



**FIRST AMENDED DECLARATION OF PROTECTIVE COVENANTS
AND RESTRICTIONS FOR ALDER CREEK SUBDIVISION**

THIS DECLARATION is made this 8th day of MAY, 2008, by Mahar Montana Homes, LLC, hereinafter referred to as "Declarant";

WITNESSETH:

WHEREAS, Declarant is the owner of real property situated in Gallatin County, Montana, more particularly described on Exhibit "A" known as ALDER CREEK SUBDIVISION PHASES 1-5, attached hereto and incorporated herein;

WHEREAS, Declarant intends to develop, sell and convey the above-described real property, hereinafter referred to as "Alder Creek"; and,

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

WHEREAS, Declarant desires to replace, supersede, and amend, all other Declarations of Protective Covenants and Restrictions for Alder Creek Subdivision, specifically Gallatin County Clerk and Recorder **Document Number 2139132** dated January 12, 2004, filed January 30, 2004, and **Document Number 2229632** dated May 25, 2006, filed May 30, 2006.

NOW, THEREFORE, Declarant does hereby establish, dedicate, declare, publish and impose upon the property the following Protective and Restrictive Covenants, which shall run with the land, and shall be binding upon and be for the benefit of all persons claiming such property, their grantors, legal representatives, heirs, successors and assigns, and shall be for the purpose of maintaining a uniform and stable value, character, architectural design, use, and development of the property. Such Covenants shall apply to the entire property, and all improvements placed or erected thereon, unless otherwise specifically excepted herein. The Covenants shall inure to and pass with each and every parcel, tract, lot or division.

Said Covenants shall be as follows:

ARTICLE I

DEFINITIONS

Section 1. The term "Association" shall mean the Alder Creek Homeowners' Association, its successors and assigns. The Association may be incorporated as a

Montana nonprofit corporation, with its members as the lot owners.

Section 2. The term "member" shall mean any owner or lot owner. Each member or owner agrees to abide and be bound by these Covenants, the Articles of Incorporation, and the Bylaws and the Resolutions of the Homeowners' Association, if any.

Section 3. The term "owner" or "lot owner" shall mean any person or entity owning a fee simple interest in a lot or a contract purchaser, whether one or more persons or entities, owning or purchasing a lot, but excluding those having a mortgage or an interest merely as security for the performance of an obligation; provided, however, that prior to the first conveyance of a lot for value, the term "owner" shall mean "Declarant" or its successors or assigns. The term "person" hereinafter shall include any person, persons or entities.

Section 4. The term "contract purchaser" shall mean a person buying a lot pursuant to a contract for deed, Montana Trust Indenture or mortgage.

Section 5. The terms "properties" and "lots" shall mean all of the real property herein described and subsequently surveyed and platted into lots as Alder Creek Subdivision, according to the official plats thereof filed of record in the office of the Clerk and Recorder of Gallatin County, Montana.

Section 6. The term "Directors" shall mean the Directors of the Association, and shall consist of at least three, but not more than seven, lot owners who shall be elected at the annual meeting by a simple majority of the members of the Association. The Board of Directors shall be elected for a term set by a simple majority of the membership, but not less than one year. Any vacancy in the Board of Directors occurring before the next annual meeting of the members shall be filled by the remaining Directors.

Until 75% of the lots in Alder Creek Subdivision, as described on Exhibit A, have been sold, the Declarant shall have the right to appoint the Board of Directors, who shall not be required to be lot owners or members of the Association.

Section 7. The term "Declarant" shall mean and refer to Mahar Montana Homes, LLC, and its successors and assigns.

Section 8. The term "open space" means those areas set aside for the use of the owners and the public, including roads, trails, easements, boulevards, storm water retention areas, parks (both active and owners'), and parkways.

Section 9. The term "active park" means the larger park areas that are maintained by the Association, and which may be transferred to the City of Bozeman, or any other public agency or authority, for such purposes and subject to such conditions as may be agreed to by the Association at some time in the future. No such dedication or transfer shall be effective unless approved by a majority of the Directors.

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Section 11. The term "owners' parks" means the boulevards, trails, and parkways maintained in perpetuity by the Alder Creek Homeowners' Association.

Section 12. The term "Alder Creek Management Plan" shall mean the management plan for designated park land and open space. The Management Plan shall provide for the

permanent care, management, maintenance and development of the open space, recreational areas, trails, and communally owned facilities, designated on the plat.

Section 13. The term "Alder Creek Architectural Committee" shall mean the Committee appointed by the Board of Directors of the Alder Creek Homeowners' Association, whose function is to review and approve or disapprove plans, specifications, designs, landscaping, sites, and locations of improvements to be constructed within the Alder Creek Subdivision.

Section 14. The term "improvements" shall include, but not be limited to, all buildings, outbuildings, stairs, decks, bridges, roads, trails, pathways, driveways, parking areas, fences, screening walls and barriers, hedges, windbreaks, plantings, trees and shrubs, retaining walls, yard and lawn ornaments or artwork, tree houses, solar panels, water lines, sewer lines, electrical, gas, telephone and internet transmission lines, cable television lines, television and radio transmission facilities, poles, signs, and all other structures, installations, and landscaping of every type and kind, whether above or below the land surface.

Section 15. Other definitions may be found throughout these covenants and those definitions are binding upon all owners. Any term not specifically defined shall be deemed to have a common and ordinary meaning.

ARTICLE II

PROPERTY USE AND CITY REQUIRED COVENANTS

Section 1. Every owner shall have a right to use the common areas, parks, trails, and roads as shown on the plat for Alder Creek Subdivision, subject to the following:

- a. The right of the Association to provide reasonable restrictions on the use of the common areas, trails, parks, and roads for the overall benefit of the Association and its members, including limitations on the number of guests permitted to use the common areas, and restrictions or prohibitions on the type of activity and use, including, but not limited to, the use of firearms, fireworks, motor driven vehicles, roller blades or skates, skate boards, scooters, bicycles, loud music and loud parties in the parks or common areas.



- b. The right of the Association to charge reasonable fees for the disproportionate use by owners or others of, or for use of specialized recreational or other facilities situated on, the parks or common areas.
- c. Owners and guests shall not harass wildlife, and should avoid areas of wildlife concentration. Loud, offensive, or other behavior which harasses or frightens wildlife in parks, common areas, and open space is prohibited.

Section 2. Each owner shall be responsible for the maintenance and repair of all sidewalks, boulevards, parking areas, driveways, walkways, and landscaping of their lot, and shall at all times keep the lot, and the buildings, improvements, and appurtenances thereon in a safe and clean condition. All landscaping and boulevards shall be maintained, watered, trimmed, mowed, controlled for weeds, and replaced as necessary so as not to detract from the general appearance of the subdivision and the neighboring properties in the opinion of the Architectural Committee.

Vacant lots are to be properly maintained. The Owner is fully responsible to mow weeds and grass during the Month of **June** and the Month of **September**. If Owner fails to remove and/or mow the weeds and grass the Association shall perform the required work and will invoice the Owner all costs associated with mowing and/or removing the weeds and grass from the vacant lot. If the invoice is not paid within 30 days a lien as allowed herein shall be filed against the Owner's vacant lot.

In the event that maintenance, repair, or weed control is caused or necessitated through the willful or negligent act of any owner, or their guests, invitees, agents or contractors, and such maintenance, repair, or weed control is completed by the Association after reasonable notice to the owner, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such lot is subject. Maintenance and repair caused by willful or negligent acts of owners shall include, but not be limited to, maintenance and repairs required as a result of utility installation or repairs, or other actions of contractors or agents of the owner, performed outside the boundary of the lot.

Section 3. Every lot owner shall be responsible for maintenance of the sidewalk located on, adjacent to and between the owner's lot and the nearest right-of-way. Maintenance shall include, but not be limited to snow and ice removal as required by the City of Bozeman. It shall also be the responsibility of each lot owner to maintain their own driveways from the edge of the paved street or alley to their own garage. The boulevards, rights-of-way, and ditches are to be mowed and maintained by the lot owner on their lot, and by the Association in common areas. Boulevards, rights-of-way, and ditches may not be blocked or filled.

Section 4. The owner of any lot shall at all times conduct its use and activities in a manner that will preserve the integrity of waterways within the parks and common areas,

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including the prevention of any degradation of water quality, any reduction or increase in the flow of said waterways, or any damage to the stream bed or banks of said waterways. The owner or occupant of any lot shall not conduct or permit the conduct of the following activities:

- a. The discharge of any liquid, solid, or gas into waterways;
- b. Any polluting of waterways;
- c. The use of any fertilizers, herbicides, or poisons, other than those specifically approved by the Architectural Committee, that would runoff, drain or discharge into waterways;
- d. Any erosion or refuse encouraging activities that would affect waterways;
- e. Any diversion of any waterway onto any subdivision lot, park lands, or common areas.

Section 5. No noxious odors or offensive activity shall take place upon any portion of the Subdivision or lots, nor shall anything be done thereon which may be, or may become, an annoyance to the neighborhood.

Section 6. No firearms or fireworks of any kind shall be discharged in the Subdivision.

Section 7. No hunting of, shooting at or harassing of birds, animals or any wildlife will be permitted in the Subdivision. Skunks, gophers and rodents may be trapped; however, poison may not be used.

Section 8. No livestock, poultry, or other animals, except domestic dogs and cats, or small in-house pets and birds, are permitted on the properties. Dogs, cats or other household pets may be kept in reasonable numbers, provided they are confined to the Lot of their owner. Household pets may not be kept, bred or maintained for any commercial purposes. Pets shall not be allowed to roam free, and shall be restrained or leashed at all times. Pets shall not be allowed to become a nuisance or annoyance to neighboring property owners, nor allowed to bark continuously or uncontrolled at any time. Owners are responsible for cleaning up after their pets on any neighboring properties, and on all boulevards, parks, trails, and common areas.

