

RESOLUTION NO. R21-100

A RESOLUTION OF ANNEXATION AND APPROVAL OF ZONE CHANGE FOR THE CHERRY HILLS SUBDIVISION, THIRD FILING, AN ADDITION TO THE CITY OF LAUREL, SUBJECT TO CONDITIONS IMPOSED BY THE CITY.

WHEREAS, the property owner's agent ("Petitioner") submitted a Petition on the property owner's behalf, seeking annexation to the City of Laurel and a zone change from Residential Tracts to R-7500 zoning as provided by the Laurel Municipal Code; and

WHEREAS, Petitioner constitutes the owner of the entire property proposed to be annexed, as described below; and

WHEREAS, the Laurel City-County Planning Board reviewed the Petition for Annexation and requested zone change along with documents provided by Petitioner and City Staff and held a duly advertised public hearing on August 18, 2021; and

WHEREAS, the Laurel City-County Planning Board conducted the public hearing and gathered comments from proponents and opponents to the annexation and zoning requests; and

WHEREAS, based on the evidence and testimony provided at the hearing the Laurel City-County Planning Board approved a recommendation to the City Council for approval of the annexation request as well as the requested zone change, subject to the conditions contained in the Staff Report; and

WHEREAS, the City Council scheduled and conducted a public hearing on the Petition on September 14, 2021 and allowed both proponents and opponents of the Petition to provide testimony and/or evidence into the record prior to their decision; and

WHEREAS, based on the public hearing and all evidence presented and existing in the City File, the City Council of the City of Laurel has determined that it is in the best interest of the City and the inhabitants thereof, and of Petitioner, that the following described territory be annexed to the corporate limits of the City of Laurel, with the requested zone change, only if the conditions contained in the Staff Report dated August 25, 2021, attached hereto and incorporated herein, are satisfied by Petitioner.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Laurel, Montana, as follows:

1. Pursuant to MCA Section 7-2-Part 46 the incorporated boundaries of the City of Laurel shall be and the same hereby is extended and/or expanded to include the territory described in the petition for annexation as additionally described below.
2. The owner of record of the territory annexed to the City of Laurel has executed a petition seeking such annexation.

3. The following described territory is hereby annexed to the City of Laurel:

Cherry Hills Subdivision 3rd Filing, consisting of 9.37 acres of property further described as follows:

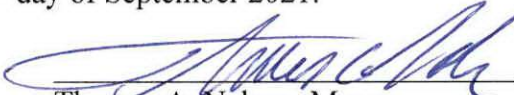
S08, T02S, R24E, COS 3034, Parcel TR1, in N2(01), Yellowstone County, Montana.

4. That the requested zone change from Residential Tracts to R-7500 zoning for the above-described property is hereby approved. The Official Zoning Map for the City of Laurel shall be amended to reflect such change.
5. The Petitioner shall complete and satisfy all of the conditions contained in the Staff Report dated August 25, 2021, attached hereto and incorporated herein, before the annexation is finalized.
6. This Resolution shall be incorporated into the official minutes of the City Council, and upon said incorporation, the City Clerk-Treasurer shall file a true and correct, certified copy of this Resolution and of said minutes with the Yellowstone County Clerk and Recorder so long as the conditions of approval are satisfied.
7. From and after the date that the City Clerk-Treasurer files such certified copy of this Resolution and of the Council minutes in the office of the Yellowstone County Clerk and Recorder, this annexation of the above-described territory to the City of Laurel shall be deemed complete and final.

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

PASSED and APPROVED by the City Council of the City of Laurel, Montana this 14th day of September 2021.

APPROVED BY THE MAYOR this 14th day of September 2021.


Thomas A. Nelson, Mayor

ATTEST:


Bethany Langve, Clerk-Treasurer

APPROVED AS TO FORM:


Sam Painter, Civil City Attorney



LAUREL CITY-COUNTY PLANNING DEPARTMENT

STAFF REPORT

TO: Laurel City-County Planning Board
FROM: Nicholas Altonaga, Planning Director
RE: Annexation and Preliminary Plat of the Cherry Hills Subdivision, 3rd Filing
DATE: August 25, 2021

DESCRIPTION OF REQUEST

Morrison-Maierle has submitted an annexation application and preliminary plat application for the Cherry Hills Subdivision, 3rd Filing on behalf of the property owner/developer. The proposed Cherry Hills Subdivision 3rd Filing is a 28-lot residential subdivision located on property west of Cherry Hills Drive and W. Maryland Lane in north-west Laurel. Approval of annexation and zone change would bring 9.37 acres of land into the City of Laurel and enable the proposed Cherry Hills Subdivision, 3rd Filing to connect to the City water, wastewater, and street system.

Owner: Goldberg Investments LLP
Legal Description: S08, T02 S, R24 E, C.O.S. 3034, PARCEL 1, IN N2 (01)
Address: Approximately 1850 East 8th Street
Parcel Size: 9.37 acres
Existing Land Use: Agricultural, vacant.
Proposed Land Use: Residential Subdivision
Existing Zoning: Residential Tracts
Proposed Zoning: Residential 7500 (R-7500)

BACKGROUND AND PROCEDURAL HISTORY

- December 18, 2021 – Morrison-Maierle submit documents for annexation and subdivision pre-application meeting.
- January 7, 2021 - Pre-Application meeting with Morrison-Maierle and City Staff
- January 12, 2021 – Staff transmitted Pre-Application meeting summary letter to Morrison-Maierle staff.
- May 25, 2021 – Cherry Hills Subdivision, 3rd Filing Annexation application and preliminary plat application submitted to the City.

- June 11, 2021 – Laurel Planning Department transmitted the Element Review letter to Morrison-Maierle. All elements required by LMC Chapter 16, Appendix F were present in the application.
- July 8, 2021 – Laurel Planning Department transmitted the Sufficiency Review letter to Morrison-Maierle. All elements required by LMC Chapter 16, Appendix F were deemed sufficient to move the application forward. Certain comments were noted by the Planning Director from city various departments.
- August 18, 2021 – A Public Hearing was held at Planning Board. The Planning Board recommended the approval of the Annexation and Preliminary plat approval of the Cherry hills Subdivision, 3rd filing with the presented staff conditions.
- September 14, 2021 – Public hearing scheduled at City Council to review the annexation application and preliminary plat application to approve, conditionally approve, or deny the applications.

STAFF FINDINGS

1. Applicant has submitted an application for annexation and preliminary plat containing all the necessary components needed for both to move forward.
2. Applicant has provided additional details of subdivision plans and documents where necessary.
3. Applicant has worked with multiple city departments to determine effectiveness of the proposed utilities for the property.
4. Applicant has provided updated documents whenever required by City departments.
5. City staff determined that the applications for annexation and preliminary plat were sufficient to move forward to Planning Board and City Council.
6. City staff have found only minor issues with the applications that require conditions of approval prior to the final plat approval stage.
7. The public noticing requirements of LMC 16.03.030 have been met.

PLANNING BOARD AND GOVERNING BODY REVIEW CRITERIA

LMC Chapter 16.03.040 - Staff and Agency Review:

- A. Review Procedure Schedule. Upon receipt of a complete and sufficient major preliminary plat application, the planning director or designee shall schedule the plat before the city-county planning board.
- B. Submittal Distribution. Planning staff shall distribute the application to all affected city and county departments, local, state, and federal agencies, school districts and public utilities for review as appropriate and indicate the review timeframe. Failure of any agency to complete a review of a plat will not be the basis for denial of the plat by the AGB.
- C. Plat Review. The planner shall review the major subdivision plat submittal and make a staff report of issues, concerns, conditions, or recommendations and send out the list to the

planning board members with the agenda of the meeting at which the plat is to reviewed; a copy must also be sent to the subdivider or his representative.

- D. **Hearing Notice.** The planning board shall hold a public hearing on all major and applicable subsequent minor preliminary plat applications, placing a notice in a newspaper of general circulation in Laurel not less than fifteen days prior to the date of a public hearing. The planner shall also notify the subdivider and each property owner of record, and each purchaser under contract for deed of record of property immediately adjoining land included in the plat and located within three hundred feet of the proposed subdivision by certified mail not less than fifteen days prior to the date of hearing (MCA § 76-3-605(3)).
- E. **Planner's Report.** The planner shall prepare a draft findings of fact (the effect on agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat, and public health and safety as per MCA § 76-3-608(3)(a)) for review by the planning board. The planner shall also forward the recommendation of the planning board to the AGB including basis for such recommendation and its compliance with adopted Growth Management Plan, the Bike/Ped Plan, and other adopted city and county plans and policies in writing no later than ten days after the public hearing (MCA § 76-3-605(4)).
- F. **Subsequent Hearing.** Before acting on the subdivision application, the AGB shall determine whether, subsequent to the public hearing, new information has become available or information that the public has not had a reasonable opportunity to examine. If so, the AGB may act on the subdivision application in accordance with this chapter or schedule a subsequent public hearing for consideration of only the new information that may have an impact on the findings and conclusions that the AGB will rely upon in making its decision on the proposed subdivision. The AGB may chose to hold the subsequent public hearing or may direct the planning board to hold it. In either case, the subsequent public hearing shall be held at the next scheduled meeting for which proper notice for the public hearing on the subdivision application can be provided.

If a subsequent hearing is held, the sixty- or eighty-day working day review period is suspended, and the new hearing must be noticed and held within forty-five days of the AGB's determination to hold a subsequent public hearing. The sixty- or eighty- working day review period will resume from the date of the subsequent public hearing. The governing body may not consider any information that is presented after the subsequent hearing (MCA § 76-3-615).

- G. **Subdivider's Preference.** The AGB shall give due weight and consideration to the subdivider's expressed preferences if the AGB requires mitigation of significant adverse impacts (MCA § 76-3-608(5)(b)).

In reviewing a subdivision and when requiring mitigation, the AGB may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the plat (MCA §76-3-608(5)(a)).

The AGB shall send the subdivider written notice of its decision and the reason therefore. (MCA § 76-3-608(4)).

RECOMMENDATIONS

The Planning Director recommends approval for the Annexation and Zone Change of the proposed Cherry Hills Subdivision, 3rd Filing to Residential R-7500 with the following conditions.

1. 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.
2. All construction and installation of public improvements must conform to the standards of the Laurel Department of Public Works and Montana Public Works standards.
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 the Planning Board approve the preliminary plat for the Cherry Hills Subdivision 3rd Filing with the following conditions:

1. Preliminary Plat shall be updated with the comments noted in the Sufficiency letter dated July 8, 2021 prior to recording.
2. Subdivision Improvement Agreement shall be updated with the notes from the Sufficiency letter dated July 8, 2021, and the annotated SIA provided to the applicant prior to recording.
3. The Preliminary Plat and supporting water and wastewater design will be approved by Montana Department of Environmental Quality (MDEQ).
4. The Preliminary Plat, Subdivision Improvements Agreement, and City Council Resolution granting approval shall be filed with the Yellowstone County Clerk & Recorder within 90-days of preliminary plat approval.
5. The Roadways and Right-of-Ways shall be constructed to the specifications presented in the plat plan and supporting documentation.
6. This Preliminary Approval shall be valid for 3 calendar years.
7. Hydrant flow tests must be approved by the City and its contracted engineer.
8. Verification must be provided to the City for the water modelling noted by the engineer in the field
9. Water model exhibits must be provided to and approved by the City showing the system characteristics and modeled properties compared to measured properties
10. Wastewater/Sewer analysis must be provided to and approved by the City.

11. A map of pre-developed stormwater conditions including the boundary, routing, and calculations must be provided to and approved by the City.
12. Water quality storm volumes and calculation sheets shall be provided to the City.
13. Confirmation is provided that the developer is willing to take on the liability of the recommendations of the Geotechnical Report dated 2006.
14. The conditions of the Geotechnical report shall be followed during the construction of the public infrastructure.
15. A Weed Management Plan shall be prepared for the project and approved by the Yellowstone County Weed District.

ATTACHMENTS

Annexation and Zone Change:

1. Annexation Application cover Letter
2. Annexation Application Form
3. Annexation Agreement
4. Waiver of Right to Protest

Cherry Hills Subdivision, 3rd Filing:

1. Cover Sheet
2. Preliminary Plat Application
3. Adjacent Property owners list
4. Draft Subdivision Improvements Agreement
5. Environmental Assessment
6. Traffic Impact Study
7. Lot Layout
8. Geotechnical Report
9. Subdivision Bylaws
10. Homeowners Association Bylaw
11. ROW Easement documents
12. LMC 16.03 – Subdivision Review Procedures
13. LMC 16.04 – Development Requirements
14. Element Review letter - Cherry Hills Subdivision, 3rd Filing (June 11, 2021)
15. Sufficiency Review letter – Cherry Hills Subdivision, 3rd Filing (July 8, 2021)
16. KLJ. Inc Preliminary Plat Review Comments letter (July 6, 2021)

June 8, 2021

Nick Altonaga
City Planner
City of Laurel
PO Box 10
115 West First Street
Laurel, MT 59044-0010

Re: Cherry Hills Subdivision – 3rd Filing
Annexation Application and Supporting Materials

Dear Mr. Altonaga:

Enclosed is an application for annexation for the proposed Cherry Hills Subdivision – 3rd Filing, located in the North ½ of Section 8, Township 2 South, Range 24 East, Yellowstone County, Montana as COS #3034.

Please find the following information included with this letter for your review:

- Draft Annexation Application Form
- Review Fee of \$534.25
- Draft Annexation Agreement
- Draft Waiver of Right to Protest

If you have any questions or comments about the project, please feel free to contact me at (406) 922-6734 or lhageman@m-m.net. Thank you.

