

ADMINISTRATIVE MATERIALS "O"

SAMPLE COVENANTS, CONDITIONS AND RESTRICTIONS

Return after recording to:

_____ **Subdivision**

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This Declaration is made this _____ day of _____, 200__, by _____, hereinafter referred to as "Declarant."

WHEREAS, Declarant is the Owner of certain real property located in Lake County, Montana, as hereinafter described and commonly known as _____, a subdivision, the plat or map of which is on file and of record in the office of the County Clerk and Recorder of Lake County, Montana; and

WHEREAS, Declarant is desirous of subjecting said real property to covenants, conditions and restrictions hereinafter set forth, each of which is and are for the benefit of said property and for each owner thereof, and shall inure to the benefit of and pass with the said property, and each and every parcel thereof, and any owner thereof;

NOW THEREFORE, the Declarant hereby declares that the real property hereinafter described is and shall be held, transferred, sold and conveyed subject to the covenants, conditions and restrictions hereinafter set forth.

**ARTICLE I
PROPERTY**

The real property which is and shall be held, transferred, sold and conveyed subject to the covenants, conditions, and restrictions hereinafter set forth, is located in Lake County, Montana, and is more particularly described as follows to wit:

_____ Subdivision, located in the _____ of Section _____, Township ___ North, Range ___ West, Lake County, Montana, according to the plat thereof on file and of record in the office of the Clerk and Recorder of Lake County, Montana.

**ARTICLE II
DEFINITIONS**

1. "Articles of Incorporation" shall mean the Articles of Incorporation of _____ Homeowners Association, Inc., as the same may be amended from time to time.

2. “Association” shall mean _____ Homeowners Association, Inc., and its successors and assigns.
3. “Bylaws” shall mean the Bylaws of _____ Homeowners Association, Inc., as the same may be amended from time to time.
4. “Common Area” means the property owned by the Association, and/or held in common by the Owners, and maintained by the Association as follows: Park, trail system, central garbage collection facility within the park and the easement to use the Roads granted to the Association by Declarant, as Owner of the Lots at time of granting, pursuant to Article VI, Section 3 below. Also included in the definition of “Common Area” for purposes of maintenance obligations of the Association, is the maintenance and payment for repair and/or operation expenses for the Subdivision entry private lighting system, entry monuments, mailboxes, school bus shelter, mailbox shelter, and maintaining all landscaping, and common area irrigation systems. The Common Area excludes the individual Lots within the Property.
5. “Declaration” shall mean this Declaration of Covenants, Conditions and Restrictions of _____, as it may be amended from time to time.
6. “Lot” shall mean any plot of land designated as a lot upon any recorded subdivision plat map of the Property, including any such land owned by Declarant. The Common Areas are not considered to be Lots. Any parcel of property owned, held or used by the Association or owned, held or used in common by the Owners shall not be considered a Lot.
7. “Owner” shall mean the record owner of fee simple title to any Lot and shall include a person, partnership, corporation, limited liability company or other entity purchasing a Lot under a contract for deed which is recorded (or an abstract of which is recorded) in the records of Lake County, Montana. The term “Owner” shall include Declarant to the extent it is the owner of fee simple title to a Lot.
8. “Period of Declarant Control” shall mean the period beginning on the date this Declaration is first recorded in the office of the Clerk and Recorder of Lake County, Montana, and ending on the earlier of: (a) the date which is (10) years later, (b) the date on which the Declarant has sold (90%) of the Lots within _____ subdivision, or (c) the date on which Declarant notifies the Association in writing that Declarant has elected to terminate the Period of Declarant Control. After the termination of the Period of Declarant Control, Declarant, if still an Owner, will continue to have all the rights and duties ordinarily given to Owners under this Declaration.
9. “Plat” shall mean the final plat map of _____ Subdivision recorded with the office of the Clerk and Recorder of Lake County, Montana.
10. “Property” and “Subdivision” shall mean the real property described in Article I above.
11. “Road Easement” shall mean that portion of Lots _____ lying within the dashed lines shown on the Plat map for the Roads. The grant of Road Easement is set forth in Article VI, Section 3 below.
12. “Roads” shall mean the sixty foot (60') rights of way for ingress, egress and utilities designated on the Plat as _____ Road.

