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Charlotte Mills - Gallatin County, MT MISC



DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, AND RESTRICTIONS FOR THE LAKES AT VALLEY WEST

THIS DECLARATION OF PROTECTIVE COVENANTS FOR THE LAKES AT VALLEY WEST is made this _____ day _____, 2015, by The Lakes at Valley West, Bozeman, LLC, hereinafter referred to as "Declarant;"

WITNESSETH:

WHEREAS, the Declarant is the owner of the following described real property situated in Gallatin County, Montana:

The Lakes at Valley West Phase 1 and 2 Subdivision, including specifically Lots 1 through 25 of Phase 1, Lots 1 through 36 of Phase 2 and Restricted Lots R1 and R2, and by this reference made a part hereof and hereinafter referred to as the "The Lakes Subdivision;" and

WHEREAS, The Lakes Subdivision is currently subject to the Fourth Amended & Restated Declaration of Protective Covenants & Restrictions for Valley West ("Valley West Covenants"), recorded on April 28, 2014 as Document No. 2479575, in the Gallatin County Clerk and Recorder's Office, the First Amendment to Fourth Amended and Restated Declaration of Protective Covenants and Restrictions for Valley West ("First Amendment to Valley West Covenants"), recorded on May 14, 2015 as Document No. 2511338, in the Gallatin County Clerk and Recorder's Office, the Second Amendment to Fourth Amended and Restated Declaration of Protective Covenants and Restrictions for Valley West ("Second Amendment to Valley West Covenants"), recorded on 10-14-2015 as Document No. 2527604, in the Gallatin County Clerk and Recorder's Office, and all Rules and Regulations for the Valley West Homeowners' Association on file and of record at the Gallatin County Clerk and Recorder's Office;

WHEREAS, the Declarant desires to impose additional covenants, conditions, and restrictions on the property in The Lakes Subdivision;

NOW THEREFORE, the Declarant hereby declares that all of the Property in The Lakes Subdivision shall be held, sold, and conveyed subject to the following easements, covenants, conditions, and restrictions, which are for the purpose of maintaining a stable value, character, use, and development of The Lakes Subdivision; and which shall run with the land and be binding on all persons having any right, title, or interest in any property in The Lakes Subdivision or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I
Definitions

- 1.1. “Affirmative Vote” means the affirmative vote of the majority of the membership interest who are eligible to vote and who are present at a meeting in person or by proxy.
- 1.2. “Annexed Property” means property adjoining the Property which is annexed to the Property pursuant to Article XIV.
- 1.3. “Association” means the Lakes Homeowner’s Association for The Lakes Subdivision.
- 1.4. “Board of Directors” means the Board of Directors for the Association.
- 1.5. “Bylaws” means the Bylaws, if any, for the Association, as may be amended from time to time. The Board of Directors is not required to adopt Bylaws unless the Association is incorporated.
- 1.6. “Common Areas” mean any property or part of any property within The Lakes Subdivision that is dedicated or reserved for the use of all the Owners, their guests and invitees.
- 1.7. “Design Manual” means The Lakes at Valley West Design Manual, as may be amended from time to time.
- 1.8. “Director” means a person on the Board of Directors.
- 1.9. “Declarant” means The Lakes at Valley West, Bozeman, LLC, or any successor or assign who obtains an Assignment of Declarant’s Rights and Responsibilities. Both successors and assigns shall always be deemed to be included within the term “Declarant” whenever, however, and wherever such terms are used in the Declaration, Bylaws, Rules and Regulations, or Design Manual.
- 1.10. “Declaration” means this Declaration of Protective Covenants, Conditions, and Restrictions for The Lakes at Valley West, and as may be amended from time to time.
- 1.11. “Design Review Panel” means The Lakes at Valley West Design Review Panel, as further defined in Article VI.

1.12. "Lot" means any plot of land shown upon any recorded The Lakes at Valley West subdivision map, excluding the Common Areas.

1.13. "Member" means each Owner. By purchasing a Lot in The Lakes Subdivision, each Member agrees to abide by and be bound by the Declaration, the Bylaws, all Rules and Regulations, and the Design Manual.

1.14. "Open Space" means any property designated as open space on any recorded The Lakes at Valley West Phase 1 and 2 subdivision plat.

1.15. "Owner" means the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of The Lakes Subdivision, but excluding those having such interest merely as security for the performance of an obligation.

1.16. "Parks" means any property designated as a park on any recorded The Lakes at Valley West Phase 1 and 2 subdivision plat.

1.17. "Park Facility" means and refers to the park facilities as shown on The Lakes Subdivision Parks Plans approved by the City of Bozeman.

1.18. "Property" means and refers to all of the property described in The Lakes at Valley West Phase 1 and 2 Subdivision and such additions thereto as may hereafter be annexed and brought within the jurisdiction of the Association.

1.19. "Storm Water Facility" means and refers to storm water facilities as shown on the City of Bozeman approved infrastructure plans.

1.20. "The Lakes Subdivision" or "The Lakes at Valley West" means and refers to all of the property described in the Final Plat of The Lakes at Valley West Phase 1 and 2 Subdivision and such additions thereto as may hereafter be annexed and brought within the jurisdiction of the Association.

1.21. "Transfer Date" means the date on which all of the Lots and Property owned by the Declarant- both at the time this Declaration is recorded or as may be annexed by the Declarant pursuant to Article XIV - have been sold, transferred, or the construction of a residence on the Lot completed. On the Transfer Date, all rights, responsibilities, duties, or benefits of the Declarant, solely in its position as the Declarant, which arise out of this Declaration, shall automatically transfer to the Association. The sale or transfer must have been to someone other than the Declarant's successors or assigns. The Board of Directors or its designated representative shall notify the Owners of the Transfer Date within a reasonable time after the Transfer Date occurs. For purposes of this Section, notice includes posting notice of the Transfer Date to the Association's website.

