

After recording return to:  
NexCo, LLC  
2680 Overland Avenue, Ste. F  
Billings, Montana 59102

**AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
OF WHITEHORSE ESTATES 1<sup>ST</sup> FILING**

This Amended and Restated Declaration of Covenants, Conditions, and Restrictions of Whitehorse Estates 1<sup>st</sup> Filing (this “**A&R Declaration**”) is made as of August 27, 2025 (the “**A&R Declaration Date**”) by NexCo LLC, a Montana limited liability company (the “**Declarant**”), and hereby amends, restates and supersedes in its entirety that certain Declaration of Covenants, Conditions, and Restrictions of Whitehorse Estates dated May 5, 2020 and recorded with the Clerk and Recorder of Yellowstone County, Montana on June 4, 2020 under Document No. 3922734 (the “**Original Declaration**”).

This A&R Declaration affects the real property described on **Exhibit A** and depicted on the plat for the Whitehorse Estates Subdivision 1<sup>st</sup> Filing on file in the office of the Yellowstone County Clerk and Recorder under Document # 3919281 (that office, the “**Recording Office**”; that real property, the “**Property**”; that plat, the “**Original Plat**”; each lot included in the Property, a “**Lot**”; the owner of a Lot, whether the Lot has one or more Owners, the “**Owner**”; the part of the Property comprising land, the “**Land**”; the part of the Property comprising buildings, each, a “**Building**”; the part of the Property comprising Buildings and other improvements, the “**Improvements**”; a Lot together with the Improvements on the Lot, the “**Owner’s Property**”; any parts of the Property the Owners hold in common ownership with one another, the “**Common Properties**”). The Declarant anticipates developing a residential housing project named the Whitehorse Estates on the Property and is making this A&R Declaration to bring the Project under a general plan (that project, the “**Project**”).

**Article 1: Project Structure**

**1.1 General Declaration.** The Declarant hereby declares that the Property is subject to this A&R Declaration. This A&R Declaration regulates the development and use of the Property under a general plan of servitudes to further the Project and protect the value, viability, and desirability of the Property for the mutual and direct benefit of the Property and the Owners.

**1.2 Run with Land.** This A&R Declaration and the servitudes consisting of the covenants, conditions, restrictions, equitable servitudes, negative easements, and easements it creates: (1) are appurtenant to, and burden and benefit the Property; (2) bind successive Owners; and (3) run with the Property and are transferred with and included in the sale, conveyance, or transfer of a Lot, regardless of whether the instrument transferring the Lot mentions them or not (a sale, conveyance, or transfer of a Lot, whether voluntary, by court order, by judicial or non-judicial foreclosure, by operation of law, or otherwise, a “**Transfer**”; the transferee under a Transfer, the “**Transferee**”; the transferor under a Transfer, the

**“Transferor”**; the instrument that accomplishes the Transfer, a **“Deed”**). A Transfer occurs upon recording a Deed in the Recording Office, regardless of who records the Deed. When the Transfer occurs, the Transferee: (1) becomes an Owner; (2) becomes bound by this A&R Declaration; and (3) makes the acknowledgements this A&R Declaration says the Owner makes. A Transfer does not relieve the Transferor from liability under this A&R Declaration for matters or obligations occurring when the Transferor was an Owner.

**1.3 Ownership.** As of the A&R Declaration Date, the Declarant owns the Property. Owners can own Lots in any form of ownership Montana law allows. No Owner may avoid the Owner’s obligations under this A&R Declaration: (1) regardless of the form in which the Owner owns the Lot; or (2) by nonuse, waiver, abandonment, withdrawal, or otherwise.

**1.4 Mortgages.** An Owner may allow lenders to encumber the Owner’s Lot with mortgages, trust indentures, or similar lien instruments (each, a **“Mortgage”**; the mortgagee, beneficiary, or secured party under a Mortgage, a **“Mortgagee”**; the Mortgage with the highest priority lien position on a Lot that one or more Mortgages encumber, a **“Priority Mortgage”**). Mortgages are subject and subordinate to this A&R Declaration. A Mortgagee is not an Owner but may become one if it is the Transferee under a Deed recorded with the Recording Office. If there is a purchaser of a Lot under an installment contract, contract for deed, land contract, or other similar instrument, then for this A&R Declaration and upon recording that instrument, or a notice, abstract, or memorandum of that instrument, with the Recording Office: (1) the purchaser is the Owner; (2) the instrument is a Mortgage; and (3) the seller is a Mortgagee. Mortgagee consent is unnecessary to make the modifications described in the sections of this A&R Declaration with the descriptive headings Modifying Regulations, Modifying Declarations, or Modifications.

**1.5 Development Period.** The Declarant shall have complete control of the Project until the soonest of the following events to occur (the time from the A&R Declaration Date until the soonest of these events to occur, the **“Development Period”**): (1) the Declarant Transfers all the Lots; or (2) the Declarant relinquishes control of the Project by recording an instrument with the Recording Office stating the Development Period is over. During the Development Period, the Declarant shall have the following rights and powers (the **“Declarant Powers”**): (1) control of developing the Project; (2) the power, authority, and rights this A&R Declaration gives to the Declarant, including the right to make Modifications; (3) the right to enforce and amend this A&R Declaration, which includes the design guidelines attached as **Exhibit B** (the **“Design Guidelines”**); (4) the right to adopt, amend, and enforce the rules, policies, and regulations for the use, operation, maintenance, and other aspects of the Project (the **“Regulations”**); (5) the right to adopt, amend, and enforce fine schedules for violations of the Regulations (the **“Fine Schedule”**; the fines, penalties, and late fees in a Fine Schedule, **“Fines”**); (6) the right to designate Common Properties; and (7) the right to establish servitudes consistent with the nature, development, theme, or purpose of the Project. The Declarant Powers are necessary to enable the Declarant to protect its interests in completing the Project and making Transfers. The Owner acknowledges the Development Period is a reasonable amount of time for the Declarant to protect the Declarant’s interests. In determining the Development Period, a Transfer to an entity or entities in which the Declarant is a member or has a direct or indirect ownership interest in does not constitute a Transfer. Once the Development Period ends the Declarant will have no further obligations under this A&R Declaration other than those it has if it is still an Owner.

