

W4128

**RESTATED DECLARATION
 OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
 CANYON CREEK VILLAGE
 AND
 CANYON EAST**

This Restated Declaration is made this 22 day of December, 2004, by Wesmont Builders-Developers, Inc., a Montana Close Corporation of 515 South Reserve, Suite 4, Missoula, Montana 59801 provides as follows:

RECITALS

1. Wesmont Builders-Developers, Inc. is the Owner of certain real property, comprising two adjoining developments, both located in Missoula County, Montana, which are described as follows:

CANYON CREEK VILLAGE

Reserve "B" of the preliminary plat of Missoula Development Park located in the E1/2NE1/4 of Section 1, Township 13 North, Range 20 West, P.M.M., and being a portion of Tract 3 of Certificate of Survey No. 3858, records of Missoula County, Montana, ~~a portion of which has been platted as~~ Canyon Creek Village Phases 1 through 10; and

CANYON EAST

Lot 1A of Certificate of Survey No. 5437, being a portion of Lot 1 of Green Acres, Phase 2, located in the NW ¼ of Section 6, Township 13 North, Range 19 West, P.M.M. Missoula County Montana.

2. The portion of the Real Property, comprising Canyon Creek Village, was subjected to certain limitations and restrictions, as contained in a document entitled "DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF CANYON CREEK VILLAGE" dated April 23, 2002, and recorded upon the records of the office of the Missoula County Clerk & Recorder on April 23, 2002, in Book 680, at Page 1359 (the Declaration).
3. The Declaration was amended by a document entitled "FIRST AMENDMENT TO "DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF CANYON CREEK VILLAGE" dated October 21, 2003, and recorded upon the records of the office of the Missoula County Clerk & Recorder on October 23, 2003, in Book 720, at Page 1107 (the First Amendment).

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4. The Declaration provided, "Declarant reserves the sole right to amend, modify, make additions to or deletions from this Declaration that it alone deems appropriate, for so long as Declarant owns one or more of the Lots subject to this Declaration."
5. Declarant is at the time of entry into this Restated Declaration an owner of more than one Lot subject to the Declaration and the First Amendment, and as such has the sole right to amend, modify, make additions to or deletions from the Declaration and the First Amendment.
6. The Declarant desires, by this Restated Declaration to supercede the covenants, conditions and restrictions as set out in the Declaration and the First Amendment and replace such covenants, conditions and restrictions with those as set out in this Restated Declaration, for the purposes of including both Canyon Creek Village and Canyon East in the Restated Declaration, making such amendments and changes as necessitated by the inclusion of both Canyon Creek Village and Canyon East and making other amendments and changes, all to further the intentions as stated in these Recitals.
7. The Declarant, or its successors and assigns, intends to cause to be constructed upon the Real Property, described in Paragraph 1 of these Recitals, a mixed use development, which will encompass detached single family homes (including Single Family Detached Homes, Bungalows, Center Boulevard Frontage Homes, Park Frontage Homes, Private Lane Single Family Homes, and Garage Front Load Homes); Live/Work Units; Townhouses and a Multiple Family Building or Buildings.
8. Declarant, or its successors and assigns, intends to cause the subdivision of the Real Property, described in Paragraph 1 of these Recitals, to be platted in sixteen phases (twelve for Canyon Creek Village and four for Canyon East), therefore the final plats of earlier phases have been previously recorded and the final plats of the subsequent phases will be filed hereinafter.
9. The Declarant wishes to place restrictions, covenants and conditions upon Real Property described in Paragraph 1 of these Recitals for the use and benefit of the property, its future Owners and the Declarant.

DECLARATION

NOW THEREFORE, Wesmont Builders-Developers, Inc. declare that all the Real Property described above shall be held, sold, and conveyed subject to the following restrictions, covenants, conditions, and easements, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Real Property.

1. Definitions. For the purposes of this Restated Declaration the following definitions shall apply.

- a. Association. "Association" shall mean the Canyon Creek Village Homeowners' Association, Inc., its successors or assigns.
- b. Board of Directors or Board. "Board of Directors" or "Board" shall mean the Board of Directors of the Association, duly elected pursuant to the Bylaws of the Association or appointed by Declarant as herein provided.
- c. Bylaws. "Bylaws" shall mean the Bylaws adopted by the Association as amended from time to time.
- d. Common Area. "Common Area" shall mean that area as depicted upon the final plat or plats of the property identified as common area, which consists of driveways and parking areas servicing the Bungalow Lots and the Private Lane Single Family Lots and the parking area adjacent to Live/Work Lot G1 of Canyon Creek Village, depicted on the plat as Common Parking Area.
- e. Declarant. "Declarant" shall mean the Wesmont Builders-Developers, Inc. a Montana Close Corporation, or its successors and assigns to which it might expressly assign its rights as Declarant.
- f. Restated Declaration. "Restated Declaration" shall mean this Restated Declaration of Covenants, Conditions and Restrictions for Canyon Creek Village and Canyon East, as may be amended from time to time.
- g. Lot. "Lot" shall mean Lots A1 through A126, B1 through B36, C1 through C20, D1 through D14, E1 through E15, F1 and F2, G1 through G21, H1 and P1, as are shown upon the recorded plat maps of Canyon Creek Village, and Lots A1 through A8, Block 1; Lots A1 through A8, Block 2; Lots A1 through A26, Block 3; Lots A1 through A8, Block 4; Lots B1 through B18, Block 5; Lots A1 through A13 and Lots B14 through B26, Block 6, Lots B1 through B13, Lots H14 through H29, Block 7 and Lots H1 through H15 and Lots G16 through G 18, Block 8 as are shown upon the recorded plat maps of Canyon East, or as will be shown upon the recorded plat map of future phases of the Real Property.
- i. Single Family Lot. "Single Family Lot" shall mean and refer to the Lots, which are designed as the sites for single family homes and include the following:
 - (1) "Single Family Detached Lots" shall mean and refer to the Lots, which are designed as the sites for Single Family Detached Homes and are identified on the subdivision plat map, as Lots A1 through A126 of Canyon Creek Village, and Lots A1 through A8, Block 1; Lots A1 through A8, Block 2;



Lots A1 through A26, Block 3; Lots A1 through A8, Block 4; Lots A1 through A13, Block 6 of Canyon East

- (2) "Bungalow Lots" shall mean and refer to the Lots, which are designed as the sites for Bungalows and are identified on the subdivision plat map, as Lots B1 through B36 of Canyon Creek Village and Lots B1 through B18, Block 5; Lots B14 through B26, Block 6, and Lots B1 through B13, Block 7 of Canyon East.
- (3) "Center Boulevard Frontage Lots" shall mean and refer to the Lots, which are designed as the sites for Center Boulevard Frontage Homes and are identified on the subdivision plat map, as Lots C1 through C20 of Canyon Creek Village.
- (4) "Park Frontage Lots" shall mean and refer to the Lots, which are designed as the sites for Park Frontage Homes and are identified on the subdivision plat map, as Lots D1 through D14 of Canyon Creek Village.
- (5) "Private Lane Single Family Lots" shall mean and refer to the Lots, which are designed as the sites for Private Lane Single Family Homes and are identified on the subdivision plat map, as Lots E1 through E15 of Canyon Creek Village.
- (6) "Garage Front Load Lots" shall mean and refer to the Lots, which are designed as the sites for Garage Front Load Homes and are identified on the subdivision plat map, as Lots F1 and F2 of Canyon Creek Village.

ii. Live/Work Lot. "Live/Work Lot" shall mean and refer to the Lots, which are designed as the sites for Live/Work Units and are identified on the subdivision plat map, as Lots G1 through G21 of Canyon Creek Village and Lots G16 through G 18, Block 8 of Canyon East.

iii. Multiple Family Lot. "Multiple Family Lot" shall mean and refer to the Lot, which is designed as the site for a Multiple Family Building or Buildings and is identified on the subdivision plat map, as Lot H1 of Canyon Creek Village.

iv. Townhouse Lot. "Townhouse Lot" shall mean and refer to the Lots, which are designed as the sites for Townhouses and are identified on the subdivision plat map as Lots H14 through H29, Block 7 and Lots H1 through H15, Block 8 of Canyon East.

v. Community Facility Lot. "Community Facility Lot" shall mean and refer to the Lot, which is designed as the site for a Community Facility and is identified on the subdivision plat map, as Lot P1 of Canyon Creek Village.

