

After Recording Return To:  
Chris Johnson  
Worden Thane, PC  
321 W. Broadway, Ste. 300  
Missoula, MT 59802

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR BURNT FORK ESTATES, PHASE 1**

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This Declaration is made this \_\_\_\_ day of \_\_\_\_\_, 2020, by Burnt Fork Enterprise LLC (Declarant), a Montana limited liability company, of 874 Garber Lane, Corvallis, MT 59828, and provides as follows:

RECITALS

1. Burnt Fork Enterprise LLC is owner and developer of certain Real Property, located in Section 26, Township 9 North, Range 20 West, P.M.M., Ravalli County, Montana, and more particularly described as being Tract 1 of Certificate of Survey No. 495033-TR; Excepting and reserving therefrom the plat of Creekside Meadows, Phase 1, Recorded July 24, 2003 as Instrument No. 519639, records of Ravalli County, Montana. The first phase of Burnt Fork Estates burdened by this Declaration of Covenants, Conditions and Restrictions (Declaration) will comprise 6 platted Lots, designated as Lots 31 through 36, inclusive, together with adjacent Common Area, all constituting Burnt Fork Estates, Phase 1.
  
2. The portions of the Real Property, comprising Burnt Fork Estates, Phase 1, are subject to certain limitations and restrictions required as a condition of the plat, and may contain certain open or common areas as designated on the plat. Additional phases of said development are anticipated, and it is the intent of the Declarant that those subsequent phases will also be governed by the covenants, conditions, restrictions, and easements identified herein, with the exception of any phase or portion of the plat in which commercial zoning and uses are provided for (anticipated to be phase 7).

3. NOW THEREFORE, Burnt Fork Enterprise LLC hereby declares that all the Real Property identified in this Declaration shall be held, sold, hypothecated, and conveyed subject to the following restrictions, covenants, conditions, and easements, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Real Property as a desirable residential development and mixed use development in the portions so zoned. These restrictions, covenants, conditions and easements shall run with the Real Property and shall be binding upon all parties having or acquiring any right, title or interest in the described Real Property, or any part thereof, and shall inure to the benefit of and be binding upon each successor in interest to the Owner thereof.

#### ARTICLE I: DEFINITIONS

Section 1. Association. "Association" shall mean and refer to the Burnt Fork Estates Homeowners Association, Inc., a Montana non-profit corporation, as the same may exist from time to time of record with the office of the Secretary of State, Helena, Montana, and its successors or assigns.

Section 2. DRC. "DRC" shall mean and refer to the Design Review Committee for Burnt Fork Estates Owners Association.

Section 3. Common Area. "Common Area" shall mean all that area as may be shown on the plat of Burnt Fork Estates Phase 1 and the various phases thereof and upon the subdivision plats for subsequent phases thereof or as may be shown on any other plat of any subdivision or property coming within the jurisdiction and authority of this Declaration.

Section 4. Declarant. "Declarant" shall mean and refer to Burnt Fork Enterprise LLC, a Montana limited liability company, its successors and assigns if such successors or assigns should expressly acquire its rights as Declarant. The sale or transfer of an individual Lot in the subdivision shall not operate as a transfer of any development rights retained herein.

Section 5. Lot. "Lot" shall mean and refer to any plot of land shown upon the recorded plat map of the Real Property subject to this Declaration with the exception of any Common Area or open space and all roads dedicated or private. In the event a plot of land other than a Lot as shown on the recorded plat map is utilized as a building site, as hereinafter authorized, such building site shall be considered as a Lot. Declarant reserves the right to have any Lot, upon which common buildings and amenities are constructed, to be dedicated as common area or a common area lot.

Section 6. Member. "Member" shall mean and refer to every person or entity who is a Member of the Association as described in Article II.

Section 7. Owner. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of any Lot which is a part of the Real Property, including buyers under a

contract for deed, but excluding those having such interest merely as security for the performance of an obligation.

Section 9. Real Property. "Real Property" shall mean and refer to that certain Real Property described as Burnt Fork Estates, Phase 1, and such other Real Property as is now or may hereafter be brought within the jurisdiction of this Declaration and the Association.

## ARTICLE II: MEMBERSHIP & VOTING RIGHTS

Section 1. Membership. Every person or entity who is a record Owner of any Lot, including buyers under a contract for deed, shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Acceptance of title to any Lot whether by deed or other form of conveyance shall be deemed a consent to membership in the Association. Membership shall be appurtenant to and may not be separated from Ownership of the Lot. Ownership of such Lot shall be the sole qualification for membership, except all members of the Declarant shall be considered as Lot Owners for purposes of Association membership, and shall therefore be Members of the Association, so long as the Declarant owns one or more Lots. The Association, if it acquires an interest in a Lot, which would otherwise qualify it for membership, shall not be considered a member either for voting or assessment purposes.

Section 2. Voting Rights. As to this Declaration, the Owners of Lots shall be entitled to one vote for each Lot in which they hold an ownership interest, except for so long as the Declarant is the Owner of two or more Lots it shall be entitled to five votes for each Lot it owns. When more than one person or entity owns an interest in any Lot, the vote for such Lot shall be exercised as such persons or entities determine, but in no event may more than one vote per Lot be cast, except as previously stated for the Declarant. In the event multiple owners of a Lot cannot agree on the exercise of their vote, the vote allocated to that Lot may be cast only in accordance with the agreement of a majority of such multiple Owners. If only one of the multiple Owners of a Lot is present at a meeting of the Association, that Owner is entitled to cast any and all votes on behalf of that Lot. There is majority agreement if any one of the multiple Owners casts the vote(s) allocated to that Lot without protest being made promptly to the person presiding by any of the other Owners of the Lot. In the case of a protest of the vote cast by one of the multiple Owners, and absent a majority agreement, the vote or votes cast shall be disregarded and the multiple Owners shall lose their right to vote on the matter in question

## ARTICLE III: HOMEOWNERS ASSOCIATION

The Declarant has created a Montana non-profit corporation to act as the homeowners association in conjunction with the administration of this Declaration. The Association shall administer the terms and provisions of this Declaration as they apply to Lots and take such action as may be reasonable or necessary to carry out the functions of a homeowners association.