Sincerely,



**Morrison
Maierle**
engineers • surveyors • planners • scientists



Lee Hageman, P.E.
Land Development Engineer

cc: Western Holdings, LLC
MMI File 6683.001

We create solutions that build better communities.

**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: GERALD A & ARDIS M NEUMANN
Address: 2669 SELVIG LN, BILLINGS, MT 59102
Phone: (406) 698-4534

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.) CHERRY HILLS SUBDIVISION 3RD FILING, 9.37 ACRES OF:
Legal description: SO8, T02 S, R24 E, C.O.S. COS 3034, PARCEL TR1 , IN N2 (01)
Lot size: PROPOSED SUBDIVISION SIZE: 9.37 ACRES
Present use: AGRICULTURAL
Planned use: RESIDENTIAL 7500
Present zoning: RESIDENTIAL
(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: Within property and located in existing 80' easement
Location of existing main: (future Maryland Dr) and extensions from Cherry Hills Drive
Cost of extension of approved service: \$149,000
How cost determined: Bid tabs of previous subdivisions on price per lineal feet of roadway
Timeframe for installation: ~ 2 months

Sewer Service: Within property and located in existing 80' easement
Location of existing main: (future Maryland Dr) and extensions from Cherry Hills Drive
Cost of extension of approved service: \$100,000
How cost determined: Bid tabs of previous subdivisions on price per lineal feet of roadway

Timeframe for installation: ~ 2 months
How financed: Developer financed (no lending required)

Streets:

Is there any adjoining County ROW to the proposed annexation: N/A

Location of existing paved access: Maryland Drive and Cherry Hills Drive

Cost of paving: \$497,000 (Including structural materials, asphalt, curb/gutter, sidewalks, etc.)

How cost determined: Bid tabs of previous subdivisions on price per lineal feet of roadway

Timeframe for construction: ~1-3 months.

Other required improvements: Provide above information on attached pages.

5. A map suitable for review of this application of the proposed area to be annexed must be submitted with this application. SEE ATTACHED PRELIMINARY PLAT.
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. SEE ATTACHED WAIVER.
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. ACKNOWLEDGED.
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. A FEE IS INCLUDED IN THE AMOUNT OF \$534.25 FOR THE PROPERTY OF 9.37 ACRES.
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 _____
_____.

CITY HALL
115 W. 1ST ST.
PLANNING: 628-4796, ext. 5
WATER OFC.: 628-7431
COURT: 628-1964
FAX 628-2241

City Of Laurel

P.O. Box 10
Laurel, Montana 59044



Office of the City Planner

June 11, 2021

Lee Hageman
Land Development Engineer
Morrison Maierle
2880 Technology Blvd W.
PO Box 1113
Bozeman, MT 59771

Regarding the Element Review of the submitted documents for the Preliminary Plat Application for the Cherry Hills Subdivision, 3rd Filing.

Dear Mr. Hageman,

Below are listed the results of the element review by city staff on the Major Preliminary Plat application for the Cherry Hills Subdivision, 3rd Filing, submitted by your office on May 25th, 2021, and additional documents submitted on June 8, 2021, as per LMC. Chapter 16, Appendix F: Required Supporting Documents for Major Preliminary Plat Applications.

1. Names and Addresses of Immediately Adjoining Property Owners typed or neatly printed on Address Labels – *Included.*
2. Draft Subdivision Improvements Agreement – *Included.*
3. Environmental Assessment or Summary of Probably Impacts, when applicable. – *Included.*
4. Traffic Accessibility Study (TAS) when applicable. – *Included.*
5. Preliminary Water and Sanitation Information – *Included.*
6. Geotechnical Report – *Included.*
7. Draft Protective and restrictive covenants, if any. – *Included.*
8. Draft Articles of Incorporation when Homeowner's Association is proposed. – *Included.*
9. When a tract of land is to be subdivided in separate filings, a Master Plan of the Entire area to be developed. – *Not Included. Not Applicable.*

We have also received the Application for Annexation and the supporting documents that will run in tandem with this subdivision application. Please let me know if you have any questions or comments about the items in this letter. Thank you for your time and I look forward to your response.

Regards,

Nicholas Altonaga, CFM
Planning Director

CITY HALL
115 W. 1ST ST.
PLANNING: 628-4796
WATER OFC.: 628-7431
COURT: 628-1964
FAX 628-2241

City Of Laurel

P.O. Box 10
Laurel, Montana 59044



Office of the City Planner

July 8, 2021

Lee Hageman
Morrison Maierle
2880 Technology Blvd W.
PO Box 1113
Bozeman, MT 59771

Regarding of the Sufficiency of the Preliminary Plat Application for the Cherry Hills Subdivision, 3rd Filing

Mr. Hageman,

The subdivision application for the Cherry Hills Subdivision, 3rd Filing is deemed sufficient. What follows is a list of comments by City Staff and the City Engineer. There were only minor issues noted with the plat application and its documents, with many of the issues able to be handled prior to the Final Plat approval of the Subdivision process.

Preliminary Plat Comments

1. A small number of items were noted on the Preliminary Plat. The most important item of note is how the utility easement at the Southeastern corner of the property will be dealt with.
 - a. The utility easement currently houses the City of Laurel Water Booster Station.
 - b. This easement (Yellowstone County Clerk & Recorder Document # 3358070) was established in 2005 with the development of the Elena Subdivision.
 - c. This area of the property will become its own lot with the approval of this subdivision.
 - d. This could become a portion of the proposed Utility Lot.
2. The minimum right-of-way width is 67ft as noted in LMC Table 16.4.C.1. A variance should be noted on the Subdivision Improvement Agreement.
3. Michelle Drive and Rochelle Lane are very similar names, it may be good to rename one to not confuse any future residents or EMS, Fire, or Police services.
4. A copy of the annotated Preliminary Plat has been provided with this letter.

Subdivision Improvement Agreement Comments

1. The Planning Department had minor comments on the SIA.
2. Please refer to the annotated SIA attached to this letter for suggested updates.
3. Please note a variance to LMC Table 16.4.C.1 for the width of the rights-of-way for Cherry Hills Drive, Rochelle Lane, and Michelle Drive.
4. A copy of the annotated Subdivision Improvement Agreement has been provided with this letter.

Traffic Impact Study Comments

1. Appears fully sufficient.

2. The Subdivision will have no major impacts on increased automobile trips at nearby major intersections.

Water and Sewer Report Comments

1. No hydrant flow tests are provided in the study.
2. Please provide verification that model matches what you see in the field.
3. Provide water model exhibits and printouts showing system characteristics and modeled properties compared to measured properties.
4. No sewer analysis was provided.

Stormwater Drainage Comments

1. Engineer needs to provide a map of the pre-developed conditions showing boundary, routing, & calculations.
2. What is the water quality storm volume and where are the calculation sheets for the analysis?

Geotechnical Report Comments

1. Is the developer willing to assume liability for geotechnical report dated 2006?
2. Has an updated cost estimate for the items within the Geotechnical Report been prepared?
3. City will recommend a condition of approval for following the recommendations of the Geotechnical Report during build-out of the public infrastructure.

Environmental Assessment Comments

1. Can the developer provide a copy of the Wetland Delineation report dated March 2021?
2. Has a Weed Management Plan been prepared for the project?

The Planning Department and other City Staff are willing to work with the developer to rectify these items wherever possible. These items will also be solved through conditions of approval for the Preliminary Plat Application when appropriate. A letter with specific comments and citations in the supporting documents has been provided by the contracted engineers for the City of Laurel, KLJ Inc. A copy of those comments has been provided with this letter.

An annexation agreement was also supplied with the Preliminary Subdivision Application. That application has been deemed sufficient and will be brought forward in conjunction with the application for subdivision. During the Preliminary Plat Review process, City Staff located a Water and Sewer Facilities Engineers Report for Cherry Hills Subdivision, 3rd Filing, dated July 2006. That document has been provided with this letter for your review.

City Staff anticipate the Preliminary Plat Application for the Cherry Hills Subdivision, 3rd Filing to be placed on the agenda for the Laurel City-County Planning Board Meeting of August 18, 2021. Please contact me if you have any questions or comments about these items. Thank you for your time and I look forward to your response.

Nicholas Altonaga



Planning Director

CC: Forrest Sanderson, Ryan Welsh, Kurt Markegard



2611 Gabel Road
Billings, MT 59102-7329
406 245 5499
KLJENG.COM

July 6, 2021

Mr. Nick Altonaga, CFM
Planning Director
City of Laurel – Public Works Department
PO Box 10
Laurel, Montana 59044

Re: Laurel Public Works Engineering Preliminary Plat Review: Cherry Hills Subdivision, 3rd Filing

Dear Mr. Altonaga:

We have completed our review of the submittal packet for the above referenced project. Please review the following items to offer input on behalf of the City of Laurel. Once you have completed review, we can revise this letter for you to send to the applicant. Please have the applicant revise the packet based on the comments contained in this letter and shown on the returned items.

The applicant will be expected to resubmit the revised reports for review and provide written responses to any items that they would like to discuss. The following comments were noted:

1. Section 2, Page 10 Item 2. Supplemental information indicates that there are no subdivision improvements agreements proposed, however a copy of the SIA is included as an attachment to the package?
2. Section 2, Page 11, Item 5.a Springs – Supplemental information indicates that there are no springs on or near the property, but the lush growth on the property to the west of here appears to be weeping groundwater.
3. Section 4, Page 62, Water Rights memo – First line of the introduction locates the subdivision in the northeast corner of Laurel when it is in the northwest corner.
4. Section 4, Page 72, Draft Stormwater Calculations – Engineer needs to provide a map of the pre-developed conditions showing boundary, routing, & calculations.
5. Section 4, Page 72, Draft Stormwater Calculations – What is the water quality storm volume and where are the calculation sheets for the analysis?
6. Section 4, Page 81, Water Model Evaluation – Engineer improperly quotes me. I stated “no major changes have occurred since the model was created, but they should perform some verification as we’ve seen pressure differences from actual to modeled of up to 30 psi.” No hydrant flow tests are provided in the study. Please provide verification that model matches what you see in the field.
7. Section 4, Page 82, Water Model Evaluation – Provide water model exhibits and printouts showing system characteristics and modeled properties compared to measured properties.
8. Section 4, Sewer Analysis – None provided.
9. Section 7, Memo’s from CMG Construction – Explain purpose of these being included within the submittal.



10. Section 7, Geotechnical Investigations – The two investigations provided are from 2006; Does the Owner’s Engineer accept the liability of using a report that is 15+ years old?

We have reviewed the documents provided and identified issues, but this review in no way releases the Developer from submitting design and construction documents for approval to the City prior to the start of any construction activities.

Please give me a call at 406.245.5499 if you have any questions or concerns. Thank you and we look forward to working with you on this project.

Sincerely,

KLJ

A handwritten signature in black ink, appearing to read 'Ryan E. Welsh', written in a cursive style.

Ryan E. Welsh, P.E.
Project Engineer

PRELIMINARY PLAT
CHERRY HILLS SUBDIVISION - 3RD FILING
 TRACT 1 OF CERTIFICATE OF SURVEY No. 3034,
 SITUATED IN THE N1/2 OF SECTION 8, TOWNSHIP 2 SOUTH, RANGE 24 EAST,
 PRINCIPAL MERIDIAN, YELLOWSTONE COUNTY, MONTANA.

ZONING: CITY OF LAUREL, RESIDENTIAL - 7500
 OWNER: GERALD A & ANNE M NEUMANN, 2009 BELVUE LN, BILLINGS, MT 59102
 SUBDIVIDER: WESTERN HOLDINGS, LLC, PO BOX 81330, BILLINGS, MT 59109
 PURPOSE: TO CREATE A SUBDIVISION FOR RESIDENTIAL USE

AN ADDITION TO THE CITY OF LAUREL

COS 2171
 PARCEL 1C TR 1C
 2ND AMND

COS 2171
 PARCEL 1E
 2ND AMND

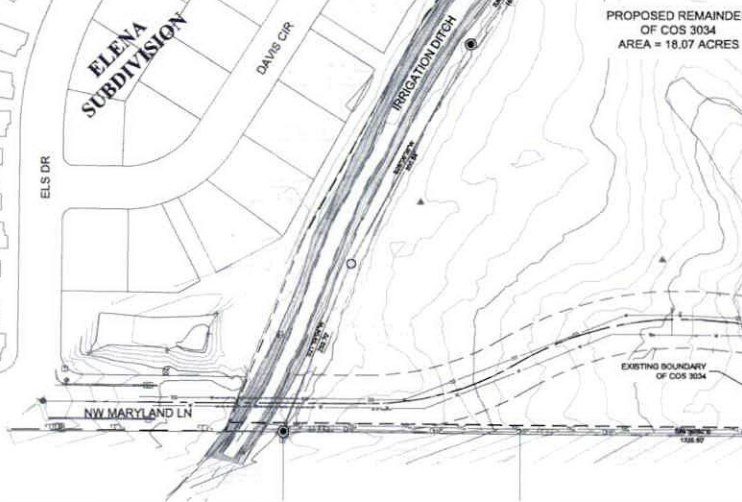
COS 2171
 PARCEL 1F2
 3RD AMND

CHERRY HILLS
 SUBDIVISION
 2ND FILING



VICINITY MAP
 NOT TO SCALE

ELENA
 SUBDIVISION



LEGEND

- PLS CHANGE PARTITION ESTABLISHED FROM PREVIOUS MEASUREMENTS AND PREVIOUS PLATS OF RECORD
- Point: 1/8" = 10' diam.
- Point: Yellow Plastic Cap
- PROPOSED SEWER MAIN
- PROPOSED WATER MAIN
- PROPOSED STORM MAIN

AREA SUMMARY

PROPOSED LOTS = 28
 MIN. LOT AREA = 7,809
 MAX. LOT AREA = 23,834
 EXISTING ZONING = RESIDENTIAL
 PROPOSED ZONING = RESIDENTIAL 7500
 EXISTING LAND USE = AGRICULTURAL
 PROPOSED LAND USE = RESIDENTIAL 7500

LOT AREAS: 6.45 ACRES
 OPEN SPACE & PARKLAND: 0.00 ACRES
 PROPOSED RIGHTS-OF-WAY: 2.92 ACRES
 TOTAL AREA: 9.37 ACRES

ROAD LENGTH SUMMARY

CHERRY HILLS DR: 529.41 LF
 MARYLAND LN: 562.88 LF
 STREET A: 435.09 LF
 STREET B: 461.77 LF
 TOTAL LENGTH: 1,989.15 LF

AREA SUMMARY

LOT AREAS: 6.45 ACRES
 OPEN SPACE & PARKLAND: 0.00 ACRES
 PROPOSED RIGHTS-OF-WAY: 2.92 ACRES
 TOTAL AREA: 9.37 ACRES

COS 1262

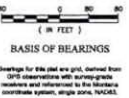


FIELD HYDRO: MMS
 DATE: 07/2021
 DRAWN BY: LRH
 CHECKED BY: MMS
 PROJECT: # 26683021
 DRAWING NAME: N:\6683021\CADD\Concept\Preliminary\26683021_CherryHills3rdFilingPrel.dwg

T4 SEC.	SECTION	TOWNSHIP	RANGE
14	8	2S	24E

PRINCIPAL MERIDIAN, MONTANA
 YELLOWSTONE COUNTY, MONTANA
 PLOTTED DATE: JUNE 2021
 SHEET 1 OF 3

ENGINEER: MORRISON-MAIERLE INC.
 SURVEYOR: MORRISON-MAIERLE INC.