All dogs, cats and other pets shall be strictly controlled by their owners to prevent any interference or harassment of wild birds or animals in the subdivision or on surrounding or adjacent properties. If any animals are caught or identified chasing or otherwise harassing

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wildlife or people, or have become a nuisance or annoyance to neighboring property owners, the Association or any Owner shall have the authority to have such animal or animals impounded in accordance with the City of Bozeman animal control regulations.

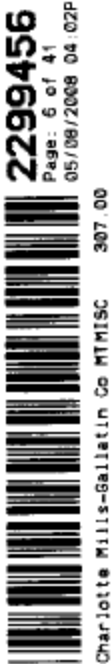
All animals shall be further subject to the provisions of the Alder Creek Management Plan, and subject such rules and regulations as may be adopted by the Association, which may reduce the allowable number, restrict the type of pet, or require that such pets be confined indoors.

Section 9. No signs shall be erected on the common areas, parks, or open space, or on any privately owned lot within the subdivision, except as follows:

- a. One address or family name sign shall be allowed to identify the owner of the property. Such identification signs shall be limited to a maximum of two square feet of surface area, and must be attached to the principal residence. Any such signs shall comply with the City of Bozeman zoning and sign regulations.
- b. One temporary "For Sale" sign shall be allowed for a home or lot being sold, provided it is promptly removed when the home or lot is sold.
- c. During the time that the property is being developed and lots are being sold, the Declarant may erect "Subdivision For Sale" type signs in accordance with the City of Bozeman zoning and sign regulations.
- d. A sign may be placed at the entrance(s) to the subdivision to identify the subdivision, and directory signs may be placed within the common areas, parks, trails, or open spaces, may be approved by the Board of Directors. Directory signs should be combined with landscaping features, be made of natural appearing materials, and must comply with the provisions of the City of Bozeman zoning and sign regulations.

Section 10. Individual mail boxes will not be allowed, and no newspaper delivery tubes will be allowed in the Subdivision. Community mail boxes will be clustered at strategic locations approved by the Postmaster to simplify mail delivery, and such boxes shall be maintained by the Association. No parking will be allowed in front of the mailbox clusters.

Section 11. All garbage, trash, and rubbish shall be regularly removed from the property, and shall not be allowed to accumulate. All solid waste containers must be stored out of view except during reasonable periods prior to and after pick-up, and only on the day of pick-up.



Section 12. No pickup camper, camping trailer, snowmobile, boat, trailer, motor home, motorcycle, four-wheeler, ATV, or any type of vehicle or similar item used for recreational purposes shall be used for habitation, and may not be placed or left upon a Lot, driveway, street, or alley, for a period of longer than fourteen (14) days in a calendar year unless it is stored in an attached, enclosed structure which is aesthetically acceptable to the Architectural Committee, and is not visible from other properties, sidewalks, or streets. Owners understand and agree that streets within Alder Creek whether dedicated or not shall be monitored by both the Association and the City of Bozeman and both shall have the authority to enforce this restriction.

Section 13. No temporary structures, trailers, campers, motor homes, tents, or similar structures shall be used as a residence on any lot.

Section 14. All recreational and play equipment, including but not limited to, swing sets, play houses, tee-pees, trampolines, and tennis or badminton nets, shall be limited to back yard areas, shall be inconspicuous and screened from neighboring and street views, and shall be limited in use so as not to be offensive to neighboring properties or common areas.

Section 15. All holiday-type decorations, including but not limited to, lights, decorations, and ornaments for structures, lawns, trees, or windows, shall not be put up, installed, or lighted more than 30 days prior to the designated calendar date for the applicable holiday, and must be taken down and removed within 30 days after the designated calendar date for the applicable holiday.

Section 16. There are reserved, as shown in the plat and as may otherwise be reserved, easements for the purposes of constructing, operating, maintaining, enlarging, reducing, removing, laying or relaying lines and related facilities and equipment for utilities, including, but not limited to, those providing gas, communication and electrical power. Fencing, hedges and other items allowed by the Covenants may be placed along and in the easements as long as the intended use of such easements are not prevented.

Section 17. City sewer and water lines, power, natural gas, cable television, and telephone primary service lines are provided to each lot. However, each lot owner is responsible for the costs of connecting to the main utility lines to the lot improvements from the primary line near the lot, including any additions to the primary line that may be required by the location of the improvements on the lot. All utility lines shall be underground.

Section 18. Any lot may be subject to the declarations of a condominium or townhouse property legally formed and filed. The additional restrictions and requirements of any such condominium or townhouse do not, in any way, relieve the lot or owner from compliance with all restrictive covenants stated herein.

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Section 19. All zoning, land use regulations and all other laws, rules and regulations of any government or agency under whose jurisdiction the land lies are considered to be part of these Covenants and enforceable hereunder; and all of the owners of said lands shall be bound by such laws, rules and regulations.

In the event there is a conflict between the Covenants and the applicable zoning, the most restrictive provision of either the Covenants or the zoning shall control.

ARTICLE III

ALDER CREEK HOMEOWNERS' ASSOCIATION

Section 1. An association is hereby established known as "Alder Creek Homeowners' Association," (hereinafter referred to as the "Association"), for the purpose of enforcing these covenants and operating the Association for the benefit of all members therein. The initial address of the Association shall be 1627 West Main #370, Bozeman, MT 59715. The address of the Association may be changed by the Board of Directors upon notice to the owners.

Section 2. Every owner or contract purchaser of a lot shall be a member of the Alder Creek Homeowners' Association. Membership shall be appurtenant to and may not be separate from the ownership of any lot. Each owner shall be responsible for advising the Association of their acquisition of ownership, of their mailing address, and of any changes of ownership or mailing address.

Members shall be entitled to one vote for each lot owned. Multiple owners of a single lot shall have one such membership or voting interest between them. If more than one lot is owned, the owner or owners thereof shall have one membership or voting interest for each separate lot.

Section 3. For the purpose of determining membership, at any meeting a person or entity shall be deemed to be a member upon the recording of a duly executed deed to that owner, or upon the recording of a Notice of Purchaser's Interest or an Abstract of Contract for Deed showing a contract purchase by an owner. The legal title retained by the vendor selling under contract shall not qualify such vendor for membership.

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

Section 4. The annual meeting of the Association shall be set at a time and place

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determined and noticed by the Board of Directors.

Any special meetings may be called by the President, or in the absence of the President, by the Vice-President. In addition, a special meeting shall be held upon call of 25% of the owners. Special meetings shall require 48 hours' notice, in writing. Notice of annual and special meetings shall be mailed to owners at the address for each owner as provided pursuant to Section 2 of this Article. The presence of members, in person or by written proxy, representing 55% of the total votes of the membership shall constitute a quorum.

At the annual meeting, the members shall review and approve a budget for the next year, shall elect Directors to fill any expired term or vacant position, and shall conduct such other business as shall be reasonable or necessary to carry out the purpose of the Association.

Section 5. The members shall have the authority to set the number of Directors, which number shall not be less than three nor more than seven and shall consist of an odd number of total Directors. However, as set forth in Article I, Section 6, until at least 75% of the lots have been sold, there shall be three Directors, and Declarant shall have the right to appoint the Board of Directors, who shall not be required to be lot owners or members of the Association.

Section 6. The Board of Directors shall serve for a term to be set by a simple majority of the membership, which shall not be for less than one year. Each director shall serve until replaced by his or her successor. Any vacancy on the Board of Directors occurring before the next annual meeting of the members shall be filled by the remaining directors by a majority vote of the remaining directors.

All Director meetings shall require the presence of Directors entitled to cast a minimum of 55% of all votes of the Directors. The presence of Directors entitled to cast 55% of all votes of the Directors shall constitute a quorum. The Directors shall act by majority vote.

Section 7. The Board of Directors shall have the power and responsibility of acting on behalf of the Association and its members as shall be reasonably necessary to carry out the purposes of the Association, including but not limited to take such actions as shall be necessary or reasonable to care for, protect and maintain the easements, park lands, open space, trails, boundary fences, drainage easements and common areas, community signs or identification; to enforce these Covenants; to set and collect assessments; to set annual and/or special meetings; and to act in any other matters set forth herein or which may serve the development, including the formation of special improvement districts, either public or private, for such improvements as the Association shall approve.

The Directors shall have the authority to hire additional professional officers, management personnel or companies, consultants, accounting services, or any other personnel which they deem necessary for the smooth, efficient, and professional functioning of the Association. They may include, but not be limited to, a manager, secretary, treasurer, professional consultants, accountants, and maintenance personnel. The Directors shall

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also have the authority to make contractual arrangements with outside entities, including but not limited to attorneys, accountants, engineers, environmental consultants, maintenance contractors, and building contractors to provide for the smooth, efficient, and professional functioning of the Association.

Section 8. The annual meeting of the Board of Directors shall be held immediately after the annual meeting of the members. At the annual meeting, the Directors shall elect a President, Vice-President and Secretary-Treasurer for the Association from among the Directors, except that the Secretary-Treasurer may be a member who is not a Director. The officers of the Association shall follow the directions of the majority vote of the Directors.

Section 9. The duties of each of the offices shall be as follows:

a. President. The President shall preside over all meetings of the Association. The President shall call the membership together whenever necessary. The President shall be the general administrative and executive officer of the Association, and shall perform such duties as may be specified, and exercise such powers as may be delegated to the office of President by the Board of Directors.

b. Vice-President. The Vice-President shall exercise the powers of the President in the absence of the President.

c. Secretary-Treasurer. The Secretary shall give notice of all meetings of the Association, and shall keep a record of the proceedings of the meetings of the Association. The Secretary shall be authorized to sign on behalf of the Association, all records, documents and instruments when such are authorized to be signed by the Association.