The affairs of the Association shall be managed by its Board of Directors. Following the

initial Board, the Board of Directors shall consist of 3 individuals, all of whom shall be an owner of a Lot or the designated representative of an Owner, and said Board shall be elected at each annual meeting by the Members of the Association as provided in the Bylaws. Board Member terms shall be 3 years, with each position staggered so that one Board Member is elected each year. Provided, Declarant shall have the right to appoint Directors until such time Declarant may elect to opt out of this right in writing to the Association and its membership. In any event, Declarant's right to appoint Directors shall end upon the final approval of the third phase of Burnt Fork Estates.

#### ARTICLE IV: PROPERTY RIGHTS

Section 1. Members' Easements of Enjoyment. Every Member and their guests and invitees, shall have a right and easement of use and enjoyment in and to the Common Areas, subject to any further restrictions as may exist in this instrument or rules promulgated by the Association, and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- a. The right of the Association to provide reasonable rules relative to use of the Common Areas for the overall benefit of its members and for the management of Common Areas, and for ensuring compliance with any rules. Such rules may not conflict with this Declaration, unless it is amended, but may be more restrictive in nature;
- b. The right of the Association to charge reasonable and pro rata fees for the repair, maintenance, dust abatement, and snow removal in the walkways and paths within the plat, and other fees for the use of the Common Areas and common facilities located thereon, and fees associated with the maintenance and management of Common Areas and common or shared facilities;
- c. To the extent permitted or authorized by the appropriate governing body, the right of the Association or Declarant to dedicate or transfer all or any part of the roadways or Common Areas and open spaces to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed upon by the Association or Declarant;
- d. The right of the Association or Declarant to grant easements under any Common Area to any public agency, authority, or utility provider without charge;
- e. The right of the Association or Declarant to run utility service lines or connections including a water, sewer, or stormwater or drainage

system that serves any portion of the Real Property under or through any Common Areas or Open Spaces, inclusive of such facilities that may benefit future phases; and

- f. Certain Lots or Common Areas may be subject to drainage swale or drainage easements as may be depicted on the plats. No Lot or Common Area shall be developed or landscaped in such a manner as to interfere with the purpose of the drainage swale or drainage easement.
- g. The right of the Declarant to allow or prohibit use of Common Area by adjacent properties and Owners, including, but not limited to, future phase for commercial use.
- h. Until such time as all phases of the development have been finally platted, Declarant shall and does reserve the right to exercise the rights stated in this Article IV; provided Declarant may at any time opt out of such rights by written assignment to the Association.

Section 2. Assignment of Use. Any Member may assign, in accordance with this Declaration, his right of enjoyment to the Common Areas and common facilities or to Open Spaces to the members of his family or others who reside on a Lot.

Section 3. Maintenance Easement. An easement is hereby declared, granted, and reserved to the Declarant and the Association for access on to any Lot or Common Area for the purpose of installation, service, maintenance, or replacement of any common utility service. Further, the Declarant and the Association reserve the right to make additional grant of easement to any private or public utility provider over any Lot or Common Area as may be required for the provision of such service.

#### ARTICLE V: RESPONSIBILITY FOR SERVICES

Section 1. Common Areas. The Association shall mow, water or otherwise maintain the Common Area (as identified in the plat of Burnt Fork Estates, Phase 1, and as subsequently identified or amended in recorded plats of future phases) as is reasonably necessary, inclusive of complying with any weed district requirements. It is anticipated that streets within the plat will be public streets, dedicated or otherwise transferred to, accepted, and maintained by the city. Neither the City of Stevensville nor other public agencies are responsible for maintenance any private roads and any bike and pedestrian walkways until such time as the same are designed and constructed to the then existing public road standards and said roads are accepted by the appropriate governmental body as dedicated public streets or walkways. The Association shall maintain and manage any common amenities or improvements located on the common areas, inclusive of any common area buildings or improvements, and inclusive of any common or shared utilities, and excepting such facilities and common utilities that may be under the authority of the City of Stevensville or any water or sewer district that may be established. It is

anticipated that the Phase 1 Common Area will have an improved gravel trail and will be established and maintained as having native grasses and landscaping, and will not be irrigated. Common Areas established or maintained in native grasses may nevertheless need periodic mowing and weed control, as may be required to meet Weed District requirements and to control fire risk. Common Areas developed with future phases may have picnic and playground facilities and have irrigated landscaping, and may include an area or areas of fenced, developed dog park. Declarant shall be responsible for maintenance of the initial Phase 1 Common Area until such time as a subsequent phase is developed and in general there is sufficient homeowner rate/assessment base to adequately support maintenance of the then existing Common Area(s).

Section 2. Exterior/Lawn Maintenance. Individual Lot Owners shall be responsible for all exterior maintenance on their lots, such as painting, repair of walls, roofs, driveways, lawns and shrubs. If landscaping at certain road turns or intersections is required or desired to serve as headlight buffers, such landscaping shall be so designated, and its maintenance will be the responsibility of the individual Owner. Individual Owner maintenance may include landscaped boulevard areas that may lie within a public right-of-way.

Section 3. Water and Sanitary Sewer.

