

***SECOND AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS***

CANYON FERRY CROSSING

OWNERS ASSOCIATION

APRIL 2002

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**SECOND AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR CANYON FERRY CROSSING OWNERS ASSOCIATION**

This Second Amended and Restated Declaration is made this ____ day of April, 2002, and hereby amends and restates the First Amended and Restated Declaration first made on the 21st day of July, 1998, and incorporates the Second Amendment made November 15, 1999 and the Third Amendment made August 10, 2001, all by **CANYON FERRY CROSSING LLC**, a Colorado limited liability company registered to do business in Montana ("Developer" or "Declarant").

These Covenants, Conditions and Restrictions shall apply to that certain real property situated in Lewis and Clark County, Montana (including any final plats, retracement surveys or certificates of survey as approved by and filed in Lewis and Clark County, Montana), more specifically described on **Exhibit A** attached hereto and made a part hereof (the "Property").

NOW, THEREFORE, Declarant hereby declares the Property shall be held, sold and conveyed subject to the following covenants, conditions and restrictions and this Declaration shall bind all the Owners, Declarant, grantees, heirs, successors and assigns of the Owners and the future owners of the above-described real property.

ARTICLE 1 DEFINITIONS

1.1 **Accessory Building**. A building, not occupied as a Dwelling, such as a garage, barn, workshop or tack shed, detached from a dwelling and used for purposes which are incidental and subordinate to residential or permitted commercial uses, but not occupied for living purposes.

1.2 **Association**. The terms "Association" or "Owners Association" shall mean and refer to the CANYON FERRY CROSSING OWNERS ASSOCIATION, INC., a Montana non-profit corporation, its successors and assigns. This non-profit corporation shall be a legal entity under Montana law and have the right to sue and be sued under applicable State and Federal law. Approval by the Association shall mean approval by the Association Board of Directors, or a committee appointed by the Association Directors, unless approval of Owner members is specifically required.

1.3 **Declaration**. The term "Declaration" shall mean and refer to these Declaration of Covenants, Conditions and Restrictions, including lawful amendments.

1.4 **Developer**. The Declarant is the "Developer", CANYON FERRY CROSSING LLC, its successors and assigns.

1.5 **Dwelling**. A single family residence, designed for and used as permanent living quarters having sleeping, cooking and complete sanitary facilities, subject to the requirements of this Declaration.

1.6 **Guest House.** A residence separate from the Dwelling that does not contain more than 600 square feet of living space and that is used at any time for living quarters, provided that there is no charge to its occupants for living in the Guest House and that it is constructed either at the same time as or after the Dwelling on that same Lot is constructed. Guest Houses shall not be occupied as a permanent residence but rather on a temporary basis for visitors.

1.7 **Design Standards.** The term "Design Standards" shall mean and refer to the Design Standards and Procedures which may from time to time be adopted and published by the Architectural Review Committee, which Design Standards may set forth procedures for review of plans and elevations for buildings, structures and other development on the Lots and may establish standards and criteria which the Architectural Review Committee expects to follow in reviewing proposed developments within the Property, as the same may from time to time be amended or supplemented.

1.8 **Junk Area.** The use of land for the wrecking, dismantling, recycling and/or storage of manufactured or recycled goods of any kind, including, but not limited to, refuse, garbage, rubbish, trash, inoperable Vehicles or equipment and scrap materials of every sort.

1.9 **Lot.** The term "Lot" or "Lots" shall mean and refer to any part, plot, lot or tract of land of the Property which is or has been made subject to this Declaration and is shown as a separate lot or tract upon any recorded deed, final plat, or certificate of survey or which can be lawfully transferred as a unit unto itself.

1.10 **Mortgage.** The term "Mortgage" shall mean and refer to a mortgage, trust indenture, deed of trust or any other security arrangement encumbering a Lot, including a contract for deed.

1.11 **Owner.** The term "Owner" shall mean and refer to the record owner, including Lots owned by the Developer, whether one (1) or more persons or entities, of fee simple title to any Lot which is a part of the Property and is subject to this Declaration, including contract purchasers who have a possessory interest pursuant to their contract to purchase, but excluding contract sellers or mortgagees or persons having such interest merely as security for the performance of an obligation. Owner(s) shall include an Owner or Owners of any subdivided Lot. If the Developer or any Lot owner sells a Lot, the Seller will still be considered Owner of the Lot until a deed, notice of purchaser's interest, or abstract of contract for deed, containing the address of the new owner, is recorded with the Lewis and Clark County Clerk and Recorder and a copy of the recorded document delivered to the Association. A contract seller or vendor is jointly and severally responsible along with the vendee or purchaser for performance of these Declarations, including the payment of dues and assessments.