ARTICLE III
PURPOSE

The Property is subjected to the covenants, conditions and restrictions hereby declared to insure the best use and the most appropriate development and improvement of each building site thereof; to protect the Owners of building sites and the value of their property; to preserve so far as is practicable the natural beauty, wildlife habitat and environment of the Property; to guard against the erection thereon of structures built of improper or unsuitable material; to encourage and secure the erection of attractive homes thereon; and to adequately provide for a high quality of improvements made by purchasers of Lots thereon.

ARTICLE IV
PROTECTIVE RESTRICTIONS

Limited use elements and development requirements to be added here

ARTICLE V
COMMON AREA

1. Common Area: The area designated as Common Area on the Plat Map and/or in this Declaration shall forever remain in common use by all Lot Owners.
2. Use of Park, Trails and Other Common Area: Except as described in this Section 2, the Park and trails shall be used only for recreational purposes. The Common Area is owned by the Association for use by all Owners and said Owners' and tenants' bona fide invitees and guests. The Common Area shall not be open to the public. Additional uses within the Common Area may include:
 3. Roads. Declarant, as owner of all Lots and Common Areas in the Subdivision, does hereby grant to the Association, for the benefit of all Owners, their respective tenants, and said Owners' and tenants' bona fide invitees and guests, a non-exclusive easement (the "Road Easement") for access, ingress, egress and utilities over and across the Roads shown on the Plat map. This grant of easement shall be subject to the following terms and conditions:
 - a. Maintenance, Repair and Replacement Responsibilities. Maintenance, repair and replacement of the Roads shall be the Association's responsibility, and shall be at the Association's sole cost and expense.
 - b. Indemnification. The Association agrees to indemnify, defend, save and hold harmless each Owner (including the Declarant) whose Lot is burdened by the Road Easement from any and all liens, claims, costs, liability and/or damages for or on account of any injury to or death of persons or damage to property (including but not in any way limited to the Owner's property and costs and attorney fees incurred in defense), in whole or in part caused by or attributed to or resulting from (a) the exercise of the rights herein granted, (b) the construction, maintenance, repair, renewal, alteration, exchange, relocation, existence, presence, use, operation or removal of any improvement incident to such exercise, (c) any and all acts of commission, omission or negligence on the part of the Association or any person exercising the easement rights hereunder, and/or (d) violation of any provision of this Agreement by any Owner or any other person exercising the easement rights granted hereunder.

- c. Insurance. The Association agrees, at its expense, to keep in full force and effect a policy or policies of insurance whereby each Owner will be fully protected and indemnified against any and all damage or injury to the property of the Owner, and any and all damage or injury or claims or demands thereof of any nature whatsoever to the person or property of any other party arising out of the activities of persons using the Road Easement, or any adjacent premises of the Owner, regardless of whether such damage or injury shall occur directly or indirectly as a result of any negligent act or omission on the part of the Owner or of any latent or patent condition of such premises. Such insurance shall have personal injury limits of Five Hundred Thousand Dollars (\$500,000.00) for one accident and a property damage limit of One Hundred Thousand Dollars (\$100,000.00) for each occurrence, with an aggregate of One Million Dollars (\$1,000,000.00).
 - d. Term. The term of the Road Easement shall be indefinite and shall continue until revoked by the mutual agreement of the Association and all Owners or their heirs, successors or assigns. Said Road Easement is intended to and shall run with the land and the benefits and burdens of the Road Easement herein created shall pass to the heirs, successors and assigns of the parties in and to their respective properties benefited and burdened by the Road Easement.
 - e. Liens. The Association shall not allow any mechanics, laborers, materialmen or any other lien of any type or nature whatsoever to be placed against the property of the Owners arising out of any activity on the Roads by the Association, or its agents, employees or invitees. If any lien is placed against the easement as a result of or incident to any such activity, the Association shall within ten days of notice from Owner cause the same to be released or discharged of record.
 - f. Other Provisions. The Road Easement is also for construction and maintenance of utilities and drainage as shown on the Plat and/or the DEQ approval for the subdivision. Within these areas, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and or maintenance of such utilities, or which may change the direction of flow of water through a drainage channel in the easement, or which may obstruct or retard the flow of water through drainage channels in the easements. The Association shall have the right to excavate, construct, operate, maintain, repair and or rebuild any common improvements within the Road Easement area, provided that each Owner shall have the explicit responsibility for maintaining the landscaping within the landscaped portions of the Road located on the Owner's Lot. Emergency ingress and egress to the Subdivision as shown on the face of the Plat; said ingress and egress is for emergency purposes only and no Owner may use it for any other purpose.
 - g. Road Users' Agreement. Lake County may require a separate Road Users' Agreement to be recorded. In such event, the provisions of this Article VI, Section 3, shall be deemed to supplement the provisions of such Road Users' Agreement. In the event of a conflict between the terms of this Declaration and such Road Users' Agreement, the Road Users' Agreement shall be deemed to control.
4. Maintenance: The Common Areas shall be maintained by the Association. Except as to any damage attributable to any Lot Owner, or his or her tenants, invitees, guests or agents, which damage shall be repaired at the sole cost of such Lot Owner, or except for any additional assessments imposed as described in Article ____, below, the costs of such maintenance shall be paid equally by the Owners as

