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c/o Luna Properties
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Eric Semerad - Gallatin County, MT MISC



FIRST AMENDMENT TO THE HYALITE VIEW ESTATES COVENANTS, CONDITIONS
AND RESTRICTIONS, GALLATIN COUNTY

On January 16, 2017, the members of the Hyalite View Estates Owners' Association, Inc. voted to amend the Declaration of Covenants, Conditions and Restrictions for Hyalite View Estates, Gallatin County Clerk and Recorder's Office, and all recorded amendments including but not limited to Document No 2240880, Dated September 7, 2006 as follows:

All language that would be deleted is shown as a ~~strikethrough~~.

All language that would be added is shown in *italics*.

Amendment 1: Add in language allowing attached ADUs

Amend Article 1(A)(3) as follows.

One single family dwelling ("*Primary Dwelling*") is allowed on each residential lot as approved by the Design Review Committee ("DRC"). *The Primary Dwelling may include one attached, assessorly dwelling unit. ("ADU"). The ADU must be attached to the main dwelling. It must be no larger than 800 square feet. An* ~~The Primary Dwelling must include an attached, private two or three car garage is required.~~ One accessory, *non-residential* building which is normal, incidental and secondary to the residential use of the property is allowed pursuant to DRC strict approval of location (taking into consideration view planes), size, style and building material. Landscaping, trees, hedges and fences are allowed. The owner shall obtain the approval of the DRC prior to construction of any residential, accessory building, landscaping or fencing. A copy of the Design Review Guidelines is attached hereto as Exhibit A.

Amendment 2: Add in Leasing language

Amend to add in Article 1, Section A(21) as follows:

Rental or Lease of Lot.

- a. *Lease/Leasing/Leased” is defined as allowing a person(s) to occupy a Lot for a monetary consideration or its equivalent.*
- b. *No Owner shall Lease a Lot for hotel or transient purposes. All Leases must be for three months or longer.*
- c. *No ADU shall be Leased separate from the Primary Dwelling.*
- d. *Should an Owner rent a Lot in violation of this section, the Board shall have the power to enforce this section with an action for possession of the Lot (i.e. action for possession/eviction) should the Board deem such action necessary. This power shall be in addition to all other rights, claims and/or action under the law.*

Amendment 3: Fix Article 5 and Assessments.

Amend Article 5, Section D as follows:

~~Assessments shall be levied by the Board of Directors of the Association against the owners and the lots within the subdivision. Assessments shall be billed at such times as the Directors shall determine, and notice of the amounts shall initially be mailed to each lot owner. The assessments shall normally be assessed against each lot owner equally. It shall be in the Board's sole discretion whether or not to set a different rate for lots with a home and for vacant lots. All assessments become due thirty (30) days after the date of mailing. The Association has the authority to impose reasonable charges for interest, not to exceed the legal rate of twelve percent (12%) per annum, and penalties for past due assessments. Assessments shall be based upon an annual budget prepared by the Board of Directors and submitted to the membership in advance of or at an annual or special meeting of the Association, and the budget must have the approval of a majority vote of the lot owners present and voting in person or by proxy. Unpaid assessments, upon notice of lien thereof being duly filed of record with the Clerk and Recorder of Gallatin County, shall be a lien against the parcel of real property against which said unpaid assessment was made. Such lien may be foreclosed upon in like manner as a construction lien on real property, which legal proceedings may include the addition of interest, court costs, expenses, and reasonable attorney's fees.~~

D. Assessments

1: Personal Obligation for Assessments and Other Amounts.

Each Member shall pay to the Association, and be liable for, all Assessments, charges, fines, penalties or other amounts, to be levied, fixed, established and collected as set forth in the Governing Documents. Each Owner, by accepting a deed or recording a notice of purchaser's interest for a contract for deed for any portion of the Property, is deemed to covenant and agree to pay the Assessments. Each real person Owner, regardless of how the Property is owned (i.e. corporation, limited liability, trust, limited partnership, etc.), is personally liable for all assessments owed. Each real person Owner, by accepting a deed or recording a notice of

purchaser's interest for a contract for deed for any portion of the Property, is deemed to covenant and agree to be personally liable for all assessments.