- a. Each Lot shall be served by sanitary sewer service. Declarant shall be responsible for the initial construction of the sewer or effluent mains, the service line check and shutoff valve(s) at the property line of each Lot, the service line running between the sewer main and these valves, and any off-lot lift or pump station that may be required to move effluent. Each Owner shall install, use, operate, maintain and repair the sewer facilities for which the Owner is responsible in a good and workmanlike manner such that it causes no harm or injury to other property or the overall system, and will be in compliance with all pertinent ordinances, rules and regulations contained herein or properly promulgated by a governmental entity.
- b. On completion, the main or common sewer lines shall be maintained, owned, and operated by the municipal sewer provider.
- c. Each Lot shall be served by a municipal or public water system. Declarant shall be responsible for the initial construction of the water mains, curb stops or shutoff valves located near the Lot line, and service lines between mains and curb stops. Each Lot Owner shall be responsible for the installation of all remaining water system elements located on a Lot, inclusive of any pressure reducing valve desired or required, and inclusive of meters, if required. Each Owner shall install, use, operate, maintain and repair the water provision facilities for which the Owner is responsible in a good and workmanlike manner such that it causes no harm or injury to other property or the overall system, and will be in compliance with all pertinent ordinances, rules and regulations contained herein or properly promulgated by a governmental entity. Water efficient faucets and facilities

should be used on all new construction.

- d. On completion, the water mains and other delivery lines shall be dedicated to the municipal or public water provider which shall maintain and operate such facilities.
- e. Assessments for such sewer and water service shall be made by the municipal or public provider of such services.

Section 4. Additional Services. The Association may provide additional services or facilities as it sees fit or as may be required as a condition of the plat. The Association may provide such services or facilities for all or a portion of the Real Property within its jurisdiction or with which it may contract and levy assessments on such portion of its Members or others as derive benefits from services concerned. It shall be the option of the Declarant to provide such additional services as desired or required as a condition of the plat (or any subsequent phase) until such time as subsequent phase(s) is(are) developed and in general there is sufficient homeowner rate/assessment base to adequately support additional services or facilities contemplated.

Section 5. Fees. The Association shall establish a fee schedule for providing these services or facilities, which fees shall be considered as assessments, as set forth above. Such schedule may include the assessment of:

- a. Charges for availability of a service or Common Area even though it is not used by the Owner of a Lot.
- b. Charges for use based on a flat rate.
- c. Additional charges for excess use.
- d. Such other charges as may be required to maintain any private roads or trails within the Real Property.

Provided, the Association may not assess for services or facilities or other improvements that are conditions of the plat of any future phase.

#### ARTICLE VI: RULES AND REGULATIONS

Section 1. Association to Establish Rules. The Association, by and through its Directors and inclusive of any Design Review Committee that may be established, may promulgate such rules and regulations as it deems necessary and appropriate for the use of the Common Areas, Common Area improvements, and community or common facilities. Rules and regulations may, at Declarant's election be promulgated by Declarant relative to all Lots and Common Areas so long as Declarant owns any property within the Development and there are unplatted phases still

to be developed. Declarant may by written notice to the Association opt out of this reserved right. Members of the Association may otherwise promulgate rules and regulations by the Association's receipt of the affirmative vote of 60% of the Members, either in writing subscribed to by the requisite number of Members or 'votes' or at a meeting of the Members called for such purpose, except as otherwise provided for herein. Such rules promulgated by the Association, either through the Directors or through Membership action, may not touch or concern commercial lots, in the event such lots are brought within the authority of this Declaration. The Association, through the Directors or through Membership, may modify or amend Association rules and regulations promulgated by the Declarant only upon a 60% vote of the Members, inclusive of voting rights granted the Declarant, above, and then may not apply to commercial lots.

Section 2. Rules for Maintenance and Repairs. The Declarant and Association, as provided for above, may also promulgate reasonable rules and regulations for the maintenance, repair or improvement of the Real Property. Such rules must be uniformly and evenly applied.

#### ARTICLE VII: ASSESSMENTS

Section 1. Assessments. The general assessments levied by the Association shall be used for such purposes as are deemed desirable by the Association including but not limited to expenditures for construction, reconstruction, repair or replacement of any capital improvement; maintenance, repair and upkeep of drainage facilities; maintenance, upkeep, real property taxes, hazard and liability insurance, and related expenses in regard to any Common Area or common utility or service; insurance and administrative costs of the Association incurred in its day to day activities and any costs or expenses, including attorneys fees, incurred in enforcing the conditions, restrictions or charges set forth in this Declaration. Such assessments for commercial lots shall only be as provided for below.

Section 2. Rate of Assessments. Assessments for any services provided by the Association may be based on either a flat rate or on usage. Usage charges may be assessed to Lots for services or amenities that directly benefit only certain Lots, and the Association may assess those service costs to the Real Property Owners who benefit directly from the services, provided maintenance of such features is not assumed by a governmental entity. All other assessments, including those for capital improvements on systems utilized to provide services, shall be fixed at a uniform rate per Lot. Undeveloped but platted Lots owned by Declarant shall be subject to assessment at 25% of the amount of assessments fixed for other Lots. No assessment may be made of existing platted Lots for the development of or installation of infrastructure that is solely for the benefit of additional phases and lots to be developed.

Section 3. Special Assessments. Upon determination by the Board of Directors of the Association, assessments may be levied for special or particular purposes. Such assessments may include related administration costs and such other costs or charges as are reasonably required. The assessments shall be fixed, established and collected in the amount and manner as the Association might determine but in any event they shall be separately treated from other

assessments provided for by this Article. Funds used for special assessments shall be accounted for separately.

Section 4. Specific Assessments. Throughout this Declaration certain costs and expenses incurred by the Association may be attributed to one or more, but not all Owners, and such specific assessments shall be specifically assessed against the Owner and Lot incurring such cost and expense.

Section 5. Commencement of Assessments. The Association is authorized to commence initial assessments as herein authorized at such time as it determines appropriate. Written notice of assessments shall be sent to every Lot Owner. The due dates shall be established by the Association, and may be monthly, quarterly, or annual. If Assessments are not paid by such due date then interest shall begin to accrue on them at a rate as determined by the Association Directors, but may not exceed the then legal limit in effect.

Section 6. Certificate of Payment. The Secretary of the Association shall upon demand furnish a written statement signed by an officer of the Association setting forth the status of any assessments relative to a specific Lot. The statement shall, as applicable, identify any delinquent assessments, the amount owed, the amount of any current assessments or accruing assessments or indicate that all assessments are current and paid. A reasonable charge may be made by the Association for the issuance of the statement. Such statement shall be conclusive evidence of payment of any assessment therein stated to have been paid. In addition, the Secretary of the Association shall maintain a roster of the individual Lots and the assessments due thereon.

