

## RESOLUTION NO. R21-50

### RESOLUTION OF INTENT TO APPROVE THE APPLICATION FOR BITTERROOT GROVE TOWNHOMES, A SIXTY UNIT PLANNED UNIT DEVELOPMENT AS AN ADDITION TO THE CITY OF LAUREL WITH CHANGES.

WHEREAS, the Planned Unit Development Application (“PUD”) was submitted to the City of Laurel by an agent for the property owner (“Petitioner”) of Block 6, Lots 1-12, and Block 7, Lots 1-12, Nutting Brothers Subdivision, seeking approval for the Development Application to include annexation to the City of Laurel, zoning, and a variance to lot size; and

WHEREAS, Petitioner constitutes the owner of the entire property which is subject to the application submitted to the City for approval; and

WHEREAS, the Laurel City-County Planning Board reviewed the Planned Unit Development Application, at a duly advertised public hearing that was held on May 19, 2021 and a second subsequent public hearing on August 18, 2021; and

WHEREAS, the Laurel City-County Planning Board heard testimony from Petitioner and his Agents who spoke as proponents of the requests and testimony from individuals who resided near the proposed development area; and

WHEREAS, based on the evidence and testimony provided at the two public hearings the Laurel City-County Planning Board approved a motion to recommend the approval of the PUD application to the Laurel City Council with the following recommended changes:

1. The Property shall be cleared of personal property, debris, and refuse prior to final approval of the PUD and Variance application.
2. A landscaping and maintenance plan shall be submitted to and approved by the City after it finds the plan sufficient enough to ensure the development does not operate or become a nuisance.
3. The proposed Water system shall be approved by the contracted city engineer, KLJ Inc. and the Laurel Department of Public Works.
4. The proposed Wastewater system shall be approved by the contracted city engineer, KLJ Inc. and the Laurel Department of Public Works.
5. The proposed Stormwater system shall be approved by the contract city engineer, KLJ Inc. and the Laurel Department of Public Works.
6. Weed Management Plan shall be completed and approved by the Yellowstone County Weed District.
7. The alleyways within Blocks 6 and 7 of the Nutting Brothers Subdivision shall be abandoned via a petition to abandon.
8. Utility access easement documents shall be filed for the abandoned portions of Blocks 6 and 7 of the Nutting Brothers Subdivision.
9. A survey shall be filed aggregating the lots within Blocks 6 and 7 of the Nutting Brothers Subdivision.

10. Details on the legal description of the lots in the northwest corner of Block 6, Nutting Brothers Subdivision, shall be provided to the City in order to determine the scope of project.

WHEREAS, the City Council held a public hearing on July 13, 2021 on the proposed PUD application as well as the annexation and variance requests submitted by the Petitioner and sent the proposed development back to the Planning Board for further proceedings and work; and

WHEREAS, the City Council held a subsequent public hearing on September 14, 2021 in which it gathered public comment regarding the application and based upon the documents contained in the City's File, and testimony and evidence submitted during the public hearings, the City Council has determined it is in the City's best interest to consider the approval of the Petitioner's application subject to the changes and findings contained staff report dated August 25, 2021 being completed.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Laurel hereby approves the Resolution of Intent to adopt the Bitterroot Grove Townhomes Planned Unit Development subject to the changes and conditions herein,


1. Petitioner's application for the Planned Unit Development known as the Bitterroot Grove Townhomes is under consideration of approval, subject to the changes contained in the Staff Report dated August 25, 2021, and findings specified herein being completed.
2. The City Council hereby adopts the changes, findings, and recommendations contained in the Staff Report dated August 25, 2021, as its findings and recommendations for future approval.
3. The City Council's intention to approve is specifically conditioned on the satisfactory completion of the changes, findings, and recommendations adopted herein.
4. Pursuant to City Ordinance, the City shall record this resolution, the development plan and any other associated agreements or documents with the Yellowstone Count Clerk and Recorder upon future approval.

Introduced at a regular meeting of the City Council on September 14, 2021, by Council Member Stokes.

PASSED and APPROVED by the City Council of the City of Laurel this 14<sup>th</sup> day of September 2021

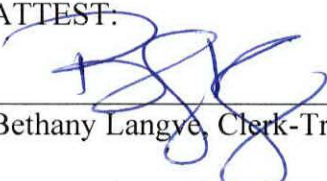
APPROVED by the Mayor this 14<sup>th</sup> day of September 2021.

CITY OF LAUREL



Thomas C. Nelson, Mayor

ATTEST:

  
\_\_\_\_\_  
Bethany Langye, Clerk-Treasurer, Clerk-Treasurer

Approved as to form:

  
\_\_\_\_\_  
Sam Painter, Civil City Attorney



## LAUREL CITY-COUNTY PLANNING DEPARTMENT

### STAFF REPORT & FINDINGS OF FACT

TO: Laurel City-County Planning Board  
FROM: Nicholas Altonaga, Planning Director  
RE: Planned Unit Development – Bitterroot Grove Townhomes  
DATE: August 25, 2021

#### DESCRIPTION OF REQUEST

A Planned Unit Development (PUD) application and supplemental was submitted by Forrest Mandeville of Forrest Mandeville Consulting and Engineering West on behalf of Darrel Dyer for the parcels at 1304 E. 8<sup>th</sup> Street, between Fir and Juniper Avenues. The Applicant has proposed the Bitterroot Grove Townhomes, a 60-unit Planned Unit Development with age-restricted units for those 55 and older. This PUD application also includes a request for annexation and a variance. The Application contains all the necessary components of the PUD, Variance, and Annexation applications. The property is currently owned by Elvira and James Cotter, with purchasing agreements in place. The property currently has a great deal of personal property, debris, and materials on site and is an overgrown state.

The Planning Board shall consider the Annexation and zoning of the parcels in question, as well as the preliminary plan approval of the PUD application with the related variance for project size.

Owner: James Cotter, Elvira Cotter (Under Contract for sale)  
Legal Description: NUTTING BROS SUBD, S10, T02 S, R24 E, BLOCK 6, Lots 1 - 12, BLOCK 6, Lots 1 - 12  
Subdivision size: 4.68 Acres  
Existing Land Use: Residential, Vacant  
Proposed Land Use: Residential Planned Unit Development

#### BACKGROUND AND PROCEDURAL HISTORY

1. A pre-application meeting for the Planned Unit Development took place on June 23, 2020 between the Applicant, their engineers, and City Staff.

2. The Application for the Planned Unit Development, Annexation, and Variance and their supporting documentation was submitted on March 15, 2021.
3. The City Staff Design Conference took place on April 27, 2021.
4. The Planning Director transmitted a letter of findings to the Applicant and their developer on May 7, 2021.
5. The Applicant and their developer resubmitted documents to the Planning Department on May 17, 2021.
6. The Planning Board held a public hearing on the proposed Planned Unit Development, Annexation, and Variance applications on May 19, 2021.
7. The Planning Director worked with the Applicant and their contractor to update the Annexation Agreement and HOA Bylaws as discussed at the May 19<sup>th</sup> meeting.
8. The Planning Board has scheduled a second public hearing on the proposed Planned Unit Development, Annexation, and Variance applications for June 16, 2021.
9. The Planning Board lacked a quorum at the scheduled public hearing on June 16, 2021.
10. The Planning Director forwarded the materials and documentation for the Bitterroot Grove Townhomes Annexation, Variance, and Planned Unit Development to the City Council on June 25, 2021.
11. The City Council held a public hearing on the Planned Unit Development, Annexation, and Variance applications on July 13, 2021.
12. The City Council decided that the information provided was insufficient to approve the application and returned it to Planning Board for further review.
13. August 18, 2021 – Public Hearing Held for Planned Unit Development at Planning Board. Planning Board Members recommended the approval of annexation and preliminary approval of the Bitterroot Grove Townhomes Planned Unit Development with the stated conditions of approval.
14. September 14, 2021 – Laurel City Council shall hold a public hearing on the applications for Annexation and Zone Change, Planned Unit Development, and Variance.

#### STAFF FINDINGS

1. The Application for PUD, Annexation, and Variance contain all the necessary items.
2. Annexation has been requested to hook the property into the municipal water and wastewater system, as well as garbage pick-up.
3. A variance has been sought for the minimum size requirements of a Planned Unit Development stated in the Laurel Municipal Code.
  - a. Laurel Municipal Code requires a minimum of 5 acres for a PUD
  - b. The proposed PUD is 4.68 acres.
4. The Applicant has proposed private interior streets with gated entrances.
5. Gated entrances shall be accessible by all Laurel EMS, Fire, and Police departments, as well as code enforcement and public works where necessary.
6. The Applicant has proposed private internal water and sewer connections.
7. The Applicant has proposed a water meter building, to manage the interior water system of the development.

8. The proposed project would improve a largely vacant, blighted lot with a dense residential development.
9. The application includes bylaws for a townhouse association to manage the property.
10. The subsequent submittal of documents on May 17 included a landscaping plan and weed management plan.
11. An Annexation Agreement was provided with the application which specifies adjacent public improvements, development standards, and other requirements for annexation into the City of Laurel.
12. Updated site plans were submitted to the City detailing the water and sewer lines to be installed.

### PLANNING BOARD AND GOVERNING BODY REVIEW CRITERIA

LMC 17.32.020 – Review and Approval, Part D states:

“Within thirty days after the design conference, the application shall be reviewed by the city-county planning board and recommendations based on the comments from the design conference and the criteria contained in the subdivision regulations shall be forwarded to the zoning commission. The comments from the design conference shall be forwarded to the planning board, zoning commission and developer within five working days after the conference.”

