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Charlotte Mills - Gallatin County, MT MISC



**EIGHTH AMENDED and RESTATED
DECLARATION OF PROTECTIVE COVENANTS
AND RESTRICTIONS FOR MIDDLE CREEK PARKLANDS SUBDIVISION**

WHEREAS, Circle F, LLC , a Montana limited liability company, (hereinafter referred to as "Declarant") is the Declarant of the real property described in Exhibit A and commonly referred to as Middle Creek Parklands Subdivision; and

WHEREAS, on March 31, 2009, Declarant recorded covenants for Middle Creek Parklands in the office of Gallatin County Clerk and Recorder for the above reference property as Document No. 2325713. The Covenants were amended many times, including but not limited to the following documents: First Amendment filed on October 8, 2010 as Doc. No. 2372219, Second Amendment filed on February 19, 2013 as Doc. No. 2441010, Third Amendment filed on April 8, 2013 as Doc. No. 2445799, Fourth Amendment filed on October 03, 2013 as Doc. No. 2464624, Fifth Amendment filed on January 24, 2014 as Doc. No. 2473250, Sixth Amendment filed on March 06, 2015 as Doc. No. 2505529 and Seventh Amendment filed on January 6, 2016 as Doc No. 2534809.

WHEREAS, Declarant reserved the right to modify the Covenants and Amended Covenants pursuant to Article X, Section 1 of the Covenants.

WHEREAS, Declarant, by and through this Eighth Amended Declaration hereby restate and amend all of those covenants, restrictions, limitations and regulations for the for the benefit of Middle Creek Parklands described above.

NOW THEREFORE, Declarant does hereby establish, dedicate, declare, publish and restate, amend and impose upon the premises the following Eighth Amended Protective Covenants which shall run with the land and shall be binding upon and be for the benefit and value of the Declarant and persons claiming under them, their grantees, successors and assigns, and for Middle Creek Parklands and shall be for the purpose of maintaining a uniform and stable value, character, architectural design, use and development of the premises. These Protective Covenants and Restrictions shall apply to the entire premises and to all improvements placed or erected thereon unless otherwise

specifically excepted and shall have perpetual existence, unless terminated by law or amended as herein provided.

Such Amended and Restated Covenants and Restrictions shall apply to the entire property, and all improvements placed or erected thereon, unless otherwise specifically excepted herein. The Amended and Restated Covenants shall inure to and pass with each and every parcel, tract, lot or division and shall supersede and entirely replace the Declaration of Protective Covenants and Restrictions recorded as Document as Document No. 2325713 and as amended including but not limited to the following documents: First Amendment filed on October 8, 2010 as Doc. No. 2372219, Second Amendment filed on February 19, 2013 as Doc. No. 2441010, Third Amendment filed on April 8, 2013 as Doc. No. 2445799, Fourth Amendment filed on October 03, 2013 as Doc. No. 2464624, Fifth Amendment filed on January 24, 2014 as Doc. No. 2473250, Sixth Amendment filed on March 06, 2015 as Doc. No. 2505529 and Seventh Amendment filed on January 6, 2016 as Doc No. 2534809.

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ARTICLE I

DEFINITIONS

Section 1. The term "Association" shall mean the Middle Creek Parklands Homeowners' Association, its successors and assigns. The Association may be incorporated as a Montana non-profit corporation, with its members as the lot owners.

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

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

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

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

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

The Directors shall have the authority to act on behalf of the Association and its members as shall be reasonably necessary to carry out the purposes of the Association and enforce these Covenants. The Directors shall act by majority vote. The officers of the Association shall follow the directions of the majority vote of the Directors.

Until 75% of the lots in Middle Creek Parklands Subdivision have been sold or seven (7) years after the final plat approval, whichever occurs later, the Declarant shall have the right to appoint the Board of Directors, who shall not be required to be lot owners or members of the Association.

Section 7. The term "Declarant" shall mean and refer to Circle F, LLC, and its successors and assigns.

Section 8. The term "Private Open Space" refers to the area within the Middle Creek Parklands Plat Reference J-496 referred on that Plat as Common Space.

Section 9. The term "common open space" means that area set designated on the final plat as private open space for the use of the property owners.

Section 10. The term "Middle Creek Parklands Design Review Committee" or "DRC" shall mean the Committee as defined in Article IV of these covenants and the Design Regulations.

Section 11. Other definitions may be found throughout these covenants and those definitions are binding upon all owners. Any term not specifically defined shall be deemed to have a common and ordinary meaning.

ARTICLE II

MIDDLE CREEK PARKLANDS HOMEOWNERS' ASSOCIATION

Section 1. An association is hereby established and known as "Middle Creek Parklands Homeowners' Association" hereinafter referred to as the "Association." Said Association may be incorporated under a different name as may be approved by the Montana Secretary of State.