1.22. "Rules and Regulations" means such rules and regulations adopted by the Board of Directors.

1.23. "Utilities" means utility lines for power, sewer, gas, telephone and other utility lines and service lines for television, computer services, gas or other service lines, whether presently available or not.

1.24. "Valley West Covenants" means the Fourth Amended & Restated Declaration of Protective Covenants & Restrictions for Valley West, recorded on April 28, 2014 as Document No. 2479575, in the Gallatin County Clerk and Recorder's Office, the First Amendment to Fourth Amended and Restated Declaration of Protective Covenants and Restrictions for Valley West ("First Amendment to Valley West Covenants"), recorded on May 14, 2015 as Document No. 2511338, in the Gallatin County Clerk and Recorder's Office, and any additional amendments to those documents on file and of record with the Gallatin County Clerk and Recorder's Office.

1.25. "Valley West Homeowners' Association" means the association referred to in the Valley West Covenants. Until such time as the Property in The Lakes Subdivision is no longer subject to the jurisdiction of the Valley West Association, Owners are also members of the Valley West Homeowners' Association and subject to the Valley West Covenants and all Rules and Regulations for the Valley West Homeowners' Association on file and of record at the Gallatin County Clerk and Recorder's Office.

ARTICLE II **Location**

2.1 The principal office of the Association shall be located in the residence of the duly elected Secretary of the Association; or if there is no Secretary, in the residence of the duly elected President of the Association.

ARTICLE III **Membership**

3.1 Every Lot Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separate from the ownership of any Lot, so that each Lot owner will automatically become a Member of the Association with the purchase of any Lot, and will be a permanent Member until the Lot is sold or transferred to a different owner. Accordingly, no Member shall be expelled, nor shall any Member be permitted to withdraw or resign while possessing a membership interest.

3.2 It shall be the duty of each Owner to advise the Association of the Owner's acquisition of any Lot, the Owner's mailing address and email address, and of any change in ownership or mailing or email address. For purpose of providing any notice required by the Declaration, the Owner's address shall be the last known address on file with the Association.

- 3.3 The voting rights of each Owner are subject to:
- A. Ownership of an interest by fee or by contract in a Lot in The Lakes Subdivision;
 - B. The full payment of assessments, fees, fines, penalties, interest, attorneys' fees, other costs, and liens imposed by the Association; and
 - C. Compliance with the Declaration, Bylaws, Rules and Regulations, and Design Manual.

3.4 The voting rights of any Owner are automatically suspended during any period when such Owner shall have failed to timely pay any monies then owed to the Association and during any period of non-compliance with the Declaration, Bylaws, Rules and Regulations, and Design Manual. Upon payment of such monies and upon complete compliance, the Member's voting rights shall be automatically restored.

3.5 Each Lot shall have one membership or voting interest. If ownership is vested in more than one person, only one vote may be cast collectively by such Owners. Such owners must, prior to a meeting where voting may be allowed, among and between them, determine who is entitled to vote the membership interest, and in what manner it shall be voted. If more than one person seeks to exercise the vote, the vote shall be suspended and the Owners will be deemed to not be eligible to vote on that matter.

ARTICLE IV **Meetings**

4.1 There shall be an annual meeting of the membership of the Association. The annual meeting shall be held at a place specified in the notice of the meeting and at a date and hour selected by the Board of Directors. The notice of the annual meeting may state those matters that will come before the Association for approval.

4.2 Special meetings may be called at any time upon the initiative of the President, a majority vote of the Board of Directors, or by a qualified Petition (a Petition signed by 5% of the membership interest eligible to vote at the time the Petition is presented to any Director, and which specifies the purpose(s) for which the special meeting is being requested). Upon receipt of a qualified Petition, the notice for such special meeting shall be provided by the Board of Directors or its designated representative within 30 days after receiving a qualified Petition. Notice of any special meeting shall state the hour, date and place of the meeting and shall state the reason(s) of such meeting, and said special meeting shall be strictly confined to the matters set forth in the notice.

4.3 Written notice of all annual and special meetings shall be mailed, emailed, or personally delivered by the Board of Directors or its designated representative to every Member of record no later than ten (10) days and not more than fifty (50) days before the date of the meeting.

4.3.1 The record date shall be the date on which the notice of the meeting is first sent to any Member.

4.3.2 The notice of the annual meeting shall include a copy of the budget for the prior calendar year, with actual income and expenses included, and a copy of the budget for the next calendar year.

4.4 At the beginning of either an annual or special meeting of the Association, the presence in person or by proxy of 10% of the membership interest eligible to vote shall constitute a quorum. If a quorum shall not be present at any meeting, such meeting shall be adjourned and may be immediately re-convened, at which time the presence in person or by proxy of 5% of the membership interest eligible to vote shall constitute a quorum.

4.5 Once a quorum is established, unless another vote is expressly required, the Association may act by Affirmative Vote.

4.5.1 Notwithstanding anything stated in this Declaration, before the Transfer Date any vote taken by the Members is an advisory vote. No advisory vote taken by the Members shall be construed to require the Declarant or Board of Directors to act or not act; the Board of Directors shall have the discretion to determine whether to act or not act based on the advisory vote.

4.5.2 After the Transfer Date, if any action approved by the Members compels the Board of Directors to take positive action, the Board of Directors retains the final discretion as to the scope, extent, and specific character of the action it is required to take.