### RECOMMENDATIONS

The Planning Director recommends approval for the Annexation and Zone Change to PUD – 1 Planned Unit Development 1 with the following conditions.

1. The property and adjacent rights-of-way shall be cleared of personal property, debris, and refuse within 90-days of annexation approval.
2. The Annexation Agreement, Waiver of Right to Protest, and the City Council Resolution approving annexation shall be filed with the Yellowstone County Clerk & Recorder within 90-days of annexation approval.
3. All construction and installation of public improvements must be completed within two years of annexation.
4. If the public improvements are not constructed at the time of annexation, the property owner shall provide the city a bond or letter of credit that equals 125% of the estimated engineering costs for the construction of improvements. If the property owner fails to construct the improvements or to obtain the agreed upon engineering, the city shall utilize the bond or letter of credit to pay for the construction, including engineering; In accordance with GASB-34, the Developer of Landowner shall provide the city the total cost and/or value of the improvements including, but not limited to, parks, sidewalks, curb and gutter, lift stations, and sewer and water lines, that are conveyed to the city.

The Planning Director recommends that Planning Board grant preliminary approval to the Planned Unit Development plan and variance with the following conditions:



1. The Property shall be cleared of personal property, debris, and refuse prior to final approval of the PUD and Variance application.
2. A landscaping and maintenance plan shall be submitted to and approved by the City after it finds the plan sufficient enough to ensure the development does not operate or become a nuisance.
3. The proposed Water system shall be approved by the contracted city engineer, KLJ Inc. and the Laurel Department of Public Works.
4. The proposed Wastewater system shall be approved by the contracted city engineer, KLJ Inc. and the Laurel Department of Public Works.
5. The proposed Stormwater system shall be approved by the contract city engineer, KLJ Inc. and the Laurel Department of Public Works.
6. Weed Management Plan shall be completed and approved by the Yellowstone County Weed District.
7. The alleyways within Blocks 6 and 7 of the Nutting Brothers Subdivision shall be abandoned via a petition to abandon.
8. Utility access easement documents shall be filed for the abandoned portions of Blocks 6 and 7 of the Nutting Brothers Subdivision.
9. A survey shall be filed aggregating the lots within Blocks 6 and 7 of the Nutting Brothers Subdivision.
10. Details on the legal description of the lots in the northwest corner of Block 6, Nutting Brothers Subdivision, shall be provided to the City in order to determine the scope of project.

#### ATTACHMENTS

1. PUD Written Statement
2. Annexation Application
3. Annexation Agreement (updated)
4. Waiver of Right to Protest (updated)
5. Variance Application and Request Letter
6. PUD Layout/Design
7. PUD Landscaping Plan
8. Bylaws of Bitterroot Grove Townhomes Association (updated)
9. Images of proposed townhome design
10. Planner Letter to the Applicant (dated 5/17/2021)
11. Comments from Ryan Welsh, Engineer at KLJ, on proposed Water/Sewer expansion (dated June 8, 2021)





**CITY OF LAUREL, MONTANA  
REQUEST FOR ANNEXATION  
AND PLAN OF ANNEXATION**

Applicant is required to meet with the City Planner prior to filling out this application. All blanks of this application are to be filled in with explanation by the applicant. Incomplete applications will not be accepted.

1. Only parcels of land adjacent to the City of Laurel municipal limits will be considered for annexation. "Adjacent to" also includes being across a public right of way. If the parcel to be annexed is smaller than one city block in size (2.06 acres), the city council must approve consideration of the request; the applicant must make a separate written request to the city council stating their wish to annex a parcel of land less than one city block in. Once the council approves the request, the applicant can apply for annexation.

2. Applicant landowner's name: Darrell Dyer - Bitterroot Group, LLC  
Address: PO Box 908, Laurel, MT 59044  
Phone: 701-651-5572

3. Parcel to be annexed: (If it is not surveyed or of public record, it must be of public record PRIOR to applying for annexation.)  
Legal description: Nutting Bros. Subdivision, Block 6, Lots 1-12, and Block 7, Lots 1-12, and abandoned portion of Hazel Avenue between Blocks 6 and 7  
Lot size: 4.68 acres  
Present use: Residential and vacant land  
Planned use: 60 Unit Planned Unit Development Townhome Project (Bitterroot Grove Townhomes)  
Present zoning: R-200  
(Land which is being annexed automatically becomes zoned R-7500 when it is officially annexed [City ordinance 17.12.220])

4. City services: The extension of needed city services shall be at the cost of the applicant after annexation by the city has been approved. As part of the application process, each of the following city services must be addressed with an explanation:

Water Service: Fir Ave (west side of site); Juniper Ave (east side);  
Location of existing main: undeveloped 7th St right-of-way (south side)  
Cost of extension of approved service: \$278,784 for water for entire PUD development  
How cost determined: Engineer Estimate  
Timeframe for installation: Summer 2021

Sewer Service:  
Location of existing main: Undeveloped Alleys in Blocks 6 and 7, Nutting Bros. Subdivision  
Cost of extension of approved service: \$201,603 for sewer for entire PUD development  
How cost determined: Engineer estimate

Timeframe for installation: Summer 2021

How financed: Privately Financed

**Streets:**

Is there any adjoining County ROW to the proposed

annexation: Yes, 8th St. to the north, Fir Ave to the west, Juniper Ave to the east, undeveloped 7th St to the South

Location of existing paved access: 8th St (north side), Fir Ave (west side), Juniper Ave (east side)

Cost of paving: \$218,156 for road improvements for entire PUD Development

How cost determined: Engineer Estimate

Timeframe for construction: Summer 2021

**Other required improvements: Provide above information on attached pages.**

Sidewalk improvements at estimated cost of \$31,000

5. A map suitable for review of this application of the proposed area to be annexed must be submitted with this application.
6. A written Waive of Protest must accompany this application, suitable for recording and containing a covenant to run with the land to be annexed, waiving all right of protest to the creation by the city of any needed improvement district for construction or maintenance of municipal services. This Waiver of Protest must be signed by the applicant prior to annexation by the city.
7. Requests for annexations are referred to the City-County Planning Board for recommendation to the City Council. Within 30 days after receiving the properly filled out application with all required accompaniments and after conducting a duly advertised public hearing, the City-County Planning Board shall make recommendation to the City Council as to this Request for Annexation. If more information is needed from the applicant during the review of the application, such application shall be deemed incomplete and the timeframe for reporting to the City Council extended accordingly, in needed.
8. A **non-refundable** application fee of \$300 + \$25.00 per acre (80 acres or less); \$300 + \$35.00 per acres (81 acres or more) must accompany the submission of this application.

The City Council of the City of Laurel, Montana, after review and consideration of this Application for Annexation, found such to be in the best interest of the City, that it complied with state code, and approved this request at its City Council meeting of \_\_\_\_\_



## INSTRUCTIONS

### CITY-COUNTY PLANNING VARIANCE REQUEST

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These application instructions cover appeals from decisions of the Planning Department (and sometimes other officials) and for requests for variances concerning setbacks, structures, heights, lot coverage, etc.

This application form is supplied by the City and must be returned to the City.

The following is a list of information required for submittal to be considered complete.

1. It is mandatory that you meet with the City Planner prior to applying. The City Planner will provide you with a map of the property owners within 300' that you must have certified by a title company.
2. Provide a plot plan drawn to scale on paper not larger than 11"x17" which includes all existing and proposed structures and proposed variance measurements.
3. A set of three mailing labels for each surrounding property owner within the 300 feet.
4. A detailed justification referring to the Laurel Municipal Code Chapter 17.60.020.
5. Application, with fee (\$550 for residential; \$1,100 for commercial), must be made on or before the first day of the month prior to the month it will appear before the Laurel City-County Planning Board.

The public hearing before the City-County Planning Board is held on the 3<sup>rd</sup> Wednesday of the month at 5:35PM. in the City Council Chambers at 115 W. 1<sup>st</sup> Street, Laurel. **Applicant or Applicant Representative must be present at the meeting.**

The Laurel City-County Planning Board makes a recommendation to the City Council. The City Council will review the application at Council Workshop and then make a decision on the Council agenda.





## Laurel Variance Request Application

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This application covers appeals from decisions of the Planning Department (and sometimes other officials) and for requests for variances concerning setbacks, structures, heights, lot coverage, etc.

The undersigned owner or agent of the owner of the following described property requests a variance to the Zoning Ordinances of the City of Laurel as outlined by the laws of the State of Montana.

1. Name of property owner: Bitterroot Group, LLC (Darrell Dyer)
2. Name of Applicant if different from above: Darrell Dyer
3. Phone number of Applicant: \_\_\_\_\_
4. Street address and general location: South of 8th St, between Fir Ave and Juniper Ave.
5. Legal description of the property: Nutting Bros. Subdivision, Block 6, Lots 1-12, and Block 7, Lots 1-12, and abandoned portion of Hazel Avenue between Blocks 6 and 7
6. Current Zoning: R-200. Annexation and PUD requested as well
7. Provide a copy of covenants or deed restrictions on property.

I understand that the filing fee accompanying this application is not refundable, that it pays part of the cost of process, and that the fee does not constitute a payment for a variance. I also understand I or my agent must appear at the hearing of this request before the Planning Board and all of the information presented by me is true and correct to the best of my knowledge.