Section 2. Every owner or contract purchaser of a lot shall be a member of the Middle Creek Parklands Homeowners' Association. Membership shall be appurtenant to and may not be separate from the ownership of any lot. By purchasing a lot, the owner acknowledge that owner will become a member of the association and agrees to the membership. Each owner shall be responsible for advising the Association of their acquisition of ownership, of their mailing address, and of any changes of ownership or mailing address. The initial address of the Association shall be 40 E. Main St. Ste. 210, Bozeman, Montana 59715. The address of the Association may be changed by the Board of Directors upon notice to the owners.

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

Foreclosure of a mortgage, trust indenture or the termination or foreclosure of a contract for deed wherein title is vested in the mortgage, beneficiary or original seller on a contract, or repossession for any reason of a lot or unit sold under a contract shall

terminate the vendee's membership, whereupon all rights to such membership and responsibilities shall vest in the legal owner.

Section 4. The annual meeting of the Association shall occur on the 1st Tuesday of December of each year. The Annual Meeting may be set for a different date upon the vote of 75% of the members of the Board of Directors at a Director's meeting called for the purpose of changing the date of the Annual Meeting.

Any special meetings may be called by the President, or in the absence of the President, by the Vice-President. In addition, a special meeting shall be held upon call of twenty percent (20%) of the owners. Special meetings shall require at least ten (10) days' notice, in writing. Notice of annual and special meetings shall be mailed to owners at the address for each owner as provided pursuant to Section 2 of this Article. The presence of members representing 20% of the total votes of the membership shall constitute a quorum. Proxy votes are allowed so long as the proxy is provided to the Association not less than twenty-four (24) hours prior to the meeting, is signed by the lot owner(s), is dated and clearly identified the party or person entitled to exercise the vote. The proxy does not need to be notarized.

At the annual meeting, the members shall review and approve a budget for the next year, shall elect Directors to fill any expired term or vacant position, and shall conduct such other business as shall be reasonable or necessary to carry out the purpose of the Association. The members shall have the authority to set the number of Directors by majority vote of the members present at a meeting called for such a purpose, which number of Directors shall not be less than three nor more than seven. The presence of members representing 20% of the total votes of the membership shall constitute a quorum.

Passage of any motions shall require a majority of the members present.

Section 5. The annual meeting of the Board of Directors shall be held immediately after the annual meeting of the members. At the annual meeting, the Directors shall elect a President, Vice-President and Secretary-Treasurer for the Association from among the Directors, except that the Secretary-Treasurer may be a member who is not a Director.

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

Section 7. The Board of Directors shall have the power and responsibility of acting on behalf of the Association and its members as shall be reasonably necessary to carry out the purposes of the Association, including but not limited to take such actions as shall be necessary or reasonable to care for, protect and maintain the common open space and boundary fences, to enforce these Covenants; to collect assessments; to create rules and

adopt fines to effectuate these covenants, to set annual and/or special meetings; and to act in any other matters set forth herein or which may serve the development, including the formation of special improvement districts, either public or private, for such improvements as the Association shall approve.

The Directors shall act by majority vote.

Section 8. The duties of each of the offices shall be as follows:

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

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

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

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

Section 9. A vacancy in any office of the Association shall be filled by appointment by the Board of Directors until the next annual meeting or the successor is duly appointed or elected.

ARTICLE III

ANNUAL AND SPECIAL ASSESSMENTS

Section 1. Assessments.

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

- (1) Annual assessments or charges;

- (2) Special assessments for capital improvements and reserve assessments, such assessments to be established and collected as hereinafter provided; and
- (3) Enforcement fines as adopted and imposed by the Board of Directors.

The annual, special and reserve assessments and fines together with interest, costs and reasonable attorney's fees and costs of collection, shall be a charge on the land, and shall be a continuing lien upon the property against which each such assessment/fine is made. Each assessment/fine, together with the interest, costs and reasonable attorney's fees, shall be a charge on the land, run with the land and shall be a continuing lien upon the property against which the assessment/fine is made. As the lien runs with the land, it shall survive sale, foreclosure and other such events. Each actual Person who is an Owner or who has part Ownership shall be personally liable for any and all Assessments/fines.

Section 2. Purpose of Assessments.

The assessments levied by the Association shall be used to promote the recreation, health, safety, convenience and welfare of the owners, for the improvement, roads, trails, repair and maintenance of the common open space, and for any other purposes, expressed or implied, in these Covenants.

Section 3. Amount and Approval of Assessments.

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

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

Section 4. Special Assessments for Capital Improvements and Reserve Assessments.