- h. Owner and Member. "Owner" and "Member" shall mean the record Owner of a fee, or undivided fee, whether one or more persons or entities, of any Lot, including buyers under a contract for deed, but excluding any person or entity who has sold or is selling any Lot under a contract and those having such interest merely as security for the performance of an obligation.
 - i. Real Property. "Real Property" shall mean that certain Real Property as described in Paragraph 1 of the Recitals.
 - j. Townhouse. "Townhouse" shall mean a single-family dwelling unit constructed so as to be attached by a common wall to one or more other single family dwelling units, each located on a separate Townhouse Lot and separated by the property line between those Townhouse Lots.
 - k. Zoning Districts. "Zoning Districts" shall mean the Planned Unit Development Zoning District for Canyon Creek Village, enacted by Missoula County and the Canyon East Special Zoning District, enacted by Missoula County.
2. Homeowners' Association. Until such time as Lots are sold by the Declarant, Declarant shall act as the Association. At such time as Lots are sold, Declarant, together with other Owners, shall act as the Association. It is Declarant's intention that within six (6) months after Declarant sells its last Lot, the responsibility for maintaining, administering and enforcing the covenants, easements, conditions and restrictions set forth herein shall be assumed by the Canyon Creek Village Homeowners' Association, Inc., or its successor entity, if any.
3. Membership & Voting Rights.
- a. Membership. Every person or entity who is an Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of the Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership. Acceptance of a deed, notice of purchasers' interest or documentation evidencing an ownership interest in a Lot shall be deemed to be consent to membership in the Association. The recording of a deed or other document evidencing an ownership interest shall be prima facie evidence of acceptance of that document by the receiver of the interest transferred.
 - b. Voting Rights. The Association shall have one class of voting membership. Other than as otherwise provided in this subsection, Members shall be entitled to one vote for each Lot owned. When more than one person holds an interest in a Lot, the vote for such Lot shall be exercised as they determine,



but in no event shall more votes be cast with respect to any Lot than as permitted in this subsection.

- i. Multiple Family Lot Voting. It is specifically intended that the Multiple Family Lot will have the number of votes equal to the number of individual dwelling units constructed on the Multiple Family Lot or the number of individual dwelling units approved for the Multiple Family Lot (whichever is less) multiplied by 50%. The votes of the Multiple Family Lot shall be exercised by its Owner(s) and if the Multiple Family Lot is configured as a Condominium or Townhouse, that its votes shall be exercised by its Condominium Unit Owners' Association or Townhouse Owners' Association.
- ii. Declarant Voting. For so long as the Declarant owns one or more Lots (other than the Multiple Family Lot), the Declarant shall be entitled to five (5) votes for each Lot it owns. For so long as the Declarant owns the Multiple Family Lot, the Declarant shall be entitled to ninety (90) votes for the Multiple Family Lot. The Declarant's entitlement to votes shall apply to all Lots identified on the Phasing Plan and as described in 1(g) above, whether the final plat for such Lot or Phase in which the Lot is located is filed or not.

4. Responsibility and Authority of Association.

- a. Maintenance of Trees and Landscaping. The Association shall maintain the trees and landscaping located on all parks and on all boulevards, which are located within the public right-of-way. The Association's obligation for maintenance shall include landscaping, pruning of trees, replacement of dead and diseased trees in such fashion so as to maintain the trees and landscaping in an attractive appearance. The Association's obligation for maintenance shall also include watering and mowing all parks and center boulevard strips (the obligation for watering and mowing boulevards adjacent to the various Lots shall be that of the Owners as set out in Section 6(k)). Provided in the event a Special Improvement District (SID) or Rural Special Improvement District (RSID) is created for maintenance of these areas, the Association's responsibility for such maintenance shall cease.
- b. Maintenance of Common Driveways and Parking Areas. The Association shall maintain the driveways and parking areas that are located upon Common Areas in a neat and attractive appearance, including but not limited to snow removal and general maintenance thereof, so as to permit the reasonable use of the Common Areas for their designed purposes. The Association is not responsible for maintenance of driveways and parking areas that are not located on a Common Area.



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- c. Maintenance of Alleys. The Association shall maintain the alleys in a neat and attractive appearance, including but not limited to snow removal and general maintenance thereof, so as to permit the reasonable use of the alleys for their designed purposes. Provided in the event a Special Improvement District (SID) or Rural Special Improvement District (RSID) is created for maintenance of these areas, the Association's responsibility for such maintenance shall cease.
- d. Maintenance of Streetlights and Fire Hydrants. The Association shall maintain the streetlights and fire hydrants, including but not limited to providing electrical and water services and general maintenance thereof, so as to permit the normal operation of the streetlights and fire hydrants for their designed purposes. Provided in the event a Special Improvement District (SID) or Rural Special Improvement District (RSID) is created for maintenance of these areas, the Association's responsibility for such maintenance shall cease.
- e. Maintenance of Community Facility Lot. In the event the Declarant transfers ownership of the Community Facility Lot, and any improvements thereon to the Association, the Association shall maintain the Community Facility Lot and its improvements, if any. The maintenance shall include, without limitation, watering, mowing and landscaping the Community Facility Lot and maintaining the interior and exterior of any structure erected on the Community Facility Lot in such fashion so as to maintain the property in an attractive appearance. Provided in the event a Special Improvement District (SID) or Rural Special Improvement District (RSID) is created for maintenance of these areas, the Association's responsibility for such maintenance shall cease.
- f. Other. Additionally, the Association may provide additional services as it sees fit. The Association may provide such services for all or a portion of the property within its jurisdiction or with which it may contract and levy assessments on such portion of its Members or others as derive benefits from services concerned. Further, the Association may retain the services of a professional manager or management company to carry out its duties under the terms of this Restated Declaration.

5. Assessments.

- a. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of the Association discharging its responsibilities, as described herein, and for the administration and enforcement of this Restated Declaration and any Bylaws of the Association.

b. Uniform Rate of Assessment. All Lots, for which the final plat has been recorded shall be subject to assessments. Assessments may not be levied against any Lot, the final plat of which has not yet been filed. Except as provided below, both annual and special assessments shall be fixed at a rate set in the discretion of the Board of Directors.

i. Single Family/Townhouse/Live/Work Lot Assessments. Both annual and special assessments must be fixed at a uniform rate for all Single Family Lots, Townhouse Lots all Live/Work Lots and the Community Facility Lot.

ii. Assessments for Costs Attributable to Common Areas/Facilities of Limited Benefit. Assessments attributable to the maintenance of the Common Area, adjoining the Bungalow Lots shall be allocated equally among the Bungalow Lots, which are the only Lots benefitted by such Common Areas. Assessments attributable to the maintenance of the common parking area appurtenant to Lots G1 through G6 shall be allocated equally among Lots G1 through G6, which are the only Lots benefitted by such common parking area. The Owners of Bungalow Lots B11 through B36 and the Owners of the Townhouse Lots shall share equally in the cost of the common dumpsters, as provided for Section 6(g), as those Lots are the only Lots benefitted by such common dumpsters.

iii. Multiple Family Lot Assessments. The annual and special assessment rate for the Multiple Family Lot shall equal the rate for a Single Family Lot multiplied by the number of individual Dwelling Units located upon that Multiple Family Lot.

iv. Bare Lot Assessments. Bare Lots shall be assessed at a rate 25% of that assessed a developed Lot. For the purpose of this Section a bare Lot is any Lot for which no certificate of occupancy has been issued by the governing body.

v. Declarant Owned Properties. Other than Lots designated by the Declarant as model homes, developed Lots owned by the Declarant and offered "for sale" shall be assessed at a rate 25% of a developed Lot.

c. Types of Assessments. The assessments levied by the Board of Directors of the Association shall be utilized to provide funds consistent with the purposes of the Association. The assessments may include, but shall not be limited to, the following:

i. Annual Assessment: An annual assessment for administration of the Association, including, but not limited to maintenance costs, liability



insurance, other normal expenses and to provide funds for such other purposes as the Board of Directors may find necessary and consistent with the purposes of the Association.