The Treasurer shall keep and maintain adequate and correct accounts of the accounts, properties, and business of the Association, including accounts of its assets, liabilities, receipts, disbursements, gains and losses of the Association. The Treasurer shall prepare and report such periodic accountings as shall be required by the Association.

Section 10. A vacancy in any office of the Association shall be filled by appointment by the Board of Directors until the next annual meeting or the successor is duly appointed or elected.

ARTICLE IV

INSURANCE AND RESERVE REQUIREMENTS

The Association shall be and is hereby required to maintain and carry general liability insurance in a minimum amount of \$1,000,000.00 per incident and \$2,000,000.00

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in aggregate. The payment of premiums for such insurance shall be occasioned through the inclusion of the premiums in the annual budget and the collection of those premiums through the assessment procedures set forth below. The general liability policy shall also name Montana State University or its designee or nominee as an additional insured inasmuch as Montana State University has the right to continue to allow its irrigation waters to flow and travel over, through and across a designated water course in this development.

The general liability policy shall further provide that Montana State University its designee or nominee shall be entitled to written notice of the expiration, termination or cancellation of such general liability policy no less than thirty (30) days before such expiration, termination or cancellation becoming effective.

In the event and for whatever reason the Association shall fail, refuse or neglect to keep and maintain general liability insurance naming Montana State University or its designee or nominee as an additional insured, Montana State University may, of its own accord and election, procure such insurance at its cost and expense and bill the same to the Owners Association together with interest at the rate of twelve percent (12%) per annum and an administrative fee of \$500.00. Until paid, such charges shall be a lien upon the properties, lots and tracts throughout this development.

The Association further hereby covenants and agrees with Montana State University, to hold Montana State University harmless and indemnify Montana State University against any and all claims, actions, causes of action, damages, or other losses which may arise by virtue of the Developer's or the Association's modifications to the Montana State University ditch system, including but not limited to culverts, control structures, pipes and ditch relocation.

In addition to the insurance and indemnity requirements set forth herein, the Association shall maintain a capital reserve/maintenance account in the amount of \$25,000.00 for the purposes of maintaining, repairing and/or replacing any of the ditch structures or modifications made by Developer or the Association.

Montana State University or its designee or assign shall be entitled to perform any maintenance, repair or replacements on the ditch or structures therein, and shall be entitled to reimbursement from the capital reserve maintenance account within 20 days of submission of an invoice for said work to the Association.

ARTICLE V

ANNUAL AND SPECIAL ASSESSMENTS

Section 1. Assessments.

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

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- (1) Annual assessments or changes; and,
- (2) Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

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

Section 2. Purpose of Assessments.

The assessments levied by the Association shall be used to promote the recreation, health, safety, convenience and welfare of the owners, for the improvement, repair and maintenance of roads, easements, trails, park lands, open space, ail boxes, community

signs or identification, and community boulevard trees and landscaping within the subdivision, and for any other purposes, expressed or implied, in these Covenants.

The assessments levied by the Association shall also include the annual cost of maintaining general liability insurance approximately \$800.00 per year for the Association. However, this assessment shall increase as the amount of Owners increases.

Community park land, open space, and boulevard trees and landscaping shall be watered, maintained, and replaced by the Association when necessary.

Section 3. Amount and Approval of Assessments.

The maximum assessment per lot which may be made by the Association in every calendar year shall not substantially exceed the projected and budgeted actual and reasonable costs to be incurred by the Association during the coming year in carrying out the purposes herein set forth, and may include a reasonable reserve for contingencies. The amount of the annual assessments shall be fixed by the Board of Directors of the Association in the following manner:

At each annual meeting of the members of the Association, the Directors shall present a proposed budget of the estimated expenses for the Association for the coming year to the members for review, discussion, amendment, comment and approval. The members shall approve or amend the proposed budget by a majority vote of the members present or voting by proxy. After the annual meeting, the Board of Directors shall set the amount of the assessments and the date(s) due for the coming year to cover the budget approved in the manner herein set forth.

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Section 4. Special Assessments for Capital Improvements.

In addition to the annual assessments authorized above, the Association may levy special assessments for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, or other capital improvements on the properties and open space, including fixtures and personal property related thereto, provided that any such assessment shall have the approval of two-thirds (2/3) or more of all of the votes of the members who are present, in person or by proxy, at a meeting duly called for that purpose. Special assessments may be levied to be paid over one or more years. Assessments for normal maintenance and repairs shall not require two-thirds (2/3) vote.

Section 5. Uniform Rate of Assessment.

Annual assessments shall be fixed by the Directors at a uniform rate for each lot, except the Directors may fix a different uniform rate for improved and unimproved lots. The assessments may be collected on a monthly, quarterly or annual basis, or any other regular basis as shall be determined by the Board of Directors of the Association. Special assessments shall be fixed at the same rate for each lot affected by the special assessments. Different rates of annual or special assessments may be set for different phases of the Alder Creek development.

Section 6. Date of Commencement of Annual Assessments: Due Dates.

Except as herein provided, the annual and special assessments provided for herein shall be due on the date determined by the Board of Directors. The Board of Directors shall fix the amount of the annual assessments against each lot at least thirty days in advance of the due date of each annual assessment, and at least ninety days in advance of a special assessment. Written notice of the annual and special assessments shall be mailed or personally delivered to every member subject thereto, at their last known mailing address.

Section 7. Effect of Nonpayment of Assessments: Remedies of the Association.

Any assessment not paid within thirty days after the due date shall bear interest from the due date at the rate of ten percent (10%) per annum. The Association may bring an action at law against the owners obligated to pay the same or foreclosure the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the open space or by abandonment of their lot.

Upon delivery of the notice of assessment to the owner, the assessment shall be a lien upon the owner's lot until paid. The Association may record a notice of the lien with the Clerk and Recorder of Gallatin County, Montana. In the event of non-payment within thirty days after the recording of the notice of lien, the Association may foreclose the lien in the manner set forth under Montana law for the foreclosure of liens against real property. The Association is entitled to collect during an action for delinquent assessments any and all reasonable attorney fees and costs accrued prior to and in association with the collection

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of delinquent assessments.

Section 8. Sale or Transfer of a Lot.

The sale, transfer or encumbrance of any lot shall not affect the assessment lien if recorded in the records of Gallatin County, Montana, or the personal liability of the owner responsible for the assessment. No sale or transfer to a third party with actual or constructive knowledge of an assessment shall relieve such new owner from the liability for any outstanding assessments, or from any assessments thereafter becoming due, or from the recorded lien thereof. A person or entity purchasing a lot shall be responsible for checking with the Association for any outstanding assessments against said lot before the closing upon the purchase. The Transfer or use of property by the Declarant to secure investments, loans, or collateral shall not be considered a "Sale" as particularly described herein.

ARTICLE VI

ALDER CREEK OPEN SPACE MANAGEMENT PLAN

Section 1. Alder Creek Subdivision is designed to meet the goals and objectives of the City of Bozeman 2020 Plan. The park lands, boulevards, trails, and open space in Alder Creek Subdivision are intended to provide a general feeling of openness to buffer the residential areas of the Subdivision, to preserve and enhance existing watercourses and related vegetation, to provide accessible recreational opportunities within an urban setting, and to provide trail connectivity through the Subdivision and into the adjacent neighborhoods.

To that end, Mahar Montana Homes, LLC, has adopted this Alder Creek Open Space Management Plan, which is incorporated herein by reference, and which is given the same consideration and enforceability as all other covenants contained herein. The Alder Creek Open Space Management Plan is intended to provide a guideline for the protection, management, development, operation, and maintenance of the park lands, boulevards, trails, and open space within Alder Creek Subdivision.

Section 2. The park lands, boulevards, trails, and open space within Alder Creek Subdivision, as designated on the final plats, shall be preserved in perpetuity. The Alder Creek Homeowners' Association shall be responsible for payment of liability insurance and local taxes for these areas, and shall have the right and obligation to provide for the protection, management, development, operation, and maintenance of recreation and other facilities in the parks and open space areas consistent with the Alder Creek Open Space Management Plan. The Association shall also have the right to enforce the Alder Creek Open Space Management Plan.

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The Board of Directors of the Alder Creek Subdivision Homeowners' Association shall establish assessments for the taxes, insurance, and maintenance of all boulevards, trails, roads, active parks under the control and authority of the Association, subdivision parks, parkways, and open space. The assessments levied by the Board for the maintenance, upkeep, repair and operation of open space and other common areas, like all other assessments, become a lien on each lot within the Alder Creek Subdivision. The Board, may, in its discretion, adjust the assessments to meet the changing needs of the community and the areas serving the community.

Section 3. The Association shall have the right to construct such recreational facilities in any portion of the common areas that may be approved by a majority vote of the members voting at any regular or special meeting called in accordance with the provisions of these covenants.

Section 4. Trails may be located so as to provide opportunities for interior walking loops and watercourse viewing and enjoyment. Ancillary facilities such as benches, picnic tables, or overlook locations may be located and constructed along trails. Mowed areas are proposed adjacent to trails. All trails are to be Class II trails in accordance with the City of Bozeman trail requirements.

Section 5. The boulevards, storm water retention areas, and trails, located at the entrance to Alder Creek Subdivision, along South 3rd Street and 11th Street, in the center area of Alder Creek Drive, running east/west through Blocks 15 - 18, and north/south through Block 17 between Madrona Lane and Spring Ridge Drive, as well as the large park land areas shall be maintained by the Association. No motorcycles, ATV's, snowmobiles or similar means of transportation are permitted in the park land or open space areas. Motorized vehicles and equipment are allowed in the park land and open space areas exclusively for snow removal and landscape maintenance.