1.12 **Phase.** The various stages of development of the Property as indicated on a recorded Plat of any portion of the Property and currently identified on Exhibit A.

1.13 **Private Driveways.** Those driveways that are built by the Developer to the extent that they are included in the definition of "Roads."

1.14 **Property**. The term "Property" shall mean and refer to real property described on Exhibit A attached hereto, including any approved and filed amended plats, retracement surveys or certificates of survey of any of the lots and tracts within the Property.

1.15 **Road or Roads**. The term "Road" or "Roads" shall mean and refer to any public driveway, street, highway, road, or thoroughfare within or adjacent to the Property and shown on any recorded subdivision plat, whether designated thereon as driveway, street, avenue or road. Roads shall also include any Private Driveway originally built by the Developer and only to the extent that either the driveway serves more than one Lot or the driveway is contained within an easement on a Lot as shown on the Plat and is labeled "Private Access and Utility Easement" or similar language.

1.16 **Signs**. Any structure, object, device, or part thereof, situated out of doors, or prominently visible from outside the building on which it is situated, which identifies, advertises, displays or otherwise attracts attention to either itself or some other object, person, institution, organization, business, product, service, event, activity, location, thing or happening of whatever nature, and by any means, including words, letters, numerals, figures, designs, symbols, fixtures, colors, mottos, illumination, projection, contrast and the like.

1.17 **Single Family**. One or more persons living together as a single, non-profit, housekeeping unit, as distinguished from a group occupying a hotel, motel, club, fraternity or sorority, commune and the like.

1.18 **Subdivided or Subdivision**. Any division of land, or land so divided, resulting in the creation of two or more tracts of land out of a single, larger tract in order that title to, possession or occupancy of the tract(s) so created may be sold, rented, leased or otherwise conveyed, transferred or used separately and shall include any re-subdivision. Subdivision shall include the creation or attempted creation of two or more tracts out of a larger tract from whatever process or procedure including court order or lien foreclosure.

1.19 **Turnover Date**. The "Turnover Date" is the date on which the Developer elects, at its discretion, to turn over certain responsibilities to the Owners Association. This date shall be no earlier than the date on which 70% of the Lots contained within a specific Phase are sold and all access roads, main telephone lines and main power lines are completed and no later than when 100% of the Lots contained in a specific Phase are sold provided said improvements are completed and further provided that Developer may elect to delay the Turnover Date on a specific Phase until all Phases are turned over. In no event shall the Turnover Date be effective until Developer records a written notice in the Office of the Clerk and Recorder of Lewis and Clark County, Montana evidencing its express intent to effect the turnover. As used in this Declaration "turned over" shall mean that the Turnover Date has occurred.

1.20 **Vehicles**. Any motorized machine, including, but not limited to, an ordinary passenger automobile, truck, three wheeler, motorcycle, four wheeler, tractor, farm equipment, construction equipment, camper, snowmobile, jet ski, wave runner, boat, bobcat, backhoe, plow, trailer, recreational vehicle or commercial vehicle.

ARTICLE 2 OWNERS ASSOCIATION

2.1 **Formation of the Association.** On or before the date on which Declarant conveys to any Owner other than Declarant fee simple title to the first Lot within Property, Declarant shall form the Association.

2.2 **Association Documents.**

(a) This Section 2 is intended by Declarant to summarize the privileges and obligations of an Owner as a member of the Association. The Declarant, for itself, and each Owner of a Lot by acceptance of a deed thereto, shall be bound and shall abide by the additional terms, conditions and obligations set forth in the Articles of Incorporation, the Bylaws of the Association, the Rules and Regulations (defined below) and the Design Standards, as the same may be adopted and amended from time to time. The above documents together with this document shall collectively be referred to as the "Association Documents."

(b) Each Owner shall comply with and benefit from each term, provision, covenant, condition, restriction, reservation and easement contained in the Association Documents. The obligations, burdens and benefits of membership in the Association touch and concern the Property and are, and shall be, covenants running with each Lot for the benefit of all other Lots.

