional manager or managing agent heretofore or hereafter employed by the Association. The fidelity coverage or bonds should be in an amount sufficient to cover the maximum funds that will be in the control of the Association, its



officers, directors, trustees and employees. If the Association retains a Managing Agent, the Managing Agent shall be required to provide such fidelity insurance covering itself and its employees and naming the Association as the loss payee.

Section 10.5 Workers Compensation of the Association. The Association shall obtain and maintain workers' compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association in the amounts and in forms now or hereafter required by law.

Section 10.6 Director and Officer Liability Insurance of the Association. The Association may purchase directors' and officers' insurance in an amount reasonably necessary to protect the directors and officers.

Section 10.7 Other Insurance of the Association. The Association may obtain insurance against such other risks, of similar or dissimilar nature as it shall deem appropriate with respect to the Association's responsibilities and duties.

Section 10.8 Miscellaneous Terms Governing Insurance Carried by the Association. The Association shall maintain, to the extent reasonably available and necessary, policies with the following terms or provisions:

- A) All policies of insurance shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of an Owner and shall provide that such policies may not be canceled or modified without at least 45 days prior written notice to all of the Owners, holders of First Mortgages and the Association.
- B) If requested, certificates of insurance and renewals thereof, together with proof of payments of premiums, shall be delivered to all First Mortgagees at least 10 days prior to expiration of the then current policies.
- C) All liability insurance shall be carried in blanket form naming the Association, the Board, the manager or managing agent, if any, and the officers of the Association, as insureds.
- D) Prior to renewing casualty insurance and not less than every three years, pursuant to the provisions hereof, the Board may obtain an appraisal from a duly qualified real estate or insurance appraiser, which appraiser shall reasonably estimate the full replacement cost of the Townhouses and the Common Elements, without deduction for depreciation, review any increases in the cost of living, and/or consider other factors, for the purpose of determining the amount of the insurance to be effected pursuant to the provisions hereof. In no event shall any casualty insurance policy contain a co-insurance clause.

E) All policies of insurance shall provide that the insurance thereunder shall be invalidated or suspended only in respect to the interest of any particular Owner guilty of a breach of warranty, act, omission, negligence or non-compliance of any provision of such policy, including payment of the insurance premium applicable to the Owner's interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy, but the insurance under any such policy, as to the interests of all other insured Owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect.

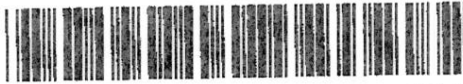
Section 10.9 Insurance Premium. Except as assessed in proportion to risk, insurance premiums for the above provided insurance shall be a Common Expense to be included as a part of the annual Assessments levied by the Association.

Section 10.10 Managing Agent Insurance. The manager or managing agent, if any, shall be insured for the benefit of the Association, and shall maintain and submit evidence of such coverage to the Association, including workers' compensation, unemployment and fidelity coverage.

Section 10.11 Waiver of Claims Against Association. As to all policies of insurance maintained by or for the benefit of the Association and Owners, the Association and the Owners hereby waive and release all claims against one another and the Board, to the extent of the insurance proceeds available, whether or not the insurance damage or injury is caused by the negligence of or breach of any agreement by these persons.

Section 10.12 Adjustments by the Association. Any loss covered by an insurance policy described above shall be adjusted by the Association, and the insurance proceeds for that loss shall be payable to the Association, and not to any first mortgagee. The Association shall hold any insurance proceeds in trust for the Association, Owners and first mortgagees as their interests may appear. The proceeds must be distributed first for the repair or restoration of the damaged property, and the Association, Owners and first mortgagees are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored. If the insurance proceeds are insufficient to cover the cost of repair or reconstruction, the Association may levy a Special Assessment to cover the short fall (or deductible) pursuant to this Declaration.

Section 10.13 Claims. The Board may, in its discretion, choose to submit a claim under the Association's insurance policy. If a claim is submitted, the payment of the deductible amount for claims which the Association is responsible for insuring shall be as follows:



A) The Association shall pay or absorb said deductible for any work, repairs or reconstruction for damage incurred to Common Elements or an area for which the Association has a maintenance responsibility, or for damage to Common Elements or any area which the Association maintains that originates in the Common Elements or an area that the Association maintains, or for damages to the Common Elements or an area which the Association maintains which originates from natural causes, unless said damage is caused by the negligent or willful act or omission of an Owner, his family, guests, or invitees; provided, however, the Association may levy a Special Assessment against all Owners to cover the deductible as provided in this Declaration.