Section 6. Landscaping and plantings shall feature native species, but may incorporate non-native and ornamental species of trees and shrubs that will minimize maintenance and water consumption, or that will contribute to wildlife depredation problems. Terrain modification may occur where needed to enhance opportunities for human activities, especially in conjunction with the trails, to improve vegetative screening, to enhance watercourse development, and to minimize maintenance. Temporary fencing around shrubs and trees may be utilized to prevent or minimize destruction by animals or people during the time necessary to ensure the protection and survival of any plantings.

Section 7. Noxious weeds shall be controlled on all common and open space areas. The preferred method is by introduction of desirable plant species that eliminate weeds. Interim measures permitted include herbicide applications, mowing and biological control. All herbicide applications shall be conducted according to applicable regulations.

Section 8. The watercourse and wetland riparian areas are intended to encourage the return of native plant and animal species, while recognizing that people are drawn to and

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like to be near water. All water course, wetland, and wildlife enhancement projects will be done in conjunction with public or private professional consultants, and shall be in compliance with recommendations from the Montana Department of Fish, Wildlife and Parks. Examples of such projects include the reconstruction and improvement of watercourses, fish habitat, wetlands, stream bank stabilization, and bird nesting sites. The Association shall have the authority to establish reasonable rules for operation and maintenance of enhanced watercourse, wetland, and wildlife habitat areas consistent with the overall intent of the Alder Creek Open Space Management Plan.

Section 9. No feeding of wildlife other than birds shall be allowed in or on the park lands, trails, or common open space areas. The killing or taking of any wildlife species by any means within the park lands, trails, open space, or other common areas is prohibited except for the catching and release of fish, and the control of specific animals known to be causing unacceptable damage to property or persons (i.e. beavers damming the watercourses or porcupines identified as girdling planted trees). In such cases, the Board of Directors shall contact appropriate professional consultants to trap and relocate such animals.

Section 10. Domestic pets shall not be allowed at any time in or on the open space areas or trails unless on a leash. Pet owners shall be required to clean up after any pets they take on the boulevards, parks, trails and open areas. At no time shall any domestic pet be permitted to chase or harass wildlife in or on the parks, trails, open space or other common areas.

Section 11. In general, no fences shall be permitted in the common areas. Temporary fences for the protection of plantings, as identified above, may be permitted. Fences required to restrict or direct human activity or safety shall be permitted as necessary, provided that no wire or metal mesh is used. Any required fencing shall meet the fencing regulations for the City of Bozeman.

Section 12. Signs shall be permitted to identify trail routes, direct human activity or provide interpretive information. Directory signs should be combined with landscaping features, be made of natural appearing materials, and must comply with the provisions of the City of Bozeman zoning and sign regulations.

Section 13. The Association shall be responsible for maintenance and snow removal on the common area sidewalks within Alder Creek Subdivision. Such maintenance shall include cleaning of culverts, weed mowing and patching or repairing damaged areas on the common area sidewalks.

The Association may choose to hire contract services for road, sidewalk, and common area maintenance, in addition to the snow plowing and maintenance done by the City of Bozeman. The necessity for any such additional maintenance and snowplowing shall be determined by the Board of Directors. The Association may use the provisions of these Covenants for collecting funds to pay for such maintenance.

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Section 14. No Owner, guest or invitee may use or occupy the park lands, open space, trails, boulevards, roads, parking areas, or any lot in such a manner as to disturb or interfere with the peaceful use, occupancy or enjoyment of any other owner, guest or invitee of Alder Creek Subdivision. Violations shall be enforced as provided for in these Covenants and the City of Bozeman zoning regulations.

ARTICLE VII

WATER COURSES

Every Owner acknowledges that there are water course which travel over through and across parts of the development primarily through park and open space areas. Some of these water courses may appear dry and only carry water during times of runoff, flood, heavy irrigation, or events involving rapid or unseasonable precipitation. Other water courses may carry and conduct water seasonally or year around. Owner acknowledges that there are inherent risks and dangers to life and property associated with water and water courses especially involving children at play, and the risk of flood.

The developers have attempted through proper engineering to provide for safe and proper drainage of water over, through and across the water courses and development as a whole. Calculations supplied from FEMA's 100 year flood plain map and other obtainable sources have been used to design the development and provide for appropriate carriage and drainage of water. There is no assurance nor guarantee that acts of God, unusual or unforeseen events or intervening circumstances will not arise which will result in loss of life or property. All reasonable steps have been taken however to insure a safe development with the orderly flow and drainage of water throughout.

Owners are encouraged prior to purchasing property within this development to become familiar with and to seek competent advice with respect to the ditches, drainages, creeks, swales and flood plains which exist throughout the property and are delineated on the subdivision plat on file and of record in the office of the Gallatin County Clerk and Recorder. Additionally, parties are encouraged to visit with and seek information from their insurance consultants with respect to their real and personal property, flood plains, and loss, injury or damage resulting from flooding.

Several of the water courses throughout the development exist to conduct and carry irrigation water which is owned and used by persons or entities downstream of this development. Those persons and entities having water rights which flow throughout the development also have the right to enter upon the development to inspect, repair, maintain and provide for the flow of water to their property through the ditches, swales and water courses throughout the development. Every Owner acknowledges that these downstream users and owners of water rights have the right and ability to enter upon the development property along these water courses for the purposes described herein and that such entry

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may be occasioned by foot or vehicle, including heavy equipment which may be needed to clean debris or sediment from ditches, excavate ditches, remove, replace or install culverts or other structures related to the flow of water, clear and remove brush, timber or trees interfering with the ditch, to line the ditch or other purposes reasonably related to the conveyance and carriage of irrigation water through the property.

ARTICLE VIII

ARCHITECTURAL REVIEW COMMITTEE AND DESIGN REVIEW PROCESS

Section 1. Architectural Review Committee

The Alder Creek Architectural Review Committee shall consist of three (3) members appointed by the Board of Directors, one of whom shall be designated as the Chairperson. It is suggested that at least one of the members of the Architectural Review Committee have professional qualifications in the area of architecture, landscape architecture, or construction.

Section 2. Scope of Responsibilities

The Architectural Review Committee has the right to exercise control over all construction in Alder Creek. It will also review all homeowner's alterations and modifications to existing structures (including but not limited to walls, painting, renovations, and landscaping).

No residence or other structure, and no fence, wall, garage, outbuilding or other structure shall be made, erected, altered or permitted to remain upon the properties until written plans and specifications showing the site plans, floor plans, design, nature, kind, color, dimensions, shape, elevations, material, use and location of the same shall have been submitted and approved, in writing, by a majority of the Alder Creek Architectural Review Committee as to compliance with these Covenants.

All documents submitted for review must be dated and labeled with the specific project title, owner, architect, contractor, and address, and must be accompanied by the fees required for review.

Section 3. Standards for Review.

It shall be the applicants responsibility to ensure that all proposed construction shall comply with the Uniform Building Code, National Plumbing Code, the National Electrical Code, the City of Bozeman Zone Code and 2020 Community Plan, these Covenants, and any amendments thereto.

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All plans must be harmonious with the overall plan for the Alder Creek Subdivision. All plans and specifications must be suitable to the site, the adjacent properties, and the neighborhood. All improvements must be compatible with the surrounding properties so as to not impair or degrade property or aesthetic values.

Section 4. Review Fee.

A review fee will be required at the time of submission of all of the documents and sample materials. The owner shall submit the documents and the required fee to the Committee chairperson or other designated member of the Committee. The purpose of the design review fee shall be to defray the Association's cost of review of all proposed site plans and specifications submitted to them. The fee, which shall be set by the Board of Directors, shall initially be \$100.00.

Section 5. Documents Required for Review.

Three copies of the following documents in engineering scale of 1/8" = 1'0" should be submitted to the Architectural Review Committee chairperson:

- a. Site plans including:
 - Property lines and setback lines with dimensions;
 - Building footprints with entries, porches, balconies and decks delineated;
 - Location, dimensions and materials for driveways and sidewalks;
 - Elevation of first floor;
 - Height of foundation from the top of the curb;
 - Landscaping requirements and concepts.
 - Location, height and material for retaining walls, garden walls, and fences;
 - Water, electric and sewer service; and
 - Exterior light locations and type.
- b. Complete construction drawings, including floor plans, exterior elevations of all sides, roof design, specifications, and any construction details, as follows:
 - a. Floor Plans showing:
 - Foundation plan dimensioned;
 - Exterior walls shown and dimensioned;
 - Room use and dimension;
 - Wall, window and door openings dimensioned;
 - All overhangs of floors and roofs as dashed lines;
 - Overall dimensions; and
 - Total enclosed square footage.

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- b. Elevations including:
 - A description of the material for the front street elevation;
 - Porches, balconies, doors and windows;
 - Principal materials rendered and specified;
 - Height of each floor, eaves, and roof peak dimensioned from the first floor;
 - Overall height from ground level;
 - Roof pitch;
 - Major building sections;
 - Typical walls from ground to ridge; and
 - Typical porch section from ground to roof.
- c. Roof Plan.
- d. Landscape Plan, including plant listings and their respective locations.
- e. Samples (1 set) of all exterior materials in their respective color proposals in an adequate size to evaluate.

Section 6. Review Procedures.

Upon review by the Architectural Review Committee, the owner will be notified in writing within fifteen (15) business days after receipt of the documents for review, that the design has been approved, approved with stipulations, or disapproved. The fifteen (15) day review time will not start until after the detailed site plan, floor plans, roof plans, exterior details, project specifications, color samples, sample materials, and landscaping plans have all been submitted.