(c) If there is any conflict or inconsistency between the terms and conditions of the Association Documents, the Documents shall control in the following order of priority:

- (i) This Declaration
- (ii) The Articles
- (iii) The Bylaws
- (iv) The Design Standards
- (v) The Rules and Regulations

(d) Upon request, the Association shall allow Owners and Mortgagees to inspect current copies of the Association Documents and the books, records, budgets and financial statements of the Association during normal business hours and under other reasonable circumstances. The Association may charge a reasonable fee for copying such materials as well as for the time of Association staff members associated with such inspection.

2.3 **Membership.** Every Owner of a Lot in the Property, including the Owner of any allowed subdivided Lot, by acceptance of a deed to such Lot, shall be a member of the Owners Association and shall be irrevocably subject to assessments by the Association. Membership shall be appurtenant to and may not be separated from ownership of the Lot. Notwithstanding the above, Lots 2B, 39 and 45 Phase I shall not be included in the Association, shall not pay any Association dues and shall not have any Membership rights.

2.4 **Classes of Members.** The Association shall have one class of members, with the privileges and obligations of such membership defined and set forth in the Articles of Incorporation and Bylaws of said Association.

2.5 **Rules and Regulations.** No Owner shall violate the rules and regulations (the "Rules and Regulations") for the use of the Lots and the Property as set forth in these Declarations or adopted from time to time by the Association. No such Rules or Regulations shall be established which violate the intention or provisions of this Declaration.

2.6 **Voting Rights.** The Owner or Owners shall be entitled to one (1) vote for each Lot owned. Membership in the Association and the vote with respect to any Lot shall be appurtenant and may not be separated from the ownership of that Lot. The vote for any Lot owned by more than one person shall be exercised as such co-owners may among themselves determine, but in no event shall the vote with respect to any Lot exceed the total of one (1) vote per Lot as herein provided and fractional voting shall not be allowed. If such Owners cannot agree as to how to cast their vote when they are required to cast their vote on a particular matter, they shall lose their right to vote on such matter. If any Owner casts a vote representing a certain membership, it will thereafter be conclusively presumed for all purposes that the Owner was acting with the authority and consent of all other Owners with whom such Owner shares the membership, unless objection to such vote is made to the chairperson of the meeting at the time the vote is cast. If more than one vote is cast for any particular Lot, none of such votes shall be counted and all of such votes shall be deemed null and void.

Notwithstanding anything to the contrary contained herein, Declarant shall have the exclusive right to appoint and remove all members of the Board of Directors of the Association until the Turnover Date has occurred for all Phases of the Property. Declarant may relinquish in writing the exclusive rights afforded it pursuant to the preceding sentence at any time. Any director(s) not appointed by Declarant pursuant to the exclusive rights afforded it by this section shall be elected pursuant to the Bylaws of the Association. In the event that the Association is the Owner of one or more Lots, it shall not be entitled to any votes, nor shall it be liable for any assessments, by virtue of such ownership.

2.7 **Purposes.** The Owners Association shall be formed for the purpose of engaging in any lawful services, activities or functions as the Owners Association shall from time to time arrange or provide for, and to transact any such other business for the benefit of the Property as may be permitted by law. The Owners Association shall be empowered to enforce all of the restrictions, covenants and conditions herein including, but not limited to, the maintenance, preservation and improvements of such Property and to keep and maintain the Property and every part thereof in a clean and sanitary condition including the removal of weeds and rubbish on vacant property and streets. Without limiting the generality of the foregoing, the Association may: (i) manage, operate, construct, improve and maintain the Roads, as necessary or appropriate; (ii) administer and enforce the covenants, conditions, restrictions, reservations and easements created hereby; (iii) levy, collect and enforce the assessments, liens, charges and penalties imposed pursuant hereto; (iv) subject to the provisions of Section 6.3 below, appoint members to the Architectural Review Committee with the goal of ensuring that all improvements within the Property are constructed in accordance with Design Standards adopted by such Architectural Review Committee; (v) take any action necessary or appropriate to protect the

general welfare and safety of Owners and residents of the Property and their guests, and (vi) regulate and manage Property with the goal of enhancing and protecting its value.