RETURN AFTER RECORDING:
Western Holdings Company, LLC
PO Box 51330
Billings, MT 59105

**DECLARATION OF PROTECTIVE COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR CHERRY HILLS SUBDIVISION – 3RD FILING**

THIS DECLARATION is made this ____ day of _____, 2021, by Western Holdings Company, LLC, a Montana limited liability company, hereinafter referred to as “Declarant”.

WHEREAS, Declarant is the owner of real property situated in Yellowstone County, Montana, more particularly described on Exhibit “A” attached hereto and incorporated herein (“Property”);

WHEREAS, Declarant intends to develop, sell and convey the above-described real property, hereinafter referred to as the “Cherry Hills Subdivision – 3rd Filing”; and,

WHEREAS, Declarant desires to subject all of said real property, together with the Lots contained therein to the covenants, conditions, restrictions and reservations herein set forth and referred to as “Covenants”;

NOW THEREFORE, Declarant does hereby establish, dedicate, declare, publish and impose upon the Property the following Protective Covenants, Conditions and Restrictions which shall run with the land, and shall be binding upon and be for the benefit of all persons claiming such Property, their grantors, legal representatives, heirs, successors and assigns, and shall be for the purpose of maintaining a uniform and stable value, character, architectural design use, and development of the Property. Such Covenants shall apply to the entire Property, including but not limited to all Lots, Utility Lot and improvements placed or erected thereon, unless otherwise specifically excepted herein. The Covenants shall inure to and pass with each and every parcel, tract, Lot or division.

Said Covenants shall be as follows:

ARTICLE I – DEFINITIONS

Section 1. “Articles of Incorporation” shall mean the Articles of Incorporation for the Cherry Hills Subdivision – 3rd Filing Owners’ Association, Inc., a Montana non-profit corporation, filed with the Montana Secretary of State.

Section 2. “Architectural Guidelines” shall mean those architectural guidelines contained in Article VI of these Covenants

Section 3. “Association” shall mean the Cherry Hills Subdivision – 3rd Filing Owners’ Association, Inc., its successors and assigns. The Association shall be incorporated as a Montana nonprofit corporation, with its members as the Lot Owners.

Section 4. “Bylaws” shall mean the Bylaws for Cherry Hills Subdivision – 3rd Filing Owners’ Association, Inc.

Section 5. “Contract Purchaser” shall mean a person buying a Lot pursuant to a contract for deed, trust indenture or mortgage.

Section 6. “Covenants” shall mean this Declaration of Protective Covenants, Conditions and Restrictions for the Cherry Hills Subdivision – 3rd Filing, and as it may, from time to time, be amended or supplemented.

Section 7. “Declarant” shall mean Western Holdings Company, LLC, a Montana limited liability company, and its successors and assigns, located at PO Box 51330, Billings, MT 59105.

Section 8. “Declaration” shall mean this Declaration of Protective Covenants, Conditions and Restrictions for Cherry Hills Subdivision – 3rd Filing, and as it may, from time to time, be amended or supplemented.

Section 9. “Directors” or “Board of Directors” shall mean the Board of Directors of the Association.

Section 10. “Yellowstone County Regulations” shall mean any and all rules and regulations adopted by Yellowstone County that governs the Property and the Lots, including, but not limited to land use regulations and Zoning Regulations.

Section 11. “Cherry Hills Subdivision – 3rd Filing Architectural Committee” shall mean the Committee appointed by the Board of Directors of Directors of Cherry Hills Subdivision – 3rd Filing Owners’ Association, whose function is to review and approve or disapprove plans, specifications, designs, landscaping, sites, and locations of improvements to be constructed within Cherry Hills Subdivision – 3rd Filing.

Section 12. “Improvement(s)” shall include, but is not limited to, all buildings, outbuildings, stairs, decks, structures, bridges, roads, pathways, driveways, parking areas, fences, screening walls and barriers, hedges, windbreaks, plantings, trees, shrubs, retaining walls, yard and lawn ornaments of artwork, tree houses, solar panels, water lines, sewer lines, electrical, gas, telephone and internet transmission lines, cable television, television and radio transmission facilities, dishes, towers, poles, signs, and all other structures, installations and landscaping of every type and kind, whether above or below the land or Lot surface.

Section 13. "Lot(s)" or "Property(ies)" shall mean and refer to all real property herein described and platted into Lots as Cherry Hills Subdivision – 3rd Filing according to the official plat, and any amendments thereto, thereof on file and of record in the office of the County Clerk and Recorder, Yellowstone County, Montana. Lots shall mean any real property platted into Lots in any future phases of Cherry Hills Subdivision – 3rd Filing.

Section 14. "Lot Owners" or "Owner" shall mean and refer to any person or entity, whether one or more persons or entities, owning a fee simple title to or interest in a Lot or a Contract Purchaser, whether one or more persons or entities, owning or purchasing a Lot, but excluding those having a mortgage or an interest merely as security for the performance of an obligation; provided, however, that prior to the first conveyance of a Lot for value, the terms "Lot Owner" or "Owner" shall mean the "Declarant" or its successors or assigns. The term "contract purchaser" shall mean a person buying a Lot pursuant to a Contract for Deed. The term "person" shall include any person, persons or entities.

Section 15. "Member" shall mean any Lot Owner or Owner. Each Member or Lot Owner agrees to abide by and be bound by these Covenants, the Articles of Incorporation, and the Bylaws and the Resolutions of the Association, if any.

Section 16. "Utility Lot" means those areas set aside for storm water treatment within the subdivision, and shall include roads, proposed stormwater pond, proposed channels, common areas, and easements.

Section 17. "Utility Lot Management Plan" shall mean the management plan for the lot designated "Utility Lot".

Section 18. "Subdivision" shall mean the Cherry Hills Subdivision – 3rd Filing.

Section 19. "Zoning District" shall mean the City of Laurel's designated zoning district.

Section 20. "Zoning Regulations" shall mean and refer to the Zoning Regulations of the City of Laurel and any and all amendments thereto.

Section 21. Other definitions may be found throughout these Covenants and those definitions are binding upon all Owners. Any term not specifically defined shall be deemed to have a common and ordinary meaning.

ARTICLE II – CHERRY HILLS SUBDIVISION – 3RD FILING OWNERS' ASSOCIATION

Section 1. Association.

An association is hereby established known as "Cherry Hills Subdivision – 3rd Filing Owners' Association," (hereinafter referred to as the "Association"), for the purpose of enforcing these Covenants and operating the Association for the benefit of all Members therein. The initial address of the Association shall be PO Box 51330, Billings, MT 59105. The address of the

Association may be changed by the Board of Directors of Directors upon notice to the Members.

Section 2. Members.

Every Owner or contract purchaser of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separate from the ownership of any Lot. Each Owner shall be responsible for advising the Association of their acquisition of ownership, of their mailing address, and of any changes of ownership or mailing address.

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

Foreclosure of a mortgage, trust indenture or the termination or foreclosure of a contract for deed wherein title is vested in the mortgage, beneficiary or original seller on a contract, or repossession for any reason of a Lot sold under a contract shall terminate the vendee's membership, whereupon all rights to such membership shall vest in the legal owner.

Section 3. Vote.

A Member shall be entitled to one vote for each Lot owned. Multiple owners of a single Lot shall have one such membership or voting interest between them. If more than one Lot is owned, the Owner or Owners thereof shall have one membership or voting interest for each separate Lot owned.

Section 4. Annual Meeting and Special Meetings of the Association.

The annual meeting of the Association shall be set at a time and place determined and noticed by the Board of Directors. Any special meetings may be called by the President, or in the absence of the President, by the Vice-President. In addition, a special meeting shall be held upon call of 25% of the Owners. Special meetings shall require not less than 10 days written notice of the meeting date, time and location, and a description of the matter to be called before the Association. Notice of annual and special meetings shall be mailed to Owners at the address for each Owner. The presence of Members, in person or by written proxy, representing 55% of the total votes of the membership shall constitute a quorum.

At the annual meeting, the Members shall review and approve a budget for the next year, shall elect Board of Directors to fill any expired term or vacant position, and shall conduct such other business as shall be reasonable or necessary to carry out the purpose of the Association.

Section 5. Board of Directors.

The Members shall have the authority to set the number of Board of Directors, which number shall not be less than three nor more than seven. However, until at least 75% of all Lots existing or to be platted in future phases of Cherry Hills Subdivision – 3rd Filing have been sold, there shall be three Directors, and Declarant shall have the right to appoint the Board of Directors of Directors, who shall not be required to be Lot Owners or Members of the Association. Upon the sale of 75% of the Lots, the Board of Directors shall call a meeting within 30 days of such occurrence to transition the Board of Directors and Association to the Members.

The Board of Directors shall serve for a term to be set by a simple majority of the membership, which shall not be for less than one year. Each Director shall serve until replaced by his or her successor. Any vacancy on the Board of Directors occurring before the next annual meeting of the Members shall be filled by the remaining directors.

All Director meetings shall require the presence of Directors entitled to cast a minimum of 55% of all votes of the Directors. The presence of Directors entitled to cast 55% of all votes of the Directors shall constitute a quorum. The Directors shall act by majority vote.

Section 7. Board of Director's Duties and Responsibilities.

The Board of Directors shall have the power and responsibility of acting on behalf of the Association and its Members as shall be reasonably necessary to carry out the purposes of the Association, including but not limited to take such actions as shall be necessary or reasonable to care for, protect and maintain the easements, proposed stormwater pond, proposed channels, Utility Lot, boundary fence, if any, common areas, community signs or identification; to adopt rules and regulations for the use of the proposed stormwater pond, proposed channels, Utility Lot, boundary fence, if any, common areas to enforce these Covenants; to set and collect assessments; to set annual and/or special meetings; and to act in any other matters set forth herein or which may serve the Subdivision, including the formation of special improvement districts, either public or private, for such improvements as the Association shall approve. Neither the Board nor any Director, officer or Committee member acting in good faith shall be liable to any Owner or member of the Association as a result of any decision or determination made by the Board, a Director, officer or Committee Member.

The Board of Directors shall have the authority to hire additional professional officers, management personnel or companies, consultants, accounting services, legal services or any other personnel which they deem necessary for the smooth, efficient, and professional functioning of the Association. They may include, but not be limited to, a manager, secretary, treasurer, professional consultants, accountants, attorneys and maintenance personnel. The Board of Directors shall also have the authority to make contractual arrangements with outside entities, including but not limited to attorneys, accountants, engineers, environmental consultants, maintenance contractors, and building contractors to provide for the smooth, efficient, and professional functioning of the Association.

Section 8. Annual Meeting of the Board of Directors.

The annual meeting of the Board of Directors shall be held immediately after the annual

meeting of the Members. At the annual meeting, the Board of Directors shall elect officers of the Association, including a President, Vice-President and Secretary-Treasurer (the Secretary/Treasurer position may be divided into two separate positions), from among the Board of Directors, except that the Secretary-Treasurer may be a Member(s) who is not a Board of Director. The officers of the Association shall follow the directions of the majority vote of the Board of Directors.

Section 9. Officers.

The duties of each of the offices shall be as follows:

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

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

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

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

Section 10. Vacancy

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

ARTICLE III - ANNUAL AND SPECIAL ASSESSMENTS

Section 1. Assessments.

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

- A. Annual assessments or changes; and,
- B. Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the property and Lot, and shall be a continuing lien upon the property or Lot against which each such assessment is made. Each assessment, together with the interest, costs and reasonable attorney's fees, shall be the personal obligation of the Owner of such Property or Lot at the time when the assessment are due.

Section 2. Purpose of Assessments.