**1.6 Project Governance.** Other than those functions reserved to the **“Association”** (defined below) and more particularly outlined in Article 3 below, the following Project functions must be met (the

**“Project Obligations”**; the party responsible for fulfilling the Project Obligations, the **“Operator”**): (1) enforcing this A&R Declaration; (3) enforcing the Regulations; (4) making, charging, collecting, managing, and disbursing Fines; (5) approving or disapproving matters requiring consent under this A&R Declaration; and (6) undertaking other matters this A&R Declaration permits. The Operator has the power and authority to perform the Project Obligations and shall exercise that power in a manner consistent with the **“Governing Documents”** (defined below). When the Operator is exercising the Operator’s powers to fulfill the Project Obligations, the Operator is doing so in its capacity as the Operator, and not in the Operator’s capacity as the Declarant or the Owners. The Operator may engage and pay a manager to perform the Project Obligations the Operator elects to delegate (the **“Manager”**). The Declarant shall be the Operator during the Development Period and when the Development Period ends, the Operator shall be the Owners acting collectively in a group as Owners (the threshold of affirmative written Owner consents the Declaration requires to achieve approval of the Owners, **“Owner Approval”**). Except where this A&R Declaration provides otherwise, Owner Approval requires the written approval of at least 75% of the Owners. The Declarant may exercise the Declarant Powers without Owner Approval and the Owners may not act or fail to act in a manner which usurps or diminishes the Declarant’s right or ability to exercise the Declarant Powers. When the Declarant is exercising the Declarant Powers, it is doing so in its capacity as the Declarant, and not in its capacity as the Operator or an Owner. If a provision in the section of this A&R Declaration with the descriptive heading Development Period conflicts with this a provision in this section or a provision in another part of this A&R Declaration, the conflicting provision in the section of this A&R Declaration with the descriptive heading Development Period controls.

**1.7 Compliance.** The ownership of a Lot is subject and subordinate to, and each Owner shall follow (these instruments, the **“Governing Documents”**): (1) this A&R Declaration, which includes the Design Guidelines; (2) the Regulations; and (3) matters affecting the Property that became of record with the Recording Office before this A&R Declaration became of record. The ownership of a Lot is subject and subordinate to, and each Owner shall follow, the **“Association Documents”** (defined below). The Governing Documents and Association Documents govern the operation of the Project and determine the rights and obligations of the Owners. Each Owner shall: (1) follow the Governing Documents and Association Documents; and (2) cause the occupants of the Lot and the guests, visitors, invitees, tenants, and licensees of the Owner and those of the Lot’s occupants to follow the Governing Documents and Association Documents (those parties collectively, together with the Owner, the **“Owner Parties”**). If any Owner Parties violate a Governing Document, the Operator may pursue remedies and may exercise them concurrently, alternatively, or cumulatively. If the Operator elects not to pursue a violation, any Owner or Owners may do so. In owning and using the Owner’s Property the Owner shall: (1) comply with all laws, statutes, codes, ordinances, orders, permits, licenses, rules, and regulations, whether local, state, or federal (the **“Laws”**); and (2) cause the Owner Parties to comply with the Laws. If an Owner requests approval, consent, or waiver for a matter under this A&R Declaration, that Owner shall pay all reasonable fees and expenses the Operator incurs relating to the request, including those for the professional services of engineers, architects, attorneys, or others. If a provision in this A&R Declaration conflicts with a provision in the other Governing Documents or the Association Documents, the conflicting provision in this A&R Declaration controls.

**1.8 Regulations.** The Operator may adopt, amend, and restate Regulations and Fine Schedules. When the Operator takes the actions in the preceding sentence, the actions shall be (the following, the **“Regulations Standard”**): (1) reasonable and consistent with the rights and obligations this A&R Declaration establishes; or (2) related to furthering a legitimate interest of the Project. When the Operator adopts or changes the Regulations or Fine Schedule, the Operator shall notify the Owners

about them and when they become effective. In any judicial, administrative, or arbitration action, suit, claim, investigation, or proceeding (any of those matters, a “**Proceeding**”) arising from or relating to a Regulation, the Fine Schedule, or a Fine: (1) the Operator shall have the benefit of the legal presumption that the matter in question meets the Regulations Standard, which the Owner must then overcome with clear and convincing evidence that the Regulation, Fine Schedule, or Fine is arbitrary and capricious; and (2) determining whether a matter in question meets the Regulations Standard shall be from the perspective of the Operator, not from the perspective of the objecting Owner. The Owner acknowledges that in any such Proceeding, the Owner would want the court or other decision-making body to apply the principles in the preceding sentence and strictly construe them.

**1.9 No Representations.** The Owner acknowledges that neither the Declarant, nor anyone acting or purporting to act on the Declarant’s behalf, made representations or warranties to the Owner about the Project, the Property, or the Owner’s Property. If the Declarant is the Transferor, representations and warranties from the Declarant to the Transferee, if any, are in (the following documents, the “**Transfer Instruments**”): (1) the sale and purchase agreement for the Lot; (2) the Deed; or (3) both documents. The Transfer Instruments are independent from this A&R Declaration and the Declarant’s violation of: (1) the Transfer Instruments does not violate or invalidate the Governing Documents; and (2) the Governing Documents does not violate or invalidate the Transfer Instruments.

**1.10 Lot 12.** At the time of recording of the Original Declaration, the Property consisted of a total of 12 Lots. Between the recording of the Original Declaration and this A&R Declaration, the Declarant recorded with the Recording Office, that certain Amended Plat of Lot 12 of Whitehorse Estates, 1<sup>st</sup> Filing and Lot 1A of Amended Plat of Lots 1 and 2 of the Plat of Whitehorse Subdivision, under Document No. 4047913 (the “**BLA Plat**”). The BLA Plat merged Lot 12 of the Original Plat to adjoining property to the West owned by Declarant but which is not part of the Property. It is the intent of the Declarant that a plat will be recorded with the Recording Office during the Development Period (the “**Future Plat**”) such that there will be twelve (12) Lots consisting of the Property and a Lot 12 under the Future Plat (“**New Lot 12**”) will be essentially in the same location and the same shape and size as the Lot 12 under the Original Plat. All Owners by acceptance of the Deed from Declarant will be considered to have waived any right to object to (1) any Future Plat or (2) the creation of a New Lot 12 as contemplated under this section which will be a Lot within the Property. Any reference to “Lot 12” except those reference to “Lot 12 under the Original Plat” shall be deemed a reference to the New Lot 12.

## **Article 2: Property Components**

**2.1 Property.** The Property consists of the Land, the Improvements, and that which is incidental or appurtenant to the Land.

**2.2 Subdivision.** Unless the Declarant does so by exercising the Declarant Powers during the Development Period, neither the Operator, Owner or Owners, nor the Association may subdivide, partition, or rezone any Lot or cause or permit the subdivision, partition, or rezoning of any Lot.

**2.3 Common Properties.** The following parts of the Property are Common Properties: (1) the Signs, (2) the “Ditch Shares” (defined below), and (3) all other components which are for the common benefit and/or use of the Owners. Through this A&R Declaration, the Declarant reserves the Common Properties for the exclusive use and enjoyment of the Owners, who shall use them in common with one another, but that use: (1) is subject to this A&R Declaration; (2) shall be consistent with the Project and the function the Common Properties customarily serve; and (3) shall not unreasonably obstruct the

rights of the other Owners to use and enjoy the Common Properties and their Lots. The Owners shall not place or store their personal property or other items on or in the Common Properties. The Declarant reserves, and this A&R Declaration creates, a nonexclusive easement in favor of and for the benefit of: (1) the Association to maintain, repair, replace, and reconstruct the Common Properties as this A&R Declaration requires; and (2) the Owners to use and enjoy the Common Properties. The Owners shall own the Common Properties in common. Each Owner's undivided interest in the Common Properties (a "**Common Properties Interest**") equals one-twelfth (1/12). Transfers of a Lot include the Common Properties Interest of the Transferor whether the Deed mentions the Common Properties Interest or not.

