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**Third Restated and Revised Declaration of  
Protective Covenants, Conditions and  
Restrictions  
For  
Spanish Peaks**

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**Third Restated and Revised Declaration of  
Protective Covenants, Conditions and Restrictions  
for  
Spanish Peaks**

This THIRD RESTATED AND REVISED DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS FOR SPANISH PEAKS (this “**Declaration**”) has been unanimously approved by the Board and is made this \_\_\_ day of October, 2016.

This Declaration restates and supersedes in its entirety the Second Restated and Revised Declaration of Protective Covenants, Conditions and Restrictions for Spanish Peaks, dated November 15, 2006, and recorded at the office of the Clerk and Recorder, Gallatin County, Montana on December 7, 2006, as Document No. 2250423, and recorded at the office of the Clerk and Recorder, Madison County, Montana on March 12, 2007, as Document No. 118896; First Supplement to Second Restated and Revised Declaration of Protective Covenants, Conditions and Restrictions for Spanish Peaks (Phase 3A), recorded July 30, 2007, as Document No. 2273922, records of Gallatin County, Montana; Second Supplement to Second Restated and Revised Declaration of Protective Covenants, Conditions and Restrictions for Spanish Peaks, recorded October 3, 2007, as Document No. 2280701, records of Gallatin County, Montana; Third Supplement to Second Restated and Revised Declaration of Protective Covenants, Conditions and Restrictions for Spanish Peaks, recorded February 22, 2008, as Document No. 2292358, records of Gallatin County, Montana; First Amendment to Second Restated and Revised Declaration of Protective Covenants, Conditions and Restrictions for Spanish Peaks, recorded October 3, 2008, as Document No. 2312062, records of Gallatin County, Montana, and recorded October 6, 2008, as Document No. 128394, records of Madison County, Montana; Fourth Supplement to Second Restated and Revised Declaration of Protective Covenants, Conditions, and Restrictions for Spanish Peaks Resort Subdivision Phase 6A, recorded July 30, 2015, as Document No. 2519595, records of Gallatin County, Montana (the “**Fourth Supplement**”); Fifth Supplement to Second Restated and Revised Declaration of Protective Covenants, Conditions, and Restrictions for Spanish Peaks for Spanish Peaks Resort Subdivision Phase 4, recorded February 11, 2016, as Document No. 2537412, records of Gallatin County, Montana (the “**Fifth Supplement**”); and Sixth Supplement to Second Restated and Revised Declaration of Protective Covenants, Conditions, and Restrictions for Spanish Peaks for Spanish Peaks Resort P.U.D. Subdivision Phase 8A, recorded February 11, 2016, as Document No. 2537417, records of Gallatin County, Montana (the “**Sixth Supplement**”).

This Declaration imposes upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Property, and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Property.

All of the Property described in **Exhibit A** of this Declaration and any additional property subjected to this Declaration by Supplemental Declaration, and all improvements placed or constructed thereon, shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and



desirability of, and which shall run with title to, the real property subjected to this Declaration. This Declaration shall be binding on all parties having any right, title, or interest in or to the Property or any part thereof, and their respective heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof.

In addition to being subject to this Declaration, the portion of the Property located in Gallatin County is within the boundaries of what is currently known as the Gallatin Canyon/Big Sky Planning and Zoning District, and, therefore, such portion of the Property, its development and use, is also subject to the terms, covenants and conditions set forth in the zoning regulations adopted for the Gallatin Canyon/Big Sky Planning and Zoning District on July 30, 1996 (Gallatin County Commission Resolution 1996-38) and as the same has been and may be subsequently amended.

## **Article 1 Definitions**

The terms in this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below:

1.1 **Act.** Act means the Montana Nonprofit Corporation Act, §35-2-113 *et seq.*, MCA, as amended.

1.2 **Affirmative Vote of a Majority of the Classes.** The Affirmative Vote of a Majority of the Classes means and shall be achieved on any particular matter if (and only if) all of the following occur: **(a)** the Class B Member votes in favor of such matter, and **(b)** the affirmative vote of a majority of all other Classes of Members which have Members entitled to vote on such matters (other than Class B), voting collectively as a single Class. The affirmative vote of a majority of all other Classes of Members (other than Class B) shall require **(i)** a Combined Quorum of such Classes, and **(ii)** the votes of a majority of the Members of such Classes entitled to vote on such matter and present at such meeting in person, by proxy, or by written ballot, voting collectively as a single class. Notwithstanding the foregoing, upon the effective resignation of the Class B Member, the favorable vote of the Class B Member shall no longer be required under clause **(a)** above.

1.3 **Annexable Area.** Annexable Area means the undeveloped portions of real property within the Spanish Peaks Master Plan. Unless and until such Annexable Areas are included as part of the Property pursuant to the terms in **Article 13** in a writing recorded in the Public Record, the Annexable Area is not deemed to be part of the Property.

1.4 **Architectural Review Committee or ARC.** Architectural Review Committee or ARC means the committee appointed pursuant to **Section 8.2**.

1.5 **Area of Common Responsibility.** Area of Common Responsibility means the Common Area, together with the Open Space, Roadways, Internal Trails, Water System (so long as the Association owns or is required to maintain and operate the Water System) and any other areas that by the terms of this Declaration, any written notice from the Declarant to the

Association, or other applicable covenants, contract, or agreement with the County, are or become the responsibility of the Association to maintain.

1.6 **Articles of Incorporation or Articles.** Articles of Incorporation or Articles means the Articles of Incorporation of the Association as filed with the Montana Secretary of State and any amendments and restatements thereto from time to time.

1.7 **Assessments.** Assessments means, collectively, the categories of assessments as established herein, being Base Assessments, Community Transfer Assessments, Default Assessments, Special Assessments, Specific Assessments, or any other assessments as may be established by the Board.

1.8 **Association.** Association means the Spanish Peaks Owners Association, Inc., a Montana nonprofit corporation, which meaning shall include successors and assigns.

1.9 **Association Expenses.** Association Expenses means allocations to reserves for, and all costs, expenses and liabilities incurred by or on behalf of the Association for, (a) acquiring, leasing, renting, designing, constructing, managing, operating, maintaining, repairing, replacing and improving Area of Common Responsibility; (b) administering and enforcing the Governing Documents; (c) levying, collecting and enforcing the Assessments, charges, liens, and other expenses imposed pursuant to the Governing Documents; (d) regulating and managing the Property; (e) performing any and all Functions permitted by this Declaration or any Governing Document; (f) operating the Association; and (g) any other cost or expense legally incurred by the Association. Association Expenses shall not include any expenses incurred during the Class B Control Period for initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs unless approved by a majority of the total Class A votes of the Association.

1.10 **Base Assessment.** Base Assessment has the meaning given to it in **Section 1.1(b)** of **Exhibit C**.

1.11 **Board of Directors or Board.** Board of Directors or Board means the body responsible for administration of the Association, as established in the Bylaws.

1.12 **BSFD.** BSFD means the Big Sky Fire Department, which is the authority having jurisdiction to enforce the fire code as adopted by the Big Sky Fire District, currently the International Fire Code, 2012 edition, within the Property.

1.13 **Builder.** Builder means any Person which purchases one or more Lots for the purpose of constructing improvements for later sale to consumers in the ordinary course of such Person's business and who is approved and designated in writing by the Declarant as a "Builder" under this Declaration.

1.14 **Building Envelope.** Building Envelope means that portion of a Lot that may be shown on a Plat recorded in the Public Record or a building envelope plan on file with the County which encompasses the area in which certain Improvements may be constructed, subject

to any limitations and requirements specified during the architectural review process by the ARC.

1.15 **Business.** Business means any commercial, retail or service enterprise, including, without limitation, restaurants, shops, offices offering medical, legal, accounting, engineering, real estate, property management or repair services and facilities providing the point of sale for recreational services such as horseback riding, skiing and snowboarding, ski school instruction, guiding, golfing or other seasonal recreational activities; any Lodge; and, without deeming such uses permitted hereunder, any manufacturing, industrial, warehouse, logistics, storage, or other non-residential use of property; but shall exclude (a) home occupations and (b) rentals of residences as permitted under **Section 7.4**.

1.16 **Business Class.** Business Class means a membership class that may be created pursuant to **Exhibit B**. This class of members shall be all those Owners where any type of Business (including a Lodge) is operated upon their Platted Unit.

1.17 **Bylaws.** Bylaws means the Bylaws of the Association adopted by the Association and any amendments and restatements thereto from time to time.

1.18 **Class or Classes.** Class or Classes means the various voting classes as set forth in **Exhibit B** attached hereto and incorporated herein by reference.

1.19 **Class B Control Period.** Class B Control Period means the period of time during which the Class B Member is entitled to certain rights as enumerated in this Declaration, which expires on the Turnover Date.

1.20 **Class B Member.** Class B Member means the Declarant.

1.21 **Club.** Club means the private recreational resort commonly known as the Spanish Peaks Mountain Club, which is owned by the Club Property Owner.

1.22 **Club Membership Plan.** Club Membership Plan means the plan, dated November 11, 2013, that governs membership in the Club, as such plan may be amended or replaced from time to time.

1.23 **Club Property.** Club Property means the property within the Spanish Peaks Master Plan owned by the Club Property Owner and operated for commercial, recreational and social purposes and not defined herein as Platted Units or Common Area (such Club Property includes, without limitation and whether now or hereafter existing, the Golf Property, clubhouse, tennis facilities, ski facilities, swimming pool and related commercial, recreational and social facilities), which Club Property is generally depicted in its current form on **Exhibit D**. At any time during the Class B Control Period, the Declarant may amend, in its sole discretion, **Exhibit D** to more accurately describe the Club Property, and the consent of no other party shall be required. The Club Property is NOT a Common Area or an Area of Common Responsibility.

1.24 **Club Property Owner.** Club Property Owner means the owner of the Club Property, which is, as of the date hereof, the Declarant.

1.25 **Combined Quorum.** Combined Quorum has the meaning given to it in Section 1.66.

1.26 **Common Area.** Common Area means all real and personal property which the Association owns or leases for the common use and enjoyment of the Owners.

1.27 **Community Transfer Assessment.** Community Transfer Assessment has the meaning given to it in **Section 1.2(a)** of **Exhibit C**.

1.28 **Condominium Unit.** Condominium Unit means a condominium unit, or a townhome or townhouse which is subject to the Montana Unit Ownership Act, that is depicted on a final subdivision plat, certificate of survey or condominium declaration recorded in the Public Record.

1.29 **Construction Activity.** Construction Activity means any site preparation, landscaping, sign erection, construction, reconstruction, drilling of test pits or wells, change, modification, alteration, enlargement or material maintenance of any Improvements or real property within the Property, or any physical changes in the use of any Platted Unit or other property or building or structure thereon; *provided, however*, that after initial construction of any Improvement on a Platted Unit is completed, Construction Activity shall not include any activities within the interior of such Improvements that do not have a material impact on the exterior of such Improvements, except a change in the use thereof.

1.30 **County.** County means Gallatin County, Montana and/or Madison County, Montana, as applicable.

1.31 **Declarant.** Declarant means CH SP Acquisition LLC, a Delaware limited liability company, or any successor, successor-in-title, or assign who is designated as the Declarant by CH SP Acquisition LLC or any successor Declarant in a written instrument recorded in the Public Record and who succeeds as Declarant pursuant to the terms of this Declaration.

1.32 **Declarant's Rights.** Declarant's Rights has the meaning given to it in **Section 6.3**.

1.33 **Declaration.** Declaration means this Third Restated and Revised Declaration of Protective Covenants, Conditions and Restrictions for Spanish Peaks and includes all amendments, restatements or supplements hereafter recorded in the Public Record.

1.34 **Default Assessment.** Default Assessment has the meaning given to it in **Section 1.3** of **Exhibit C**.

1.35 **Design Guidelines.** Design Guidelines mean any instruments adopted by the ARC, or over which the ARC has accepted jurisdiction, for the regulation and management of the Property or any portion thereof with respect to any matter that the ARC is authorized to review or for which the ARC is authorized to establish standards, as the same may be amended from time to time.

1.36 **Direct Benefit.** Direct Benefit means that the proceeds of the Community Transfer Assessment are used exclusively to support maintenance and improvements to the Property or for acquisition, improvement, administration, and maintenance of property owned by the Association and used primarily for the benefit of Members. Direct Benefit also includes cultural, educational, charitable, recreational, environmental, conservation or other similar activities that are conducted in or protect the Property or adjacent or contiguous property or are conducted on other property that is used primarily by the Members. To the extent that any governmental restrictions (including but not limited to the provisions of 12 CFR Part 1228 or any successor thereto) as to the use of private transfer fees are amended to remove or expand the Direct Benefit requirement so that it is less restrictive, then the provisions of this Declaration may be similarly deemed to remove or expand the Direct Benefit requirement so that it is less restrictive, such interpretation to be at the discretion and election of the Association.

1.37 **Eligible Holder.** Eligible Holder shall have the meaning given in **Section 12.1(a)**.

1.38 **Federal Mortgage Underwriter.** Federal Mortgage Underwriter means governmental (including, but not limited to, a governmental sponsored enterprise) or nation-wide institutional lender or purchaser of mortgage loans or governmental provider of credit support for mortgage loans or securitized mortgage loans, including, but not limited to, the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the United States Veterans Administration and their respective successors and assigns.

1.39 **Fifth Supplement.** Fifth Supplement shall have the meaning given in the second paragraph of this Declaration.

1.40 **Fourth Supplement.** Fourth Supplement shall have the meaning given in the second paragraph of this Declaration.

1.41 **Function.** Function means any activity, function or service listed in this Declaration which is required to be or may be undertaken or performed by the Association as well as any activity, function or service otherwise undertaken or performed by the Association.

1.42 **Golf Course Property.** Golf Course Property means Club Property owned and operated for use as a golf course and for commercial, recreational and/or social purposes. This property may include, without limitation, whether now or hereafter existing, the golf course, driving range, chipping and putting areas, clubhouse (inclusive of bar and restaurant facilities), maintenance shop and associated structures, ski facilities, and related commercial, recreational and social facilities. As of the date of the recording this Declaration, the Golf Course Property is

not part of the Property, is not a Unit, and the owner or the Golf Course Property is not an Owner or Member hereunder by virtue of owning the Golf Course Property. The Golf Course Property is NOT a Common Area or an Area of Common Responsibility.

1.43 **Good Standing.** Good Standing means that a Member is current on the payment of such Member's Assessments, is not deemed by the Board to be in violation of the Governing Documents, and is current on any other payments deemed by the Board to be due and owing to the Association or a Sub-Association or the Club.

1.44 **Governing Documents.** Governing Documents collectively means this Declaration, Supplemental Declarations, Bylaws, Articles, Rules and Regulations, Design Guidelines, and resolutions of the Board, all as amended from time to time.

1.45 **Improvements.** Improvements means all structures and appurtenances thereto of every type and kind, including but not limited to, buildings, outbuildings, all exterior surfaces including the surface finish thereof; Transportation Systems; snowmaking facilities; night skiing facilities and illumination equipment for trails, bridges and other amenities that are part of the Property; security systems; mailbox structures; decks; canopies; patios; awnings; gardens; sprinkler systems and other landscaping; planting, clearing, or removing of trees, shrubs, grass, or plants and appurtenances; ponds and water tanks; drainage, detention, retention facilities and culverts; monuments; entertainment and recreational areas, amenities and facilities; swimming pools; ice rinks; skating ponds; saunas; steam baths; clubhouses; facilities to accommodate Invitees and visitors; central waste collection and disposal facilities; paving and parking areas; malls; ducts; shafts and flues; conduit installation areas; storage facilities for supplies and equipment; fences; gates; fire breaks and fire prevention works; screening walls; earth walls, retaining walls, cuts and fills associated with any improvements; lighting; signage; pipelines, lift stations, and pumps; utilities of any sort; communication facilities and lines; management offices; environmental monitoring equipment and facilities; ground water facilities; waterways; the demolition or destruction by voluntary action of any structure or appurtenance thereto of every type and kind; grading, excavation, filling, or similar disturbance to the surface of the land including, but not limited to, change of grade, change of ground level, change of drainage pattern, change of stream bed or change of any existing surface contour; equipment related to the foregoing; and all types of structures, facilities and improvements that a governmental or quasi-governmental entity may be empowered by law from time to time to construct.

1.46 **Internal Trails.** Internal Trails means those trails, excepting ski trails, some of which are set forth and described as trails or recreational use easements on a final plat of property within the Property, for non-motorized (other than for maintenance (including grooming) or in the case of emergency) use by Owners and their Invitees and for Club members, guests and invitees.

1.47 **Interval Ownership.** Interval Ownership means the holding of rights by which ownership of real property is subject to programs of ownership or use for the operation of a timesharing, fractional ownership, fraction sharing or similar shared or scheduled occupancy program.

1.48 **Invitee.** Invitee means any family member, customer, agent, employee, independent contractor, guest or invitee of a Member.

1.49 **Licensee.** Licensee means any Person who occupies or uses a Platted Unit pursuant to a lease, license, occupancy agreement, concession agreement or under color of any other arrangement with an Owner.

1.50 **Lodge.** Lodge means a building (or portion of a building) containing lodging facilities that are predominately intended or used for the overnight accommodation of transient guests or invitees for compensation, but a Lodge shall not include the portions of any such building that has been designated for individual ownership for residential purposes under the Spanish Peaks Master Plan and which would count against the number of allocated residential units under the Spanish Peaks Master Plan or which is used for the operation of any other type of Business. The term Lodge shall include, but is not limited to, inns, hotels and similar structures.

1.51 **Lot.** Lot means a legally described division of real property within the Property as depicted on a Plat or certificate of survey recorded in the Public Record, as may be amended from time to time.

1.52 **MCA.** MCA means the Montana Code Annotated 2015 and any subsequent amendments.

1.53 **Member.** Member means a Person holding a membership in the Association pursuant to **Article 3**.

1.54 **Membership.** Membership means a membership in the Association that is appurtenant to the ownership of a Unit within the Property.

1.55 **Mortgage.** Mortgage means a mortgage, a deed of trust, a deed to secure debt, or any other form of security deed relating to all or a portion of the Property.

1.56 **Mountain Ski Area.** Mountain Ski Area means the Big Sky Resort Ski Area (or by whatever name it may from time to time be known) or other ski area operated for downhill skiing and summer recreation which is included within or adjacent to the Spanish Peaks Community.

1.57 **NFPA.** NFPA has the meaning given to it in **Section 7.7(a)**.

1.58 **Open Space.** Open Space means the portions of the Property designated on Plat(s) as "Open Space" or "OS" that may have a designated number. The term Open Space shall specifically exclude the following real property: OS-1 and OS-9, of the Final Plat of Spanish Peaks Resort Subdivision, Phase 2, in Madison County, Montana, according to the official plat thereof on file and of record in the office of the Clerk and Recorder, Madison County, Montana (Plat Reference: Book 4 of Plats, Page 500). Open Space shall not constitute or include any Unit.

1.59 **Owner.** Owner means one or more Persons, including, without limitation, the Declarant, who hold record title to any Platted Unit, and the Declarant with respect to its entitlements or the rights it holds to any Unplatted Unit, but excluding (a) contract purchasers or holders only of beneficial title unless the record holder has designated in a writing delivered to the Association that such contract purchaser or beneficial title holder is, until further notice, to be deemed to stand in place of the record holder, (b) the Association, (c) the Club Property Owner, with respect to its ownership of the Club Property, (d) an owner of the Mountain Ski Area, with respect to its ownership of the Mountain Ski Area, and (e) those having an interest merely as security for the performance of an obligation; *provided, however*, that such a holder may be subject to payment of Assessments from and after the time of commencement of a foreclosure or other effective transfer procedures until the time that such procedures have been abandoned or completed and all redemption periods have expired.

1.60 **Permitted Household Pets.** Permitted Household Pets has the meaning given to it in **Section 7.18**.

1.61 **Person.** Person means any natural person, corporation, partnership, limited liability company, association, trust, or any other legal entity.

1.62 **Plat.** Plat means a graphical representation of a subdivision within the Spanish Peaks Community showing the division of land into lots, parcels, blocks, streets, alleys, and other divisions and dedications that satisfies the requirements of the Montana Subdivision and Platting Act and County requirements recorded in the Public Record.

1.63 **Platted Unit.** Platted Unit means each Lot or Condominium Unit within the Property. Where an Owner owns two or more contiguous Lots or Condominium Units and vacates the boundary lines(s) between the Lots or Condominium Units in accordance with this Declaration, the resulting Lot or Condominium Unit shall constitute one Platted Unit. Lot line adjustments must have the prior written approval of the Declarant or the Association as required under this Declaration.

1.64 **Property.** Property means the real property described in **Exhibit A**, as supplemented or otherwise revised from time to time in accordance with **Article 13**.

1.65 **Public Record.** Public Record means the office of the Clerk and Recorder of either County where land records are recorded or filed.

1.66 **Quorum.** Quorum means, (a) with respect to a Class, the presence in person or by proxy of Members of such Class who are entitled to vote more than ten percent (10%) of the total votes for the Members of such Class entitled to be cast on the matter, and (b) with respect to a vote of multiple or combined Classes, the presence in person or by proxy of Members of all such Classes who are entitled to vote more than ten percent (10%) of the total votes for the Members of such Classes entitled to be cast on the matter (a “**Combined Quorum**”).

1.67 **Roadway.** Roadway means a street or roadway (but excluding driveways) within the Property or a street or roadway providing primary or secondary access to the Property.



1.68 **Rules and Regulations.** Rules and Regulations mean any instruments adopted by the Association for the regulation and management of the Property or any portion thereof, as the same may be amended from time to time.

1.69 **Septic Systems.** Septic System means the septic systems located upon individual Units or community or common wastewater treatment systems or drainfields on or serving the Property, operated and maintained either by an Owner, by the Association or by a Sub-Association.

1.70 **Sixth Supplement.** Sixth Supplement shall have the meaning given in the second paragraph of this Declaration.

1.71 **Spanish Peaks Community.** Spanish Peaks Community means the Property, the Club Property, the Annexable Area, and any other property developed in the surrounding area by Declarant.

1.72 **Spanish Peaks Master Plan.** Spanish Peaks Master Plan means the Master Planned Unit Development for Spanish Peaks Area, Big Sky, Montana, dated May 3, 1999, and as approved by the Gallatin County Commission at its meeting on June 17, 1999, and subsequently renewed at its meeting on June 9, 2005, as well as the Spanish Peaks Overall Development Plan, dated October 24, 2003, approved by the Madison County Commission at its meeting on December 8, 2003, and as they may be subsequently amended, modified, restated or otherwise changed from time to time. The inclusion of property within the Spanish Peaks Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the omission of any property from the Spanish Peaks Master Plan bar its later submission to this Declaration in the manner provided herein. The Spanish Peaks Master Plan is intended to be dynamic and, subject to land use regulations of governmental entities, the Spanish Peaks Master Plan may be changed by Declarant at any time for any reason without requiring the consent of any other Person except for any County consent or approvals that may be required in connection therewith.

1.73 **Special Assessments.** Special Assessments has the meaning given to it in **Section 1.4 of Exhibit C.**

1.74 **Special Declarant Rights.** Special Declarant Rights has the meaning given to it in **Section 6.2.**

1.75 **Specific Assessments.** Specific Assessments has the meaning given to it in **Section 1.5(a) of Exhibit C.**

1.76 **Staff.** Staff means the employees or agents of the Association.

1.77 **Sub-Association.** Sub-Association means an incorporated property owners association, including any condominium association but not including the Association, within the Property.

1.78 **Supplemental Declaration.** Supplemental Declaration means an amendment or supplement to this Declaration filed pursuant to **Article 13** which subjects additional property to this Declaration, removes property from this Declaration, and/or imposes, expressly or by reference, additional, modified or restated restrictions and obligations on all or any portion of the Property.

1.79 **Transportation Systems.** Transportation Systems means streets, access roads, mountain and other limited access roads, paths, walkways and walks; ski trails, skier bridges, skier tunnels, skiways, sidewalks, trails, skiway supports, ski lifts, surface lifts; snow cats and snowmobiles, gondola, tram, bus, automobile, funicular or rail systems, stations, stops and other related structures; any facilities owned by Declarant or the Association and necessary or useful for transit purpose or other means of transportation to and from or within the Property; and lighting, signage and any other facilities deemed necessary or appropriate for the proper operation and maintenance of such systems.

1.80 **Turnover Date.** Turnover Date means the date upon which the Class B Control Period ends, which shall be the earlier of **(a)** December 31, 2030, and **(b)** when the Declarant determines, in an instrument recorded in the Public Record, that more than ninety percent (90%) of the Units that may ultimately be established under the Spanish Peaks Master Plan have been sold to a Person other than Declarant or an affiliate thereof. As of the date of this Declaration, 896 residential Units are permitted under the current Spanish Peaks Master Plan. This number may be amended and increased pursuant to any amendment to the Spanish Peaks Master Plan as is permitted hereunder, and such amended or increased amount shall be used in the calculation of the Turnover Date.

1.81 **Turnover Meeting.** Turnover Meeting has the meaning given to it in **Section 3.6(d)**.

1.82 **Unit.** Unit means each Platted Unit and each Unplatted Unit.