ii. Special Assessments: The Association may levy in any year a special assessment for the purpose of defraying in whole or in part, the costs of any construction or reconstruction, unexpected repair or replacement of any capital improvement, including the necessary fixtures and personal property related thereto, or for such other capital improvements as are determined necessary or desirable. However, no special assessment in excess of \$100.00 per Lot shall be levied, which has not been approved by the affirmative vote of seventy-five percent (75%) of the votes of the Members who are voting in person or by proxy at a meeting duly called to consider such special assessment. No special assessment shall be established to cover a period in excess of five (5) years.

iii. Emergency Assessments: The Board of Directors is authorized to levy in any assessment year an emergency assessment, which shall not exceed four (4) times the amount of the annual assessment for that year. Additional emergency assessments require the approval of a simple majority of the votes of the Members who are voting in person or by proxy at a meeting duly called to consider such additional emergency assessment. Emergency assessments shall be levied only to meet costs and expenses precipitated by an emergency causing damage or a change of condition that must be remedied promptly to insure a safe and adequate continuation of facilities or services.

iv. Legal Reserve and Compliance Assessments: In addition to the assessments herein provided, the Board of Directors may levy an assessment for the purpose of establishing a legal reserve fund for legal fees and costs to enforce this Restated Declaration. Nothing herein shall be interpreted to preclude the Board of Directors from utilizing other funds for compliance purposes.

d. Payment of Assessments: The assessments provided for herein shall be computed on a yearly basis, commencing on the 1st day of January of each year and terminating on the 31st day of December of the same year. The assessments for any year shall become due and payable monthly, quarterly, annually and/or in advance, at the discretion of the Board of Directors. The Board shall fix the amount of the assessment against each Lot for each assessment period at least thirty (30) days in advance of the due date specified herein and shall at that time, prepare a roster of the Lots and assessments applicable to each, which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the assessment shall thereupon be sent to every Owner subject thereto.

e. Effect of Non-Payment of Assessment: If the assessments are not paid by midnight on the date when due, then such assessment shall become



delinquent and shall, together with any interest thereon, become a continuing lien upon the Lot, against which the non-paid assessment was levied, which lien shall run with the land. Such lien shall have a priority from the date the Association records proper notice of lien on the records of Missoula County, Montana. If the assessment remains unpaid for thirty (30) days after such due date, the assessment shall bear interest from the due date at the maximum annual percentage rate permitted by law. The obligation of the then Owner to pay any assessment or interest shall not be affected by any conveyance or transfer of title to said Lot. The Association may bring an action at law against the Owner obligated to pay the same and/or Lot, and there shall be added to the amount of such assessment their costs of collecting the same for foreclosing the lien thereof, including reasonable attorneys' fees.

f. Exempt Property: Any part of the real property dedicated to and accepted by a public authority or agency shall be exempt from the assessments created herein.

6. General Restrictions and Covenants. These restrictions and covenants are made for the purposes of creating and keeping the premises, insofar as is possible, desirable, attractive, beneficial and suitable in architectural design, materials and appearance; and guarding against an unnecessary interference with the natural beauty of the property; all for the mutual benefit and protection of the Owners of Lots within the Real Property. These restrictions and covenants are organized into six sections, those applicable to all Lots (Section 6), those applicable solely to Single Family Lots (Section 7), those applicable solely to Live/Work Lots (Section 8), those applicable solely to the Multiple Family Lot (Section 9), those applicable solely to the Townhouse Lots (Section 10) and those applicable solely to the Community Facility Lot (Section 11).

a. Zoning Districts. The portion of the Real Property, within Canyon Creek Village, is subject to a Planned Unit Development Zoning District for Canyon Creek Village, enacted by Missoula County. The portion of the Real Property, within Canyon East, is subject to the Canyon East Special Zoning District, enacted by Missoula County. These Zoning Districts establish restrictions and limitations upon the use of the Real Property and upon the nature, location and size of the structures to be erected thereon. Said restrictions and limitations as set out in the Zoning Districts are hereby incorporated into this Restated Declaration, by this reference, as if fully set forth herein. In the event of any conflict or inconsistency between this Restated Declaration and the Zoning Districts, the more restrictive of the two shall control.

b. Architectural Guidelines. The Real Property is further subject to written Architectural Guidelines, which are attached to this Restated Declaration as Exhibit "A". The Architectural Guidelines establish restrictions and limitations upon the use of the Real Property and upon the nature, location and size of the structures to be erected thereon beyond those established by the Zoning Districts. The restrictions and limitations as set out in the Architectural Guidelines are hereby incorporated into this Restated Declaration, by this reference, as if fully set forth herein. Declarant reserves



the right to waive, amend, modify, or expand the Architectural Guidelines, until such time as it is no longer an owner of any Lot at which time such right shall pass to the Association. In the event of any conflict or inconsistency between this Restated Declaration and the Architectural Guidelines, this Restated Declaration shall control.

- c. Manufactured Homes. No trailers, mobile homes (either double or single-wide) or other structures constructed primarily away from the Real Property on which they would be situated, shall be permitted, except that modular homes built either to Uniform Building Code (U.B.C.) or Conference of American Building Officials (C.A.B.O.) standards shall be permitted and further Declarant shall not be restricted by this section or this Restated Declaration from manufacturing or assembling components of structures on a site other than the Lot on which the building is to be located.
- d. Boundary Control Monuments. It shall be the responsibility of the Owner of each Lot to provide for immediate professional replacement of any survey monuments that are removed or become lost or obliterated from his Lot.
- e. Noxious or Offensive Activity and Materials. No noxious or offensive activity shall be carried on upon the Real Property, nor shall anything be done thereon which constitutes an annoyance or nuisance to the neighborhood.
- f. Easements. Declarant shall have and does hereby reserve by perpetual easement the right to locate, install, erect, construct, expand, maintain, and use, or authorize the location, installation, erection, construction, expansion maintenance, and use of waterlines, drains, sewer lines, electric lines, telephone lines, and other utilities, and to give or grant a right-of-way easement, not more than twenty feet (20') in width thereof over any part of any Lot within the Real Property, providing that such location, installation, erection, construction, expansion, maintenance, and use is harmonious with the development of the Real Property.
- g. Trash and Garbage. No Real Property shall be used or maintained as a dumping ground, nor shall any rubbish, trash, garbage or other waste be allowed to accumulate except in sanitary containers which shall be emptied on at least a weekly basis by a local garbage collection firm. All garbage shall be stored in containers of metal, plastic, or other suitable material which have sufficiently tight-fitting covers to prevent the escape of noxious odors and to prevent entrance by pets. Trash receptacles shall be secured so as to prevent spillage due to winds or animals. All trash receptacles shall be kept in the alleys or indoors only, other than as follows:
 - i. Bungalow Lots/Townhouse Lots. Bungalow Lots B11 through B36 shall share common dumpsters and the Townhouse Lots shall share common dumpsters to be located in such places as established by the Declarant. The Owners of Bungalow Lots B11 through B36 share equally in the cost of such common dumpsters and the Owners of the



Townhouse Lots shall share equally in the cost of such common dumpsters, which shall be included in the Assessments levied against such Lots, per Section 5(b) of this Declaration.

ii. Garage Front Load Lots and Live/Work Lots. Garage Front Load Lots and Live/Work Lots shall use individual trash receptacles which shall be kept indoors or screened from public view on all four sides through the use of walls, fences or plantings, except on garbage collection day, when they may be placed in a location convenient for pickup.

h. Parking. No vehicles shall at any time be placed or parked so as to impede, obstruct or interfere with pedestrian or vehicular traffic along any street, alley, sidewalk, trail or right-of-way with in the Real Property. Trucks exceeding one ton capacity, semi-tractors, semi-trailers, mobile homes, equipment, unsightly vehicles, recreational vehicles such as motor homes, travel trailers, fifth wheel trailers, pickup truck campers, boats, snowmobiles, or utility trailers are not permitted on the streets, alleys or upon the front or side yards of any Lots for more than twenty-four (24) hours unless stored in the backyard of a Lot, a garage or other structure as approved by the Architectural Control Committee.