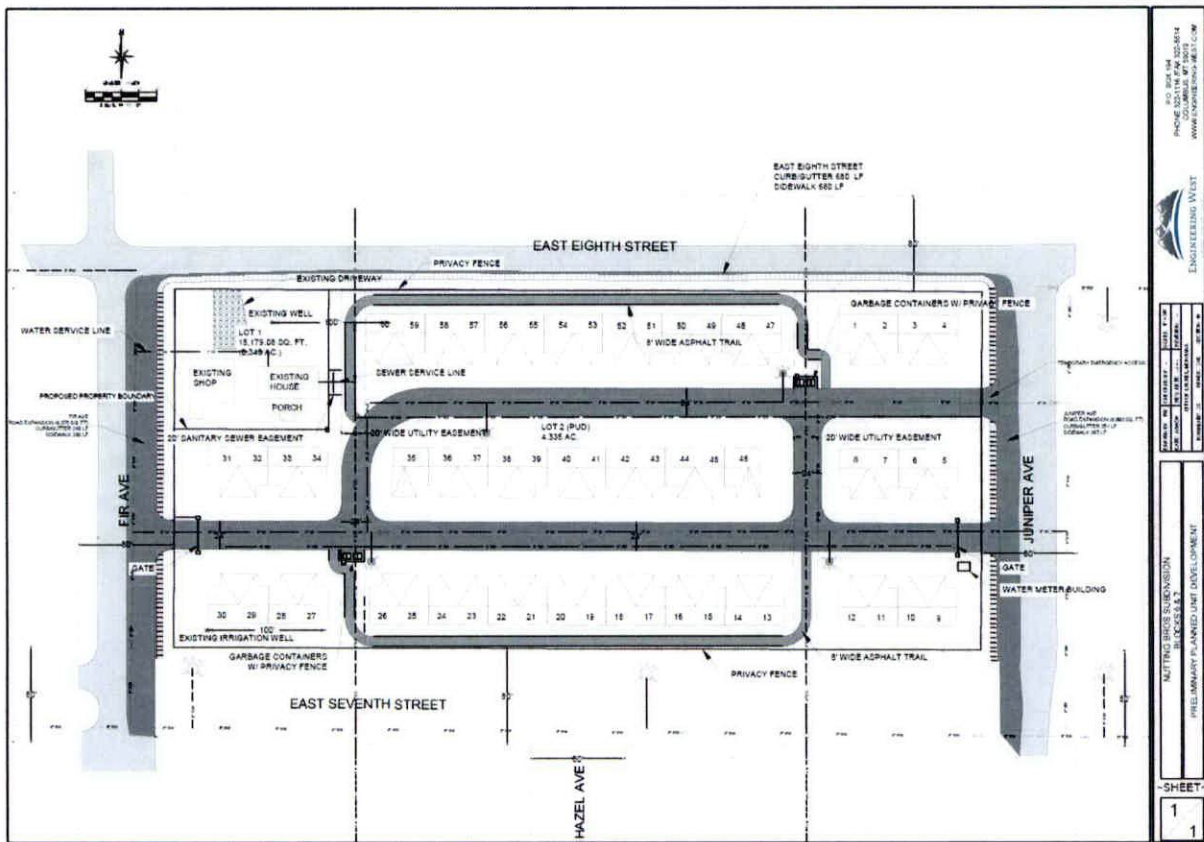
Signature of Applicant: \_\_\_\_\_

Date of Submittal: \_\_\_\_\_

# VARIANCE REQUEST AND JUSTIFICATION

## BITTERROOT GROVE TOWNHOMES PLANNED UNIT DEVELOPMENT DARRELL DYER

### NUTTING BROS. SUBDIVISION BLOCKS 6 & 7, PLUS ABANDONED PORTION OF HAZEL AVE. LAUREL, MONTANA



MARCH 2021

## Summary

The Bitterroot Group, LLC (Darrel Dyer), intends to create a 60-unit townhome development (Bitterroot Grove Townhomes) in Laurel, MT, on the south side of Eighth Street, between Fir Avenue and Juniper Ave. The development will utilize the Planned Unit Development (PUD) process, as outlined in the Laurel Municipal Code (LMC), Section 17.32.

The property is currently outside of Laurel city limits, and annexation has been requested. The property was split by an undeveloped portion of Hazel Ave, but abandonment has been conditionally approved by Yellowstone County. As a condition of approval for the Hazel Ave. abandonment, the landowner will resurvey the property to aggregate the property, as shown on the site plan.



Aerial of Site

## Variance Request

Section 17.32.050(E) of the LMC requires PUDs have a minimum size of five acres. This request is to allow a variance to that requirement, allowing this 4.68-acre site to be reviewed as a PUD. The project area consists of two entire city blocks, plenty of area for a development of this type. The abandonment of Hazel Ave., as previously discussed, provides some more area, but to meet the five acre requirement, the alleys in Blocks 6 and 7 would have to be abandoned, as well as a portion of Seventh Street. There are existing utilities in these alleys and street rights of way, as well as a ditch



easement in the street right of way. It is the desire of the landowner to keep these utility lines intact and operational, not only for existing users but for this development as well. It is understood that the City also prefers to not abandon the alleys or 7<sup>th</sup> St.

### **Justification for Granting of the Variance**

The granting of this variance is necessary to allow this townhome PUD development to move forward under the criteria set forth in the LMC. Allowing this development to be approximately 1/3 of an acre smaller than the required PUD size is an insignificant reduction and allows this land to be developed in a desirable manner.

The granting of this variance is special and peculiar to this property and this application. The landowner owns nearly enough property to meet the required size, and additional land acquisition would be undesirable due to the presence of City-owned utilities and streets.

The basis for this variance request is not related to financial gain or loss of the landowner. This request simply allows for the PUD review process to be utilized for this development.

The hardship was not created by the applicant. In fact, the landowner has taken steps, such as the abandonment of Hazel Ave., to come as close as possible to meeting the size requirement.

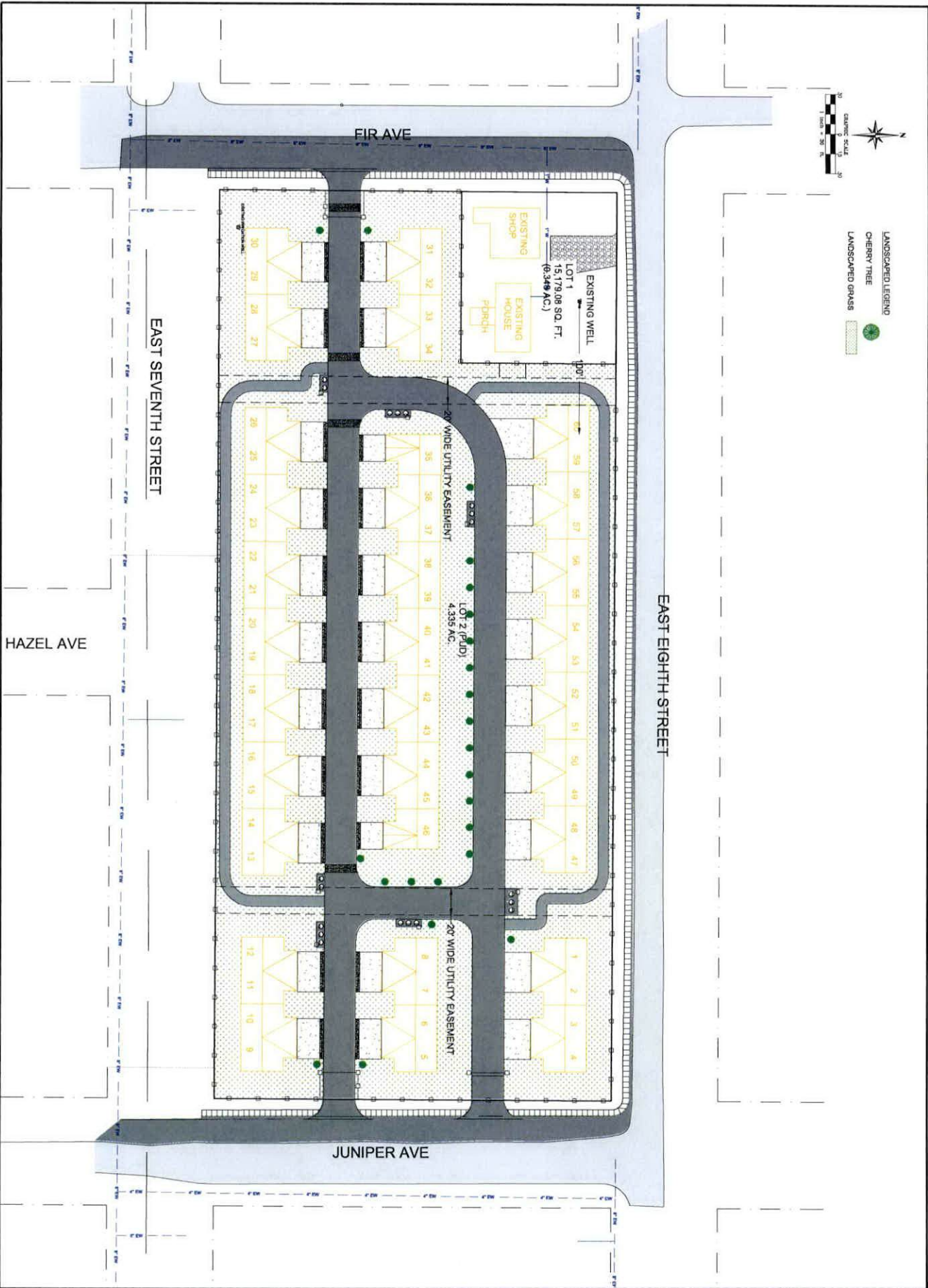
This granting of this variance would be within the intent and purpose of the LMC, and would allow for an attractive development of the site.