B) The Owner shall pay or absorb said deductible for any work, repairs, reconstruction or replacement for damage incurred to his or her Lot, to the Common Elements, or to any area that the Association maintains, as the Association shall, in its sole discretion, determine to be the responsibility of the Owner.

C) If a Lot or Party Wall is damaged, then the Owner of that Lot or the Owners sharing the Party Wall shall have primary responsibility, either directly or through his insurance company, for handling and paying for, any work, repairs, reconstruction or replacement.

Section 10.14 Insurance Assessments. If the proceeds of insurance are not sufficient to defray the costs of reconstruction and repair due to deductibles allocated to the Association or failure of the Association to maintain coverage to defray costs of repair and reconstruction which in the absence of insurance would be the maintenance responsibility of the Association, the deductible or additional cost shall be a Common Expense. This Assessment shall not be considered an Assessment as discussed in this Declaration and shall not require any vote or ratification of the Owners. Notwithstanding the Special Assessment procedure set forth this Declaration, the insurance Assessment shall be ratified unless vetoed by 90% of the Members and as set forth in the Bylaws, as the Bylaws may be amended from time to time.

Section 10.15 Association as Attorney-in-Fact. Each Owner hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of dealing with any improvements covered by insurance written in the name of the Association pursuant to this Article upon their damage or destruction as provided in this Declaration, or a complete or partial taking or condemnation as provided in this Declaration. Acceptance by a grantee of a deed or other instrument of conveyance conveying any portion of the Property shall constitute appointment of the Association as the grantee's attorney-in-fact, and the Association shall have full authorization, right, and power to make, execute, and deliver any contract, assignment, deed, waiver, or other instrument with respect to the interest of any Owner which may be necessary to exercise the powers granted to the Association as attorney-in-fact. Furthermore, if so requested, an Owner shall execute a separate instrument specifically setting forth this appointment.



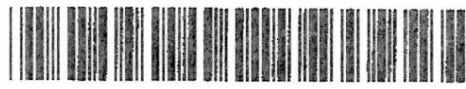
ARTICLE 11. GENERAL PROVISIONS

Section 11.1 Compliance and Enforcement.

A) Every Owner and occupant of a Lot shall comply with the Governing Documents, and each Owner shall have the right to enforce the covenants and restrictions, as set forth in this Declaration.

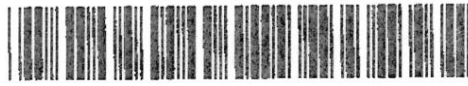
B) The Association, acting through the Board, may enforce all applicable provisions of this Declaration, and may impose sanctions for violation of the Governing Documents. Such sanctions may include, without limitation:

1. imposing reasonable monetary fines, after notice and opportunity for a hearing, which fine shall constitute a lien upon the violator's Lot. (In the event that any occupant, guest, or invitee of a Lot violates the Governing Documents and a fine is imposed, at the Board's discretion, the fine may first be assessed against the violator; provided, however, if the fine is assessed against the violator and is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board and the opportunity for a hearing have been provided);
2. suspending the right to vote;
3. exercising self-help (including, but not limited to, performing such maintenance responsibilities which are the Owner's responsibility under this Declaration and assessing all costs incurred by the Association against the Lot and the Owner as an Assessment) or taking action to abate any violation of the Governing Documents;
4. requiring an Owner, at the Owner's expense, to remove any structure or Improvement on such Owner's Lot in violation of the Governing Documents and to restore the Lot to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed, at the Owner's expense, and any such action shall not be deemed a trespass;
5. without liability to any person, the Association precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Declaration from continuing or performing any further activities in the Community;
6. levying specific Assessments to cover costs incurred by the Association to bring a Lot into compliance with the Governing Documents; and
7. bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.