Section 7. Nonpayment of Assessments. Any assessments or installment payments on assessments which are not paid when due shall be delinquent. The Association may bring an action at law to collect the amount of the delinquent assessment together with all interest, costs, and reasonable attorney's fees incurred in such action, or may take action to perfect and foreclose the lien for assessments, or may take such other action as provided for herein.

Section 8. Obligation of Payment. All residential Lots are subject to the assessments set forth in this Declaration. Each Lot Owner hereby covenants and agrees to pay to the Association the amount of all assessments, as such assessments are fixed, established and billed. The Association shall bill the Lot Owner for the amount of any assessment and that Lot Owner shall be responsible for any accruing assessments until and unless such Lot Owner has provided to the Association's secretary a true and correct copy of a recorded deed or other document of conveyance transferring title of a Lot to another Owner. The Association may use and rely on the address of a particular Lot for contacting Owners, or may use for the Lot's taxpayer address as identified in public records, unless the Association has received written notice from a Lot Owner to use a different address.

Section 9. Creation of Lien. All assessments both current and delinquent, together with interest and cost of collection as herein provided for, shall be a charge upon the land and may constitute a lien upon the Lot against which assessments are made. The Association is hereby

granted a lien against the Owner's Lot for any payment or payments which the Owner fails to make as required by this Declaration; provided, however, that (a) such lien shall be effective only upon recordation of a notice thereof in the office of the Clerk and Recorder of Ravalli County, Montana, and each Owner, by accepting a deed to his Lot, designates any one of the officers or directors of the Association or its duly appointed manager as agent with full irrevocable power and right to record a notice of said lien in favor of the Association; (b) a lien accruing hereunder shall be foreclosed in the same manner as provided by the laws of the State of Montana for foreclosure construction liens as contained in Montana Title 71, chapter 3, part 5, as now exists or may be hereinafter amended, provided the limitation period of such lien shall be that of mortgages; and (c) such lien shall be subject and subordinate to and shall not affect the right of a holder of any recorded first mortgage now or hereafter placed on the dwelling unit in good faith and for value. The lien hereby given shall also be a lien upon all of the rents and profits of the encumbered Lot. In the event of a foreclosure, the Owner shall be required to pay reasonable rental to the Association for occupying the same during the period of the foreclosure, and if after the filing of a foreclosure action, the Lot and improvements thereon is left vacant, the Association may take possession and rent said Lot or apply for appointment of a receiver for the Lot without notice to the Owner. In addition to the lien herein granted, the Association shall have the right to bring an action at law against any Owner who fails to pay any amounts assessed against his Lot and obtain judgment for the amount of the assessments due plus costs as herein provided. The Association shall have the power to bid at the foreclosure sale, and if title is obtained, hold, lease, mortgage and encumber or convey the same. Conveyance of title to any Lot shall not be effective to avoid the obligation for payment of any sums then due and owing whether or not reduced to the status of a lien, and unpaid assessments shall remain the personal obligation of the prior Owner. The Association may create and adopt such other collection processes and procedures as it may deem appropriate.

Section 10. Property Subject to Assessment. All Lots shall be subject to assessments by the Association as herein provided except those Lots acquired by the Association.

Section 11. Assessment of Commercial Lots. In the event the Declarant does not promulgate separate covenants, conditions, and restrictions for lots developed in a commercial phase, and such commercial phase is incorporated into and under this Declaration of Covenants, Conditions and Restrictions, Declarant may establish a separate assessment for commercial Lots, which shall be administered and applied as assessments for residential Lots, inclusive of enforcement mechanisms. Such assessment shall be limited to a pro rata amount as may be appropriate for such commercial Lots, taking into account the services and amenities provided by the Association for which the commercial Lot and specific commercial use may avail itself. Such assessment may be in the form of a one-time impact assessment. Responsibility for collection and use of continuing assessments may be assigned by Declarant to the Association. Assessments of commercial lots may be handled by a sub-association of commercial lot owners, with the Association setting commercial lot assessments in consultation with the sub-association, and the sub-association making and collecting such assessments, and paying the same over to the Association per separate agreement. Such agreement between the Association and a commercial lot owner sub-association may take into account a different pro rata assessment and different

assessment and payment periods. The formation of such sub-association for commercial lots, if elected, may be a part of separate covenants, conditions and restrictions for such phase.

## ARTICLE VIII: PROTECTIVE COVENANTS

Residential Protective Covenants. The following protective covenants are designed to provide a uniform plan for the development of the residential Real Property. They shall constitute covenants running with the land for each residential Lot within the Real Property.

Section 1. Design Review Committee. The Association may establish and maintain either permanently or on an ad-hoc basis, a Design Review Committee (DRC) to serve the functions as described in this Article and may establish criteria specifically for the Real Property subject to the jurisdiction of this Declaration. Nothing herein shall prevent the functions of the DRC from being assumed by the Directors of the Association. If established, the DRC shall have at least one Director as a member, and the number of DRC members shall be as specified by the Directors, but shall in any event be an odd number. Separate DRC criteria may be established for successive phases, and established to distinguish criteria for Lots within the respective R1 and R2 zoning districts (e.g. for future multifamily lots as may be established). All such design review criteria shall comply with any zoning that exists at the time of promulgation. Members of the DRC shall be appointed and serve as set forth above and in the Bylaws of the Association, provided the Declarant shall constitute DRC so long as Declarant owns at least two Lots in a particular phase or has pending future phases still unplatted, and further provided Declarant may relinquish this right to the Association early, and for a particular phase, in a written notice to the Association. It is anticipated that Declarant will keep or retain DRC authority for new construction on Lots being developed, and may relinquish ongoing DRC authority to the Association for matters that follow construction of improvements on Lots within a particular phase.