**2.4 Streets and Sidewalks.** The streets shown on the Original Plat are public streets (the "**Streets**"). The sidewalks abutting the Streets are intended for public pedestrian use (together with the associated curbs and gutters, the "**Sidewalks**"). Neither the Streets nor the Sidewalks are Common Properties. Because the Streets are public it is unnecessary for the Declarant to reserve an access easement on the Property in favor of the Owners to enable them to access their Lots. The responsibility for the installation, maintenance, repair, replacement, and reconstruction of the Streets and Sidewalks shall be in accordance with the Laws. If the Laws do not address the responsibilities in the preceding sentence pertaining to the Sidewalks, the Owner has those responsibilities for the Sidewalks on or abutting the Owner's Lot.

**2.5 Signs.** The monument signs on the Property identifying the Project (each, a "**Sign**" and together, the "**Signs**") are Common Properties. The Declarant hereby reserves, and this A&R Declaration creates, a nonexclusive easement on and over Lot 1 and Lot 12 for the placement, maintenance, repair, reconstruction and restoration of the Signs in the locations the Signs are initially placed and built by Declarant on such Lots.

**2.6 Ditches.** The Original Plat depicts irrigation ditches running along: (1) the boundaries of Lots one, six and seven (that ditch, the "**Northern Ditch**"); and (2) Hesper Road (that ditch, the "**Hesper Ditch**"; the Northern Ditch and the Hesper Ditch together, each a "**Ditch**"; the owner of a Ditch, a "**Ditch Owner**"). To the extent a Ditch Owner is not responsible for the maintenance and repair of a Ditch, the Owner is responsible to maintain and repair the portion of the Ditch on the Owner's Lot. The four shares of capital stock in the Big Ditch Company pertaining to the Northern Ditch are Common Properties (the "**Ditch Company**"; those shares, the "**Ditch Shares**"; the Ditch Company's bylaws, rules and regulations, the "**Ditch Company Governance Documents**"). Any right of an Owner to use water in the Northern Ditch is through the Owner's ownership of an undivided interest of the Ditch Shares and any such use subject to the Ditch Company Governance Documents. On behalf of the Owners, the Association shall exercise the rights associated with the Ditch Shares. An Owner has no right to use water in the Hesper Ditch, unless the Owner obtains the right to do so from the owner of the Hesper Ditch.

**2.7 Easements.** The Declarant hereby incorporates by reference the easements shown on the Original Plat that affect the Property. The Declarant reserves, and this A&R Declaration gives, the Operator and the Association the right to grant nonexclusive easements to others in, to, upon, across, above, and under the Property for any reason (1) the Operator considers reasonable and for the benefit of the Owners or the Project (2) relating to any duty or obligation of the Association set forth hereunder or under the Association Documents. No Owner may subject that Owner's Lot to an easement if the easement is for the benefit of real property outside the Property. The restriction in the preceding sentence is inapplicable to the easements this Article describes.

**2.8 Utilities.** The easements shown on the Original Plat include easements for electrical, gas, telephone, communications, stormwater, and other utility services (the lines, pipes, conduits, cables, and facilities furnishing those services, the “**Utility Lines**”; the party providing the utility services through a Utility Line, the “**Utility Provider**”). All Utility Lines shall be underground. Once the Declarant installs or causes the installation of the Utility Lines, the maintenance, repair, replacement, and reconstruction of Utility Lines falls upon the Utility Providers and the Owners, as the Laws and agreements governing the Utility Lines require. Each Owner is responsible to install, maintain, repair, replace, and reconstruct the Improvements on that Owner’s Lot necessary to enable the Owner to connect the Lot to Utility Lines and obtain the utility services the Utility Providers furnish.

### **Article 3: Association**

**3.1 Membership in Association.** The Declarant shall form Whitehorse Estates #1 Limited Owners Association, a Montana nonprofit corporation with mutual benefit designation (the “**Association**” the Association’s governing documents including but not limited to the bylaws, the “**Association Documents**”; the member approval threshold the Association Documents require to achieve approval of the Association, “**Association Approval**”). Each Owner shall be a member of the Association. If there are two or more Owners of a Lot, such Owners shall be deemed to be one member for the purposes of voting and “**Assessments**” (defined below). The vote for any Lot owned by more than one Owner shall be exercised as such co-Owners may among themselves determine, but in no event shall there be more than one vote per Lot. Each member shall have one (1) vote.

**3.2 Obligations of the Association.** The Association shall have the responsibility for maintaining, repairing operating, restoring, and replacing the Common Properties and paying all “**Common Expenses**” (defined below). The Association shall have the sole and exclusive right to enforce the Association Documents. Notwithstanding the foregoing, capital improvements relating to the Common Properties shall be made only with consent of 75% of the members of the Association. If an Owner damages Common Properties, that Owner is responsible to pay the expenses to repair the damage.

**3.3 Regular Assessments.** The Association, through its Board of Directors (the “**Board**”), shall establish and collect regular assessments (the “**Regular Assessments**”) from each member to pay for the expenses, fees, and other charges relating to the Common Properties, for administrative expenses of the Association as well as the establishment of a reserve fund (collectively, the “**Common Expenses**”). Regular Assessments shall be levied against each Lot in the amount of the Common Properties Interests. In the event that Board fails to fix a Regular Assessment, the previous Regular Assessment shall remain in effect until changed by the Board. The initial Regular Assessment for a Lot shall begin at the time of the completion of construction of the Signs.

**3.4 Special Assessments for Capital Improvements.** In addition to the Regular Assessments authorized above, the Association may levy, in any year, a special assessment (a “**Special Assessment**” and together with the Regular Assessments, the “**Assessments**”) for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement relating to the Common Properties. Nothing stated herein shall restrict the right of the Association to provide for the repayment of the Special Assessment over a term of months or years subsequent to the date of such Special Assessment, and upon terms and conditions it deems appropriate, including the collection of interest on the deferred balance.

**3.5 Payment of Assessments.** Each Owner shall be responsible for the payment of Assessments within thirty days after notice of Assessment is given by the Board. Assessments paid more than thirty days after the date when due, shall bear interest at the rate of 10% per annum from the due date until paid. All payments upon Assessments shall be applied first to interest and then to the earliest Assessment due. Interest collected shall become part of the Association's account. In no event shall the interest charged be more than permitted by Montana's usury statutes. All Assessments collected by the Association may be commingled in a single fund. The Association shall maintain records showing the amounts of all Assessments paid and unpaid. Such records shall be available for inspection at all reasonable times by Owners or their representatives.

**3.6 Covenant to pay assessments.** Each Owner, by acceptance of a Deed, whether or not it shall be expressed in said Deed, is deemed to covenant and agree to pay to the Association all Assessments lawfully made by the Association. Owners and their Transferees shall be jointly and severally liable for all unpaid Assessments due and payable at the time of Transfer of any Lot, but without prejudice to the rights of the Transferee to recover from the Transferor the amounts paid by the Transferee therefore. Notwithstanding the foregoing, the Declarant shall not be subject to any Assessments.