2.8 **Powers.** Unless expressly prohibited by law or any of the Association Documents, the Association may take any and all actions that it deems necessary or advisable to fulfill its purposes. Without in any way limiting the foregoing, the Association may: (i) adopt and amend the Articles (as provided therein), the Bylaws and the Rules and Regulations; (ii) adopt and amend budgets for revenues, expenditures and reserves, and collect annual, special and default assessments; (iii) hire and fire managing agents and other employees, agents and contractors; (iv) institute, defend or intervene in litigation or administrative proceedings in its own behalf of itself or two or more Owners on matters affecting the Property; (v) make contracts and incur liabilities; (vi) regulate the use, maintenance, repair, replacement and modification of Roads; (vii) cause additional improvements to be made part of the Roads; (viii) acquire, hold, encumber and convey in its own name any right, title or interest in real or personal property; (ix) impose charges for late payments of any assessments, recover reasonable attorneys' fees and disbursements and other costs of collection for Assessments and other actions to enforce the rights of the Association, regardless of whether suit was initiated, and, after notice and an opportunity to be heard, levy reasonable fines and impose reasonable penalties for violations of any Association Documents; (x) impose reasonable charges for the preparation and recordation of amendments to this Declaration or statements of unpaid assessments; (xi) provide for the indemnification of the Association's officers and directors and maintain directors' and officers' liability insurance; (xii) assign its right to future income, including its right to receive assessments; (xiii) add additional land to the Property and include it in the Association; (xiv) provide or procure any services necessary for the safety or security of the Property, Owners, guests or visitors; (xv) approve, install, maintain, repair and replace signage; (xvi) provide or procure landscaping services within the Property; (xvii) plan, arrange and hold recreational activities for the benefit of Owners, residents and their guests; (xviii) become a member of another property owners' association or other similar associations; (xix) exercise any other powers expressly or implicitly conferred on it by the Association Documents or any of them; (xx) exercise all other powers that may be exercised in Montana by nonprofit corporations; and (xxi) exercise any other powers necessary or proper for the governance and operation of the Association.

2.9 **Personal Liability and Indemnification.**

(a) No officer, director, employee, agent or committee member of the Association (including the Architectural Review Committee) shall be personally liable to the Association or any Owner for any injury, damage, loss, cost or expense suffered or incurred by reason of any act or omission of such officer, directors, employee, agent or committee member unless a court of competent jurisdiction finds that the act or omission of such officer, director, employee, agent or committee member was wanton and willful or unless otherwise provided in the Articles and Bylaws.

(b) The Association shall indemnify and hold harmless each present or former officer, director, employee, agent or committee member of the Association against any and all claims, suits, proceedings, injuries, damages, losses, costs and expenses, including, but not limited to, attorneys' fees and disbursements, asserted against or incurred by any such present or former officer, director, employee, agent or committee member to the fullest extent permitted by

the Association Documents; provided, however, that in no event shall the Association indemnify or hold harmless any such officer, director, employee, agent or committee member to the extent that he or she is personally liable for an act or omission under paragraph 2.9(a) above.

ARTICLE 3 ASSESSMENT BY THE ASSOCIATION

3.1 **Creation of the Lien and Personal Obligation of Assessments.** The Declarant, for each Lot owned within the Property, hereby covenants (except Lots 2B, 39 and 45 Phase I), and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) annual assessments or charges, (ii) default or penalty assessments, and (iii) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual, special and default assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment became due. The personal obligation (as distinguished from the lien) for delinquent assessments shall not pass to such Owner's successors in title unless expressly assumed by them. The Developer is exempt from paying the monthly assessments with respect to Lots still owned by the Developer. The initial annual assessments for each Lot (whether or not more than one Lot is owned by one Owner) shall be \$40.00 per month collected semi-annually, until changed by resolution of the Board of Directors of the Association at one of its regular or special meetings. It shall not be necessary for the Board of Directors of the Association to amend this Declaration in order to change the amount or payment frequency of the annual assessments.

3.2 **Purpose of Annual Assessments.** The annual assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of the Owners and occupants of the Property, for the expenses and charges for operating the Association and the Architectural Review Committee, for maintenance and repair of Roads maintained by the Association, including without limitation weed management, roadway signage, lighting, and snow removal, for any other charges or assessments for any legitimate purpose imposed by the Association, and the cost of labor, equipment, materials, management and supervision with respect to any of the foregoing.