The granting of this variance will not adversely impact or injure others. It is limited to this property, which is completely surrounded by City streets and rights of way. Existing utilities and infrastructure will be utilized and expanded as a result of this development.





- LANDSCAPED LEGEND
- CHERRY TREE 
  - LANDSCAPED GRASS 



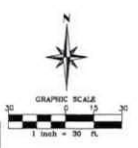
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BITTERTROOT GROVE TOWNHOMES  
PLANNED UNIT DEVELOPMENT  
LANDSCAPE PLAN

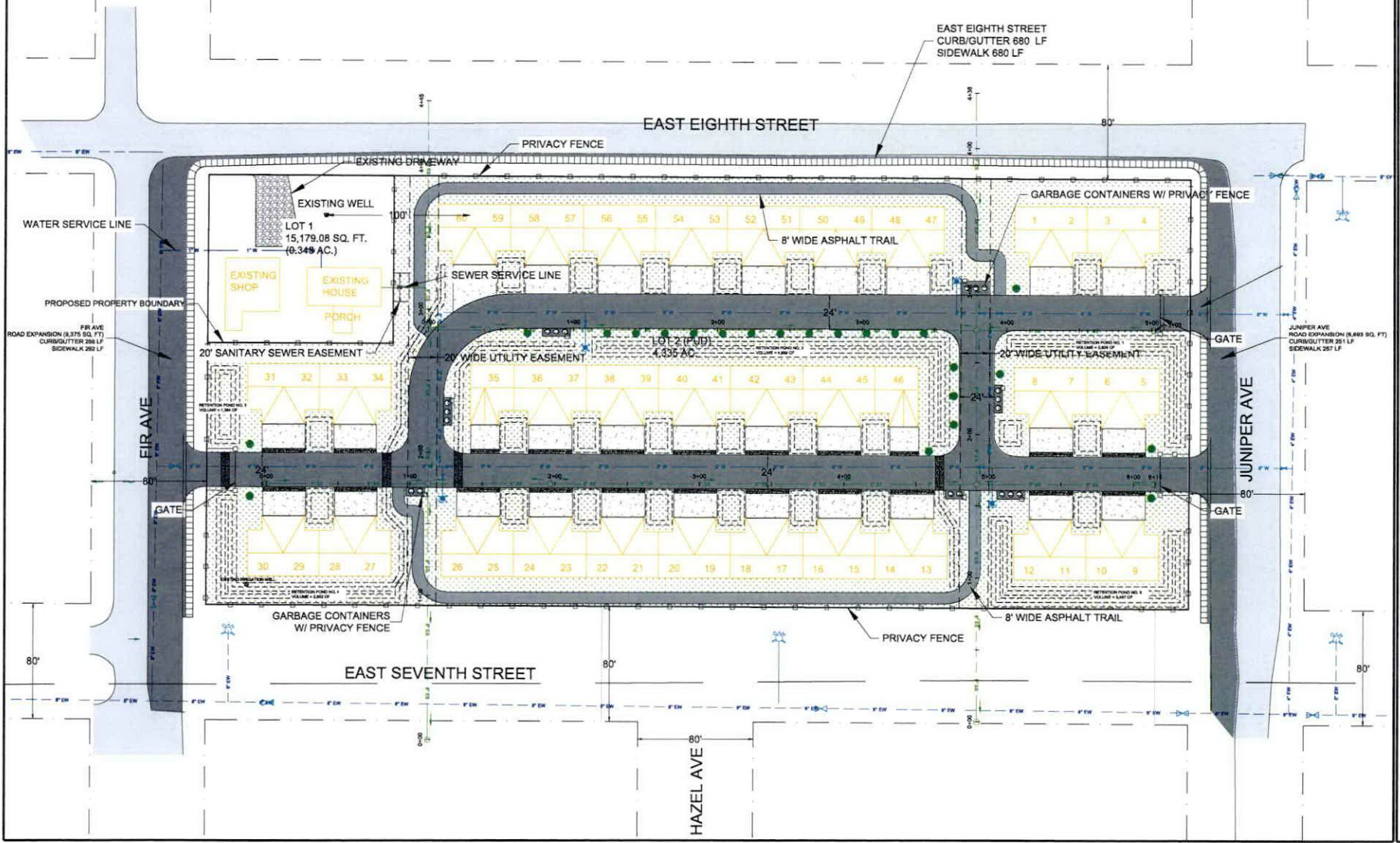
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CITY OF LAUREL, MONTANA		
TOWNSHIP: 25	RANGE: 24E	SECTION: 10



P.O. BOX 194  
PHONE 322-1116 / FAX 322-8514  
COLUMBUS, MT 59019  
WWW.ENGINEERING-WEST.COM



OPEN SPACE (37% OF AREA)  
 LANDSCAPED AREA : 1.42 AC. (61,802 SQ. FT.)  
 PAVED WALKING TRAIL: 0.20 AC. (8,703 SQ. FT.)



P.O. BOX 194  
 PHONE 322-1116 / FAX 322-8514  
 COLUMBUS, MT 59019  
 WWW.ENGINEERING-WEST.COM



DRAWN BY: TW CHECKED BY: SCALE: 1" = 30'  
 DATE: 8/21/21 REV. DATE: REV. NO.:  
 CITY OF LAUREL, MONTANA  
 TOWNSHIP: 2S RANGE: 2E SECTION: 10

BITTERROOT GROVE TOWNHOMES  
 PLANNED UNIT DEVELOPMENT

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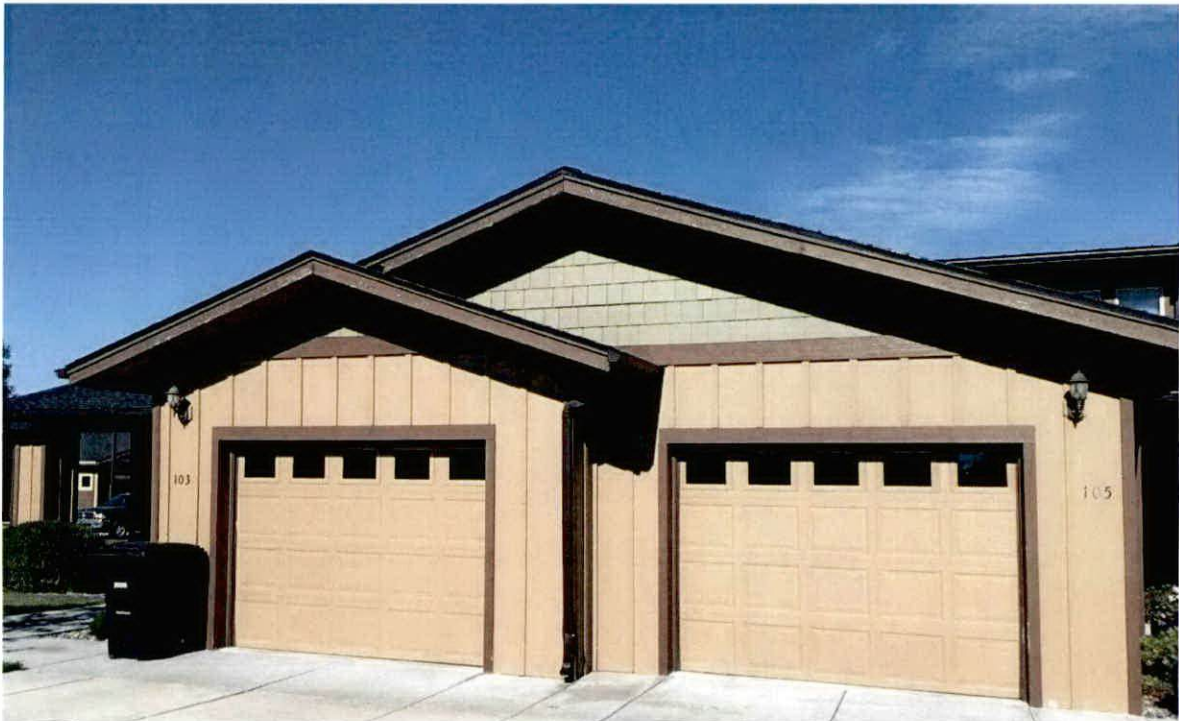
### Bitterroot Townhome PUD: Building Styles

The buildings within the Bitterroot Townhome PUD Development will be similar to the following examples. The development will include a variety of building styles to offer the development a certain amount of "personality" and to avoid the "cookie-cutter" appearance of tract housing.