In addition to the annual assessments authorized above, the Association may levy special assessments for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, or other capital improvements on the properties and open space, including fixtures and personal property related thereto, provided that any such assessment shall have the approval of fifty percent (50%) or more of all of the votes of the members who are present at a meeting duly called for that purpose. Special assessments may be levied to be paid over one or more years.

The Association may levy reserve assessments for the replacement and upkeep of the improvements enjoyed by the Association members. Reserve assessments need not be levied against all lots during any budget cycle provided that any such assessment shall have the approval of fifty percent (50%) or more of all of the votes of the members being assessed, who are present at a meeting duly called for that purpose.

Section 5. Rate of Assessment.

Annual assessments shall be fixed by the Directors at a uniform rate for each lot. Assessments may be collected on a monthly, quarterly or annual basis, or any other regular basis as shall be determined by the Board of Directors of the Association. Special assessments shall be fixed at the same rate for each lot affected by the special assessments.

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

Except as herein provided, the annual and special assessments provided for herein shall be due on the date determined by the Board of Directors. The Board of Directors shall fix the amount of the annual assessments against each lot at least thirty (30) days in advance of the due date of each annual assessment, and at least ninety (90) days in advance of a special assessment and reserve assessments. Written notice of the annual and special assessments shall be mailed or personally delivered to every member subject thereto, at their last known mailing address.

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

Any assessment and/or fine not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of ten percent (10%) per annum. The Association may bring an action at law against the owners obligated to pay the same or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments and/or fines provided for herein by non-use of the open space or by abandonment of their lot.

Upon delivery of the notice of assessment and/or fines to the owner, the assessment/fines shall be a lien upon the owner's lot until paid. The Association may record a notice of the lien with the Clerk and Recorder of Gallatin County, Montana. In the event of non-payment within thirty (30) days after the recording of the notice of lien, the Association

may foreclose the lien in the manner set forth under Montana law for the foreclosure of liens against real property. The Association may also bring a claim outside of the lien foreclosure laws against the owner to collect the debt. The Association is entitled to collect during an action for delinquent assessments/fines and/or foreclosure of the lien any and all reasonable attorney's fees, costs of collection of judgment and costs accrued prior to and in association with the collection of delinquent assessments/fines and/or foreclosure of the lien.

Section 8. Sale or Transfer of a Lot.

The sale, transfer, foreclosure or encumbrance of any lot shall not affect the assessment lien, or the personal liability of the owner responsible for the assessment. No sale or transfer to a third party shall relieve such new owner from the liability for any outstanding assessments, or from any assessments thereafter becoming due, or from the recorded lien thereof. A person or entity purchasing or foreclosing on a lot shall be responsible for checking with the Association for any outstanding assessments against said lot before the closing upon the purchase. By buying, foreclosing or otherwise taking the property, the new owner agrees to these terms.

ARTICLE IV

DESIGN REGULATIONS

Section 1. Design Regulations

All structures shall be built in conformance with the Design Regulations, a separate document, adopted to govern the building of any and all structures in the Middle Creek Parklands Subdivision. The Design Regulations are incorporated by reference herein and are enforceable as if they are a part of this document. However the Design Regulations may be amended by a separate process defined therein and are not required to be filed with the Gallatin County Clerk and Recorder.

The Design Review Committee is hereby created and shall carry out all duties bestowed upon it by these covenants and the Design Regulations, and any amendments made thereto.

The procedures for application, consideration and approval of any building are set forth in the Design Regulations.

No construction shall commence without the signed approval of the Design Review Committee. Construction means erecting or placing a new structure (new meaning it is new to the lot), altering the appearance of any existing structure (whether or not it is on a permanent foundation), walls, building a new fence or altering an existing fence, and similar activities. Each structure must be constructed in compliance with the Design Regulations, including but not limited to location, square footage requirements, color, building materials and all requirements of the Design Regulations.

Section 2. Appeal Process for Design Review Committee Disputes:

In the event of a dispute between an Owner and The Design Review Committee, the Owner may appeal to the Board of Directors for a review of the dispute. The appeal to the Board of Directors must be implemented within thirty (30) days of the dispute arising.

ARTICLE V

LANDSCAPE DESIGN

Section 1. Landscape Design

All landscaping shall be installed in conformance with the environmental and site guideline regulations section of the Design Regulations, a separate document, adopted to govern the building of any and all structures in the Middle Creek Parklands Subdivision. The environmental and site guideline regulations of the Design Guidelines is incorporated by reference herein and are enforceable as if they are a part of this document.

The procedures for application, consideration and approval of any landscape improvement are set forth in the Design Regulations.

No landscaping shall be installed without the signed approval of the Design Review Committee. All landscaping must be installed within the first growing season following the completion of the residential structure.