3.3 **Default or Penalty Assessments.** Notwithstanding anything to the contrary contained herein, if any common expense or other expense of the Association is caused by (i) the negligence or misconduct of an Owner or an Owner's family member, employee, agent or guest, or (ii) a violation of any covenant, condition or restriction of an Association Document by an Owner or an Owner's family member, employee, agent or guest, the Association may, if it deems necessary or advisable, levy an assessment against such Owner's Lot for the amount of such expense. In addition, the Association may, if it deems necessary or advisable, and if it has previously notified the Owners of the fines, impose a fine, penalty, fee or other charge upon an Owner for the violation of any covenant or condition of any Association Document by an Owner or an Owner's family member, employee, agent or guest. Any such assessment levied by the Association, and each fine, penalty, fee or other charge imposed hereunder, are each referred to herein as a "Default Assessment." Default Assessments need not be shown on an annual budget, or on an amendment to an annual budget, adopted by the Board of Directors of the Association;

provided, however, that with respect to any Default Assessment, or portion thereof, levied other than as a late charge, the Owner of the Lot against which the Association seeks to levy the Default Assessment shall be provided notice and an opportunity to be heard. Owners of Lots against which Default Assessments have been levied shall pay such Default Assessments when required by the Association.

3.4 **Special Assessments for Capital Improvements.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, improvement or replacement of the Roads or a capital improvement upon property owned or maintained by the Association, including fixtures and personal property related thereto, provided that any such assessment shall have the approval of the Members of the Association. Nothing stated herein shall restrict the right of the Association to provide for the repayment of the special assessment over a term of months or years subsequent to the date of such assessment, and upon terms and conditions it deems appropriate, including the collection of interest on the deferred balance.

3.5 **Notice and Quorum for Action.** A meeting of the Members of the Association for the purpose of levying of a Special Assessment under Section 3.4, shall be held pursuant to the requirements of the Bylaws of the Association. In the event the Members decline or are unable to approve the levying of a Special Assessment, nothing herein shall preclude the Association from calling another meeting at any time (subject to the foregoing notice requirements) for the same purpose or purposes.

3.6 **Uniform Rate of Assessment.** Except as provided in Section 3.1, and as may be provided in any Notice given pursuant to Section 9.1, annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a semi-annual or other basis.

3.7 **Date of Commencement of Assessments; Due Dates.** The assessments provided for herein shall commence as to all Lots (except Lots 2B, 39 and 45 Phase I) on the first day of the month following the conveyance of the Lot by Declarant to an Owner, and shall be payable semi-annually thereafter, due on January 1 and July 1 of each year. The first assessment shall be adjusted according to the number of months remaining in the then current semiannual period. The Board of Directors shall fix the amount of the annual assessment against each Lot by December 31 of each year. Written notice of the annual assessment shall be sent to every Owner subject thereto by way of an invoice or other reasonable method. The Board of Directors shall prepare a projected annual budget setting forth the expected annual assessments for the upcoming year, which shall be sent not later than April 1 of each year to the Owners subject to the assessments. The due dates of assessments shall be established by the Board of Directors. The failure of the Board of Directors to timely prepare an annual budget or to invoice an Owner for the assessments shall not relieve an Owner from its obligation to timely pay such assessment on or before January 1 and July 1 of each year. Unless notified otherwise, such assessments shall be paid at the rate required for the previous year. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

3.8 **Effect of Nonpayment of Assessments; Remedies of the Association.** Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date

at the rate of twelve percent (12%) per annum, but in no event to exceed the maximum rate permitted under Montana law, and such Owner shall also pay an administrative late fee of \$10.00 per month until the assessment, and accrued charges, are paid in full. The Association may bring an action at law against the Owner personally obligated to pay the same, or may foreclose the lien against such Owner's Lot in the same manner as a mortgage on real property, and the Association shall be entitled in any such foreclosure proceedings to recover its costs, expenses and reasonable attorney's fees. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the property owned or maintained by the Association or by abandonment of such Owner's Lot. In addition to the foregoing, any member of the Association who is not current in dues or assessments imposed pursuant to this Section 3 shall lose their voting privileges until such dues or assessments are brought current.