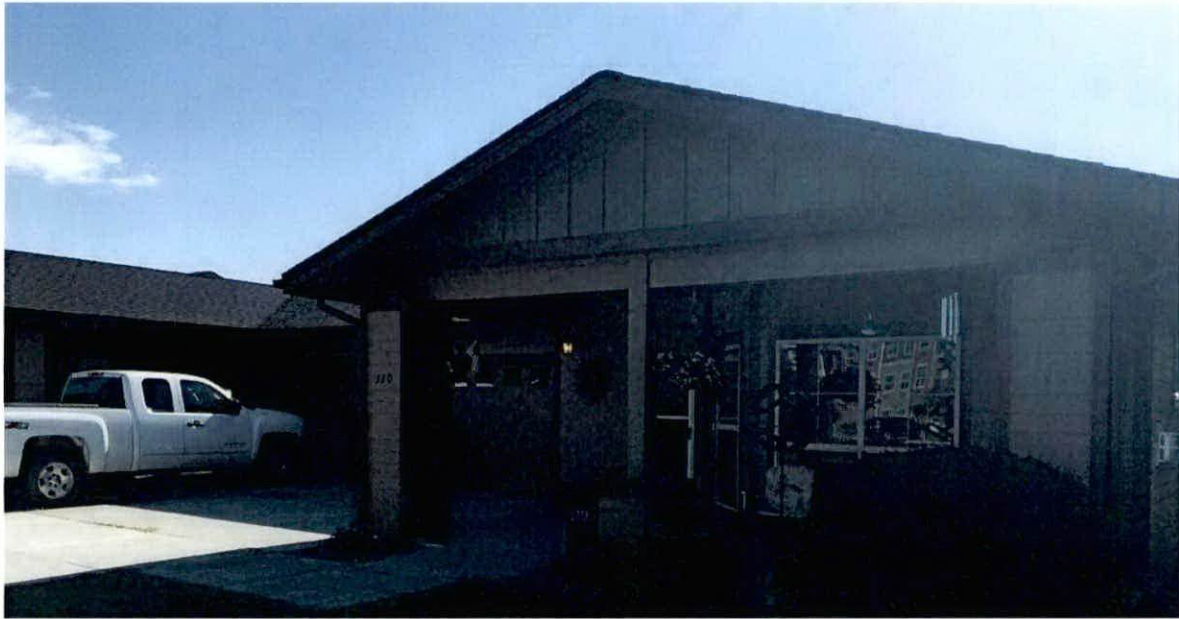
















**Return To:**  
Darrell Dyer  
112 3rd Ave  
Laurel, MT 59044

**BYLAWS OF BITTERROOT GROVE TOWNHOMES ASSOCIATION  
A 55 AND OLDER COMMUNITY**

**1. APPLICABILITY OF BYLAWS.**

The provisions of these Bylaws are applicable to The BITTERROOT GROVE which has been submitted to the provisions of the Montana Unit Ownership Act pursuant to the Declaration of Unit Ownership for said TOWNHOMES. BITTERROOT GROVE is located upon the following described real property located in Billings, Yellowstone County,

Montana:

**NEW PLAT WITH NEW LEGAL TO BE RECORDED AND THAT LEGAL INSERTED  
HERE LAUREL MONTANA NUTTING BROS SUBDIVISION**

All present or future owners, tenants, or any other person who might use the facilities of the above-described property in any manner, are subject to the provisions of these Bylaws. The acquisition, rental, or occupancy of any of the units will signify that these Bylaws are accepted, ratified, and will be complied with.

**2. MEMBERSHIP, MEETINGS AND VOTING.**

(a) **Membership.** Each unit owner shall be a member of BITTERROOT GROVE HOA, hereinafter called "the Association". However, if the ownership of any unit is vested in more than one person, and while each such owner shall be a member, the co-owners or joint owners of the unit shall be deemed to be one member for the purpose of voting and the determination of any required quorum. Developer shall be deemed the owner of each unit not yet sold, and shall have one vote for each such unit.

(b) **Ownership.** Ownership shall be determined according to the records of

**THESE BYLAWS PROVIDE FOR BINDING ARBITRATION OF DISPUTES**  
the Clerk and Recorder of Yellowstone County, Montana, except that a personal representative, conservator, or trustee shall be deemed to be the owner of any unit owned or held by him or her in such capacity, whether or not the same shall have been transferred to his or her name by a duly recorded conveyance. Owners shall also include those purchasing units under purchase contracts

and who have an equitable interest in the unit as disclosed by the public record in the office of the Yellowstone County Clerk and Recorder, and in such an event, the equitable owner shall be considered as the only owner of such unit. Tenants shall be deemed to be owners only if the record owner has complied with the provisions of Section

70-23-102(16), MCA.

**Cc) Voting.** The owners of each unit shall be entitled to one vote per unit and the vote for any unit owned by more than one person shall be exercised as such co-owners may among themselves determine. Whenever a unit is owned by two or more persons, any one of such owners may vote in the absence of protest by the other or others. Votes may be cast in person or by proxy.

(d) **Proxies.** Proxies may be made by any person entitled to vote. They shall be valid only for the particular meeting designated and must be filed with the Secretary on or before the appointed time of the meeting.

**Ce) Annual and Special Meetings.** The annual meeting of the Association shall be held on the first \_\_\_\_ of \_\_\_\_ of every year at \_\_\_\_ p.m. Additional regular and special meetings of the Association may be held at such times and places as shall be agreed upon by the unit owners. Notice of all meetings shall be given to each member personally or by mail, telephone, e-mail, or facsimile at least 10 days prior to the day named for such meeting. The presence, in person or by proxy, of owners of a majority of the units at such meetings of the Association shall be required for the transaction of any business by the Association.

The agenda for the annual meeting shall include the following:

- (1) Determination of quorum;
- (2) Approval of minutes of last annual meeting;
- (3) Presentation of financial report for past year and budget for coming year;
- (4) Report Board opinion of adequacy of limits on insurance coverage;
- (5) Election of Directors;
- (6) Appointment of Arbitrator, as provided below;
- (7) Old business, if any; and
- (8) New business.

Meetings shall be conducted in accordance with Roberts Rules of Order.

(f) **Arbitrator.** At each annual meeting, the owners shall mutually agree upon and appoint one person who is not a member to serve as Arbitrator for the Board and members for the coming year. In the event of a dispute or disagreement between the directors and members or between two or more members which cannot otherwise be resolved without a lawsuit, except non-payment of assessments, or other monies owed the Association the issue shall be presented to the Arbitrator and the decision of the Arbitrator shall be binding upon the Association, its members, and its Board of Directors. The Arbitrator shall be paid a reasonable amount for the arbitration services. If an Arbitrator is not selected by the members, one or more Arbitrators shall be appointed in the manner provided by the Montana Uniform Arbitration Act, or any successor to that Act. Claims of non-payment of assessments or other monies owed the Association and foreclosure of a lien for unpaid assessments or monies owed the Association are ~ subject to binding arbitration.

(g) **Manner of Obtaining Approval of Unit Owners.** Approval of all decisions and resolutions of the Association which require the approval of unit owners may be obtained by vote at an annual or special meeting, or by written ballot or petition, circulated among the owners.

### 3. **BOARD OF DIRECTORS.**

(a) **Number of Directors.** The affairs of the Association shall be governed by a Board of Directors composed of three owners. Directors shall be elected by the members, provided, however, that \_\_\_\_\_ shall serve as one of the three elected Directors until all units are sold by the Developers. After sale of all units, the number of Directors may be increased upon affirmative vote of 75% of the members entitled to vote.

(b) **Term of Office.** Two Directors shall be elected at the first annual meeting of the Association for a one year term. \_\_\_\_\_, of \_\_\_\_\_, shall serve as the remaining Director for a two year term of office. Thereafter, the term of office of each Director shall be for two years, subject to the requirement that \_\_\_\_\_ must be one of these three Directors until sale of all units.

(c) **Nomination ~ Election.** Except as otherwise provided above, candidates for vacant Director positions shall be nominated from the floor at each

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annual meeting. Each unit owner shall be entitled to one vote for each vacancy in the Board of Directors; cumulative voting shall be permitted. If votes are cast by the owners of a majority of the units, the candidate(s) receiving the greatest number of votes shall serve for the term. If a quorum cannot be obtained for an annual meeting, the existing Directors shall continue to serve until the next annual or special meeting is held and new Directors are elected, or as an alternative, the existing Directors may contact members to determine who is willing to serve as a Director, and deliver a written ballot to all owners for voting. The ballot shall include the names of all owners willing to serve for the term(s) to be filled.

**Cd) QUALIFICATIONS OF Directors.** Directors must be members of the Association, or, in the case of partnerships, LLCs, LLPs and corporate members, a designated representative of the corporate member, partnership, LLP or LLC.

**Ce) Compensation.** No compensation shall be paid to Directors for their services as Directors unless salaries for Directors are approved by vote of one owner of each unit. However, Directors shall be reimbursed for actual expenses incurred in the performance of their duties.

**(f) Meetings.** Regular and special meetings of the Board of Directors may be held at such times and places as shall be determined by the Directors. Notice of such meetings shall be given by the Secretary to each Director and to the Treasurer and President of the Association, personally or by mail, telephone, facsimile, or e-mail at least three days prior to the day named for such meeting. If notice is given by e-mail, the Association shall maintain a record of all e-mails sent. A majority of the Directors shall be needed for a quorum and any action by the Board shall require approval of a majority of the Directors present at the meeting. Directors may have telephone meetings so long as all Directors are present or are given the opportunity to be present, and so long as each Director is able to speak to and be heard by the others. Unless otherwise agreed by all Directors, meetings of Directors shall be conducted in accordance with Roberts Rules of Order. In any event, all Directors shall be given an opportunity to briefly speak without repeated interruptions, and formal votes shall be taken and recorded. Information concerning major actions by the Board shall be promptly disseminated to all members of the Association in a manner to be determined by the Board. Owners may attend Board meetings, but their participation in the meetings may be limited to the extent determined by the Directors present at the meeting.