1.83 **Unplatted Unit.** Unplatted Unit means each residential or commercial unit approved in the Spanish Peaks Master Plan, until any such unit is converted to a Platted Unit. Accordingly, at any time the number of Unplatted Units shall equal: (a) the number of residential and commercial units approved in the Spanish Peaks Master Plan, minus (b) the then existing number of Platted Units. Only the Declarant or its assigns may hold any entitlement to, or rights related to, any Unplatted Unit under this Declaration.

1.84 **Water System.** Water System means the wells, booster stations, storage/holding tanks, pipes, mains, pressure reducing valves, treatment and disinfection systems, fire hydrants and utility easements used to construct, operate and maintain water pipelines, mains and utilities, with the usual services, valves, connections, manholes, accessories and appurtenances, for the purposes of transmitting water over, through and across certain properties within the Spanish Peaks Community. The individual wells and septic systems of Owners, where applicable, are excluded. In addition, the Water System specifically does not include any component of the treated effluent system used to irrigate Club Property, which includes, but is not limited to,

effluent supply pipes, storage ponds, booster station, or the components of the golf course irrigation system, including the booster station, pipes, sprinkler heads, and utility easements. Not all real property within the Spanish Peaks Community is served by the Water System.

1.85 **Zoning Regulations.** Zoning Regulations means the regulations adopted for the Gallatin Canyon/Big Sky Zoning District on July 30, 1996 (Gallatin County Commission Resolution 1996-38) and as subsequently amended.

## **Article 2**

### **Certain Functions and Rights of Association**

2.1 **General.** Certain of the Functions described in this **Article 2** are expressly made mandatory performance obligations of the Association. All other Functions described below are voluntary Functions that the Association may, but is not obligated to, elect to provide. For any voluntary Functions, the Association may elect which Functions to perform based on the budget as adopted by the Association.

2.2 **Mandatory Property Maintenance Function; Additional Discretionary Property Management Function.** The Association shall have the obligation, right, and authority to provide or cause another party to provide for the care, operation, management, maintenance, repair and replacement of the Area of Common Responsibility. Such obligations with respect to the Area of Common Responsibility shall include but not be limited to:

(a) the removal of snow from and application of sand and salt to Roadways and operation, management, maintenance, repair, and replacement of Improvements;

(b) maintenance of all landscaping and other flora, parks, lakes, structures, and Improvements;

(c) maintenance of all ponds, streams and/or wetlands which serve as part of the drainage and storm water retention systems for the Property, including, without limitation, any retaining walls, bulkheads or dams (earthen or otherwise) retaining water therein, and any fountains, lighting, pumps, conduits, and similar equipment installed therein or used in connection therewith;

(d) maintenance of any property and facilities owned by the Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members, such property and facilities to be identified by written notice from the Declarant to the Association and to remain a part of the Area of Common Responsibility and be maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association; and

(e) compliance with any environmental reserves or responsibilities assigned to the Association, including, without limitation, creating and maintaining wildlife corridors, winter wildlife ranges and natural wildlife habitats.

Moreover, the Association may provide for the care and maintenance of other areas of the Spanish Peaks Community if the Board, in its sole and exclusive discretion, deems such care and maintenance to be necessary or desirable for access to the boundary of any Lot within the Spanish Peaks Community or access to or full utilization of any Area of Common Responsibility. The Board shall be the sole judge as to the appropriate maintenance, operation, and management of the Area of Common Responsibility and, to the extent that such services are provided by the Association, other areas of the Property and the Spanish Peaks Community.

**2.3 Water System Function.** Unless otherwise determined by the Board (and the Declarant during the Class B Control Period), the Association may, or may cause a third party selected by the Board to, maintain, keep in good repair and operate all infrastructure that comprises the Water System. The Board may set the budget for the operation and maintenance of the Water System. The Board may also establish policies that address the operation and maintenance of the Water System, which may include, among other things, rates, usage, infrastructure charges, hookup fees, water restrictions, and remedies for delinquent payments. The Association is authorized to collect amounts in connection with maintenance and operation of the Water System as Assessments and/or bill users separately, as determined by the Board. The Board is authorized to shut off water to users who are delinquent in the payment of their water charges.

**2.4 Well and Septic System Function.** The Association shall be responsible for the operation, maintenance and repair, in accordance with applicable laws, rules, regulations and governmental approvals, of any multi-user well or Septic System located on any Unit, Area of Common Responsibility or a combination thereof, or any other Septic System for which the Association agrees to take responsibility, and any single user Septic System to the extent located on an Area of Common Responsibility. This obligation shall include the regular pumping of septic tanks and monitoring of and appropriate response to alarm and sensor systems located on any multi-user Septic System for which the Association has responsibility or any single user Septic System to the extent located on an Area of Common Responsibility. The Association is hereby granted a perpetual, non-exclusive access and maintenance easement to enter upon each Unit and Area of Common Responsibility that has septic lines, tanks or other facilities associated with a multi-user Septic System or single user Septic System located on an Area of Common Responsibility or that may provide access to the Area of Common Responsibility containing said facilities. The easement is limited to the right to enter a Unit or Area of Common Responsibility for the purposes of fulfilling the Association's obligations under this Declaration. Pursuant to **Section 1.5 of Exhibit C**, the Board may levy a Specific Assessment against each Platted Unit requiring multi-user Septic Systems for which the Association is responsible and against each Platted Unit requiring single-user Septic Systems on an Area of Common Responsibility for which the Association is responsible. The Specific Assessment for a multi-user system shall be assessed pro rata against the Platted Units benefiting from this provision.

**2.5 Other Functions.** The Association may undertake and perform other functions as the Board deems reasonable or necessary to carry out the provisions of this Declaration. Subject to the limitations set forth in this Declaration, the Association is authorized to expend Community Transfer Assessments in order to fulfill the Functions of the Association.

## 2.6 Right to Make Rules and Regulations.

(a) The Association is authorized to and has the power to adopt, amend and enforce Rules and Regulations applicable to the Property and, when authority is conferred upon the Association, any other property managed by the Association, with respect to the Area of Common Responsibility and with respect to any Function, and to implement the provisions of the Governing Documents, including, but not limited to, Rules and Regulations: to (i) prevent or reduce fire hazard; (ii) prevent disorder and disturbances of the peace; (iii) regulate pedestrian and vehicular traffic; (iv) regulate household animals, the environment and environmental practices; (v) regulate signs; (vi) regulate any use of any and all Area of Common Responsibility to assure fullest enjoyment of use by the Persons entitled to enjoy and use the same; (vii) promote the general health, safety and welfare of persons within the Property; and (viii) protect and preserve property and property rights.

(b) The ARC is authorized and empowered to adopt, accept jurisdiction over, amend and enforce Design Guidelines applicable within the Property and is authorized to establish standards, including but not limited to, new Design Guidelines or revised Design Guidelines and procedures to be followed and material which must be provided by any Member or such Member's authorized agents in order to obtain review of proposed Construction Activity by the ARC.

(c) The Association and ARC may provide for enforcement of any Rules and Regulations adopted and Design Guidelines adopted, as the case may be, through fines, penalties, restriction of access or otherwise.

(d) Each Member, Licensee, and Invitee is hereby deemed to have notice of all Rules and Regulations adopted by the Association and Design Guidelines adopted by the ARC, whether or not the same have been recorded, and shall be obligated to and shall comply with and abide by such Rules and Regulations and Design Guidelines, and pay such unpaid fines and penalties which shall be enforceable in accordance with **Article 9**. Any current or potential Member, investor, lender or purchaser in relation to the Property may request that the Association or ARC provide a copy of the Rules and Regulations and the Design Guidelines to such Member, potential Member, investor, lender or purchaser. Upon the new adoption or material amendment of Rules and Regulations and Design Guidelines, the Association or ARC shall provide all current Members affected by such Rules and Regulations or Design Guidelines with copies of such documents or notification of the adoption of such documents and notice as to where copies may be obtained. Copies of such documents may be made available at offices of the Association or its agents or on an electronic or otherwise generally accessible medium. Each Member is obligated to inform all Licensees and Invitees of the obligations and restrictions set forth in the Governing Documents and to cause such Licensees and Invitees to comply with such obligations and restrictions; *provided, however*, that failure to so inform any Licensees or Invitees shall not impair the enforceability of any Governing Document.

2.7 **Taxes.** The Association shall pay or cause to be paid all ad valorem real estate taxes, special improvement and other assessments (ordinary and extraordinary), ad valorem personal property taxes, and all other taxes, duties, charges, fees and payments required to be

made to any governmental or quasi-governmental entity which shall be imposed, assessed or levied upon, or arise in connection with, the Area of Common Responsibility or Functions.

**2.8 Right to Acquire, Dispose and Improve Association Property.** The Association may acquire (by gift, purchase, lease, trade or any other method), own, operate, build, manage, maintain, rent, sell, develop, encumber, abandon, dispose of and otherwise deal in and with real and personal property of every kind and character, tangible and intangible, wherever located, and interests of every sort therein; except that the Association may not convey any real property or Improvements owned by the Association without the Affirmative Vote of a Majority of the Classes (as well as the consent of the Declarant during the Class B Control Period). The Association may cause additional Improvements to be made as part of the real property it owns or Area of Common Responsibility, including, without limitation, the construction of any capital asset, in whole or in part, for the benefit of some or all of the Members, Licensees or Invitees, subject to the restrictions set forth herein. The Association may grant easements, leases, licenses and concessions through or over real property owned by the Association, including, but not limited to, easements (including conservation easements), rights-of-way, leases, licenses and concessions to suppliers of utilities serving the Property or property in the Spanish Peaks Community, for the purpose of accommodating minor encroachments onto the real property owned by the Association or other purposes that do not unreasonably interfere with the use and enjoyment of the Area of Common Responsibility.

**2.9 Records.** The Association shall maintain its records in accordance with applicable law and the Bylaws.

**2.10 Rights of Association.** The Association shall have and may exercise any right or privilege given to it expressly by the Governing Documents or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents or by law, all rights and powers of the Association may be exercised by the Board without a vote of the Members. The powers and rights of the Association include, but are not limited to, the right to:

(a) adopt and amend the Bylaws by a majority vote of the Board, with such consents as are required pursuant to the Bylaws;

(b) make capital expenditures, incur liabilities, enter into contracts and agreements, and provide services and functions as are necessary to effect the business of the Association, including, but not limited to, hiring and discharging managing agents and other employees, agents, and independent contractors;

(c) enter into agreements with adjacent property owners for the use of Roadways within the Property, Improvements and real property owned by the Association, or the Area of Common Responsibility, as well as receiving a benefit of any of the Functions performed by the Association and address the proportionate share of such adjacent property owners for the costs for such use and participation;

(d) perform any Function, including, without limitation, by, through or under contractual agreements, licenses, or other arrangements with any governmental, quasi-governmental, private entity or any non-profit organization, as may be necessary or desirable;

(e) enter any Unit for emergency and safety reasons, to perform maintenance in accordance with this Declaration, to protect persons and property, and to inspect for the purpose of ensuring compliance with the Governing Documents, which right may be exercised by any member of the Board, the Association, officers, agents, employees, and managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after reasonable notice to the Owner of the applicable Unit. This right of entry shall include the right of the Association to enter upon any Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board, but shall not authorize entry into any single family detached dwelling or Condominium Unit without permission of the Owner except by emergency personnel acting in their official capacities. The rights set forth in this provision shall not obligate the Board or the Association to exercise any such rights or to undertake any of the actions set forth in this provision;

(f) adopt and amend budgets for revenues, expenditures and reserves and levy and collect Assessments from Members;

(g) pay the expenses of the Association, and provide for the use and disposition of any insurance proceeds in the event of loss or damage;

(h) purchase insurance policies to protect the real and personal property of the Association, including the Area of Common Responsibility, against casualty or loss and to protect the Association, officers, directors, and Staff (when acting in their official capacity) from liability (the extent and specific nature of coverage shall be determined by the Board in accordance with **Section 11.1**);

(i) provide for the indemnification of the Association's officers, directors and Staff;

(j) borrow funds in order to pay for any expenditure or outlay authorized by the Governing Documents, including, but not limited to, funds borrowed from Declarant or an affiliate thereof, and to execute all such instruments evidencing such indebtedness as may be necessary or advisable; and assign its right to future income, including, without limitation, the right to receive Assessments, as security for any borrowed funds; *provided, however*, that the Association shall not use in excess of seventy-five percent (75%) of the Association's total reserve funds or pledge assets with a value in excess of seventy-five percent (75%) of the total value of all Association assets as collateral for any borrowed funds without the Affirmative Vote of a Majority of the Classes;

(k) obtain and pay for legal, accounting and other professional and expert services;

(l) deal with agencies, officers, boards, commissions, departments, and other governmental bodies on a local, state and federal basis to carry out the powers, duties and responsibilities herein;

(m) institute, defend or intervene in litigation, arbitration, mediation, or an administrative proceeding in its own name on behalf of itself on matters affecting the Property or Area of Common Responsibility or take such action as it deems necessary to enforce the Governing Documents;

(n) in its discretion, appoint Persons to generally supervise and control the business of the Association and delegate certain powers, duties and responsibilities to such Persons; and

(o) exercise all the powers that may be exercised by a Montana nonprofit corporation under the Act.

2.11 **Conflicts Hierarchy.** In the event that there is any conflict or inconsistency between the provisions of Montana law, this Declaration, the Articles, the Bylaws, the Rules and Regulations and any Sub-Association declaration or other governing documents or rules, the provisions of Montana law, this Declaration, the Articles, the Bylaws, the Rules and Regulations and any Sub-Association declaration or other governing documents or rules (in that order) shall prevail. In the event there is a conflict between this Declaration and any Supplemental Declaration, the Supplemental Declaration shall control, and in the event there is a conflict between any Supplemental Declarations, the Supplemental Declaration most recently recorded in the Public Record shall control.

### **Article 3 Membership, Voting and Board of Directors**

#### **3.1 Regular Membership; Appurtenant Rights.**

(a) **Owners.** Every Owner shall be a Member of the Association. There shall be only one Membership attributable to fee simple ownership of a Platted Unit.

(b) **Memberships Appurtenant.** Membership in the Association shall be limited to Owners. A Person may hold more than one Membership and may also hold other forms of Membership.

(i) Each Membership and the benefits and burdens relating to that Membership shall be appurtenant to the fee simple title to the Platted Unit (and solely with respect to the Declarant, each Unplatted Unit) held by an Owner. The Owner shall hold the Membership appurtenant to that Unit as set forth herein and title to and ownership of the Membership shall pass automatically with fee simple title of a Unit, no matter how such title or interest is acquired. Membership may not be transferred separately from the fee simple title of a Unit.

(ii) No such Person who is an Owner shall be entitled to opt out, resign, or withdraw from being a Member, regardless of whether any Person uses or does not use



any Area of Common Responsibility or is the beneficiary of any Function of the Association. The obligations of each Owner under this Declaration are mandatory, including, but not limited to, the payment of ongoing Assessments, and all obligations of each Owner set forth herein, regardless of when specific obligations arise or become payable during the term of any Owner's ownership of a Unit are deemed to be an obligation incurred and a commitment made as of the date of such Person becoming an Owner.

**3.2 Joint Ownership; Joint and Several Liability.** If an Owner's interest in a Platted Unit is held by more than one Person (in tenancy in common, as joint tenants, or otherwise), the Membership appurtenant to such Platted Unit shall be shared by all such Persons in the same proportionate interest and by the same type of ownership as the Platted Unit is held, subject to reasonable Board regulation and restrictions on voting, notices, and Assessment obligations as set forth in this Declaration, the Bylaws or otherwise. All such Persons shall be jointly and severally obligated to perform the responsibilities of the specific Owner. The Membership rights of an Owner that is not a natural person may be exercised by any officer, director, partner, trustee, member or manager, or by an individual designated from time to time in a written instrument describing and certifying the authority of such Person provided to the Secretary of the Association. In a multiple interest owner situation, if more than one Person seeks to exercise the vote, the voting privilege shall be suspended. Neither the Association nor Declarant shall have any obligation to confirm, as among such multiple interest owners, which of the Persons has the right to exercise a vote. In the case where an Owner is not a natural person, or where there are multiple owners of one Platted Unit, written notice shall be provided to the Secretary of the Association stating which Person has authority to act (including the payment of any Assessments due) on behalf of the Owner(s) and include that Person's name, mailing and physical address, telephone number and email address. The Association shall rely on such notice until such notice is updated by an Owner. In the case where there are multiple Owners of a Platted Unit, the liability of each Owner in relation to the Governing Documents is joint and several.

**3.3 Evidence of Membership and Registration of Mailing Address.** Any Person, upon becoming a Member, shall furnish to the Association a copy of the instrument vesting that Person with the interest required to make such Person a Member. Each such Member at the same time shall give a single name and address to which notices to such Member may be sent, as well as an e-mail address and telephone number by which that Person can be contacted. In the event of any change in the facts reported in the original written notice, including, without limitation, any change of ownership, the Member shall give a new written notice to the Association containing all the information required to be contained in the original notice. As against any Member, and any Person claiming by, through, or under such Member, the Association may, but shall not be obligated to, for any and all purposes, rely on the information reflected in the most recent written notice furnished with respect to such Member. In no event will the Association have any obligation to investigate the address or contact information of any Member.

### **3.4 Club Membership.**

**(a) Declarant Sales.** All Owners (excluding the Declarant, Builders, the Association and the Club Property Owner) must be approved for and acquire a membership in

the Club prior to acquiring a Platted Unit from the Declarant or any affiliate thereof or any Builder, and thereafter must maintain in good standing the membership level required by the Club Membership Plan.

(b) **Resales.** On the resale of a Platted Unit, the Owner thereof must require the prospective buyer(s) to apply for membership in the Club prior to acquiring a Platted Unit, and if approved, such Owner shall be required to maintain in good standing the membership level required per the Club Membership Plan. In the event a prospective buyer on the resale of a Platted Unit is denied membership into the Club, but such prospective buyer acquires a Platted Unit and becomes an Owner, then such Owner will be issued a written exemption, but on such Owner's subsequent resale of a Platted Unit, such Owner (whether a member of the Club or not) shall require that their prospective buyer submit an application for membership in the Club.

(c) **Exemptions.** The Class B Member, prior to the Turnover Date, and the Club Property Owner, following the Turnover Date, may grant written individual exemptions or a blanket exemption (such as for specific subdivisions or products or for groups of purchasers) from the requirements of **Sections 3.4(a) and (b)**. Notwithstanding anything else in this **Section 3.4**, Club membership is by invitation only.

(d) **Club Property.** The Club Property is not a part of the Common Area or Area of Common Responsibility. Ownership of a Platted Unit does not provide any Member with the right to access or utilize the Club Property. Delinquent Club dues and other Club charges are deemed to constitute Special Assessments. The Association shall have a lien against each Platted Unit for all unpaid Special Assessments in accordance with the lien and foreclosure provisions set forth in **Section 4.6**. In the event the Association does not enforce its rights hereunder with respect to a Special Assessment resulting from delinquent Club dues or other Club charges, the Association hereby consents and authorizes the Club to enforce the lien and foreclosure provisions of **Section 4.6**.

3.5 **Voting Rights of Membership.** The Members shall be entitled to the number of votes as allocated on **Exhibit B** attached hereto. If the Declarant elects to add a third Membership Class, the Business Class, the Declarant may also amend, in its sole discretion, this **Section 3.5, Section 3.6** and **Exhibit B** to allocate votes to that Membership Class, establish a director class for the Business Class and the consent of no other party is required. At any meeting of a single Class of Members, such Members shall be entitled to vote only the votes to which they are entitled pursuant to being Members of such Class. At any meeting of the combined Classes of Membership where a vote of combined Classes of Members is to be taken, each Member shall be entitled to vote the number of votes for each Class of which it is a Member which is in the combined Classes.

### 3.6 **Board of Directors.**

(a) **Number and Qualifications.** The business and affairs of the Association shall be managed by a Board of not less than three (3) and not more than five (5) directors.

(b) **Tenure.** There is no limit as to the number of consecutive terms that a director may be elected or appointed.

(c) **Initial Directors.** During the Class B Control Period, the initial Board shall consist of three (3) directors and the Declarant shall appoint all three (3) directors. During the Class B Control Period, all directors shall serve at the pleasure of the Declarant.

(d) **Election of Directors Following Turnover Date.** Following the Turnover Date, the Declarant shall call a special meeting to advise the Members of the termination of Declarant's Class B status (hereafter called the "**Turnover Meeting**"). At the Turnover Meeting, the size of the Board shall be increased to five (5) members, the Members (other than the Declarant) shall elect three (3) members of the Board and the Declarant shall appoint the remaining two (2) members of the Board. Thereafter, at each annual meeting of the Members, the membership of the Board shall be determined as provided in the Bylaws.

#### **Article 4**

##### **Assessments, Association Expenses and Other Amounts; Lien for Sums Due Association; Enforcement**

4.1 **Personal Obligation for Assessments and Other Amounts.** Each Member shall pay to the Association, and be liable for, all Assessments, charges, fines, penalties or other amounts, to be levied, fixed, established and collected as set forth in the Governing Documents. Each Member's obligation as to Assessments shall be as set forth in this **Article 4** and **Exhibit C**. Each Owner, by accepting a deed or recording a notice of purchaser's interest for a contract for deed for any portion of the Property, is deemed to covenant and agree to pay the Assessments.

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

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

(c) Neither Declarant nor any affiliate thereof is obligated to pay Assessments on any Unit it owns, including, without limitation, Community Transfer Assessments upon any sale of transfer thereof. During the Class B Control Period, Declarant may, but is not obligated to, voluntarily subsidize the Association's budget by contribution, advance, loan, or in any manner the Declarant, in its sole discretion, chooses. Any such voluntary subsidy shall be conspicuously disclosed as a line item in the budget and shall be made known to the Members.

Such voluntary subsidy in any year shall under no circumstance obligate the Declarant to continue to provide a subsidy in future years, unless otherwise provided in a written agreement between the Association and the Declarant.

(d) The Declarant may designate, in a written notice to the Board, any Builder exempt from the obligation to pay Assessments in connection with specific Platted Units owned by such Builder, until sold as Platted Units to third parties, or such prior date established in the relevant designation. The Area of Common Responsibility shall be exempt from payment of Assessments.

4.2 **Verification of Assessments Due.** Upon written request, the Association shall furnish to a Member or such Member's title or mortgage company written verification of the amount of such Assessments owing and whether the Member has paid such Assessment (for the avoidance of doubt, such obligation does not apply to any amounts owing to the Club).

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

4.4 **Types of Assessments.** The Association may levy all of the Assessments set forth in **Exhibit C**. Each Member, as applicable, shall be obligated to and shall pay the Base Assessments, Community Transfer Assessments, Default Assessments, Special Assessments and Specific Assessments as levied by the Association, as defined and described in **Exhibit C**.

4.5 **Use of Community Transfer Assessments.** Community Transfer Assessments and any "transfer fees" collected by the Association can be used only for Direct Benefit, regardless of any other provision in this Declaration.

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

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

(b) Any Assessment, charge, fine, penalty, or other amount not paid within sixty (60) days after the due date shall be delinquent, shall incur a late payment penalty and bear interest in an amount to be set by the Board from time to time, not to exceed the maximum

permitted by applicable law, from the date due and payable until paid and the Member shall be obligated to pay all lien fees, legal fees, paralegal fees, and recording fees (as applicable). All such amounts shall be considered Default Assessments.

(c) The Association has a lien on each Platted Unit for any Assessment levied against the Platted Unit, and for any other amounts due hereunder from the Owner in relation to such Platted Unit.

(d) In the event an Owner fails to pay sums due the Association within sixty (60) days of the due date, the Association may (i) bring an action at law to collect the lien or foreclose the lien against the real property in the same manner as a mortgage on real property, (ii) although not necessary in order to foreclose the lien, record notice of the Association's lien against the property being assessed, (iii) send the debt to collections, (iv) institute an action for a money judgment, (v) apply any deposits held by the Association or ARC to the amount due, and (vi) exercise any other remedy at law or equity. Each Assessment or other charge, together with interest and penalties thereon and all costs and expenses incurred by the Association to collect such Assessment, charge, fine, penalty or other amount, including, without limitation, reasonable attorneys' fees, paralegal fees, and disbursements, may be recovered by suit for a money judgment by the Association without foreclosing or waving any lien securing the same or may be recovered in any foreclosure.

(e) The recording of this Declaration constitutes record notice and perfection of a lien of the Association on all Platted Units. No further recordation or filing of any claim of any lien is required. The Association may, in its discretion, record or file an additional notice of that lien in the Public Record. The priority of the lien of the Association shall be determined pursuant to **Section 4.7** and shall not be dependent upon the recording or filing date of any notice of lien recorded or filed in the Public Record, and shall be binding upon the Owner and its successors. The Association, acting on behalf of the Members, shall have the power to bid (which may be a bid on credit, up to and including the amount secured by the lien) for the Platted Unit at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. During the period a Platted Unit is owned by the Association following foreclosure, (i) no right to vote shall be exercised on behalf of the Platted Unit, (ii) no Assessment shall be assessed or levied on the Platted Unit, and (iii) each other Platted Unit shall be charged, in addition to its usual Assessments, its equal pro rata share of the Assessments that would have been charged to or payable by such Platted Unit had it not been acquired by the Association.

(f) The sale or transfer of any Platted Unit shall not affect the assessment lien or relieve such Platted Unit from the lien for any subsequent assessments. Any Assessments or other costs unpaid as a result of a foreclosure shall be deemed to be Association Expenses collectible from all Owners subject to Assessment under this Declaration, including, without limitation, the acquirer at foreclosure, its successors, assigns and transferees.