The Committee may request additional plans, specifications, and samples in order to complete their review. In the event of such request, the remaining time for review shall not run until after such additional plans, specifications, and samples have been submitted to the Committee.

An application may be withdrawn without prejudice, provided the request for withdrawal is made in writing to the Architectural Review Committee. No fees will be refunded due to such withdrawal.

If the Architectural Review Committee does not contact the owner within fifteen (15) business days of the review commencement date, the application shall not be deemed "approved", and the owner shall be entitled to file a written request with the Board of Directors that the application be reviewed by the Committee within five (5) business days of the date of the owner's written request.

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If an application is approved with stipulations or is disapproved, the reasons for the approval with stipulations or disapproval will be clarified for the owner, in writing and/or with drawings, within ten (10) days after the owner has been notified of the Committee's decision.

If an application has been denied, or the approval is subject to stipulations that the owner feels are unacceptable, the owner may request a hearing before the Architectural Review Committee to justify his/her position. The Architectural Review Committee will consider the arguments and facts presented by the owner and notify the owner of its final decision within ten (10) days of the hearing.

Section 7. Action Upon Approval.

Approval by the Architectural Review Committee does not relieve an owner of his/her obligation to obtain any government approvals. If such approvals are required and are not obtained by the owner, the Architectural Review Committee and/or the applicable government agency may take whatever actions are necessary against the owner to force compliance.

Upon approval by the Review Committee, the owner shall obtain a building permit from the City of Bozeman, with the Architectural Committee approval letter or approval stamp on the plans, as a prerequisite for City review. Upon receipt of both the Committee approval letter and the building permit, the owner may commence construction in accordance with the plans as submitted. Any deviation from said plans which, in the judgment of the Committee, is a deviation of substance from either the Design Guidelines, these Covenants, or is a detriment to the appearance of the structure or to the surrounding area, shall be promptly corrected to conform with the plans submitted by the owner, or corrected by the Association at the owner's expense as provided in these Covenants.

Section 8. Variances.

All variance requests pertaining to the Architectural Review Committee approvals must be made in writing to the Architectural Review Committee, and must be accompanied by written verification that the requested variance does not violate the City of Bozeman Zoning Code, or that the City of Bozeman has already approved the variance. Any variance granted shall be considered unique and will not set any precedent for future decisions.

The Architectural Committee may, upon application, grant a variance from the Architectural Guidelines, provided that the spirit of these Covenants is complied with, the requested variance does not violate the City of Bozeman Zoning Code or has been approved by the City, and written notice of the nature of the variance has been mailed or personally delivered to all other lot owners in the Alder Creek Subdivision at least ten days before the variance is considered, in order to give the other owners a chance to comment and have input to the Architectural Committee. The Architectural Committee shall have the duty and

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power to make the final decision on the granting of the variance, without any liability being incurred or damages being assessed, due to any decision of the Committee.

Section 9. Twelve Months for Completion.

Any improvements to be constructed or erected in accordance with the approval given herein, including all landscaping, must be diligently continued and completed within twelve months from the date of approval, unless otherwise extended in writing by the Architectural Committee. If construction of a structure is not commenced within one year after approval, new approval must be obtained.

If any structure is commenced within one year, but is not completed in accordance with the plans and specifications within twelve months, the Directors of the Association, at their option, may take such action as may be necessary, in their judgment, to improve the appearance of the improvements so as to make the property harmonious with other properties, and to comply with these Covenants, including completion of the exterior, removing the uncompleted structure, or any combination thereof. The amount of any expenditures made in so doing shall be an obligation of the owner. A lien on the property may be recorded and shall be enforceable by an action at law. In lieu thereof, the Association may take such action as is available by law, including an injunction, or for damages, and shall be entitled to reimbursement of their costs and attorney fees.

Section 10. Compliance with Approved Plans.

The Architectural Committee may inspect all work in progress and completed improvements, and give notice of any noncompliance as set forth below.

During construction or upon completion of any improvements, if the Committee finds that such work was not done in strict compliance with all approved plans and specifications submitted or required to be submitted for its prior approval, it shall notify the owner and the Board of Directors of such noncompliance, and shall require the owner to remedy the same. If upon the expiration of seven (7) business days from the date of such notification, the owner has failed to commence to remedy such noncompliance, the Directors shall determine the nature and extent of noncompliance, and the estimated cost of correction. The directors shall notify the owner in writing of the Director's estimated costs of correction or removal. The owner shall then have five (5) business days to commence such remedy, and thirty (30) days (not 30 business days) to complete such remedy.

If the owner does not comply with the Director's ruling within the five (5) business day period, the Directors, at their option, may stop construction of the improvements, remove the noncomplying improvements, or remedy the noncompliance, and the owner shall reimburse the Association upon demand for all expenses incurred in connection therewith.

If such expenses are not promptly repaid by the owner to the Association, the Directors shall levy an assessment and file a lien against such owner, and the lot upon which the improvement was situated, for reimbursement, and the same shall be enforced and/or

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foreclosed upon in the manner provided for by law.

Section 11. Limitation of Responsibilities and Liability.

The primary goal of the Architectural Review Committee is to review the submitted applications, plans, specifications, materials, and samples in order to determine if the proposed improvements conforms with the Alder Creek Architectural Guidelines. The Architectural Review Committee does not assume responsibility for the following:

- a. The structural adequacy, capacity, or safety features of the proposed structure or improvement;
- b. Soil erosion, ground water levels, non-compatible or unstable soil conditions;
- c. Compliance with any or all building codes, safety requirements, and governmental laws, regulation or ordinances.

Neither the Declarant, the Association, the Board of Directors, the Architectural Review Committee, nor the individual members thereof, may be held liable to any person for any damages for any action taken pursuant to these Covenants, including but not limited to, damages which may result from correction, amendment, changes or rejection of plans and specifications, the issuance of approvals, or any delays associated with such action on the part of the Board of Directors or the Architectural Review Committee.

Section 12. Construction Site Maintenance and Clean-up.

Construction materials shall not at any time prior to, or during construction, be placed or stored in the street or located anywhere else that would impede, obstruct or interfere with pedestrians or motor vehicle traffic within the sidewalk and/or street rights-of-way. All construction materials shall be removed from the entire lot within thirty (30) days of substantial completion of construction.

Construction sites shall be kept clean, neat, and well organized at all times. All construction debris shall be the responsibility of the owner and the building contractor, and shall be kept clean and properly stored on a daily basis. If construction debris blows onto another owners lot, it is the responsibility of the owner and the building contractor to clean it up immediately. Street cleanliness is of particular concern. Any construction debris, especially dirt, gravel, rocks, and concrete, that falls or is left in the street shall be removed immediately from the street, and be brought back to a broom clean condition. The Alder Creek Homeowners' Association shall strictly enforce this provision, and reserves the right to fine negligent parties up to \$500.00 for each infraction, to complete any clean up the Board of Directors determines to be necessary, and to assess the lot owner for all clean-up

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costs.

ARTICLE IX

ARCHITECTURAL GUIDELINES

A. BUILDING GUIDELINES.

Section 1. Purpose.

In order to create neighborhoods that reflect the character, scale, and friendly streetscapes of a traditional neighborhood as contemplated by the City of Bozeman 2020 Community Plan, these Architectural Guidelines allow for flexibility while maintaining architectural continuity, and are intended to compliment the Bozeman Zoning Code.

The aesthetics, materials and forms common with Craftsman, Country, Prairie, Bungalow, and traditional style homes provide a traditional aesthetic feel, with prominent front porches facing tree lined streets, while incorporating contemporary floorplans and designs. The use of natural stone, rock, and brick are encouraged for the front facing exterior to enhance the traditional appearance of the homes. Rather than dictate specific design elements, the Architectural Guidelines are provided to assist owners, builders, and architects in designing homes that are compatible with these styles, and the architectural character and elements associated with traditional neighborhood values and lifestyles.

Section 2. Design Criteria and General Regulations.

It is the intention of the Covenants to ensure that all homes shall be of quality workmanship and materials compatible with the other homes in the subdivision. All initial or subsequent improvements to lots in Alder Creek Subdivision shall be subject to the following architectural and landscaping guidelines. All plans must be approved by the Architectural Review Committee as provided herein, prior to application to the City of Bozeman for a building permit. No construction of, or alteration to, any improvements shall be commenced on any lot prior to receiving the written approval of the Alder Creek Architectural Committee and a building permit from the City of Bozeman.

All lots in Alder Creek Subdivision are subject to the zoning regulations of the City of Bozeman. In addition to these Covenants and the zoning regulations, building design may be regulated by other City, County, State and Federal agencies. The owner shall be responsible to ensure conformance with all applicable regulations.

Section 3. Lot Types.

There are three lot types in Alder Creek Subdivision:

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- a. Type I lots are single family residences, and are subject to the traditional requirements for City of Bozeman R2 Zoning. Each Type I residential lot shall be used exclusively for residential purposes, and no more than one family shall occupy such residences.
- b. Type II lots are single family residences located in the PUD portion of the Subdivision, and are subject to the City of Bozeman PUD zoning requirements. Some of the Type II lots have rear alleys, which will have homes with attached garages with access from the alleys. Each Type II residential lot shall be used exclusively for residential purposes, and no more than one family shall occupy such residences.
- c. Type III lots are duplex lots located in the PUD portion of the Subdivision, and are subject to the City of Bozeman PUD zoning requirements. The Type III duplex lots will provide individual "townhouse" ownership for each duplex unit. Each Type III residential lot shall be used exclusively for residential purposes, and no more than one family shall occupy each townhouse/duplex unit.