**(g) Powers and Duties.** The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and may do

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all acts and things as are not by law, the Declaration, or these Bylaws directed to be exercised by the members. In addition, the Board of Directors shall have the following powers and duties:

- (1) To enforce the provisions of the Declaration of Unit Ownership and these Bylaws by appropriate action.
- (2) To determine the amount of assessments payable by the unit owners for common expenses and to allocate and assess said expenses among unit owners in proportion to their respective interests in the common elements. Assessments shall include reasonable reserve funds. The Board shall have the authority to invest reserve funds in any manner not inconsistent with the needs of the Association.
- (3) In its discretion, to impose special assessments for approved capital expenses and for emergencies as they are incurred.

- (4) To send written notice of any change in the regular assessments and written notice of any special assessment to each owner at least 30 days before its due date.
  - (5) To record and foreclose a lien against any unit for unpaid assessments or other monies owed the Association by an owner or to bring an action at law against the owner personally obligated to pay the same.
  - (6) To adopt a schedule of late payment fees, with consent of 75% of the members entitled to vote.
  - (7) To issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment.
  - (8) With consent of a majority of the unit owners, to adopt a schedule of fines for violation of the Declaration, these Bylaws, or the duly adopted rules and regulations of the Association.
  - (9) To cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate.
  - (10) To procure and maintain insurance required or authorized to be purchased by the Association.
  - (11) To pay all debts of the Association.
  - (12) To grant and accept easements, permits, and licenses on behalf of all unit owners, as necessary for the proper operation of the project.
  - (13) To rent or lease the basement apartment, collect the rents, terminate the leases or rental agreements and take all usual actions of a landlord as permitted by the Montana Landlord-Tenant Act.
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- (14) To authorize occupancy of the basement apartment, rent free, to a manager or caretaker employed by the Association.
  - (14) To contract for repairs, maintenance, alterations, additions, and improvements which are the obligation of the Association.
  - (15) Upon written request from any person, agency or corporation having an interest or prospective interest in a unit, to prepare and furnish within a reasonable time an audited financial statement of the Association for the immediately preceding tax year, at the requesting party's expense. The Board shall require that audit

expenses be paid in advance of beginning the audit.

- (16) To review and approve or disapprove all requests from unit owners for consent to modify, alter, or add to any limited or general common element, and to remove or replace any unapproved modifications or additions at the expense of the offending unit owner.
- (17) To file annual corporate reports with the Montana Secretary of State and to pay the required fee.
- (18) To prepare income tax returns for the Association, if required by state or federal law, and to pay all taxes owed.
- (19) To provide any notices required by these Bylaws or the Declaration of Unit Ownership for The Terrace.
- (20) In its discretion, to delegate any of the above-mentioned powers and duties to one or more officers or employees of the Association or to an independent contractor or agent.
- (21) To engage the services of a paid manager, managing agent or caretaker. If the Board hires a professional management agent, the contract with that agent must permit termination of the contract by either party, without penalty, after 90 day advance notice of termination is given.
- (22) To supervise all officers, agents, and employees of the Association to ensure that they properly perform their duties.

(h) Directors as Agent and Attorney-in-Fact for Unit Owners. The Board of Directors is hereby irrevocably appointed as agent and attorney-in-fact for the unit owners of all of the units and for each of them to manage, control, and deal with the interests of such unit owners in the common elements, including the exterior of the building as necessary to permit the Board of Directors to fulfill all of its powers, rights, functions, and duties.

The Board of Directors is hereby irrevocably appointed as agent and attorney-in-fact for each unit owner, each mortgagee, other named insureds, and their beneficiaries, and any other holder of a lien or other interest in the

PUD TOWNHOME PROPERTY or the property to:

- (1) Adjust and settle all claims arising under insurance policies purchased by the Board of Directors;
- (2) Execute and deliver releases upon the payment of claims; and



- (3) Act on their behalf in any condemnation proceeding or act of eminent domain.

The mortgagee and guarantor of the mortgage on any unit shall have the right to timely written notice of any condemnation or casualty loss that affects a material portion of the project or the unit securing its mortgage.

Ci) Resignation and Removal of Directors. Any Director, except \_\_\_\_\_, may be removed from office by the majority vote of the unit owners. In the event of resignation or removal of a Director, the vacancy shall be filled at a special meeting of the unit owners or by written ballot circulated among the owners in the manner provided for the election of Directors, with the person so elected serving the balance of the unexpired term.

#### 4. OFFICERS.

(a) Board Elects Officers. The Board of Directors shall annually elect a President, a Secretary, and a Treasurer. The Board in its discretion may also elect a Vice-President. No two offices may be held by the same person except the offices of Secretary and Treasurer. The officers of the Association shall hold office at the pleasure of the Board and may be removed by the Board, with or without cause. In the event of a vacancy, the Board shall elect a successor at any regular meeting or at any special meeting called for such purpose. \_\_\_\_\_ shall serve as interim President and Secretary respectively until the first annual meeting of the Association.

Cb) Qualifications of Officers. Directors may also serve as officers but are not required to do so. Officers may be Directors, other members of the Association, or persons who are not members.

(c) Duties. The President shall preside at all meetings of the Association and of the Board of Directors, shall supervise the affairs of the Association and its officers, shall have all of the powers and duties usually vested in the office of President and shall also perform such other duties as from time to time may be imposed by the Board of Directors. The Vice-President, if any, shall act in the place of the President, and shall have such other duties as may be assigned by the Board of Directors. The Secretary shall keep all books and records of the Association and

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the Board of Directors and record all minutes of meetings of both, shall keep a record of all members of the Association, and shall serve all required notices. The Treasurer shall have responsibility for Association funds and securities and shall be responsible for keeping full and accurate itemized accounts of all receipts and disbursements in books belonging to the Association, in chronological order. The Treasurer shall be responsible for the deposit of all monies and other valuable effects in the name, and to the credit, of the Association in such depositories as may from time to time be designated by the Board of Directors. All checks over \$500.00 must be signed by two officers. Officers signing checks must be members of the Association. If the Association hires a manager, some of the duties may be delegated to the manager. However, the manager shall not have the right to sign checks.

(d) Compensation. Any officer may be compensated, in a reasonable amount, as determined by the Board of Directors.

**5. LIABILITY OF OFFICERS AND DIRECTORS.**

The Officers and Directors of the Association shall not be liable to the Association or any unit owner for any mistake of judgment, negligent or otherwise, except for their own individual willful misconduct or bad faith. Except to the extent that such damages and expenses are satisfied by Officer'S and Director's liability insurance, the Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding by reason of the fact that the person is or was an officer or director of the Association against damages and expenses, including attorney fees, judgments, fines and amounts paid in settlement incurred by the person in connection with such action, suit or proceeding, if the officer or director acted in good faith and in a manner the officer or director reasonably believed to be in, or not opposed to, the best interest of the Association. If not satisfied by insurance proceeds, such damages and expenses shall be a common expense.

**6. INSPECTION OF RECORDS.**

The books, records, and papers of the Association and a copy of the current Declaration of Unit Ownership, Bylaws, Articles of Incorporation, and rules and regulations, if any, for BITTEERROOT GROVE, shall be open for inspection by any unit owner and by holders, insurers, and guarantors of first mortgages on units at any reasonable time, after reasonable notice to the Secretary.

**7. EMERGENCY ACCESS.**

Directors and their manager, if any, shall have the right to enter any unit in case of an emergency originating in or threatening such unit whether or not the owner or occupant is present at the time.

**8. INSURANCE.**

(a) Except as otherwise provided in subsection (k) below, the Board of Directors shall insure all common element improvements, including every part of the building and all fixtures attached or affixed to any part of the building by screws, nails, glue, cement or other building material, against loss or damage by fire and other casualty in an amount representing the full insurable value thereof, less a deductible in an amount to be determined by the Board. Such insurance shall be "all-in" coverage. Works of art or purely decorative items normally not considered to be part of the real estate when A TOWNHOME unit is sold are not fixtures, even though temporarily attached to a wall with nails or screws.

(b) The Board of Directors shall purchase public liability and property damage insurance, insuring the Association and the unit owners for liability for personal injuries to, or the death of, any person, or damage to property resulting from the ownership, use, or occupancy of the

common areas, with policy limits to be determined by the Board, but no less than \$1,000,000.00 per occurrence and \$2,000,000.00 per aggregate.

(c) The Board of Directors shall purchase fidelity insurance coverage for all persons handling Association monies, naming the Association as insured, in an amount equal to the maximum funds held by the Association. If the Board employs a management agent, the agent must have its own fidelity insurance policy providing the same coverage required above.

(d) The Board shall purchase Officer's and Director's liability insurance covering each member of the Board and each officer of the Association; the amount of coverage shall be determined by the Board.

(e) The cost of all insurance purchased by the Association shall be a part of the common expense.

(f) All insurance policies shall be issued by an "A" rated or better company approved by FNMA; Directors shall seek to obtain the best insurance value, considering the coverage, the price, the financial stability of the insurer, and the history of the insurer in promptly and properly handling claims.

(g) In the event of a loss exceeding one thousand dollars (\$1,000.00), all Association insurance proceeds shall be paid to the Board of Directors as trustee for disbursement.