**4.7 Priority and Non-subordination of the Lien.** The lien under this **Article 4** shall be superior to all other liens, except the liens of all taxes, bonds, assessments and other liens and levies which by law in effect from time to time would be superior.

4.8 **Liability of Members, Purchasers and Encumbrancers.** The amount of any Assessment, charge, fine, penalty or other amount payable under this **Article 4** or **Exhibit C** payable by any Member shall be a joint and several obligation to the Association of such Member and such Member's heirs, estates, devisees, personal representatives, successors and assigns. A Person acquiring fee simple title to a Platted Unit shall be jointly and severally liable with the former owner of the Platted Unit for all such amounts which had accrued and were payable at the time of the acquisition of the title or interest by such Person, without prejudice to such Person's right to recover any such amounts paid from the former Owner.

## **Article 5 Easements**

5.1 **Easements for Encroachment.** There shall be reciprocal appurtenant easements of encroachment and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common area or Open Space and between adjacent Units or any Unit and Club Property due to the unintentional placement or settling or shifting of the Improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration), or any trail systems, including, without limitation, pedestrian, equestrian, bicycle, Nordic and alpine skiing, to a distance of not more than three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, an Owner, occupant, or the Association.

### 5.2 **Easements for Utilities, Etc.**

(a) There are hereby reserved unto Declarant, during the Class B Control Period, the Association, and the designees of each (which may include, without limitation, the County and any utility provider) access and maintenance easements upon, across, over, and under all of the Property to the extent reasonably necessary for the purpose of installing, replacing, repairing, maintaining and relocating cable television systems, master television antenna systems, security and similar systems, roads, lakes, ponds, wetlands, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewer, meter boxes, telephone, gas, and electricity, and for the purpose of installing any of the foregoing on property which it owns or within easements designated for such purposes on any Plat. The Declarant further hereby reserves for itself and its duly authorized agents, representatives, designees, successors and assigns a perpetual non-exclusive easement for utilization, tapping into, tying into, extending and enlarging all utilities within the Property, and a perpetual non-exclusive easement hereunder over the Roadways for the purposes of ingress and egress to and from any improvements constructed or to be constructed by Declarant within the Property or the Club Property. The Declarant further hereby reserves an easement in favor of itself, the Association, and the designees of each, upon, across, over, and under all of the Property for the creation, use, maintenance and relocation of trail systems, including, without limitation, Internal Trails, pedestrian, equestrian, bicycle, Nordic skiing, alpine skiing, snow shoeing, and for the creation, use, and maintenance of wildlife resistant landscape treatments and features, wildlife corridors, winter wildlife ranges, and natural wildlife habitats. The foregoing easements may traverse the private property of any Owner; *provided, however*, an easement shall not entitle the holders to

construct or install any of the foregoing systems, facilities, or utilities over, under or through any existing dwelling on a Platted Unit, and any damage to a Unit resulting from the exercise of an easement shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of an easement shall not unreasonably interfere with the use of any Unit or construction within any Building Envelope, shall not unreasonably diminish the value of any Platted Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant. The foregoing notwithstanding, prior to utilizing the easement rights reserved in to this **Section 5.2(a)** for purposes of installing, creating or relocating any road or trail systems, including, without limitation, Internal Trails, pedestrian, equestrian, bicycle, Nordic skiing, alpine skiing, snow shoeing, on any Property which is not owned by Declarant or the Association the Person exercising such easement rights shall obtain the written consent of the Owners(s) of the Property on which such easement rights will be exercised, which consent may not be unreasonably withheld, conditioned or delayed by such Owner(s).

(b) The Declarant specifically reserves the right to convey to the Association or its designee, with respect to the Water System, and to the local electric company, natural gas supplier, and cable television or communications systems supplier easements across the Property for ingress, egress, installation, reading, replacing, repairing, and maintaining utility meters, boxes, pump or other utility lines, valves, etc. However, the exercise of this easement shall not extend to permitting entry into a dwelling on any Platted Unit, nor shall any utilities be installed or relocated on the Property, except as approved by the Board or the Declarant and with notice to the Owner of the Platted Unit.

(c) Should any Person furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Board shall have the right to grant such easement over the Property without conflicting with the terms hereof. The easements provided for in this **Section 5.2** shall in no way adversely affect any other recorded easement on the Property.

### 5.3 **Easements for Lake and Pond Maintenance and Flood Water.**

(a) The Declarant reserves for itself and its successors, assigns, designees and the Association the nonexclusive right and easement, but not the obligation, to enter upon the lakes, ponds, streams, and wetlands located within the Area of Common Responsibility to (i) install, keep, maintain, and replace pumps in order to provide water for the irrigation of any of the Area of Common Responsibility; (ii) construct, maintain, and repair any bulkhead, wall, dam, or other structure retaining water; and (iii) remove trash and other debris therefrom and fulfill their maintenance responsibilities as provided in this Declaration. The Declarant, the Association, and their designees shall have an access easement over and across any of the Property abutting or containing any portion of any of the lakes, ponds, streams, or wetlands to the extent reasonably necessary to exercise their rights under this **Section 5.3(a)**.

(b) There is further reserved herein for the benefit of Declarant, the Association, and their designees, a perpetual, nonexclusive right and easement of access and encroachment over the Area of Common Responsibility and Platted Units (but not the dwellings thereon) adjacent to or within one hundred (100) feet of lake beds, ponds, and streams within the

Property, in order to (i) temporarily flood and retain water upon and maintain water over such portions of the Property; (ii) fill, drain, dredge, deepen, clean, fertilize, dye, and generally maintain the lakes, ponds, streams, and wetlands within the Area of Common Responsibility; (iii) maintain and landscape the slopes and banks pertaining to such lakes, ponds, streams, and wetlands; and (iv) enter upon and across such portions of the Property for the purpose of exercising its rights under this **Section 5.3(b)**. All Persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from, the intentional exercise of such easements. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to heavy rainfall, snow melt, or any other natural causes.

**5.4 Easements to Serve Additional Property.** The Declarant hereby reserves for itself and its duly authorized agents, representatives, and employees, designees, successors, assigns, licensees, and mortgagees, an easement over the Area of Common Responsibility for the purposes of enjoyment, use, access, maintenance and development of any property which Declarant may acquire an interest in that is adjacent to any Property, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Area of Common Responsibility for construction and maintenance of roads and for connecting and installing utilities on such property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Area of Common Responsibility as a result of vehicular traffic connected with development and maintenance of such property. Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof is not made subject to this Declaration, the Declarant, its successors or assigns shall enter into a reasonable agreement with the Association so that each property owner bears an equitable portion of the cost of maintenance of any access roadway serving such property.

**5.5 Ski Easements.**

(a) All Owners, including authorized immediate family and authorized guests, shall have a non-exclusive easement of access within any recreation and use or utility easement set forth on any Plat within the Property or any other recorded recreation or ski access easement for the purposes of ingress and egress to and from the ski lifts and ski runs. This access easement is subject to the restriction that its use shall be reasonable as to time and amount of use and shall be as unobtrusive as reasonably possible. Users of this access shall indemnify and hold harmless the Owner of the Unit subject to the easement for any damages done to such Unit or claims made against the Owner due to the user's conduct on the Unit. Such easement shall imply no independent right for any Owner, or immediate family or authorized guest, to access or otherwise use the Club Property.

(b) Declarant hereby reserves to itself and its successors, assigns, and designees a perpetual, non-exclusive easement across the setback areas of every Platted Unit (as determined by the applicable Plat or certificate of survey) for the establishment and construction of ski trails, lifts, runs, bridges, and tunnels. The Declarant further reserves to itself and its successors and assigns the right to grant exclusive and non-exclusive use, accesses and maintenance easements to others for purposes of using and/or maintaining such areas from time to time.



**5.6 Club Property Easements.** Declarant hereby reserves for itself and the Club Property Owner, and its and their Licensees, Invitees, successors and assigns, a perpetual easement on, over, upon, across, above, under and through the Property as may be reasonably necessary for:

(a) retrieval of golf balls that are visible from the course, including the right to enter upon the Property and any Unit thereon to accomplish such retrieval. Golf balls lying in the Property can only be picked up and returned to the course, and may not be hit while on the Property; *provided, however*, if the Unit is fenced or walled in accordance with the Governing Documents, the golfer shall seek the Owner's or occupant's permission before entry;

(b) flight of golf balls over, across, and upon the Property; and

(c) doing every act necessary and incident to the playing of golf and other recreational activities on the Golf Course Property and maintenance, use and operation of a golf course.

The Club Property Owner, the employees, agents, contractors and designees of the Club Property Owner and the Persons permitted by the Club Property Owner to use the Club Property (regardless of whether such Persons are Owners hereunder) and their guests shall at all times have a right and non-exclusive easement hereunder of ingress, egress and access across and through the Roadways and Internal Trails, whether by foot, automobile (only on Roadways), golf cart (only on Roadways) or other means, reasonably necessary to travel to and from the entrances to the Property from and to the Club Property and, further, over those portions of the Property (*i.e.*, Area of Common Responsibility, but excluding Platted Units) reasonably necessary to the use, operation, maintenance, repair and replacement of the Club Property. The Property immediately adjacent to the Club Property is hereby burdened with a non-exclusive easement in favor of the Club Property for overspray of water or treated waste water from any irrigation system serving the golf course and chemical overspray from maintenance of noxious weeds or fertilization of the Club Property. Under no circumstances shall the Declarant, Association or Club Property Owner be held liable for any damage or injury resulting from overspray or the exercise of this easement.

**5.7 Emergency Services Easements.** Declarant hereby grants a non-exclusive perpetual easement across and over the Property for ingress and egress to all police, sheriff, fire protection, ambulance and similar emergency agencies or persons, now or hereafter serving the Property, to enter the Property in the performance of their duties, subject, however, to limitations generally imposed by local, state and federal law.

**5.8 Association Easements.** There is hereby reserved unto the Association and its successors and assigns a non-exclusive, perpetual easement upon, across, above and under the Property for access, ingress and egress in order to (a) exercise any right held by the Association under this Declaration or any other Governing Document, and (b) perform any obligation imposed upon the Association by this Declaration or any other Governing Document. The Association shall not enter upon any Unit without reasonable prior notice to the Owner of the Unit and shall not enter any residence or other Improvement of an Owner without the consent of such Owner, in each case except in cases of emergency.

5.9 **Roadway Easements.** Each Owner shall have a perpetual, non-exclusive easement for ingress, egress and access across and through the Roadways to and from such Owner's Platted Unit and the Area of Common Responsibility, subject to: **(a)** this Declaration, any final subdivision plat, certificate of survey or condominium declaration recorded in the Public Record, and any other applicable covenants, restrictions or limitations contained in any recorded instrument affecting the Roadways; and **(b)** the right of the Board to promulgate and enforce any rules or regulations it deems necessary in its sole discretion for the reasonable use and enjoyment of the Roadways by any and all Owners and their Invitees, including, but not limited to, traffic regulation, speed regulation, parking, height, size and other vehicle regulations, security protocols and time/use regulations.

5.10 **Acceptance of Easements.** Each Owner, by accepting a deed to a Platted Unit or recording a notice of purchaser's interest for a contract for deed for a Platted Unit, agrees for themselves and their Licensees, Invitees and successors and assigns, to be subject to all easements created by this Declaration and the other Governing Documents.

## **Article 6 Declarant's Rights**

### **6.1 Declarant's Easements and Related Rights.**

**(a)** Declarant hereby reserves to itself for itself and for the benefit of its Licensees, Invitees, successors and assigns a non-exclusive, perpetual easement on, over, upon, across, above, under and through the Area of Common Responsibility and Club Property as may be reasonably necessary to **(i)** discharge Declarant's obligations under this Declaration; **(ii)** exercise any Special Declarant Right; **(iii)** make Improvements within the Property on property owned by the Declarant; and **(iv)** maintain, repair, access, replace, relocate, construct, use and operate utilities where they are located within the Property (and any other property that becomes subject to this Declaration) as of the date of this Declaration or any new or relocated utilities.

**(b)** Declarant hereby reserves to itself for itself and for the benefit of its Licensees, Invitees, successors and assigns, the right from time to time to establish, relocate, and use non-exclusive, perpetual utility and other easements, leases, permits or licenses on, over, upon, across, above, under and through the Area of Common Responsibility for uses for the Association or Declarant, including, without limitation, in relation to any Improvements in order to serve all persons residing, visiting or doing business within the Property; *provided* that any such easement, lease, permit or license does not unreasonably impair the use of the Area of Common Responsibility for its intended purpose or unreasonably impair construction within any Building Envelopes.

6.2 **Special Declarant Rights.** Declarant hereby reserves for itself and its successors and assigns the following rights, which rights may be exercised at any time during the Class B Control Period (collectively the "**Special Declarant Rights**"):

(a) The right to complete any Improvements on real property owned by Declarant within the Spanish Peaks Community, Area of Common Responsibility or shown on any Plat or in the Spanish Peaks Master Plan;

(b) The right to construct and maintain sales offices, trailers, booths, Improvements or other structures used for sales or promotional purposes, management offices and models on any property owned by Declarant; and the right to construct and maintain signs advertising the Spanish Peaks Community and properties therein. The number, size and location of any such sales structures and signage, management offices or models or the relocation thereof shall be determined by Declarant;

(c) The right to exercise any development right, including, without limitation, the right to add real property to the Property pursuant to **Article 13** and to make that real property subject to this Declaration and the Spanish Peaks Master Plan, the right to amend this Declaration to change the uses for Units or create additional Units within the Property, the right to subdivide Units, the right to combine Units, the right to convert any and all unimproved (*i.e.*, without a significant structure) Units owned by Declarant into an Area of Common Responsibility, the right to record Supplemental Declarations and governing documents of any Sub-Association, and the right to withdraw any and all portions of the Property from this Declaration as provided in **Article 13**;

(d) The right to create, relocate and use easements through the Area of Common Responsibility for the purpose of making Improvements within the Property or within real property which may be added to the Property;

(e) The right to designate real property owned by Declarant within the Property for fire, police, utility service operation facilities (*e.g.*, electric power, propane, sanitation, etc.), water and sewer facilities, public schools and parks, and other public facilities;

(f) The right to merge and consolidate the Association with a property owners association of the same form of ownership; and

(g) The right to accept, establish and amend reasonable use restrictions with respect to the Property.

**6.3 Transfers of Special Declarant Rights and Rights as Declarant.** The term “**Declarant’s Rights**” means, collectively, the Special Declarant Rights defined herein as well as all other rights of the Declarant under this Declaration, the other Governing Documents, and the rights of a declarant under applicable law.

(a) The Declarant’s Rights may be transferred by the Declarant in whole or in part during the Class B Control Period; *provided*, (i) the transfer shall not reduce an obligation or enlarge a right beyond that which Declarant has under this Declaration and the other Governing Documents, and (ii) any such transfer shall only be effective if it is in a written instrument signed by Declarant and the transferee and recorded in the Public Record.

(b) Upon transfer of the Declarant’s Rights, the liability of a transferor is as follows:

(i) A transferor is not relieved of any obligation or liability arising before the transfer.

(ii) A transferor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from and after the date of such transfer.

(c) Upon transfer of the Declarant's Rights, the liability of a transferee is as follows:

(i) A transferee of the Declarant's Rights is subject to all obligations and liabilities imposed on the Declarant by this Declaration arising from and after the date of such transfer.

**6.4 Rights of Declarant after the Turnover Date.** After the Turnover Date, Declarant, if still an Owner, will continue to have all of the rights and duties given to Members under the Governing Documents. The failure of Declarant to utilize any easement, right or privilege, even for an extended period of time, shall not prevent the Declarant from utilizing any easement, right or privilege, granted by this Declaration or otherwise, upon the Area of Common Responsibility or portions of the Property owned by Declarant that is necessary or advisable in connection with the development and sale of real property or amenities in relation to the Property and the Spanish Peaks Community.

## **Article 7 Restrictions Applicable to Property**

**7.1 Land Use Restrictions.** In addition to the restrictions found elsewhere in this Declaration, all or any portion of the Property shall be further restricted in its use, density or design according to the Spanish Peaks Master Plan; any Supplemental Declarations; any governing documents of any Sub-Association; Rules and Regulations; Design Guidelines; subdivision regulations, designations and agreements; wildlife agreements, wildfire mitigation guidelines and conservation guidelines entered into by Declarant or the Association in connection with the development of the Property; zoning regulations adopted by governmental authorities; and similar matters. Each Member, Licensee and Invitee shall comply with all of the terms, provisions, covenants, conditions, restrictions, easements and reservations to be complied with under this Declaration, including those referenced above, those imposed by the land use restrictions in this **Article 7** and any applicable Supplemental Declaration and governing documents of any Sub-Association.

**7.2 County Required Covenants.** The covenants contained in **Exhibit E** are included as a condition of preliminary plat approval and required by the Gallatin County Commission and may not be amended or revoked without the approval of the governing body of Gallatin County. These covenants are in addition to the covenants contained within this **Article 7**, and in the event of a conflict the stricter shall control.

### 7.3 **Open Space.**

(a) **Access.** Subject to the provisions of this Declaration, each Member, Licensee and Invitee shall have a non-exclusive easement over, upon and across Open Space as appropriate and necessary to use it for its intended purposes.

(b) **Uses.** Nothing shall be done or kept on the Open Space that would result in cancellation of the insurance or any part thereof which the Association is required to maintain pursuant hereto or increase the rate of the insurance or any part thereof over the amount that the Association, but for that activity, would pay, without the prior written consent of the Association. Nothing shall be done or kept on the Open Space that would be in violation of any statute, rule, ordinance, regulations, permit or other requirement of any governmental or quasi-governmental entity. No damage to, or waste of, Open Space shall be committed, and each Member shall indemnify, defend and hold the Association, the Declarant and other Members harmless against all loss resulting from any such damage or waste caused by such Member, or such Member's Licensee or Invitee. All restrictions contained in this **Article 7** shall be deemed to apply to the Open Space.

(c) **Ownership.** The Open Space shall be owned by Declarant during the Class B Control Period and thereafter deeded to the Association. The Declarant may but is not obligated to convey some or all of the Open Space to the Association prior to the Turnover Date. The conveyance of Open Space by Declarant to the Association at or in connection with the Turnover Date will be via quitclaim deed and the property will be accepted "AS IS."

7.4 **Residential Lot and Condominium Unit.** All residential Platted Units may be used only for dwelling purposes and typical residential activities. Owners may rent or lease their residential Platted Units to others for residential purposes, except as may be prohibited in this Declaration, other Governing Documents or governing documents of any Sub-Association. Notwithstanding anything to the contrary contained in this **Section 7.4**, a gainful home occupation, profession, trade or other non-residential use will be a permissible use of residential Platted Units, so long as: (i) such use is permitted by the Spanish Peaks Master Plan and not prohibited by law, (ii) such use is not otherwise restricted by this Declaration, the other Governing Documents or any governing documents of a Sub-Association, (iii) such use is carried on entirely within a residential Platted Unit and is secondary and incidental to its use as a residence, (iv) there is no generation of pedestrian or vehicular traffic beyond that customary or incidental to residential use of the dwelling, (v) there is no use of commercial vehicles for deliveries to or from the premises beyond that customary or incidental to residential use of the dwelling, (vi) there is no on-premises sales of products, (vii) there is no external evidence of any such activity being conducted, such as signs or structures advertising the occupation, and no excessive or unsightly storage of materials or supplies, and (viii) the use is conducted in compliance with the Governing Documents and the governing documents of any Sub-Association.

7.5 **Maintenance of Lot.** All Lots, except for any portion of the Lot then undergoing any Construction Activity, including all Improvements on such Lot and all unimproved Lots, shall be kept and maintained in a clean, safe, attractive and sightly condition and in good repair.

**7.6 Approval of Construction Activities.** Unless the approval of the ARC through processes set forth in **Article 8** is obtained in advance, **(i)** no Improvements shall be constructed, erected, placed or installed upon any Platted Unit, **(ii)** no change or alteration of the materials or appearance (including, but not limited to, color) of the exterior of any Improvements shall be made, **(iii)** no excavation or change in the grade of any Platted Unit or earth movement shall be performed, **(iv)** no healthy vegetation or trees shall be cut or removed from any Platted Unit, subject to the provisions of **Section 7.7**, and **(v)** no other Construction Activity shall be initiated or performed.

**7.7 Fire Precautions.** In addition to the Design Guidelines, all structures must be constructed in accordance with the following requirements:

**(a)** All structures must be fitted with an automatic fire sprinkler system that is fully operational and compliant with the most current edition of applicable National Fire Protection Association (“**NFPA**”) standards and fire protection standards set by the BSFD. The BSFD shall receive from the Owner a stamped set of engineered sprinkler system plans for review and approval prior to construction. Applicable inspections from the BSFD shall be scheduled in advance during the construction phase and when ready to commission the system, with at least forty-eight (48) hours’ notice during construction and after completion. All automatic fire sprinkler systems shall be kept in operating condition at all times and shall be inspected annually by state approved sprinkler inspection/installation professional.

**(b)** All structures equipped with an automatic fire sprinkler system shall also have a fire department connection on the exterior of the structure in accordance with specifications set forth in the Design Guidelines.

**(c)** All structures shall be equipped with a Knox-Box Rapid Entry System, or other rapid entry system as permitted by the BSFD, on the exterior of the structure.

**(d)** All structures shall be equipped with address identification markers in accordance with the Design Guidelines, applicable zoning regulations and applicable BSFD requirements.

**(e)** All structures shall be constructed in compliance with the current Montana State fire code, the applicable NFPA standards and the fire protection policies and guidelines set by the BSFD.

**(f)** All structures shall have a Class A roof covering or a Class A roof assembly that is constructed/assembled in accordance with the manufacturer’s guidelines. For roof coverings where the profile allows a space between the roof covering and the roof decking, the space at the eave ends shall be fire stopped to preclude the entry of flames and embers. Prior to installation, the Owner shall obtain confirmation from the BSFD that the proposed roofing materials meet its applicable fire protection standards. Prior to completion of any structure, the roof of the structure shall be inspected by the BSFD. The Owner shall be responsible for payment of any fees in connection with such inspection.

(g) Spark arrestor screens shall be placed on all fireplace and woodstove chimneys whether they are interior or exterior installations, per the manufacturer's specifications.

(h) Smoke detectors shall be installed on each level of a single family dwelling unit or residential Condominium Unit and outside of each bedroom, exclusive of the garage, which shall have a heat detector installed as part of the overall security system.

(i) All landscaping and vegetation shall be planted and managed in accordance to the NFPA's Firewise Communities guidelines. Each Owner shall maintain a defensible area of not less than thirty (30) feet around the perimeter of any structure as measured horizontally at a ninety (90) degree angle from the exterior walls of any structure. The defensible area shall not contain combustible material, and shall consist of non-combustible ground cover such as a maintained and well irrigated lawn of no more than three (3) inches. The defensible area may contain fire-resistant vegetation including trees. The first three (3) feet of the defensible area, as measured from the exterior walls of any structure, shall include non-combustible material such as washed rock or a similar product.

(j) The Association shall ensure that any water supply that is provided as a source of fire suppression shall be inspected each year by a professional engineer licensed in the State of Montana who shall certify that the water supply and delivery system holds and can deliver the appropriate amount of water to all fire hydrants within the Property in order to meet applicable NFPA standards and fire protection standards set by the BSFD as such standards exist as of the date of construction. Such certification shall be forwarded to the BSFD within ten (10) business days of its completion. The Association shall perform or cause to be performed any maintenance recommended during the inspection.

(k) Lighting of fireworks on the Property is prohibited.

(l) Open fires are prohibited on the Property, except for outdoor barbecues or outdoor fireplaces as specified in the Design Guidelines.

(m) The fire prevention provisions of this **Section 7.7** may not be amended without the approval of the BSFD and the governing body of Gallatin County.

**7.8 Trash; Garbage; Organic and Inorganic Materials.** No trash, waste, garbage, litter, junk, refuse, or unused items of any kind shall be kept, stored, thrown, dumped, allowed to accumulate, left or burned on any portion of the Property. No incinerator or other device for burning of trash or garbage shall be installed or used. Each Member shall dispose of their trash at the location(s) designated by the Association. In the event the Association has not designated any disposal location, then the Member shall provide suitable receptacles for the collection of garbage, which must be enclosed, comply with any Rules and Regulations, Board adopted policies, this Declaration, the other Governing Documents and governing documents of any Sub-Association requirement for animal-proof garbage containment. Notwithstanding the foregoing, a compost pile or barrel may be specifically allowed by the ARC.

7.9 **Wells and Septic.** Each Owner shall be responsible for the operation, maintenance and repair of the individual single user wells and septic systems located on such Owner's Unit, if applicable, which is not maintained by the Association pursuant to **Section 2.4**. This obligation shall include the regular pumping of septic tanks and monitoring of and appropriate response to alarm and sensor systems installed on any such septic system.

7.10 **Preservation of Water Resources.** Members, Licensees, Invitees and members of the general public shall at all times conduct their use and activities in a manner that will preserve the integrity of the springs, ponds, streams, and creeks within the Spanish Peaks Community. The degradation or pollution of water is not permitted. All applicable local, state, and federal regulations, guidelines, and standards pertaining to water use must be followed. Installation of a man-made pond is prohibited unless specifically permitted pursuant to a Supplemental Declaration and shall then constitute a Construction Activity and be subject to review by the ARC.