The criteria by which the DRC will review any proposed plans for the construction of improvements or exterior modifications on any Lot shall be made available to the purchaser of any Lot. It is the obligation of the Owner of any Lot to obtain current versions of the criteria prior to preparation of plans or specifications for construction of improvements or exterior modifications and prior to submission of materials for review by the DRC. The DRC will evaluate proposed plans for construction of improvements or exterior modifications based upon the most recent criteria for review as may be in effect as of the time the plans are submitted for review and is not obligated to use the criteria in effect at the time the Lot was purchased. While the review criteria must be reasonably designed to enhance and protect the value and nature of the Real Property in the area, purchasers of Lots need to be aware that the DRC may from time to time adopt more stringent criteria than what existed at the time a Lot was purchased. Review criteria may not be changed relative to an application for review already accepted by the DRC.

Design review criteria promulgated by the Declarant or the Association may, in addition to providing further detail regarding restrictions contained herein, include the following matters: house color and design, including promulgating a pre-approved color palette; fencing heights,

colors, and materials; outbuilding sizes, colors, and materials, and inclusive time for completion; specific recommended landscaping trees and shrubs, inclusive of the location of such features; the location and style of solar panels; driveway and parking area locations; and suggested pre-approved siding and roofing materials.

The DRC may require payment of fees for application for review of proposed plans and review of complaints or protests alleging violation of this Declaration as to matters within the jurisdiction of the DRC. The fees as set by the DRC shall be in an amount sufficient to reasonably compensate the DRC for its administrative costs and expenses likely to be incurred in connection with its activities. The DRC may require payment of the fee in advance as a condition of making its review or determination. Unless waived by the DRC, failure to pay any fee required for DRC review or action shall be interpreted as the matter was not present for review and no action of the DRC is required. Nothing herein shall preclude the DRC from reviewing applications or proposals by potential owners prior to acquisition of a Lot by such applicant.

Section 2. Design Review Committee Approval. Approval or disapproval by the DRC shall be in writing. In the event the Committee fails to act within thirty (30) days after the proposed plans and specifications of any structure and required fees are accepted and notice of such acceptance has been delivered to the applicant, no specific approval shall be required for such structure and the pertinent provisions of this Declaration shall be deemed to have been fully complied with. The DRC shall not be required to deem as accepted proposals, plans, and specifications that do not, in the reasonable judgment of the DRC, contain sufficient information or completeness to allow reasonable review of the proposal. Notice of non-acceptance shall be in writing, identifying why the application is deficient or otherwise not accepted. Notice of acceptance or non-acceptance shall be communicated to the applicant within 20 days of receipt of the application by the DRC. All notices required herein shall be deemed given when mailed, postage prepaid, by U.S. mail or by personal delivery.

Section 3. Land Use and Building Type. (a) New dwellings. No residential Lot shall be used except for residential purposes, and no business, trade, or manufacture shall be conducted thereon, except as provided for in Section 4, below. No building shall be erected, altered, placed, or permitted to remain on any Lot in the R1 zone other than one single-family dwelling. Duplex units or other multifamily structures may be permitted in Lots within the R2 zone, as allowed by zoning and the provisions of this Declaration. No building may exceed two (2) stories for residential dwellings, and all single family homes shall have a minimum of 1,500 square feet of finished ground floor living area, which does not include garages, porches, patios, or breezeways. Specific height restrictions may be set forth by the DRC for commercial structures. All single family dwellings shall have a private garage for no less than two (2) cars, which shall be attached to the main dwelling structure. Lots in the R2 zone that are of duplex or greater development shall have at least one garage (enclosed) parking space for each habitable dwelling. The DRC may establish criteria for additional on-Lot parking and accessory buildings, as permitted herein. No structure such as the residential dwelling, storage sheds, fences, kennels, garages, antennas, signs, mailboxes and newspaper holders or any other structure may be located upon any Lot

unless the plans and specifications for such structures have been reviewed and approved by the DRC. The DRC shall also have jurisdiction to determine and approve proposed grades of lawn, landscaping plans including seeding and planting and all other and similar items relating to the development and improvement of any Lot. Lawns and landscaping shall be substantially installed on the whole of a Lot within one (1) year of completion of the habitable dwelling.

All structures shall be constructed of new materials, and the fronts of dwellings shall have at least 20% of the fronting surfaces made of rock, brick, stone, or other architectural material that is not siding or garage door. Suitable used materials such as used brick or beams may be utilized provided that advance approval has been obtained from the DRC as herein provided. Roofs shall be of class A or B fire rated materials and of at least a 4:12 pitch. No old structures, whether intended for use in whole or in part as the main dwelling house or as a garage or other structure shall be moved upon any Lot. No mobile homes, either double or single wide, or other pre-manufactured homes constructed primarily away from the Lot on which they would be situated shall be permitted. Provided, Owners shall not be restricted by this section or this Declaration from manufacturing or assembling components of structures on a site other than the Lot on which the building is to be located (e.g. trusses or framed wall components). The DRC is authorized in its discretion to approve exceptions to this section for residential Lots so that structures intended to serve the residents of the adjoining dwelling house may be constructed (outbuildings). No such additional structure shall be utilized as an additional dwelling space or for purposes other than to serve the residents of the dwelling house.

(b) Remodeling or Alteration. No remodeling or other alteration of the exterior of any existing structure, or other remodeling or alteration which will be visible from the exterior of the structure, shall be undertaken, commenced or completed without the plans for such remodeling or alteration having first been approved by the DRC.

Section 4. Commercial Usage Prohibited. No store, office, business, manufacture, commercial enterprise, hospital, sanitarium, rest home, theater, or saloon of any kind, or anything of the nature thereof, shall be carried on or conducted on any of the designated residential Lots. However, the Declarant or its designee shall be permitted to maintain a sales office in either a model home or a specially constructed building, to be used to promote the development of and facilitate resale of Lots and homes in the development. Home occupations that do not result in increased traffic of either customers/clients or of delivery vehicles are permitted, subject to all applicable zoning and other applicable restrictions imposed by the City of Stevensville, and provided that the primary use of the Lot remains residential. No sign may be posted or displayed that advertises such in-home occupation or business.