(a) *The Board shall set and levy assessments. Failure of the Board to set assessment rates or to deliver or mail each Member an assessment notice shall not be deemed a waiver, modification, or a release of any Member from the obligation to pay these Assessments or the effectiveness of the lien in relation to the Assessments. In such event, each Member shall continue to pay their respective Assessments on the same basis as during the last year for which an Assessment was made, if any, until a new budget becomes effective and new Assessments are levied pursuant thereto. Any such budget may include as an expense item any shortfall in amounts previously collected.*

(a) *No Member may exempt himself from liability for any Assessments or any other obligation under the Governing Documents by non-use of or abandonment of such Member's Lot or any other reason. The obligation to pay Assessments is a separate and independent covenant on the part of each Member in relation to a Lot. No diminution or abatement of Assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or Improvements, or from any other action the Association or Board takes or any omission to take any such action.*

2: Verification of Assessments Due.

Upon written request, the Association shall furnish to a Member or such Member's title or mortgage company written verification of the amount of such Assessments owing and whether the Member has paid such Assessment.

3: Purpose of Assessments and Other Amounts.

The Assessments levied and any charge, fine, penalty or other amount collected by the Association shall be used exclusively to pay expenses and other obligations the Association may incur in performing any actions permitted or required under the Governing Documents, including, but not limited to, operating expenses (inclusive of the overall general administration of the Association), the costs of performing Functions, the cost of all insurance premiums and applicable deductibles for insurance required or permitted under this Declaration, repayment of debt and debt service, providing security for third party obligations (such as, but not limited to, securing borrowing by the Association) as provided in the Governing Documents, maintenance of the Area of Common Responsibility, and all other Association Expenses. The Association may invest any funds allocated to reserves in a reasonable and prudent manner. Unless expressly required by a Governing Document, the Association will not refund or credit to any Member any excess funds (including reserves) collected by the Association.

4: Types of Assessments.

(a) Base Assessments.

(i) **Budget.** At least sixty (60) days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Association Expenses during the coming year, including, without limitation, a capital contribution to establish a reserve fund in accordance with a budget separately prepared. The Board shall annually prepare the reserve budget which takes into account the number and nature of depreciable assets owned by the Association, the expected life of each asset, and their expected repair or replacement cost.

(ii) **Rate.** The Base Assessment shall be levied equally against all Lots which are subject to the Base Assessment pursuant to this Declaration and shall be set at a level which is reasonably expected to produce total revenue for the Association equal to the total budgeted Association Expenses for the benefit of all Owners, including, without limitation, reserves (“**Base Assessment**”). In determining the level of Base Assessments, the Board, in its discretion, may consider other sources of funds available to the Association.

(iii) **Notices.** The Board shall send a copy of the budget and notice of the amount of the Base Assessment for the upcoming year to be delivered to each Owner at least thirty (30) days prior to the beginning of the fiscal year for which it is to be effective. Such budget and assessment shall become effective unless disapproved at a meeting by at least fifty-one percent (51%) of the Members of the Association.

(iv) **Failure to Approve Budget.** If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the next year.

(b) **Default Assessment.** Notwithstanding anything to the contrary contained herein, if any cost or expense of the Association is caused by (a) the negligence or misconduct of a Member or a Member’s family member, employee, agent, Licensee or Invitee, or (b) a violation of any covenant or condition of a Governing Document by a Member or a Member’s family member, employee, agent, Licensee or Invitee, the Association may, if the Board deems necessary or advisable, levy a default Assessment against such Member. This Default Assessment may be in the form of a fine. The Association may also, in the discretion of the Board, levy a default Assessment against any Lot to reimburse the Association for costs incurred in bringing the Lot and Dwelling Unit into compliance with the provisions of the Governing Documents, provided the Association gives prior notice to the Owner and an opportunity for a hearing. Any such assessment levied by the Association pursuant to this **Section (b)**, and each fine, penalty, fee, or other charge imposed upon a Member for the Member’s violation of any covenant or condition of any Governing Document, are each referred to herein as a “**Default Assessment.**”

(c) **Special Assessment.** *The Association may levy “Special Assessments” from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Except as otherwise specifically provided in this Declaration, any Special Assessment for Association Expenses for the general benefit of all Owners shall require the Affirmative Vote of a Majority of the Members. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.*

(d) **General Provisions.** *Any payment or report required hereunder to be made to the Association shall be deemed to have been made in a timely fashion if sent to the principal office of the Association by (a) first class U.S. mail, postage prepaid and postmarked no later than the date such payment or report is due, or (b) reputable overnight delivery service sent no later than the date such payment or report is due. The Association at its own expense shall have the right at any time during regular business hours to inspect and copy all records and to audit all accounts of any Member which are reasonably related to such Member’s obligation hereunder to pay Assessments or make reports to the Association. The Board shall have the power to determine any matter and to resolve any dispute arising out of the application, determination, payment and collection of any Assessment or the making of any report provided for in this Declaration or any other Governing Document, and may promulgate such additional Rules and Regulations which are consistent with the provisions hereof as the Board may deem necessary, useful or appropriate to the reasonable and efficient administration of such.*

5: Time for Payments; Effect of Non-payment of Sums Due Association; Lien and Remedies of the Association.