4.6 All annual and special meetings shall be presided over by the President, or the Vice-President if the President is not present, or by any person elected by Affirmative Vote if neither the President nor the Vice-President is present.

4.7 Any action to be taken by the Members may be taken without a meeting if the Association delivers a ballot, via mail or email, to every Member eligible to vote on the matter. The ballot must set forth the proposed action, provide an opportunity to vote for or against the proposed action, indicate the number of responses needed to meet the quorum requirement, state the percentage of approvals necessary to approve each matter, and specify the time by which a ballot must be received in order for the vote to be counted. Approval by ballot under this Section is valid if the number of votes cast by ballot equals or exceeds the quorum required to be present a meeting, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting.

ARTICLE V
Board of Directors

5.1 The Association shall be governed by the Board of Directors.

5.2 The Board of Directors shall have the authority to act on behalf of the Association in order to carry out the purposes of the Declaration and the Association and to enforce the Declaration, Bylaws, Rules and Regulation, and Design Manual, unless it is after the Transfer Date and an action is expressly reserved for the Members of the Association,

5.3 The Board of Directors shall be made up of three Directors.

5.4 The initial Board of Directors shall be appointed by the Declarant for terms of one, two and three years; that is, one director for a one year term, one for a two year term and one for a three year term. Thereafter, as a term expires, the next term shall be a three year term, thus staggering the terms of the Directors. Directors may be appointed or elected for successive terms.

5.5 Appointment or Election of Directors.

5.5.1 After recording the Declaration, the Declarant shall appoint three Directors. The Declarant shall have the right to appoint the Directors until the Transfer Date. During this time, the Directors need not be Owners or Members of the Association.

5.5.2 At the next annual meeting of the Association after the Transfer Date, the Members shall nominate and elect candidates from among the Members to fill the Director position whose term expires at the annual meeting, and so forth each year thereafter.

(1) At any meeting at which an election is held, any Member present in person at the meeting may nominate himself or another Member to be on the Board of Directors.

(2) The Member receiving the highest number of votes shall be the named as a Director.

5.6 The Board of Directors shall elect the following officers:

5.6.1 President- The President shall be elected from among the Directors. The President's term is one year. The President shall oversee all meetings of the Association and the Board of Directors. The President shall be authorized to sign on behalf of the Association all contracts, records, documents, and instruments required or necessary to the administration of the Association or incidental to the powers of the Board of Directors. The President shall have all other powers expressly or impliedly authorized by the Declaration, the

Bylaws, or the Board of Directors.

5.6.2 Vice-President- The Vice-President shall be elected from among the Directors. The Vice-President's term is one year. The Vice-President shall exercise the powers of the President in the absence of the President. The Vice-President shall have all other powers expressly or impliedly authorized by the Declaration, the Bylaws, or the Board of Directors.

5.6.3 Secretary- The Secretary may, but is not required to be, a Director. The Secretary shall remain in the office of the Secretary until he or she resigns or until the Board of Directors appoints a different person to be Secretary, whichever happens first. At the least, the Secretary shall:

- (1) Maintain a record of all Owners/Members in the Association and their membership interests, addresses, and emails;
- (2) Send, either personally or through a designated representative, notices of all meetings of the Association and the Board of Directors;
- (3) Prepare and maintain minutes of the Association and Board of Director meetings;
- (4) Maintain other records required by the Declaration, Bylaws, or the Board of Directors;
- (5) Sign on behalf of the Association all records, documents, and instruments when such are authorized to be signed by the Board of Directors; and
- (6) Upon request, authenticate records of the Association.

5.6.4 Treasurer- The Treasurer may, but is not required to be, a Director. The Treasurer shall remain in the office of the Treasurer until he or she resigns or until the Board of Directors appoints a different person to be Treasurer, whichever happens first. At the least, the Treasurer shall:

- (1) Prepare a proposed budget for each year for review, comment, and approval by the Board of Directors;
- (2) Keep and maintain adequate and correct accounts of the accounts, liabilities, receipts, disbursements, gains, and losses of the Association; and
- (3) Keep and maintain a record of all assessments, fees, fines, and interest owed by any person to the Association.

5.6.5 An officer may hold more than one office.

5.7 Removal of Directors.

5.7.1 Before the Transfer Date, the Declarant has the power to remove any Director for any reason and at any time.

5.7.2 After the Transfer Date, at any meeting of the Association, the Members may remove a Director upon the approval of 75% or more of the membership interest present in person or by proxy. The Members may elect the replacement as set forth in Article 5.5.2.

5.8 Vacancy on Board.

5.8.1 Before the Transfer Date, the Declarant has the power to fill any vacancy on the Board of Directors.

5.8.2 After the Transfer Date, any vacancy on the Board of Directors shall be filled by the affirmative vote of a majority of the remaining Directors, even though less than a quorum of the Board of Directors, and any such appointed Director shall hold office for the unexpired term of his or her predecessor in office.