Section 4. Home Occupations.

Home occupations or professions may be conducted upon the lot or within the residence by the owner or occupant of the residence, provided that there are no employees on the premises, and there is no advertising of any product, work for sale, or service provided to the public upon such lot or in the residence. No advertising or directory signs relating to the home occupation shall be allowed. All such home occupations or professions must comply with the requirements of the Bozeman Zoning Code regarding such activities, and all required licenses must be obtained prior to commencing such activities. Specifically, all Home Occupations must comply with Bozeman Zoning Code 18.40.110, and only "Day Care Home, Family" as specifically described in 18.80.770 shall be allowed; all other Day Care Home Occupations shall be disallowed.

Section 5. Exterior Walls and Facades.

- a. Materials.

The exterior siding of all residential and outbuilding structures shall consist of natural stone or high quality simulated stone, rock, brick, wood, wood products or wood look-alike products, or cement board siding building materials approved by the Architectural Review Committee. Stucco or EIFS with a smooth or roughcast (pebbled) finish may also be permitted upon approval. No vinyl siding, sheet or panel metal siding, cement block, or

panel siding similar to T1-11 siding or plywood sheet siding is permitted. All facades of a building shall be made of the same materials and similarly detailed.

b. Colors.

The color palette of the body of the house shall be from white, cream, oak or earth tones that harmonize and compliment the neighboring properties. Trim, frames, doors, garage doors, and windows shall be the same color as the main body of the home or in a compatible accent color. Color schemes must be varied from 2 adjacent properties, in each direction. All exterior wood shall be painted or stained.

c. Design Direction.

No diagonals (sloping lines) other than roof slopes shall be visible on any facade. Siding shall be run horizontally, with the only exception being below the roof line but above the first level, where it may be run vertically. Maximum lap siding exposure is 5" unless approved otherwise. Brick surfaces shall be predominately a horizontally running bond pattern. Stone shall be set in an un-coursed pattern with a horizontal orientation.

d. Outbuildings.

The following outbuildings are permitted, either attached to the main house or as an outbuilding: garage, workshop, artist studio, sauna, gazebo, or conservatory. The exterior design, style and colors of any outbuildings or structures on a lot shall conform to the design, style and colors of the main residence. All outbuildings, including garages and storage buildings, shall be architecturally compatible with the main residence. The maximum size of an outbuilding shall be 750 square feet on the ground floor, unless otherwise approved by the Architectural Committee.

Section 6. Windows and Doors.

All windows shall be of double or triple glazing. Low "E" coatings are permitted, but no mirror glazing shall be allowed. All windows and sliding glass, french, or atrium doors shall be vinyl, aluminum clad wood or similar material. Unclad custom built windows for individual applications shall be trimmed and painted to appear the same as the other windows in the structure.

The patterns, sizing, and symmetry of windows and doors shall be of consistent types and shapes, in accordance with the design of the structure. Sliding doors may only be used in rear yard locations.

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Section 7. Foundation Design.

All building foundations shall be constructed to at least 18" above the top of the curb. Basements may be constructed in areas of suitable ground water depths.

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

Section 8. Roofs.

a. Form, Pitch and Eaves.

Roof forms shall consist of traditional gable, hip, or shed roof designs. Secondary roof forms are encouraged to enhance architectural scale and variety. No roof ridge line shall extend more than forty (40) feet without interruption by an intersecting roof line, secondary roof structure, or step down roof.

Primary roof forms shall have a minimum pitch of 6:12. Secondary roof forms may have varying roof pitches, but no roof component shall have a pitch less than 4:12.

All primary roof forms shall have a roof overhang or eave projection and gable of a minimum of 16 inches, measured from the finished wall. Secondary roof forms may have proportionally reduced overhangs or eave projections. Soffits shall be required to cover all rafter tails and rough framing material except where framing members are finished and protected from exposure. All roof edges shall have a minimum fascia of 6 inches in height.

b. Materials.

Roofs shall be covered with shakes, tiles or shingles, and no rolled roofing shall be allowed. Exposed aluminum or silver flashing around chimneys or roof valleys shall not be allowed unless colored, textured or painted to match or complement the roof design and color. Rain gutters should be colored to match the trim or color of the roof. Steel galvanized gutters are not permitted.

c. Roof Equipment.

All roof mounted equipment shall be integrated into the overall roof design and screened. All sewer, bath fan, hot water heater, wood or gas stove, or other roof venting stacks shall be painted a color as similar as possible to the roof material color.

Skylights shall be flat in profile (no bubbles or domes). Skylights shall be applied parallel and flat to the roof and are not to be on any roof parallel to the street.

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Any use of solar panels or collectors must first be approved by the Architectural Committee. Any approved solar panels or collectors shall be inconspicuously located, and shall be integrated into the overall roof design, parallel with the slope of the roof or wall of the building, and are not to be on any roof parallel to the street.

d. Chimneys.

Chimneys may exit the building on an exterior wall or within the structure. It is strongly encouraged that chimneys emerge from the highest roof volume. When part of an exterior wall, chimneys may be used as an accent form to break up the mass of the wall. Prefabricated metal flues shall be concealed within a chimney. Chimney caps may extend no more than 16" above the chimney top.

Chimneys shall be of a material that compliments the other exterior finishes, and may include brick, natural stone, stucco, or wood framing when the finished wood material is the same as the siding.

Section 9. Porches.

Main entry doors are encouraged to be either with a porch or gable extending over the entrance, and/or recessed a minimum of 5' from the primary facade of the house. It shall provide weather protection and visual definition. Front porches are intended to be open to allow for interaction with the street. Porch screens and glazing are not permitted.

Porch railings are encouraged to be closed and constructed of the same material as the adjacent form, unless otherwise approved. Front stoops shall be made of brick, concrete, or stone. Wood may be used only when constructed to form an apparently solid mass. Porch supports shall be stone, masonry or concrete piers no less than 16" x 16" square, or wood piers no less than 8" x 8" square. Tapered columns may not be smaller than 8" x 8" at the top.

The space below front porches shall be enclosed and integrated into a closed band, interrupted as necessary for drainage. Exterior stairs visible from nearby streets or public spaces shall only show stepped horizontal railings, except that diagonal handrails may be attached thereto. Exceptions will be considered on design merit.

Any attached flower boxes and planters shall be made of materials integrated into a closed band.

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Section 10. Decks.

Decks may be located only in rear yards. The space below first floor elevated decks visible from nearby streets or public spaces shall be enclosed or covered with wood lattice, with a maximum of 1-1/2" space between strips.

Section 11. Exterior Lighting.

Decorative fixtures, or recessed or canned lighting is encouraged for porches, main entrances and other exterior applications to achieve softer, non-glare, lighting effects. All outdoor residential lighting shall be free of glare, and fully shielded or shall be indirect lighting. No exposed bulbs or mercury vapor lights are permitted. All residential lighting shall comply with the City of Bozeman lighting requirements.

For the Type II lots with alley accesses, all alleyway garages shall provide a minimum of one wall mounted light fixture or recessed can fixture, with a minimum of 60 watts and maximum of 120 watts in a non glare or "down light" configuration. Such lights are to be controlled by photo electric cells. Owner shall at all times keep photo cells within the lamp in good working order such that the fixture can be illuminated during all periods of darkness.

Section 12. Parking

- a. Private driveway parking spaces shall be no less than 12 feet x 19 feet with access to a street or alley.
- b. Trash containers shall be located within the parking areas and be screened.
- c. Two off-street (driveway) parking spaces are required for each Type I residence.
- d. One off-street (driveway) parking space is required for each Type II and Type III residence.

Section 13. Zoning.

All zoning, land use regulations and all other laws, rules and regulations of any government or agency under whose jurisdiction the land lies are considered to be part of these Covenants and enforceable hereunder; and all of the owners of said lands shall be bound by such laws, rules and regulations.

In the event there is a conflict between the Covenants and the applicable zoning, the most

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restrictive provision of either the Covenants or the zoning shall control.

Section 14. Easements.

There are reserved, as shown in the plat and as may otherwise be reserved, easements for the purposes of constructing, operating, maintaining, enlarging, reducing, removing, laying or relaying lines and related facilities and equipment for utilities, including, but not limited to, those providing gas, communication and electrical power. Fencing, hedges and other items allowed by the Covenants may be placed along and in the easements as long as the intended use of such easements are not prevented.

B. SITE DESIGN GUIDELINES.

1. TYPE I - SINGLE FAMILY LOTS (R2 Zoning Lots)

All building plans shall be submitted to the Architectural Review Committee to confirm compliance with the standards below. Variances to the code may be granted on the basis of specific urban conditions. All building plans shall conform to the City of Bozeman Building Department's requirements and the applicable Uniform Building Code.

Section 1. Density.

No more than one (1) single family residence may be built on each Type I residential lot.

Section 2. Minimum Dwelling Sizes.

Each Type I lot shall provide the minimum living space exclusive of garages, decks, porches and carports of 1,600 square feet above grade, with a minimum of 1,200 square feet above grade on the ground floor, unless otherwise approved by the Architectural Committee.

2. TYPE II - SINGLE FAMILY PUD LOTS (PUD Lots)

All buildings shall be submitted to the Architectural Review Committee's office to confirm compliance with the standards below. Variances to the code may be granted on the basis of specific urban conditions. All building plans shall conform to the City of Bozeman Building Department's requirements and the Uniform Building Code.

Section 1. Density.

No more than one (1) single family residence may be built on each Type II residential lot.

Section 2. Minimum Dwelling Sizes.