(h) Each policy shall contain a standard mortgagee clause in favor of each mortgagee or trust indenture beneficiary, or contract of sale endorsements in favor of the contract sellers of any units and shall require the insurer to notify the Association, each unit owner, and each first mortgage holder, in writing, of any lapse, cancellation or substantial change to the policy at least ten days prior to the date on which such cancellation or change takes effect. Duplicate originals of all new insurance policies and of all policy renewals, together with proof of payment of premiums, shall be delivered to all mortgagees and contract sellers of units at least ten days prior to expiration of the current policies. THIS IS A 55 AND OLDER COMMUNITY THE ASSOCIATION MUST APPROVE ALL SALES TO ENSURE THE AGE RESTRICTIONS ARE MAINTAINED.

(i) The Board of Directors shall annually review the adequacy of limits of coverage of insurance policies, shall obtain an appraisal from an insurance company or other knowledgeable person or business of the full replacement value of the covered improvements, without deduction of depreciation, for the purpose of determining the amount of property insurance required under this section, and report its findings and opinion regarding insurance to the membership of the Association at its annual meeting.

(j) Insurance policies shall contain waivers of subrogation and waivers of any defense based on co-insurance or of invalidity arising from any acts of the insured.

(k) Unit owners shall not be prohibited from carrying other insurance for their own benefit provided that all policies shall contain waivers of subrogation and provided that the

liability of the carriers issuing insurance obtained by the Board of Directors shall not be affected or diminished by reason of any such additional insurance carried by any unit owner. Insurance purchased by the Association shall not cover personal items, such as furniture or clothing inside the units. Owners must insure their personal property and obtain liability insurance to cover injury or damage occurring within their unit if they wish such insurance coverage. If any major improvements are made to the interior of a unit after initial purchase of the unit, those improvements (betterments) must be insured for fire or other casualty on the owner's personal insurance policy if the owner wishes to have insurance. Insurance on such betterments will not be purchased by the Association. Replacement of worn fixtures or equipment with similar new ones shall not be deemed a betterment.

(1) Insurance payments for a fire or other property loss insured by the Association shall be applied by the trustee to repair or replacement of the damaged property. In the event of loss to one or more but not all units, any amount needed to repair or replace the unit, in excess of insurance payments, shall be paid by the owner of that unit. If insurance proceeds exceed the replacement cost of the units, excess proceeds shall be credited to the accounts of all unit owners.

(m) The Association shall pay, as a common expense, the deductible amount for any property loss insured by the Association if the damage is only to the common elements. In all other cases, owners of the damaged units shall pay the deductible in proportion to the amount of the loss to each damaged unit reported on the insurance claim.

#### 9. PROPERTY LOSS.

Property damaged by fire or other casualty must be repaired or rebuilt unless there is a total loss of all units, all unit owners agree not to rebuild, and there is agreement not to rebuild by mortgagees that represent at least 51% of the votes of the units that are subject to mortgages. Insurance payments for a property loss insured by the Association shall be applied by the Board, or its designated trustee, to repair or replacement of the damaged property except in the event of a total loss of all units and a decision not to rebuild. Units which are repaired or replaced after casualty shall conform in style, quality, and appearance to the unit as it existed prior to the casualty.

#### 10. ASSESSMENTS FOR COMMON EXPENSES.

(a) When Assessments Begin. The owner of each completed unit shall be obligated to pay monthly and special assessments for common expenses beginning on the 1st day of the month following sale of the first unit by Developer.

(b) Amount. Prior to the annual meeting, the Board of Directors shall prepare an Association budget for the coming year. A copy of that budget, together with a statement of the amount of each monthly assessment for the coming year, shall be delivered to each unit owner at least one week before the annual meeting. Each monthly assessment shall equal the total estimated common expenses for the coming year, plus a reasonable reserve allowance for replacement of improvements, divided by twelve, multiplied by the percent of undivided interest in the common elements for the assessed unit. Assessments shall be due and payable on the first

day of each month. If an annual budget is not prepared as required, the monthly assessment due shall be equal to the amount of the monthly assessment for the previous year until changed by the Board of Directors. The regular monthly assessments may be changed by the Board at any time it determines that the change is necessary or advisable. Written notice of the amount of any changed monthly assessment shall be given to each unit owner at least 30 days in advance of the first payment due date for the assessment. Except for changes in the amount of the monthly assessments, no bills or other notices that monthly assessments are due need be given by the Association. Assessments must be based upon and computed by using the percentile interest that each unit owner has in the common elements.

**Cc) Special Assessments.** Special assessments may be made by the Board of Directors for capital improvements only upon an affirmative vote of ALL of the members entitled to vote. The Board may impose special assessments for unanticipated emergency expenses without a vote of the members.

**(d) Interest and Late Fees.** Assessments paid more than 10 days after the date when due shall bear interest at the rate of ten percent (12.0%) per annum from the date when due until paid; in addition, late paying owners shall be obligated to pay a late fee if a schedule of late payment fees has been adopted by the Board of Directors. All payments upon assessments shall be applied first to late fees, then to interest, and then to the earliest assessment due.

**Ce) Record Keeping.** All assessments collected by the Association may be commingled in a single fund from which shall be paid the expenses for which the assessments are made. Separate records of payments received shall be kept for each unit.

**Cf) No Exemption from Payment.** No unit owner is exempt from payment of any common expense by waiver of the use or enjoyment of those items paid for or by abandonment of the unit.

**(g) Account Balance Transfers with Unit.** No unit owner shall be entitled to receive the balance in that owner's assessment account upon sale of the owner's unit. The account balance shall pass with sale of the unit to the credit of the new unit owner. This provision shall not be deemed to prohibit a selling owner from collecting the balance of that owner's assessment account from a purchaser.

**Ch) Remedies for Failure to Pay.** The remedies for failure to pay assessments are set forth in the Declaration of Unit Ownership.

## **II. MAINTENANCE OF UNITS AND COMMON ELEMENTS.**

**Ca) Unit Owner Responsibilities.** Every unit owner shall be responsible for all maintenance of and repairs to the owner's unit, for replacement of broken glass in the unit. Each owner shall be responsible for all damages to the other units adjoining caused or to the common elements resulting from failure to effect such maintenance and repair. Each unit owner shall be responsible for paying all taxes and assessments on his or her unit and for payment for all utilities provided to the unit, except water and sewer. All utility lines and pipes, fixtures, and



equipment serving only one unit shall be maintained, replaced, and kept in good repair by the unit owner.

All maintenance and repairs for which an owner is responsible shall be paid for by the owner. [In the event an owner or tenant fails or refuses to provide adequate maintenance or repairs, the Association may, after ten day advance written notice to the owner, enter into the owner's unit and make the needed repairs or do the maintenance, and charge the actual cost of such repairs or maintenance to the unit owner. Any such costs shall be a lien on the unit on which repairs were made or maintenance was done, and if unpaid, may be foreclosed in the same manner as a lien for common expenses.

Each owner shall use a reasonably high standard of care in maintaining their individual unit so that BITTERROOT GROVE will reflect a high pride of ownership. The Board of Directors of BITTERROOT GROVE Association shall be the final authority in determining whether an owner is providing adequate maintenance.

**Cb) Association Responsibilities.** Except as otherwise provided above, the Association shall be responsible for any maintenance, repair, and replacement of common elements. The Association shall pay landscaping care, for snow removal from the STREETS and sidewalks, and for paving and striping as needed. The Association may employ personnel necessary for all required maintenance, upkeep, and repair. The Association shall use a reasonably high standard of care in providing such maintenance, management, and repair so that BITTERROOT GROVE will reflect a high pride of ownership.

## 12. RESTRICTIONS OF USE.

The following restrictions apply to use of all units and common areas:

(a) Types of Uses Allowed. The property shall be used only for residential purposes except that an owner may use a portion of the unit for an office so long as the activities therein shall not interfere with the quiet enjoyment or comfort of any other owner or occupant and provided the use complies with the applicable zoning ordinances of the City of Laurel. In addition, Developer shall have the right to maintain a sales office in the project until all units are sold.

(b) Pets. A maximum of one dog and one cat shall be permitted in each unit only if kept under the owner's control at all times. No pets shall be allowed to run loose on the common area. Owners shall be responsible for promptly cleaning up after their pets and for payment for any damage caused by their pets. Owners shall keep all pets on their property unless walking with a lease.

Any owner shall pay a fine, imposed by the Board, of \$50.00 for a second violation of any of these pet restrictions and a fine of \$100.00 for each violation thereafter. Such fines shall be a common expense, payable only by the offending unit owner. In addition, the Board may require an owner to permanently remove a pet from Bitterroot Grove property if the Board receives two bona fide complaints that the animal is a nuisance from one or more other owners within a six

month period. No reptiles shall be kept in any unit.

(c) **Nuisances.** No nuisances or unlawful activities shall be allowed on or within any unit or the common areas, nor shall any use or practice be allowed which interferes with the peaceful possession or allowed use of the property by others.

(d) **Alterations to Building and Common Elements.** Nothing shall be done in, on, or to any unit or in, on or to the limited or general common elements which will impair the structural integrity of the building. Except as otherwise provided herein, no unit owner or occupant shall erect or place any building or structure on any common area, add or remove landscaping, nor make any other additions or alterations to any common areas except in accordance with plans and specifications approved by the Board of Directors. If plans and specifications have not been approved in writing by the Board within 45 days after submission, they shall be deemed disapproved.

(e) **Antennas and Satellite Dishes.** No antennas or satellite dishes exceeding one meter in diameter or diagonal measurement, and no air-conditioning units, wiring, or any other device shall be installed on the exterior of the building or on common elements without prior written approval of the Board. Owners may install a small satellite dish or antenna not exceeding one meter in diameter or diagonal measurement on their terrace or on the roof of the building without prior approval of the BITTERROOT GROVE Board of Directors. The location of the satellite dish must comply with the ordinances of the City of Laurel.