Section 5. Setback Requirements. All structures shall meet pertinent set backs as established by zoning, provided any duplex or common wall structure may be exempt from such side setbacks for the adjoining residence. Any waiver or alteration of a setback requirement by the DRC as to any Lot shall not be deemed to have waived the setback requirements set forth herein, nor shall it set a precedent that in any way obligates the DRC to make subsequent waivers or make adjustments to setback requirements for other Lots.

Section 6. Exterior Maintenance. The Owner of each Lot upon which a structure is located shall provide exterior maintenance upon such structures. Lot maintenance includes the painting and repairing the structures; maintaining the lawn and grounds to preclude weeds, underbrush, and other unsightly growths; and not permitting refuse piles or other unsightly objects to accumulate or remain on the grounds. All areas disturbed during development shall be restored and re-vegetated in accordance with any existing DRC rule or plan, and in accordance with any revegetation plan approved and/or required by the a local governmental entity or weed district. No Owner, inclusive of Declarant, of an unimproved or vacant Lot shall allow weed or other vegetation to exceed two (2) feet in height. In providing such exterior maintenance, the Owner shall maintain the exterior color, design and appearance, including landscaping, as originally approved by the DRC. In the event any Owner shall fail or neglect to provide such exterior maintenance, the Association shall notify such Owner in writing specifying the failure and demanding that it be remedied within thirty (30) days. If the Owner shall fail or refuse to provide such exterior maintenance within the thirty (30) day period, the Association may then enter such Lot and provide required maintenance at the expense of the Owner. The full amount shall be due and payable within thirty (30) days after the Owner is billed therefor and shall become a specific assessment upon that Lot. The Association may exercise all rights to collect that assessment. Such entry on the Lot by the Association shall not be deemed a trespass.

Section 7. Utilities. All utility lines shall be underground. The Owner of each Lot shall pay all initial connecting costs for electrical, cable television, and telephone service, together with all subsequent charges for all utilities.

Section 8. Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. No permanent building of any kind shall be erected, placed, or permitted to remain on such easements.

Section 9. Boundary Control Monuments, Subdivision. The Declarant has caused survey monuments to be placed on the corners of each Lot. It shall be the responsibility of the Owner of each Lot to provide for immediate professional replacement of any survey monuments that are removed or become lost or obliterated from his or her Lot. No Lot in R1 zone may be further subdivided.

Section 10. Garbage. No Lot shall be used or maintained as a dumping ground, nor shall any rubbish, trash, garbage or other waste be allowed to accumulate except in sanitary containers which shall be emptied on at least a weekly basis by a local garbage collection firm. This provision does not prohibit temporary storage of gravel, topsoil or building materials on Lots if such items are to be used in further construction. On garbage (or recycling) collection days, containers may be placed in a location convenient for collection but not interfering with vehicle traffic, and may be set out the night before, provided containers may not be left out for over 24 hours. All garbage shall be stored in containers provided by the municipal or local garbage collection firm, or shall otherwise comply with such firm's container standard. In any event, all garbage containers when placed for collection shall have tight fitting lids to preclude access by

animals. Garbage and recycling containers shall otherwise be stored indoors or screened from street view.

Section 11. Burning of Trash and Yard waste. There shall be no burning of household trash or of lawn and yard waste.

Section 12. Animals and Pets. No animals or fowl, domestic or wild, except for a total of up to four (4) dogs and/or cats, in any combination, shall be permitted on any residential Lot. Other small domestic animals that are kept solely indoors in cages or terrariums may be kept. These animals will be kept within the Lot of their Owner unless leashed and under the immediate control of their Owner. Such animals shall not be allowed at large or permitted to become a nuisance or annoyance to the neighborhood. Excessive or continuous barking shall be considered a nuisance, and in general, pets should be kept indoors at night. All animals kept on any Lot shall be properly fed, watered, and sheltered from the elements in such a manner as shall be consistent with their good health. Pets should be fed indoors or within approved kennel areas only, and food dishes not be allowed to remain outdoors. This will reduce the conflicts with wild animals. Each Owner or person responsible shall treat and care for such animals in a humane and merciful fashion, so that other persons in the area shall not be required to tolerate or condone inhumane treatment of the animals. All animals kept on the Real Property must be kept within an approved fenced enclosure, approved kennel or within the dwelling house, except when accompanied by their Owner, as provided above. No kennels are permitted, other than kennels approved by the DRC as to construction, materials and location. All animals shall be kept in a humane manner and not chained. Animal manure shall be removed from the Real Property, immediately following deposit, so as not to become obnoxious, offensive, or a nuisance to surrounding residents. All carcasses of dead animals shall be removed immediately. No commercial breeding or sales of any animals is permitted. It is anticipated and allowed that the Association or the Declarant may promulgate specific rules and regulations regarding the use of Common Areas by pets, inclusive rules associated with any dog park developed on a Common Area. In general, such developed dog park will include native, unirrigated grasses, the installation (by Declarant) and maintenance (by the Association) of gated and fenced areas of use and the provision of pet waste bag dispenser and bin.

Lot Owners are advised of and alerted to the presence of large and potentially dangerous wildlife in the area and are on notice that feeding big game is illegal, with not only negative impacts on the animals themselves, but the possibility of increasing the presence of dangerous predatory animals. Owners are encouraged to contact the Montana Department of Fish, Wildlife, and Parks to obtain information on safely living near wildlife and minimizing habitat impact.

Section 13. Firearms. There shall be no discharge of firearms for recreational purposes, nor shall there be any hunting by any means carried out on the Lots or common areas.