The assessments levied by the Association shall be used to promote the recreation, health, safety, convenience and welfare of the Owners, for the improvement, repair, replacement and maintenance of easements, Utility Lot, proposed stormwater pond, proposed waterway, common areas, community mail boxes, community signs or identification, and any landscaping located in the Subdivision that is the responsibility of the Association, insurance, general maintenance, creation of reserves, management and administration the Utility Lot, proposed stormwater pond, proposed channels, the taxes or fees for Utility Lot, proposed stormwater pond, proposed channels, and weed control in the Utility Lot or common areas, and for any other purposes, expressed or implied, in these Covenants.

Section 3. Amount and Approval of Assessments.

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

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

Section 4. Special Assessments for Capital Improvements.

In addition to the annual assessments authorized above, the Association may levy special assessments for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, or other capital improvements on the properties, Utility Lot, proposed stormwater pond, and proposed channels, including fixtures and personal property related thereto, provided that any such assessment shall have the approval of two-thirds (2/3) or more of all of the votes of the Members who are present, in person or by proxy, at a meeting duly called for that purpose. Special assessments may be levied to be paid over one or more years. Assessments for normal maintenance and repairs shall not require two-thirds (2/3) vote.

Section 5. Uniform Rate of Assessment.

Annual assessments shall be fixed by the Board of Directors at a uniform rate for each Lot, except the Board of Directors may fix a different uniform rate for improved and unimproved Lots. The assessments may be collected on a monthly, quarterly or annual basis, or any other regular basis as shall be determined by the Board of Directors of the Association. Special assessments shall be fixed at the same rate for each Lot affected by the special assessments.

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

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

Section 7. Effect of Nonpayment of Assessments; Remedies of the Association.

Any assessment not paid within thirty days after the due date shall bear interest from the due date at the rate of ten percent (10%) per annum. The Association may bring an action at law against the Owners obligated to pay the same or foreclosure the lien against the property or Lot, restrict the Owner's right to vote and/or utilize the Utility Lot. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Utility Lot or by abandonment of their Lot.

Upon delivery of the notice of assessment to the Owner, the assessment shall be a lien upon the Owner's Lot until paid. The Association may record a notice of the lien with the Clerk and Recorder of Yellowstone County, Montana. In the event of non-payment within thirty days after the recording of the notice of lien, the Association may foreclose the lien in the manner set forth under Montana law for the foreclosure of liens against real property. The Association is entitled to collect during an action for delinquent assessments any and all reasonable attorney fees and costs accrued prior to and in association with the collection of delinquent assessments.

Section 8. Sale or Transfer of a Lot.

The sale, transfer or encumbrance of any Lot shall not affect the assessment lien if recorded in the records of Yellowstone County, Montana, or the personal liability of the Owner responsible for the assessment. No sale or transfer to a third party with actual or constructive knowledge of an assessment shall relieve such new owner from the liability for and responsibility to pay any outstanding assessments, or from any assessments thereafter becoming due, or from the recorded lien thereof. A person or entity purchasing a Lot shall be responsible for checking with the Association for any outstanding assessments against said Lot before the closing upon the purchase.

**ARTICLE IV- CHERRY HILLS SUBDIVISION – 3RD FILING UTILITY LOT
MANAGEMENT PLAN**

Section 1. Cherry Hills Subdivision – 3rd Filing Utility Lot Management Plan.

The Subdivision is designed to meet the goals and objectives the City of Laurel.

The Cherry Hills Subdivision – 3rd Filing Utility Lot Management Plan is intended to provide a guideline for the protection, management, development, operation, and maintenance of the utility lot, proposed stormwater pond, and other common use items within the Subdivision.

Section 2. Utility Lot

The Utility Lot, including but not limited to the stormwater pond, structures, outfall channel, and other items necessary for the Subdivision, as designated on the final plat, and any amended plat, shall be preserved in perpetuity for use by the Association. The Association shall be responsible for the maintenance payment of fees, liability insurance and taxes for these areas, and shall have the right and obligation to provide for the protection, management, development, operation, and maintenance of the Utility Lot, the stormwater pond, structures, outfall channel, and other items.

Section 3. Assessments for Utility Lot

The Board of Directors shall establish assessments for the taxes, insurance, and maintenance of the Utility Lot under the control and authority of the Association. The assessments levied by the Board of Directors for the maintenance, upkeep, repair and operation of the Utility Lot, like all other assessments, become a lien on each Lot within the Subdivision. The Board of Directors, may, in its discretion, adjust the assessments to meet the changing needs of the community and the areas serving the community.

Section 4. Not Used.

Section 5. Not Used

Section 6. Mechanized Vehicles Prohibited.

No motorcycles, ATV's, snowmobiles, boats or similar means of transportation are permitted in or on the Utility Lot, proposed stormwater pond, and proposed channels. Motorized vehicles or equipment are allowed in or on the Utility Lot exclusively for maintenance purposes.

Section 7. Landscaping of Utility Lot.

Landscaping and plantings shall feature native species, but may incorporate non-native and ornamental species of trees and shrubs that will minimize maintenance and water consumption, or

that will contribute to wildlife depredation problems. Terrain modification may occur where needed to enhance opportunities for human activities to improve vegetative screening, to enhance watercourse development, and to minimize maintenance. Temporary fencing around shrubs and trees may be utilized to prevent or minimize destruction by animals or people during the time necessary to ensure the protection and survival of any plantings.

Section 8. Noxious Weeds.

Noxious weeds shall be controlled on all common and open space areas. The preferred method is by introduction of desirable plant species that eliminate weed. Interim measures permitted include herbicide applications, mowing and biological control. All herbicide applications shall be conducted according to applicable regulations.

Section 9. Wildlife.

No feeding of wildlife other than birds shall be allowed in or on the Utility Lot. The killing, hunting or taking of any wildlife species by any means within the Utility Lot is prohibited except for the catching and release of fish, and the control of specific animals known to be causing unacceptable damage to property or persons (i.e. beavers damming the watercourses or porcupines identified as girdling planted trees). In such cases, the Board of Directors shall contact appropriate professional consultants to trap and relocate such animals.

Section 10. Domestic Pets.

Domestic pets shall not be allowed at any time in or on the Utility Lot or other common areas unless on a leash. Pet owners shall be required to clean up after any pets they take on the Utility Lot. At no time shall any domestic pet be permitted to chase or harass wildlife in or on the Utility Lot, or other common areas.

Section 10. Prohibited Uses.

No use of fireworks, firearms, hunting and/or loud music or having loud parties in the Utility Lot is permitted.

Section 11. Fencing.

No fences shall be permitted in the Utility Lot, unless otherwise provided herein. The boundary of the Property, including the Utility Lot, may be fenced upon the request by neighboring property owners to prevent neighboring livestock from entering the Property. Temporary fences for the protection of plantings, as identified above, may be permitted.

Section 12. Signage.

Signs shall be permitted to identify trail routes, direct human activity or provide interpretive information. Directory signs should be combined with landscaping features, be made of natural appearing materials, and must comply with these Covenants and Zoning Regulations.

Section 13. Nuisance.

No Owner, guest or invitee may use or occupy the Utility Lot or common areas in such a manner as to disturb or interfere with the peaceful use, occupancy or enjoyment of any other Owner, guest or invitee of the Subdivision. Violations shall be enforced by the Board as provided for in these Covenants, including, but not limited to the levying of a fine and seeking compensation from such Owner, guest or invitee

**ARTICLE V - ARCHITECTURAL REVIEW COMMITTEE AND
ARCHITECTURAL REVIEW PROCESS**

Section 1. Architectural Review Committee

The Cherry Hills Subdivision – 3rd Filing Architectural Review Committee (hereinafter the “Architectural Committee”) shall consist of three (3) members appointed by the Board of Directors, one of whom shall be designated as the Chairperson. It is suggested that at least one of the members of the Architectural Committee have professional qualifications in the area of architecture, landscape architecture, or construction.

Section 2. Scope of Responsibilities

The Architectural Committee has the right to exercise control over all construction of any Improvement within the Subdivision. It will also review all Owner’s alterations and modifications to existing structures, including, but not limited to, exterior walls, exterior painting, renovations, and landscaping.

No residence or structure, Improvement, wall, garage, outbuilding or other structure shall be made, erected, altered or permitted to remain upon the Lot until written plans and specifications showing the site plans, floor plans, design, nature, kind, color, dimensions, shape, elevations, material, use and location of the same shall have been submitted and approved, in writing, by a majority of the Architectural Committee as to the plans and specifications compliance with these Covenants.

All documents submitted for review must be dated and labeled with the specific project title, owner, architect, contractor, and address, and must be accompanied by the fees required for review.

Section 3. Standards for Architectural Review.

It shall be the Owner’s responsibility to ensure that all proposed construction of any Improvement shall comply with the Uniform Building Code, National Plumbing Code, the National Electrical Code, and the City of Laurel Codes, these Covenants, and any amendments thereto.

All plans must be harmonious with the overall plan for the Subdivision. All plans and

specifications must be suitable to the Lot, the adjacent Lots, the adjacent properties, and the neighborhood. All Improvements must be compatible with the surrounding properties and Lots so as to not impair or degrade Subdivision or its aesthetic values.

The Owner shall reference and follow all guidelines and design requirements of the Subdivision Fire Protection Plan when designing any Improvement.

Section 4. Review Fee.

A review fee will be required at the time of submission of all of the documents and sample materials. The Owner shall submit the documents and the required fee to the Architectural Committee chairperson or other designated member of the Architectural Committee. The purpose of the design review fee shall be to defray the Association's cost of review of all proposed site plans and specifications submitted to them. The fee, which shall be set by the Board of Directors, shall initially be \$500.00.

Section 5. Documents Required for Review.

Three copies of the following documents in engineering scale of 1/8" = 1'0" should be submitted to the Architectural Committee chairperson:

A. Site plans including:

Lot lines and setback lines with dimensions; Building/Improvement footprints with entries, porches, balconies and decks delineated; Location, dimensions and materials for driveways; Elevation of first floor; Height of foundation from the top of the curb; Landscaping requirements and concepts; Location, height and material for retaining walls or garden walls; Water, electric and sewer service; and Exterior light locations and type.

B. Complete construction drawings, including floor plans, exterior elevations of all sides, roof design, specifications, and any construction details, as follows:

1. Floor Plans showing: Foundation plan dimensioned; Exterior walls shown and dimensioned; Room use and dimension; Wall, window and door openings dimensioned; All overhangs of floors and roofs as dashed lines; Overall dimensions; and Total enclosed square footage.

2. Elevations including: A description of the material for the front street elevation; Porches, balconies, doors and windows; Principal materials rendered and specified; Height of each floor, eaves, and roof peak dimensioned from the first floor; Overall height from ground level; Roof pitch; Major building sections; Typical walls from ground to ridge; and Typical porch section from ground to roof.

3. Roof Plan: Elevations of the Roof; and description of roof materials.

4. Landscape Plan: Listing of all trees and plants to be installed and their respective locations.
5. Samples (1 set) of all exterior materials in their respective color proposals in an adequate size to evaluate.

Section 6. Review Procedures.

The Owner will be notified in writing by the Architectural Committee within thirty (30) business days after receipt of all documents and items required for submittal in Article V, Section 5 that the design has been approved, approved with stipulations, or disapproved. The Architectural Committee's thirty (30) business day review period will not commence until all documents and items specified in Article V, Section 5 have been submitted to the Architectural Committee.

The Architectural Committee may request additional plans, specifications, and samples in order to complete their review. In the event of such request, the review time period shall toll and shall not again commence running until after such additional plans, specifications, and samples have been submitted to the Architectural Committee.

An application may be withdrawn by an Owner without prejudice, provided the request for withdrawal is made in writing to the Architectural Committee. No fees will be refunded due to such withdrawal.

If the Architectural Committee does not contact the Owner within thirty (30) business days of the review commencement date, the application shall not be deemed "approved," and the Owner shall be entitled to file a written request with the Board of Directors that the application be reviewed by the Architectural Committee within five (5) business days of the date of the Owner's written request.

If an application is approved with stipulations or is disapproved, the reasons for the approval with stipulations or disapproval will be clarified for the Owner by the Architectural Committee, in writing and/or with drawings, within ten (10) business days after the Owner has been notified of the Architectural Committee's decision.

If an application has been denied, or the approval is subject to stipulations that the Owner feels are unacceptable, the Owner may request a hearing before the Architectural Committee to justify the Owner's position. The Architectural Committee will consider the arguments and facts presented by the Owner and notify the Owner of its final decision within ten (10) business days of the hearing. If the Owner disagrees with the Architectural Committee's final decision, the Owner may appeal such decision to the Board of Directors and the Board of Directors shall hold a hearing, during which the Owner and the Architectural Committee may be heard. The Board of Directors shall consider all arguments and facts presented and shall render a final decision within ten (10) business days of such hearing.

Section 7. Action Upon Architectural Committee's Approval.

Approval by the Architectural Committee does not relieve an Owner of the Owner's obligation to obtain any government, city, state and county approvals necessary to construct the Improvement, including, but not limited to, a City of Laurel land use permit. If such approvals are required and are not obtained by the Owner, the Architectural Committee and/or the applicable government, state and county agency may take whatever actions are necessary against the Owner to force compliance.

Upon approval by the Architectural Committee, the Owner must obtain a building permit from the City of Laurel prior to commencing any construction. With the Owner's application for a building permit, the Owner shall also submit the Architectural Committee's approval letter or approval stamp on the Owner's plans, as a prerequisite for City of Laurel reviewing and issuing such building permit. Upon receipt of both the Architectural Committee's approval letter and the building permit, the Owner may commence construction in strict accordance and adherence with the plans and specifications submitted to and approved of by the Architectural Committee. Any deviation from said plans and specifications which, in the judgment of the Architectural Committee, is a deviation of substance from the plans and specifications approved of by the Architectural Committee, the Architectural Guidelines contained herein, or any other provision of these Covenants, and/or is a detriment to the appearance of the Improvement or to the surrounding or neighboring areas or Lots, shall be promptly corrected by the Owner, at the Owner's expense, to conform with the plans and specifications submitted by the Owner and approved of by the Architectural Committee, or such deviation may be corrected by the Association at the Owner's expense as provided in these Covenants.