(b) *The amount of any Assessment, charge, fine, penalty or other amount payable by any Member shall become due and payable at such times as the Board may establish.*

(c) *Any Assessment, charge, fine, penalty, or other amount not paid within thirty (30) days after the due date shall be delinquent, shall incur a late payment penalty and bear interest in an amount to be set by the Board from time to time, not to exceed the maximum permitted by applicable law, from the date due and payable until paid and the Member shall be obligated to pay all lien fees, legal fees, paralegal fees, and recording fees (as applicable). All such amounts shall be considered Default Assessments.*

(d) *The Association has a lien on each Lot for any Assessment levied against the Lot, and for any other amounts due hereunder from the Owner in relation to such Lot. This lien runs with the land.*

(e) *In the event an Owner fails to pay sums due the Association within thirty (30) days of the due date, the Association may (i) bring an action at law to collect the lien or foreclose the lien against the real property in the same manner as a mortgage on real property, (ii) although not necessary in order to foreclose the lien, record notice of the Association’s lien against the property being assessed, (iii) send the debt to collections, (iv) institute an action for a*

money judgment, (v) apply any deposits held by the Association or ARC to the amount due, and (vi) exercise any other remedy at law or equity. Each Assessment or other charge, together with interest and penalties thereon and all costs and expenses incurred by the Association to collect such Assessment, charge, fine, penalty or other amount, including, without limitation, reasonable attorneys' fees, paralegal fees, and disbursements, may be recovered by suit for a money judgment by the Association without foreclosing or waiving any lien securing the same or may be recovered in any foreclosure.

(f) The recording of this Declaration constitutes record notice and perfection of a lien of the Association on all Lots. No further recordation or filing of any claim of any lien is required. The Association may, in its discretion, record or file an additional notice of that lien in the Public Record. The priority of the lien of the Association shall be determined pursuant to **Section 4.6** and shall not be dependent upon the recording or filing date of any notice of lien recorded or filed in the Public Record, and shall be binding upon the Owner and its successors. The Association, acting on behalf of the Members, shall have the power to bid (which may be a bid on credit, up to and including the amount secured by the lien) for the Lot at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. During the period a Lot is owned by the Association following foreclosure, (i) no right to vote shall be exercised on behalf of the Lot, (ii) no Assessment shall be assessed or levied on the Lot, and (iii) each other Lot shall be charged, in addition to its usual Assessments, its equal pro rata share of the Assessments that would have been charged to or payable by such Lot had it not been acquired by the Association.

(g) The sale, foreclosure or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments.

6: Priority and Non-subordination of the Lien.

The lien under this **Error! Reference source not found.** shall be superior to all other liens, except the liens of all taxes, bonds, assessments and other liens and levies which by law in effect from time to time would be superior.

7: Liability of Members, Purchasers and Encumbrancers.

The amount of any Assessment, charge, fine, penalty or other amount payable under this **Article 5, Section D** payable by any Member shall be a joint and several obligation to the Association of such Member and such Member's heirs, estates, devisees, personal representatives, successors and assigns. A Person acquiring fee simple title to a Lot shall be jointly and severally liable with the former owner of the Lot for all such amounts which had accrued and were payable at the time of the acquisition of the title or interest by such Person, without prejudice to such Person's right to recover any such amounts paid from the former Owner.

Amendment 4, Add in Language allowing children to use tents, Section 11.

No temporary structures, trailers, campers, tents or similar structures shall be used at any time on the premises for habitation purposes except for the construction period and then only with the prior approval of the Committee and for a period not to exceed a reasonable time for construction. *Children's use of tents and similar structures for backyard camping is exempt from this Covenant.* During such construction period a land use permit is required by the zoning enforcement agent. Motor homes and recreational trailers may be parked on a lot and occupied by visitors or guests for a period not to exceed two (2) weeks or fourteen (14) consecutive days in any six (6) month period.

Amendment 5, Fixing Enforcement, Section 21.

Delete all of Section 21.

Add in the following:

1. Procedure.

The Association shall have the right (but not the obligation) to enforce the provisions of any of the Governing Documents (Covenants, Bylaws, Articles of Incorporation, Rules and Regulations, Architectural Guidelines), through procedures adopted by resolution of the Board, abatement of the violation by the Association, or by proceedings either at law or in equity against any Person(s) violating or attempting to violate any of the Governing Documents.