7.11 **Wildlife Habitat, Hunting, Firearms.**

(a) Declarant reserves the right to utilize and manage all of the Property for the creation and enhancement of habitat for wildlife and native plants. It is also recognized by Declarant and the Members that wildlife species live in or migrate through the Property during various times of the year. The following limitations on use and development are intended to protect, preserve and maintain the existing wildlife habitat in the Property and to minimize the adverse effects of development on the wildlife habitat:

(i) Hunting, capturing, trapping or killing of wildlife within the Property is prohibited except as organized and conducted by Declarant or Association for game management purposes. The discharge of firearms is prohibited within the Property except in conjunction with game management conducted by Declarant or the Association or as otherwise authorized by Declarant or the Association.

(ii) No feeding or domestication of any wildlife shall be permitted. No salt licks, bird feeders, or other foods shall be placed upon any Platted Unit. Items such as animal feed or food, grains and garbage shall be stored in bear-proof containers.

7.12 **Noxious Weeds.** As to a Member's Unit, such Member shall control or eliminate all noxious weeds, as such "noxious weeds" are defined by the County Weed List, other governmental authority, the Association, or the ARC. Members may use only those herbicides approved for domestic use and/or approved by the applicable County and/or the State of Montana for use around waterways.

7.13 **No Noxious or Offensive Activity.** No noxious or offensive activity shall be carried on upon the Property nor shall anything be done or placed on the Property which is or may become a nuisance or cause any disturbance or annoyance to others. As used herein, the term "noxious or offensive activity" shall not include any activities of a Member, Declarant or their respective designees which are reasonably necessary to the development of and construction on the Property so long as such activities do not violate the Governing Documents or the statutes, rules or regulations of any governmental or quasi-governmental entity having



jurisdiction with respect thereto and do not unreasonably interfere with any Member's use of such Member's Unit or with any Member's ingress and egress to or from such Member's Unit and a Roadway.

7.14 **Lights.** All exterior lighting of Improvements and grounds on a Platted Unit will be subject to regulation by the ARC.

7.15 **No Hazardous Activities.** No activities shall be conducted on any Platted Unit, no Improvements shall be constructed or performed on any Platted Unit, and no Construction Activities shall be conducted on any Platted Unit that are or might be unsafe or hazardous to any Person or property.

7.16 **No Unsightliness.** No unsightliness shall be permitted on any portion of the Property. Without limiting the generality of the foregoing:

(a) All unsightly structures, facilities, equipment, objects, and conditions shall be kept within an enclosed structure at all times.

(b) Motor vehicles classed by manufacturer rating as exceeding three-quarter ton, commercial vehicles, recreational vehicles, mobile homes, travel trailers, trailers, trucks (except pickup trucks used for personal, and not commercial transport), motorcycles, snowmobiles, golf carts, boats and other watercraft, boat trailers, tractors, ATVs, detached campers, camper shells, snow removal equipment and garden or maintenance equipment shall be kept in an enclosed structure at all times, except when in actual use; provided that such equipment and vehicles may be parked in areas specifically designated by the ARC for such equipment and vehicles.

(c) Service areas and facilities for hanging, drying or airing clothing or fabrics shall be kept within an enclosed structure.

(d) Mechanical and utility equipment, lines, wires, pipes, cables, tanks, poles, meters and other facilities, loading docks and sewage disposal systems or devices shall be screened or kept and maintained below the surface of the ground, or to the extent feasible, customary and slightly as determined by the ARC, within an enclosed structure, subject to exceptions as determined at the discretion of the ARC.

(e) No tennis courts, outdoor swimming pools, or similar facilities shall be constructed on a Platted Unit unless specifically allowed by a Supplemental Declaration and reviewed and approved by the ARC.

7.17 **Repair of Improvements.** No Improvements upon the Property shall be permitted to fall into disrepair, and each such Improvement shall at all times be kept in good condition and repair.

7.18 **Animals.** No animals other than a reasonable number of birds, dogs, cats, tortoises or other customary household pets may be kept on a Platted Unit ("**Permitted Household Pets**"). Permitted Household Pets shall not be kept, bred or maintained for any

commercial purpose, nor in unreasonable quantities nor in violation of any other provision of this Declaration. Chickens are not deemed Permitted Household Pets. No Permitted Household Pet shall be permitted to harass any wildlife. The grazing of cattle or sheep anywhere on the Property is not permitted. The foregoing shall not be deemed to prohibit the keeping of horses on Lots in accordance with the covenants of a Supplemental Declaration. Exceptions to the restrictions of this Section 7.18 may be granted by the Declarant during the Class B Control Period and thereafter by the Association.

7.19 **Parking.** Members, Licensees, Invitees and members of the general public shall not park vehicles on or along any Roadway, except in areas specifically designated for parking. The Association shall have the right to remove any vehicle that is parked on or along any Roadway not in compliance with this **Section 7.19**, at the vehicle owner's expense.

7.20 **Aircraft.** No aircraft, including, without limitation, helicopters, or aircraft operations of any kind shall be permitted anywhere in or above the Property, except according to applicable Federal Aviation Administration regulations and in areas specifically designated for airfields, landing strips or heliports by Declarant during the Class B Control Period, or thereafter by the Association. Use of drones in or above the Property shall not be permitted except in accordance with applicable laws and regulations and with approval of the Declarant, during the Class B Control Period, or thereafter approval of the Board. Nothing in this **Section 7.20** shall limit the use of an aircraft or drones in the event of an emergency.

7.21 **Wood Burning Devices.** In addition to any regulations under applicable law, the use of wood burning devices may be regulated or prohibited by the Association or ARC pursuant to its Design Guidelines.

7.22 **Drainage; Erosion.** Reasonable caution shall be taken during any Construction Activity, and thereafter, to prevent erosion, dust and drainage problems. All disturbed soil areas shall be revegetated within a reasonable time in such a fashion as to minimize erosion and dust. Owners shall not obstruct or re-channel drainage flows after the initial location and installation of drainage swales, storm sewers, or storm drains, except that the Declarant during the Class B Control Period and thereafter the Association shall have such right; *provided*, the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use of any Unit without the Owner's consent.

7.23 **No Mining, Drilling, Commercial Logging or Timber Harvesting.** No Platted Unit shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth or for commercial logging or timber harvesting.

7.24 **Fences and Entry Gates.** Except as approved by Declarant (during the Class B Control Period) and the ARC, no entry gates, fences, walls or other boundaries for the purpose of enclosing or demarcating any Unit boundaries or the perimeter of a Building Envelope shall be permitted. No fencing shall unreasonably interrupt or interfere with wildlife migration or movement.

7.25 **Construction Access.** Construction vehicles shall access construction sites within the Property via Ousel Falls Road and South Fork Road or as otherwise designated in writing by the Declarant during the Class B Control Period and thereafter the Association. No construction vehicles shall be permitted to access the Property from Andesite Road or Autumn Trail within Aspen Groves Subdivision unless otherwise permitted in writing by the Declarant during the Class B Control Period and thereafter the Association.

7.26 **Zoning Petition.** No Owner shall submit a petition for zoning or take any action to create a zoning district within the Spanish Peaks Community without the prior consent of Declarant, during the Class B Control Period, and thereafter the Association.

7.27 **Interval Ownership.** Declarant may subject all or any portion of the Property owned by Declarant to an Interval Ownership plan during the Declarant Control Period. No Unit within the Property, other than a Unit owned by Declarant, shall be subjected to Interval Ownership without the specific written approval of (a) the Declarant during the Class B Control Period, and thereafter the Association, and (b) the Owner of such Unit. Platted Units subject to Interval Ownership shall be subject to Assessments and other fees and charges in the same manner as other Platted Units; *provided, however*, that the Interval Ownership plan and related documents will address how such Assessments, fees and charges are allocated among the Interval Ownership owners.

7.28 **Health, Safety and Welfare.** In the event additional uses, activities and/or facilities are deemed by the Board to be nuisances or to adversely affect the health, safety or welfare of the Members, Licensees, Invitees, or members of the general public, or the value of any part of the Property, the Association may adopt Rules and Regulations or Design Guidelines restricting or regulating the same.

7.29 **Compliance with Law; Hazardous Materials.** No Unit shall be used, occupied, altered, improved or repaired except in compliance with all laws, rules, requirements, orders, directions, ordinances and regulations of any local, state or federal governmental or quasi-governmental agency in effect from time to time. The Association and the Declarant shall not be obligated to pursue enforcement in the event this **Section 7.29** is violated. The Association and Declarant may notify the applicable governing entity of any alleged violation and may also pursue remedies for the violation of this Declaration.

7.30 **Permits/Approvals.** No structure shall be erected within the Property within Gallatin County without first requesting and receiving a land use permit and such other permits and approvals as may be required from Gallatin County. No structure shall be erected within the Property within Madison County without first requesting and receiving the applicable approvals and/or permits from Madison County.

7.31 **Subdivision, Aggregation, and Boundary Line Adjustment of Platted Units; Sub-Association Creation and Amendment.** No Platted Unit shall be subdivided, partitioned, aggregated, or be subject to a boundary line adjustment without the prior written consent of the Declarant during the Class B Control Period and thereafter the Association. No Sub-Association shall be created, and no governing document of any Sub-Association shall be recorded in the

Public Record or amended, without the prior written consent of the Declarant during the Class B Control Period and thereafter the Association.

7.32 **Temporary Structures.** Unless approved by Declarant (during the Class B Control Period) and by the ARC (during the Class B Control Period and thereafter), no tent, shack, trailer or any temporary building or structure shall be placed upon any portion of the Property. The foregoing shall not prohibit use of tents for recreational purposes for a limited period of time on Platted Unit on which a residence has been constructed. Additional Rules and Regulations may be established to further regulate or restrict the use of tents within the Property.

7.33 **Declarant's Exemption.** Notwithstanding any other provision of this Declaration, nothing contained in this **Article 7** shall apply to the activities of Declarant. Further, Declarant's Construction Activity and Declarant's exercise of any Special Declarant Rights are exempt from review by the ARC during the Class B Control Period.

7.34 **Violation.** Determination with respect to whether or not a particular activity or occurrence shall constitute a violation of this **Article 7** shall be made in accordance with **Article 9**.

7.35 **Restrictions Applicable to Phase 6A.** In addition to the restrictions elsewhere in this Declaration, that portion of the Property identified as Spanish Peaks Resort Subdivision, Phase 6A, on **Exhibit A** to this Declaration, which was added to the Property pursuant to the Fourth Supplement, shall be subject to the additional covenants, conditions and restrictions set forth on **Exhibit F** attached hereto and incorporated herein.

7.36 **Restrictions Applicable to Phase 4.** In addition to the restrictions elsewhere in this Declaration, that portion of the Property identified as Spanish Peaks Resort P.U.D. Subdivision, Phase 4, on **Exhibit A** to this Declaration, which was added to the Property pursuant to the Fifth Supplement, shall be subject to the additional covenants, conditions and restrictions set forth on **Exhibit G** attached hereto and incorporated herein.

7.37 **Restrictions Applicable to Phase 8A.** In addition to the restrictions elsewhere in this Declaration, that portion of the Property identified as Spanish Peaks Resort P.U.D. Subdivision, Phase 8A, on **Exhibit A** to this Declaration, which was added to the Property pursuant to the Sixth Supplement, shall be subject to the additional covenants, conditions and restrictions set forth on **Exhibit H** attached hereto and incorporated herein.

## **Article 8**

### **Architectural Review Committee**

8.1 **Purpose.** In order to preserve the natural beauty of the Property and its setting, to maintain the Property as a pleasant and desirable environment, to establish and preserve a harmonious design for the community, and to protect and promote the value of the Property, all exterior design, development, Improvements, including, but not limited to, new Improvements and additions, changes or alterations to existing uses or Improvements, and Construction Activity at the Property shall be subject to review and approval by the ARC pursuant to this **Article 8**.

8.2 **ARC.** During the Class B Control Period, Declarant shall appoint all members of the ARC, who shall serve at the discretion of Declarant. The ARC shall consist of at least three (3), but not more than five (5) persons. The members of the ARC need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Board. Upon expiration of the Class B Control Period, the Board shall appoint the members of the ARC, who shall serve at the discretion of the Board.

### 8.3 **Powers and Duties.**

(a) Except as otherwise provided in **Section 7.33** and this **Section 8.3**, neither the Association, nor any Member, Licensee, Invitee nor any occupant shall perform the activities described in **Section 7.6** on the Property or a building or structure thereon, or change the use of any Platted Unit or building or structure thereon or engage in any Construction Activity unless the ARC has approved the plans and specifications for the project, showing the nature, kind, shape, height, color, materials and location of same, and the construction procedures to be used to ensure compliance with this **Article 8**, including, without limitation, compliance with applicable law, the Governing Documents and any Supplemental Declaration or applicable governing document of any Sub-Association. The ARC has the express authority to review, accept, condition, modify or deny all plans for any of the activities described in this **Section 8.3(a)** to the extent they conflict with the Design Guidelines adopted by the ARC or are not compatible with, or are inappropriate for, the Property.

(b) Design Guidelines adopted by the ARC shall provide reasonable rules and procedures as the ARC deems necessary to carry out its functions, which Design Guidelines shall not be inconsistent with the provisions of the other Governing Documents. Design Guidelines adopted by the ARC shall state the general design theme of all projects in the Property, specific design and construction requirements, and the general construction procedures that will or will not be allowed in the Property. To recognize or encourage a diversity of character between discrete areas within the Property, the Design Guidelines may be different for different development areas of the Property, consistent with the Spanish Peaks Master Plan.

(c) Each Member is hereby advised and acknowledges that, in connection with any Construction Activities on such Member's Platted Unit, such Member must comply with the applicable provisions of Supplemental Declarations, governing documents of any Sub-Association, Design Guidelines adopted by the ARC, and the Governing Documents, which documents may include, among other things, the following: (i) procedures and fees for making application to the ARC for design review approval, including, without limitation, the documents and materials to be submitted and the process the ARC must utilize to approve or disapprove any submission; (ii) time limitations for the completion, within specified periods after approval, of the Improvements for which approval is required under such documents; (iii) directions pertaining to the location of Improvements upon Lots with respect to natural topography, preservation of view corridors and similar criteria; (iv) minimum and maximum square foot areas of living space and non-habitable or non-living space that may be developed on any Lot; (v) landscaping and irrigation regulations or limitations, and limitations and restrictions prohibiting the removal or requiring the replacement of existing trees, the use of plants indigenous to the locale and other practices benefiting the protection of the environment,

aesthetics and architectural harmony of the Property; (vi) instructions and Design Guidelines for the construction, reconstruction, refinishing or alteration of any Improvement and addressing matters such as grading, transformers, meters, fire protection, loading areas, waste storage, trash and debris removal, parking areas, outside storage, sanitary facilities, and conduct of behavior of builders, sub-contractors and Members' representatives on the Property at any time; and (vii) the nature, kind, shape, height, color, materials and location of Improvements, parking, landscaping, open space, signage, skylining, setbacks, utilities, storm water management, grading, erosion control, fencing, interaction with wildlife, fault and landslide areas, air contaminants, water quality, heat, lighting and glare, noise, vibration, electrical disturbances, fire and other hazards, permitted uses within specific areas, the scale of development, maximum floor area and other dimensional limitations, impervious surface, density, construction standards and any other matter regulated pursuant to **Article 7**.

(d) The ARC shall have the authority to establish new Design Guidelines, revise existing Design Guidelines or enforce existing Design Guidelines.

(e) The ARC shall have the authority to retain the services of one or more consulting architects, landscape architects, engineers, contractors and experts, who are independent of the ARC, but are, to the extent required under law, licensed in the State of Montana, to advise and assist the ARC in performing the review functions prescribed in this **Article 8** and in carrying out provisions of **Article 7**. Such consultants may be retained to advise the ARC on a single project, on a number of projects, or on a continuing basis. Consultants shall promptly disclose to the ARC their interests in any project or matter before the ARC prior to such project coming up for ARC consideration.

(f) The ARC may, as a condition to any consent or approval, impose such covenants, conditions and restrictions as the ARC deems necessary or appropriate, including, without limitation, penalties for failure to comply.

(g) The Association and the ARC through their authorized agents shall have the right to enter any Platted Unit upon twenty-four (24) hours' notice (or such notice as is appropriate in the event of an emergency) to the Member or Member's agent for the purpose of ascertaining whether such Platted Unit or the construction, erection, placement, remodeling or alteration of any Improvement thereon is in compliance with plans or Construction Activity approved by the ARC, the applicable Design Guidelines or the terms of this Declaration. The ARC, the Association or such officer, employee, or agent thereof shall not be deemed to have committed a trespass or wrongful act solely by reason of such action or actions under this **Section 8.3(g)**. Notice as provided under this **Section 8.3(g)** may be either in person, via telephone, e-mail, or in writing.

(h) The ARC shall have the authority to require reasonable fees to be paid with the filing of plans to offset expenses of the ARC. In addition, the ARC shall have the authority to set and require Members to post reasonable deposits prior to commencing Construction Activities for the purpose of assuring that Construction Activities will be completed within the time specified and in compliance with approved plans and applicable requirements. The ARC shall adopt a fee and deposit schedule as part of the Design Guidelines covering what fees and deposits will be required, the format for paying the fees and posting the deposits, and

how such fees and deposits are used. The ARC reserves the right to establish special fees and deposits in the case of special projects where design review, oversight and enforcement costs may be higher than those established in the fee and deposit schedule.

(i) The ARC shall have the authority to revoke or suspend its approval and/or order the suspension or cessation of any Construction Activity for violation(s) of the Governing Documents or for failure to construct the project in accordance with the approved plans. In addition, the ARC shall have the authority to record a notice of such non-compliance in the Public Record.

(j) A Member upon final completion of such Member's Construction Activity, as to such Member's Platted Unit, shall request in writing from the ARC a certificate of substantial completion. The ARC will consider the request at a regularly scheduled meeting, for which there is quorum, within forty-five (45) business days from the date the request was received. The ARC will then grant or deny the issuance of the certificate. In the event of denial, the ARC shall state its reasons in writing and provide the Member a reasonable time to address the reasons for denial (*e.g.*, complete the Construction Activity in accordance with ARC approval) and reapply for a certificate of substantial completion. The ARC shall not be required to release any deposits held pursuant to this **Article 8** until a certificate of substantial completion has been issued, though the ARC may, in its discretion, reduce or release deposits when all that remains is minor, exterior landscaping work that is prevented from being completed by weather conditions. Construction Activity shall not be deemed to be substantially complete until all exterior finish and landscaping work has been completed, construction equipment and machinery are demobilized, and construction staging materials, including, but not limited to, portable toilets, dumpsters and all debris, are cleared from the Platted Unit. Such certificate shall run to third parties at the request of the applicable Member.

(k) The ARC shall have the exclusive right to construe and interpret the pertinent provisions of Design Guidelines. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the ARC's construction or interpretation of the Design Guidelines and the provisions of this **Article 8** shall be final, conclusive and binding as to all Persons and property benefitted or bound by the provisions hereof.

(l) In addition to the above powers and duties, the ARC may have such powers and duties as delegated to it by the Board.

(m) The ARC may grant variances from the Design Guidelines when there is a valid justification, where the variance does not have a negative impact on the adjacent properties or the Property as a whole, which shall be determined in the sole and absolute discretion of the ARC, and where the variance is reasonable in relation to the overall character and nature of the area; *provided, however*, that no variances can be granted by the ARC as to specific covenants and restrictions set forth in this Declaration, and the ARC may adopt specific guidelines in relation to any variance requests. Any application for a variance shall be pursuant to a written request addressing the above criteria and all variance guidelines adopted by the ARC, and any grant or denial of a variance by the ARC shall be stated in writing, based on written findings.

(n) If a member of the ARC submits a project to the ARC for review or has a personal interest in a submitted project, that ARC member shall recuse himself or herself from the meeting as a voting member of the ARC and not participate in the review and discussion of the submitted project.

#### 8.4 **Operational Procedures.**

(a) The ARC shall hold meetings as necessary. Meetings of the ARC may be called by Staff, the chair of the ARC or by a majority of the members of the ARC.

(b) A majority of the members of the ARC shall constitute a quorum.

(c) The ARC shall maintain written minutes of its meetings and a record of any votes taken.

(d) All meetings of the ARC shall be open to Members and the Declarant, as well as to any designated professional representatives thereof, and all votes of the ARC shall be taken at such meetings. Nothing contained herein, however, shall prevent the ARC from meeting in executive session, not open to Members, in relation to personnel matters, litigation in which the Association or the ARC is or may become involved, matters subject to privileges and confidentiality obligations, and matters relating to the formation of contracts with third parties. Any matter discussed in executive session shall be generally noted in the minutes of the immediately following open meeting. No meeting, regular or special, may be audio taped, recorded or broadcast. The ARC may, in its sole discretion, determine in particular circumstances that ARC members may participate in a specific meeting by telephone so long as such telephone participation will not unreasonably interfere with such ARC member's ability to perform its duties (*e.g.*, review visual designs of samples to be presented at the meeting).

(e) A copy of all minutes, Design Guidelines and policy statements, shall be filed with the records of the Association and shall be maintained by the Association in accordance with its retention and record keeping policies.

(f) The ARC will adopt procedures for soliciting review from a Sub-Association when a Member makes application to the ARC for a project that is solely within property governed by that Sub-Association.

(g) Approvals and consents of the ARC shall not be arbitrarily and capriciously withheld, and actions taken shall not be arbitrary and capricious. ARC decisions shall be conclusive and binding on all interested parties, subject only to the right of appeal detailed below. Any approval or disapproval by the ARC shall be in writing and in the case of a denial shall state the reasons for such denial. Decisions of the ARC are final; *however*, a Member can appeal in writing to the ARC to reconsider its decision. A request for reconsideration must be made in writing and be posted by certified mail to the Association's office within ten (10) business days of the ARC's decision. The ARC will consider the request at a regularly scheduled meeting, for which there is quorum, within forty-five (45) business days from the date the request was received. The ARC will then in writing affirm, modify or withdraw its decision within twenty (20) business days after the meeting.



**8.5 Enforcement.** Prior to completion of construction or action subject to review under this **Article 8**, the ARC shall have primary responsibility to enforce the restrictions set forth in **Article 7**, any applicable Design Guidelines, and restrictions as set forth in any Supplemental Declaration or governing document for a Sub-Association for which jurisdiction has been granted to the ARC; *provided, however*, that such responsibility shall not limit the right of Declarant or the Association to act under **Article 9**. In addition to any other rights or remedies available to the ARC, the ARC shall have the right to suspend its review or temporarily suspend any approvals or certificates granted in the event an Owner is not in Good Standing.

**8.6 Liability.** The standards and procedures established by this **Article 8** or the ARC are intended to enhance the overall aesthetics of the Property and the Spanish Peaks Community. None of the Declarant, the Association, or the ARC nor any of their respective officers, directors, employees or agents shall be responsible or liable for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental or quasi-governmental entity requirements, nor for ensuring the appropriateness of soils, drainage, and general site and geotechnical work. A consent or approval or certificate of substantial completion issued by the ARC means only that the ARC believes that the construction, alteration, installation or other work for which the consent, approval or certificate was requested complies with the applicable Design Guidelines. No such consent or approval shall be interpreted to mean that the construction, alteration, installation or other work covered thereby **(a)** complies with laws, rules, regulations, ordinances or other requirements of any governmental or quasi-governmental authority, or any applicable covenants, conditions or resolutions, **(b)** is free from defects, errors or omissions, **(c)** is structurally sound, or **(d)** lies within the boundaries of a Platted Unit or a Building Envelope, and by submitting materials to the ARC for its review, the applicant shall be deemed to have waived all claims against the ARC based on the foregoing disclaimed matters. None of the Declarant, the Association, the Board, the ARC, or any member or officer of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved or disapproved construction or modifications to any Unit within the Property.

**8.7 Existing Improvements.** For the avoidance of doubt, any reasonably permanent Improvements (such as buildings, residences, outbuildings, roads, driveways and similar improvements) which are existing on the Property at the time this Declaration becomes effective and which were in compliance with all covenants, conditions, restrictions, laws, rules, regulations and ordinances when constructed shall not be deemed to be in violation of this Declaration solely as a result of differences between the covenants, conditions and restriction set forth in this Declaration and such covenants, conditions and restrictions that were in place at the time such reasonably permanent improvements were initially constructed or installed. The foregoing notwithstanding, any Construction Activity occurring after this Declaration becomes effective will be required to comply with this Declaration and the Design Guidelines. If any improvement or other item located on the Property which was in compliance with all covenants, conditions, restrictions, laws, rules, regulations and ordinances prior to the effective date of this Declaration is in violation of this Declaration and the Owner of the Property on which such improvement or item is located can remove or modify the improvement or item to bring such improvement or item into compliance with this Declaration without material expense or damage to the Property such Owner will do so upon request of the Declarant or the Board.

## **Article 9 Enforcement and Remedies**

9.1 **Procedure.** The Association shall have the right (but not the obligation) to enforce the provisions of any of the Governing Documents, through procedures adopted by resolution of the Board, abatement of the violation by the Association, or by proceedings either at law or in equity against any Person(s) violating or attempting to violate any of the Governing Documents.

### 9.2 **Discretion.**

(a) The decision to have the Association pursue an enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case: (i) the Association's position is not strong enough to justify taking any or further action; (ii) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; (iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending Association resources; or (iv) it is not in the Association's best interest, based upon hardship, expense, or other reasonable criteria, to pursue or continue enforcement action.