ARTICLE VI

COUNTY REQUIRED COVENANTS

COUNTY REQUIRED COVENANTS:

The Covenants included in this Section may not be altered or amended without the mutual consent of the Association in accordance with the amendment procedure and governing body for the County of Gallatin.

Section 1. Lot Access from County Road

Individual lot accesses from County public roads shall be built to the standard of Section 7.G.2 of the Gallatin County Subdivision Regulations in effect on October 3, 2006.

Section 2. Re-seeding after Construction

All areas disturbed by construction shall be re-seeded with vegetation types approved by the Gallatin County Weed Control Officer.

Section 3. Chemical Herbicides and Pesticides.

The use of chemical herbicides and pesticides is prohibited for the control of noxious weeds as required by law. Non-chemical weed control is strongly encouraged.

Section 4. Neighboring Farming.

Lot owners and residents of the subdivision are informed that adjacent uses are likely to be agricultural. Lot owners accept and are aware that standard agricultural and farming practices can result in dust, smoke, animal odors, flies and machinery noise. Standard agricultural practices feature the use of heavy equipment, chemical sprays, periodic burning and the use of machinery early in the morning and sometimes late into the evening.

Section 5. Noxious Weeds.

- a) The Association is responsible for the control of noxious weeds in the areas of Middle Creek Parklands given to the Association by deed and/or covenant. Individual lot owners shall be responsible for the control of noxious weeds on the individually owned lot, tract or parcel. All weed control shall be in compliance with The Montana Noxious Weed Control Act (§§7-22-2102 through 7-22-2153 and subsequent amendments, Montana Code Annotated) and the rules and regulations of the Gallatin County Weed Control District.
- b) The landowner shall be responsible for the control of state and county declared noxious weeds on his, her or its lot. Both unimproved and improved lots shall be managed for noxious weeds. In the event a landowner does not control noxious weeds, after 10 days notice from the Association, the Association may cause the noxious weeds to be controlled. The cost and expense associated with such weed management shall be assessed to the lot and such assessment may become a lien on the property, without notice, if not paid within thirty (30) days of the mailing of the assessment notice to the Owner at the Owner's last known address filed with the Association.

Section 6. Fences - MSU Ag Station

All fences bordering agricultural lands, including the "living fence" bordering the MSU Agricultural Experimental Station (unless otherwise specified in the MOU signed between Middle Creek Parklands, Declarant and MSU) shall be maintained by the property owners, in accordance with state law.

Section 7. Construction Codes

All structures shall be constructed in compliance with Montana State adopted codes for construction, including codes for Seismic Zone 3 and National Fire Protection

Codes. All structures must meet the fire flow requirements as outlined in the current adopted edition of the Fire Code.

Section 8. Road Maintenance.

The Association shall be responsible for road maintenance and snow plowing on the roads within Middle Creek Parklands Subdivision. The Association may use the provisions in Article III for collecting funds to pay for such road maintenance.

Section 9. Commercial Lot Uses

The commercial lots (Lots 267 and 268) shall be restricted to only those uses listed below:

- Apartments and Apartment Buildings
- Arts and Entertainment Centers
- Automobile parking lot or garage
- Automobile fuel sales and repair
- Automobile washing establishments
- Banks and other financial institutions
- Community Centers (including religious facilities)
- Convenience use restaurants
- Convenience uses*
- Day Care Centers
- Essential Services Type I**
- Health and Exercise Establishments
- Medical / Dental Clinics
- Offices
- Other Buildings and structures typically accessory to permitted uses
- Parking facilities
- Personal and convenience services
- Pet grooming shops
- Public buildings
- Refuse and Recycling containers
- Restaurants
- Retail uses
- Sales of alcohol for on-premises consumption

* Retail commercial uses which have relatively high traffic generation rates per 1,000 square feet compared to other commercial uses. A use is designated as a convenience use if the method of operation includes one or more of the following characteristics:

- A. Retail motor fuel is sold;
- B. The primary business is the sale of food or drink for consumption, either on or off premises, over a counter, or from an outdoor service window or automobile service window. Of the food or drink sold, at least 20 percent is in disposable or carry-out containers; or

C. Drive-in and drive-through restaurants.

****Water pumping stations; stormwater drainage facilities (including collection lines, retention/detention ponds and drainage ways); sanitary sewer and storm sewer lift stations; public domestic water storage facilities; water fill stations for firefighting equipment; local service telephone lines and cables; local service electrical distribution lines and cables; local service cable television lines; local service electronic data transmission lines and cables; water and sanitary sewer distribution and collection lines; and public and amateur radio antennae and towers.**

Section 10. Commercial Structure – Submittal

All commercial structures must submit plans to the Montana State Building Code Bureau and the Central Valley Rural Fire District, or their successors in interest, for review.