2. Discretion.

- A. *The decision to have the Association pursue an 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; (ii) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; (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 Association resources; or (iv) it is not in the Association's best interest, based upon hardship, expense, or other reasonable criteria, to pursue or continue enforcement action.*
- B. *Such a decision shall not be deemed a waiver of the right of the Association to enforce such provision at a later time or under other circumstances, nor shall it preclude the Association from enforcing any other covenant, restriction or rule, nor shall it preclude any Member from taking action at law or in equity to enforce the Governing Documents, including all such costs and fees for any appeal or enforcement of a judgment.*

3: Costs of Enforcement.

- A. *Costs incurred for enforcing the provisions of the Governing Documents (inclusive of giving notice of the violation), costs of correcting the defect or undoing or curing the violation, if undertaken by the Association, or any fines levied against the Member after the Member is determined by the Board to be in violation of the Governing Documents, shall be paid by the Member. Any costs incurred for enforcing the provisions of the Governing Documents, for correcting the defect or undoing the violation, or fine assessed against the Member is a Default Assessment, and if not paid within sixty (60) days may be handled in accordance with **Section 4(d)**.*
- B. *Should any lawsuit, arbitration or other legal proceeding be instituted by a Member against the Association, or the Association against a Member alleged to have violated one or more of the provisions of the Governing Documents and should the Association be wholly or partially successful in such proceeding, the Member shall be obligated to pay all the costs of such proceeding, including, without limitation, reasonable attorney's fees and costs.*

4: Reporting Violations. Complaints regarding alleged violations may be reported by a Member or Renter within the Association by submission of a written complaint.

5: Complaints. Complaints by a Member or Renter shall be in writing and submitted to the Board. The complaining Member or Renter shall have observed the alleged violation and shall identify the Complainant, the alleged Violator, and set forth a statement describing the alleged violation, referencing the specific provisions which the alleged is to have violated, when the violation was observed and any other pertinent information.

6: Investigation. Upon receipt of a Complaint by a Member or Renter within the Association, the Board shall have the sole responsibility to investigate the matter.

7: Initial Warning Letter. If a violation is found to exist, a warning letter shall be sent to the alleged Violator explaining the nature of the violation. The alleged Violator shall have twenty (20) calendar days from the date of the letter to come into compliance or request a meeting with the Board to discuss the merits of the matter.

8: Continued Violation After Initial Warning Letter. If the alleged Violator does not come into compliance within twenty (20) calendar days of the first warning letter, a certified second letter shall then be sent to the alleged Violator explaining that a violation has been found to exist, compliance has not been achieved, and a meeting with the Board is requested within fifteen (15) days of the date of the certified second violation letter.

9: Meeting with the Board of Directors. The alleged Violator and the Board shall meet privately to discuss the merits of the matter and the Board shall base their decision solely on the matters set forth in the Complaint. The Board shall have up to fifteen (15) days to render its written findings and decision and impose a fine, if applicable. A decision, either a finding for or against the alleged Violator, shall be by a majority of the Board members present at the meeting.

Failure to strictly follow the meetings procedure as set forth above shall not constitute grounds for an appeal of the Board's decision absent a showing of denial of due process.

10: Failure to Timely Request a Meeting. If the alleged Violator fails to request a meeting within fifteen (15) days of the certified second letter, or fails to appear at the meeting, the Board may make a decision with respect to the alleged violation based on the Complaint, results of the investigation, and any other available information without the necessity of holding a formal meeting. If a violation is found to exist, the alleged Violator may be assessed a fine pursuant to the policies and procedures outlined in below, the Board may proceed with enforce these covenants by legal proceedings in a court of law or equity, including the seeking of injunctive relief and damage, or a combination of both, or any other remedy available under the law.

11: Notification of the Decision. The decision of the Board shall be in writing and provided to the Violator and Complainant within fifteen (15) days of the meeting, or if no meeting is requested, within fifteen (15) days of the final decision.

12: Fines.

C. The following fine schedule is adopted for all recurring violations:

- | | |
|---|--|
| <i>1. First Violation:</i> | <i>Warning Letter</i> |
| <i>2. Second Violation OR Failure To Comply After First Warning Letter</i> | <i>\$100.00</i> |
| <i>3. Third Violation OR Failure To Comply After Meeting Scheduled With Board of Directors</i> | <i>\$25.00 per day, retroactive to the date of the initial warning letter.</i> |

D. Continuous Violations. Continuous violations are defined as either the same violation being committed repeatedly throughout time or as the same violation being committed materially uninterrupted by time. If the Member is determined as having a continuous violation, in accordance with the terms of this Amendment, such Member shall be subject to a daily fine of \$25.00 per day each violation is committed, retroactive to the date of the first warning letter.