Section 8. Variances.

All variance requests pertaining to the Architectural Committee approvals must be made in writing to the Architectural Committee, and must be accompanied by written verification that the requested variance does not violate the Zoning Regulations, City of Laurel regulations, and that such a variance has not already been requested by the Owner from the Zoning District and/or Yellowstone County. Any variance granted shall be considered unique and will not set any precedent for future decisions.

The Architectural Committee may, upon application, grant a variance from the Architectural Guidelines, provided that the spirit of these Covenants is complied with, the requested variance does not violate the zoning regulations or any Yellowstone County regulations, and written notice of the nature of the variance has been mailed or personally delivered to all other Lot owners in the Subdivision at least ten days before the variance is considered, in order to give the other Owners a chance to comment and provide input to the Architectural Committee. The Architectural Committee shall have the duty and power to make the final decision on the granting of the variance, without any liability being incurred by the Architectural Committee or damages being assessed against the Architectural Committee, due to any decision of the Architectural Committee.

Section 9. Eighteen Months for Completion.

Any Improvements to be constructed or erected in accordance with the approval given herein, including all landscaping, must be diligently continued and completed within eighteen months from the date of approval, unless otherwise extended in writing by the Architectural Committee. If construction of any Improvement is not commenced within one year after approval, a new approval must be obtained.

If any Improvement is commenced within one year, but is not completed in accordance with the plans and specifications within twelve months, the Board of Directors of the Association, at their option, may take such action as may be necessary, in their judgment, to improve the appearance of the Improvement so as to make the property harmonious with other Lots and properties, and to comply with these Covenants, including completion of the exterior, removing the uncompleted structure, or any combination thereof. The amount of any expenditures made in so doing shall be the responsibility and obligation of the Owner. A lien on the Lot may be recorded and shall be enforceable by an action at law. In lieu thereof, the Association may take such action as is available by law or equity, including, but not limited to, an injunction, or seeking damages, and shall be entitled to reimbursement of the Association's costs and attorney fees as may be awarded by the Court.

Section 10. Inspection and Compliance with Approved Plans.

The Architectural Committee may inspect all work in progress and any completed Improvement, and give notice of any noncompliance as set forth below.

During construction or upon completion of any Improvement, if the Architectural Committee finds that such work was not done in strict compliance with all approved plans and specifications submitted or required to be submitted for its prior approval, it shall notify the Owner and the Board of Directors of such noncompliance, and shall require the Owner to remedy the same. If upon the expiration of seven (7) business days from the date of the notification, the Owner has failed to commence to remedy such noncompliance, the Board of Directors shall determine the nature and extent of the noncompliance, the estimated cost of correction and any fine the Board of Directors so elects to assess for such noncompliance or pursuant to a fine schedule adopted by the Board of Directors. The Board of Directors shall notify the Owner in writing of the Board of Director's estimated cost of correction action, which may include removal, and any associated fine. The Owner shall then have five (5) business days to pay any assessed fine and to commence such corrective action. Any corrective action must be completed within thirty (30) days of the Board of Directors providing the Owner written notice of the cost of corrective action.

If the Owner does not comply with the Board of Director's determination within the five (5) business day period referenced above, the Board of Directors, at its' option, may stop the Owner's construction of the Improvement, remove the noncomplying Improvement, or remedy the noncompliance, and the Owner shall reimburse the Association upon demand for any and all expenses incurred as a result of the Owner's noncompliance. If such expenses are not promptly paid by the Owner to the Association, the Board of Directors may levy an assessment against the Owner and/or file a lien against the Owner's Lot upon which the Improvement was/is situated,

for reimbursement of the Association's expenses, and the same shall be enforced and/or foreclosed upon in the manner provided for by law.

Section 11. Limitation of Responsibilities and Liability.

The primary goal of the Architectural Committee is to review the Owner's submitted application, plans, specifications, materials and samples in order to determine if the proposed Improvement conforms with the Architectural Guidelines. The Architectural Committee does not assume responsibility for the following.

- A. The structural adequacy, capacity or safety features of the proposed Improvement.
- B. Soil erosion, ground water levels, non-compatible or unstable soil conditions.
- C. Compliance with any or all building codes, safety requirements, and governmental laws, regulations or ordinances.

Neither the Declarant, the Association, the Board of Directors, the Architectural Committee, nor the individual members thereof, may be held liable to any person or Owner for any damages for any action taken pursuant to these Covenants, including, but limited to, damages which may result from correction, amendment, changes or rejection of plans and specifications, the issuance of approvals, or any delays associated with such action on the part of the Board of Directors or the Architectural Committee.

Section 12. Construction Site Maintenance and Clean-up.

Construction materials shall not at any time prior to, or during construction, be placed or stored in the street or located anywhere else that would impede, obstruct or interfere with pedestrians or motor vehicle traffic within the sidewalk and/or street rights-of-way. All construction materials shall be removed from the entire Lot within thirty (30) days of substantial completion of construction.

Construction sites shall be kept clean, neat, and well organized at all times. All construction debris shall be the responsibility of the Owner and the Owner's contractor, and shall be kept clean and properly stored on a daily basis. If construction debris blows onto another Owner's Lot, it is the responsibility of the Owner and the Owner's contractor to clean it up immediately. Street cleanliness is of particular concern. Any construction debris, especially dirt, gravel, rocks, and concrete, that falls or is left in the street shall be removed immediately from the street, and be brought back to a broom clean condition. The Association shall strictly enforce this provision, and reserves the right to fine negligent parties up to \$500.00 for each infraction, to complete any clean up the Board of Directors determines to be necessary, and/or to assess the Lot Owner for all clean-up costs.

ARTICLE VI – ARCHITECTURAL AND LANDSCAPE GUIDELINES

The Architectural Guidelines which follow are intended to compliment the Zoning Regulations which govern this Subdivision and to clarify the intention for the design of Improvements in the Subdivision. Specifically, these guidelines set forth design criteria which address the design of Improvements and location. The intent to these guidelines is to define a minimum level of quality and consistency of Improvement design, which shall be consistent with and maximize the quality of the overall Subdivision. Unique design elements of the Improvements will be respected and individual expression is encouraged, provided they are harmonious with the overall plan of the Subdivision and the neighboring Lots.

I. ARCHITECTURAL GUIDELINES.

Section 1. Purpose.

These Architectural Guidelines allow for flexibility while maintaining architectural continuity, and are intended to compliment the Zoning Regulations. The primary goal is to ensure that the proposed Improvement design, including landscaping, maintains or exceeds the general level of quality, size, appearance, and marketability as is commensurate to residential lots and homes adjacent to it. The City of Laurel will have no power to issue a building permit for any Improvement which has not been approved of by the Architectural Committee.

Section 2. Design Criteria and General Regulations.

The intent of the following Architectural Guidelines are to provide a continuity to the built environment of the Subdivision, while encouraging unique approaches to the Architectural Guidelines provided herein. Using scale, proportion, and orientation, colors and materials, all Improvements in Cherry Hills Subdivision – 3rd Filing will celebrate the surrounding land forms and concentrate on preserving view sheds and blending into the landscape throughout the Subdivision. These guidelines specifically require homes designed by a licensed architect that are sensitive to the environmental conditions and prohibit tract style design types, inadequate site planning solutions, unorthodox design solutions or other approaches that damage property values and/or aesthetic values in the Subdivision as determined by the Architectural Committee. It is the intention of the Covenants to ensure that all homes shall be of quality workmanship and materials compatible with the other homes in the Subdivision. All initial or subsequent improvements to Lots in the Subdivision shall be subject to the following architectural and landscaping guidelines. All plans must be approved by the Committee as provided herein, prior to application to the City of Laurel for a building permit. No construction of, or alteration to, any Improvement shall be commenced on any Lot prior to receiving the written approval of the Architectural Committee and, if necessary, a building permit from the City of Laurel.

All Lots in the Subdivision are subject to the Zoning Regulations and City of Laurel regulations. In addition to these Covenants, Zoning Regulations and City of Laurel regulations, building design and construction may be subject to other County, State and Federal regulations. The Owner shall be responsible to ensure conformance with all applicable

regulations.

Section 3. Single Family Residence Lots and Density.

The Lots in the Subdivision shall be used exclusively for the construction of single family residences only. No more than one single family residence may be constructed on each Lot.

Section 4. Building Area.

Each Lot shall have a designated building area. All construction of Improvements, except landscaping, shall occur in the designated building area.

Section 5. Improvement Types.

All Improvements built within Cherry Hills Subdivision – 3rd Filing shall be stick-built on site, using common dimension lumber and other similar basic materials. Prefabricated, modular, panelized, factory built and/or kit homes of any type are prohibited within the Subdivision.

Section 6. Improvement Height.

The height of any Improvement shall be limited to a maximum of 28 feet for a single story Improvement and 30 feet for a two-story Improvement. Improvements shall be measured from the highest ridge to the lowest adjacent grade.

With approval from the Architectural Committee, a chimney, cupola, and other architecture feature may exceed the given height limitations by no more than 2 feet.

Section 7. Size of Residential Improvements.

A. Minimum.

Any residential Improvement constructed on a Lot shall have minimum living space, exclusive of garages, decks, and porches, of 2,500 square feet.

B. Maximum.

Any residential Improvement constructed on a Lot shall not exceed a maximum living space, exclusive of garages, decks, and porches, of 6,200 square feet. To exceed After 6,200 square feet of living space, an Owner must obtain a variance to these Covenants from the Architectural Committee and may be required to implement increased fire prevention requirements.

Section 8. Accessory Buildings.

One accessory building shall be allowed, which shall not exceed 24 feet in height. No accessory building may be erected in any required front yard or setback. Detached garages shall be erected no closer than five and one-half feet of any principal residence. No other separate accessory use shall be erected within ten feet of any principal residence. The exterior design, style and colors

of any accessory building on a Lot shall conform to the design, style and colors of the principal residence, and must receive prior approval of the Architectural Committee. All accessory buildings, including, but not limited to, garages and storage buildings, shall be architecturally compatible with the principal residence.

Section 9. Setback Requirements.

All Improvements shall have a minimum of a 25-foot setback from all irrigation ditches, not within the boundary of the Property. Unless otherwise specified, the front setback for each Lot shall be 30 feet from the front Lot line, the side setback for each Lot shall be 10 feet from each side Lot line, and the rear setback for each Lot shall be 10 feet from the rear Lot line.

Section 10. Exterior Walls and Facades.

The character of the exterior of the Improvement should be kept simple in order to harmonize and compliment the surrounding environment of the Lot. Natural materials and subdued colors should pre-dominate the main body of the Improvement. Exterior trim can be more colorful and contrast the main body.

A. Materials.

The exterior siding of all residences and Improvements shall consist of natural stone, rock, brick, stucco, or wood which is painted or stained. Simulated stone and new building materials that maintain the aesthetic character of the Subdivision may be considered by the Architectural Committee. No vinyl siding, cement block, panel siding similar to T1-11 siding, plywood sheet siding, or unfinished reflective siding is permitted. Any use of sheet or panel metal siding must be approved by the Architectural Committee, and shall run in a horizontal or diagonal directions, and shall be lapped. All facades of a residence or Improvement shall be made of the same materials and similarly detailed.

B. Colors.

The color palette of the body of the Improvement shall be traditional colors, including earth tones, neutral, natural wood, or muted primary colors, that harmonize and compliment the neighboring Improvements and Lots. Trim may be more colorful and contrasting in order to add visual interest. Color of homes will be determined on a case by case basis by the Architectural Committee. All exterior wood shall be painted or stained.

C. Wall Form.

No wall shall consist of single finish treatment for more than 14 horizontal feet without interruption by a wall projection or a different siding material, window, wall corner, chimney, wall recess, porch or other architectural element that adds interest.

D. Windows and Doors.

The pattern, sizing, symmetry, of windows and doors determines the scale and feel of an Improvement. Windows are key architectural element that creates interest and contrast, such that it is recommended that a significant number of windows are utilized in the design of the improvement. All windows will be double or triple glazing. Low E coatings are permitted, but no mirror glazing is allowed. The Architectural Committee will require that the following aspects be carefully addressed in the window design:

- 1) Consistency of types and shapes.
- 2) Special shapes for future windows in appropriate areas
- 3) Window patterns consistent with design of the Improvement.

Section 11. Foundation Design.

All Improvement foundations shall be constructed to at least 18" above the top of the curb. Basements may be constructed in areas of suitable ground water depths, but flood prevention building techniques must be used including sump pumps and approved foundation sealing.

Exposed concrete shall be limited to a maximum of 8 inches from the bottom of the siding to the finish grade. Exposures of more than 8 inches shall be covered by shrubs, masonry veneer, texture concrete surface such as exposed aggregate or synthetic stucco.

Section 12. Roofs.

Roofs are a major element in the design of an Improvement and therefore will be emphasized by the Architectural Committee. Roof designs should complement the mountain foothills with the goal of bringing continuity to the Subdivision. Consideration should be given to the prevention of excess snow build-up, ice damming and snow shedding.

A. Designs.

Designs of roofs used in a creative and aesthetically pleasing combinations as well as pitches of the indigenous buildings found around the City of Laurel are recommended. Secondary roofs forms are also highly recommended in roof designs for the Subdivision, as they are useful in giving proper scale to larger roof masses.