Section 11. Omitted

Section 12. Open Space Maintenance

The Association shall be responsible for the operation and maintenance of all parks and common open space.

Section 13. Ownership of Open Space

Title to the common open space within the subdivision shall vest in the Association and be maintained and controlled by the Board of Directors of the Association.

Section 14. Membership in the Association

Membership in the Association is mandatory for each lot and the owners of said lot. Each Owner shall be required to pay such fees as the Board of Directors of the Association deems appropriate to ensure payment of real estate taxes, insurance and the maintenance of the common open space.

Section 15. Insurance of the Board of Directors

The Association shall be responsible for liability insurance in an amount to be determined by the Board of Directors of the Association, and said insurance shall name Gallatin County as a loss payee.

Section 16. Assessment as Lien

A portion of the assessments levied by the Board of Directors of the Association shall become a lien on the lots within the subdivision in the event the taxes on the common open space become delinquent. The Board of Directors shall adjust the assessments as the taxes on the common open space increase.

Section 17. Owners Responsible for Open Space Taxes

Ownership shall be structured in such a manner that real property taxing authorities may satisfy tax claims against the common open space lands against individual owners in the Association and the dwelling or building units they own.

Section 18. All garbage shall be stored in animal-proof containers or made unavailable to animals.

Section 19. Pets shall be controlled by each property owner, and not allowed to roam at large.

Section 20. Owners acknowledge that wildlife damage to landscaping and other property may occur. Owners shall accept the risk and shall not file claims against the governing body for such damage.

Section 21. All structures shall be constructed in compliance with Montana State adopted codes for construction, including code for pertinent seismic zone.

ARTICLE VII

PROPERTY USE and WATER FEATURES

Section 1. Storage of Equipment.

No lot or adjacent street, roadway or alleyway shall be used for the storage of any inoperable vehicle, machinery or equipment. No lot shall be used for storage of any articles, vehicles, equipment or other personal property of any quantity in excess of the immediate needs and personal use of the owner of a lot or the occupants and guests thereof as the case may be, and shall not interfere with the use or enjoyment of neighboring lots. Any vehicle or equipment parked in violation of these covenants may be notified by means of a verbal notice to the vehicle owner, or by notice from the Homeowners' Association placed on the vehicle or equipment stating that the vehicle/equipment is in violation of these covenants and requesting immediate removal of the vehicle/equipment. If the violation is not corrected with twenty-four (24) hours of notification, the Homeowners' Association may cause the vehicle/equipment to be towed and impounded at the expense of the vehicle/equipment's owner. The Homeowner's Association may cause a vehicle/equipment to be towed immediately without notification

if the Homeowner's Association determines the vehicle/equipment impedes emergency vehicles or, in any way, presents a threat to health and safety.

Section 2. Commercial Vehicles.

No lot shall be used for the outside parking or storage of any commercial trucks, large commercial vehicles or other heavy equipment, except as may be necessary during reasonable periods of construction. Nothing herein shall prohibit the storage of such vehicles within the confines of a garage approved by the Design Review Committee. Any vehicle or equipment parked in violation of these covenants may be notified by means of a verbal notice to the vehicle owner, or by notice from the Homeowners' Association placed on the vehicle or equipment stating that the vehicle/equipment is in violation of these covenants and requesting immediate removal of the vehicle/equipment. If the violation is not corrected with twenty-four (24) hours of notification, the Homeowners' Association may cause the vehicle/equipment to be towed and impounded at the expense of the vehicle/equipment's owner. The Homeowner's Association may cause a vehicle/equipment to be towed immediately without notification if the Homeowner's Association determines the vehicle/equipment impedes emergency vehicles or, in any way, presents a threat to health and safety.

Section 3. Recreational Equipment.

All campers, trailers, motor homes, boats, and all other recreational equipment and the like shall only be parked within the building envelope. In no event shall such equipment be parked on roads, nor shall any equipment be parked such that it is visible from the streets or adjacent lots for a period exceeding three (3) days in any 30-day period. Storage or location of such equipment and vehicles, in excess of the requirements of this section, shall occur in an enclosed garage or other screened area with such garage or screen having been pre-approved in writing by the Design Review Committee. Any vehicle or equipment parked in violation of these covenants may be notified by means of a verbal notice to the vehicle owner, or by notice from the Homeowners' Association placed on the vehicle or equipment stating that the vehicle/equipment is in violation of these covenants and requesting immediate removal of the vehicle/equipment. If the violation is not corrected with twenty-four (24) hours of notification, the Homeowners' Association may cause the vehicle/equipment to be towed and impounded at the expense of the vehicle/equipment's owner. The Homeowner's Association may cause a vehicle/equipment to be towed immediately without notification if the Homeowner's Association determines the vehicle/equipment impedes emergency vehicles or, in any way, presents a threat to health and safety.