provided in Article ____ hereof. If there is disagreement concerning the maintenance of the Common Area or Roads, such disagreement shall be resolved by majority vote at a meeting of the Owners, as provided below.

5. Property Taxes: While owned by the Association, the Common Area may be regarded by the tax authorities as being owned in common by all Owners. So long as taxes on the Common Area are billed separately, such taxes on the Common Area shall be paid by the Association. Notwithstanding the foregoing, it is acknowledged that, for property tax purposes, Lake County and the State of Montana may allocate to each Lot a fractional, proportional portion of the value attributable to the Common Area. By accepting a deed to a Lot, the Owner agrees to this mechanism for property taxation and if such taxes are not billed to and paid by the Association, then the Owner agrees to pay directly a proportional share (as allocated by Lake County and the State of Montana) of the taxes attributable to the value of the Common Area.

ARTICLE VI HOMEOWNERS ASSOCIATION

1. Association: _____ Homeowners Association, Inc. shall act as a homeowners association for the Subdivision. The Association shall operate and be managed in accordance with the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association, and the laws of the state of Montana, as the same may be amended from time to time.

2. Function: All Owners of all Lots shall automatically be members of the Association. Membership in the Association shall be appurtenant to and shall not be separated from ownership of a Lot. The Association shall have all of the powers and duties of a homeowners association, as provided in Montana Statutes, the Articles of Incorporation and Bylaws of _____ Homeowners Association, Inc., including but not limited to (a) administration, servicing, conservation, management, operation, maintenance, repair and restoration of the Common Areas; (b) maintenance, repair, restoration and replacement of the Roads, including snow removal; (c) operation, maintenance, repair, restoration and replacement of all stormwater appurtenances, such as barrow ditches and culverts; and (d) such other activities as may be determined by the Board of Directors from time to time for the benefit and general welfare of Owners in the Subdivision. The Association may levy and collect assessments to be used in the operation of the Association, maintenance of the Common Areas and similar functions typically undertaken by homeowners associations generally.

3. Owner's Address: Upon acquiring a Lot, the Owners of the Lot shall immediately inform the Association of their names and of one address to which notices from the Association should be sent. The Owners shall be responsible for informing the Association of any change of address. All notices sent to the last address on record for the Owner shall be deemed adequately given.

4. Management During Period of Declarant Control: During the Period of Declarant Control, Declarant may appoint, remove and replace from time to time any or all of the directors and officers of the Association. If Declarant so elects, Declarant may from time to time relinquish, either on a temporary or permanent basis, the right to appoint all or a portion of the directors and officers of the Association; provided that any such relinquishment shall be expressed in writing to the Association.

ARTICLE VII
ASSESSMENTS

1. Assessments: The Declarant, for each Lot owned by the Declarant, hereby covenants and agrees, and each Owner of any Lot, by acceptance of the deed to a Lot, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, to pay to the Association assessments as provided herein.

2. Purpose: The assessments levied by the Association shall be used to administer this Declaration and the Association, to maintain and improve the Common Areas, to purchase insurance carried by the Association, and to generally promote the recreation, health, safety, comfort, convenience and welfare of the Owners in the Subdivision.