**3.7 Remedies for non-payment of assessments.** All unpaid Assessments, together with interest, collection costs, costs of suit, and reasonable attorney and paralegal fees, shall constitute a lien on the Lot to which the Assessments were made, and if filed of record, may be foreclosed in the same manner as a construction lien. Such lien shall have priority over other liens encumbering a Lot except Priority Mortgages and liens for Taxes. Each Assessment, together with interest, collection costs, costs of suit, and reasonable attorney and paralegal fees, shall also be the personal obligation of the Owner of the Lot against which the Assessment was made at the time the assessment fell due and suit to recover a money judgment for unpaid Assessments shall be maintainable by the Association against said Owner without foreclosing or waiving the lien securing the same. All costs of collection of delinquent Assessments, including but not limited to, court costs, costs of filing liens, and reasonable attorney and paralegal fees, shall be the obligation of the non-paying Owner, and may be added to the next Assessment for that Lot. Transfer of a Lot shall relieve the Transferee from the liability for past due Assessments or from the lien thereof. All rights, remedies and privileges granted to the Association or the Owners pursuant to the terms hereof, shall be deemed to be cumulative.

**3.8 No Liability.** In no event shall the Association be liable to any Owner, or the Owner's heirs, successors, assigns, family or guests, employees, agents, invitees or lessees or to any person using the Common Properties for any damages arising out the Association's obligations with respect to the Common Properties.

**3.9 Right to Contract.** The Association shall have the power to contract for goods and/or services for the Common Properties in order to discharge its duties hereunder. This includes the right to obtain legal and accounting services necessary or proper for the operation of the Common Properties and the Association and the power to employ a manager or contract with independent contractors to perform all or part of the duties and responsibilities of the Association.

**3.10 Conveyance.**

**3.10.1 Account Balance Transfers with Lot.** No Owner shall be entitled to receive the balance in that Owner's Assessment account upon Transfer of the Owner's Lot. The account balance shall pass with the Transfer of the Lot to the credit of the Transferee. This provision shall

not be deemed to prohibit a Transferor from collecting the balance of that Owner's Assessment account from the Transferee.

3.10.2 Joint and Several Liability. A Transferee shall be jointly and severally liable with the Transferor for all unpaid Assessments by the Association against the latter for that Lot's share of Assessments up to the time of the Transfer, without prejudice to the Transferee's right to recover from the Transferor the amounts paid by the Transferee therefor. However, the Transferee shall be entitled to a statement from the Association setting forth the amount of said unpaid Assessments against the Transferor due the Association and the Transferee shall not be liable for, nor shall the Lot conveyed be subject to a lien for, any unpaid Assessments made by the Association against the Transferor in excess of the amount therein set forth.

3.11 **Amounts Collected Upon Initial Sale by Declarant.** Declarant, as agent of the Board, shall collection from initial Transferee of each Lot, at the time of Declarant's Transfer of the Lot, an amount equal to two (2) months' Regular Assessments for the Lot. Such payment shall be delivered to the Board to provide necessary working capital for the Association. Such funds may be used for certain prepaid items, including initial equipment, supplies, organizational costs and other start-up costs, and such other purposes as the Board may determine. These funds are not refundable. These funds may not be used by Declarant to defray any of Declarant's expenses, construction costs or other financial obligations, and this payment shall not be considered to be a prepayment of the Regular Assessments.

#### **Article 4: Construction and Maintenance**

4.1 **Design Guidelines.** The construction, installation, maintenance, repair, replacement, and reconstruction of Improvements is subject to and must comply with the Design Guidelines. The intent of the Design Guidelines and other provisions in this A&R Declaration is to ensure the Improvements are orderly and aesthetically complimentary in design and appearance and of the quality customary for a first-class residential development in Yellowstone County, Montana. In any Proceeding arising from or relating to the Design Guidelines: (1) the Operator shall have the benefit of the legal presumption that Operator's decision is correct, which the Owner must then overcome with clear and convincing evidence that the Operator's conclusion is arbitrary and capricious; and (2) determining whether a matter in question meets or violates the Design Guidelines shall be from the perspective of the Operator, not from the perspective of the objecting Owner. The Owner acknowledges that in any such Proceeding, the Owner would want the court or other decision-making body to apply the principles in the preceding sentence and strictly construe them.

4.2 **Plans.** As of the A&R Declaration Date, the Lots had no Improvements (a Lot in that state of development, a "**Undeveloped Lot**"). Before developing an Undeveloped Lot, the Owner must present architectural and construction plans to the Operator that comply with the Design Guidelines and describe the Improvements the Owner intends to construct on the Lot (the "**Plans**"; the date an Owner submits Plans to the Operator, the "**Submission Date**"; a Lot developed substantially in accordance with the Plans, a "**Developed Lot**"; Plans the Operator approves, "**Approved Plans**"; the Improvements the Approved Plans describe, the "**Initial Improvements**"; Improvements on a Lot other than Initial Improvements "**Other Improvements**"). The Plans must address the following Initial Improvements: (1) a single-family residential dwelling (a "**House**"); (2) an enclosed garage or garages (the "**Garage**"); (3) any permanent structures or Buildings that will not be attached to the House; (4) a paved asphalt or

concrete driveway (the “**Driveway**”); (5) paved asphalt or concrete walkways, entryways, and patios; (6) landscaping; (7) connections to Utility Lines; (8) water and septic systems; and (9) other matters the Design Guidelines require. If within 14 days after the Submission Date the Operator: (1) does not direct the Owner to revise the Plans (those revisions, the “**Revisions**”), the Plans are deemed to be disapproved; or (2) directs the Owner to make Revisions (i) the Owner shall make the Revisions or other changes and resubmit revised Plans to the Operator, (ii) the date the Owner resubmits the Plans becomes the new Submission Date, and (iii) the Owner and the Operator shall continue the Revision process until the Operator approves the Plans. The Operator, in the Operator’s reasonable discretion: (1) shall determine whether the Plans comply with the Design Guidelines; and (2) may approve Plans that deviate from the Design Guidelines if the Operator determines the deviation is minor. The Owner shall: (1) not commence construction of the Initial Improvements until there are Approved Plans for those Initial Improvements; (2) construct the Initial Improvements in accordance with the Approved Plans; and (3) complete that construction within one year after the recording of the Deed for the Lot with the Recording Office. In its reasonable discretion, the Operator may consent to extensions of that one-year period. The Operator must approve changes to the Approved Plans.

**4.3 Other Improvements.** If an Owner wants to make Other Improvements, it may do so without the necessity of undertaking the Plan approval process if the Other Improvements comply with this A&R Declaration, the Design Guidelines, and the Regulations. If an Owner wants to make Other Improvements that do not comply with this A&R Declaration and the Design Guidelines, the Owner may not do so unless the Operator consents. If the Operator is the Owners acting as a group as Owners, then for purposes of the preceding sentence Owner Approval requires the written approval of 75% of the Owners except that: (1) each Owner must issue that Owner’s approval or disapproval in writing; and (2) Owners that do not issue their approval or disapproval in writing within 30 days after a written request for them to do so are deemed to have given their written disapproval. If an Owner begins construction of Other Improvements, the Owner shall construct them diligently and expeditiously and complete them within the time the Design Guidelines allow and if the Design Guidelines do not address a completion time, then no later than one year after beginning to construct them.