5.9 Without limiting any power vested in the Board of Director by law or by this Declaration, the Board of Directors shall have the power to:

- A. To sue and be sued, complain, and defend in the Association's name;
- B. To purchase, receive, lease, or otherwise acquire and own, hold, improve, use, maintain, and otherwise deal with real or personal property or any legal or equitable interest in property;
- C. To lease, exchange, and otherwise dispose of all or any part of the Association's property;
- D. To make contracts and guaranties;
- E. To incur liabilities and pay the expenses of the Association;
- F. To prepare and approve a budget;
- G. To establish a reserve fund;
- H. To impose assessments, penalties, fines, fees, interest, attorneys' fees, and costs upon its Members and upon the Lots within The Lakes Subdivision as authorized by the Declaration, the Bylaws, the Rules and Regulations, the Design Manual, or the law;

- I. To collect assessments, penalties, fines, fees, interest, attorneys' fees, and costs authorized by the Declaration, the Bylaws, the Rules and Regulations, the Design Manual, or the law;
- J. To file and foreclose liens;
- K. To care for, manage, control, protect, and maintain the Common Areas, Parks, Park Facilities, Open Spaces, Storm Water Facility, boundary fences, and easements;
- L. To enforce these Declaration, the Bylaws, Rules and Regulations, and Design Manual;
- M. To set and call meetings of the Association, both annual and special, and to preside over such meetings and to give appropriate notice of such meetings as required by the Declaration or the Bylaws;
- N. To establish Rules and Regulations to carry out the purposes of the Declaration so long as such Rules and Regulations do not conflict with the Declaration and the Members are provided with 30 days written notice (via mail, email, or on the Association's website) of any Rule and Regulation before it becomes enforceable;
- O. To form committees to assist the Board of Directors in carrying out its powers and authority; and
- P. To pay for such insurance as may be necessary and in the best interest of Association and the Board of Directors, and to provide for the use and disposition of the insurance proceeds in the event of loss or damage. The extent and specific nature of coverage shall be determined by the Board of Directors, except that the Board of Directors shall procure and maintain liability insurance for the Association;
- Q. To pay taxes;
- R. To deal with agencies, officers, boards, commissions, departments, and bureaus or other governmental bodies in a federal, state, county, or local basis on behalf of the Association;
- S. To do all things authorized by the Declaration, the Bylaws, Rules and Regulations, or the Design Manual; and
- T. To do all things necessary or convenient which may serve the interests of the Association or The Lakes Subdivision or to carry into effect the Declaration, the Bylaws, Rules and Regulations, the Design Manual or the purposes of the Association.

5.10 A meeting of the Board of Directors may be called at any time upon the initiative of the President or a majority of the Board of Directors.

5.11 Notice of any Board of Directors' meeting may be by telephone, mail, email, or personal delivery to each Director at least 2 days before the meeting. The notice need not state the purpose(s) of the meeting. A Director may waive the required notice by a writing, signed by the Director, and filed in the corporate records; or by attending or participating in a meeting unless the Director, upon arriving at the meeting or before the vote on any matter, objects to the lack of notice and does not vote for or assent to that action.

5.12 At the beginning of a Board of Directors' meeting, the presence in person or by proxy of a majority of the Board of Directors shall constitute a quorum. Any Director may participate in a meeting through the use of any means of communication by which all Directors participating may simultaneously hear each other during the meeting. A Director participating in a meeting by this means is considered present in person at the meeting.

5.13 Once a quorum is established, the Board of Directors may act upon the affirmative vote of a majority of Directors present.

5.14 Any action required or permitted to be taken by the Board of Directors may be taken without a meeting if the action is taken by all Directors. The action must be evidenced by one or more written consents describing the action taken, be signed (by regular or electronic signature) by each Director, and filed in the corporate records, or ratified by the Board of Directors at its next annual or special meeting.

5.15 The Directors shall not receive any monetary compensation, except that they shall be reimbursed for any out-of-pocket expenses incurred while acting in their official capacity for their services as members of the Board of Directors.

5.16 Any Director who acts in good faith on behalf of the Association:

- A. Shall not be liable to the owners as a result of their activities as such for any mistake of judgment, negligence or otherwise, except for their own willful misconduct or bad faith;
- B. Shall have no personal liability in contract to an Owner or any other person or entity under any agreement, instrument or transaction entered into by them on behalf of the Association in their capacity as such;
- C. Shall have no personal liability in tort to any Owner or any person or entity, except for their own willful misconduct or bad faith;
- D. Shall have no personal liability arising out of the use, misuse or condition of the property which might in any way be assessed against or imputed to them as a result of or by virtue of their capacity as such.

5.17 Any person made a party to any proceeding because the person is or was a Director or member of the Design Review Panel shall be defended and indemnified as set forth in Section 35-2-446 through Section 35-2-454, MCA, as those statutes may be amended from time to time.

ARTICLE VI
Design Manual and Design Review Panel

6.1 Pursuant to the Second Amendment to the Fourth Amended and Restated Declaration of Protective Covenants and Restrictions for Valley West, on file and of record in the Gallatin County Clerk and Recorder's Office as Document No. _____, Members and Owners are not required to comply with Article IV (Architectural Regulations), Article V (Site Design), Article VI (Landscape Design), Article VII (Design Review Process), and Article VIII (Valley West Architectural Review Committee) of the Valley West Covenants. Instead, all Members and Owners shall be bound by and adhere to the Design Manual (as amended from time to time) and shall be subject to the authority of The Lakes at Valley West Design Review Panel.

In addition to any enforcement powers given to Board and/or the Design Review Panel, while the Valley West Subdivision is under the jurisdiction of the Valley West Homeowners' Association, all Members and Owners shall continue to be subject to Article X, Section 2, of the Valley West Covenants for any violation of the Valley West Covenants or the Design Manual.

6.2 All construction, installation, and alteration of all improvements on the Property or any Lot within The Lakes Subdivision shall be subject the Design Manual and to the review and approval of The Lakes at Valley West Design Review Panel.