3. Annual Assessment; Reserves: The initial Annual Assessment shall be _____ Dollars (\$____.____). It shall be pro-rated on an annual basis and paid at closing by the first owner taking title to the Lot from Declarant. Annually, the Board of Directors of the Association shall establish an estimated budget for its purposes, and cause an assessment to be levied against each Lot for their share of such costs. The annual assessment may include, without limitation, the estimated cost of (a) administering, servicing, conserving, managing, maintaining, repairing or replacing the Common Areas and any improvements located thereon, including but not limited to snow removal, landscaping, care of grounds, weed removal, common lighting within the Common Areas; routine renovations within the Common Area, and common water and utility charges for the Common Area, (b) maintenance, repair, restoration and replacement of the roads as shown on the Plat of _____, including snow removal; (c) operation, maintenance, repair, restoration and replacement of any common fire suppression facilities; (d) premiums for insurance coverage as deemed desirable or necessary for the Association; (e) all expenses incurred by the Association in administering and managing the Association; and (f) all other expenses incurred by the Association in any other activities undertaken for the common benefit of all or some of the Owners. The Association budget shall include an amount for replacement reserve. To initially fund such replacement reserve, each Lot Owner, other than Declarant, upon purchasing a Lot from Declarant, shall pay to the Association the sum of _____ Dollars (\$____.____) which shall not be prorated. The Association may use the reserve for any purchase, including normal operations, to the extent so determined by the Association.

4. Special Assessment: The Board of Directors may establish additional special assessments as needed for capital improvements, extraordinary repairs or other generally non-recurring expenses. No additional special assessments shall be levied unless approved by vote or consent of two-thirds (2/3) of the Owners all of the Lots. During the Period of Declarant Control, no special assessment shall be levied without the written consent of the Declarant.

5. Apportionment of Assessments: The annual and special assessments shall generally be apportioned equally to each Lot, except as follows:

- a. Road expenses. All lot owners shall be equally responsible for Road expenses.
- b. Parkland and trail system. Expenses required to maintain the Park and trail system, if any, for recreational use shall be apportioned equally to all Lot owners.

6. Payment of Assessments: Except as to the reserve and the initial annual assessment, which shall be due upon closing of the purchase of a Lot by the Owner, written notice of each assessment shall be sent to each Owner at least thirty (30) days prior to the assessment being due. Assessments may be set to be due annually, quarterly, monthly or otherwise, as fixed by the Board of Directors. All assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on each Owner's Lot, and

shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person or entity who was the Owner of such Lot at the time when the assessment was made.

7. Statement of Assessments Due: Any Owner may request, in writing, a statement from the Association as to the status of the assessments due and owing with respect to such Owner's Lot. Upon receipt of such request, the Association shall promptly furnish the statement to said Owner. Such statement shall be conclusive evidence of payment of any assessments therein stated to have been paid.

8. Nonpayment of Assessments: Any assessment not paid within thirty (30) days after the due date shall accrue interest and/or late charges set by the Board of Directors (not to exceed the highest rate of interest allowed by law) from the due date, and the Association is entitled to bring any action permitted by law to collect the assessment and/or to foreclose the lien created thereby against the Lot. No Owner subject to an assessment may waive or escape liability for the assessment by the nonuse of the Common Areas or abandonment of his or her Lot. The remedies provided herein shall be in addition to any other remedies provided by law.