E. Waiver of Fines. The Board may waive all, or any portion, of the fines, if, in its sole discretion, such a waiver is appropriate under the circumstances. Additionally, the Board may condition waiver of the entire fine, or any portion thereof, upon the Violator coming into and staying in compliance with the Declaration, Bylaws and Rules and Regulations.

F. Deposit of Fines. All and any fines collected shall be deposited into the Association reserve account.

13: Other Enforcement Means. *This fine schedule and enforcement process is adopted in addition to all other enforcement means which are available to the Association and Board through its Declaration, Bylaws, Rules and Regulations, Articles of Incorporation and Montana law. The use of this process does not preclude the Board from using any other enforcement means.*

14: Supplement to Law. *The provisions of this Amendment shall be in addition to and in supplement of the terms and provisions of the Declaration, Bylaws, Rules and Regulations and the law of the State of Montana*

15. Non-Waiver. *Failure or delay in enforcement of a covenant or a violation thereof shall not be deemed a waiver of the right to enforce such covenant or any other covenant.*

The above-mentioned amendments are the only amendments to the Original Covenants. Except as modified, altered or amended by the provisions of this First Amendment, the Declaration, as previously amended, shall remain in full force and effect. The certification of the President and Secretary of the Association is included below in order to comply with Section 23 of the Covenants which states:

“After the Declarant has sold 32 lots in the Subdivision, these Covenants or any portion thereof, except county required covenants which require county approval to amend, may be amended, restated, modified, or supplemented at any time by seventy-five percent (75%) of the votes of the owners present, in person or by proxy, at a meeting, duly called, including in the Notice of the meeting a copy of the proposed changes; or by the approval, duly signed by the owners of seventy-five percent (75%) of the votes of the lot owners within the boundaries of the Subdivision, based on one vote per lot. **The Declarant or Declarant’s designee has the authority in its absolute and sole discretion to modify or amend these Covenants or any portion thereof, except count required covenants, until 32 of the lots in the subdivision are sold.** Any modification or amendment pursuant to this provision shall be effective upon the recording of a Certification by the President and Secretary of the Board of Directors that the required seventy-five percent (75%) of the votes of the lot owners have voted in favor of the restatement, modification, or supplement and setting forth the same in writing in the Certification. The Certification shall be under oath and notarized and recorded with the Clerk and Recorder of Gallatin County. A copy of the recorded document shall be mailed to each lot owner at his or her last known address. Amendment to the Covenants required by Gallatin County shall not be effective unless approved by Gallatin County.”

The proposed amendments were approved by seventy-five percent (75%) of the votes of the owners present, in person or by proxy, at a meeting, duly called, on January 16, 2019. Therefore, the Covenants are amended.

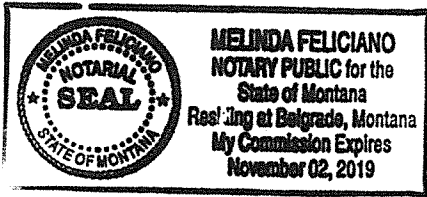
I, Chris Hahn, the President of Hyalite View Estates Owners’ Association, Inc., submit this amendment which complies with Section 23 of the Covenants. I certify that the required seventy-five percent (75%) of the votes of the lot owners, at a meeting, duly called, have voted in favor of the restatement, modification, or supplement.

By: Chris Hahn
Chris Hahn
Its: President

STATE OF MONTANA)
 : SS.
County of Gallatin)

On this 29th day of January, 2019, before me, a Notary Public in and for the state and county aforesaid, personally appeared Chris Hahn, President of the Hyalite View Estates Owners' Association, Inc., known to me to be the person whose name is subscribed to the within instrument and having been duly sworn did herein execute the above recorded record for the purposes stated.

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



Melinda Feliciano
Melinda Feliciano (print name)
Notary Public for the State of Montana
Residing at Belgrade, MT
My Commission Expires: November 02, 2019
(mm/dd/yyyy)

(SEAL)

I, Robert T. Miller, the Secretary of Hyalite View Estates Owners' Association, Inc., submit this amendment which complies with Section 23 of the Covenants. I certify that the required seventy-five percent (75%) of the votes of the lot owners have voted in favor of the restatement, modification, or supplement.

By: [Signature]
Its: Secretary