**4.4 Damage or Destruction.** If there is damage or destruction to the Improvements, the Owner may reconstruct, replace, or repair them without the necessity of undertaking the Plan approval process if the reconstruction, replacement, or repairs are made: (1) in a fashion substantially similar to Improvements in the Approved Plan; and (2) in compliance with this A&R Declaration, the Design Guidelines, and the Regulations. If an Owner wants undertake reconstruction, replacements, or repairs that do not substantially comply with the Approved Plans, the Owner may not do so unless the Operator consents. If the Operator is the Owners acting as a group as Owners, then for purposes of the preceding sentence the parties shall address Owner Approval in the same manner as they address Other Improvements that do not comply with this A&R Declaration and the Design Guidelines.

**4.5 Buildings.** No Lot may contain a manufactured home, mobile home, modular home, or kit home, regardless of whether those items are real property or personal property under the Laws. All Buildings an Owner constructs, erects, or places on a Lot must be newly constructed at the time the Owner constructs, erects, or places them on the Lot. No Owner may locate, construct, or erect portable, storage, temporary, or accessory buildings, sheds, or structures without Operator approval. The preceding sentence does not apply to temporary structures the Owner uses to construct, reconstruct, replace, maintain, or repair the Improvements.

**4.6 Water and Septic Systems.** The Utility Lines exclude water and sanitary sewer facilities. Each

Owner shall install the following lines, pipes, conduits, cables, and facilities on the Owner's Lot: (1) a domestic water supply system that furnishes the Lot with water from a well the Owner shall install on the Owner's Lot; (2) a sprinkler system for landscaping purposes that furnishes the Lot with water from well the Owner shall install on the Owner's Lot; (3) a septic and drain field system to treat domestic wastewater generated on the Lot. The Owner is responsible for maintaining, repairing, replacing, and reconstructing the water and septic systems this section describes.

**4.7 Landscaping.** The Owner shall install grass, trees, shrubs, plants, ground cover, and other vegetation on an Owner's Lot and extending to the pavement edge or street of such Lot (collectively, "**Vegetation**"): (1) in a manner consistent with the Plans; and (2) if the Plans does not address the Vegetation, then in a manner consistent with the Design Guidelines; and (3) if the Design Guidelines do not address the Vegetation, then in a manner consistent with other Developed Lots. The Owner shall maintain the Vegetation in a neat and attractive manner: (1) by watering it on regular basis; (2) by mowing, trimming, cutting, and pruning it on a regular basis; and (3) by removing dead Vegetation and replacing it with Vegetation that is alive. The Owner shall control and attempt to remove any Vegetation from the Owner's Lot that the Montana Department of Agriculture categorizes as a noxious weed or plant.

**4.8 Owner Maintenance.** At the Owner's expense and in a reasonably timely fashion, the Owner shall: (1) keep the Owner's Property in good order and repair; (2) keep the appearance of Owner's Property in an orderly, neat, and attractive condition and in conformity with the aesthetics of other Developed Lots; (3) keep the Owner's Property in a safe, sound, sanitary, and habitable condition; (4) promptly remove snow and ice from the Sidewalks, walkways, and driveways within and abutting the Owner's Lot; and (5) maintain the Owner's Lot in a condition that minimizes potential or actual off-site damage from erosion, sediment deposits, and storm water. If the Owner does not fulfill the Owner's obligations under this section, the Operator has no obligation to do so, but may do so, and if the Operator fulfills those obligations, the Owner shall pay for the expenses the Operator incurs for performing them.

## Article 5: Use

**5.1 Use.** The Owner shall: (1) use the Owner's Property for residential purposes only; and (2) not engage in activity on the Owner's Property that diminishes the residential character of the Project. In owning and using the Owner's Property the Owner shall: (1) comply with the Laws; (2) use the Owner's Property so it does not cause harm to others or create a nuisance; and (3) not commit waste to or obstruct the Common Properties. The Operator, in the Operator's reasonable discretion, shall determine whether a use is creating a nuisance or is creating an annoyance. In making that determination, the Operator shall do so from the perspective of a reasonable person, and not from the perspective of an overly sensitive person. Creating a nuisance violates this A&R Declaration but creating an annoyance does not. Nuisances include, but are not limited to: (1) these items migrating outside the Owner's Lot (i) smoke and related odors, (ii) offensive, pungent, or obnoxious odors, and (iii) unreasonably loud or persistent noise or vibrations; (2) unsanitary conditions within a Lot that may attract or harbor insects, rodents, or disease; (3) engaging in activity that may or does adversely affect the health or safety of others; (4) matters that unreasonably interfere with an Owner's use and enjoyment of the Owner's Property or the Common Properties; and (5) violating the other provisions of this Article.

**5.2 Leasing.** This A&R Declaration regulates the rental, lease, sublease, lodging, and license of all or any part of the Lot and whether the Owner receives or does not receive consideration for doing so

(collectively, any such activity, a **"Lease"**; the tenant under the Lease, the **"Tenant"**; the lessor under the Lease, the **"Landlord"**; the term of a Lease, the **"Term"**; the rent payable under a Lease, the **"Rent"**). An Owner may enter a Lease, but only if: (1) the Lease is in writing and both Lease parties sign it; (2) the Term is for three months or longer; and (3) neither the Landlord nor the Tenant are able to terminate the Lease without cause during the first three months of the Term. If a Lease is in violation of the requirements in the preceding sentence: (1) the Operator shall assess a Fine equal to the Rent; and (2) the Operator may direct the Landlord to evict the Tenant. Leases are subject and subordinate to this A&R Declaration. Upon the Operator's request, the Landlord shall provide a copy of the Lease to the Operator.

**5.3 Parking.** This A&R Declaration regulates where an Owner may park or place: (1) motor vehicles (each, a **"Vehicle"**); and (2) motor homes, campers, boats, watercraft, snowmobiles, carriers, all-terrain vehicles, dirt bikes, motorcycles, go-karts, four-wheelers, trailers, and other comparable items (those items, whether licensed or not, collectively, **"Recreational Vehicles"**). An Owner may not park or place Vehicles or Recreational Vehicles anywhere on the Property other than in the locations described in this section. An Owner may park or place Vehicles and Recreational Vehicles: (1) in the Owner's Garage; and (2) subject to the time limitations in this section, on the paved driveway associated with the Owner's Lot (the **"Driveway"**). Subject to the time limitations in this section and any Laws applicable to the Streets, an Owner may park or place Vehicles in the Streets on a non-exclusive basis, but only on the portion of the Streets adjacent to the Sidewalk on the Owner's Lot. An Owner may not park or place Recreational Vehicles on the Streets. The Owners shall not park or place: (1) a Vehicle on a Street for more than 48 hours in any consecutive 14-day period; or (2) a Recreational Vehicle or inoperable or unlicensed Vehicle in the Driveway for more than 48 hours in any consecutive 30-day period.