B. Pitches.

The minimum roof pitch is 6:12 for major components of any roof. Secondary roof forms may have varying roof pitches, but no roof component shall have a pitch less than 4:12. Should a lower or higher roof pitch be desired by an Owner, the Owner may seek a variance from the Architectural Committee so long as such pitch is appropriate for the design of the improvement and does not compromise the integrity of the Subdivision.

C. Secondary Roof Structures.

Dormers, skylights, chimneys, and solar collectors are considered secondary roof structures.

Dormers and other secondary roof structures are encouraged to give scale to the main roof and also create habitable space within the roof. When designing the location of the skylights, consideration should be given to both the interior and exterior of the Improvement. Locations should also be coordinated with window and door locations. Skylights shall be flat and not bubbled, and located away from valleys, ridges, and other areas where drifting snow and snow ice may hinder the performance and safety of the Improvement. Any use of solar panels or collectors must first be approved by the Architectural Committee. Any approved solar panels or collectors shall be inconspicuously located, and shall be integrated into the overall roof design, parallel with the slope of the roof or wall of the Improvement, and are not to be on any roof parallel to the street.

D. Entry Definition, Overhangs and Fascia.

Caution should be used when designing entry definition, overhangs and fascia to minimize snow shedding towards walkways, driveways, porches, decks, balconies, or any other place a person may be injured by sliding ice. Entrances should be expressed with a gable or shed roof and protected with adequate overhangs. All overhangs shall be at least two feet in length. Fascia materials shall be built-up. Substantial trim elements, such as built-up, double fascia's of 12 inches overall dimension, are preferred. All eaves and soffits shall be designed so as not to allow embers to be caught or trapped in the event of a fire.

E. Materials.

Roof materials shall be constructed of fire-resistant materials carrying a class A rating. The following are the only acceptable roof materials: Class A synthetic shakes or shingles; Class A wood or Cedar shakes; Natural and synthetic slate tiles; Standing ridge metal roofing; or other similar materials allowed by the Architectural Committee.

E. Gutters Down Spouts and Flashing.

Gutters and down spouts are allowed but they must be of a color and finish that matches the Improvement or trim. The down spouts must be a part of the initial design of the Improvement reviewed by the Committee. Unpainted gutters down spouts and flashing shall not be allowed.

F. Roof Equipment.

All roof mounted equipment shall be integrated into the overall roof design and screened. All sewer, bath fan, hot water heater, wood or gas stove, or other roof venting stacks shall be painted a color as similar as possible to the roof material color.

G. Chimneys.

Chimneys may exit the sides of residences or Improvements as well as the roof of the residence or Improvement. It is strongly encouraged that chimneys emerge from the highest roof volume. When part of an exterior wall, chimneys may be used as an accent form to break up the mass of the wall. Prefabricated metal flues shall be concealed within a chimney. Chimney caps may extend no more than 16" above the chimney top. Chimneys shall be of a material

that compliments the other exterior finishes, and may include brick, natural stone, stucco, or wood framing when the finished wood material is the same as the siding.

Section 13. Decks, Balconies, and Porches.

Decks, balconies and porches, are to be used to accentuate the architecture of the Improvement and create interest and variations in the Improvement. Articulation of indoor, outdoor shared space with thought of the transition between the two is encouraged. Multiple elevations and combinations of covered decks, projecting balconies and bay windows shall be encouraged.

Section 14. Garages.

Each single-family residence is required to have a minimum of an attached or detached 2 car garage. With sectional roll up doors. If the garage is unattached, Owners are encouraged to design a walking space between the residence and the garage. The detached garage must adhere to the same Architectural Guidelines as the residential improvement, must compliment the residential improvement and be proposed to the Committee for review at the same time as the residential improvement. There will be no long term storage of cars or other vehicles outside the garage.

Section 15. Energy Considerations.

All Improvements shall be designed so that the primary source of heat is natural gas or electricity. The use of wood, wood bi-products or coal burning appliances as the major heat source is prohibited. All wood burning devices except fireplaces shall be fitted with catalytic converters.

Section 16. Exterior Lighting.

All exterior residential lighting must be free of glare and shall be fully shielded or shall be indirect lighting. All exterior residential lighting on all Lots must be incandescent and limited to a maximum of 60-watt incandescent bulbs, and shall be of such focus and intensity so as to not cause disturbance to adjacent Lots. No direct lighting shall shine beyond the Lot line of any parcel. No exposed bulbs, mercury vapor or high-pressure sodium lights are permitted.

Decorative fixtures, or recessed or canned lighting is encouraged for porches, main entrances and other exterior applications to achieve softer, non-glare, lighting effects. All residential lighting shall comply with the Zoning Regulations and City of Laurel lighting requirements.

Recessed or can lighting is encouraged for porches and main entrances for softer lighting effects. Clear glass fixtures (i.e. coach lantern style) are prohibited. Honey glass or amber glass panels are encouraged as an alternate.

Obtrusive flood lighting and front yard landscape/pathway lighting, and clear glass or exposed bulb (non-cutoff) fixtures are prohibited. Yard and walkway lighting shall be compatible with the scale and architectural design of the main residence.

All exterior lighting and exterior lighting changes shall be approved by the Committee.

For the purposes of this paragraph, the following definitions shall apply:

Fully Shielded lights: Outdoor residential light fixtures shielded or constructed so that no light rays are emitted by the installed fixture at angles above the horizontal plane as certified by photometric testing.

Indirect Light: Direct light that has been reflected or has scattered off of other surfaces.

Glare: Light emitting from a luminaire with an intensity great enough to reduce a viewer's ability to see.

Section 17. Parking

All parking shall be off-street. A minimum of two off-street parking spaces shall be provided for each residence.

Section 18. Signage.

Signs shall be limited to identification signs, real estate sale signs and street signs, no larger than six square feet, the design and location of which must be approved of by the Committee.

Section 19. Zoning.

All zoning, land use regulations and all other laws, rules and regulations of any government or agency under whose jurisdiction the property and Lots lies are considered to be part of these Covenants and enforceable hereunder; and all of the Owners of said Lots and properties shall be bound by such laws, rules and regulations.

In the event there is a conflict between the Covenants and the applicable zoning, the most restrictive provision of either the Covenants or the zoning shall control.

Section 20. Easements.

There are reserved, as shown in the plat and as may otherwise be reserved by the Declarant, easements for the purposes of constructing, operating, maintaining, enlarging, reducing, removing, laying or relaying lines and related facilities and equipment for utilities, including, but not limited to, those providing gas, communication and electrical power. Landscaping elements and other items allowed by the Covenants and approved of by the Committee may be placed along as long as the intended use of such easements are not prevented.'

II. LANDSCAPE DESIGN GUIDELINES

Section 1. Driveways.

All driveways and parking areas shall be surfaced with concrete, and in no case be located closer than five (5) feet to adjacent Lot lines. No Lot Owner shall fill or obstruct the natural flow of any borrow ditch, drainage swale, or culverts.

Section 2. Fences.

No fences shall be permitted on Lots, unless otherwise provided herein. Temporary fences for the protection of plantings, as identified above, may be permitted.

Section 3. Antennas and Satellite Dishes.

No external television, radio antennas, or large satellite dishes shall be permitted. Smaller satellite dishes of the latest technology (not exceeding two feet in diameter) will be allowed. All satellite dishes shall be inconspicuously located, and screened from neighboring and street views.

Section 4. Utilities.

All utilities, including but not limited to natural gas, electricity, telephone, and cable television, shall be located underground.

Section 5. Landscaping and Irrigation.

Each Lot Owner shall submit a Landscape Plan, including plant and tree listings and their respective locations, and an irrigation plan to the Architectural Committee for review and approval. Each Lot owner will be required to meet minimum landscape requirements consistent with the overall plan for the Subdivision. Landscaping will be required for the area around the residence and Improvements. Landscape, grading and irrigation plans shall be submitted and approved by the Committee concurrently with the plans for the residence.

Owners are required to maintain the landscaping on their Lots in a manner that does not detract from the appearance and value of the adjoining Lots or the aesthetics of the Subdivision. Landscape maintenance will be enforced by the Association as provided in these Covenants.

Section 6. Trees.

All Lot owners shall plant a minimum of trees and shrubs to enhance the aesthetic features of their Lot. Trees are encouraged to be planted in clusters rather than at regular intervals around the Lots. Shrubs and flowers may be used to provide a transition from the tree clusters to the lawn surfaces.

All trees must be planted a minimum of 8 feet from the Lot line when adjacent to a neighbor, and may not be planted in the utility easements. It is the responsibility of the Owner to contact the appropriate utility companies before digging.

When selecting trees, it is the responsibility of the Lot Owner to check the appropriateness of that species with specific site conditions. Deciduous trees are encouraged to be placed on the southern and western during the winter months. Deciduous trees must be planted a minimum of 20 feet from the eaves. Planting beds and any bedding around tree base areas shall be mulch or earth tone stone (not white).

Section 7. Weeds.

The Association shall provide a Yellowstone County approved weed control plan, which both the Association and the Owners shall comply with the terms and conditions of such plan. Both improved and unimproved Lots shall be kept free of weeds. The Owner of each Lot shall control the weeds and all noxious plants on the Owner's Lot; provided, however, that the Owner shall not use spray or killing materials in such a way as to be harmful to humans or animals or to the neighboring or common area vegetation.

In the event an Owner shall not control the weeds and noxious plants on their Lot, the Association, after ten days written notice to a Lot Owner to control the same, may cause the weeds or noxious plants to be controlled, and may assess the Lot Owner for the costs thereof, as set forth in these Covenants.

ARTICLE VII – MAINTENANCE

Section 1. Each Owner, at Owner's expense, shall be responsible for the maintenance and repair of the Owner's Lot, including, but not limited to, the driveway, parking area, walkways and landscaping.

Section 2. The Association shall be responsible for the maintenance, repair and replacement of the Utility Lot and any other common areas, including, but not limited to the storm drain system, culverts, outfall and ditch. Should any maintenance, repairs or replacement of items within the Utility Lot or any other common areas be the result of damages caused by a Lot Owner, guest or invitee, said Lot Owner shall be responsible for the costs incurred by the Association for any maintenance, repairs or replacements resulting from such damage, and, if the Lot Owner fails to promptly pay for such costs after receiving written notice thereof, may be assessed for such costs or may have a lien place against the Owner's Lot by the Association to secure repayment of the costs.

ARTICLE VIII – MISCELLANEOUS

Section 1. Aggregation or Division of Lots.

There shall be no further division of any Lot. An Owner may aggregate two Lots so long as the Owner obtains prior written approval of Board and City of Laurel for the aggregation and files, at the Owner's expense, any necessary amended plat or other documentation as required by City of Laurel to aggregate the Lots. Once aggregated, the Lots shall be treated as a single family Lot such that only one main residence and one accessory building may be constructed on the Lot, however, the Association may still collect assessments for two Lots.

Section 2. Proposed Stormwater Pond

The Owner of a Lot shall at all times conduct its use and activities in a manner that will preserve the integrity of the proposed channels within the Utility Lot and overflow channel easement, including, but not limited to, the prevention of any degradation of water quality, any reduction or increase in the flow of said proposed channel, any damage to the channel or proposed stormwater pond. The Owner shall not conduct or permit – the discharge of any liquid, solid, gas or refuse of any kind into the proposed channel or stormwater pond. The Board shall adopt rules and regulations for the use of the proposed stormwater pond, such that the proposed stormwater pond may only be used in a manner consistent with said rules and regulations. The stormwater retention pond shall only be used for its intended functional purpose.

Section 3. Rental of Residences.

Should an Owner rent the Owner's residence to any third party, the Owner shall provide the tenant a copy of these Covenants and any rules and regulations adopted by the Board, and said Tenant shall comply with the terms of these Covenants and all rules and regulations. The Owner shall be responsible for the tenant's compliance with the terms of these Covenants and all rules and regulations and shall be liable for the tenant's violation of the terms of these Covenants and any rule or regulation, and fines or damages related to the tenant's violation.

Section 4. Nuisance.

No Owner, guest or invitee may use or occupy a Lot in such a manner as to disturb or interfere with the peaceful use, occupancy or enjoyment of any other Owner, guest or invitee of the Subdivision. Violations shall be enforced by the Board as provided for in these Covenants, including, but not limited to the levying of a fine and seeking compensation from such Owner, guest or invitee.

Section 5. Home Occupations.

Home occupations or professions may be conducted upon the Lot or within the residence by the Owner or occupant of the residence, provided that there are no employees on the premises, and there is no advertising of any product, work for sale, or service provided to the public upon such Lot or in the residence. No advertising or directory signs relating to the home occupation shall be allowed. No child care centers shall be allowed. All such home occupations or professions must comply with the requirements of the City of Laurel regarding such activities, and all required licenses must be obtained prior to commencing such activities.

ARTICLE IX – COUNTY REQUIRE COVENANTS

The Covenants included in this Article may not be repealed or amended without prior written consent of the City of Laurel.

ARTICLE X - TERM, ENFORCEMENT, APPLICABILITY AND CHANGE

Section 1. Binding Effect and Amendment.

The provisions of these Covenants shall be continuous and binding unless terminated. For an initial term of twenty-five (25) years from the date of these Covenants, or until 85% of the Lots in the Subdivision have been sold, these Covenants may be modified, altered or amended only with the Declarant's consent. After the initial twenty-five (25) year period, or after 85% of the Lots in the Subdivision have been sold, whichever first occurs, the provisions of these Covenants may be changed or amended or additional Covenants added, in whole or in part, upon approval of 75% of the votes of the Members of the Association at a meeting duly noticed and called for that purpose.