Section 14. Vehicles. There shall be no repairing of vehicles in the street. Each Lot with a single family dwelling on it shall contain a sufficient paved or surfaced area or driveway for two off-street parking spaces, excluding the garage. Any parking pad or surface separate from

garage and driveway shall be subject to DRC review and approval. Street parking is permitted subject to City of Stevensville regulations. No recreational vehicle, trucks exceeding one ton capacity, fifth wheel, trailer, or trailered vehicle, snow mobile, or water craft may be parked on the street for over 48 hours, and then such parking shall be an irregular and infrequent occurrence. No vehicle or trailer may be parked on a Lot's lawn. Vehicle parking restrictions provided by this Declaration will be strictly enforced, including but not limited to ticketing (with fines as established by the Association Board) and towing of vehicles after three (3) or more such violations. These provisions are not intended to preclude the entry of construction, maintenance, delivery, moving, or other such service vehicles while they are being used in connection with services for the Real Property.

Section 15. Signs and Antennas. No advertising signs, billboards, or unsightly objects shall be erected, placed, or permitted to remain on any Lot with the following exceptions:

- a. Signs specifically permitted in future commercial zones, which may be subject to Association promulgated guidelines, which shall generally comport with any governmental regulation of signage;
- b. Signs erected within the subdivision(s) by the Declarant promoting the development of the Property and other phases;
- c. One small sign identifying the contractor of a building while such building is under construction; one small "For Rent" or "For Sale" sign per Lot or temporary small signs advertising a garage sale. Political signs may be placed on an Owner's Lot for a period not to exceed 60 days prior to the election to which such sign pertains, and shall be removed within 48 hours of such election. Signs subject to this section may not exceed 1,000 square inches.
- d. All improved Lots shall have the address of such Lot installed on the property, either at the entrance or on the house, which address shall be visible from the road and at the driveway entrance. Addressing may also need to comport with the requirement of the local fire district.
- e. No exterior television or radio antennas taller than one meter, or satellite or microwave dishes larger than one meter in diameter, may be placed or permitted to remain on any Lot.

Section 16. Damaged Property. Any dwelling or building damaged by fire or other casualty must be removed from the premises and repairs commenced within one hundred twenty (120) days unless an extension of time for such removal and repair is granted by the DRC. Any damaged dwelling not so removed and repaired may be removed at the Owner's expense and the DRC may pursue any and all legal and equitable remedies to enforce compliance and to recover any expenses incurred in connection herewith. Any cost incurred by the Association under this

section shall become a specific assessment upon the Lot of the Owner. The Association may exercise all rights to collect that assessment.

Section 17. Access. No Owner shall use part of any Lot to provide access to any adjacent land or Lot. No road or driveway shall be used or constructed on any Lot for any purpose except one driveway for access to the dwelling or garage, and such driveways shall be paved.

Section 18. Sanitary Restrictions. The Owners of every Lot shall comply with all governing laws and regulations relating to water supply, sanitation, sewage and garbage disposal, and air pollution.

Section 19. Accessory Buildings. No accessory buildings or outbuildings shall be permitted unless specifically approved in writing by the DRC, which approval may include review of the location, design, color, materials, size and appearance of the proposed outbuilding.

Section 20. Fences. As stated above, fences are improvements that require DRC review and approval. Approved fencing materials include wood and vinyl, with such other materials subject to approval on an individual basis. No Lot perimeter fence may be closer to the front of a Lot than the front of the dwelling constructed thereon. No fence may exceed five (5) feet in height, with the exception of the back fences of Lots that border Logan Lane, which may be 6 feet in height. The Association, Declarant, or DRC may promulgate specific fencing requirements for Lots that border Common Areas and portions of Common Areas that provide access, ingress, and egress to Common Areas. It shall generally be the goal that fencing of Lots that border access strips to Common Areas shall not create a tunnel or non-visible access strip, and to maintain visibility of such access strips, chain link fencing may be an approved standard.

Section 21. Imperiling of Insurance. Nothing shall be done within the plat, Common Areas, or on any individual Lot, that would result in an increase in the premiums for insurance maintained by an adjacent Owner or the Association, or which might cause cancellation of such insurance. No hazardous substances as defined by federal or state law are allowed on any Lot, except small amounts of fuel for lawn mowers and other household motors, and small amounts of materials used for cleaning or sanitary purposes, may be kept.

Section 22. Construction Liens. No labor performed or materials furnished with the consent or at the request of an Owner, his agent, contractor or subcontractor shall create any right to file a construction lien against the Real Property of the Association or any other Owner, who does not request or consent to the same. Each contracting or consenting Owner shall indemnify, defend and hold harmless the Association and each of the other Owners from and against liability arising from the claim of any lien holder for labor performed or materials furnished at the request of the contracting or consenting Owner. At the written request of any Owner, the Association shall enforce such indemnity by collecting from the contracting or consenting Owner the amount necessary to discharge any such lien and all costs incidental thereto including attorney's fees and expenses. Said expenses may be added to such Owner's regular assessments.

Section 23. Alteration. As stated above, no alteration of the exterior of an improvement or visible portion of a Lot may be made without advance approval of the DRC. Interior alterations and remodeling do not require DRC approval.

Section 24. Insurance. Each Owner shall maintain insurance as to the improvements constructed on that Owner's Lot, in an amount sufficient to provide full replacement of the improvements. Additional insurance requirements may be promulgated by the Association Board in the instance of specific proposed uses of future Commercial Lots.

Section 25. Rentals. No residence, nor any portion thereof may be rented for less than a thirty day minimum period. This restriction is intended to prohibit overnight, daily and weekly rentals.

#### ARTICLE IX: COMMON AREAS

Section 1. Common Areas. Neither the Owners of any Lot nor their guests or invitees shall:

- a. Construct improvements or install landscaping on Common Areas;
- b. Use any motorized vehicle on or in Common Areas;
- c. The Association shall be responsible for maintenance of any storm water drainage system as may be installed or established in a Common Area.
- d. As stated above, pets are not be allowed to be at large on Common Areas, and pets may be restricted or prohibited on certain Common Areas or portions of Common Areas, and owners are responsible for the immediate pick up of any pet waste in Common Areas.