**5.4 Waste Disposal.** The Owner shall: (1) regularly dispose of the Owner's solid waste in a safe, sanitary and legal manner; (2) observe the Laws concerning solid waste accumulation, storage, and disposal; and (3) handle solid waste so it does not (i) attract animals or insects, (ii) generate liquid runoff, or (iii) permit dissemination of paper and other lightweight solid waste.

**5.5 Animals.** Owners shall not harbor, keep, feed, or raise animals or reptiles on the Lot except for (the following, **"Pets"**): (a) dogs; (b) cats; (c) fish or reptiles kept in an enclosed tank in the interior of the House; and (d) rodents or birds kept in an enclosed cage in the interior of the House. Although the preceding sentence permits Pets, animals and reptiles that would otherwise be Pets are not Pets under this section if the Owner is keeping or raising them for commercial purposes. The presence of wild or roaming animals or reptiles on the Lot is not a violation of this section unless an Owner intentionally attracts them to the Owner's Lot.

## **Article 6: Individual Expenses**

**6.1 Individual Owner Expenses.** Certain matters are not Common Expenses, but expenses associated with or attributable to a specific Lot or Owner (the **"Individual Expenses"**). Individual Expenses include: (1) Fines; (2) expenses the Operator incurs in fulfilling obligations the Owner has but fails to fulfill; and (3) damages, claims, and losses the Operator, Owners, or the Project incur due to (i) the Owner's violation of the Governing Documents, or (ii) the negligence, breach, or misconduct of the Owner Parties. Although the Owners are responsible to pay them, real estate taxes, assessments, and special improvement assessments a taxing authority makes directly against the Lot (collectively, the **"Taxes"**) are not Individual Expenses for purposes of this Article. Each Owner shall pay the Taxes associated with the Owner's Lot before the Taxes become delinquent.

**6.2 Invoices.** The Operator shall collect the Individual Expenses by sending invoices to the Owners (each, an **"Invoice"**; the date of an Invoice, the **"Invoice Date"**; the date an Invoice becomes due, the **"Due Date"**; an Owner that does not timely pay an Invoice, a **"Delinquent Owner"**). The Operator shall state the Due Date on each Invoice. The Operator may make Individual Expenses payable in a single installment or in monthly, quarterly, or other periodic installments. No Owner is exempt from the Individual Expenses, whether by waiver of the use of the Common Properties, abandoning the Lot, or otherwise.

**6.3 Payment.** Each Owner that owns a Lot as of an Invoice Date is personally obligated to pay (the **"Expenses"**): (1) Individual Expenses the Owner owes; (2) out-of-pocket expense the Operator incurs in any Proceeding, including court filing fees, court costs, arbitration fees, witness fees, and attorneys' and other professionals' fees and disbursements (collectively, the **"Legal Expenses"**) related to collecting or attempting to collect those Individual Expenses; and (3) interest on the forgoing that accrues after the Due Date until paid in full at the non-usurious rate the Operator establishes under the Regulations (the **"Default Rate"**; interest accruing at the Default Rate, the **"Default Interest"**). If a Lot has more than one Owner: (1) they are jointly and severally liable to pay the Expenses; and (2) the Operator has no obligation to resolve any dispute between them.

**6.4 Operator Lien.** The Operator may record a claim for Expenses with the Recording Office and if the Operator does so, the Expenses become a lien against the corresponding Lot (the lien the claim creates, **"Operator Lien"**). The Operator Lien is a continuing lien on the Lot for Default Interest and Legal Expenses that accrue after the Operator Lien attaches to the Lot. The Operator: (1) may foreclose the Operator Lien as if it were a construction lien or in any other manner Montana law permits; and (2) exercise other remedies to collect the Expense. The Operator may exercise those remedies concurrently, alternatively, or cumulatively. An Operator Lien has priority over other liens encumbering a Lot except Priority Mortgages and liens for Taxes. If the Operator forecloses an Operator Lien, each Mortgagee will receive notice of the Proceeding and can cure the default causing the Operator Lien as the Laws or the Mortgage allows.

#### **Article 7: Miscellaneous**

**7.1 Insurance.** Each Owner shall obtain, pay for, and continuously keep a homeowner's insurance policy with reasonable amounts and limits covering the Owner's Property and the Owner's liability (collectively, the **"Homeowner Insurance"**). At the Owner's option and expense, the Owner may obtain other, excess, or additional insurance coverage. The Operator is not liable to the Owner Parties if the Homeowner Insurance is insufficient. The Owners may name Mortgagees as loss payees under their Homeowner Insurance.

**7.2 Recovery of Expenses.** In any Proceeding relating to or arising out of this A&R Declaration, the party that recovers greater relief in the Proceeding may recover from the other party, besides any other relief awarded, the Legal Expenses the party that recovers the greater relief incurs.

**7.3 Notices.** Unless this section provides otherwise, for a notice or other communication under this A&R Declaration to be valid, it must be in writing and delivered: (1) by hand; (2) by a national delivery company, with all fees prepaid; or (3) by registered or certified mail, return receipt requested and postage prepaid. For a notice or communication under the preceding sentence: (1) the Owner is sending, the Owner shall send it to the Operator's then current address; or (2) to an Owner, the sender

shall send it to address of the Owner's House. An Owner has valid notice of an Invoice if the party sending the Invoice delivers the Invoice to the Owner: (1) in the manner the first sentence of this section requires; or (2) by regular mail to the address of the Owner's House. Notices or communications about adopting or modifying Regulations or Fines are valid if sent: (1) in the manner the first sentence of this section requires; (2) by regular mail to the address of the Owner's House; or (3) by email sent to the email address of the Owner on file with the Operator. By becoming an Owner, the Owner undertakes the obligation to keep a correct email address on file with the Operator and to regularly check the Owner's email account for notices or communications sent as the immediately preceding sentence permits. In any Proceeding arising from or relating to an improper communication or notice sent by e-mail under this section, the sender shall have the benefit of the legal presumption that delivering the notice or communication by email is a fair and reasonable manner of delivery, which the Owner must then overcome with clear and convincing evidence.

**7.4 Waiver.** No waiver or satisfaction of a condition or failure to follow an obligation under this A&R Declaration will be effective unless it is in writing and signed by the party granting the waiver, and that waiver will not be a waiver of satisfaction of another condition or failure to follow another obligation. The Declarant's or the Operator's failure to seek redress for an Owner's violation of this A&R Declaration or insist upon strictly performing any term of this A&R Declaration will not prevent the Declarant or the Operator from redressing a later violation or from thereafter insisting on strict performance. The Declarant's or the Operator's failure to enforce this A&R Declaration against an Owner or Owners is not a waiver of its ability to enforce it against other Owners.

**7.5 Severability.** The Declarant intends: (1) that if any provision of this A&R Declaration is held to be unenforceable, then that provision will be modified to the minimum extent to make it enforceable, unless that modification is not permitted by law, in which case that provision will be disregarded; (2) that if an unenforceable provision is modified or disregarded under this section, then the rest of this A&R Declaration will remain in effect as written; and (3) that an unenforceable provision will remain as written in circumstances other than those in which the provision is held to be unenforceable. The Owner acknowledges that the Owner has the same intentions as the Declarant about the immediately preceding sentence.