3.9 **Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first Mortgage. The sale or transfer of any Lot shall not affect the assessment lien whether such lien arises prior to such sale or transfer, or thereafter becomes due. However, the sale or transfer of any Lot pursuant to foreclosure proceedings of such first Mortgage or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer, but shall not relieve such Lot from liability for any assessments thereafter accruing or becoming due or from the lien thereof or effect the personal liability of the Owner of the Lot, at the time the assessment accrued.

ARTICLE 4 ROADS AND MAINTENANCE

4.1 **Access Restrictions.** No direct access shall be allowed to and from Canyon Ferry Road for Lots 9, 25, 26A, 26B, 27, 28, 30 and 39 of Phase I, Lots 1A, 2A, 6A, 21A and 22A of Phase II, and Lots 27B and 28B of Phase III. Further, no direct access shall be allowed to and from Hegland Tracts Road along the southerly boundaries of Lots 15, 16, 17, 18, 20, 21 and 22 of Phase I. This provision may not be amended without the consent of the Lewis and Clark County Commissioners.

4.2 **Cross Access Easements.** Each Lot Owner hereby grants an easement for and consents to dedication of all Roads shown on any recorded Plat of the Property. Easements for Private Driveways shall be for the benefit and use of only those Lots being accessed by the Private Driveway.

4.3 **Maintenance of Roads.** All of the Roads depicted and shown on the plat of the Property are dedicated public roads except the Private Driveways. The Association shall maintain and repair all of the Roads (including Private Driveways) within the Property (except Canyon Ferry Road), including without limitation weed management, annual maintenance, roadway sign and lighting, and snow removal. The Association shall have the sole discretion to determine what road maintenance will be performed by the Association within the terms of the Association's budget, provided that the Association will at all time comply with the requirements lawfully imposed by Lewis and Clark County with respect to such Road maintenance.

4.4 **Obstructions.** No gates or obstructions shall be placed upon or block any Road.

4.5 **Roads and Driveways.** All Roads shall be open at all times to the public (except Private Driveways) and to persons and vehicles providing public services, including, but not limited to, the fire and sheriff's departments, ambulance, county sanitarian, delivery companies and electrical, plumbing and building inspectors and the agents and invitees of an Owner. All driveways shall be constructed so as to allow reasonable access for emergency vehicles pursuant to Section 5.5(f) below.

ARTICLE 5 USES ALLOWED, BUILDING RESTRICTIONS, TIMBER CUTTING AND SET BACK REQUIREMENTS

5.1 **Residential Density.** All Lots (except Lot 1 of Phase I) shall be used primarily for construction of a Dwelling for Single Family residential purposes and may contain only one Dwelling. Guest Houses may be allowed up to a maximum of one Guest House per Lot, provided that all County and State permitting and approvals are obtained and further provided that there is no charge to its occupants for living in the Guest House and that it is constructed either at the same time as or after the Dwelling on that same Lot is constructed. Up to two Accessory Buildings (including any detached garage) per Lot are also allowed. All Dwellings shall be of good quality, permanent type construction and affixed to the realty. Guest Houses may require additional approvals from the County and State.

5.2 **Minimum Square Footage.** Any Dwelling constructed on a Lot in Phase I or Phase II must have at least 1000 square feet of living space on the main floor exclusive of patios, porches or garages, except that if the Dwelling has more than one story above the ground, then the first floor shall have at least 800 sq. ft. of living space and when combined with the second floor, such Dwelling must have a total of at least 1,000 square feet of living space. Any Dwelling constructed on a Lot in Phase III must have at least 1800 square feet of living space on the main floor exclusive of patios, porches or garages, except that if the Dwelling has more than one story above the ground, then the first floor shall have at least 1000 sq. ft. of living space and when combined with the second floor, such Dwelling must have a total of at least 1,800 square feet of living space. Any questions or variances from these standards must be answered or approved by the Architectural Review Committee. These requirements are waived for Phase I, Lots 2A, 2B, 3, 39 and 45.