- 6.2.1 Before the Transfer Date, except for any provision that cannot be changed without the City of Bozeman's approval, the Declarant may adopt, amend, modify, add, or delete any provision of the Design Manual;
- 6.2.2 After the Transfer Date, except for any provision that cannot be changed without the City of Bozeman's approval, the Board of Directors may adopt, amend, modify, add, or delete any provision of the Design Manual by unanimous vote.
- 6.2.3 Any amendment, modification, addition, or deletion to the Design Manual shall not be effective until 30 days after the Members are given notice of the amendment, modification, addition, or deletion. For purposes of this provision, notice of the amendment, modification, addition, or deletion may be given by mail, email, or by posting the amendment, modification, addition or deletion on the Association's website.

ARTICLE VII
Assessments

7.1 The Declarant hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- (1) Annual Assessments; and
- (2) Special Assessments.

7.2 Assessments may be used to promote the recreation, health, safety, convenience, and welfare of the Association or the Members; for noxious weed mitigation and removal; for the improvement, repair, operation, and maintenance of the Common Area, Open Space, Parks, Park Facility, Storm Water Facility, easements, sidewalks, woonerfs and alleys, or any other area for which the Association is or may be responsible for now or in the future; to defray, in whole or in part, the cost of any construction, reconstruction, gravel, paving, repair or replacement of a capital improvement upon the Common Area, Open Space, Parks, sidewalks, trails, woonerfs and alleys, easements, or any other area for which the Association is or may be responsible for now or in the future, including fixtures and personal property related thereto; to establish reserves for any reason; for making and collecting assessments; for paying taxes and insurance; for enforcing the Declaration, Bylaws, Rules and Regulations, or Design Manual; to assist the Board of Directors or Design Review Panel in carrying out their powers and authorities; for any other purposes, express or implied, in this Declaration, the Bylaws, the Rules or Regulations, or the Design Manual; and for any other purpose deemed reasonable and necessary by the Board of Directors.

7.3 The Board of Directors shall have the power to levy Annual and Special Assessments on its Members.

7.3.1 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.

7.3.2 Special Assessments shall be fixed at the same rate for each Lot affected by the Special Assessment.

7.4 The Annual and Special Assessments shall be due on the date determined by the Board of Directors, except that the Board of Directors or its designated representative shall provide notice of the amount and due date of the Annual and Special Assessments to the Owner of each Lot at least 30 days before the due date of each Annual Assessment, and at least 90 days before the due date for each Special Assessment.

7.5 No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Property or by abandonment of his or her Lot.

7.6 Until such time as The Lakes Subdivision is removed from the jurisdiction of the Valley West Homeowners' Association, any Owner assessed hereunder shall be subject to an additional assessment by the Valley West Homeowners' Association, which is assessed and collected pursuant to the Valley West Covenants. Payment of such assessments does not alleviate or offset the assessments required by this Declaration.

7.7 Notwithstanding anything contained in this Declaration, the Declarant shall not be required to pay any assessments on any Lot or Property owned by the Declarant unless the Declarant or its agents, representatives, members, or employees reside on the Lot.

ARTICLE VIII

Fees

8.1 The Board of Directors shall have the power to establish and charge fees for any service provided to any Owner (such services may but are not required to include, lawn maintenance, weed maintenance, snow removal, design review, etc.), or for any other reason permitted by the Declaration, the Bylaws, the Rules and Regulations, or the Design Manual.

8.2 The fees may be used in any manner that the Board of Directors, in its discretion, believes benefits the Association.

8.3 Fees are due in an amount and on the due date established by the Board of Directors or as otherwise set forth in the Declaration, Bylaws, Rules and Regulations, or Design Manual.

ARTICLE IX

Property Use

9.1 Municipal Regulations. All 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 this Declaration and enforceable hereunder; and all of the Owners of said lands shall be bound by such land use regulations and other laws, rules, and regulations. In the event there is a conflict between the Declaration and the applicable land use regulations and other laws, rules, and regulations, the most restrictive shall control.

9.2 Re-Subdivision. There shall be no further division of the Lots without the consent of the Board of Directors.

9.3 Residential Use. The Lots shall be restricted to residential uses only. There shall be no commercial business conducted on any Lot, except that "cottage industries" may be conducted in the dwelling or within an appurtenant building by an Owner residing in the dwelling or any of the Owner's immediate family residing in the dwelling. A "cottage industry" means a business where the public does not purchase merchandise on a retail basis on the Lot, and such commercial use is clearly incidental and secondary to the use of the Lot as a residence.

9.4 Wildlife. No hunting of, shooting at or harassing of birds, animals or any wildlife will be permitted. Skunks, gophers and rodents may be trapped; however, poison may not be used.

9.5 Animals. No animals, except dogs, cats, chickens, or small in-house pets, are permitted on the Lots. Owners may comply with all state, city, and local rules regarding animals kept on any Lot. Owners shall pick up after their animals and shall not allow their animals to roam free on any other Lot.

9.6 Lot Maintenance. Each Owner is required to maintain his or her Lot, whether developed or undeveloped, in a neat and orderly fashion. This includes but is not limited to maintaining the landscape, mowing, trimming, weeding, mitigating and removing noxious weeds, and other similar maintenance and upkeep.

9.7 Building Maintenance. Each Owner is required to maintain any structure (buildings, fences, walls, etc.) on the Owner's Lot in a neat and orderly fashion. This includes but is not limited to re-painting, re-staining, re-roofing, and other similar maintenance and upkeep.

9.8 Woonerfs and Alleys. Each Owner shall maintain the alley right-of-way adjacent to the Owner's Lot. This includes but is not limited to picking up and appropriately disposing of garbage, trash, debris, and other waste and mowing and trimming the alley right-of-way.

9.9 Refuse.

9.9.1 No junk, garbage, trash, debris, materials, equipment, or other waste shall be allowed to accumulate on any Lot or originate from any Lot; except that during the period of construction approved by the Design Review Panel, temporary accumulations may be allowed but they shall at all times be kept in an orderly, clean, and sanitary condition and screened from view, and shall be disposed of regularly.