**7.6 Interpretation.** Each Owner acknowledges that the Owner does not intend that the presumptions of laws or rules relating to interpreting contracts against the drafter should be applied to this A&R Declaration in any Proceeding, and therefore waives their effects.

**7.7 Governing Law.** Montana law governs this A&R Declaration.

**7.8 Liability.** If the Operator or the Declarant breaches an obligation it has under the Governing Documents (a "**Breach of Contract**"), the affected Owner or Owners may seek injunctive relief or monetary damages, but not both. If the affected Owner seeks monetary damages: (1) the limit of the Declarant's liability for losses arising from or relating to the Breach of Contract is \$50,000, inclusive of any Legal Expenses the Owner receives in the associated Proceeding (that amount, the "**Liability Limitation**"); and (2) the cumulative limit of the Operator's liability for losses arising from or relating to the Breach of Contract is the Liability Limitation. No Owners may bring a breach of contract claim against the Manager for matters arising from or relating to the Project because they are not in privity of contract with the Manager. Any such breach of contract claim belongs to the Operator. Neither the Declarant nor the Operator will be liable for losses any Owner Parties incur arising from or relating to the negligence, breach, misconduct, action, or inaction of the Owner Parties. If an Owner or Owners

make a claim against the Declarant or the Operator for something other than Breach of Contract: (1) the limit of the Declarant's liability for losses is the greater of (i) the Liability Limitation, or (ii) the insurance the Declarant has available that covers and pays the losses; and (2) the cumulative limit of the Operator's liability for losses is the Liability Limitation.

**7.9 Modifying Regulations.** The Declarant or the Operator may take these actions (each, a "**Regulation Modification**"): (1) waive, abandon, change, or amend the Regulations and the Fine Schedule; (2) create new Regulations, Fine Schedules, and Fines; and (3) change or amend the Design Guidelines. During the Development Period, the Declarant may make Regulation Modifications by amending the Regulations and Fine Schedule without Owner Approval or Association Approval. If the Declarant makes a Regulation Modification, the Regulation Modification will not become effective until the Declarant notifies the Owners. Until the Development Period ends, neither the Owners acting in a group as Owners nor the Association may make a Regulation Modification without the Declarant's consent, and any Regulation Modification they make without that consent is void. Once the Development Period ends, or sooner with the Declarant's consent, the Operator may make Regulation Modifications that meet the Regulations Standard. The Owner acknowledges that because of the nature of the Regulations and Fine Schedule and the application of the Regulation Standards, the procedure and threshold of making a Regulation Modification is lower than the threshold for amending other parts of this A&R Declaration.

**7.10 Modifying Declarations.** The Declarant or the Operator may take these actions (each, a "**Declaration Modification**"; a Regulation Modification, or a Declaration Modification, each, a "**Modification**"): (1) waive, abandon, change, or amend this A&R Declaration; (2) create new covenants, conditions, agreements, reservations, restrictions, and charges pertaining to the Project this A&R Declaration does not address; (3) record the Future Plat and create New Lot 12; and (4) add new real property owned by Declarant under the purview of this A&R Declaration. During the Development Period, the Declarant has the right, without Owner Approval or Association Approval to make Declaration Modifications. If the Declarant makes a Declaration Modification, it becomes effective when the Declarant records it with the Recording Office. Until the Development Period ends the neither the Owners acting in a group as Owners nor the Association may make a Declaration Modification without the Declarant's consent and any Declaration Modification either makes without that consent is void. Once the Development Period ends, or sooner with the Declarant's consent, Declaration Modifications require Owner Approval and that Declaration Modification will become effective when the Operator records the Declaration Modification with the Recording Office. If a Declaration Modification requires and receives Owner Approval, the Operator shall record it with the Recording Office, and it will become effective upon recording.

**7.11 Modifications.** The Owner acknowledges that: (1) this A&R Declaration fairly appraises the Owner about Modifications and how they will occur; (2) it is within the Owner's reasonable expectation that Modifications will occur; and (3) when Declarant or the Operator, as applicable, follow the Modification procedures in this A&R Declaration, doing so satisfies the Owner's right to substantive due process. When the Association or the Owners acting in a group as Owners make Modifications, they shall do so with the intent of treating Owners fairly. Each of these Modifications are presumptively fair: (1) those applying uniformly to all Owners; (2) those treating similarly situated Owners equally; and (3) those that do not unfairly shift burdens or benefits from one group of Owners to another. If a Modification is unfair, the Owners the Modification will adversely affect must consent to the Modification for the Modification to become effective.

7.12 **Inapplicable Statute.** Section 70-17-901, Montana Code Annotated (that statute in effect as of the A&R Declaration Date and as later amended, the “**Restriction Statute**”) precludes the Association from entering, amending, or enforcing a covenant, condition, or restriction affecting a Lot in a way that imposes a more onerous restriction on the types of use for the Lot than those existing when the Owner acquired the Lot unless the Owner agrees to it in writing when the Association adopts it (such an item, a “**New Restriction**”). The Restriction Statute applies to homeowners’ associations and the Association particularly. Because this A&R Declaration accommodates the formation of the Association but does not allow the Association to affect or enforce any New Restriction, the Restriction Statute is inapplicable to the Project, the Property, this A&R Declaration, the other Governing Documents, the Association, the Association Documents, and the Owners. The Owner acknowledges that: (1) the Restriction Statute is inapplicable to the Declarant; (2) the Restriction Statute is inapplicable to the Owners acting in a group as Owners unless they are acting through and under the Association; and (3) because of the preceding sentence, the Restriction Statute is inapplicable to the Project, the Property, this A&R Declaration, the other Governing Documents, the Association Documents, and the Owners.

7.13 **Owner Waiver.** This section addresses a scenario where a court of competent jurisdiction issues a final non-appealable decision (a “**Final Judgment**”) declaring the section of this A&R Declaration with the descriptive heading Inapplicable Statute unenforceable. If the Restriction Statute applies to this A&R Declaration, the Owner waives any advantage the Restriction Statute may afford the Owner and acknowledges that if a Proceeding arises under this A&R Declaration about the Restriction Statute, the Owner would want a court to determine the Owner’s waiver is valid by applying these principles: (1) that in relation to the Proceeding, the Restriction Statute is solely for the Owner’s benefit; and (2) that in relation to the Proceeding, the Declaration is not for a public purpose, but it is a private land use planning contract affecting private parties, their private real property, and their freedom to privately contract.