i. Bungalow Lot Parking. In addition to the preceding parking restrictions, Bungalow Lots B11 through B36 are designed so that they utilize common parking lots or areas (the parking for Bungalow Lots B1 through B10 shall be on-street parking, only, and not be assigned per this sub-section). The final plat creating Bungalow Lots B11 through B 36 shall illustrate said parking lots or areas, and shall further designate which of the parking spaces are assigned to which of the Bungalow Lots B11 through B36. Owners of Lots B11 through B36, their families, guests and invitees, may only utilize the parking space assigned in the final plat to such Owner's Lot. Provided the Association may, if it first determines it is so required under ether the State or Federal Fair Housing Acts, reassign parking spaces among Bungalow Lots B11 through B 36 in order to accommodate a disabled or handicapped occupant of such Lots, provided no such Lot shall have fewer parking spaces assigned to it, than originally assigned by the Declarant. No vehicles other than regularly operating automobiles, vans, light trucks and/or motorcycles, which are currently licensed for operation on public roads, may be permitted to park in any of the parking spaces, assigned per this sub-section. This is specifically intended to prohibit the parking of recreational vehicles, including, but not limited to boats, trailers, wave runners, jet skis, snowmobiles and other such items.

i. Exterior Maintenance. Each Owner of a Lot on which there is a structure shall provide exterior maintenance upon such Lot and structure to include painting and repairing the structure, maintaining any lawn and the entire Lot to preclude weeds, underbrush and other unsightly objects to accumulate or remain on the grounds.



- j. Maintenance of Original Design. The single family dwellings, to be erected on the Single Family Lots and the Townhouses, to be erected on the Townhouse Lots, are designed in a common architectural theme. It is the Declarant's intent to maintain such theme following construction. In that regard then, no single family dwelling, townhouse or garage shall be renovated or remodeled so as to change the external appearance of such structure so it no longer complies with the common architectural theme. Such restriction shall include, but is not limited to, a prohibition against enclosing or removing the front porches on the single family dwellings and Townhouses. Any outbuildings placed on a Lot shall also comply with the common architectural theme, including consistency with siding and roofing materials and color themes with the single family dwelling or Townhouse located on the same Lot. Moreover, prior to undertaking any renovation, remodeling or adding an outbuilding each Owner shall first obtain the consent of the Architectural Control Committee as provided in this Restated Declaration.

- k. Boulevard Landscaping and Maintenance. The boulevards shall be landscaped with 100% living material, consisting of grass and deciduous street trees, one and one-half in caliper at the time of planting and placed every thirty feet. The trees are to be planted by the Declarant, and shall be maintained as provided in this Section and in Section 4(a). Each Owner of a Lot shall maintain the trees and landscaping within the boulevard area adjacent to each Owner's Lot in the manner as set out in this Section. The Owners' obligation for maintenance shall include watering and mowing in such fashion so as to maintain the trees and landscaping in an attractive appearance.

- l. Seeding and Planting. Within six (6) months of the completion or occupancy of the primary structure erected on any Lot, whichever occurs first, the Owner of such Lot shall seed, plant and landscape the entire Lot. Provided, when the open area between the foundations of bungalows, constructed on Bungalow Lots, is fifteen feet or less in width, such open areas shall be landscaped in such a manner so as to include no plants or other elements or features requiring watering.

- m. Fences. No fence or comparable structure shall be constructed or placed on any Lot until after the height, color, type, design and location thereof shall have been approved by the Architectural Control Committee. No fence shall be allowed in the front of any dwelling unit. No fence shall be closer than six feet from the front building line. No fence shall be placed outside of a property line. Fences are structures and are specifically included under the provisions of this Declaration addressing exterior maintenance. In addition to the preceding requirements, applicable to all fences, the remaining requirements for fences vary depending upon where the fence is located as follows:
 - i. Street/Park Facing Fences. For any fence facing a street or park, such fence shall only be constructed of white painted wood picket or white

vinyl picket, in one of the ten picket designs as set out in the Architectural Guidelines. Fence design may only be replicated no more than once every fifth Lot. The height of such fences shall be as described in the Architectural Guidelines. Provided, other designs and/or other maximum heights may be approved by the Architectural Control Committee, so long as the materials and color remain the same.

- ii. Rear/Interior Lot Facing Fences. For an fence facing an alley or located in the rear of a house or along the common property line between two Lots (other than a fence facing a park, which are subject to the requirements of sub-section (m)(i) above) shall only be constructed of wood, chain-link, decorative wrought iron or vinyl. The height of such fences shall be no greater than five feet.
- iii. Painting of Wood Fences. If a fence permitted under this subsection is constructed of wood, it shall be first appropriately primed and then shall be painted white, utilizing Benjamin Moore 103 and 105; Sherwin Williams 107-8070; Glidden 2100, 3600, 3669; Pittsburgh 7245, 6-650; Richards 100, 300; or Devoe 1501, 51501 only.
- n. Decks. Decks are permitted, but may only be located in the backyard areas and may not wrap around the sides of the dwelling.
- o. Grade of Lawn. All buildings shall be situated such that a finished lawn grade has positive drainage away from the building. The Architectural Control Committee may act in an advisory capacity for such matters. The Declarant cautions Owners that over watering lawns and gardens could cause water to enter into crawl spaces and basements.
- p. Animals. There shall be no livestock whatsoever allowed upon the premises. No more than two dogs or two cats or one cat and one dog may be kept on each Lot (other than the Multiple Family Lot, where such restrictions shall apply to each individual dwelling unit located upon the Multiple Family Lot and not to the Multiple Family Lot as a whole). No cats or dogs shall be permitted or allowed to run at large. Any kennel must be located in the back yard area, out of sight from other Lots. No commercial breeding operation may be maintained on the premises. Dogs should be kept in an enclosed structure when not under the direct supervision of its owner. Pet food shall be stored indoors.
- q. Accessory Dwelling Units. Accessory Dwelling Units as defined in the Zoning Districts may be allowed upon the complete build-out of Canyon Creek Village and upon the build-out of Canyon East, but only upon the written approval of the Association and with written permission from the governing body acknowledging sewer capacity for Accessory Dwelling Units.



- r. Storage Sheds/Playhouses. Storage sheds and playhouses must be located in back yards only and be constructed of materials and with design standards and color schemes similar to those of the dwelling they serve. Storage sheds may not exceed 100 square feet in area and cannot exceed a height of eight feet from grade to the highest point of the structure.
- s. Temporary Dwellings. No structure of a temporary character shall be constructed, placed or used on any Lot at any time as a residence or otherwise, nor shall any building be occupied for residential purposes until it is completely finished in accordance with the plans approved by the Architectural Control Committee. Campers, trailers, mobile homes or recreational vehicles shall not be used as either permanent or temporary dwellings. Provided that Declarant's construction offices, sales offices, construction buildings shall not be prohibited by this Restated Declaration for so long as the Declarant owns one or more Lots.
- t. Utility Connection Costs. The Owner of each Lot shall pay all utilities and utility connection costs, including those for television cable and the cost of the water meter(s) utilized on each Lot.
- u. Wood Burning Devices. No solid fuel burning devices of any type shall be permitted or used in any residential structure erected upon any Lot in the Real Property. This specifically includes, but is not limited to, fireplaces, wood burning stoves, pellet stoves, fireplace inserts, or similar devices.
- v. Mining. No mining or mineral removal activity, including the removal of gravel or sand except for as necessary for the construction of a permitted structure and/or landscaping purposes shall be permitted on any Lot or roadway within the Real Property.
- w. Ingress and Egress. Declarant retains rights of ingress and egress to, upon, and from the Real Property for purposes of locating, installing, erecting, constructing, maintaining, expanding or using waterlines, drains, sewer lines, electric lines, telephone lines and other utilities.
- x. Weed Control. The Owner of each Lot shall maintain his Lot in conformity with the Montana County Weed Control Act and the Missoula County Noxious Weed Management Plan. Each Owner shall be responsible for the control of noxious weeds and vegetation on the entirety of such Owner's Lot. In the event an Owner fails to provide such control, the Homeowners' Association may enter the Lot and provide such control at the expense of the Owner of the Lot concerned.
- y. Utilities, Wiring and Antennas. All utility service lines shall be located underground. No exterior television or radio antennas, or satellite dishes larger than one meter in diameter shall be placed or permitted to remain on any Lot and shall be located so as to be as inconspicuous as possible, at such location as approved by the Architectural Control Committee.



z. Wildlife. The Declarant hereby advises the Owners of the potential problems associated with the occasional presence of bears, mountain lions, deer and other wildlife. Owners are advised to protect vegetation from damage, to confine their pets and to properly store garbage and other items that might attract wildlife. Artificial feeding of wildlife is prohibited. Owners should refer to Fish Wildlife and Parks brochure, entitled Living With Wildlife.