#### ARTICLE X: ANNEXATION OF ADDITIONAL PROPERTY

Section 1. By Declarant. Declarant, at Declarant's sole discretion, may deem it desirable to annex additional real property to the Property covered by this Declaration, and as of the date of this initial Declaration 6 additional phases are anticipated, with one being commercial. Additional real property may be annexed to the Property and brought within the provisions of this Declaration as provided herein by Declarant, its successors or assigns, at any time, and from time to time, without the approval of any Owner or the Association, and regardless of whether Declarant owns a Lot or Lots in existing platted phases. This right shall also include bringing in additional properties to the provision of services by existing water and sewer systems, even though management of such systems may have been transferred to a public entity. The use and development of such additional real property shall conform to all applicable land use regulations and zoning, as such regulations are modified by variances. No action by the Association, nor any

amendment of this Declaration may frustrate or serve to inhibit this right to develop additional phases of the subdivision and Common Areas associated therewith, this provision being deemed to be for the benefit and enhancement of all properties and Lots within Burnt Fork Estates.

Section 2. By the Association. In addition to the provisions concerning annexations by Declarant specified in Section 1 above, additional real property may be annexed to the Property, subject to the same conditions by the Association upon the exercise by Members of at least seventy five percent (75%) of the votes of the Association.

Section 3. Rights and Obligations of Owners of Annexed Property. Subject to the provisions hereof, upon recording of a Supplemental Declaration as to any additional real property, all provisions contained in this Declaration shall, to the extent practicable and allowed by law, apply to the additional real property in the same manner as if it were originally covered by this Declaration.

Section 4. Method of Annexation. The addition of additional real property to the Property authorized under Sections 1 and 2 shall be made by filing of record a Supplemental Declaration or other similar instrument with respect to the annexed property, which shall be executed by Declarant or the Owner thereof and which shall annex such property to the Property.

Section 5. Sub-Association. Declarant may, in the development of a phase that is zoned commercial, form a sub-association of commercial lot owners. Such sub-association may then exempt itself from direct Association assessments, provided such sub-association enters into a separate agreement with the Association to assess and pay the Association for its maintenance of, and commercial lot use and enjoyment of, common areas, common amenities, etc., within the development. Said sub-association may also be formed as above upon the unanimous consent of all commercial lot owners. Additional commercial lots in future phases may be annexed into such sub-association as provided for above. Provided, these provisions do not prevent such commercial phase from forming its own association, or not having an association, in particular if such commercial phase does not enjoy any use or benefit of common facilities used by the residential Lots.

#### ARTICLE XI: GENERAL PROVISIONS

Section 1. Duration. The covenants, conditions, charges and restrictions of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Association, the Declarant or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors, or assigns in perpetuity.

Section 2. Enforcement. Any Owner of a Lot , the Declarant or the Association shall have the option and right to enforce by any proceeding at law or in equity all restrictions, conditions, covenants, reservations, and charges now or hereafter imposed by the provisions of this Declaration, inclusive of rules such as design guidelines promulgated by the Declarant, Association, DRC, or other properly constituted committee of the Association. Provided that,

future covenants, restrictions, rules, regulations and guidelines affecting commercial Lots may only be enforced by the Declarant, or an Owner of another commercial Lot, or by the Association through its directors in the event there is a commercial sub-association. Further, provided that the Owners of commercial Lots may not enforce restrictions on residential Lots. Each Owner may submit to the Association any complaint regarding alleged violation of this Declaration by any other Owner. Upon receipt of such complaint to Association shall conduct a reasonable investigation of the alleged violation. If the Association, in its sole discretion, deems that the complaint has merit it may elect to seek enforcement of this Declaration pursuant to this section. In any event the decision of the Association as to the merit of the complaint or its decision to pursue or not pursue enforcement of this Declaration, shall not limit or restrict in any way any individual Owner's pursuit of enforcement of this Declaration, except as provided for above. The method of enforcement may include legal action seeking an injunction or to prohibit any violation or threatened violation, to recover damages, or both. Failure by the Association, any Owner, or by the Declarant, to enforce any such provisions shall in no event be deemed a waiver of the right to do so thereafter. Should any law suit or other legal proceeding be instituted against an Owner who is alleged to have violated one or more of the provisions of this Declaration, or a rule promulgated by the DRC, the prevailing party in such proceeding shall be entitled to reimbursement for the costs of such proceeding, including reasonable attorney's fees.

Section 3. Severability. Invalidation of any of the terms, covenants, conditions or restrictions as established by this Declaration by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 4. Amendment. The Declarant reserves the sole right to amend, modify, make additions to or deletions from this Declaration it alone deems appropriate. This right of the Declarant to make such amendments shall continue for so long as Declarant is a Member in the Association (relative to residential Lots and inclusive of Lots in subsequent phases) or owns a commercial lot (relative to commercial Lots). After that time the right to amend shall pass to the Association to be exercised relative to the residential Lots only upon a concurrence of two-thirds (66%), or more, of the Lot owners of Real Property in Burnt Fork Estates, Phase 1, or with the concurrence of the same percentage of Lot Owners of this and subsequent phases that may be brought under the jurisdiction of this Declaration. An amendment by the Association of the covenants and restrictions herein affecting residential Lots does not amend the covenants and restrictions pertaining to commercial Lots. Covenants and restrictions pertaining to commercial Lots may be amended by Declarant, as provided for above, or by the agreement of two-thirds (66%), or more, of the commercial Lot owners. In no event may those provisions of this Declaration required by a preliminary plat approval letter from Ravalli County and/or the City of Stevensville to Declarant be amended or deleted except with the express written consent of that governmental body, its successors or assigns.

Section 5. Waiver of Protest: Participation in Special Improvement District. Declarant hereby waives any and all right to protest which it may have in regard to any attempt to be made by a local governmental entity, to initiate a Special Improvement District, for any of the purposes related to roads, water facilities and systems, and sewer facilities and systems; provided