9. Protection of First Mortgagees: The lien for assessments shall be senior in priority to all other liens against the Lot, except for the lien for all sums unpaid on a First Mortgage recorded before the date of filing of a written lien statement for delinquent assessments, including any and all advances made by the First Mortgagee, even though some or all of such advances may have been made subsequent to the date of filing of a written lien statement for delinquent Assessments. Any First Mortgagee who acquires title to a Lot by virtue of foreclosing the First Mortgage or by virtue of a deed or assignment in lieu of such a foreclosure, or any purchaser at a foreclosure sale of the First Mortgage, will take the Lot free of any claims for unpaid assessments, interest, late charges, costs, expenses, and attorney's fees against the Lot which accrue prior to the time such First Mortgagee or purchaser acquires title to the Lot. No violation or breach of, or failure to comply with, any provision contained in this Declaration and no action to enforce any such provision shall affect, defeat, render invalid or impair the lien of any First Mortgage on any property taken in good faith and for value and perfected by recording in the office of the Clerk and Recorder of Lake County, Montana, prior to the time of recording in said office of an instrument describing such property and listing the name or names of the Owner or Owners and giving notice of such violation, breach or failure to comply. No violation, breach, failure to comply or action to enforce this Declaration shall affect, defeat, render invalid or impair the title or interest of the holder of any First Mortgage or the title or interest acquired by any purchaser upon foreclosure of any First Mortgage or result in any liability, personal or otherwise, of any such holder or purchaser. Any such purchaser upon foreclosure shall, however, take subject to this Declaration.

ARTICLE VIII RIGHT TO FARM DISCLOSURE

All purchasers of the tracts within the subdivision understand and agree that land owners adjacent to the subdivision actively farm and ranch their lands. Such farm and ranch activities include, without limitation, spraying and crop dusting, utilization of heavy machinery, grazing, feeding, watering of stock and fowl, cultivation, planting and harvesting of crops and hay, baling of hay, and harvesting and otherwise managing timber resources. All subdivision tract owners understand and agree that such farm and ranch activities can create, without limitation, noise, dust, allergens and offensive odors, and all subdivision lot owners hereby waive all rights to protest or take any other action that would in any way inhibit the subdivision's adjacent land owners from engaging in farm or ranch activities. All subdivision tract owners further understand and agree that adjacent land owners may take whatever action is

necessary to maintain their farm and ranch activities, including, without limitation, the right to protect their livestock from harassment by household pets.

ARTICLE IX
LEGAL EFFECT

1. Term: The covenants and restrictions of this Declaration shall run with and bind the Property for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless terminated by vote or consent of not less than the Owners of two-thirds (2/3) of all of the Lots. Provided, however, that this Declaration may not be repealed or terminated without the prior written approval of the Lake County Board of Commissioners.
2. Amendments: This Declaration may be amended by the Declarant during the Period of Declarant Control, or at any time by the Owners of two-thirds (2/3) of all of the Lots either at a meeting of the Owners or by written ballot mailed to all the Owners or by a combination of votes at a meeting and by written ballot. Amendments to be effective must be recorded in Lake County by a document showing the amendment made, together with a certification by two officers of the Association attesting that the amendment received the required approval of the Owners or with a certification by the Declarant that (a) the Period of Declarant Control has not ended or (b) that the amendment is for the purpose of annexation as described in Article VI, Section 4 above. During the Period of Declarant Control, any amendment shall also require the written consent of the Declarant. Amendment to this Declaration shall also require the prior written approval of the Lake County Board of Commissioners.
3. Enforcement: The Declarant, any Owner, and the Association shall have the right (but not the obligation) to enforce by any proceeding at law or in equity all covenants, conditions and restrictions now or hereafter imposed by the provisions of this Declaration. Failure by the Declarant, any Owner or the Association to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.
4. Severability: Invalidation of any covenant, condition or restriction contained in this Declaration by judgment or court order shall in no way affect any of the remaining provisions, which shall remain in full force and effect.
5. Arbitration: In the event of a dispute under this Declaration, the parties agree that the dispute shall be determined and resolved by binding arbitration. The determination of the arbitrator shall be final and binding upon the parties and their respective successors and assigns. The determination may be filed in a court of competent jurisdiction as a final judgment. The arbitrator is authorized, but not required, in the arbitrator's discretion, to award attorney's fees and costs to the prevailing party. If no such award is made, the costs of the arbitration shall be paid equally by the parties.
6. Construction/Successors: This Declaration shall be construed pursuant to the laws of Montana. This Declaration runs with the land and is binding upon the heirs and successors in interest of the parties hereto. Declarant may assign its rights as Declarant to a third party purchaser of all or a portion of the Subdivision by a written instrument recorded in the records of Lake County, Montana specifying that Declarant's rights are assigned to the third party purchaser. Such instrument may specify the extent and portion of the rights or interests as a Declarant which are being assigned, in which case the initial Declarant shall retain all other rights as Declarant.