7. Single Family Lots – Restrictions and Covenants.

a. Residential Use. All Single Family Lots, shall be known and described as residential Lots and no business, trade, or commercial activity of any kind or description shall be conducted thereon, other than as permitted pursuant to the Zoning Districts. This restriction shall not be deemed to prohibit the rental of a Single Family Dwelling for residential purposes.

b. Re-Subdivision. No Single Family Lot may be further subdivided.

c. Signs. No advertising signs, billboards or unsightly objects shall be erected, placed or permitted on any Single Family Lot. However, exceptions are permitted as follows:

- i. For one small (less than six square feet) "For Rent" sign or "For Sale" upon each Lot;
- ii. For a period of ten years from the date of this Restated Declaration, the Declarant shall be permitted to place signs within the Real Property to promote the development of the Real Property; and
- iii. For signs pertaining to any political campaign or ballot issue, but only for a period of thirty days prior to the election to which the sign pertains.

d. Garages. All garages must be constructed of materials and with design standards and color schemes similar to those of the dwelling they serve. Other than on Bungalow Lots, garages must be of a size to permit the parking of two typical automobiles. On Bungalow Lots garages may be of a size to accommodate one typical automobile. Garages may not exceed 600 square feet in area and cannot exceed a height of 24 feet from grade to the highest point of the structure. All garages must be located in the rear yard, and be accessed off the alley, other than for the Garage Front Load Lots and the Bungalow Lots, where the garage may be located in the front yard area and accessed off the street. All garages must be completed within 90 days of start of construction.

e. Carports. All carports must be constructed of materials and with design standards and color schemes similar to those of the dwelling they serve.



Carports may not exceed 600 square feet in area and cannot exceed a height of 24 feet from grade to the highest point of the structure. All carports must be completed within 90 days of start of construction. Temporary awnings or cloth, plastic or fiberglass covered garages or carports are not allowed. No carports are permitted on any Single Family Lot, other than Bungalow Lots.

8. Live/Work Lots – Restrictions and Covenants

a. Residential/Commercial Use. All Live/Work Lots, shall be known and described as mixed use lots, including both residential uses and business, trade, or commercial activity as set out in the Planned Unit Development Zoning District. Provided, no Live/Work Lot may be used for the following purposes:

- i. the operation of an adult bookstore, adult movie theater, adult movie, video or DVD rentals, exotic or nude dancing, escort services or in general for the sale, display or promotion of pornographic or sexually explicit materials, goods or services; or
- ii. the operation of a casino, bingo parlor, live gaming and/or video gaming machines.

b. Re-Subdivision. It is anticipated that the Live/Work Lots may be developed with townhouses or condominiums, which may require further subdivision of the Live/Work Lot.

c. Condominium Unit/Townhouse Owners' Association. It is anticipated that one or more of the Live/Work Lots may be designed as Condominiums or Townhouses, the individual commercial and/or dwelling units of which are intended for sale (Units). In such event, the Owner of the Live/Work Lot being so developed, shall organize separate non-profit corporations as Condominium or Townhouse Owners' Association. Any Condominium and its Condominium Unit Owners' Association, or Townhouse and its Townhouse Owners' Association, in addition to other such terms and conditions as are appropriate shall conform to the requirements as follows:

- i. Unit Ownership Act. In the event Condominiums and a Condominium Owners' Association is chosen, the Condominium and its Condominium Unit Owners' Association shall be appropriately registered and organized so as to comply with the Unit Ownership Act, Title 70, Chapter 23 of the Montana Code Annotated, as the same exists at the time the Condominium and its Condominium Unit Owners' Association are developed and organized.
- ii. Membership and Voting. The Condominium Unit Owners' Association or Townhouse Owners' Association shall be organized so that no later than upon sale of all the individual Units, that the



owner of each such Unit shall be a full voting member in the corresponding Condominium Unit Owners' Association or Townhouse Owners' Association. The Condominium Unit Owners' Association or Townhouse Owners' Association shall be designated as the entity entitled to exercise the vote as a Lot Owner and Member, as is described in Section 3 of this Restated Declaration.

iii. Assessments. The Condominium Unit Owners' Association or Townhouse Owners' Association shall be organized so that no later than upon sale of all the individual Units on a Live/Work Lot, that the owner of each such Unit shall become responsible for assessments levied against that Unit based on a pro-rata share of the expenses of the Condominium Unit Owners' Association or Townhouse Owners' Association. The Condominium Unit Owners' Association or Townhouse Owners' Association shall be responsible for the assessments levied against the Live/Work Lot by the Homeowners' Association, under this Restated Declaration.

iv. Maintenance. The Condominium Unit Owners' Association or Townhouse Owners' Association shall be organized so that no later than upon sale of all the individual Units on the Live/Work Lot, that the Condominium Unit Owners' Association or Townhouse Owners' Association shall undertake responsibility for all upkeep, repair and maintenance of the Live/Work Lot and the common elements of any building and improvements located on said Live/Work Lot.

d. Signs. No advertising signs, billboards or unsightly objects shall be erected, placed or permitted on any Live/Work Lot, other than as permitted by the Zoning Districts.

e. Outdoor Commercial Use. All commercial activities occurring on a Live/Work Lot shall take place within the confines of the building located on that Lot. No outside or outdoor commercial activities are permitted, other than as required for parking and access to the buildings by customers of and those servicing or supplying the business. Provided, however, the Architectural Control Committee may approve exceptions to the prohibition set out in this sub-section.

f. Garages/Carports. No garages or carports are permitted on the Live/Work Lots, without the prior written approval of the Architectural Control Committee.

g. Common Parking Area. The Owners of Lots G1 through G6 of Canyon Creek Village shall have and the Declarant hereby conveys an easement upon the Common Area depicted on the plat as Common Parking Area which easement is a pppurtenant to said Lots and for the purposes of using said Common Area as parking for said Owners, their guests and business invitees.

Said easement is appurtenant to Lots G1 through G6 of Canyon Creek Village and shall run with the title to said Lots.

9. Multiple Family Lot – Restrictions and Covenants.

- a. Residential Use. The Multiple Family Lot shall be known and described as a residential Lot and no business, trade, or commercial activity of any kind or description shall be conducted thereon, other than home occupations to the extent permitted under the Zoning Districts. This restriction shall not be deemed to prohibit the rental of individual dwelling units, within a Multiple Family Building for residential purposes.
- b. Re-Subdivision. It is anticipated that the Multiple Family Lot may be developed with townhouses or condominiums, which may require further subdivision of the Multiple Family Lot.
- c. Condominium Unit/Townhouse Owners' Association. It is anticipated that Multiple Family Lot will be improved with one or more Multiple family buildings. It is further anticipated that some or all of these Multiple family buildings may be designed as Condominiums or Townhouses, the individual dwelling units of which are intended for sale. In such event, the Owner of the Multiple Family Lot shall organize separate non-profit corporations as Condominium or Townhouse Owners' Association. Any Condominium and its Condominium Unit Owners' Association, or Townhouse and its Townhouse Owners' Association, in addition to other such terms and conditions as are appropriate shall conform to the requirements as follows:
 - i. Unit Ownership Act. In the event Condominiums and a Condominium Owners' Association is chosen, the Condominium and its Condominium Unit Owners' Association shall be appropriately registered and organized so as to comply with the Unit Ownership Act, Title 70, Chapter 23 of the Montana Code Annotated, as the same exists at the time the Condominium and its Condominium Unit Owners' Association are developed and organized.
 - ii. Membership and Voting. The Condominium Unit Owners' Association or Townhouse Owners' Association shall be organized so that no later than upon sale of all the individual Dwelling Units, that the owner of each such Dwelling Unit shall be a full voting member in the corresponding Condominium Unit Owners' Association or Townhouse Owners' Association. The Condominium Unit Owners' Association or Townhouse Owners' Association shall be designated as the entity entitled to exercise the vote as a Lot Owner and Member, as is described in Section 3 of this Restated Declaration.
 - iii. Assessments. The Condominium Unit Owners' Association or Townhouse Owners' Association shall be organized so that no later



than upon sale of all the individual Dwelling Units on a Multiple Family Lot, that the owner of each such Dwelling Unit shall become responsible for assessments levied against that Dwelling Unit based on a pro-rata share of the expenses of the Condominium Unit Owners' Association or Townhouse Owners' Association. The Condominium Unit Owners' Association or Townhouse Owners' Association shall be responsible for the assessments levied against the Multiple Family Lot by the Homeowners' Association, under this Restated Declaration.