- C) In addition to any other enforcement rights, if an Owner fails to properly perform his or her maintenance responsibility, or otherwise fails to comply with the Governing Documents, the Association may record a notice of violation against the Owner and the Lot.
- D) All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, the prevailing party shall be entitled to recover all costs, including, without limitation, attorney fees and court costs, reasonably incurred in such action.
- E) The decision of the Association to pursue enforcement action in any particular case shall be left to the Board's discretion, subject to the duty to exercise judgment and be reasonable, as provided for in this Declaration, and further restricted in that the Board shall not be arbitrary or capricious in taking enforcement action. A decision of the Association to pursue enforcement action shall not be construed as a waiver of the Association's right to enforce such provisions at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule. Without limiting the generality of the foregoing, the Board may determine that, under the circumstances of a particular case:
1. the Association's legal position is not strong enough to justify taking any or further action;
 2. the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; or
 3. that it is not in the Association's best interests, based upon hardship, expense or other reasonable criteria, to pursue enforcement action.
- F) Should the Association for any reason not take responsibility for compliance and enforcement of this Declaration and all other Governing Documents, the City of Bozeman may take responsibility to enforce all of the aforementioned.

Section 11.2 Dispute Resolution/Arbitration. Any controversy or claim arising out of or relating to this Declaration of Covenants and Restrictions or any rules, regulations, or governing documents of the Association shall be resolved by arbitration administered by an arbitration service selected by the party that commences such arbitration from a list of arbitration services adopted by the Executive Board of the Association. The arbitration will be administered in accordance with the rules of the selected arbitration service and MCA 27-5-111 of Montana State law. Commencement of the arbitration shall be by service of a Notice of Intention to Arbitrate in accordance with MCA 27-5-211. The arbitration award shall be final and binding, and judgment may be entered upon the arbitration award in any court having jurisdiction. Notwithstanding the above, a party may seek injunctive relief through arbitration or from any court of competent jurisdiction to prevent irreparable harm. The prevailing party in any arbitration or other legal proceeding shall be awarded its costs and actual attorneys fees. Failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.



Section 11.3 Severability. Each of the provisions of this Declaration shall be deemed independent and severable. If any provision of this Declaration or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Declaration which can be given effect without the invalid provisions or applications.

Section 11.4 Term of Declaration. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity.

Section 11.5 Amendment of Declaration, Map or Plat by Declarant. If Declarant shall determine that any amendments to this Declaration or the Plat shall be necessary in order to make non-material changes, such as for the correction of a technical, clerical or typographical error or clarification of a statement or for any changes to property not yet part of the Community, then, subject to the following sentence of this Section, Declarant shall have the right and power to make and execute any such amendments without obtaining the approval of any Owners. Each such amendment of this Declaration shall be made, if at all, by Declarant prior to the expiration of seven years from the date this Declaration is recorded. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant to make or consent to an amendment under this section on behalf of each Owner and holder of a security interest. Each deed, security interest, other evidence of obligation or other instrument affecting a Lot and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power of Declarant to make, execute and record an amendment under this Section.

Section 11.6 Amendment of Declaration by Owners. Except as otherwise provided in this Declaration, and subject to provisions elsewhere contained in this Declaration requiring the consent of Declarant or others, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended, revised, removed or repealed, and new provisions, covenants, conditions, restrictions or equitable servitudes may be added, at any time and from time to time upon approval of Owners holding at least 67% of the votes in the Association and with the written consent of the Association. Notice of any meeting at which a proposed amendment will be considered shall state the fact of consideration and the subject matter of the proposed amendment. The amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of the Gallatin County, State of Montana of a certificate setting forth the amendment in full and certifying that the amendment has been approved as set forth above, and containing the written consent and approval of the Association.

Section 11.7 Amendment Required by Mortgage Agencies. Prior to seven years after recording of this Declaration, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration which a holder of a first lien security interest, or FHA, VA, FHLMC, GNMA, FNMA or any similar entity authorized to insure, guarantee, make or purchase mortgage



loans requires to be amended or repealed may be amended or repealed by Declarant or the Association. Any such amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of the Gallatin County, State of Montana of a certificate setting forth the amendment or repeal in full.

Section 11.8 FHA/VA Approval. As long as the Declarant has the right to appoint and remove officers and directors of the Association, the following actions shall require the prior approval of the VA (so long as the VA is guaranteeing any Mortgage in the Community), and FHA (so long as FHA is insuring any Mortgage in the Community): annexation of additional property to the Community; mergers and consolidations; dedication of Common Property to any public entity; dissolution; mortgaging of Common Property, and material amendment of the Declaration, Bylaws or Articles of Incorporation.