5.3 **Moveable Living Conveniences and Mobile Homes.** Except for Phase I, Lots 2A, 2B, 3, 39 and 45, no Dwelling that is constructed offsite and requires transportation to any Lot, whole or in partial assembly, will be permitted; this includes mobile homes, stock modular buildings, used buildings, or any other structure requiring transportation and set up in a partially completed state. However, new structures that are assembled offsite and completely disassembled for transportation including, but not limited to, log homes are permitted, subject to review and approval by the Architectural Review Committee as to its aesthetic merits. Provided the same is in full compliance with the Design Standards and subject to Section 5.12 below, nothing herein is intended to prevent the Owner of a Lot from storing a recreational vehicle on the Lot. Subject to the Design Standards, a trailer, mobile home or other movable living convenience may be located on a Lot during the time that the Lot Owner is actively engaged in the construction of a Dwelling, provided it is in compliance with the Design Standards, but in no event, shall it remain on the Lot for longer than eighteen (18) months. Notwithstanding the above, Developer shall have the right to construct or install a temporary or permanent structure on any Lot for purposes of conducting sales activities.

5.4 **Commercial Uses.** No Lots may be used for commercial purposes, except as follows:

(a) **Commercial Lots.** Lot 1 of Phase I may be used for any commercial purposes consistent with any zoning or land use restrictions of Lewis and Clark County.

(b) **Home Businesses.** Small home businesses conducted in the Dwelling or in an Accessory Building next to the Dwelling are permitted. Such allowed home businesses include activities such as woodworking, crafts, studios, offices for professional or consulting businesses and similar type family businesses. All such home businesses shall be clearly incidental to the use of the premises as a single family Dwelling, shall not change the residential character thereof, and shall be conducted in such a manner as not to give any outward appearance nor manifest any characteristics of a business in the ordinary meaning of the term. Such businesses shall be conducted in a manner that does not infringe upon the right of neighboring residents to enjoy the peaceful occupancy of their homes for which purpose the residential area was created and primarily intended. No noise, light, odor, traffic or other noticeable consequence of the home business may be discernible from adjacent Lots. However, nothing in this Section 5.4 shall be deemed to prevent: (a) Developer or its duly authorized agent from using any Lot owned by Developer as a sales office, sales model, property management office or rental office; or (b) any Owner or his duly authorized agent from renting or leasing all or any part of any Dwelling for residential uses from time to time, subject to all of the provisions of this Declaration.

5.5 **Minimum Building Standards.** All Dwellings and other structures constructed or erected on any Lot or any portion of the Property shall comply with the following requirements which may not be amended or deleted from this Declaration without approval of the Lewis & Clark County Commissioners:

(a) **Radon Potential.** Radon Gas or Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of Radon that exceed Federal guidelines have been found in buildings in Montana. Additional information regarding Radon and Radon Testing may be obtained from a County or State of Montana public health unit. The existence and risk of Radon can be evaluated through appropriate soil tests. If found, the risks from Radon can be mitigated through Radon abatement techniques incorporated into structures.

(b) **Seismic Specifications.** All Dwellings or other structures shall be constructed or erected to specifications which meet or exceed the equivalent provisions in the Uniform Building Code for Seismic Zone 3.

(c) **Fire Code Specifications.** All Dwellings or other structures shall be constructed or erected to specifications which meet or exceed the equivalent provisions in the Uniform Fire Code. Further, all roofing material shall have a Class A or Class B Fire Rating, and no wood roofing materials shall be allowed. All wood burning heating devices shall be equipped with spark arresters, which devices shall be inspected at least annually. All brush and tall grass shall be cleared and maintained for a distance of at least thirty (30) feet from all Dwellings and other structures.

(d) **Lighting**. All exterior lighting shall be arranged and shielded so that the light source cannot be seen from adjacent Roads or Lots and so that no direct beam illuminates other private property or roads.

(e) **Height Limitation**. No Dwelling or other structure on Lots 13 through 18, inclusive, 20, 21, 22, 37 and 38 of Phase I, shall exceed the height of twenty-six (26) feet.

(f) **Access Standards**. All driveways or access to any Dwelling or other structure shall be constructed in accordance with the applicable standards for private roads or driveways as identified in the *Fire Protection Design Standards for Wildland Residential Interface Development*.

(g) **Utility Lines**. All additional utility lines and pipes serving a Dwelling or any other portion of the Property shall be placed and installed underground and in accordance with the Subdivision Regulations for Lewis and Clark County, Montana.