(f) **Garbage.** All garbage and trash must be placed in the proper receptacles designated for refuse collection, and no garbage or trash shall be placed elsewhere on any common element.

(g) **Noise** Residents and their guests shall exercise care about making noise which may disturb other residents. No unit owner shall make or permit excessive noise between the hours of 11:00 p.m. and the following 7:00 a.m. if such noise shall disturb or annoy occupants of other units.

(H) **Parking.** Unit owners shall not park vehicles in such a manner as to block sidewalks or access to the street, or take up more than one parking space with a single vehicle, nor shall they permit any member of their family, guests, or tenants to do so. Junked or non-operational vehicles, boats and trailers, and motorhomes shall not be parked on common areas. Improperly parked vehicles may be removed at the owner's expense.

(i) **Blocking Access.** Owners shall not take or permit any occupant or guest to take any action which impairs pedestrian access to another unit or vehicle access to the parking area.

(j) **Fire Prevention.** No unit owner shall perform any act or store anything within a unit or on the common areas which might increase the rate of fire insurance for BITTERROOT GROVE or increase the probability of fire as a result of such act or the storage of such items.

Ck) **Fines.** The Board of Directors is hereby authorized to adopt a schedule of fines for violation of any of the provisions contained in this Section and for violation of any additional



rules and regulations adopted by the Board pursuant to Section 13 below, and to assess such fines against all owners who violate these provisions.

The owner of each unit shall be responsible for fines resulting from the conduct of the occupants of the unit and their guests. In the event any owner, any occupant, or a guest of any occupant fails to abide by the provisions of this Section, or the rules and regulations adopted pursuant to Section 13 below, the Board shall be entitled to recover from the unit owner all costs and attorney fees incurred by it in compelling compliance, including collection of fines imposed for violations, with or without initiating arbitration or filing a lawsuit. If an owner wishes to dispute the imposition of a fine against that owner, the owner must submit the dispute to the Arbitrator within six weeks after receipt of written notice of the fine; failure of an owner to submit the dispute to arbitration within six weeks shall be deemed an admission that the fine was properly imposed by the Board. All fines shall be a lien on the unit of the owner against whom they are imposed, and if unpaid, the lien may be foreclosed in the same manner as a lien for common expenses.

### **13. RULES AND REGULATIONS.**

Administrative rules and regulations concerning the use of the common elements may be promulgated and amended by the Board of Directors with the approval of *A majority of the members* entitled to vote.

A copy of the current rules and regulations shall be provided to each unit owner by the Secretary of the Association, without cost, upon receipt of a request

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### **14. WORKING CAPITAL.**

The Developer, as agent of the Board of Directors, shall collect from the initial purchaser of each unit, at the time of closing, an initial capital payment equal to the Buyer's prorata share of insurance for the year plus an amount equal to the amount of the regular monthly assessments for two months. The Developer shall be entitled to retain the Buyer's pro-rata share of insurance for the current premium period if Developer paid the premium for the unit sold for that period; otherwise, the premium shall be paid to the Association's insurance agent. The remainder of each initial capital payment collected from the buyers shall be delivered to the Board of Directors to provide the necessary working capital for the Association. Such funds may be used for certain prepaid items, including initial maintenance, equipment, supplies, organizational costs, furnishings for common areas, other start up costs, and such other purposes as the Board of Directors may determine. These funds may not be used by Developer to defray any of its expenses, construction costs, or other financial obligations, and shall NOT be considered to be prepayment of regular monthly assessments.

In addition, at closing, the Developer shall collect from the initial purchaser of each unit the Buyer's pro-rata share of the assessment for that month.

## **15. LIABILITY OF THE ASSOCIATION AND UNIT OWNERS.**

The Association shall not be liable to any unit owner or any occupant of a unit for any failure to provide services paid for as a common expense or for any uninsured injury or damage to person or property caused by the elements or resulting from water, snow, or ice which may leak or flow from any portion of the common elements or from any pipe, drain, conduit, appliance, or equipment into a unit. The Association shall not be liable to any unit owner or any occupant of a unit for uninsured loss or damage, by theft or otherwise, of articles which may be stored upon any of the common elements. This shall not be deemed to be a waiver of any liability between unit owners. No diminution or abatement of any assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the common elements or from any action taken by the Association to comply with any law, ordinance, or order or directive of any government authority. The Association shall not be liable to any unit owner or any occupant of a unit for uninsured injury or damage to person or property caused by another unit owner. Any such liability shall be attributed solely to the responsible unit owner. The Association shall not be liable to any unit owner or any occupant

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of a unit for uninsured personal injuries or uninsured injuries to property occurring on common elements.

## **16. AMENDMENT.**

(a) Prior to sale and closing of \_\_\_ units, these Bylaws may be amended by Developer. Each owner, by acceptance of a deed to any TOWNHOME shall be deemed to have approved any such amendment by Developer and to have granted to Developer the power, pursuant to Section 70-15-301, MCA, to make such amendments.

(b) These Bylaws may also be amended by the Association either in a duly constituted meeting called for such purpose or by written petition circulated among the owners. However, no amendment shall take effect without the approval of Developer until such time as all units have been sold by Developer. No amendment shall take effect unless approved by at least 75% of the unit owners entitled to vote and until a copy of the amendment, certified by the President and Secretary of the Association, is recorded in the office of the Clerk and Recorder of Yellowstone County, Montana. In all cases, however, the Bylaws shall always include those particulars required to be included therein by the Montana Unit Ownership Act.

(c) The consent of at least 51% percent of eligible mortgage holders shall be required for a change in any of the following:

- (i) Changes in insurance requirements; and
- (ii) Changes in any provisions which expressly benefit mortgage holders, insurers, or guarantors.

## **17. BYLAWS ARE COVENANTS.**

The provisions of these Bylaws shall be covenants running with the land and shall be binding on all owners, their tenants, and guests for so long as the real property described herein is subject to the provisions of the Montana Unit Ownership Act.

**18. ENFORCEMENT AND WAIVER.**

These Bylaws may be enforced in the manner set forth in the Declaration of Unit Ownership for The Terrace, in these Bylaws or as otherwise authorized by Montana law. In the event the Board of Directors shall refuse or neglect to enforce the provisions of these Bylaws, the Declaration of Unit Ownership, or duly adopted rules and regulations, any unit owner shall have the right to do so.

Failure of the Association, its Board of Directors, or any of its members to enforce the provisions of these Bylaws or the Declaration of Unit Ownership of The

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Terrace or any rules and regulations adopted by the Association shall not be deemed a waiver of the right to do so in the future.

The losing party in any lawsuit or arbitration proceeding brought to enforce these Bylaws or the Declaration or to foreclose a lien described in the Declaration or these Bylaws shall be obligated to pay the reasonable attorney fees incurred by the prevailing party, together with costs incurred in the lawsuit or arbitration proceeding. In the event the services of an attorney are used by the Association or its Board of Directors to enforce these Bylaws without filing a lawsuit or initiating arbitration, the party violating these Bylaws shall be obligated to pay the attorney fees incurred by the Association; the attorney fees shall be a lien on the unit of the violating owner. The lien may be enforced in the same manner as a lien for unpaid assessments for common expenses.

**19. DEFINITIONS.**

The terms used herein shall have the definitions set forth in the Declaration of Unit Ownership for BITTERROOT GROVE.

**20. HEADINGS.**

The headings used in these Bylaws are for convenience only and shall not be deemed to limit the provisions of these Bylaws.

**21. NOTICE.**

Except where otherwise provided in these Bylaws, any written notice required or provided for in these Bylaws or in the Declaration of Unit Ownership for BITTERROOT GROVE shall be hand-delivered or mailed to the last address provided by the owner to the Association. A notice sent by certified mail shall be deemed delivered three days after the date

when mailed, whether or not actually received by the owner to whom it was sent.

IN WITNESS WHEREOF, the undersigned, being the interim President and Secretary of the Association, have executed this instrument as evidence of the adoption of the aforesaid Bylaws by the Association and hereby certify that the foregoing is a true and correct copy of the Bylaws of the Association.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2007.

**BITTEERROOT GROVE HOMEOWNERS ASSOCIATION**

By: \_\_\_\_\_, President

By: \_\_\_\_\_, Secretary-Treasurer

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STATE OF MONTANA )  
County of Yellowstone )

ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2021, before me, the undersigned, a Notary Public for the State of Montana, personally appeared \_\_\_\_\_, known to me to be the President of BITTERROOT GROVE HOMEOWNERS ASSOCIATION, whose name is subscribed to the foregoing Bylaws and acknowledged to me that he executed the same.

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

(seal) (print or type name of notary)  
Notary Public for the State of Montana  
Residing at Billings, Montana  
My Commission Expires \_\_\_\_ 200~  
STATE OF MONTANA )  
County of Yellowstone )

ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2007, before me, the undersigned, a Notary Public for the State of Montana, personally appeared KEN TOLLIVER, known to me to be the Secretary-Treasurer of THE TERRACE HOMEOWNERS

**ASSOCIATION, whose name is subscribed to the foregoing Bylaws and acknowledged to me that he executed the same.**

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

**(seal)**

**(print or type name of notary)  
Notary Public for the State of Montana  
Residing at Billings, Montana  
My Commission Expires \_\_\_\_ 200**