Section 11.9 Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any paragraph, section or article hereof.

Section 11.10 Interpretation. The provisions of this Declaration shall be construed to effectuate their purposes of creating a uniform plan for promoting and effectuating the fundamental concepts as set forth in this Declaration. The Executive Board shall have the authority to interpret the meaning of any provision contained in this Declaration.

Section 11.11 Singular Includes the Plural. Unless the context otherwise requires, the singular shall include the plural, and the plural shall include the singular, and each gender referral shall be deemed to include the masculine, feminine and neuter.

ARTICLE 12.

BOZEMAN CITY COMMISSION AND U.D.O. REQUIRED COVENANTS

A) 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. The landowner shall be responsible for the control of the state and county declared noxious weeds on his or her own lot. Both unimproved and improved lots shall be managed for noxious weeds. In the event a landowner does not control the noxious weeds, after 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.



- B) Lot owners and residents of the subdivision are informed that adjacent uses may be agricultural. Lot owners accept and are aware that standard agricultural and farming practices can result in dust, animal odors and noise, flies, smoke and machinery noise. Standard agricultural practices feature the use of heavy equipment, chemical sprays and the use of machinery early in the morning and sometimes late into the evening.
- C) All fences bordering agricultural lands shall be maintained by the Homeowners in accordance with State Law.
- D) As described above, the Homeowners Association shall be responsible for the maintenance of subdivision streets, common open space, centers, pathways, landscaping in street boulevards along public frontage, open space and parks.
- E) All covenants required as a condition of preliminary plat approval and required by the City Commission may not be amended or revoked without the mutual consent of the owners in accordance with the amendment procedures set forth in this instrument, and the City Commission.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed by its duly authorized agent this 20th day of October, 2006.

BAXTER MEADOWS WEST LLC,
a Montana limited liability company,

By: Thomas L. Clinton
Thomas L. Clinton

By: Gerald R. Williams
Gerald R. Williams

STATE OF MONTANA)
) ss.
COUNTY OF Gallatin)

The foregoing Declaration was acknowledged before me by THOMAS L. CLINTON AND GERALD R. WILLIAMS, as Authorized Agents, of Baxter Meadows West LLC, this 20th day of October, 2006.

Witness my hand and official seal.

Terri Zullo
Terri Zullo
Notary Public for the State of Montana
Residing at Bozeman, Montana
My Commission expires: July 31, 2007



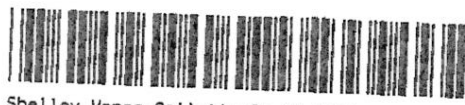
EXHIBIT A

DESCRIPTION OF PROPERTY

A parcel of land being Lots 1 and 2, Block 7 of the Final Plat of Baxter Meadows Subdivision P.U.D. Phase 1 and Tract 1-A of the Amended Plat of Baxter Meadows Subdivision P.U. D. Phase 1, Tract 1, all located in the Southwest Quarter of Section 34, Township 1 South, Range 5 East, P.M.M., City of Bozeman, Gallatin County, Montana.

Property may be added by exercise of reserved development rights, as set forth in this Declaration. Property added to the Community may be subject to the following easements and interests of record:

1. The Declaration for the Baxter Meadows Master Community Association.
2. Other instruments of record.



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Shelley Vance-Gallatin Co MT MISC 349.00

EXHIBIT B

PROPERTIES OWNED BY DECLARANT
WHICH MAY BE ADDED TO THE DECLARATION

All or part of any real estate located adjacent to the Community, or across a public street, ditch or easement from the Community, provided the owner of that real estate consents, and provided all other consents or votes required by this Declaration are first obtained.



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Shelley Vance-Gallatin Co MT MISC 349.00

EXHIBIT C

**OTHER PROPERTIES WHICH MAY
BE ADDED TO THE DECLARATION**

All or part of any real estate located adjacent to the Community, or across a public street or alley from the Community, provided the owner of that real estate consents.

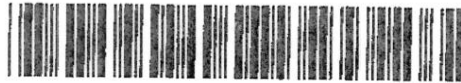


EXHIBIT D

**INITIAL COMMON ELEMENTS WITHIN BAXTER MEADOWS WEST,
MAINTAINED BY BAXTER MEADOWS MASTER COMMUNITY ASSOCIATION**