iv. Maintenance. The Condominium Unit Owners' Association or Townhouse Owners' Association shall be organized so that no later than upon sale of all the individual Dwelling Units on the Multiple Family Lot, that the Condominium Unit Owners' Association or Townhouse Owners' Association shall undertake responsibility for all upkeep, repair and maintenance of the Multiple Family Lot and the common elements of any building and improvements located on said Multiple Family Lot.

d. Signs. No advertising signs, billboards or unsightly objects shall be erected, placed or permitted on any Lot. However, exceptions are permitted as follows:

- i. For one small (less than six square feet) "For Rent" sign or "For Sale" upon each Lot;
- ii. For a period of ten years from the date of this Restated Declaration, the Declarant shall be permitted to place signs within the Real Property to promote the development of the Real Property; and
- iii. For signs pertaining to any political campaign or ballot issue, but only for a period of thirty days prior to the election to which the sign pertains.

e. Garages/Carports. All garages and carports must be constructed of materials and with design standards and color schemes similar to those of the dwelling they serve. All garages and carports must be completed within 90 days of start of construction. Temporary awnings or cloth, plastic or fiberglass covered garages or carports are not allowed.

10. Townhouse Lots – Restrictions and Covenants.

a. Residential Use. All Townhouse Lots, shall be known and described as residential Lots and no business, trade, or commercial activity of any kind or description shall be conducted thereon, other than as permitted pursuant to the Zoning Districts. This restriction shall not be deemed to prohibit the rental of a Townhouse for residential purposes.

b. Re-Subdivision. No Townhouse Lot may be further subdivided.

c. Signs. No advertising signs, billboards or unsightly objects shall be erected, placed or permitted on any Townhouse Lot. However, exceptions are permitted as follows:

- i. For one small (less than six square feet) "For Rent" sign or "For Sale" upon each Townhouse Lot;
- ii. For a period of ten years from the date of this Restated Declaration, the Declarant shall be permitted to place signs within the Real Property to promote the development of the Real Property; and
- iii. For signs pertaining to any political campaign or ballot issue, but only for a period of thirty days prior to the election to which the sign pertains.

d. Garages. All garages must be constructed of materials and with design standards and color schemes similar to those of the dwelling they serve. Garages must be of a size to accommodate one typical automobile. Garages may not exceed 600 square feet in area and cannot exceed a height of 24 feet from grade to the highest point of the structure. All garages must be completed within 90 days of start of construction.

e. Carports. All carports must be constructed of materials and with design standards and color schemes similar to those of the dwelling they serve. Carports may not exceed 600 square feet in area and cannot exceed a height of 24 feet from grade to the highest point of the structure. All carports must be completed within 90 days of start of construction. Temporary awnings or cloth, plastic or fiberglass covered garages or carports are not allowed.

f. Common Walls. The dwellings located on each Townhouse Lot were designed in a "Townhouse" configuration, so as to share a common wall and design with one or more other Townhouses. The Owner of each Townhouse Lot shall own, in fee simple, that portion of the common wall lying within the boundaries of his Townhouse Lot. No Owner shall commit or omit any act the result of which is infringement of an adjoining Townhouse Lot Owner's rights in the common wall absent written agreement between such Owner and the Architectural Control Committee.

g. Common Wall and Encroachment Easement. The Owner of each Townhouse Lot shall and does have a perpetual easement for replacement of the common walls shared with adjoining Townhouses. In the event a Townhouse, or any part thereof, shall at this time or a subsequent time unintentionally encroach (whether due to construction, settling, shifting or otherwise) upon another Townhouse Lot, the Owner of that encroaching Townhouse shall and does have a perpetual easement for such encroachment

and for maintenance of the same, upon the Townhouse Lot on which the Townhouse encroaches.

h. Alteration. The dwellings located on each Townhouse Lot were designed in a "Townhouse" configuration, so as to share a common wall and design with one or more other Townhouses. To enhance and maintain this design no Owner shall make any change, modification, alteration or addition to the design, structure or color scheme of the dwelling's exterior or to the common wall which the other Townhouses share without first obtaining the prior written consent of the Owners of the adjoining Townhouses and the Architectural Control Committee.

i. Damage or Destruction. Any Townhouse damaged or destroyed by fire or other hazard must be removed from the premises and repairs and replacement commenced within one hundred twenty days, unless an extension of time for such removal and repair is granted by the Architectural Control Committee. Such repairs and replacement shall result in the Townhouse being restored to its condition prior to the damage or destruction.

j. Insurance. Each Owner shall maintain hazard insurance on their Townhouse in an amount adequate to replace it in the event of destruction. Such hazard insurance shall be maintained with an insurance company or companies of the Owner's choice, but having no less than a AAA rating. Each Owner shall provide evidence of such insurance to the Owner of the adjoining Townhouse and the Association as reasonably requested. Further, if available, such insurance shall identify the Owner of the adjoining Townhouse and the Association as an additional loss payees, in order to assure that the Townhouse is replaced should it be damaged or destroyed. This shall not impair the ability of an Owner to identify other persons or entities as additional co-loss payees, including, without limitation, lending institutions obtaining a lien interest in an Owner's Townhouse Lot. In the event insurance proceeds exceed that needed to repair or replace the damaged Townhouse, the adjoining Owner and the Association shall have no claim to such excess.

k. Duty to Inspect Premises and to Notify of Defects. Each Owner shall have the duty to make reasonable inspections of the Townhouse located upon his Townhouse Lot from time to time, to determine if the same contain any obvious defects effecting any other Townhouse or Townhouse Lot. In the event of discovery of such a defect, the Owner shall have the duty to give written notice of the defect to the Association and any other Owner affected by such defect.

11. Community Facility Lot - Restrictions and Covenants.

a. Community Use. The Community Facility Lot may only be used for the purposes as described in the Zoning Districts, which include the permitted uses of park, open space, community gardens, and accessory buildings for parks, open space and community gardens; the conditional uses of a



community center, day care center and library; and the special use of a church.

- b. Re-subdivision. The Community Facility Lot may not be further subdivided.
- c. Dedication. While not required to do so, the Declarant may choose to dedicate the Community Facility Lot to the Association. In such event Declarant will convey said Community Facility Lot via deed to the Association. From the time of delivery of such deed to the Association, it shall thereafter hold the Community Facility Lot as Common Area, seeing to its upkeep and maintenance.