9.9.2 There shall be no incineration or burning of junk, garbage, trash, debris, materials, equipment, or other waste on any Lot.

9.9.3 All garbage and trash requirements of the City of Bozeman shall be observed.

9.9.4 All garbage and trash that is stored outside shall be kept in a City-approved container. Except on garbage pick-up day, garbage containers shall be kept in the garage or other enclosure directly adjacent to a structure or fence.

9.9.5 In addition to any other remedy allowed under this Declaration, the Rules and Regulations, the Design Manual, or at law or in equity, if an Owner violates any part of this Section, the Board of Directors, after twenty-four hours' notice, may cause the junk, garbage, trash, debris, materials, equipment, or other waste to be controlled, collected, and/or removed, assess the Owner of the Lot for all attorney's fees and costs related thereto, and charge a fine.

9.10 Junk Vehicles. No junk vehicles or unusable machinery or equipment shall be parked outside on any Lot or placed on any road. A "junk vehicle" means one which has not been

licensed for several months or is in an inoperable condition. "Unusable machinery or equipment" means that which is not in operable condition.

9.11 Signs. Only the following signs may be erected on the exterior of any Lot:

- (1) Signs which identify the Owner of the Lot;
- (2) "For Sale" signs on a Lot being sold;
- (3) Political signs, for up to 30 days before an election and 2 days after the election; and
- (4) Signs placed by the Declarant and/or Association at any entrance(s) to The Lakes Subdivision to identify the subdivision and/or neighborhood.

9.12 Automobiles and Vehicles.

9.12.1 "Automobile" means a two, three, or four door passenger vehicle, sports utility vehicle, or pick-up truck with or without a canopy cover or topper, or a moped or motorcycle, which is primarily used for transporting a small number of people over public highways.

9.12.2 "Vehicle" means any boat, trailer, snowmobile, motor home, mobile home, recreational vehicle, off-highway vehicle, or other similar equipment.

9.12.3 Only one Vehicle per Lot is allowed to be stored/parked outside of a garage on that Lot, and any such Vehicle parked/stored outside of a garage shall only be parked/stored on a designated concrete or gravel pad. The designated concrete or gravel pad shall only be adjacent to the alley. No Vehicle shall be parked/stored in a driveway or in front a house.

9.12.4 No Automobile or Vehicle shall obstruct pedestrian traffic.

9.12.5 All Automobiles and Vehicles shall also comply with all local and state laws.

9.12.6 In addition to any other remedy allowed under the Declaration or the Rules and Regulations, owners of Automobiles or Vehicles parked in violation of this Declaration may be asked in writing or by placing a written notice on the Automobile or Vehicle to comply with this Declaration and/or to immediately remove the Automobile or Vehicle. If the Automobile or Vehicle is not removed within 24 hours of notification, the Board of Directors or its authorized representative may cause the Automobile or Vehicle to be towed and impounded at the expense of the owner, assess the Owner of the Lot for all attorney's fees and costs related thereto, and charge a fine.

9.12.7 Notwithstanding anything to the contrary, the Board or its authorized representative may cause an Automobile or Vehicle to be towed immediately without notification

if the Board or its authorized representative determines that the Automobile or Vehicle impedes emergency vehicles or represents a threat to health and safety. The Board of Directors may have the Vehicle towed and impounded at the expense of the owner, assess the Owner of the Lot for all attorney's fees and costs related thereto, and charge a fine.

9.13 Conduct. Each Owner, whether present or not, shall be responsible for his or her own conduct and for the conduct of his or her family, occupants, guests, invitees, licensees, and tenants while on the Owner's Lot or within The Lakes Subdivision. Each Owner and his or her family, occupants, guests, invitees, licensees, and tenants shall conduct themselves in a manner so as not to disturb the peaceful possession of another Owner's Lot or the use of others of the Common Areas, Open Spaces, or Parks. It is a violation of this Declaration to allow noise to emit beyond the Owner's Lot boundary at a level that disturbs one or more persons.

9.14 Tenants. Each Owner is responsible for the Owner's tenants, and is responsible for providing a copy of the Declaration, Rules and Regulations, and Design Manual to the tenants. Upon the Board of Director's request, the Owner shall provide the Board of Directors with each Tenant's name, address, and telephone number.

9.15 Nuisance. No nuisance of any type or nature shall be permitted to exist upon any Lot, Common Area, Open Space, or Park. A "nuisance" includes, but is not limited to, any action or conduct or thing which, in the Board of Director's sole discretion, disturbs or interferes with the peaceful use, occupancy, or enjoyment of any Owner, occupant, guest, invitee, licensee, or tenant in The Lakes Subdivision. Every Owner is responsible for the action and conduct of the Owner and the Owner's family, occupants, guests, invitees, licensees, and tenants.

9.16 Sidewalks. Notwithstanding anything contained in this Declaration, every Owner is responsible for maintaining the Owner's sidewalk located on, adjacent to, and between the Owner's Lot and the nearest right-of-way. "Maintain" includes, but is not limited to, snow removal.

ARTICLE X **Agricultural Uses**

10.1 Lot Owners and residents of The Lakes Subdivision are informed that adjacent uses may be agricultural. Lot Owners accept and are aware that standard agricultural and farming practices can result in dust, animal odors and noise, smoke, flies, and machinery noise. Standard agricultural practices feature the use of heavy equipment, chemical sprays, and the use of machinery early in the morning and sometimes late into the evening.