Section 4. Offensive Activity.

a. No noxious odors or offensive activity shall take place upon any portion of the above-described property, nor shall anything be done thereon which may be, or may become, an annoyance to the neighborhood.

b. No fireworks of any kind may be bought, brought into, discharged or stored on the above-described property.

c. No firearms shall be discharged on the above-described property.

Any violation of county ordinances or other regulations shall be a violation of these covenants and can be enforced by the Association or individual lot owners.

Section 5. Water Features.

Each owner of property with Middle Creek Parklands Subdivision, as individuals and as members of the Association, acknowledges that water features are located with Middle Creek Parklands Subdivision. Each owner of property with Middle Creek Parklands Subdivision, as individuals and as members of the Association, acknowledges that water could pose a danger to humans, animal life and property. By this acknowledgement, each owner of property with Middle Creek Parklands Subdivision, as individuals and as members of the Association assumes the normal and ordinary consequences of their actions when in, next to or in the vicinity of water features.

Section 6. Household Pets:

A limited number of generally recognized household pets, as determined by the Board, may be maintained by owners on their lot. However, no pets shall be allowed to run at large without being within the view and voice control of the owners to prevent being an annoyance and nuisance to wildlife and other property owners. The Board without reservation or exception of any type or nature shall strictly enforce this covenant. The Board shall have the power and authority to levy escalating fines, which fines, if not paid, shall become a lien on the Lot of the Owner allowing any pet to run at large. The Board shall have the power to order the permanent removal of any pet that is an annoyance or nuisance to wildlife or any other Owner. The terms and provisions of the Gallatin County Dog Control Ordinance shall be and are incorporated herein by reference and shall be adhered to in addition to the provisions set forth above.

Section 7. Parking Restrictions

The garage shall be the primary parking area for the lot owners with overflow parking utilizing the owner's driveway. Parked cars shall not obstruct pedestrian traffic. For safety and road maintenance, there shall be no overnight parking outside the building envelope. Additional parking may be provided for guests of residences and may be used by non-residents on a temporary basis not to exceed three (3) days.

No junk vehicles shall be parked on the street. A junk vehicle is one that cannot be normally and frequently driven under its own power. All implements must be stored in a garage or other such structure and not to be left in open view.

Vehicles parked in violation of these covenants may be notified by means of a verbal notice to the vehicle owner, or by notice from the Homeowners' Association placed under the windshield wiper stating that the vehicle is in violation of these covenants and requesting immediate removal of the vehicle. If the violation is not corrected with twenty-four (24) hours of notification, the Homeowners' Association may cause the vehicle to be towed and impounded at the expense of the vehicle's owner. The Homeowner's Association may cause a vehicle to be towed immediately without notification if the Homeowner's Association determines the vehicle impedes emergency vehicles or, in any way, presents a threat to health and safety.

ARTICLE VIII

FIRE PROTECTION REQUIREMENTS

Section 1. Purpose

Middle Creek Parklands, in conjunction with the Fort Ellis Fire Service Area, the fire protection authority having jurisdiction or FPAHJ, developed a fire protection plan, which addresses the fire protection needs and emergency service needs for rural living in Gallatin County. The plan includes the construction and maintenance of a fire protection water source and adequate access for fire protection vehicles. The Fire Protection Plan attached hereto is incorporated herein and enforceable as if contained in the body of this Declaration.

Any fire protection covenant required as a condition of the preliminary or final plat approval and required by the FPAHJ may not be amended or revoked without the mutual consent of the owners, in accordance with the amendment procedures in the covenants, and the Gallatin County Commission. The Gallatin County Commission shall consult the FPAHJ prior to adoption or amendment of the fire protection Covenants.

ARTICLE IX

OPEN SPACE MANAGEMENT PLAN

Section 1. Purpose

Middle Creek Parklands Subdivision is designed to protect open space, the unique features of the steam, wildlife and lessen the visual impact of development. To that end Middle Creek Parklands Subdivision adopted a Management Plan, which is incorporated herein by reference and given full consideration and enforceability as all other adopted covenants contained herein

Section 2. Open Space Management Plan

The common open space shall remain in open space in perpetuity and shall be managed in conformance with the Open Space Management Plan, a separate document, adopted by the Declarant for Middle Creek Parklands Subdivision. Ownership of common open space shall be with the Association.

The procedures set forth in the Open Space Management Plan are incorporated by reference herein and are enforceable as if they are a part of this document.

Section 3. Mandatory Requirements

The Board, among its other duties, shall establish assessments for the taxes, insurance, and maintenance of common open space and roads, under the control and authority of the Association.