(b) Such a decision shall not be deemed a waiver of the right of the Association to enforce such provision at a later time or under other circumstances, nor shall it preclude the Association from enforcing any other covenant, restriction or rule, nor shall it preclude any Member from taking action at law or in equity to enforce the Governing Documents, including all such costs and fees for any appeal or enforcement of a judgment.

(c) In addition to all other enforcement rights and remedies available to the Association, the Association may suspend the right of an Owner to use the Area of Common Responsibility and Improvements located therein (i) for any period during which any charge against such Owner's Platted Unit remains delinquent, and (ii) for a period not to exceed thirty (30) days for a single violation, or for a longer period in the case of any continuing violation, for any period in which such Owner is not in Good Standing (other than as set forth in clause (i) of this paragraph), and the Board may request that the Club's security deny the Member, including its designees, family and guests, access to the Club Property so long as such Member is not in Good Standing.

### 9.3 **Costs of Enforcement.**

(a) Costs incurred for enforcing the provisions of the Governing Documents (inclusive of giving notice of the violation), costs of correcting the defect or undoing or curing the violation, if undertaken by the Association, or any fines levied against the Member after the Member is determined by the Board to be in violation of the Governing Documents, shall be paid by the Member. Any costs incurred for enforcing the provisions of the Governing Documents,

for correcting the defect or undoing the violation, or fine assessed against the Member that is not paid within sixty (60) days may be handled in accordance with **Section 4.6**.

(b) Should any lawsuit, arbitration or other legal proceeding be instituted by a Member against the Association, or the Association against a Member alleged to have violated one or more of the provisions of the Governing Documents and should the Association be wholly or partially successful in such proceeding, the Member shall be obligated to pay all the costs of such proceeding, including, without limitation, reasonable attorney's fees and costs.

9.4 **Delegation.** The Board may delegate any of its rights or obligations with respect to enforcement as set forth above to its appointed agent, Staff, or any committee of the Board, including, but not limited to, the ARC; except that any decision to pursue or not pursue any legal proceeding may not be delegated, and shall be determined by the Board.

9.5 **Remedies Cumulative.** Each remedy provided under the Governing Documents is cumulative and not exclusive.

## **Article 10**

### **Special Disclosure Matters**

Each Member, Licensee, or Invitee is hereby advised of the following matters affecting the Property and the use and enjoyment thereof:

#### **10.1 Mountain Ski Area.**

(a) The Property is or may be located in close proximity to the Mountain Ski Area. The Mountain Ski Area may create or contain certain hazards associated with the character or use of such area and may also generate an unpredictable amount of visible, audible and odorous impacts and disturbances from activities relating to the construction, operation, use and maintenance thereof.

(b) The activities associated with the Mountain Ski Area may include, without limitation: (i) vehicular and pedestrian traffic, including, without limitation, (A) Transportation Systems that transport skiers and people over, around and through the Mountain Ski Area and the Spanish Peaks Community, and (B) construction vehicles and equipment; (ii) activities relating to the construction, operation and maintenance of Transportation Systems relating to the Mountain Ski Area, including, but limited to, (A) tree cutting and clearing, grading and earth-moving, and other construction activities, (B) construction, operation and maintenance of snowmaking facilities, (C) operation of snow-grooming vehicles and equipment and safety and supervision vehicles, and (D) avalanche control activities; (iii) activities relating to the use of the ski area, including, without limitation, skiing, snow-boarding, dog sledding, hiking, horseback riding, bicycling and other recreational activities and organized events and competitions relating to such activities; and (iv) night time lighting associated with night skiing activities or other activities.

(c) Each Owner acknowledges that the impacts, disturbances (inclusive of construction, noise and reduction of privacy from use of the Mountain Ski Area and other

recreational areas), hazards and activities described above may occur in and around such Owner's Platted Unit and, for itself and for themselves and their Licensees, Invitees, successors and assigns, hereby forever waive and release any claims, to the maximum extent allowed by law, which such parties may have against the Association, Declarant, the owner(s) and operator(s) of the Mountain Ski Area, and/or their respective employees, officers, directors, successors and assigns, as a result of, arising out of or in any way relating to the impacts, disturbances, hazards and activities described in this **Section 10.1**.

## 10.2 Club Property.

(a) Some Platted Units are or may be located in close proximity to Club Property. This area may create or contain certain hazards associated with the character or use of such area. Such area may also generate an unpredictable amount of visible, audible and odorous impacts and disturbances from activities relating to the construction, operation, use and maintenance thereof.

(b) The activities associated with Club Property may include, without limitation: (i) development and use of the Golf Course Property, including, without limitation: (A) construction and maintenance of the golf course and golf course improvements (including, but not limited to, tees, fairways, bunkers, rough area, cart paths, signage, driving range, chipping and putting areas, and ball-washing machines), clubhouse, ski trails (alpine and Nordic), golf maintenance shop, restrooms, and all associated structures, and (B) any remodel, reconstruction or expansion of the existing golf course, trails, and structures; (ii) equestrian facilities, including, without limitation: (A) stables and paddocks, (B) horse trailer parking, and (C) exercise facility; (iii) recreational facilities, including, without limitation: (A) swimming pools, (B) hot tubs, and (C) miscellaneous recreational equipment including children's playgrounds; (iv) use of Club Property, including, without limitation: (A) people golfing, skiing (alpine and Nordic), snow shoeing, dog sledding, horseback riding, hiking, walking, running, fishing, biking, sleigh and wagon rides, and other recreational activities, (B) tournaments, weddings, camps and events, and (C) typical golf course play, including every act necessary and proper to the playing of golf (including, but not limited to, the placement and maintenance of "out-of-bounds" signs or markers, play of golf balls, retrieval of golf balls, the flight of golf balls over and upon Units, the usual and common noise level created by the playing of the game of golf and the operation of equipment incident thereto, and all other common and usual activity associated with the recreational nature of Club Property and operating and maintaining Club Property); (v) maintenance of Club Property, including, without limitation: (A) snow removal from greens, tees, cart paths and other Club Property, (B) mowing Club Property, including, without limitation, mowing around sunrise or sunset, (C) irrigation of Club Property with water or treated waste water which can take place in the late evening to sunrise, (D) application of pesticides or fungicides to Club Property through spray application, (E) application of fertilizer to Club Property either through boom sprayers, fertigation, or granular application, (F) maintenance of all Club Property Improvements, (G) maintenance of equipment used in Club Property maintenance, (H) installation or removal of trees or other vegetation on Club Property, (I) maintenance of cart paths, (J) maintenance of ski trails (alpine and Nordic), (K) maintenance of equine facilities and trails, and (L) pool and spa maintenance; and (vi) game management, including, without limitation: (A) constructing temporary fencing (inclusive of electric) for the protection and establishment of tees, greens, and fairways, (B) removal and disposal of dead

game, and (C) game management as necessary for the health, safety, and welfare of the users of Club Property or as determined by State of Montana, Department of Fish, Wildlife and Parks.

(c) The above activities may involve the use of vehicles or equipment, including, but not limited to, trucks, cars, golf carts, snowmobiles, snow grooming vehicles, mowers, sweepers, power sprayers, skid steers, snow blowers, tractors, boom sprayers, and ATVs. Use and maintenance of Club Property is year round.

(d) Each Owner acknowledges that the impacts, disturbances (including, but not limited to, noise and reduction of privacy from pedestrian or vehicular traffic on any Club Property), hazards and activities described above may occur in and around such Owner's Platted Unit and the Property and, for itself and for themselves and their Licensees, Invitees, successors and assigns, hereby forever waive and release any claims which such parties may have against the Association, Declarant, the Club Property Owner, and/or their respective employees, officers, directors, successors and assigns, as a result of, arising out of or in any way relating to the impacts, disturbances, hazards and activities described in this **Section 10.2**.

**10.3 Geotechnical.** The Property is located in mountainous terrain and due to variable surface and subsurface conditions found in mountainous terrain, Members are on notice that they are required to obtain a site-specific geotechnical analysis of such conditions prior to the construction of any Improvement, to ensure that the design of the Improvement is appropriate for the Lot. Geotechnical hazards and risks include, but are not limited to, landslides, earthquakes, abnormally high water tables, soil instability and potentially more extensive engineering and construction requirements in order to limit the destabilizing potential of any particular Lot. All Members shall verify what is required of them with regard to conducting a site-specific geotechnical analysis by checking the Plat or certificate of survey for their Platted Unit and/or their Supplemental Declarations, and all other requirements of law or best practices for engineering and construction. It is the Member's sole responsibility to obtain all required analyses for their Platted Unit and provide all required engineering and construction for their Platted Unit.

**10.4 Wetlands and Waterways.** Some Platted Units may contain streams, rivers, creeks, water courses and/or wetlands (collectively called "water features"). It is the Member's responsibility to ensure that any Construction Activity done on such Member's Platted Unit is in compliance with all applicable local, state and federal rules and regulations in addition to any land use restrictions pursuant to **Article 7**, Supplemental Declarations or any applicable Design Guidelines regarding water features.

**10.5 Checkpoint.** Members, Licensees, Invitees and members of the general public acknowledge that they and their Invitees may pass a checkpoint at the entrance of the Property and the Spanish Peaks Community and that they may be required to provide requested identification and information. However, the fact that this checkpoint may exist does not obligate Declarant or impose a duty on Declarant to provide security services or ensure the safety and well-being of any Member, Invitee, or any other person or of any Property or Improvements thereon.

**10.6 Monitoring and Alarm Systems.** It is recommended that all Owners install alarm systems to protect themselves, their property and their Invitees and guests, and that such alarm systems be connected to an on-site central station, if such system is installed on the Property in the future, or to any third party service provider retained or designated by the Association. The Association may, but has no obligation to, retain the services of a third party to patrol or monitor the Property, the Spanish Peaks Community or any portion thereof, and the costs of any such services shall be an Association Expense.

**10.7 Liability Limitation.** Notwithstanding anything in this Declaration or the other Governing Documents, none of the Association, the Declarant, the Board or their respective successors, agents, contractors, officers or employees shall in any way be considered responsible for or insurers or guarantors of security within the Property or the Spanish Peaks Community, nor shall the Association, the Declarant, the Board or any of their respective successors, agents, contractors, officers or employees be liable for any death, or personal injury, or for any loss of or damage to vehicles, equipment, fixtures or other real or personal property, in any way related to actions undertaken in connection with this Declaration, except to the extent arising out of the gross negligence or willful misconduct of such Person. All Owners and occupants of any Platted Unit acknowledge that the Association, the Board, the Declarant, any successor Declarant, and the ARC do not represent or warrant that any fire protection system, burglar alarm system, or other security system designated by or installed according to any guidelines established by the Association, the Board, the Declarant or the ARC may not be compromised or circumvented; nor that any fire protection or burglar alarm systems or other security systems will prevent loss by fire, smoke, burglary, theft, hold-up, or otherwise; nor that fire protection or burglar alarm systems or other security systems will in all cases provide the detection or protection for which the system is designed or intended.

## **Article 11 Insurance, Casualty and Condemnation**

### **11.1 Insurance.**

**(a) Required Coverages.** The Association shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

**(i)** Blanket property insurance covering “risks of direct physical loss” on a “special form” basis (or comparable coverage by whatever name determined) for all insurable Improvements within the Area of Common Responsibility or otherwise owned by the Association to the extent the Association has assumed responsibility in the event of a casualty, regardless of ownership. If such coverage is not generally available at reasonable cost, then “broad form” coverage may be substituted. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured Improvements under current building ordinances and codes;

**(ii)** Commercial general liability insurance on the Area of Common Responsibility and Improvements located thereon, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees,

agents or contractors while acting on its behalf. If generally available at reasonable cost, such coverage (including primary and umbrella coverage) shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage; *provided*, should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits;

(iii) Workers compensation insurance and employer's liability insurance, if and to the extent required by law;

(iv) Directors and officers liability coverage;

(v) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds in an amount determined by the Board's business judgment but not less than an amount equal to one-sixth of the annual revenue of the Association plus reserves on hand, or such lesser amount as is commercially reasonably obtainable. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(vi) Such additional insurance as the Board, in the exercise of its business judgment, determines advisable.

**(b) Policy Requirements.** From time to time, the Association shall arrange for a review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in Big Sky, Gallatin and Madison County, Montana. The policies may contain a reasonable deductible (the determination of "reasonable" including all reserves maintained by the Association) and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of **Section 11.1(a)**. In the event of an insured loss, the deductible shall be treated as an Association Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines that the loss is the result of the negligence or willful misconduct of one or more Members, Licensee, or Invitee, then the Board may assess the full amount of such deductible against such Member and their Platted Unit as a Default Assessment.

All insurance coverage obtained by the Board shall (if reasonably available):

(i) Be written with a company authorized to do business in Montana;

(ii) Be written in the name of the Association as trustee for the benefited parties. Policies on Area of Common Responsibility, Improvements located thereon and other Improvements owned by the Association shall be for the benefit of the Association and its Members;

(iii) Not be brought into contribution with insurance purchased by Owners, occupants or their mortgagees individually;

(iv) Contain an inflation guard endorsement;

(v) Include an agreed amount endorsement, if the policy contains a co-insurance clause;

(vi) Provide that each Member is an insured person under the policy with respect to liability arising out of such Member's interest as a member of the Association in the Area of Common Responsibility (provided, this provision shall not be construed as giving a Member any interest in the Area of Common Responsibility other than that of a Member);

(vii) Include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any act or omission of one or more Members, or on account of any curable defect or violation of any Member without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure; and

(viii) Include an endorsement precluding cancellation, invalidation, or condition to recovery under the policy on account of any act or omission of any one or more individual Owners, unless such Owner is acting within the scope of its authority on behalf of the Association.

(c) **Waiver of Subrogation and Endorsements.** In addition, the Board shall use reasonable efforts to secure insurance policies which name the Members, collectively, as additional insureds for claims arising in connection with the ownership, existence, use or management of the Area of Common Responsibility, Improvements located thereon and other Improvements owned by the Association and provide:

(i) A waiver of subrogation as to any claims against the Association's Board, Staff, officers, and any manager, the Members and their Licensees and Invitees;

(ii) A waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(iii) An endorsement excluding Member's individual policies from consideration under any "other insurance" clause;

(iv) An endorsement requiring at least thirty (30) days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;

(v) A cross-liability endorsement that provides cross-liability coverage; and

(vi) A provision vesting in the Board exclusive authority to adjust losses; *provided, however*, no mortgagee having any interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

## 11.2 Casualty.

(a) In the event of damage or destruction to any part of the Area of Common Responsibility, Improvements located thereon or other Improvements owned by the Association,



any insurance proceeds shall be collected by and paid to the Association and such insurance proceeds, if sufficient to reconstruct or repair the damage in the estimation of the Board, shall be applied by the Association to such reconstruction and repair. If the insurance proceeds with respect to such damage or destruction are insufficient to repair and reconstruct the damaged or destroyed Area of Common Responsibility or Improvements, or if there are no insurance proceeds, the Board shall levy a Special Assessment pursuant to the Governing Documents in the aggregate amount of such deficiency and shall proceed to make such repairs or reconstruction. Notwithstanding the foregoing, the Association shall not repair or reconstruct the damaged or destroyed Area of Common Responsibility or Improvements if (i) such repair or reconstruction would be illegal under any local, state or federal law, or (ii) within sixty (60) days after such damage or destruction (A) during the Class B Control Period the Declarant elects not to repair or reconstruct, or (B) after the Class B Control Period the Board elects not to repair or reconstruct. If the Declarant or the Board elects not to repair or reconstruct as provided above, the Association shall demolish any destroyed or damaged improvements, remove all debris and rubble caused by such demolition and return the damaged or destroyed area to a slightly condition and shall have the right to levy against and collect from the Members a Special Assessment for this limited purpose, if necessary.

(b) Subject to the terms of any Supplemental Declaration or governing document of a Sub-Association, in the event of damage or destruction of the Improvements located on any Platted Unit or any part thereof (other than any Area of Common Responsibility or Improvement which is governed by **Section 11.2(a)**), the Owner (or Sub-Association as applicable) of such Platted Unit shall, at its sole cost and expense, with due diligence, either (i) cause the damaged or destroyed Improvements to be repaired and restored to a condition comparable to that prior to the damage or destruction, or (ii) demolish the destroyed or damaged Improvements, in which event the rubble caused by such demolition shall be removed and the affected Lot graded and landscaped. If such repair or restoration or such demolition, debris removal, grading and landscaping is not commenced within one hundred eighty (180) days from the date of such damage or destruction, or if the same is commenced but then abandoned for a period of more than ninety (90) days, the Association may initiate proceedings under **Article 9**, inclusive of fining the Owner or Sub-Association until such repair or restoration or such demolition, debris removal, grading and landscaping is commenced or re-commenced, as the case may be, unless the Owner or Sub-Association can prove to the satisfaction of the Board that such failure is due to circumstances beyond the Owner's control. All Construction Activity commenced under this **Section 11.2(b)** shall be subject to ARC review and approval, which will not be unreasonably withheld. In addition to the remedies available pursuant to **Article 9**, the Association, acting through the Board, may undertake demolition, grading, and landscaping of the affected Platted Unit and charge the Owner or Sub-Association for the costs thereof as a Default Assessment.

### 11.3 **Condemnation.**

(a) In the event the Area of Common Responsibility, Improvements thereon or other Improvements or property owned by the Association, or any portion thereof, shall be taken for any public or quasi-public use, under any statute, by right of eminent domain or by purchase in lieu thereof, each Member will be entitled to notice thereof, but the Association will act as attorney-in-fact for all Members in the proceedings incident to such taking unless

otherwise prohibited by law. The award for such taking will be payable to the Association as trustee for all of the Members to be used as follows:

(i) If the taking involves a portion of the Area of Common Responsibility on which Improvements have been constructed, then, unless (A) restoration or replacement of such Improvements would be illegal under any state, local or federal law or (B) within sixty (60) days after such taking (I) during the Class B Control Period Declarant elects not to restore or replace such Improvements, or (II) after the Class B Control Period the Board elects not to restore or replace such Improvements, the Association shall restore or replace such Improvements so taken on the remaining land included in the Area of Common Responsibility to the extent lands are available therefore, in accordance with plans approved by the ARC and other governmental or quasi-governmental entity having jurisdiction over the Property. If such Improvements are to be restored or replaced, and the award for the taking is insufficient to restore or replace such Improvements, the Board shall levy a Special Assessment in the aggregate amount of such deficiency and shall proceed to restore or replace such Improvements.

(ii) If the taking does not involve any Improvements, or if there is a decision made not to restore or replace as set forth above, or if there are net funds remaining after any such restoration or replacement of Improvements is completed, then the Association shall retain such excess proceeds and place them in the Association's reserve account.

(b) In the event any Unit or any portion thereof (other than any Area of Common Responsibility which is governed by **Section 11.3(a)**) shall be taken, the condemnation award for such taking shall be paid solely to the Owner of such Unit. The repair or restoration of any Improvements located on such Unit which are affected by the taking shall be completed as if it were a casualty, in accordance with the terms of **Section 11.2(b)**. If an entire Unit shall be condemned, the Owner thereof shall automatically cease to be a Member of the Association with respect to such Unit, but obligations arising prior to such taking shall remain the obligation of such Person regardless of the termination of Membership. The condemnation of any Condominium Unit shall be handled pursuant to the condominium declaration governing that particular Condominium Unit.

## **Article 12**

### **Mortgagee Provisions**

#### **12.1 Notices of Action.**

(a) Any institutional holder, insurer, or guarantor of a first Mortgage that provides a written request to the Association in accordance with this **Section 12.1** shall thereby become an "**Eligible Holder**" for so long as such Person remains an institutional holder, insurer or guarantor of a first Mortgage and will be entitled to timely written notice of:

(i) Any condemnation loss or any casualty loss of which the Association has notice which affects a material portion of the Area of Common Responsibility; or

(ii) Any foreclosure by the Association of a lien resulting from a delinquency in the payment of any Assessment, charge, fine, penalty or other amount payable by

a Member with respect to a Platted Unit subject to the mortgage of such Eligible Holder. Such notice shall be given at least thirty (30) days prior to the foreclosure.

(b) The written request as required under this **Section 12.1** shall clearly state the legal description and address of the Platted Unit as well as the name, mailing address, telephone number and e-mail address of the person who should receive the notices for the above listed actions. It is the sole obligation of the Eligible Holder to keep this information up to date with the Association and deliver notice as provided herein to the Association when this information changes. The Association will not be in default for failure to provide the above-listed notices if the Eligible Holder does not provide the Association with accurate information.

(c) Any written notice required under this **Section 12.1** to be provided by the Association to an Eligible Holder shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by certified mail, first-class, postage pre-paid, return receipt requested to the address provided by the Eligible Holder.

**12.2 Payment of Unpaid Assessment.** Any mortgagee or other lienholder holding a lien on a Platted Unit may pay any unpaid Assessment with respect to such Platted Unit, together with any and all costs and expenses incurred with respect to the Assessment lien securing such unpaid Assessment.

### **Article 13**

#### **Jurisdiction, Annexation and Withdrawal**

**13.1 Jurisdiction.** The Property within the jurisdiction of the Association and subject to this Declaration and the Governing Documents as of the date hereof is described in **Exhibit A** attached to this Declaration and incorporated herein by reference. Property within the jurisdiction of the Association and subject to this Declaration is subject to all provisions of the Governing Documents. Pursuant to the provisions of this **Article 13**, the Annexable Area and other real property may be subjected to the jurisdiction of the Association and become part of the Property subject to this Declaration.

#### **13.2 Expansion of Jurisdiction by Declarant.**

(a) During the Class B Control Period, the jurisdiction of the Association and the Property subject to this Declaration may be expanded in accordance with **Section 14.1(a)(ix)** hereof. Notwithstanding any other term herein, in relation to any annexation, the Declarant may modify the provisions of this Declaration in relation to applicable types of Assessments, applicable Assessment rates and amounts, in the Declarant's sole discretion, any such modifications to be set forth in a Supplemental Declaration. The Declarant shall, in its sole discretion, determine the class of membership for each Owner of property so annexed, but in the absence of such determination each Owner of such property shall be deemed a Class A Member.

(b) Any such annexation shall be effective upon the recording of such Supplemental Declaration in the Public Record, unless otherwise provided therein. Upon annexation, the owner or owners of the annexed property shall become a Member in the Association, will be subject to the Governing Documents and entitled to the rights and

obligations of the Members as set forth in the Governing Documents. The Association, in its sole discretion, may impose a fee to be paid by the owner of the annexed property to defray any costs of annexation.

(c) Nothing in this Declaration shall be construed to require Declarant or any successor to subject additional property to this Declaration or to develop any of the Property whatsoever.

### 13.3 **Expansion of Jurisdiction by the Association.**

(a) After the Class B Control Period, the jurisdiction of the Association and the Property subject to this Declaration may be expanded by annexation of the Annexable Area or any portion thereof, and of other real property, subject to the Affirmative Vote of a Majority of the Classes. Such annexation shall be accomplished by recording in the Public Record, a Supplemental Declaration describing the property being annexed, stating the results of the vote taken, and signed by the Association and the owner of the real property being annexed.

(b) Any such annexation shall be effective upon the recording of such Supplemental Declaration in the Public Record, unless otherwise provided therein. Upon annexation the owner of the annexed property shall become a Member in the Association, will be subject to the Governing Documents and entitled to the rights and obligations of the Members as set forth in the Governing Documents. The Association, in its sole discretion, may impose a fee to be paid by the owner of the annexed property to defray any costs of annexation.

(c) Nothing herein shall be construed to require the Association to subject additional real property to this Declaration or develop any Property whatsoever.

### 13.4 **Withdrawal from Jurisdiction.**

(a) Declarant, during the Class B Control Period, and thereafter the Association, reserves the right to remove any Property from the area subject to this Declaration with the written consent of the Owner of such Property. In the event such Property is owned by the Association, only the written consent of a majority of the Board shall be required. Such withdrawal shall be accomplished by recording in the Public Record a Supplemental Declaration describing the property being withdrawn, stating the authority for withdrawal, and signed by Declarant during the Class B Control Period, and thereafter by the Association, and applicable Owners.

(b) Prior to any withdrawal, all applicable Assessments that are owed to the Association must be paid to or waived in writing by the Association.

13.5 **Additional Covenants and Easements.** During the Class B Control Period the Declarant may unilaterally subject any portion of the Property submitted to this Declaration initially or by Supplemental Declaration to additional covenants and easements, including, without limitation, covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed

either concurrent with or after the annexation of the subject property, and shall require the written consent of the owner(s) of such property, if other than the Declarant.

## **Article 14 Miscellaneous**

### **14.1 Amendment.**

(a) **By Declarant.** During the Class B Control Period, Declarant may unilaterally amend this Declaration for any purpose, provided the amendment has no material adverse effect on the right of any Owner. Notwithstanding the above, during the Class B Control Period, Declarant may unilaterally amend this Declaration if such amendment is (i) necessary to bring any provision in compliance with any applicable governmental statutes, necessary governmental registrations, rule, regulation, or judicial determination; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage on the Units; (iii) required by a Federal Mortgage Underwriter to enable such Federal Mortgage Underwriter to make or purchase mortgage loans on the Units; (iv) necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Units; (v) necessary to enable any governmental agency or reputable private insurance company to insure the Property, or any portion thereof; (vi) otherwise necessary to satisfy the requirements of any governmental or quasi-governmental entity; (vii) necessary to develop in accordance with the Spanish Peaks Master Plan; (viii) to establish Interval Ownership pursuant to **Section 7.27**; or (ix) necessary to annex the Annexable Area or any portion thereof, or any other real property, which amendment shall be effective upon a recording of a Supplemental Declaration or amendment stating the amendment, the authority for the amendment, and signed by Declarant.