Any covenant required as a condition of the approval of the Subdivision shall not be altered or amended without the agreement of City of Laurel. Any change of these Covenants shall be effective upon the filing and recording of such an instrument in the office of the Yellowstone County Clerk and Recorder. The President or Vice-President shall execute and record the amendment, change or addition with the Clerk and Recorder of Yellowstone County, Montana. Any change in these Covenants shall not affect existing Improvements and uses of the Lots.

Section 2. Enforcement.

Enforcement of these Covenants shall be by proceedings either at law or in equity against any person or persons, Owner or Owners, violating, or attempting to violate, any Covenant and any such legal proceedings may be to restrain violation of these Covenants, to recover damages, or both. Furthermore, the City of Laurel may be party to and be able to, if it so elects, enforce any provisions in these Covenants that pertain to the maintenance of Utility Lot, the control of storm water and the maintenance of streets.

Should any lawsuit or other legal proceeding be instituted by the Association, an Owner, City of Laurel, or Yellowstone County against any person or Lot Owner alleged to have violated one or more of the provisions of these Covenants, the prevailing party shall be entitled to recover the costs of such proceeding, including reasonable attorney's fees associated with the action, as may be ordered by the court.

Section 3. Non-waiver.

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

The waiver of, or approval of a variance of a Covenant provision by the Board of Directors, or non-action of the Association or Declarant in the event of a violation of a Covenant by a

particular Owner or Lot, shall not be deemed to delete or waive the Covenant or enforcement thereof as it pertains to other Owners or Lots.

Section 4.

Every Owner by paying assessments related thereto shall be responsible for and share in the cost of maintaining the Utility lot, proposed channels, and proposed stormwater pond and any assessments related thereto.

Section 5. Invalidation of any one of these Covenants by statute, judgment or by Court order shall in no way affect any of the other Covenants or provisions, all of which shall remain in full force and effect.

Section 6. In any conveyance of the above described Property or of any Lot thereon, it shall be sufficient to insert a provision in any deed or conveyance to the effect that the Property or Lot is subject to protective or restrictive Covenants without setting forth such restrictions and Covenants verbatim or in substance in said deed nor referring to the recording data. All of the above described Property and Lots shall be subject to the restrictions and Covenants set forth herein, whether or not there is a specific reference to the same in a deed or conveyance.

IN WITNESS WHEREOF, Declarant has hereunto set its hand as of this ____ day of _____, 20____.

DECLARANT:

Western Holdings Company, LLC

By: _____

Its: _____

STATE OF MONTANA)
 : ss
County of Yellowstone)

On this ____ day of _____, 20____, before me, a Notary Public for the State of Montana, personally appeared _____ (name), known to me to be the person whose name is subscribed to the above instrument and acknowledged to me that they he/she is the _____ (capacity) of Western Holdings Company, LLC and executed the same.

Notary Public for the State of _____

Printed Name _____

Affix seal to the left

EXHIBIT A

See the attached legal description

RETURN AFTER RECORDING:
Western Holdings Company, LLC
PO Box 51330
Billings, MT 59105

**BYLAWS FOR
CHERRY HILLS SUBDIVISION – 3RD FILING OWNERS’
ASSOCIATION, INC.**

1. PURPOSE AND APPLICATION

These Bylaws are and shall be the Bylaws for the Cherry Hills Subdivision – 3rd Filing Owners’ Association Owners’ Association, Inc.

These Bylaws shall govern and control the administration of the Cherry Hills Subdivision – 3rd Filing Owners’ Association, Inc. (“Association”). All Members in the Association, their guests, invitees, lessees and/or sublessees present and future shall be subject to the provisions of these Bylaws along with the provisions of the Declaration of Protective Covenants, Conditions and Restrictions for Cherry Hills Subdivision – 3rd Filing Owners’ Association (“Covenants”), incorporated in its entirety by reference herein.

The acquisition of an ownership interest in a Lot in the Cherry Hills Subdivision – 3rd Filing (“Subdivision”) signifies that the Owner (“Owner”) accepts, ratifies and agrees to comply with these Bylaws.

2. MEMBERSHIP

Persons owning a Lot in the Subdivision (“Lot”) or owning a Lot in the Subdivision in any real estate tenancy relationship recognized by the State of Montana, including, but not limited to, contract purchasers, shall be Members of the Association (“Member”). The legal title retained by the Seller under a contract for deed shall not qualify such Seller as a Member. In the event of ownership by more than one person or entity, the Owners shall designate one person or

entity to be the agent for receiving notices hereunder, and for the purpose of voting. Each Owner shall be responsible for advising the Association, in writing, of their current address and the person designated to vote.

Membership in the Association begins concurrently with the acquisition of an ownership interest in a Lot and terminates at the time such ownership interest is terminated, but such termination shall not relieve any Owner of liability for obligations incurred while a Member of the Association. No Member shall be expelled, nor shall any Member be permitted to withdraw or resign while possessing an ownership interest in a Lot. Membership in the Association does not, in any way, negate or impair any Member's legal remedies, right to bring legal action, or defenses to any and all actions involving the Association, or the Management which may arise from or be incident to ownership.

3. OBLIGATIONS

Each Member shall be obligated to comply with these Bylaws, the Covenants, and the laws of the City of Laurel, County of Yellowstone, and State of Montana. Such obligation shall include, but not be limited to, the paying of assessments to the Association. Failure of any Member to abide by these Bylaws and all rules made pursuant thereto, the Covenants, and the laws of the City of Laurel, County of Yellowstone, and the State of Montana, shall be grounds for appropriate legal action by the Association or by an aggrieved Member against such non-complying Member.

4. MEETINGS AND VOTING

A. Regular Meetings: There shall be a regular meeting of the Association annually on such date as determined by the Board of Directors of the Association ("Board") and properly announced by the Board. Any first lienholder shall have the right to have a representative attend any regular meeting and shall be given notice thereof, provided that such lienholder requests notice to be given. The first meeting of the Association shall take place not more than one year following the date of signing these Bylaws, if not sooner held.

B. Special Meetings: Pursuant to these Bylaws, the Association may, at any time, hold special meetings, notice of which must be sent to first lienholders who so request notice, who shall have the right to have a representative attend. Such special meetings may be called on the initiative of the President of the Association, or a signed request of the Manager, or a petition signed by 25% of the total votes of the Members of the Association. Notice of any special meetings must specify the reason for such meeting and the matters to be raised. Only matters set forth in the petition or request may be brought before such meeting, unless 75% of the aggregate votes present agree otherwise.

C. Notice: Written or printed stating the place, day, and hour of the meeting, and, in case of a special meeting, the purpose or purposes for which the meeting is called shall be delivered personally, by mail or electronically. Said notices shall be personally delivered, mailed or

delivered electronically to each Member of record entitled to vote at such meeting at least ten (10) days prior to the date of the meeting and not more than sixty (60) days prior to the date of the meeting. Such notices shall make provision to allow for the voting of each Member's interest by proxy at the discretion of the Member. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the Member at his, her or its address as it appears on the books of the Association, with postage thereon prepaid. If delivered electronically, such notice shall be deemed to be delivered upon the Association's transmittal of the electronic communication to the Member at the authenticated electronic identification designated by the Member for such communications. The Members shall have the responsibility of keeping the Association notified of their current mailing and electronic mail addresses. In the absence of such notice, the Member's address shall be the address of record with the Yellowstone County Assessor's Office.

D. Quorum: No Association meeting, regular or special shall be convened to conduct business unless a quorum of Members is present in person or by proxy. A quorum shall consist of at least fifty percent (50%) of the total votes of the Members. At any time, during any meeting that a quorum is not present, such meeting shall be adjourned forthwith; provided, however, that in the event a quorum cannot be established for a properly notice meeting, then the Board may postpone the meeting to a date no more than thirty (30) days later. In the event that the meeting is postponed in accordance with the preceding sentence, a quorum for the second meeting shall consist of at least forty percent (40%) of the total votes of the Members.

E. Directors Meeting: The Board of Directors shall have an annual meeting to elect officers and to take care of such annual business as preparing a budget and other matters. The President or a majority of the Board may call a special meeting of the Board at any time upon seven days written or printed notice. Notice of any meeting may be waived in writing. The Board of Directors shall act by a majority vote.

F. Telephonic Participation: So long as the Association has 50 or fewer Members, Members may participate in a meeting of the Members by means of a conference telephone call or similar communications equipment through which all persons participating in the meeting can hear each other at the same time. Participation in this manner constitutes presence in person at a meeting.

5. VOTING INTEREST; PROXY

An Owner shall have one (1) vote for each Lot owned in the Subdivision. Multiple Owners of a Lot will collectively have only one vote, and shall decide amongst themselves how to vote. If more than one Lot is owned within the Subdivision, the Owner or Owners thereof would have one vote for each separate Lot. In no event shall more than one vote be cast with respect to any Lot. Pursuant to the Covenants, voting privileges may be suspended by the Board for failure to pay assessments when due. Whenever a quorum is present at a meeting of the Association, those present may do any and all acts they are empowered to do unless specific provision of these Bylaws, the Covenants, or the laws of the State of Montana direct otherwise.

At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary of the Association before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of the Member's Lot, or upon receipt of written notice by the secretary of the Association of the death or judicially declared incompetence of a Member, or upon the expiration of eleven (11) months from the date of the proxy. The proxy shall identify the person or persons authorized to exercise the proxy and the length of time it will be valid. If the Member specifies a choice of his or her proxy, the vote shall be cast in accordance with that choice. In addition, voting by proxy shall comply with any other applicable requirements of the Montana Code Annotated § 35-2-539.

6. BOARD OF DIRECTORS

The governance of the Subdivision shall be by a Board of Directors. Such Board shall have all powers and responsibilities attendant to the general administration and control of the Subdivision. Additionally, the Board shall have the authority necessary to carry into effect the powers and duties specified by these Bylaws. The Association shall have no less than three (3) directors ("Directors") who shall constitute the Board of Directors as the governing body of the Association. The number of Directors may be increased or decreased, but not to fewer than three (3) Directors, from time to time, as determined by the Members of the Association.

Upon the expiration of the term of the Initial Directors (hereinafter defined), the election of the Board shall be conducted at the annual meeting of the Association with three (3) Directors being elected from among the Members, with two (2) Directors elected to terms of two (2) years, and one (1) Director elected to a one (1) year term. Unless otherwise provided herein, a Director must be a Member in good standing. At such election, the Members or their proxies may cast their vote(s) for each vacancy. The persons receiving the largest number of votes shall be elected. There shall be no cumulative voting. Voting for Directors or their removal may be by secret written ballot. After the expiration of the term of the Initial Directors, any vacancy in the Board shall be filled by the remaining Board at a duly held meeting or by the sole remaining director; provided, however, a vacancy created by the removal of a director by the Members can only be filled by election by the Members. A successor Director shall serve for the unexpired term of his or her predecessor.

The initial Directors shall be appointed by the Declarant and need not be Members (the "Initial Directors"). Each Initial Director shall serve until the earlier of the time when (i) Declarant no longer owns any Lots in the Subdivision or (ii) Declarant voluntarily relinquishes its rights to appoint Initial Directors. Until the earlier of the time when (i) Declarant no longer owns any Lots in the Subdivision or (ii) Declarant voluntarily relinquishes its rights to appoint Initial Directors, the Declarant, in its sole and absolute discretion, shall be entitled to fill by appointment any vacancy in the Initial Directors or to remove any Initial Director. Notwithstanding any other provision of these Bylaws to the contrary, the Members shall have no power to remove the Initial Directors nor to appoint any additional or successor Director until the

earlier of the time when (i) Declarant no longer owns any Lots in the Subdivision or (ii) Declarant voluntarily relinquishes its rights to appoint Initial Directors.

The Association shall indemnify any present or former Director or officer of the Association to the fullest extent authorized under Montana Code Annotated §§ 35-2-447 and 352-452, or any successor statutes.

7. **OFFICERS OF THE BOARD OF DIRECTORS**

The officers of the Association shall be a President, Secretary and Treasurer, each of whom shall be appointed by the Board. Such other officers and assistant officers as may be deemed necessary may be appointed by the Board. Each officer shall hold office until the earlier of the officer's successor being duly appointed, or his death, resignation or removal. Any officer or agent appointed by the Board may be removed by the Board whenever in their judgment the best interests of the Association would be served thereby. Any officer may resign at any time by giving written notice to the Board. Such resignation shall take effect at the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. A vacancy in any office may be filled by the Board. The officer appointed to such vacancy shall serve the remainder of the term of the officer he or she replaces.

A. **President:** The President shall be the principal executive officer of the Association, and, subject to the control of the Board, shall in general supervise and control all the business and affairs of the Association, including the filing of liens for unpaid assessments in accordance with the Covenants and the enforcement activities of the Association. The President, when present, shall preside at all meetings of the Association and meetings of the Board. The President may sign, with the Secretary or any other proper officer of the Association authorized by the Board, any deeds, mortgages, bonds, contracts, or other instruments which the Board has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board or by the Covenants to some other officer or agent of the Association, or shall be required by law to be otherwise signed or executed, and in general shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board from time to time.

B. **Secretary:** The Secretary shall keep the minutes of the Board meetings in one or more books provided for that purpose, see that all notices are duly given in accordance with the provisions of the Covenants and these Bylaws, be custodian of the Association records, regulations, rules and resolutions and keep a register or the post office address of each Director which shall be furnished to the Secretary by each Director, and in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him or her by the Board or by the Association.