10.2 All fences bordering agricultural lands shall be maintained by the landowners in accordance with state law.

ARTICLE XI
Common Areas, Parks, Open Spaces, Easements,
and Designated Sidewalks

11.1 The Declarant shall install or cause to be installed or constructed the following improvements: The mainlines for telephone, power and gas shall be connected up to the main utility lines in the area and Declarant shall install such utility lines near each Lot within the utility or road easements or Common Areas shown on the site plans. The streets shown on the site plan shall be installed in accordance with the present City of Bozeman requirements for such a subdivision. Storm Water Facilities and Park Facilities as required under the City of Bozeman approved infrastructure and park facility plans, including any such Storm Water Facilities and Park Facilities required in the R Lots shown on the Final Plat for Phases 1 and 2 of the Lakes at Valley West. Such other amenities as the Declarant deems appropriate or as required by Gallatin County.

11.2 The Declarant reserves and retains throughout The Lakes Subdivision the reasonable and necessary easements and encroachment rights to install, move, maintain, repair, and remove the utilities service lines, including sewer and water lines, improvements and amenities mentioned in Section 11.1, and for other service lines and utility and cable services, whether presently available or not, in the Common Areas, Parks, Park Facilities, Storm Water Facilities, and Open Spaces along the easements reserved or delineated on the recorded subdivision map. The Declarant or the Board of Directors may grant such easements to third parties as necessary for installation, moving, maintenance, repair, or removal of any service lines or improvements in the Common Areas, Parks, Park Facilities, Storm Water Facilities, and Open Spaces..

11.3 After the Transfer Date, only the Valley West Association and the Association, acting through their respective Boards, shall have the rights and reservations set forth in Section 11.1 and Section 11.2.

11.4 City sewer and water lines, power, natural gas, cable television, and telephone service lines are provided to each Lot. The Owners shall be responsible and have the obligation, at its cost, to install and hook up the utility and service lines from the main lines to the buildings and improvements on the Lot. All utility lines shall be underground. Private utilities are the responsibility of the Owner. The Owners shall pay for all service and use charges billed by the utility and service companies for the use and consumption of the utilities.

11.5 After the initial installation of the improvements in the Common Areas, Parks, and Open Spaces by the Declarant, the Association, if the Valley West Association does not or is no longer obligated to, shall be responsible for and have the obligation to maintain the Common Areas, Parks and Open Spaces in good condition and repair and as set forth on the Final Plat of The Lakes Subdivision. This includes the responsibility to control noxious weeds and to maintain sidewalks in the Common Areas, Parks, and Open Spaces, including snow removal. The cost of such maintenance shall be a part of the annual budget for the Association to be assessed to the Owners.

11.6 Common Area Easement. The Declarant, the Owners and their guests and invitees, and the public have a perpetual nonexclusive easement of ingress and egress through the Common Area,

Parks, and Open Space. This covenant shall not be changed without the written approval of the City of Bozeman.

11.7 Other Easement. The Association, by and through the Board of Directors or its designated representative, shall have the right, but not the obligation, to enter upon any Lot for emergency, security, or safety reasons, or to perform maintenance in compliance with the Declaration, Bylaws, Rules and Resolutions, or Design Manual, which right may be exercised by any member of the Board of Directors or their designated representative, and all policeman, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties.

ARTICLE XII

Additional Covenants Required by the City

12.1 Every Owner shall cause to be constructed city standard sidewalks (including a concrete sidewalk section through all private drive approaches) on all public and private street frontages prior to the occupancy of any structure on individual Lots. Upon the third anniversary of the final plat recordation of a Lot Owner's phase of The Lakes Subdivision, any Lot Owner within that phase who has not constructed the required sidewalk shall, without further notice, construct within 30 days the sidewalk for his or her Lot(s), regardless of whether other improvements have been made upon the Lot.

12.2 The Open Space within The Lakes Subdivision, as designated on a final plat or approved PUD site plan, shall be preserved in perpetuity.

12.3 After the installation of the Storm Water Facility and the Parks Facility by the Declarant, the Association, if the Valley West Association does not or is no longer obligated to, shall be responsible for and have the obligation to maintain the Storm Water Facility and Park Facilities as shown on the City of Bozeman approved infrastructure and park plans, including the R Lots as shown on the Final Plat for Phases 1 and 2 of The Lakes at Valley West. The cost of such maintenance shall be a part of the annual budget for the Association to be assessed to the Owners.

12.3 The Board of Directors shall include in the assessments an amount necessary to pay for the taxes, insurance, maintenance, upkeep, and repair of all Parks, Open Space, sidewalks in Parks and Open Spaces, Woonerfs and alleys, that are required to be maintained by the Association.

12.4 If the Association fails to maintain the Parks and Open Spaces in reasonable order and condition in accordance with the City of Bozeman's approved plan, the City may enforce the covenant pursuant Bozeman Ordinance Section 38.38.030(8).

12.5 Drainage plans shall be required for each Lot as part of a Lot Owner's application for a building permit from the City of Bozeman.

ARTICLE XIII
Enforcement

13.1 For any violation or threatened violation of the Declaration, Bylaws, Rules or Regulations, or Design Manual, the Board of Directors (on behalf of the Association) or any Owner may bring a legal proceeding for monetary, injunctive, and/or other relief and damages. The prevailing party shall be entitled to an award of all attorney fees (including fees for fees and fees on appeal) and all costs and expenses related to or arising from the issues raised in the proceeding.

13.1.1. Before the Board of Directors may bring a legal action, the Board of Directors shall provide notice of the violation or threatened violation to the Owner.