12. Architectural Control Committee.

- a. Appointment of Architectural Control Committee. An Architectural Control Committee, consisting of three members, shall be appointed in order to carry out the duties as set out in this Restated Declaration. The Architectural Control Committee shall be appointed by the Declarant, until such time as Declarant no longer holds an ownership interest in any Lot. Thereafter, the Board of Directors of the Association will appoint three persons to serve on the Architectural Control Committee, which shall consist of two Directors and any additional Members of the Corporation.
- b. Approval of Construction Plans. No site clearing or preparation shall be commenced, no building or other structure shall be started, constructed, installed, erected or maintained on any Lot, nor shall any addition, renovation or remodeling thereto or change or alteration therein, be made until the complete plans and specifications for the same has been submitted to and approved in writing by the Architectural Control Committee. Said plans and specifications shall include but not be limited to the following; site clearance, the designs, dimensions, location and principal materials, colors and color schemes to be used, as well as a full description of all fences, lighting, off-street parking, and landscaping planned in connection with the construction. In the event the Architectural Control Committee fails to act on a request for an approval within thirty days of its complete submission, including all required materials and payment of fee, no specific approval shall be required and the provisions requiring Architectural Control Committee approval shall be deemed met.
- c. Fees for Approval. The Architectural Control Committee reserves the right to require reasonable fees to be paid with the filing of the plans and specifications and the issuance of building or other approvals. Any undertaking that is approved under this section shall be concluded in strict accordance with the approved plans and specifications. Approvals may be based on engineering, architectural, legal or aesthetic grounds.



13. Waivers.

- a. Right to Protest Annexation. Acceptance of a deed to a Lot, within Canyon Creek Village or Canyon East shall constitute a waiver of the statutory right of protest to annexation into the City of Missoula. This waiver shall run with the land and shall be binding on the transferees, successors and assigns of the Owners of the Lots.
- b. Right to Protest RSID/SID. Acceptance of a deed to a Lot, within Canyon East, shall constitute a waiver of the right to protest a future RSID/SID for improvements, including but not limited to the installation of paving, drainage facilities, curbs and gutters, pedestrian walkways or bikeways to Wheeler Drive, Storehouse Way, and all streets within the Canyon East Subdivision, based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors, and assigns of the Owners of the Lots.

14. Airport Influence Area. The Real Property is located within the Missoula County Airport Influence Area; is subject to the requirements of the Missoula County Airport Influence Area Resolution; and is further subject to an Avigation Easement concerning Canyon Creek Village entered between the Declarant and the Missoula County Airport Authority, dated the 23d day of April, 2002 and recorded on the records of the Missoula County Clerk and Recorder in Book 680, Micro Records at Page 1357, and an Avigation Easement concerning Canyon East entered between the predecessor in interest to the Declarant and the Missoula County Airport Authority, dated the 8th day of July, 2003 and recorded on the records of the Missoula County Clerk and Recorder in Book 711, Micro Records at Page 369 all of which limit and restrict the rights of the Owners of Lots within both Canyon Creek Village and Canyon East, now and into the future. The limitations and restrictions set out in these documents should be reviewed carefully prior to purchase by all prospective purchasers of Lots. Prospective purchasers and Owners are advised that the operations at the airport may change and/or expand in the future, thereby changing and/or expanding the impacts felt on the Real Property. Prospective purchasers and Owners are advised and should consider before purchasing a Lot that noise, vibration, dust, fumes, smoke, vapor and other effects from aircraft may occur, which may cause inconvenience or annoyance that may vary from Lot to Lot and that may affect people in different ways or extent. Federal funding for soundproofing, other mitigation of these impacts, or for acquisition of these properties is not available at present, nor in the future. This paragraph may not be revised without the written consent of the Missoula County Airport Authority, which consent shall not be unreasonably withheld.

15. Duration. The covenants, conditions, charges and restrictions of this Restated Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Declarant or the Owner of any Lot subject to this Restated Declaration, their respective legal representatives, heirs, successors, or assigns in perpetuity.

16. Enforcement. The Association, any Owner or the Declarant shall have the option and right to enforce by any proceeding at law or in equity all restrictions, conditions,




covenants, reservations, and charges now or hereafter imposed by the provisions of this Restated Declaration. The method of enforcement may include legal action seeking an injunction to prohibit any violation, to recover damages, or both. Failure by the Association, any Owner, or by the Declarant, to enforce any such provisions shall in no event be deemed a waiver of the right to do so thereafter.

- 17. Attorney's Fees. Should any lawsuit or other legal proceeding be instituted against an Owner, who is alleged to have violated one or more of the provisions of this Restated Declaration, the prevailing party in such proceeding shall be entitled to reimbursement for the costs of such proceeding, including reasonable attorney's fees.
- 18. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.
- 19. Amendment. The Declarant reserves the sole right to amend, modify, make additions to or deletions from this Restated Declaration that it alone deems appropriate, for so long as Declarant owns one or more of the Lots subject to this Restated Declaration. After that time the right to amend shall pass to the Owners, who upon the written consent of 66% of the Owners may amend, modify, make additions to or deletions from this Restated Declaration. No such modification or amendment shall be effective until a written instrument evidencing such modification or amendment, together with the necessary consents are executed and recorded upon the records of the Missoula County Clerk and Recorder. No part of this Restated Declaration, or covenant contained herein, relating to maintenance of private driveways, lanes or common parking areas, living with wildlife, design guidelines or weed management may be changed without prior written consent of the Governing Body. Further, Section 13, Airport Influence Area shall not be amended, without prior written consent of the Missoula County Airport Authority, which consent shall not be unreasonably withheld.
- 20. Liability of Declarant. The Declarant shall have no liability for any of its actions or failures to act, or for any action or failure to act of any Owner of any Lot.

IN WITNESS WHEREOF, the Declarant has executed the foregoing Restated Declaration on the day and year first above written.

Wesmont Builders-Developers, Inc.
a Montana Close Corporation

By: 
Perry Ashby, President

CONSENT OF MISSOULA COUNTY AIRPORT AUTHORITY

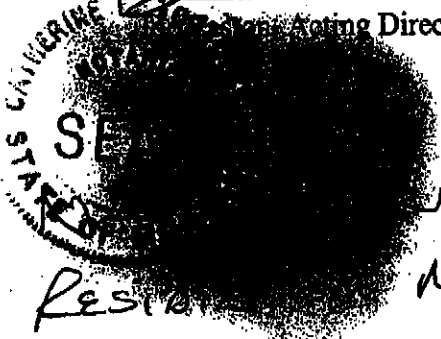
Comes now Joe Easton, Acting Director of Airports for the Missoula County Airport Authority and consents to the changes to Section 13 of the Declaration found in Section 14 of this Restated Declaration.

Missoula County Airport Authority



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By: *[Signature]*
Acting Director of Airports



THE STATE of Montana

Missoula

Residing at

My Commission Expires 5-6-2006

Catherine L. Torronelli

**EXHIBIT "A"
LEGAL DESCRIPTION**

CANYON CREEK VILLAGE

Reserve "B" of the preliminary plat of Missoula Development Park located in the E1/2NE1/4 of Section 1, Township 13 North, Range 20 West, P.M.M., and being a portion of Tract 3 of Certificate of Survey No. 3858, records of Missoula County, Montana, a portion of which has been platted as Canyon Creek Village Phases 1 through 10; and

CANYON EAST

Lot 1A of Certificate of Survey No. 5437, being a portion of Lot 1 of Green Acres, Phase 2, located in the NW 1/4 of Section 6, Township 13 North, Range 19 West, P.M.M. Missoula County Montana.



FIRST AMENDMENT CANYON CREEK VILLAGE & CANYON EAST PAGE 7 OF 7

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**FIRST AMENDMENT TO
 RESTATED DECLARATION
 OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
 CANYON CREEK VILLAGE AND CANYON EAST**

This First Amendment is made this 26 day of October, 2005, by Wesmont Developers, Inc. (f/k/a Wesmont Builders-Developers, Inc.), a Montana Close Corporation of P.O. Box 17437, Missoula, Montana 59808 provides as follows:

RECITALS

1. The Real Property subject to this Amendment is located in Missoula County, Montana and is described as set forth in Exhibit "A," which is attached hereto and incorporated herein by this reference (the "Real Property").
2. The Real Property was subjected to certain limitations and restrictions as contained in a document entitled "RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CANYON CREEK VILLAGE AND CANYON EAST" dated December 22, 2004, and recorded upon the records of the office of the Missoula County Clerk & Recorder on December 22, 2004, in Book 745 of Micro Records, at Page 663 (the Restated Declaration).
3. The Restated Declaration provided that amendment thereto may occur as follows:

Amendment. The Declarant reserves the sole right to amend, modify, make additions to or deletions from this Restated Declaration that it alone deems appropriate, for so long as Declarant owns one or more of the Lots subject to this Restated Declaration. After that time the right to amend shall pass to the Owners, who upon the written consent of 66% of the Owners may amend, modify, make additions to or deletions from this Restated Declaration. No such modification or amendment shall be effective until a written instrument evidencing such modification or amendment, together with the necessary consents are executed and recorded upon the records of the Missoula County Clerk and Recorder. No part of this Restated Declaration, or covenant contained herein, relating to maintenance of private driveways, lanes or common parking areas, living with wildlife, design guidelines or weed management may be changed without prior written consent of the Governing Body. Further, Section 13, Airport Influence Area shall not be amended, without prior written consent of the Missoula County Airport Authority, which consent shall not be unreasonably withheld.