The Association shall be responsible for liability insurance, local taxes and maintenance of the common open space. The Board may, in its discretion, adjust the assessments to meet the changing needs of the community and the areas serving the community.

Section 4. Nuisance

No Owner, guest or invitee may use or occupy the open space, trails, roads, or any lot in such a manner as to disturb or interfere with the peaceful use, occupancy or enjoyment of any other owner, guest or invitee of Middle Creek Parklands Subdivision. Violations shall be enforced as provided for in Article IX of these Covenants.

Section 5. Control and Management

The Association shall have the exclusive right and obligation to manage, control and maintain the common open space.

ARTICLE X

TERM AND ENFORCEMENT

Section 1. The term of the provisions of these Covenants shall be binding for a term of fifteen (15) years from the date of these Covenants and may be modified, altered or amended during that period by the Declarant at the Declarant's sole option or upon vote of the owners of Fifty percent (50%) of the lots in Middle Creek Parklands Subdivision. After the initial fifteen (15) year period, the Covenants shall continue amended, revoked or terminated, in writing by the owners of fifty percent (50%) of the lots in Middle Creek Parklands Subdivision. Any covenant required as a condition of preliminary subdivision approval shall not be altered, amended, or terminated without the agreement of the governing body.

Section 2. These Covenants, as above set forth, shall be enforced by the Board of Directors. Enforcement of these Covenants shall be by proceedings either at law or in equity against any person or persons violating or attempting to violate any Covenant; and the legal proceedings may be either to restrain violation of the Covenants or to recover damages or both. In the event of any action to enforce these Covenants, the prevailing party shall be entitled to costs and a reasonable attorney's fee to be set by the Court. Any owner may report any perceived violation of these Covenants by way of a written complaint to the Board of Directors. Any owner may seek legal action against a violator if dissatisfied with the Board of Directors action/inaction to enforce these Covenants. The cost of correcting the defect or undoing the violation, if undertaken by the Association, shall constitute a lien against the tract and/or the grantee's interest therein, such lien to be enforceable by sale under the laws of the State of Montana. The violator in addition shall be liable for all costs and reasonable attorney's fees incurred in enforcing the provisions of this Article, and in giving notice of violation the Association may, at its discretion, develop procedures, or direct a committee to develop additional procedures to follow in identifying and correcting violations and to assist it with the process of prioritizing its enforcement actions. Enforcement Procedures shall be carried out as follows:

- a. Obvious violations that can be seen from road ways will be identified and addressed at regular Board meetings. Complaints of violations by Association Members will be addressed by the Board of Directors after a complaint is submitted in writing and is signed by the complaining Member. The Board will make every attempt to maintain confidentiality, however in the process of resolving the situation the Board maintains the right to divulge the name of the complaining member. The Board may decide to address the issue immediately at a special meeting or at a regular board meeting depending on the urgency of the situation.
- b. The Board of Directors consisting of the President or the Vice President, plus a quorum vote of the Board may take under advisement, on a case-by-case basis, review of a complaint. If a clear violation of the Covenants has taken place, the Board will contact the responsible party either in person or in writing to determine if the violation can be resolved by negotiation. If so resolved, no further action will be required. In the event all negotiations fail to resolve the issue, the Board of Directors will then contact legal counsel to affirm the nature of the violation and decide whether or not further action by the Board is in the best interest of the Association. A letter regarding the Board's decision will be sent to the complaining party setting out the Board's reasons for its decision.
- c. If the Board decides to pursue further action, the Board of Directors shall mail to the owner a certified letter outlining the complaint, advising the owner to comply or respond within thirty (30) days and that the failure to do so could result in fines or legal action. If the owner does not comply or respond within the 30 days, the Board may proceed to the next step.

d. A second certified letter will be mailed to the owner stating the consequences for failing to comply with the Covenants, including that the Board may seek legal action against the owner and the owner may be responsible for the costs of that court action, or that the Board may establish a fine schedule. The letter must also set forth a time limit for compliance. If no satisfaction has been received by the time set forth in the letter, then the Board may proceed to the next steps.