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Each Type II lot shall provide the minimum living space exclusive of garages, decks, porches and carports of 1,000 square feet above grade, with a minimum of 750 square feet above grade on the ground floor, unless otherwise approved by the Architectural Committee.

3. TYPE III – TOWNHOUSE/DUPLEX LOTS (PUD Lots)

Section 1. Density.

No more than one (1) single family residences may be built on each Type III residential lot. However, two Type III lots shall be utilized to create a townhouse/duplex with two (2) total residential units.

Section 2. Minimum Dwelling Sizes.

Each Type III lot shall provide the minimum living space exclusive of garages, decks, porches and carports of 1,000 square feet above grade for each residential unit in the townhouse/duplex, with a minimum of 750 square feet above grade on the ground floor for each townhouse/duplex unit, unless otherwise approved by the Architectural Committee.

ARTICLE X

LANDSCAPE DESIGN

Section 1. Definitions.

Front Yard: The areas from the set back (build-to) line to the property line, and from side lot line to side lot line.

Side Yard Corridor: The area from the side of the house to the side lot line, less front yard and rear yard.

Rear Yard: The area from the back of the structure extending to the rear property line.

Section 2. Driveways.

All driveways and parking areas shall be surfaced with concrete, and in no case be located closer than five (5) feet to adjacent property lines for Type I lots, or closer than four (4) feet for Type II and Type III lots.

No lot owner shall fill or obstruct the natural flow of any borrow ditch, drainage swale, or culverts.



Section 3. Sidewalks.

Sidewalks shall be constructed to City of Bozeman standards, and shall be installed at the time homes are constructed on individual lots, if they have not been previously installed.

Section 4. Fences.

Maximum fence height is 5'-0" unless a relaxation (6'-0" maximum) is requested and granted from the Alder Creek Architectural Review Committee. Maximum height for fences in corner sideyards shall be 5'-0". No fences are allowed in required vehicle vision triangles. No fences are allowed in front yards unless approved by the Alder Creek Architectural Review Committee.

Rear yards may be fenced with wood or materials that look like wood (excluding split rail). Rear yard fencing cannot extend past the mid-point of the residence and garage. The front yard shall not be fenced.

Maximum height of landscaping in required vehicle vision triangles is 30".

Any fence or wall constructed so as to have only one elevation "finished", which shall be defined as not having its supporting members significantly visible, shall be erected such that the finished elevation of the fence is exposed to the adjacent property and street.

Fence design and location must be approved by the Architectural Review Committee. Fence designs should have a cap board or if a picket fence, have a flat top or dog-ear cut. No wire, chain link, or vinyl fencing is permitted. Fencing shall be maintained in good condition. Fences in the rear yards adjoining any parks or trails shall not be higher than four feet and must be approved by the Alder Creek Architectural Review Committee.

Garden walls and retaining walls visible from nearby streets or public spaces shall match the water table or relate to the residential structure, and shall be built of brick, stone, stucco, shingles, or poured-in-place concrete with a surface texture approved by the Architectural Review Committee. Garden walls should appear as an extension of the building and are encouraged to be of the same building material as the structure. Gates in garden walls shall be made of wood.

Section 5. Antennas and Satellite Dishes.

No external television or radio antennas shall be permitted. Smaller satellite dishes of the latest technology (not exceeding two feet in diameter) will be allowed. All satellite dishes shall be inconspicuously located, and screened from neighboring and street views.

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Section 6. Exterior Lighting.

a. General:

All exterior residential lighting must be free of glare and shall be fully shielded or shall be indirect lighting. No lighting shall shine beyond a property's lot line.

Mercury vapor and high-pressure sodium lights are prohibited.

b. Residential (Single Family/Duplex Lots) Lighting:

All exterior residential lighting must be incandescent.

Builder or Owner shall hardwire at least one light fixture on garages that abut alleyways. Such fixtures shall contain a photoelectric cell and maximum 60-watt bulb. Smaller wattages for alley bulbs are encouraged. Owner shall at all times keep photoelectric cell within the lamp in good working order such that the fixture can be illuminated during all periods of darkness.

All exterior lighting of all lots shall be limited to maximum 60-watt incandescent bulbs and of such focus and intensity so as to not cause disturbance of adjacent lots.

Obtrusive flood lighting and front yard landscape/pathway lighting is prohibited.

Clear glass or exposed bulb (non-cutoff) fixtures are prohibited.

Recessed or can lighting is encouraged for porches and main entrances for softer lighting effects. Clear glass fixtures (i.e. coach lantern style) are prohibited. Honey glass or amber glass panels are encouraged as an alternate.

Yard and walkway lighting shall be compatible with the scale and architectural design of the main residence. Standardized street lighting will be installed as required by the City of Bozeman throughout Alder Creek Subdivision.

c. Definitions:

Fully Shielded lights: Outdoor residential light fixtures shielded or constructed so that no light rays are emitted by the installed fixture at angles above the horizontal plane as certified by photometric testing.

Indirect Light: Direct light that has been reflected or has scattered off to other surfaces.

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Glare: Light emitting from a Luminare with an intensity great enough to reduce a viewer's ability to see.

Section 7. Utilities.

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

Section 8. Landscaping.

Each lot owner will be required to meet minimum landscape specifications consistent with the overall plan for Alder Creek Subdivision. These will include, but are not limited to: street trees, large canopy trees in specified yards, shrubs, mixed planting beds and turf lawns. Landscaping will be required for the entire lot, including up to the actual edge of the road, curbs, and sidewalks. Landscape, grading and irrigation plans shall be submitted and approved by the Architectural Committee concurrently with the plans for the residence.

Owners are required to maintain the landscaping on their lots in a manner that does not detract from the appearance and value of the adjoining lots or the aesthetics of the subdivision. Landscape maintenance will be enforced by the Association as provided in these Covenants.

Section 9. Trees.

All lot owners shall plant a minimum of trees and shrubs to enhance the aesthetic features of their lot. Trees are encouraged to be planted in clusters rather than at regular intervals around the lots. Shrubs and flowers may be used to provide a transition from the tree clusters to the lawn surfaces.

Unless prevented by a utility easement or garage access, the Owner shall plant a minimum of one tree for each lot smaller than 60 feet, two trees for each lot larger than 60 feet, near the street in front yards. Rear yard trees are encouraged but not required. All trees must be planted a minimum of 8 feet from the lot line when adjacent to a neighbor, and may not be planted in the utility easements. It is the responsibility of the Owner to contact the appropriate utility companies before digging.

Tree varieties shall be selected from varieties recommended by the City of Bozeman Zoning Code. When selecting from provided species list, it is the responsibility of the property owner to check the appropriateness of that species with specific site conditions. Deciduous trees are encouraged to be placed on the southern and western areas of the lot to provide shade in the summer months and allow sun to penetrate during the winter months. Deciduous trees must be planted a minimum of 20 feet from the eaves.

Planting beds and any bedding around tree base areas shall be mulch or earth tone stone (not white).

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Section 10. Weeds.

The owner of each lot shall control the weeds and all noxious plants on their lot; provided, however, that the owner shall not use spray or killing materials in such a way as to be harmful to humans or animals or to the neighboring or common area vegetation.

In the event an owner shall not control the weeds and noxious plants on their lot, the Association, after ten days written notice to an owner to control the same, may cause the weeds or noxious plants to be controlled, and may assess the lot owner for the costs thereof, as set forth in these Covenants.

ARTICLE XI

TERM, ENFORCEMENT, APPLICABILITY AND CHANGE

Section 1. The term of the provisions of these Covenants shall be binding for a term of fifteen (15) years from the date of these Covenants and may be modified, altered or amended during that period only by the Declarant at the Declarant's sole option. After the initial fifteen (15) year period, the Covenants should be automatically extended for successive periods of ten (10) years not to exceed three (3) such extensions unless an instrument agreeing to amend, revoke or terminate the term has been signed by the Owners of eighty (80) percent of the lots in Alder Creek Subdivision. Any covenant required as a condition of subdivision approval shall not be altered or amended without the agreement of the governing body (city, county, or state agency). This First Amended Declaration of Protective Covenants and Restrictions for Alder Creek Subdivision shall apply to all Phases located in Alder Creek and shall supersede and replace Document Numbers 2139132 and 2229632 filed and of record at the Gallatin County Clerk and Recorder's Office. All other filings concerning this Property shall remain in full force and effect unless otherwise amended herein.

Section 2. Enforcement of these Covenants shall be by proceedings either at law or in equity against any person or persons violating, or attempting to violate, any Covenant; and the legal proceedings may be to restrain violation of these Covenants, to recover damages, or both.

Should any lawsuit or other legal proceeding be instituted by the Association or an owner against an owner alleged to have violated one or more of the provisions of these Covenants, the prevailing party shall be entitled to recover the costs of such proceeding, including reasonable attorney's fees associated with the action, as ordered by the court.

Section 3. The failure of Declarant, the Association or an owner, to enforce any Covenant or restriction contained herein shall not be deemed a waiver, or in any way prejudice the rights to later enforce that Covenant, or any other Covenant thereafter, or to

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collect damages for any subsequent breach of Covenants.

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

Section 4. Invalidation of any one of these Covenants by judgment or by Court order shall in no way affect any of the other Covenants or provisions, all of which shall remain in full force and effect.

Section 5. In any conveyance of the above described real property or of any lot thereon, it shall be sufficient to insert a provision in any deed or conveyance to the effect that the property is subject to protective or restrictive Covenants without setting forth such restrictions and Covenants verbatim or in substance in said deed nor referring to the recording data. All of the above described real property and lots shall be subject to the restrictions and Covenants set forth herein, whether or not there is a specific reference to the same in a deed or conveyance.