4. The Declarant, as Owner of one or more of the Lots subject of the Restated Declaration, desires to amend the Restated Declaration concerning landscaping and

FIRST AMENDMENT CANYON CREEK VILLAGE & CANYON EAST PAGE 1 OF 7



yard maintenance, all in furtherance of its purpose of enhancing and protecting the value, desirability, and attractiveness of the Real Property.

AMENDMENT

NOW THEREFORE the Declarant, provides as follows:

- 1. Section 4(c) of the Restated Declaration is hereby amended to read as follows:

Maintenance of Alleys. The Association shall maintain the alleys in a neat and attractive appearance, including but not limited to snow removal and general maintenance thereof, so as to permit the reasonable use of the alleys for their designed purposes. Provided in the event a Special Improvement District (SID) or Rural Special Improvement District (RSID) is created for maintenance of these areas, the Association's responsibility for such maintenance shall cease. As the Declarant constructs the alleys, it provides a one year warranty against any defects in construction or materials. This warranty commences at such time as the Declarant concludes construction of each alley and extends for one year thereafter for such alley. The Association is responsible for all repairs to the alley, after the expiration of the one year warranty period, without regard for the reason why the repair was needed. The warranty does not include maintenance of the alleys or repairs necessitated for any other reason than a defect in the original construction of or materials used in the alleys. The Association is responsible for all maintenance and repairs necessitated for any other reason than a defect in the original construction of or materials used in the alleys.

- 2. Section 6(h) of the Restated Declaration is hereby amended to read as follows:

Parking. No vehicles shall at any time be placed or parked so as to impede, obstruct or interfere with pedestrian or vehicular traffic along any street, alley, sidewalk, trail or right-of-way within the Real Property. The Owners are encouraged to use their garages, driveways and parking pads, as opposed to street parking so as to not interfere with the flow of traffic through the Real Property. Trucks exceeding one ton capacity, semi-trailers, mobile homes, equipment, unsightly vehicles, recreational vehicles such as motor homes, travel trailers, fifth wheel trailers, pickup truck campers, boats, snowmobiles, or utility trailers are not permitted on the streets, alleys or upon the front or side yards of any Lots for more than twenty-four (24) hours unless stored in the backyard of a Lot, a garage or other structure as approved by the Architectural Control Committee.



[Section 6(h)(i) Bungalow Lot Parking - shall remain in full effect as originally set out in the Restated Declaration.]

3. Section 6(l) of the Restated Declaration is hereby amended to read as follows:

Exterior Maintenance. Each Owner of a Lot on which there is a structure shall provide exterior maintenance upon such Lot and structure to include painting and repairing the structure. In addition each Owner of a Lot shall provide for the maintenance of the lawn and yard areas of his entire Lot to preclude weeds, underbrush and other unsightly objects to accumulate or remain on the grounds. The Owner of each Lot shall maintain and mow or cause to be mowed the lawn located on his lot in a manner that keeps lawn appearances uniform and looking maintained, inclusive of edging or trimming lawn edges where appropriate. Nothing herein shall preclude an Owner from having longer grass, but lawns that remain unmowed and therefore growing in length beyond what reasonable maintenance would call for, may be notified in writing by the Association that such lawn need be mowed. Should an Owner not mow or have that lawn mowed within seven days of mailing of such warning, certified mail, return receipt requested, or within five days, if notified by personal service, the Association may enter the Lot and provide such law maintenance at the expense of the Owner of the Lot concerned, which expense shall be treated as assessment against such Owner and Lot. The Association may delegate the responsibility for such notification to the directors, and individual director, or any committee established under the Association, and may retain such landscaping services as may be reasonably required to effectuate such lawn maintenance.

4. Section 6(l) of the Restated Declaration is hereby amended to read as follows:

Seeding and Planting. Each Owner shall re-vegetate any ground disturbance caused by construction or maintenance with beneficial species appropriate for the site at the earliest appropriate opportunity after such construction or maintenance is completed, but no later than within six (6) months of the completion of such construction or maintenance. This shall require each Owner to seed, plant and landscape his entire Lot. Provided, when the open area between the foundations of bungalows, constructed on Bungalow Lots, is fifteen feet or less in width, such open areas shall be landscaped in such a manner so as to include no plants or other elements or features requiring watering.

5. Section 6(t) of the Restated Declaration is hereby amended to read as follows:

Utilities. The Owner of each Lot shall pay all utilities and utility connection costs, including those for television cable and the cost of the water meter(s)

FIRST AMENDMENT CANYON CREEK VILLAGE & CANYON EAST PAGE 3 OF 7



utilized on each Lot. Other than that obligation for maintenance, repairs and replacement undertaken by the various utility providers. Each Owner is solely responsible for maintenance, repairs and replacement of utility lines and services to their Lot, including but not limited to underground water service lines from the water main to the Owner's dwelling house, valves, meters and similar apparatus.

6. Section 6(x) of the Restated Declaration is hereby amended to read as follows:

Weed Control. The Owner of each Lot shall maintain his Lot in conformity with the Montana County Weed Control Act and the Missoula County Noxious Weed Management Plan. Each Owner shall be responsible for the control of noxious weeds and vegetation on the entirety of such Owner's Lot. In the event an Owner fails to provide such control, the Homeowners' Association may enter the Lot and provide such control at the expense of the Owner of the Lot concerned, which expense shall be treated as assessment against such Owner and Lot.

7. Other than as set forth above, the Restated Declaration shall remain in full force and effect as originally written.

8. Now therefore the Declarant hereby amends the Restated Declaration, which Amendment shall be binding upon all present owners of the Real Property and upon all parties having or acquiring any right, title or interest in the Real Property or any part thereof, and shall inure to the benefit of and be binding upon each successor and interest to the owners thereof.

Dated this 26th day of October, 2005.

Wesmont Developers, Inc.
(f/k/a Wesmont Builders-Developers, Inc.),
a Montana Close Corporation

By: [Signature]
Perry Ashby, president



STATE OF MONTANA)
 : ss
County of Missoula)

This instrument was acknowledged before me on the 26th day of October, 2005 by Perry Ashby, as president of Wesmont Developers, Inc. (f/k/a Westmont Builders-Developers, Inc.), a Montana Close Corporation



Margaret Berg
Notary Public for the State of Montana
Printed Name: MARGARET BERG
Residing at: MISSOULA, MT
My Commission expires: 1/31/07



CONSENT OF MISSOULA COUNTY

Comes now Missoula County, and consents to the changes to the Restated Declaration as set in this First Amendment to Restated Declaration.

Missoula County

By: *Jean Curtiss*
Commissioner

By: *Barbara Stone*
Commissioner

By: *Bit [unclear]*
NOT AVAILABLE FOR SIGNATURE
Commissioner



**EXHIBIT "A"
LEGAL DESCRIPTION**

CANYON CREEK VILLAGE

Reserve "B" of the preliminary plat of Missoula Development Park located in the E1/2NE1/4 of Section 1, Township 13 North, Range 20 West, P.M.M., and being a portion of Tract 3 of Certificate of Survey No. 3858, records of Missoula County, Montana, a portion of which has been platted as Canyon Creek Village Phases 1 through 10; and

CANYON EAST

Lot 1A of Certificate of Survey No. 5437, being a portion of Lot 1 of Green Acres, Phase 2, located in the NW 1/4 of Section 6, Township 13 North, Range 19 West, P.M.M. Missoula County Montana.