Actions the Board may take after second certified letter is sent.

e. The Board of Directors may determine that legal action against the owner is in the best interest of the Association. If the Board determines that legal action is necessary and that the cost of litigation will necessitate a special assessment, the Board must notify all Association Members through a special assessment procedure as specified in these covenants. If the Board believes that the cost of litigation does not necessitate a special assessment, then the Board may proceed with litigation.

f. The cost of correcting a defect or undoing a violation, if undertaken by the Association through legal action, shall constitute a lien against the Lot, such lien to be enforceable by sale under the laws of the State of Montana. The Association may file the lien with the Gallatin County Clerk and Recorder's Office. The violator in addition shall be liable for all costs and reasonable attorney's fees incurred in enforcing the provisions of this Article, and all costs in collecting or enforcing a judgment and in giving notice of violation.

g. Discretion. The decision to have the Association pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

- i. the Association's position is not strong enough to justify taking any or further action; or
- ii. the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; or
- iii. although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or
- iv. it is not in the Association's best interest, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be deemed a waiver of the right of the Association to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule, nor shall it preclude any Owner from taking action at law or in equity to enforce the Protective Covenants.

h. Fine Schedule. Instead of a legal action, or in conjunction with a legal action, the Board may determine to impose fines. All fines shall be considered final and shall be considered an assessment and a lien against the property unless the Property Owner makes a written appeal to the Board within five (5) days of receiving the fine and the board subsequently overturns such fine. The Board shall have thirty (30) days to meet and render its decision regarding the fine which decision shall be final. All fines may be collected by the Association in the same manner as an assessment as set forth herein (refer to Section 7, Article III, Annual and Special Assessment). All fines not paid within thirty (30) days shall accrue interest at the maximum current legal rate per annum on the amount of the fine from the due date thereof.

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

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

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

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

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

Section 7. These Covenants may be freely changed or amended by the Declarant before the Association is turned over to the Members. Once the Association is turned over to the Members, the provisions of these Covenants may be changed or amended or additional Covenants added, in whole or in part, by the Association upon approval of fifty percent (50%) of the members of the Homeowners' Association at a meeting duly noticed and called for this purpose; provided that, the easements for roads, utilities and common

areas shall not be changed without the unanimous consent of all of the owners affected by the change. Any proposed change to a County Required Covenant must receive approval from the governing body of the County of Gallatin prior to presentation to the Association.

If changed by the Declarant, the Declarant shall execute and record the amendment, change or addition with the Clerk and Recorder of Gallatin County, Montana. If changed by the Association, the President or Vice-President shall execute and record the amendment, change or addition with the Clerk and Recorder of Gallatin County, Montana.

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

Section 8. In the event that the terms of these covenants should conflict with any other governing documents, including but not limited to the by-laws, the Design Regulation, any rules created by the Board to effectuate these covenants and the Design Regulations, then the terms of these covenants shall control.

Section 9. Covenant Pronouns and Plurals:

All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the Person or Persons may require.

Section 10. Law Governing Covenants:

These Covenants shall be governed by and construed in accordance with the laws of the State of Montana.

Signature on next page.

IN WITNESS WHEREOF, Declarant has hereunto set its hand as of this 11 day of July, 2016.

DECLARANT:

Circle F, LLC, a Montana Limited Liability Company

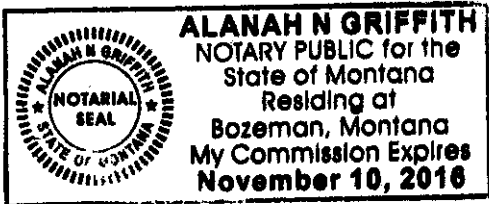
Nancy A. Flikkema

By: Nancy Flikkema
Its: Duly Authorized Member

STATE OF MONTANA)
) ss.
County of Gallatin)

On this 11 day of July, 2016, before me, the undersigned, a Notary Public of the State of Montana, personally appeared Nancy Flikkema being the Duly Authorized Member of Circle F, LLC, known to me to be the person that executed the within instrument on behalf of the limited liability company and acknowledged to me he executed the same.

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



Alanah N. Griffith
NOTARY PUBLIC for the State of Montana
Printed Name: _____
Residing at _____
My Commission expires _____

EXHIBIT A

Parcel 1: Middle Creek Parklands Subdivision, Phase 1, located in the Northeast and Southeast Quarter of Section 12, T2S, R4E and the Northwest and Southwest Quarter of Section 7, T2N, R5E, P.M.M., Gallatin County Montana (Plat Reference J-496)

Parcel 2: Middle Creek Parklands Subdivision, Phase 2 West, located in the Southeast Quarter of Section 12, T2S, R4E and the Northwest and Southwest Quarter of Section 7, T2N, R5E, P.M.M., Gallatin County Montana (Plat Reference J-515)

Parcel 3: Middle Creek Parklands Subdivision, Phase 2 South, located in the Southeast Quarter of Section 12, T2S, R4E and the Northwest and Southwest Quarter of Section 7, T2N, R5E, P.M.M., Gallatin County Montana (Plat Reference J-558)

Parcel 4: Middle Creek Parklands Subdivision, Phase 2 East and North, located in the Northwest and Southwest Quarter of Section 7, T2N, R5E, P.M.M., Gallatin County Montana (Plat Reference J-575)