13.1.2. The notice shall specify the violation and the time period in which the violation must be cured.

13.1.3. The notice shall be served upon the Owner via mail, email, or personal delivery. The notice is deemed served on the date it is personally delivered or emailed, or 3 days after it is mailed, whichever date comes first.

13.1.4. The Lot owner has 10 days after service of the notice to submit a written letter to the Board of Directors setting forth all of the reasons why the Owner believes a violation has not occurred. The Owner shall attach to the letter all documentary evidence and, if applicable, a list of witnesses in support of the Owner's position.

13.1.5. If the Owner submits a timely written response, the Board of Directors shall review the Owner's response and determine whether a violation has occurred. If the Owner fails to timely submit a written letter to the Board of Directors, then the violation will be deemed to have occurred.

13.1.6. If a violation is deemed to have occurred, any action or proceeding authorized by the Declaration, these Bylaws, the Rules and Regulations, the Design Manual, or by law or equity may be taken against the Owner and/or the Lot. Such action may include, but is not limited to any or all of the following: suspending voting rights, assessing fines, charging interest, filing a lien, filing a lawsuit, and assessing payment for all attorney fees and all costs and expenses.

13.1.7. Even if a violation is determined or deemed to have occurred, the Board of Directors may make a business judgment decision to not take action or initiate a proceeding against the Lot owner.

13.2 The Board of Directors (on behalf of the Association), may also record a lien any Lot owned by the Lot Owner for all unpaid assessments, fees, fines, attorney fees, other costs and expenses, and interest on all outstanding amounts owed at the rate of 12% per annum.

Said lien shall be a charge on any Lot owned by the Owner and shall be a continuing lien until all amounts owed are fully paid.

- 13.2.1 Such lien shall be superior to all other liens and encumbrances, except for tax and special assessment liens placed by a statutory authority, other statutory liens.
- 13.2.2 Such lien shall attach from the date the notice of the assessment, fee, or fine is first served, the date it first becomes due, or the date the lien is filed, whichever happens first.
- 13.2.3 The Board of Directors may foreclose the lien against the Lot in the manner set forth under Montana law for the foreclosure of liens against real property, and may also bring an action against the Owner personally obligated to pay all such amounts.

13.3 Any money due on a Lot or owed by an Owner that remains unpaid at the time the Owner's Lot is purchased by or transferred to a successive owner, shall also be the personal obligation of any successive owner, regardless of the fact that the amount first became due while the Lot was owned by a prior owner. Every successive owner has a duty to contact the Association's Board of Directors before taking title to a Lot to learn if there are any unpaid amounts due on the Lot or against the prior owner.

13.4 In addition to the remedies outlined in this Article, the Board of Directors (on behalf of the Association) reserves the right to assert and/or pursue any other remedy in which it may be entitled to under the Declaration, these Bylaws, the Rules and Regulation, the Design Manual, or at law or in equity.

13.5 Failure to Enforce Covenants. The failure by to enforce any provision contained in this Declaration shall not be deemed a waiver or in any way prejudice the rights to later enforce that same provision or any other provision.

ARTICLE XIV **Annexation**

14.1 At any time before the Transfer Date, the Declarant shall have the right, from time to time and in its sole discretion, to annex to the Property and to include within this Declaration all or part of any property that is contiguous to any part of the Property. Right-of-ways, such as streets and alleys, do not prevent property from being considered contiguous.

14.2 Notwithstanding anything stated in this Declaration, any annexation authorized in Section 14.1, above, may be made by the recording of one or more supplemental declarations signed by the Declarant. At the least, a supplemental declaration shall contain: (1) the legal description of the property to be annexed; (2) a statement that the annexed property is deemed a part of the Property and subject to the Declaration; (3) and a statement that all owners of any lot in the annexed property shall automatically be a member of the Association.

14.3 The annexation shall become effective upon being recorded with the Gallatin County Clerk and Recorder.

14.4 In any property is annexed to the Property pursuant to the provisions of this Article, then such property shall be considered within the definition of Property for all purposes of this Declaration and each owner shall be deemed a member of the Association subject to all right and responsibilities set forth in this Declaration.

ARTICLE XV
Notice

15.1 Whenever notice is required under this Declaration, unless otherwise stated notice shall be deemed served if notice is given by mail to the owner's last known address, email to the Owner's last known email address, or personal delivery. The notice is deemed served on the date it is personally delivered or emailed, or 3 days after it is mailed, whichever date comes first. The

ARTICLE XVI
Miscellaneous Covenants

16.1 Term of Declaration. The term of this Declaration shall be perpetual, except that any time after the Transfer Date, 95% of the membership interest may sign a document to terminate the Declaration. Said termination shall not take effect until the document and all of the required signatures are recorded in the Gallatin County Clerk and Recorder's Office.

16.2 Amendment.

16.2.1 Before the Transfer Date, except for those covenants required by the City of Bozeman under Article XII, the Declarant may amend, modify, add, or delete any provision of this Declaration, in whole or in part. The amendment, modification, addition, or deletion shall not take effect until it is recorded with the Gallatin County Clerk and Recorder and notice provided to all Members. For purposes of this provision, notice includes posting the amendment, modification, addition, or deletion on the Association's website.

16.2.2 After the Transfer Date, except for those covenants required by the City of Bozeman under Article XII, the Association may amend, modify, add, or delete any provision of this Declaration upon the approval of 75% of the membership interest present at a meeting in person or by proxy. The amendment, modification, addition, or deletion shall not take effect until it is signed by the President, recorded in with Gallatin County Clerk and Recorder, and notice provided to all Members. For purposes of this provision, notice includes posting the amendment, modification, addition, or deletion on the Association's website.