Section 6. A breach of any of the foregoing restrictions or Covenants shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value upon any lot or portion of the real property or any improvements thereon. However, the Covenants shall be binding upon and shall inure to the benefit of any subsequent owner whose title thereto was acquired by foreclosure, trustee sale or otherwise.

Section 7. After the initial fifteen year term for these Covenants, or after 75% of the lots in Alder Creek Subdivision have been sold, whichever first occurs, the provisions of these Covenants may be changed or amended or additional Covenants added, in whole or in part, upon approval of two-thirds (2/3) of the votes of the Homeowners' Association at a meeting duly noticed and called for that purpose; provided that, the dedications or easements for roads, utilities and common areas shall not be changed without the unanimous consent of all of the owners affected by the change. Any covenant required as a condition of subdivision approval shall not be altered or amended without the agreement of the governing body (city, county, or state agency).

The President or Vice-President shall execute and record the amendment, change or addition with the Clerk and Recorder of Gallatin County, Montana.

Any change of these Covenants shall be effective upon the filing and recording of such an instrument in the office of the Gallatin County Clerk and Recorder. Any change in these Covenants shall not affect existing structures and uses of the lots.

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IN WITNESS WHEREOF, Declarant has hereunto set its hand as of this 8th
day of May, 2008.

Mahar Montana Homes, LLC

By: [Signature]
Joe Mahar, Member

STATE OF MONTANA)
County of Gallatin)
:SS.

On this 8th day of May, 2008, before me, the undersigned, a Notary Public of the State of Montana, personally appeared Joe Mahar, known to me to be a member of Mahar Montana Homes, LLC, who executed the within instrument, and acknowledged to me that he executed the same on behalf of said company.

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



Nadine C. Zikmund
NOTARY PUBLIC for the State of Montana
Printed Name Nadine C. Zikmund
Residing at Bozeman
My Commission expires January 18, 2011

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EXHIBIT "A"

Alder Creek Subdivision - Legal Description:

The West Half of the Southeast Quarter, the Northeast Quarter of the Southwest Quarter, and that part of the west 50.00 feet of the East Half of the Southeast Quarter of Section 24, lying north of the north line of Certificate of Survey No. 482 and its easterly extension, located in Township 2 South, Range 5 East of P.M.M., Gallatin County, Montana, including the abandoned 50 foot wide right of way of the Chicago, Milwaukee, St. Paul and Pacific Railroad, conveyed by Deed recorded on Film 98, Page 3879, records of the office of the Clerk and Recorder, Gallatin County, Montana,

EXCEPT the following described tracts:

EXCEPTION NO. 1: the north 15 rods (247.5 feet) of said West Half of the Southeast Quarter except the east 50.00 feet thereof;

EXCEPTION NO. 2: the north 15 rods (247.5 feet) of said Northeast Quarter of the Southwest Quarter;

EXCEPTION NO. 3: Certificate of Survey No. 482, according to the plat thereof, on file and of record in the office of the Clerk and Recorder, Gallatin County, Montana, and containing 28.759 acres;

Said property is more particularly described as follows:

Commencing at the South Quarter Corner of said Section 24; thence northerly $000^{\circ} 14' 01''$, assumed azimuth from north, 990.06 feet along the west line of the Southeast Quarter of said Section 24, to the northwest corner of Certificate of Survey No. 482 and the point of beginning of the property to be described; thence continuing northerly $000^{\circ} 14' 01''$ azimuth 326.82 feet along said west line; thence westerly $269^{\circ} 02' 57''$ azimuth 1337.96 feet along the south line of the Northeast Quarter of the Southwest Quarter of said Section 24; thence northerly $359^{\circ} 48' 24''$ azimuth 1082.37 feet along the west line of said Northeast Quarter of the Southwest Quarter; thence easterly $089^{\circ} 08' 24''$ azimuth 1345.99 feet along the south line of the north 15 rods (247.5 feet) of said Northeast Quarter of the Southwest Quarter; thence easterly $089^{\circ} 47' 24''$ azimuth 1276.79 feet along the south line of the north 15 rods (247.5 feet) of the Northwest Quarter of the Southeast Quarter, said Section 24; thence northerly $000^{\circ} 10' 00''$ azimuth 247.50 feet; thence easterly $089^{\circ} 47' 57''$ azimuth 50.00 feet along the north line of the Northwest Quarter of the Northeast Quarter of said Section 24; thence easterly $089^{\circ} 17' 33''$ azimuth 50.00 feet along the north line of the Northeast Quarter of the Northeast Quarter of said Section 24; thence southerly $180^{\circ} 10' 00''$ azimuth 1650.62 feet along the east line of the west 50.00 feet of the West Half of the Southeast Quarter of said Section 24; thence westerly $269^{\circ} 36' 10''$ azimuth 1378.47 feet along the north line of Certificate of Survey No. 482 to the point of beginning.

Area = 3,411,134 square feet, 78.3089 acres or 316,904.7 square meters. Subject to existing easements.

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EXHIBIT B

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SPRING RIDGE DRIVE



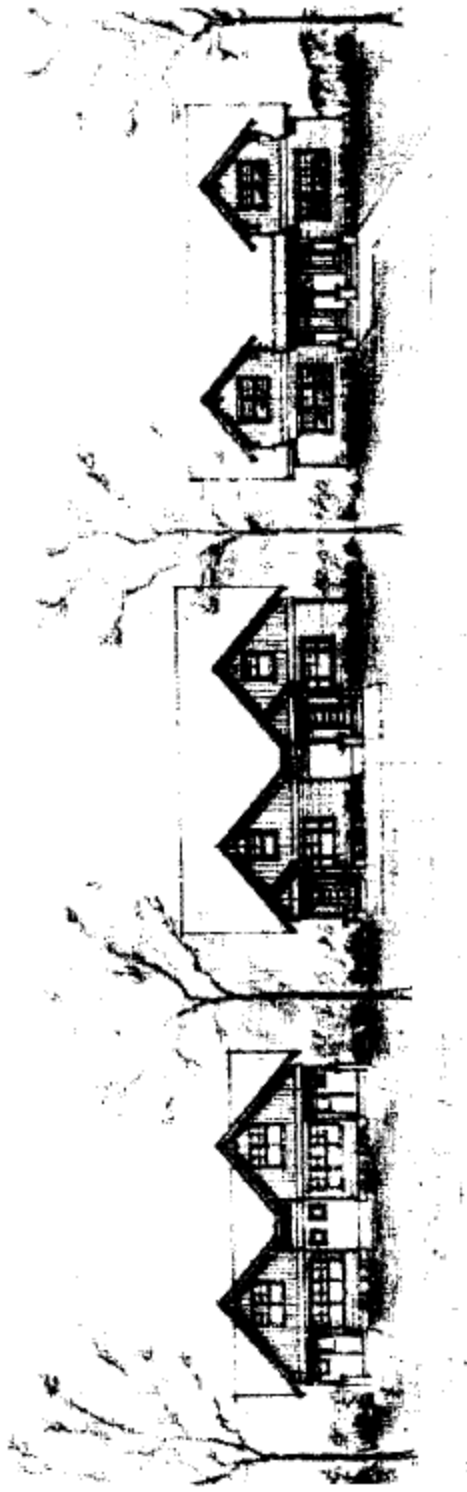
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SUMMER VIEW LANE

EXHIBIT B



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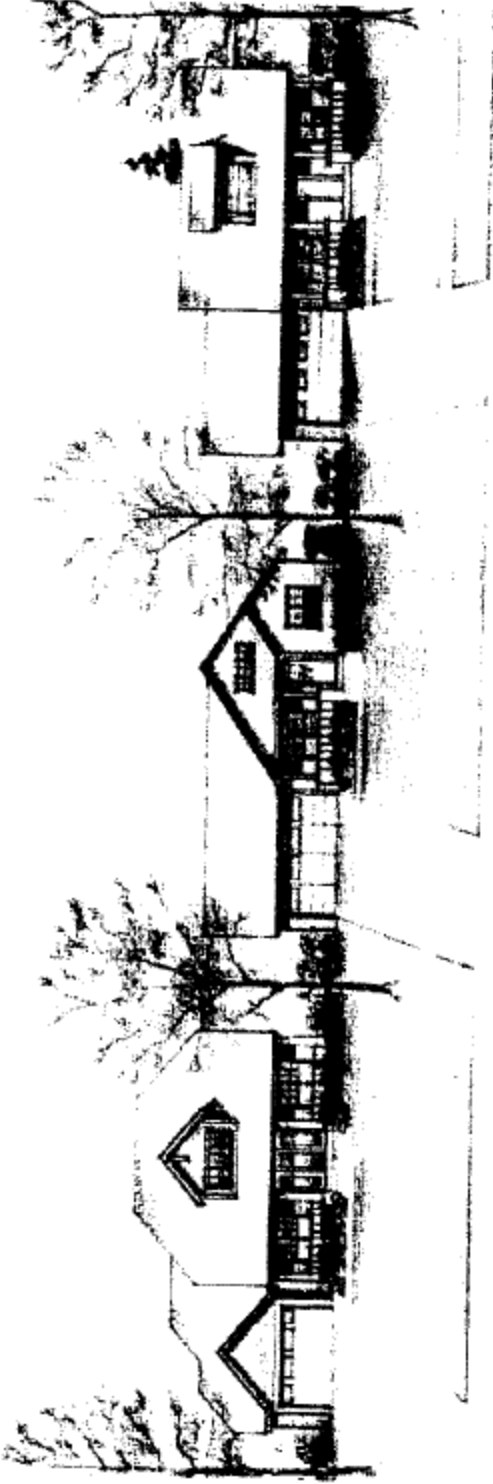
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MADRINA LANE

EXHIBIT B



ALDER CREEK P.U.D.

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