(b) **By Members.** During the Class B Control Period, this Declaration may be amended by an Affirmative Vote of a Majority of the Classes with the consent of the Declarant. After the Class B Control Period, this Declaration may be amended by an Affirmative Vote of a Majority of the Classes.

(c) **By Board.** During the Class B Control Period, the Board may adopt an amendment to this Declaration provided at least eighty percent (80%) of the members of the Board vote in favor of the adoption and the consent of the Declarant is obtained. After the Class B Control Period, the Board may adopt an amendment to this Declaration provided at least eighty percent (80%) of the members of the Board vote in favor of the adoption.

(d) **Restrictions on Amendment.** If an Owner consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment. No amendment may remove, revoke, or modify any right or privilege of the Declarant, or increase Declarant's obligations, without the written consent of the Declarant or the assignee of such right or privilege.

**14.2 Effect of Provisions of Declaration.** Each provision of this Declaration, and any agreement, promise, covenants and undertaking to comply with each provision of this Declaration, and any necessary exception or reservation or grant of title, estate, right or interest

to effectuate all easements, grants, and conveyances herein and all other provisions of this Declaration shall be deemed incorporated in each deed or other instrument by which any right, title or interest in any real property within the Property is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument.

**14.3 Interpretation of the Declaration.** The Association, by and through its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration, except for provisions expressly delegated to the ARC. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Board's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all Persons and property benefitted or bound by the covenants and the provisions hereof.

**14.4 Attorneys' Fees.** In the event suit or action is instituted for a declaration of rights hereunder or to enforce any of the provisions of this Declaration or the other Governing Documents, the parties agree that the prevailing party shall be entitled to all reasonable costs, fees, and paralegals' and attorneys' fees and costs (as calculated on an hourly fee basis and not a contingency fee basis) and all costs of collection and enforcement, including, but not limited to, any appeals, from the non-prevailing party.

**14.5 Limited Liability.** None of Declarant, the Association, the ARC, the Board, or any member, agent or employee of any of the same shall be liable to any party for any action or for any failure to act with respect to any matter related to the Governing Documents if the action taken or failure to act was in good faith and without malice. Such parties shall additionally be entitled to indemnification to the extent required under applicable law or any Governing Document.

**14.6 Disclaimer of Representations.** ANYTHING TO THE CONTRARY IN THIS DECLARATION NOTWITHSTANDING, DECLARANT MAKES NO, AND DISCLAIMS ANY AND ALL, WARRANTIES OR REPRESENTATIONS WHATSOEVER THAT THE SPANISH PEAKS MASTER PLAN (AS PRESENTLY ENVISIONED OR AS AMENDED IN THE FUTURE) FOR THE DEVELOPMENT OF THE PROPERTY CAN OR WILL BE CARRIED OUT OR THAT ANY REAL PROPERTY NOW OWNED OR HEREAFTER ACQUIRED BY DECLARANT IS OR WILL BE SUBJECTED TO THIS DECLARATION, OR THAT ANY SUCH LAND, WHETHER OR NOT IT HAS BEEN SUBJECTED TO THIS DECLARATION, IS OR WILL BE COMMITTED TO OR DEVELOPED FOR A PARTICULAR USE, OR THAT IF SUCH REAL PROPERTY IS ONCE USED FOR A PARTICULAR USE, THAT SUCH USE WILL CONTINUE IN EFFECT. NO ASSURANCES ARE MADE REGARDING THE PRESERVATION OF VIEWS FROM ANY UNIT OR CONFIGURATION, LOCATION, UNIT TYPE OR OTHER ASPECT OF THE DEVELOPMENT IN THE VICINITY OF ANY UNIT.

**14.7 Successors and Assigns.** Except as otherwise provided herein, this Declaration shall inure to the benefit of Declarant, the Association, and each Member and shall be binding upon Declarant, the Association, each Member and their respective heirs, devisees, personal representatives, successors and assigns.

14.8 **Severability.** A determination of invalidity of any one or more of the provisions or conditions hereof, or any portion thereof, by judgment, order or decree of a court shall not affect in any manner the other provisions or portions of provisions hereof which shall remain in full force and effect.

14.9 **Captions.** The captions and headings in this Declaration are for convenience only and shall not be considered in construing any provisions of this Declaration.

14.10 **Gender.** The use of the masculine gender in this Declaration shall be deemed to include the feminine and neuter genders and the use of the singular shall be deemed to include the plural, and *vice versa*, whenever the context so requires.

14.11 **No Waiver.** Failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration.

14.12 **Notice of Sale or Transfer of Title.** Any Owner desiring to sell or otherwise transfer title to such Owner's Platted Unit shall give the Board at least seven (7) days' prior written notice of the name and address of the proposed purchaser or transferee, the date of such proposed transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Platted Unit with respect thereto, including, without limitation, assessment obligations, until the date such notice is received by the Board, notwithstanding the transfer of title. Nothing in this **Section 14.12** shall eliminate or modify the requirements set forth in **Section 3.4**.

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**Exhibit A**  
**of**  
**Third Restated and Revised Declaration of**  
**Protective Covenants, Conditions and Restrictions**  
**for Spanish Peaks**

**LEGAL DESCRIPTION OF THE PROPERTY**

**MADISON COUNTY:**

Lot 1 of Spanish Peaks Resort, Phase 1, a P.U.D. Subdivision, in Madison County, Montana, according to the official plat thereof on file and of record in the office of the Clerk and Recorder, Madison County, Montana. [Recorded in Book 4 of Plats, Page 504]; and

All of Spanish Peaks Resort Subdivision, Phase 2, in Madison County, Montana, according to the official plat thereof on file and of record in the office of the Clerk and Recorder, Madison County, Montana. **Excepting therefrom: OS-1 and OS-9** [Recorded in Book 4 of Plats, Page 500].

**GALLATIN COUNTY:**

**Spanish Peaks Estates:**

Spanish Peaks Estates Subdivision, Phase 1, in Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the Clerk and Recorder, Gallatin County, Montana. [Plat reference: J-345];

Spanish Peaks Estates Subdivision, Phase 1A, in Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the Clerk and Recorder, Gallatin County, Montana. [Plat reference: J-361];

Spanish Peaks Estates Subdivision, Phase 3, in Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the Clerk and Recorder, Gallatin County, Montana. [Plat reference: J-362];

Spanish Peaks Estates Subdivision, Phase 4, in Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the Clerk and Recorder, Gallatin County, Montana. [Plat reference: J-363];

Spanish Peaks Estates Subdivision, Phase 5, in Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the Clerk and Recorder, Gallatin County, Montana. [Plat reference: J-424]; and

Spanish Peaks Estates P.U.D. Subdivision, Phase 6, in Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the Clerk and Recorder, Gallatin County, Montana. [Plat reference: J-452].

**Spanish Peaks Resort P.U.D.:**

Lot 1 of Spanish Peaks Resort P.U.D. Subdivision, Phase 1A, in Gallatin County, Montana, according to the official plat thereof on file and of record in the office the County Clerk and Recorder, Gallatin County, Montana. [Plat Reference: J-427];

All of Spanish Peaks Resort P.U.D. Subdivision, Phases 1B and 1C, in Gallatin County, Montana, according to the official plat thereof on file and of record in the office the County Clerk and Recorder, Gallatin County, Montana. [Plat Reference: J-399];

Lot 1 of Spanish Peaks Resort P.U.D. Subdivision, Phase 2, in Gallatin County, Montana, according to the official plat thereof on file and of record in the office the County Clerk and Recorder, Gallatin County, Montana. [Plat Reference: J-487];

Lot 1 of Spanish Peaks Resort P.U.D. Subdivision, Phase 3A, in Gallatin County, Montana, according to the official plat thereof on file and of record in the office the County Clerk and Recorder, Gallatin County, Montana. [Plat Reference: J-468];

Lot 1 of Spanish Peaks Resort P.U.D. Subdivision, Phase 3B, in Gallatin County, Montana, according to the official plat thereof on file and of record in the office the County Clerk and Recorder, Gallatin County, Montana. [Plat Reference: J-472];

Spanish Peaks Resort P.U.D. Subdivision, Phase 4, in Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the County Clerk and Recorder, Gallatin County, Montana. [Plat Reference: J-580]; and

Spanish Peaks Resort P.U.D. Subdivision, Phase 8A, in Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the County Clerk and Recorder, Gallatin County, Montana. [Plat Reference: J-581]

## **Spanish Peaks Subdivision Phase 6A**

Spanish Peaks Resort Subdivision Phase 6A, in Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the Clerk and Recorder, Gallatin County, Montana. [Plat References: J-568]

Amended Plat of Spanish Peaks Resort Subdivision Phase 6A, Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the Clerk and Recorder, Gallatin County, Montana. [Plat Reference: J-568A]

**Exhibit B**  
**of**  
**Third Restated and Revised Declaration of**  
**Protective Covenants, Conditions and Restrictions**  
**for Spanish Peaks**

**CLASSES OF MEMBERSHIP**

1. **Initial Classes.** There shall be two (2) initial Classes of Members in the Association, as set forth below. A Member may belong to more than one Class.

2. **Class A.** Class A Members shall be all of the Owners of Units (including the Declarant). Class A Members shall have one (1) equal vote for each Unit in which they hold the interest required for Membership under **Section 3.1** of the Declaration. There shall be only one (1) vote per Unit owned by each Class A Member.

3. **Class B.** The sole Class B Member shall be the Declarant. Notwithstanding anything set forth in **Section 2** of this **Exhibit B**, prior to the Turnover Date the Class B Member shall be entitled to five (5) Class A votes per each Unit owned by the Class B Member. Upon and after the Turnover Date, the Class B Member shall be deemed to be a Class A Member entitled to one (1) vote for each Unit in which the Declarant holds the interest required for Membership under **Section 3.1** of the Declaration.

4. **Business Class.** At any time during the Declarant Control Period, the Declarant may amend, in its sole discretion, from time to time, this **Exhibit B** and add a third membership class, the Business Class, and the consent of no other party shall be required.

**Exhibit C**  
**of**  
**Third Restated and Revised Declaration of**  
**Protective Covenants, Conditions and Restrictions**  
**for Spanish Peaks**

**ASSESSMENTS**

**Article 1**  
**Types of Assessments**

**1.1 Base Assessments.**

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

(b) **Rate.** The Base Assessment shall be levied equally against all Platted Units which are subject to the Base Assessment pursuant to this Declaration and shall be set at a level which is reasonably expected to produce total revenue for the Association equal to the total budgeted Association Expenses for the benefit of all Owners, including, without limitation, reserves (“**Base Assessment**”). In determining the level of Base Assessments, the Board, in its discretion, may consider other sources of funds (exclusive of Community Transfer Assessments and Specific Assessments) available to the Association. In addition, the Board shall take into account the number of Platted Units subject to the Base Assessment on the first day of the fiscal year for which the budget is prepared and the number of Platted Units reasonably anticipated to become subject to Base Assessments during the fiscal year.

(c) **Notices.** The Board shall send a copy of the budget and notice of the amount of the Base Assessment for the upcoming year to be delivered to each Owner at least thirty (30) days prior to the beginning of the fiscal year for which it is to be effective. Such budget and assessment shall become effective unless disapproved at a meeting by at least fifty-one percent (51%) of the Class A votes in the Association, and, during the Class B Control Period, the Declarant. There shall be no obligation to call a meeting of the members for the purpose of considering the budget except on petition of the Membership as provided for special meetings in the Bylaws or, if the Bylaws are silent, the Act, which petition must be presented to the Board within ten (10) days after delivery of the budget and notice of the amount of the Base Assessments.

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

## 1.2 Community Transfer Assessment.

(a) **Obligation at Transfer.** Upon a Transfer occurring after this Declaration has been recorded in the Public Record in the County in which the applicable Platted Unit is located, every Transferor shall pay to the Association a “**Community Transfer Assessment**” equal to the Fair Market Value of the Transferred Platted Unit multiplied by one percent (1%). The term Community Transfer Assessment shall also refer to any and all “transfer fees” as remitted to the Association prior to the recording of this Declaration.

(b) **Definitions.** For the purposes **Section 1.2** of this **Exhibit C**, the following terms are defined as set forth below.

(i) **Consideration.** Consideration means and includes the total of money paid or value delivered and the Fair Market Value of any property delivered, or contracted to be paid or delivered, in return for the Transfer of any Platted Unit, and includes the amount outstanding of any note, contract indebtedness, or rental payment assumed, deemed forgiven or received in connection with such Transfer, whether or not secured by any lien, mortgage, or other encumbrance, given to secure the Transfer price, or any part thereof, or remaining unpaid on the property at the time of Transfer. The term “Consideration” does not include the amount of any outstanding lien or encumbrance for taxes, special benefits or improvements, in favor of the United States, the State of Montana, or a municipal or quasi-municipal governmental corporation or district.

(ii) **Entity.** Entity means a corporation, partnership, limited liability company, association, or any other legal entity, but does not include any of the foregoing serving in a trustee capacity or any natural person, whether serving in his individual or trustee capacity.

(iii) **Fair Market Value.** Fair Market Value means the greater of: (A) the Consideration given by the Transferee to the Transferor in exchange for the Transfer of a Platted Unit, or (B) the price that a Transferee would pay to a Transferor for a Platted Unit in a bona fide arms’ length Transfer between unrelated Persons, as determined by the Board.

(iv) **Transfer.** Transfer means, whether in one transaction or in a series of related transactions, any direct or indirect conveyance, assignment, merger, or other transfer, whether by operation of law or otherwise, of beneficial ownership of any Platted Unit, including but not limited to (A) the conveyance of fee simple title to any Platted Unit, (B) the transfer of more than fifty percent (50%) of the outstanding shares of the voting or control equity interests of an Entity, which, directly or indirectly, owns one or more Platted Units, and (C) the transfer of more than fifty percent (50%) of the interest in net profits, net losses, or net cash distribution rights of any Entity which, directly or indirectly, owns one or more Platted Units, but “Transfer” shall not mean or include the transfers exempted under **Section 1.2(c)** below.

(v) **Transferee.** Transferee (*i.e.*, “buyer”) means and includes all parties to whom any interest passes by a Transfer, and each party included in the term “Transferee” shall have joint and several liability for all obligations of the Transferee under this **Section 1.2**.

**(vi) Transferor.** Transferor (*i.e.*, “seller”) means and includes all parties from whom any interest passed by a Transfer, and each party included in the term “Transferor” shall have joint and several liability for all obligations of the Transferor under this **Section 1.2.**

**(c) Exemptions.** The Board may adopt a resolution which states which Transfers may be exempt from payment of the Community Transfer Assessment and provides for a process by which a Transferor may apply for a determination of the Board to evaluate and determine whether a Transfer is subject to payment of the Community Transfer Assessment. In addition to any exemptions set forth in a resolution of the Board as set forth above, the Transfers described below shall not be subject to the Community Transfer Assessment, with the determination of whether any Transfer falls within an exemption to be made by the Board.

**(i)** Any Transfer to, from or among the Association, any Sub-Association, the Club Property Owner, the Declarant or any of the Declarant’s affiliates.

**(ii)** Any Transfer by reason of death, whether provided for in a will, trust, deed of distribution or through probate.

**(iii)** Any Transfer, whether outright or in trust, that is for the benefit of the Transferor or the Transferor’s relatives, but only if the Consideration for the Transfer is no greater than ten percent (10%) of the Fair Market Value of the Platted Unit. For purposes of this exemption, (A) the relatives of a Transferor shall include all lineal descendants of any grandparent of the Transferor, and the spouses of such descendants, and (B) stepchildren and adopted children shall be considered lineal descendants. A distribution from a trust shall be treated as a Transfer made by the grantors of the trust to the beneficiaries of that trust.

**(iv)** Any Transfer from a Transferor or Transferors to an Entity on the conditions that (A) the Entity is owned in its entirety by the Transferor(s), (B) if there are multiple Transferors, such Transferors have the same relative ownership interest in the Entity as was previously held in the Transferred Platted Unit, and (C) no Consideration is paid for the Transfer, other than the issuance of stock or other equity interests in the Entity in proportion to the interests in the Transferred Platted Lot.

**(v)** Any Transfer arising solely from the termination of a joint tenancy or co-tenancy pursuant to a divorce or other termination of marriage.

**(vi)** Any Transfer from an Entity to its shareholders, members, partners or other equity owners in connection with the dissolution and liquidation of such Entity on the condition that Platted Unit is Transferred generally pro rata to the shareholders, members, partners or other equity owners in accordance with their distribution rights and that no Consideration is paid for such Transfer other than cancellation of stock, membership or partnership interest or other equity interest.

**(vii)** Any Transfer made solely for the purpose of confirming or correcting a previously recorded Transfer, making minor boundary adjustments, removing clouds on title or granting easements, rights of way or licenses.

(viii) Any Transfer in connection with (A) the foreclosure of a deed of trust or mortgage, or (B) a deed given in lieu of foreclosure.

(d) **Payment and Reports.** The Community Transfer Assessment shall be due and payable by the Transferor to the Association at the time of the Transfer giving rise to such Community Transfer Assessment. With such payment, the Transferor shall make a written report to the Association on forms prescribed by the Association, fully describing the Transfer, the names of the parties thereto, the legal description of the Platted Unit transferred, and such other information as the Association may reasonably require. The Transferor and the Transferee of a Unit shall have joint and several liability for the Community Transfer Assessment with respect to the applicable Transfer.

**1.3 Default Assessment.** Notwithstanding anything to the contrary contained herein, if any cost or expense of the Association is caused by (a) the negligence or misconduct of a Member or a Member's family member, employee, agent, Licensee or Invitee, or (b) a violation of any covenant or condition of a Governing Document by a Member or a Member's family member, employee, agent, Licensee or Invitee, the Association may, if the Board deems necessary or advisable, levy a default Assessment against such Member. The Association may also, in the discretion of the Board, levy a default Assessment against any Platted Unit to reimburse the Association for costs incurred in bringing the Platted Unit into compliance with the provisions of the Governing Documents, provided the Association gives prior notice to the Owner and an opportunity for a hearing. Any such assessment levied by the Association pursuant to this **Section 1.3**, and each fine, penalty, fee, or other charge imposed upon a Member for the Member's violation of any covenant or condition of any Governing Document, are each referred to herein as a "**Default Assessment.**"

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

**1.5 Specific Assessments.**

(a) The Board shall have the power to specifically assess Association Expenses against Platted Units receiving benefits, items, or services not provided to all Platted Units within an area or within the Property that are incurred for the benefit of the Owner of a Platted Unit or the Owners of Platted Units within a section of the Property for specific items or services relating to the Platted Unit(s), as determined by the Board in good faith. All such assessments shall be "**Specific Assessments.**"

(b) Any Platted Unit or group of Platted Units may request that the Association provide a higher level of service or special services for the benefit of such Platted Units, upon the affirmative vote, written consent, or a combination thereof, of a majority of affected Owners requesting the service. In such event, the Association, in the Board's sole



discretion, may provide for the requested services. The cost of such services, if provided, shall be assessed against the Platted Units making the request, as determined by the Board in good faith, as a Specific Assessment on such Platted Units.

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

**Exhibit D**  
**of**  
**Third Restated and Revised Declaration of**  
**Protective Covenants, Conditions and Restrictions**  
**for Spanish Peaks**

**DESCRIPTION AND DEPICTION OF CLUB PROPERTY**

Club Property shall include the following legally described parcels of real property located in Madison County and Gallatin County, Montana, more particularly described below, as well as the depiction attached hereto:

Tract 1, OS-1 and OS-9 of Spanish Peaks Resort Subdivision, Phase 2, in Madison County, Montana, according to the official plat thereof on file in the office of the Clerk and Recorder, Madison County, Montana. [Filed February 7, 2005 in Book 4 of Plats, Page 500]

Lot 2 of Spanish Peaks Resort P.U.D. Subdivision, Phase 1A, in Gallatin County, Montana, according to the official plat thereof on file in the office the County Clerk and Recorder, Gallatin County, Montana. [Plat Reference: J-427]

See attached map.





Attachment to Exhibit D to Third Restated and Revised Declaration of Protective Covenants, Conditions and Restrictions for Spanish Peaks



**Exhibit E**  
**of**  
**Third Restated and Revised Declaration of**  
**Protective Covenants, Conditions and Restrictions**  
**for Spanish Peaks**

**GALLATIN COUNTY PLAT APPROVED COVENANTS**

The following covenants are required by Gallatin County per the plat approvals for the Property contained solely within Gallatin County and do not apply to portions of the Property within Madison County, Montana. In the event this **Exhibit E** contains covenants that are addressed elsewhere in this Declaration the stricter provisions shall control.

1. **Fire Precautions.** All structures shall be constructed in compliance with the Fire Precautions contained in **Section 7.7** and all Members shall abide by the applicable Fire Precautions in **Section 7.7**.

2. **Noxious Weeds.** The control of noxious weeds by the Association on those areas for which the Association is responsible and the control of noxious weeds by individual owners on their respective lots shall be as set forth and specified under the Montana Noxious Weed Control Act (MCA 7-22-2101 through 7-22-2153) and the rules and regulations of the Gallatin County Weed Control District. The landowner shall be responsible for the control of State and County-declared noxious weeds on his or her lot. Both unimproved and improved lots shall be managed for noxious weeds. In the event a landowner does not control the noxious weeds, after ten (10) days' notice from the Association, the Association may cause the noxious weeds to be controlled. The cost and expense associated with such weed management shall be assessed to the Unit and such assessment may become a lien if not paid within thirty (30) days of the mailing of such assessment.

3. **Zoning Controls.** All use of the Property within Gallatin County must comply with the Zoning Regulations, including but not limited to Section 23: Resort, Section 29: General Development Standards, and Section 33: Hillside and Ridgeline Development Standards. Any question as to compliance with the Zoning Regulations shall be directed to the Gallatin County Planning Department.

4. **Geotechnical.** A soils analysis and geotechnical study, prepared by a licensed professional engineer, shall be submitted with all Gallatin County land use permit applications, along with other submittals as may be required by the permit process and Section 33.7 of the Zoning Regulations.

5. **Driveways.** All driveway access points must be at least seventy-five (75) feet from the nearest road intersection and must be built to the standards of Section 7.G2 of the Gallatin County Subdivision Regulations (or as thereafter amended). All driveways in Spanish Peaks Estates Phases 5 and 6 or any later phase in Gallatin County longer than one hundred fifty

(150) feet shall comply with NFPA/Uniform Fire Code §18.1 regarding fire apparatus access roads.

6. **Open Space.** The Declarant shall initially hold title to the Open Space and thereafter title shall be held by the Association. Open Space shall be preserved and maintained for passive and active recreation, wildlife habitat, and protection of scenic, unique or important natural features.

7. **Association and Association Membership.** The Association shall be responsible for the operation and maintenance of all interior subdivision Roadways, and common Open Space. The Association is responsible for local taxes on, and the maintenance of, Association owned property and facilities and Area of Common Responsibility. The Association shall be responsible to adjust the assessment to meet changing needs in the administration and maintenance of Association owned property, facilities and Area of Common Responsibility. Membership in the Association shall be mandatory for each Owner within the Property; and each Owner must pay assessments to the Association for Association Expenses. In the event of a claim by a real property taxing authority against commonly owned property, the taxing authority may proceed against individual owners in the Association and the Platted Units and dwelling units they each own.

8. **Wildlife.**

(a) The artificial feeding of all wildlife is prohibited, including providing any food, garbage or other attractant.

(b) All refuse shall be stored in animal-proof containers.

(c) Owners acknowledge that wildlife damage to property will occur. Owners shall accept that risk and shall not file claims against the Association or any other governing body for such damages.

(d) Fencing along the exterior boundaries of Lots is prohibited.

(e) The taking of any wildlife species within the Property is prohibited except for catching fish.

(f) Pets shall be controlled by each Owner and not allowed to roam at large within the Property.

Any covenant that is included herein as a condition of preliminary or final plat approval and required by the Gallatin County Commission may not be amended or revoked without the approval of the governing body of Gallatin County.