C. **Treasurer:** The Treasurer shall be responsible for the funds of the Association and shall be responsible for keeping and having kept full and accurate financial records and books

of account showing all receipts and disbursements of the Association and any other financial data required by the Board. He or she shall be responsible for the deposit of all funds in the name of the Association in such depositories as may be designated by the Board from time to time. The Treasurer shall be responsible for the collection of periodic assessments to be collected. Further, the Treasurer shall record the assessments due and paid and shall prepare quarterly reports reflecting the Association's assets, including the assessments due and paid and shall mail or otherwise provide a copy of the quarterly reports to each Director. In general, the Treasurer shall perform all of the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him or her by the Board or by the

Association. The Board may delegate such of the Treasurer's powers and duties to a manager as it deems advisable.

8. POWERS AND DUTIES OF THE BOARD OF DIRECTORS

The Board of Directors shall have the following powers and duties:

- A. To call annual meetings of the Association and give due notice thereof.
- B. To conduct elections of the Board.
- C. To enforce the provisions of the Articles of Incorporation, the Bylaws, and the Covenants of the Subdivision by appropriate action.
- D. To promulgate and adopt rules and regulations for the use of the Utility Lot and for the occupancy of the Lots so as to not interfere with the peace and quiet of all the Members. Such rules must be approved by fifty-one percent (51%) of the total votes of the Members, voting in person or by proxy, at any regular or special meeting of the Association.
- E. The Board may provide for the management of the Subdivision by hiring or contracting with suitable and capable management personnel ("Manager") for the day-to-day operation, maintenance, upkeep and repair of the Subdivision and its' facilities, open space, and utilities.
- F. To levy assessments as allowed by the Covenants, these Bylaws, and the State of Montana, and to provide for the collection, expenditure, and accounting of said assessments.
- G. To collect the assessments for the Association for the operation, maintenance, repair, utilities and insurance related to the Utility Lot within the Subdivision.
- H. To pay for the expenses of the operation, maintenance, improvement, repair, and insurance related to easements, common areas, Utility Lot, mail boxes, community signs

or identification, and community boulevard trees and landscaping within the Subdivision, general maintenance, management and administration of common areas, Utility Lot, and, taxes for open space, and weed control in the Utility Lot or common areas, and for any other purposes, expressed or implied, in the Covenants and to approve payment vouchers, either at regular or special meetings.

- I. To delegate authority to the Manager for the conduct of Subdivision business, to carry out the duties and powers of the Board; however, such authority shall be precisely defined with ultimate authority at all times residing in the Board of Directors.
- J. To provide a means of hearing grievances and foreclosure proceedings of Members and to observe all due process requirements imposed upon the Association and non-profit corporations.
- K. To meet at regularly scheduled times and hold such meetings open to all Members or said Member's representative.
- L. To prepare an annual budget for the Subdivision in order to determine the amount of the assessments payable by Members, to meet the expenses, and to allocate and assess such charges among the Members for their pro-rata share of the budget each year, and to submit such budget to the Members on or before the date of the annual meeting.
- M. To levy and collect special assessments whenever, in the opinion of the Board, it is necessary to do so in order to meet increases in expenses or costs related to the operation, maintenance, and repair of the Subdivision, or related to additional capital expenses or emergencies expenses.
- N. To file liens and to foreclose liens and to otherwise take appropriate legal action to collect any delinquent assessments, payments of amounts due from Members or from any person or persons owing money to the Subdivision, and to levy a penalty and to charge interest up to the legal rate on unpaid amounts due and owing.
- O. To defend in the name of the Association any and all lawsuits wherein the the Subdivision is a party defendant.
- P. To enter into contracts with third parties to carry out the duties set forth, for and on behalf of the Board and the Association.
- Q. To establish a bank account for the Subdivision and to keep therein all funds of the Association. Withdrawal of monies from such accounts shall only be by checks signed by such persons as are authorized by the Board of Directors.
- R. In general, to act for and carry on the administration and affairs of the Association as authorized and prescribed by the Covenants and to do all those things which are

necessary and reasonable in order to carry out the governance and operation of the Subdivision.

- S. To arrange, keep, maintain, and renew adequate liability insurance for the Association and the Board.
- T. To carry out the duties and responsibilities of the Board in all other matters as may be authorized, needed or required by the Covenants.
- U. To allow first lienholders to inspect Association and Board records upon proper notice and during reasonable business hours.
- V. To serve as the Design Review Committee of the Association or to appoint Members to such Committee and to carry out the duties thereof as described in the Covenants.

9. VACANCIES AND REMOVAL

After the expiration of the term of the Initial Directors, any vacancy in the Board shall be filled by the remaining Board at a duly held meeting or by the sole remaining director; provided, however, a vacancy created by the removal of a Director by the Members by a majority vote can only be filled by election by the Members. A successor Director shall serve for the unexpired term of his or her predecessor. Voting for Directors or their removal may be by secret written ballot.

10. COMPENSATION

No member of the Board of Directors shall receive any compensation for acting as such, except to be reimbursed for approved expenses incurred in attending Board meetings or carrying out Board functions. Nothing herein however, shall be construed to preclude compensation being paid to any Manager who is hired by the Board.

11. LIABILITY OF MEMBERS OF BOARD OF DIRECTORS

No Member of the Board shall be liable to the Association or any of the Members or any third party for harm, injury, loss or damage suffered because of any action taken or omitted to be taken by any Board of Director serving as a Director in good faith if the Board of Director:

- A. exercised and used the same degree of care and skill as a prudent man or woman would have exercised or used under the circumstances in the conduct of his own affairs; or
- B. took or did not take action in reliance upon advise of counsel or upon statements or information of other Members, the Manager or employees of the Association which he or she has reasonable grounds to believe.

12. MANAGEMENT AND BUDGET

A Manager may be appointed and/or removed by the Board of Directors. The Manager or any Member of the Board or Association handling Association funds or having power to withdraw or spend such funds shall be bonded, and shall have maintained records of the financial affairs of the Subdivision. Such records shall also detail all assessments made by the Association and the status of payments of said assessments by all Members. All records shall be available for examination during normal business hours by any Member or the Member's representative. All functions and duties herein provided for the Manager may be performed by the Board, or the President, if the Board should decide not to have a Manager.

A. The receipts and expenditures of the Association shall be under the direction of the Board or the Manager and shall include a provision for:

1. Current Expenses: Which shall include all receipts and expenditures to be made within the year for which the budget is made, including a reasonable allowance for contingencies and working funds, except expenditures chargeable to reserve or to betterments. The balance in this fund at the end of each year shall be applied to reduce the assessments for current expenses for the succeeding year.
2. Reserve for Deferred Maintenance: Which shall include funds for maintenance and items which occur less frequently than annually.
3. Reserve for Replacement: Which shall include funds for repair or replacement required because of damage, depreciation or obsolescence.
4. Betterments: Which shall include the funds to be used for capital expenditures for additional improvements or additional personal property which shall be a part of the common elements of Subdivision.

B. The Manager, if any, shall prepare and submit to the Board a budget, or the Board must prepare the budget each calendar year. The budget shall include the estimated funds required to carry out the functions of the Association, including a reserve for contingencies, to pay for services and materials furnished to the Association, and to provide and maintain funds for the foregoing accounts according to good accounting practices.

Copies of the budget and proposed assessments shall be transmitted to each Member on or before the date of the annual meeting of the Association preceding the year for which the budget is made. If the budget is subsequently amended, a copy of the amended budget shall be furnished to each Member. The budget shall be amended if necessary and approved by a majority of the total votes of the Members voting in person or by proxy at the annual meeting.

C. A financial report of the accounts of the Association shall be made annually by an accountant, and a copy of the report shall be furnished to each Member at the annual meeting.

The Board or the Manager shall generally operate and manage the Subdivision for and on behalf of the Members and shall have such other powers and authority as the Members may designate. If there is no Manager or if the Manager resigns, is terminated or the Manager's contract expires and a successor is not chosen, the Board shall perform all the duties of the Manager until a Manager shall be replaced.

13. AMENDMENT OF BYLAWS

These Bylaws may be amended at any regular or special meeting of the Association providing that a copy of the proposed amendment is included in the notice of such meeting. Upon a vote of seventy-five (75%) of the votes of Members present and voting in person or by proxy at such meeting, based on one vote per Lot, the amendment shall be declared adopted. The Bylaws may also be amended by the execution and acknowledgment of such amendment by seventy-five (75%) of the total votes, based on one vote per Lot.

The Secretary shall as soon as practicable after adoption, prepare a copy of these Bylaws as amended for certification by the President and Secretary of the Association and recording with the Office of the Clerk and Recorder of Yellowstone County. Bylaws as amended shall become effective at the time of recording, and a copy shall be mailed or delivered to each Member.

14. ASSESSMENTS

The Association, acting through the Board of Directors, shall have the power to levy assessments on its Members for capital and operating expenses. The assessments levied by the Association shall be used exclusively to promote health, safety and welfare of the residents of the Subdivision, including, but not limited to, the maintenance of the common areas, open space, utility lines, and common area landscaping, property liability insurance, Association employees' wages, mailing costs and other related expenses incurred on behalf of the Association as further described hereafter. In addition, assessments may be levied for any necessary capital improvements. Notice of each Member's assessments shall be mailed to said Member at the Member's address of record. The assessments shall be levied consistent with the Covenants.

15. NOTICE OF DEFAULT TO LIENHOLDERS

A first lienholder, upon request, will be entitled to written notification from the Association of any default in the performance by an individual Member borrower of any obligation under the Covenants or these Bylaws that is not cured within sixty (60) days.

16. FISCAL YEAR

The fiscal year of the Association shall commence on January 1 of each year and end on December 31 of each year, unless changed by the Board of Directors.

17. DUE PROCESS BY THE ASSOCIATION

In the event there shall be a default, except in the payment of assessments, by a Member or a violation of any of the provisions of of the Covenants or these Bylaws, or non-compliance, notice of the same shall be sent to the Member in writing by the Board of Directors setting forth the nature of the violation or non-compliance and providing for a time certain when the Member shall be confronted by the Board to respond. At such hearing the Member shall be confronted by the person or persons bringing the charges if they are individuals other than the Board of Directors; the Member shall have an opportunity to cross-examine such individuals and present his or her own witnesses, exhibits or testimony in his or her own behalf. At such hearing, if the Member desires, he or she may request an impartial hearing examiner to be present and conduct the proceedings. Following such a hearing, the Board shall enter its findings of fact following the recommendations of any examiner, if any, and setting forth its decision and any actions it deems appropriate if it finds in fact that a violation or default has occurred.

18. MISCELLANEOUS

- A. Costs and Attorney's Fees: In any proceeding arising because of an alleged default by a Member, the prevailing party shall be entitled to recover the costs of the proceedings and such reasonable attorney's fees as may be determined by the Court.
- B. No Waiver of Rights: The failure of the Association or of a Member to enforce any right, provision, covenant or condition which may be granted by the Subdivision documents, including, but not limited to, the Covenants and these Bylaw, shall not constitute a waiver of the right of the Association or Member to enforce such right, provision, covenant or condition in the future.
- C. Election of Remedies: All rights, remedies and privileges granted to the Association or a Member pursuant to any term, provision, covenant or condition of the Subdivision documents, including, but not limited to, the Covenants and these Bylaw shall be deemed cumulative and the exercise of any one or more shall not be deemed to constitute an election of remedies nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be granted to such other party by the subdivision documents, or at law or in equity.
- D. Surplus: Any surplus of the common expense payment by the Members over the actual expenses (including the reserve for contingencies and replacements) during a fiscal year of the Association shall be applied toward the common expenses for the following year, or shall be applied in any other manner which shall benefit the Association and which, on the basis of the United States Federal Income Tax Law, regulations and interpretations existing from time to time, in the sole discretion of the Board, is most likely to avoid taxation of such surplus.

- E. Parliamentary Rules: Roberts Rules of Order (latest edition) shall govern the conduct of the Association's meetings when not in conflict with the Articles of Incorporation, the Covenants, or these Bylaws.
- F. Invalidity: The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability or effect of the balance hereof, nor shall it affect the validity, enforceability, or effect of the Covenants.

19. **THE COVENANTS**

The Declarant has recorded the Declaration of Covenants, Conditions and Restrictions of the Cherry Hills Subdivision – 3rd Filing. These Covenants shall govern the acts, powers, duties and responsibilities of the Association and in the event these Bylaws and Covenants are in conflict, the Covenants shall prevail.

The definition of terms set forth in the Covenants shall be applicable throughout these Bylaws and the interpretation thereof.

By virtue of these Bylaws and the Covenants, each Owner has the right to membership in the Association and any Owner is eligible to be elected to the Board of Directors of the Association.

The Association and its Board of Directors shall have the primary and final authority on all matters solely affecting the Subdivision area, subject to the laws, rules and regulations of the County of Yellowstone, and the State of Montana.

IN WITNESS WHEREOF, _____, authorized representatives of, the owner of record of Cherry Hills Subdivision – 3rd Filing and having a majority of the voting interest of the said Subdivision as of the date hereof, hereby appoints the following persons to serve on the initial Board of Directors until the first meeting of the Association, to-wit:

President: _____

Secretary: _____

Treasurer: _____

and the undersigned record owner and the said Board hereby certify, declare and affirm the adoption of the foregoing Bylaws on the ____ day of _____, 2018.

DECLARANT:

WESTERN HOLDINGS COMPANY, LLC

BY: _____

ITS: _____

STATE OF MONTANA)
 : ss
County of Yellowstone)

On this ____ day of _____, 20____, before me, a Notary Public for the State of Montana, personally appeared _____ (name) , known to me to be the person whose name is subscribed to the above instrument and acknowledged to me that they he/she is the _____ (capacity) of Western Holdings Company, LLC and executed the same.

Notary Public for the State of _____
Printed Name _____

Affix seal to the left