7.14 **Evidentiary Standards.** This section addresses a scenario where a Final Judgment declares the section of this A&R Declaration with the descriptive heading Owner Waiver unenforceable. The Owner acknowledges that for this A&R Declaration: (1) the phrase *more onerous* in the Restriction Statute means a scenario where a New Restriction rises to a level of significance that would cause a reasonable person not to acquire a House because of the New Restriction when the reasonable person would have otherwise been willing to do so absent the New Restriction; (2) a New Restriction that applies to all Owners is presumptively not more onerous on the Owner; and (3) a New Restriction that does not unfairly shift burdens or benefits from one group of Owners to another is presumptively not more onerous on the Owner. In a Proceeding arising from or relating to the Restriction Statute: (1) the Operator shall have the benefit of the legal presumption that (i) the New Restriction is not more onerous on the Owner, which the Owner must then overcome by clear and convincing evidence, and (ii) in exercising its power to adopt the New Restriction, the Operator acted fairly and used its power reasonably, which the Owner must then overcome by clear and convincing evidence that the New Restriction is arbitrary or capricious; and (2) the Owner must prove by clear and convincing evidence the New Restriction will materially injure the Owner. For the preceding sentence, material injury means that applying the New Restriction will directly cause the fair market value of the Owner’s Property to decrease by 25% or more. The Owner acknowledges that in any such Proceeding, the Owner would want a court to apply the principles in this section and construe them strictly.

7.15 **Owner Remedies.** In any Proceeding an Owner initiates relating to a New Restriction or the Restriction Statute, or that the Operator initiates against an Owner because the Owner refuses to comply with a New Restriction: (1) the Owner may seek injunctive relief or monetary damages, but not

both; and (2) if the Owner is not the Prevailing Party, the Owner (i) will be in breach of this A&R Declaration and liable for damage the breach causes, and (ii) shall indemnify the Declarant, the Association, the Manager, the Board, the other Owners, and the Mortgagees from all damages, claims, losses, and Legal Expenses any of them suffer or incur arising from or relating to the Proceeding, including but not limited to the uncertainty relating to the status of the New Restriction, diminution of the value of the Property, and lost or delayed Transfers. If the Owner seeks injunctive relief, the Owner shall post a bond or other security sufficient to cover: (1) the estimated Legal Expenses the Operator will incur through Final Judgment; (2) the estimated damages the Operator will receive if the Operator is the Prevailing Party; and (3) the estimated amount of the Owner's indemnification liability if the Owner is not the Prevailing Party. If the Operator is not the Prevailing Party in a Proceeding arising from or relating to a New Restriction or the Restriction Statute, the Operator's liability for losses is limited to the lesser of: (1) Liability Limitation; or (2) the decrease in the value of the New Restriction causes to the Owner's Property.

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The Declarant is signing this A&R Declaration as of the A&R Declaration Date.

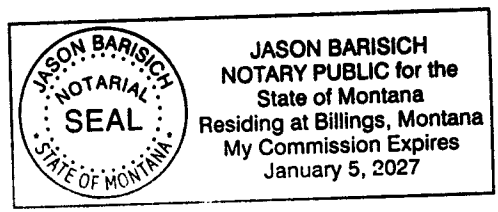
NexCo, LLC

By: Richard A. Doen  
Name: Richard A. Doen  
Title: MEMBER

STATE OF MONTANA )  
  :SS  
County of Yellowstone )

This record was acknowledged before me on August 27, 2025, by Richard A. Doen  
  , as the Member of NexCo, LLC.

Jason Barisich  
Notary Public for Montana





## Exhibit B Design Guidelines

**Control.** If the Design Guidelines of the Approved Plans allow a feature or Improvement that the Laws preclude, the Laws shall control with respect to that feature or Improvement.

**Form of Plans.** The Plans must be in a form reasonably acceptable to the Operator.

**Traditional Design.** The design of the Buildings shall be traditional style in attitude and the Operator encourages the use of traditional forms and design elements (*e.g.* pitched roofs, columns, arches, trellises, dormers, etc.). The preceding sentence does not require the literal interpretation of a traditional style, but the design of the Buildings should reflect the aesthetic of the Project's environment and the Developed Lots.

**Minimum House Sizes.** The minimum square footage for the main floor of a House is 2,750 square feet and the minimum total square footage for any multi-floor or level House is 3,500 square feet. Basements, garages, and porches shall not be included in any such square footage calculations.

**Height.** The maximum height of any Building shall be 48 feet. The Operator shall determine the height of a Building by taking the average of the lowest and the highest grade point at the foundation of the House. That average will establish the base elevation from which the highest part of the Building may not exceed 48 feet.

**Exterior Walls.** The Owners shall side the exterior walls of the Buildings with brick, stone, clapboard, wood, or stucco. The Operator may approve or disapprove the choice of exterior wall material in each situation and may expand the list of allowable materials as new materials become available. The front exterior of all Houses must be at least twenty percent (20%) brick or stone. No aluminum or vinyl siding is allowed on any Building.

**Roofs.** All roofs shall be architecturally harmonious with the Project and other Buildings. Chimneys shall be clad in brick or stone. The Operator encourages the use of roof dormers in lieu of skylights.

**Accessory Buildings.** The construction materials for Buildings that are not the House shall be compatible with those used on the House and must reflect the aesthetic of the Project's environment and the Developed Lots.

**Fences.** Fences shall not unreasonably restrict or block the view of other Lots. For this purpose, fences shall not be permitted except as follows:

- No fence shall be constructed on any Lot until after the Operator approves the height, type, design, and location of the fence.
- The Owner must erect the fence so the finished side of the fence faces the public view of the Lot.
- The Operator may approve privacy fences around hot tubs, patios, and utility areas so long as the fences are reasonable in size and appearance.

**Outside Lighting.** Each Lot must have yard lights to light the yard, walkways, and the front of the House, including but not limited to a front yard light pole. The design of the yard light must be consistent with the design of the House, Project aesthetics, and other Developed Lots. No high intensity or excessive lighting is allowed and all exterior lights must have a kelvin color temperature between 3000 and 3800.

**Color.** The Operator will approve exterior colors of the Buildings as part of the Approved Plans. The Operator must approve changes to the exterior color of any Buildings if the change in color deviates from the aesthetics of the Project and other Developed Lots. Each Building must be painted or stained in a consistent fashion, and no Building shall be painted or stained in more than one color, except that window and door trim, shutters, eaves, porches, and similar design elements may be another complementary color. The exterior color palette of all Buildings shall be subdued in intensity, with color tones tending toward the neutral end of the color value scale.

**Solar Panels.** Solar panels, roof-mounted or otherwise are not permitted.

**Pools and Hot Tubs.** Above ground swimming pools are not permitted. Exterior hot tubs must be screened from adjacent Lots and the Streets. All pumps, filters and equipment for pools and hot tubs must be located and installed so as not to cause a noise nuisance to neighbors and must be screened from view.

**Speed of Construction.** Any structure erected on any of the lots shall be fully enclosed, sided and shingled, within one (1) year after equipment and/or materials to be used in construction have been moved onto the location, and all construction shall be pursued with reasonable diligence, not to exceed two (2) years, unless approved extension is provided by Operator. No excavations, shall be permitted on any of the lots until such time as the actual construction of the building is to begin, except that the owners test for subsoil conditions, provided that such test sites are replaced to their original condition.

**Additional Specifications.** Detailed architectural and landscaping specifications (“**Additional Specifications**”) shall be adopted by the Operator and provided to an Owner upon their initial purchase from Declarant and upon request. The Additional Specifications shall set forth additional specific requirements for the Improvements and may be amended from time to time by the Operator as Regulation Modifications.