**Exhibit F**  
**of**  
**Third Restated and Revised Declaration of**  
**Protective Covenants, Conditions and Restrictions**  
**for Spanish Peaks**

**COVENANTS, CONDITIONS AND RESTRICTIONS – PHASE 6A**

The additional covenants, conditions and restrictions set forth in this **Exhibit F** apply solely to the following described real property located in Gallatin County, Montana (the “**Phase 6A Property**”):

Spanish Peaks Resort Subdivision Phase 6A, Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the Clerk and Recorder, Gallatin County, Montana. [Plat References: J-568]

Amended Plat of Spanish Peaks Resort Subdivision Phase 6A, Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the Clerk and Recorder, Gallatin County, Montana. [Plat Reference: J-568A]

1. The following additional use guidelines and restrictions are imposed on the Phase 6A Property:
  - a. **Horses:** Horses are not permitted on Lots 207 or 208. However, the Owners of Lots 201A, 203, 204, 205 and 206 are granted the right to keep horses, subject to the following limitations:
    - i. **Number of Horses and Season:** For Lots 201A, 203 and 204 a maximum of two (2) horses may be kept and for Lots 205 and 206 a maximum of three (3) horses may be kept. Horses may only be kept on these Lots annually from June 1<sup>st</sup> to October 1<sup>st</sup>.
    - ii. **Fencing:** Perimeter fencing of a Lot is not permitted. However, a fenced area for a corral or paddock may be permitted. Corrals or paddocks for the Lots may not be larger than a total of 10,000 square feet. The enclosed fenced area on these Lots shall be constructed with wood post and rail fencing that shall not exceed six (6) feet in height. Barbed wire fences are not permitted. Steel material may be used for corral or paddock gates. The fence materials must meet the Design Guidelines and are subject to review and approval by the ARC. The enclosed fenced areas on these Lots shall be constructed with a compacted gravel base with a substrate of rock to accommodate for drainage.
    - iii. **Location:** The location of the enclosed fenced area shall not be located within the 100’ well zone protection easement or within 150’ from the

identified watercourses or wetlands as identified in the Watercourse Mitigation Plan in paragraph 2 below.

- iv. **Associated Structures:** Owners are permitted only one accessory structure and the structure must comply with the applicable Zoning Regulations and Design Guidelines and must be reviewed and approved by the ARC. The accessory structure must be located within the Building Envelope. One Minor Structure (as that term is defined in the Zoning Regulations, i.e., horse shelters, hay storage areas, etc.) is permitted but it must be located within or adjacent to the fenced area and comply with the Design Guidelines and be reviewed and approved by the ARC.
  - v. **Feed:** Horses shall not be permitted to graze the Lot, but shall be fed with weed free certified hay and straw in conformity with U.S. Forest Service regulation for national forests. All grain or sweet feed shall be kept in an animal proof storage area.
  - vi. **Water:** Owners are not permitted to drill a separate well for the purpose of watering horses. Owners shall provide a water supply for the horses via a water line from the main residence, accessory dwelling unit, or accessory structure on the Lot to the fenced area.
  - vii. **Manure:** Owners shall keep corral and paddock areas free of manure and maintained so as to prevent all nuisances of any type at all times. Manure will be routinely cleaned from the corral and or paddock and piled during the timeframe when horses are on a Lot (June 1<sup>st</sup> to October 1<sup>st</sup>), manure storage shall be located at least 150' from identified watercourses or wetlands as identified in the Watercourse Mitigation Plan in paragraph 2 below or well heads to prevent contamination. On or before October 1<sup>st</sup>, all stored manure shall be placed in a dumpster for disposal with Republic Services (or other regulated entity providing solid waste disposal in Big Sky) or for private removal to a landfill or other approved off-site location.
  - viii. **Trailer Parking:** Horse trailers may be parked on the Lots when the horses are there from June 1<sup>st</sup> to October 1<sup>st</sup>, but they must be parked in an enclosed structure from October 2<sup>nd</sup> to May 31<sup>st</sup>.
  - ix. **Vegetated Buffers and Reclamation:** High use areas shall be surrounded by vegetated buffers to provide natural filtration of runoff. If the fenced area is to be removed, and horses are no longer to be kept on the Lot all fenced areas shall be reclaimed to their natural state.
- b. **Permitted Structures:** Spanish Peaks Resort Subdivision Phase 6A is located within the Spanish Peaks Resort Phase 6 Planned Unit Development as approved by the Gallatin Canyon/Big Sky Planning and Zoning Commission on May 10,

2007 and modified on April 9, 2015. The Phase 6A Property is subject to the conditions of approval of the Spanish Peaks Resort Phase 6 Planned Unit Development. In summary the modified approval on April 9, 2015 allows for the following permitted structures on the Lots: main residence, accessory dwelling unit (with a maximum of 1,500 square feet), an accessory apartment and accessory structures in compliance with the applicable development standards established in the Gallatin Canyon/Big Sky Zoning Regulation in effect as of April 9, 2015. In addition, all permitted structures must be in compliance with the Declaration, Design Guidelines and all applicable local, state and federal approvals or regulations.

- c. **Recreational Use Easement:** The recreational use easement as shown on the Plat for Spanish Peaks Resort Subdivision Phase 6A encumbers residential Lots 201A, 203 and 208 and is reserved by the Declarant for the establishment of non-motorized trails (i.e., including but not limited to: hiking, biking, un-groomed cross-country skiing, snowshoeing, and equestrian use) and/or wildlife habitat either by the Declarant or the Association. Any trail established within the recreational use easement is for the benefit of all Members and their invitees. The recreational use easement and any trails within the easement shall be maintained by the Association. The Owners of residential Lots 201A, 203 and 208 may not place any structures or landscaping that would inhibit the use and/or maintenance of the easement in the sole discretion of the Declarant and thereafter the Association. The Declarant and/or the Association may establish rules and regulations for the use of the recreational use easement.
2. **Watercourse Mitigation Plan:** The Phase 6A Property is subject to a “Watercourse Mitigation Plan” (“**Phase 6A Plan**”) as approved by the Gallatin County Commission on August 12, 2014. A complete copy of the plan and addendum is attached as **Schedule A** to this **Exhibit F** (incorporated herein by reference). In summary the Phase 6A Plan provides for the following setbacks from identified watercourses:
    - a. Setbacks for the Building Envelopes from the identified watercourses in the Phase 6A Plan shall not be less than 75 feet for Lots 201A (formerly 201), 207 and 208.
    - b. Setbacks for the Building Envelopes for all Lots from jurisdictional wetlands shall be 35 feet.
    - c. Best Management Practice (BMP) methodologies shall be utilized during any construction or development on the Lots.
    - d. The Association shall be responsible for ensuring that the setbacks in the Phase 6A Plan are complied with through the design review process with the ARC.
  3. **Building Envelopes:** All Building Envelopes for the Phase 6A Property are shown on **Schedule B** attached to this **Exhibit F**, incorporated herein by reference. In particular, **Schedule B** shows the alternative Building Envelopes for Lots 207 and 208 to allow for



an alternative Building Envelope to be selected at the discretion of the Owner during the ARC review process. The Owner at the time of submitting plans to the ARC for review shall designate which Building Envelope shall be utilized. Building Envelopes shall not be modified or designated without the prior written approval of the ARC. Any modifications or designations of the Building Envelopes for the Lots shall be shown as an amendment to the Declaration recorded in the Public Record prior to Construction Activities commencing on the Lot. The ARC shall prepare and record in the Public Record an amendment to the Declaration with an exhibit that supplements **Schedule B** for the Lot that reflects any approved modifications or designations to the Building Envelopes. The Owner of the respective Lot shall reimburse the ARC for all costs associated with the preparation and recording of the supplemental exhibit.

**Schedule A**  
**to**  
**Exhibit F**  
**of**  
**Third Restated and Revised Declaration of**  
**Protective Covenants, Conditions and Restrictions**  
**for Spanish Peaks**

**Watercourse Mitigation Plan and Addendum**  
**for Spanish Peaks Resort Phase 6A PUD Subdivision**

**Watercourse Mitigation Plan for**  
**Spanish Peaks Resort Phase 6A PUD Subdivision**

This Mitigation Plan consists of two parts, a description of the watercourses and the proposed mitigation to facilitate reduction of the watercourse setback from 150-feet to 75-feet for two specific instances. The reduction to 75-feet is requested for building envelopes on 2 lots being proposed with this application. The building envelopes on the remaining 6 lots meet the 150-foot watercourse setback requirement. The requested reduction exceeds the 50-foot setback in the Zoning Regulations.

**Description:**

There are three watercourses that are the focus of this plan. These watercourses are unnamed tributaries of the Middle Fork of the West Fork of the Gallatin River. For the purposes of their descriptions, these watercourses will be referred to as “Watercourse A”, “Watercourse B” and “Watercourse C”. The locations of these watercourses are shown on the accompanying exhibit provided by the Gallatin Conservation District (GCD).

Watercourse A was identified by Pioneer Environmental Services during the wetland delineation of the property. It is not shown on the GCD map of the property. Watercourse A flows between two delineated jurisdictional wetlands and often has no discernable watercourse, it has a channel width of between approximately 1 and 2-feet and a length of roughly 100-feet. It drains an area of roughly 8 acres. Photo #1 is a view of Watercourse A looking downstream between the two wetlands, it illustrates the small nature of the watercourse and mature, grassy vegetation along its banks. A request for a reduction in the watercourse setback to 75-feet for this watercourse, to accommodate one potential building envelope on Lot 207 and two potential building envelopes on Lot 208, is proposed.

Watercourse B bisects the southwestern portion of this proposed subdivision. Watercourse B flows through a series of delineated jurisdictional wetlands before its confluence with Watercourse C. Watercourse B has been identified by the Gallatin Conservation District as a jurisdictional stream by virtue of its continuous flow during all seasons of the year. The required 150-foot watercourse setback will be implemented for proposed lots and building envelopes along this stream, therefore, it will not be discussed further.

Watercourse C also has been identified by the Gallatin Conservation District as a jurisdictional stream. Watercourse C flows into the proposed property boundary from the west where it converges with Watercourse B and together they flow through an elongated jurisdictional wetland before finally flowing through and exiting the property's proposed northern boundary. Photo #2 is a view of Watercourse C taken from a point downstream from the confluence with Watercourse B within the delineated wetland. This stream has a channel width that ranges between approximately 4 to 6-feet. Photo #3 is a view of Watercourse C looking across the channel. The photographs illustrate the 10 to 15 feet of vertical separation between the stream channel and the proposed home site. Watercourse C drains an area of roughly 1,000 acres. A request for a reduction in the watercourse setback to 75-feet for this watercourse, to accommodate one of the potential building envelopes for Lot 208, is proposed.

The two subject watercourses, A and C, exhibit undisturbed, mature vegetation on the banks consisting of grasses, and in the case of Watercourse C, mature stands of trees as well. The preliminary plat for Phase 6A shows all of the watercourse locations within the proposed subdivision with a special notation illustrating the watercourses where a 75-foot setback is being requested as well as areas of wetlands.

The Wetlands Delineation Report, prepared in 2002 by Pioneer Environmental Services, Inc., describes the channels of these watercourses. Examples of three different stream types according to the Rosgen Stream Classification system are represented within this proposed subdivision and noted in that report. These channels are classified in the report as Type A, Type Aa+ and Type G. Watercourse A is classified as a Type G channel while Watercourse C contains portions of its channel that are classified as Type A, Aa+ and G. Channels classified as Types A and Aa+ have "high relief and with slopes greater than 10% were typical.... Low sinuosity and visible erosion of the channel banks was typically noted as well. These stream types were most often found in v-shaped valleys and ravines, which were observed in the topography between the moderately sloping wetlands area." (*Wetlands Delineation Report*, p. 18)

Channel Type G are described as "channels at lower relief and with slopes ranging from 5% to 10%.... These entrenched, moderately sinuous channels were observed above and below wetlands with a relatively low valley floor. Wetland grasses and sedges often characterized the Type G channels, in addition to minimal evidence of erosion and instability." (*Wetlands Delineation Report*, p. 18)

While Watercourse C may have potential for fisheries, there are no known fisheries on site, as was indicated in the Wildlife Monitoring Report previously submitted. Watercourse A is intermittent and has no potential for fisheries.

### **Mitigation Plan:**

Impacts to these watercourses should be minimal and can be accomplished with conventional best management practice (BMP) methodologies in conjunction with the projects design regulations. The building envelopes adjacent to Stream A and Stream C will be set back a minimum of 75-feet from the watercourse bank, the remaining building envelopes will be setback a minimum of 150-feet. All of the building envelopes will be setback 35-feet from any

adjacent wetland. The mitigation plan consists essentially of a proposal to maintain the existing bank characteristics (vegetation, slopes and separation) in conjunction with the following measures:

### Best Management Practices

Storm water generated on the site during construction will be controlled as outlined by a discharge permit as required by the Montana Department of Environmental Quality (MDEQ), by using typical BMP's such as silt fences, straw bales, retention ponds, and diversion ditches. Storm water generated by permanent improvements will be collected and treated prior to release as outlined in the drainage plan under the guidelines of Circular DEQ 8, Montana Standards for Subdivision Storm Drainage. Because storm water leaving the site will be restricted to a runoff rate equal to the predevelopment flow rate, the potential for scouring, erosion or flooding is unlikely. Runoff from site improvements will be dispersed to occur by sheet flow into the watercourse to maximize sediment removal and minimize potential for gully. Erosion control is further controlled by Article XII of the Covenants that requires strict adherence to the *Construction Regulations* in the *Spanish Peaks Design Guidelines* which require minimal disruption of existing vegetation and outline erosion control practices required for home site construction.

### Project Design

The lots, roads, open spaces and building envelopes have been situated to minimize impacts on watercourses. The wetland/wildlife corridors through the wetland areas and along the watercourses are protected by the 35-foot buffer for the wetlands and the minimum 75-foot buffer for Watercourse A and Watercourse C.

By complying with the permitting process of the regulatory agencies and implementing environmentally conscious BMP's, the potential impacts to downstream fisheries, wildlife habitat, water quality and watercourse health should be minimized.

Water quality has been monitored within Spanish Peaks Resort since 2004. In 2004, 2005 and 2006 water quality samples have been obtained 3 times per year at one location that represents the confluence of most channels leaving the Resort area. The conclusion of each year of monitoring is that there is no significant change in water quality since the onset of construction activities within Spanish Peaks Resort. Through the continued practices outlined above, water quality and watercourse conditions should be maintained throughout the construction of the development.

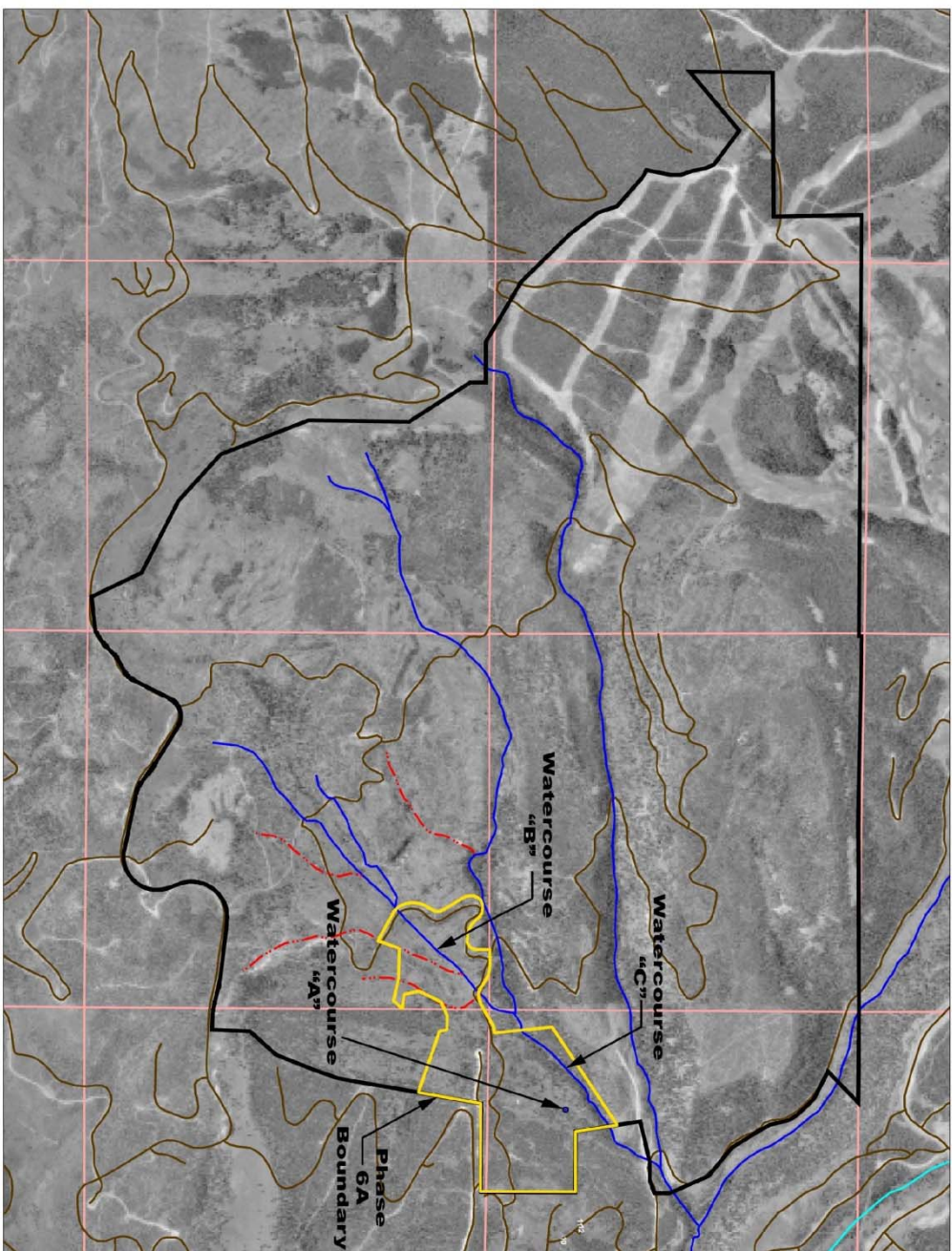
### Conclusion

Owing to the small size of Watercourse A and the design restrictions on disruption of native vegetation, the proposed 75-foot setback would appear to be appropriate.

The Building Envelope for Lot 208 that affects Watercourse C is set above the channel and its adjacent wetlands. The 75-feet between is heavily vegetated with mature trees and ground cover.

Given these circumstances and the design regulations, the 75-foot setback would also seem appropriate in this case.

# SPANISH PEAKS RESORT JURISDICTIONAL STREAMS - Gallatin Conservation District



A 310 permit is required for any project that affects the channel or immediate banks of any natural stream which flows continuously during all seasons of the year, except in the case of appropriation, impoundment, or extreme drought.



### LEGEND:

- Property Boundary
- Streams:**
- Jurisdictional
- Not Jurisdictional
- Roads
- Sections



H:\3652\059\Pre-Plat\SPR Jurisdictional Streams Exhibit.jpg

This map shows 310 jurisdiction for streams within Gallatin County and a portion of Madison County for which field work has been completed. These jurisdiction determinations are in progress and have not been formally approved by the Gallatin Conservation District Board of Supervisors before a public meeting. This map is for general planning purposes only.





Photo #1 downstream view of Watercourse A between two jurisdictional wetlands



Photo #2 downstream view of Watercourse C north of the confluence with Watercourse B



Photo #3 Looking across Watercourse C



## **Addendum to the Preliminary Plat Application for Spanish Peaks Resort, Phase 6A**

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### **Watercourse Mitigation Plan**

In addition to the watercourses discussed in the Watercourse Mitigation Plan included with the Phase 6A Preliminary Plat Application, one additional watercourse setback reduction from 150-feet to 75-feet is being requested with this addendum to accommodate one potential building envelope on Lot 201. Lot 201 was aggregated with Lot 202 and is now known as Lot 201A; however, all of the restrictions that were applicable to Lot 201 as set forth below are applicable to the area of Lot 201A that was previously Lot 201, but only that area. All references to Lot 201 below apply to that portion, but only that portion, of Lot 201A which was previously Lot 201.

#### **Description:**

The watercourse that is the focus of this addendum is an unnamed tributary of the Middle Fork of the West Fork of the Gallatin River that flows intermittently through a series of jurisdictional wetlands in the southeastern portion of Phase 6A. The location of this watercourse is shown on the accompanying exhibit provided by the Gallatin Conservation District (GCD). According to the GCD, this watercourse is classified as a non-jurisdictional stream. A setback reduction for property located to the east of this watercourse was requested with the previously submitted Spanish Peaks Resort Phase 4A Preliminary Plat Application. The setback reduction requested with that application was from 150-feet to 50-feet; however, the closest building envelope within Phase 4A, adjacent to the portion of the watercourse being discussed here, is approximately 75-feet from the bank. Pending final definition of the setback reductions requested on a lot by lot basis, the Watercourse Mitigation Plan was approved.

The subject watercourse was identified by Pioneer Environmental Services during the wetland delineation of the Spanish Peaks Resort property. This particular watercourse flows through a series of delineated jurisdictional wetlands and often has no discernable watercourse. The width of the channel is between approximately 1 and 2-feet with lengths between wetlands of roughly 150 to 500-feet and drains an area of approximately 16 acres. Photo #1 is taken from a point just north of the large jurisdictional wetland within Lot 201; the photo illustrates the small nature of the watercourse and the mature, grassy vegetation along its banks.

The preliminary plat for Phase 6A shows all of the watercourse locations within the proposed subdivision with a special notation illustrating the watercourses where a 75-foot setback has been requested as well as areas of wetlands. The 75-foot setback notations provided on the preliminary plat refer to the watercourses described in the Watercourse Mitigation Plan included in the application.

The Wetlands Delineation Report, prepared in 2002 by Pioneer Environmental Services, Inc., describes the channels of this watercourse. Examples of three different stream types according

to the Rosgen Stream Classification system are represented along the length of this watercourse and noted in that report. These channels are classified in the report as Type A, Type E and Type G. Channels classified as Type A typically have “high relief and with slopes greater than 10% were typical .... Low sinuosity and visible erosion of the channel banks was typically noted as well. These stream types were most often found in v-shaped valleys and ravines, which were observed in the topography between the moderately sloping wetlands area.” (*Wetlands Delineation Report*, p. 18) Photo #2 illustrates an example of one of the Type A sections of the subject watercourse.

Channel Type E are found “within wetland areas, [with] moderate to slightly entrenched channels” and “these channels displayed a very low width to depth ratio as well as moderate entrenchment and sinuosity.” (*Wetlands Delineation Report*, p. 18)

Channel Type G are described as “channels at lower relief and with slopes ranging from 5% to 10% .... These entrenched, moderately sinuous channels were observed above and below wetlands with a relatively low valley floor. Wetland grasses and sedges often characterized the Type G channels, in addition to minimal evidence of erosion and instability.” (*Wetlands Delineation Report*, p. 18)

There are no known fisheries on site, as was indicated in the Wildlife Monitoring Report previously submitted. This watercourse is intermittent and has no potential for sustaining fisheries.

### **Mitigation Plan:**

As is the case with the watercourses discussed in the Watercourse Mitigation Plan included in the Phase 6A Preliminary Plat Application, impacts to this watercourse should be minimal as well, this can be accomplished with conventional best management practice (BMP) methodologies in conjunction with the projects design regulations discussed in that plan.

As was discussed in the Phase 6A Watercourse Mitigation Plan, water quality has been monitored within Spanish Peaks Resort since 2004. In 2004, 2005 and 2006 water quality samples have been obtained 3 times per year at one location that represents the confluence of most channels leaving the Resort area. The conclusion of each year of monitoring is that there is no significant change in water quality since the onset of construction activities within Spanish Peaks Resort. Through the continued practices outlined in the Phase 6A Watercourse Mitigation Plan, water quality and watercourse conditions should be maintained throughout the construction of the development.

### **Conclusion**

Owing to the small size of this particular watercourse and the overall design restrictions on disruption of native vegetation throughout the development, the proposed 75-foot setback would appear to be appropriate. The requested watercourse setback reduction for this subdivision is consistent with the setback reduction on the eastern side of this watercourse that was requested with the previously submitted Phase 4A and is also consistent with the 75-foot setback reduction request included in the Phase 6A Watercourse Mitigation Plan.

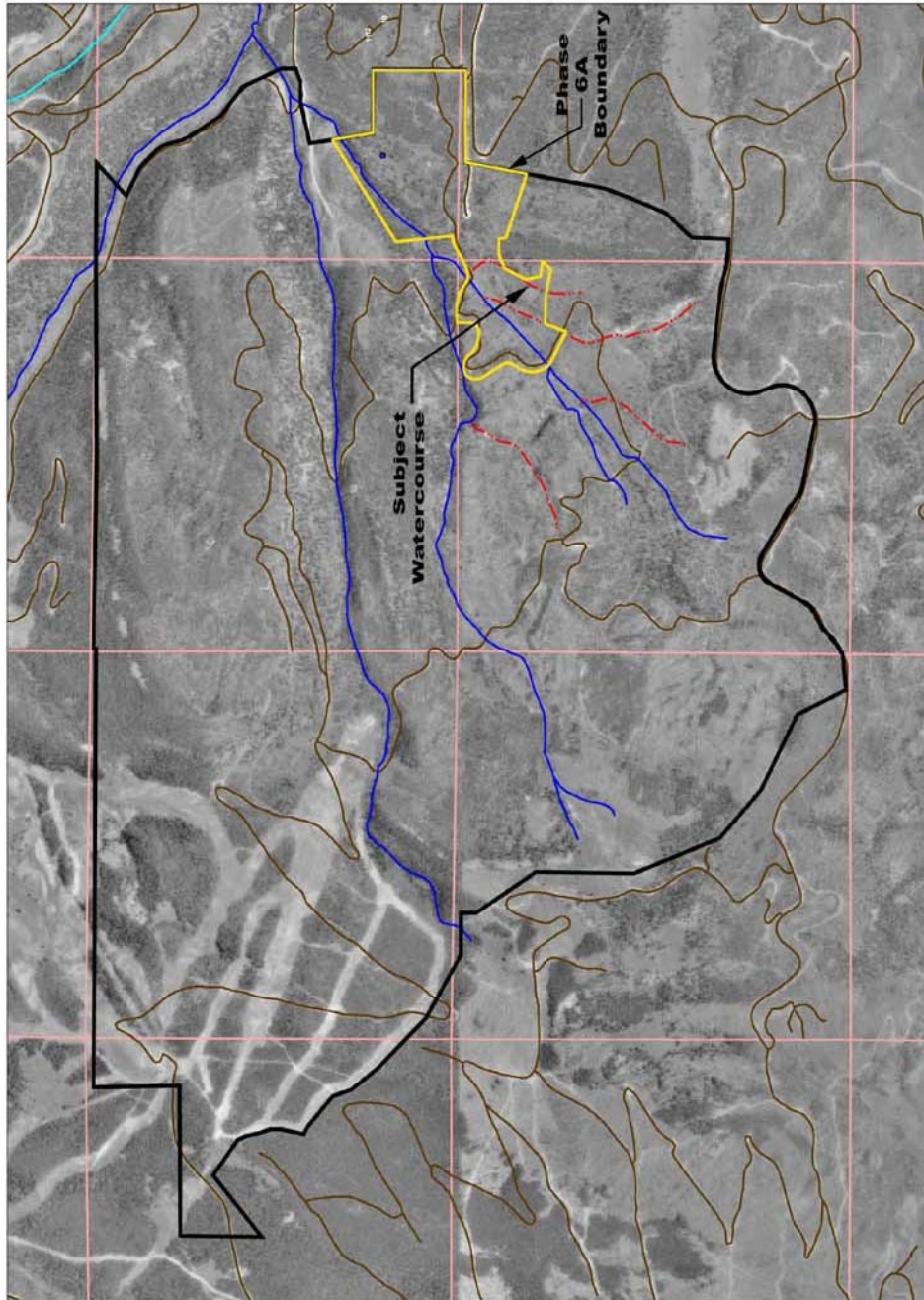
# SPANISH PEAKS RESORT JURISDICTIONAL STREAMS - Gallatin Conservation District

A 310 permit is required for any project that affects the channel or immediate banks of any natural stream which flows continuously during all seasons of the year, except in the case of appropriation, impoundment, or extreme drought.



## LEGEND:

- Property Boundary
- Streams:
  - Jurisdictional
  - Not Jurisdictional
- Roads
- Sections



This map shows 310 jurisdiction for streams within Gallatin County and a portion of Madison County for which field work has been completed. These jurisdiction determinations are in progress and have not been formally approved by the Gallatin Conservation District Board of Supervisors before a public meeting. This map is for general planning purposes only.

H:\13652\059\Pre-Plan\SPR, Jurisdictional Streams Exhibit.jpg





Photo 1: Subject watercourse north of a jurisdictional wetland within Lot 201



Photo 2: Type A section of the subject watercourse

**Schedule B  
to  
Exhibit F  
of  
Third Restated and Revised Declaration of  
Protective Covenants, Conditions and Restrictions  
for Spanish Peaks**

**Spanish Peaks Resort Subdivision Phase 6A  
Building Envelopes**

**(see attached – 1 page 11X17)**

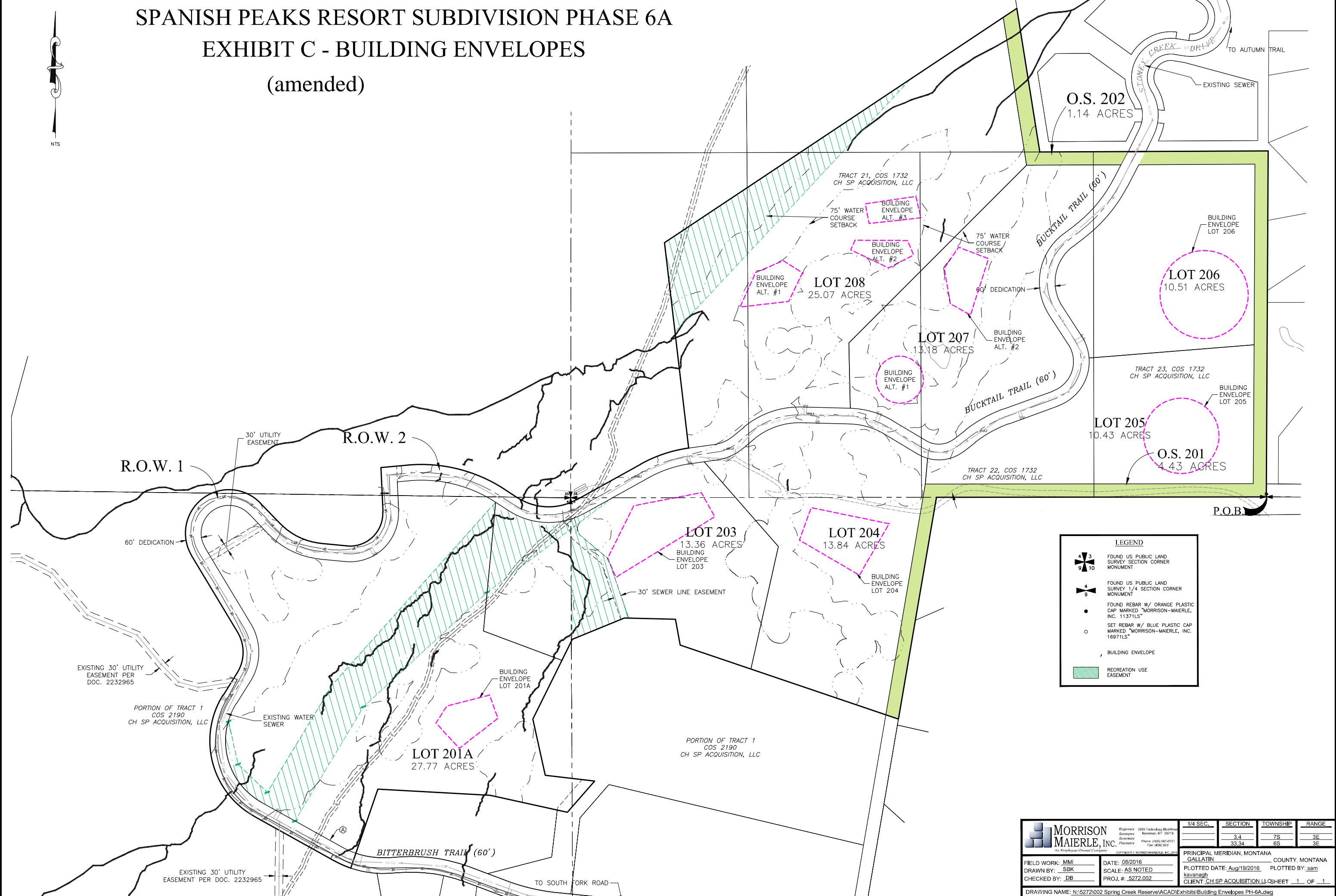


# SPANISH PEAKS RESORT SUBDIVISION PHASE 6A

## EXHIBIT C - BUILDING ENVELOPES

(amended)

NTS



**LEGEND**

- FOUND US PUBLIC LAND SURVEY SECTION CORNER MONUMENT
- FOUND US PUBLIC LAND SURVEY 1/4 SECTION CORNER MONUMENT
- FOUND REBAR W/ ORANGE PLASTIC CAP MARKED "MORRISON-MAIERLE, INC. 11371LS"
- SET REBAR W/ BLUE PLASTIC CAP MARKED "MORRISON-MAIERLE, INC. 16971LS"
- BUILDING ENVELOPE
- RECREATION USE EASEMENT

**MORRISON MAIERLE, INC.**  
 An Employee-Owned Company

Engineers: 5959 Technology Blvd., Bozeman, MT 59718  
 Surveyors: 405 567-0121  
 Scientists: 405 567-0121  
 Planners: 405 567-0121

| 1/4 SEC. | SECTION | TOWNSHIP | RANGE |
|----------|---------|----------|-------|
|          | 3,4     | 7S       | 3E    |
|          | 33,34   | 6S       | 3E    |

PRINCIPAL MERIDIAN, MONTANA  
 GALLATIN COUNTY, MONTANA

FIELD WORK: MMI DATE: 08/2016  
 DRAWN BY: SBK SCALE: AS NOTED  
 CHECKED BY: DB PROJ. #: 5272.002

PLOTTED DATE: Aug/19/2016 PLOTTED BY: sam  
 kavanagh  
 CLIENT: CH SP ACQUISITION LLC SHEET 1 OF 1

DRAWING NAME: N:\5272\002 Spring Creek Reserve\ACAD\Exhibits\Building Envelopes PH-6A.dwg

**Exhibit G**  
**of**  
**Third Restated and Revised Declaration of**  
**Protective Covenants, Conditions and Restrictions**  
**for Spanish Peaks**

**COVENANTS, CONDITIONS AND RESTRICTIONS – PHASE 4**

The additional covenants, conditions and restrictions set forth in this **Exhibit G** apply solely to the following described real property located in Gallatin County, Montana (the “**Phase 4 Property**”):

Spanish Peaks Resort P.U.D. Subdivision, Phase 4, in Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the County Clerk and Recorder, Gallatin County, Montana. [Plat Reference: J-580]

1. The following additional use guidelines and restrictions are imposed on the Phase 4 Property:
  - a. **Horses:** Horses are not permitted on Lots 212 or 213. However, the Owners of Lots 209, 210 and 211 are granted the right to keep horses, subject to the following limitations:
    - i. **Number of Horses and Season:** For Lots 209, 210 and 211 a maximum of three (3) horses may be kept on each Lot. Horses may only be kept on these Lots annually from June 1<sup>st</sup> to October 1<sup>st</sup>.
    - ii. **Fencing:** Perimeter fencing of a Lot is not permitted. However, a fenced area for a corral or paddock may be permitted. Corrals or paddocks for the Lots may not be larger than a total of 10,000 square feet. The enclosed fenced area on these Lots shall be constructed with wood post and rail fencing that shall not exceed four (4) feet in height. Barbed wire fences are not permitted. Steel material may be used for corral or paddock gates. The fence materials must meet the Design Guidelines and is subject to review and approval by the ARC. The enclosed fenced areas on these Lots shall be constructed with a compacted gravel base with a substrate of rock to accommodate for drainage.
    - iii. **Location:** The location of the enclosed fenced area shall not be located within the 100’ well zone protection easement or within 150’ from the identified watercourses or wetlands as identified in the Watercourse Mitigation Plan in paragraph 2 below.
    - iv. **Associated Structures:** Owners are only permitted one accessory structure and the structure must comply with the applicable Zoning Regulations, Design Guidelines and must be reviewed and approved by

the ARC. The accessory structures must be located within the Building Envelope. One Minor Structure (as that term is defined in the Zoning Regulations, i.e., horse shelters, hay storage areas, etc.) is permitted but it must be located within or adjacent to the fenced area and comply with the Design Guidelines and be reviewed and approved by the ARC.

- v. **Feed:** Horses shall not be permitted to graze the Lot, but shall be fed with weed free certified hay and straw in conformity with U.S. Forest Service regulation for national forests. All grain or sweet feed shall be kept in an animal proof storage area.
  - vi. **Water:** Owners are not permitted to drill a separate well for the purpose of watering horses. Owners shall provide a water supply for the horses via a water line from the main residence, accessory dwelling unit, or accessory structure on the Lot to the fenced area.
  - vii. **Manure:** Owners shall keep corral and paddock areas free of manure and maintained so as to prevent all nuisances of any type at all times. Manure will be routinely cleaned from the corral and or paddock and piled during the timeframe when horses are on a Lot (June 1<sup>st</sup> to October 1<sup>st</sup>), manure storage shall be located at least 150' from identified watercourses or wetlands as identified in the Watercourse Mitigation Plan in paragraph 2 below or well heads to prevent contamination. On or before October 1<sup>st</sup>, all stored manure shall be placed in a dumpster for disposal with Republic Services (or other regulated entity providing solid waste disposal in Big Sky) or for private removal to a landfill or other approved off-site location.
  - viii. **Trailer Parking:** Horse trailers may be parked on the Lots when the horses are there from June 1<sup>st</sup> to October 1<sup>st</sup>, but they must be parked in an enclosed structure from October 2<sup>nd</sup> to May 31<sup>st</sup>.
  - ix. **Vegetated Buffers and Reclamation:** High use areas shall be surrounded by vegetated buffers to provide natural filtration of runoff. If the fenced area is to be removed, and horses are no longer to be kept on the Lot all fenced areas shall be reclaimed to their natural state.
- b. **Permitted Structures:** Spanish Peaks Resort P.U.D. Subdivision Phase 4 is located within the Spanish Peaks Resort Phase 4 Planned Unit Development as approved by the Gallatin Canyon/Big Sky Planning and Zoning Commission on December 10, 2009. The Phase 4 Property is subject to the conditions of approval of the Spanish Peaks Resort Phase 4 Planned Unit Development. In summary the approval allows for the following permitted structures on the Lots: main residence, accessory dwelling unit (with a maximum of 1,500 square feet), an accessory apartment and accessory structures in compliance with the applicable development standards established in the Gallatin Canyon/Big Sky Zoning



Regulation. In addition, all permitted structures must be in compliance with the Declaration, Design Guidelines and all applicable local, state and federal approvals or regulations. In particular certain uses may be restricted or not permitted on all Lots based on the Gallatin Canyon/Big Sky Zoning Regulation and applicable approvals from the Montana Department of Environmental Quality and/or the Gallatin City-County Health Department, Environmental Health Services; therefore, Owners are responsible for verifying that particular structures are permitted with each agency.

2. **Watercourse Mitigation Plan:** The Phase 4 Property is subject to a “Watercourse Mitigation Plan” (“**Phase 4 Plan**”) as approved by the Gallatin County Commission on August 12, 2014. A complete copy of the plan and addendum is attached as **Schedule A** to this **Exhibit G** (incorporated herein by reference). In summary the Phase 4 Plan provides for the following setbacks from identified watercourses:
  - a. Setbacks for the Building Envelopes from the identified watercourses in the Phase 4 Plan shall not be less than 50 feet for Lot 211.
  - b. Setbacks for the Building Envelopes for all Lots from jurisdictional wetlands shall be 35 feet.
  - c. Best Management Practice (BMP) methodologies shall be utilized during any construction or development on the Lots.
  - d. The Association shall be responsible for ensuring that the setbacks in the Phase 4 Plan are complied with through the design review process with the ARC.
3. **Building Envelopes:** All Building Envelopes for the Phase 4 Property are shown on **Schedule B** attached to this **Exhibit G**, incorporated herein by reference. However, an Owner may request a modification to the location of the Building Envelope as shown on the attached **Schedule B** from the ARC. An Owner requesting a modification shall submit to the ARC the surveyed location of the modified Building Envelope and a site specific geotechnical analysis certified by a licensed professional engineer that the proposed modified Building Envelope is suitable for construction. Building Envelopes shall not be modified or designated without the prior written approval of the ARC. Any modifications or designations of the Building Envelopes for the Lots shall be shown as an amendment to the Declaration recorded in the Public Record prior to Construction Activities commencing on the Lot. The ARC shall prepare and record in the Public Record an amendment to the Declaration, with an exhibit that supplements **Schedule B** for the Lot that reflects any approved modifications or designations to the Building Envelopes. The Owner of the respective Lot shall reimburse the ARC for all costs associated with the preparation and recording of the supplemental exhibit.

**Schedule A**  
**to**  
**Exhibit G**  
**of**  
**Third Restated and Revised Declaration of**  
**Protective Covenants, Conditions and Restrictions**  
**for Spanish Peaks**

**Watercourse Mitigation Plan**  
**for Spanish Peaks Resort Phase 4 PUD Subdivision**

This Mitigation Plan consists of two parts, a description of the watercourses and the proposed mitigation to facilitate reduction of the watercourse setback from 150-feet to 50-feet.

**Description:**

There are two (2) watercourses which flow through or in the vicinity of Phase 4. Both have been identified by the Gallatin Conservation District as non-jurisdictional or intermittent streams. A copy of the Conservation District map showing the jurisdictional status of the watercourses in the Spanish Peaks Resort is included. The hand applied small black “x” is located in the approximate location of Bitterbrush Trail, near Lot 211.

These two streams meander through and along the edge of Phase 4 and there is often no discernable watercourse. In all cases, these two watercourses exhibit undisturbed, mature vegetation on the banks consisting of grasses and/or trees. They have a channel width of between 1 and 2-feet. The Plat for Phase 4 indicates the watercourse locations and areas of wetlands, where there is no identified channel. Photographs of the watercourse and a map indicating approximate locations of the photos are included.

The Wetlands Delineation Report, prepared by Pioneer Environmental Services, Inc., describes the channels of these watercourses. The report has been previously submitted in the Master Appendices for Spanish Peaks. These channels are classified in the report as Type A and Type G. Channels classified as A have “high relief and with slopes greater than 10% were typical .... Low sinuosity and visible erosion of the channel banks was typically noted as well. These stream types were most often found in v-shaped valleys and ravines, which were observed in the topography between the moderately sloping wetlands area.” (*Wetlands Delineation Report*, p. 18)

Channel Type G are described as “channels at lower relief and with slopes ranging from 5% to 10% .... These entrenched, moderately sinuous channels were observed above and below wetlands with a relatively low valley floor. Wetland grasses and sedges often characterized the Type G channels, in addition to minimal evidence of erosion and instability.” (*Wetlands Delineation Report*, p. 18)

There are no known fisheries on site. As seen in the accompanying photos, the streams are intermittent and not of a size or flow to maintain fisheries.

The Wildlife Monitoring Report, included in the Master Appendices, fully describes the wildlife found in the Resort. A variety of mammals – moose, elk, deer, bear and fox – have left evidence of their existence within the Resort. The wetlands located just to the west of these watercourses are ideal for many animals. Additionally, 47 species of birds have been identified on site. The conclusion of the wildlife monitoring is that “maintaining this variety of species will depend considerably on maintaining a good distribution of riparian habitat, small openings in stands of timber and different age classes of mature timber ....” (2004 Update, Wildlife Considerations) Lot 211 is the only lot that is affected by the watercourse setback.

### **Mitigation Plan:**

Due to the intermittent nature of these two watercourses, impacts should be minimal and can be accomplished with conventional best management practice (BMP) methodologies. All building envelopes adjacent to these two streams will be set back a minimum of 50 feet from the watercourse bank or 35 feet from any adjacent wetland. The mitigation plan consists essentially of a proposal to maintain the existing bank characteristics (vegetation, slopes and separation) in conjunction with the following measures:

#### **Best Management Practices**

Storm water generated on the site during construction will be controlled as outlined by a discharge permit as required by the Montana Department of Environmental Quality (MDEQ), by using typical BMP's such as silt fences, straw bales, retention ponds, and diversion ditches. Storm water generated by permanent improvements will be collected and treated prior to release as outlined in the drainage plan under the guidelines of Circular DEQ 8, Montana Standards for Subdivision Storm Drainage. Because storm water leaving the site will be restricted to a runoff rate equal to the predevelopment flow rate, the potential for scouring, erosion or flooding is unlikely. Runoff from site improvements will be dispersed to occur by sheet flow into the watercourse to maximize sediment removal and minimize potential for gullying. Erosion control is further controlled by the Covenants, the *Spanish Peaks Design Guidelines and Construction Regulations* that require minimal disruption of existing vegetation and outline erosion control practices required for home site construction.

#### **Project Design**

The lots, roads and open spaces have been situated to minimize impacts on watercourses. The wetland/wildlife corridors through the wetlands area and along the watercourses are protected by the 35-foot buffer for the wetlands and the 50-foot buffer for the watercourses.

By complying with the permitting process of the regulatory agencies and implementing environmentally conscious BMP's, the potential impacts to downstream fisheries, wildlife habitat, water quality and watercourse health should be minimized.

Water quality has been monitored within Spanish Peaks Resort since 2004. Water quality samples have been obtained 3 times per year at one location that represents the confluence of

most channels leaving the Resort area. The conclusion of each year of monitoring is that there is no significant change in water quality since the onset of construction activities within Spanish Peaks Resort. Through the continued practices outlined above, water quality and watercourse conditions should be maintained throughout the construction of the development.

#### Conclusion

Owing to the small size of watercourse and the design restrictions on disruption of native vegetation, the proposed 50-foot setback would appear to be appropriate.

[see photos on next page]





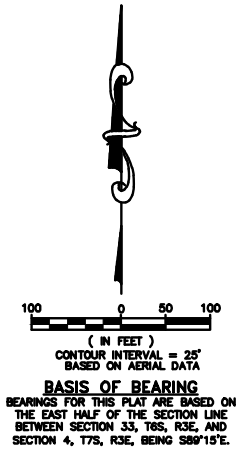


**Schedule B  
to  
Exhibit G  
of  
Third Restated and Revised Declaration of  
Protective Covenants, Conditions and Restrictions  
for Spanish Peaks**

**Spanish Peaks Resort Phase 4 PUD Subdivision  
Building Envelopes**

**(see attached – 1 page 11X17)**

# SPANISH PEAKS RESORT P.U.D. SUBDIVISION PHASE 4 EXHIBIT C - BUILDING ENVELOPES



| LEGEND |  |
|--------|--|
|        | FOUND US PUBLIC LAND SURVEY SECTION CORNER MONUMENT                    |
|        | FOUND US PUBLIC LAND SURVEY 1/4 SECTION CORNER MONUMENT                |
|        | FOUND REBAR W/ BLUE PLASTIC CAP MARKED "MORRISON-MAIERLE, INC. 100825" |
|        | OPEN SPACE (PRIVATE)   |
|        | EXISTING EASEMENT  |
|        | PROPOSED EASEMENT  |
|        | OPEN SPACE PARCEL  |



|   |  |  |  |
|---|--|--|--|
| <b>MORRISON MAIERLE, INC.</b><br><small>An Employee-Owned Company</small> |  | <small>Engineers</small> 2860 Technology Blvd, Suite 100<br><small>Surveyors</small> Bozeman, MT 59716<br><small>Scientists</small><br><small>Planners</small> Phone: (406) 553-0721 Fax: (406) 922- | 1/4 SEC.<br>_____<br>SECTION<br>3 & 4<br>TOWNSHIP<br>7S<br>RANGE<br>3E |
|   |  | PRINCIPAL MERIDIAN, MONTANA<br>GALLATIN COUNTY, MONTANA<br>PLOTTED DATE: Oct/13/2016 PLOTTED BY: sam<br>kavanagh<br>CLIENT _____ SHEET _____ OF _____  |  |
| FIELD WORK: <u>MMI</u><br>DRAWN BY: <u>DS</u><br>CHECKED BY: <u>MEE</u>   | DATE: <u>05/2014</u><br>SCALE: <u>1"= 100'</u><br>PROJ. #: <u>5272.002</u> | DRAWING NAME: <u>N:\5272\002 Spring Creek Reserve\ACAD\Exhibits\Building Envelopes PH-4.dwg</u>  |  |

**Exhibit H**  
**of**  
**Third Restated and Revised Declaration of**  
**Protective Covenants, Conditions and Restrictions**  
**for Spanish Peaks**

**COVENANTS, CONDITIONS AND RESTRICTIONS – PHASE 8A**

The additional covenants, conditions and restrictions set forth in this **Exhibit H** apply solely to the following described real property located in Gallatin County, Montana (the “**Phase 8A Property**”):

Spanish Peaks Resort P.U.D. Subdivision, Phase 8A, in Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the County Clerk and Recorder, Gallatin County, Montana. [Plat Reference: J-581]

1. The following additional covenants apply to the Phase 8A Property:
  - a. **Open Space Uses:** The Open Space within the Phase 8A Property may also be used for groomed ski trails, hiking and biking trails, as well as necessary signage for those trails or a master sign for the Phase 8A Property.
  - b. **Improvements:** The improvements in the Open Space (if any) within the Phase 8A Property as it relates to the groomed ski trails and signage associated with the groomed ski trails and all landscaping installed or maintained within the Phase 8A Property by or on behalf of the Association (if any) shall be improvements and services that are included in the Specific Assessments to the Units within the Phase 8A Property per the Special Area Designation (below).
  - c. **Recreational Easements:** The recreational easements as referenced on the face of the plat for Spanish Peaks Resort P.U.D. Subdivision Phase 8A encumber the side and rear of each Lot within the Phase 8A Property and are reserved by the Declarant for the establishment (by Declarant or its assigns) of groomed ski trails which may, if established, provide ski in and ski out service to certain Units. The Owners of the encumbered Lots may not place any structures or landscaping that would inhibit the use and/or maintenance of the easement in the sole discretion of the Declarant and thereafter the Association. The Declarant and/or the Association may establish rules and regulations for the use of the recreational easements.
2. **Special Area Designation:** The Units within the Phase 8A Property benefit from the ski lifts and groomed ski trails that provide service to those Units and may also benefit from landscape installation and maintenance and snow removal for driveways, sidewalks and other areas within the Phase 8A Property provided by or on behalf of the Association. Therefore, the Board is authorized to assess Specific Assessments against the Units



within the Phase 8A Property for the expenses associated with the operation and maintenance of these ski lifts and ski trails, landscaping and landscape maintenance and snow removal and related services in accordance with the Declaration. In addition, the Units within the Phase 8A Property may benefit from one or more neighborhood amenities. Therefore, the Board is authorized to assess Specific Assessments against the Units within the Phase 8A Property for the expenses associated with the operation and maintenance of these amenities in accordance with the Declaration. Such Specific Assessments shall be assessed against the Units in the same manner as the Base Assessment, but only with respect to the Units within the Phase 8A Property.