5.6 **Restrictions of Further Subdivision of Lots**. Lot 1 of Phase I may be Subdivided, provided such Subdivision complies with all applicable governmental rules, regulations and procedures. Except for the foregoing Lot, no other Lot or Lots may be further Subdivided except by the Declarant. In the event an Owner of two or more adjoining Lots consolidates such Lots into one lot, such consolidation shall not change the obligation of the Owner to pay assessments or the right of the Owner to votes and for purposes thereof such Lot, shall be considered as the number of Lots as originally configured by the Declarant.

5.7 **Limited Build Zones; Building Envelopes**. No Dwellings may be located in limited build zones as indicated or depicted on the recorded plat of the Property or in the Design Standards, which by this reference are incorporated into this Declaration as though fully set forth at this point. This restriction does not prevent the construction of Accessory Buildings, or fences in the limited build zones. Structures built in limited build zones shall be placed so as to minimize the cutting of trees. No structures, other than fences, shall be built in limited build zones on slopes greater than 25%. With respect to those Lots for which a Building Envelope has been designated in the Design Standards, all Dwellings, Accessory Buildings and other structures shall be constructed, installed and placed entirely within such Building Envelopes unless a variance is granted by the Architectural Review Committee.

5.8 **Set Backs**. All Dwellings and other buildings, not including access roads, fences, and utilities, must be set back at least twenty (20) feet from any boundary line common to another Lot in Canyon Ferry Crossing and at least ten (10) feet from any road right-of-way boundary if the Lot boundary line is within the road right-of-way. Declarant may make specific exceptions to these setbacks at the time it initially conveys any Lot.

5.9 **Sanitation Requirements**. No outside toilets or privies shall be permitted on any Lot, except during periods of construction. All toilet facilities must be part of the residence or other structure and shall be of modern flush type and connected with an approved sewage disposal system. Sewage shall be disposed of only by and through a septic system of adequate dimension and capacity and of a type approved by the applicable governmental entity for the State of Montana and Lewis and Clark County. All septic tanks and drainfields shall be located in areas approved by the applicable governmental entities. All wells shall be drilled in locations

approved by all applicable governmental entities and in compliance with all rules and regulations.

5.10 **Completion of Construction**. Construction of any building or other structure on a Lot must become completed within eighteen (18) months from the date of start of construction, or it will be considered a nuisance, and may be removed or otherwise abated by the Association, at the sole cost and expense of the Owner of the Lot on which such building or other structure is situated. The Association through the Architectural Review Committee may set longer periods of time for good cause shown.

5.11 **Timber Cutting**. It is the goal of Developer to minimize impact on the existing environment. Owners will be encouraged by the Architectural Review Committee, to locate Dwellings and Accessory Buildings so as to minimize the cutting of trees. Except as necessary to clear a building site pursuant to a plan approved by the Architectural Review Committee no timber may be cut. Notwithstanding the above, if a dead or diseased tree creates a danger to persons or property, it may be removed.

5.12 **Storage of Vehicles**. No more than four Vehicles may be stored or parked outside on any Lot at any time, other than short-term guest parking. At no time shall inoperable Vehicles be stored on, or repaired outside of a garage on any Lot. This Section 5.12 shall not prohibit the storage or parking of construction equipment and machinery within the Property during the construction period.

5.13 **Rubbish**. No Lot shall be used or maintained as a dumping ground nor shall any rubbish, trash, garbage or other waste be allowed to accumulate and all garbage and waste shall be kept in sanitary containers, which shall be emptied on a weekly basis by a local sanitation company. No part of any Lot may be used as a Junk Area. Rubbish, garbage and trash shall be kept in a covered container at all times and any such container shall be kept within an enclosed structure. In no event shall any Owner store food or garbage outside of a Dwelling in a location accessible to wildlife or otherwise engage in other activities which may create an attractive nuisance for wildlife species in the vicinity of the Property.

5.14 **Signs**.

(a) **Residential Lots**. The provision of this Section 5.14(a) apply to all Lots other than those identified in Section 5.14(b). The following signs are allowed: (a) one temporary construction sign; (b) one (1) sign for the Owner to advertise his home or Lot for sale; (c) one (1) sign advertising a home business and such sign must be attached to the Dwelling or placed inside a window of the Dwelling; (d) one (1) sign to identify ownership of the Lot; (e) any sign erected by the Declarant or the Association necessary to give directions; (f) any sign erected by the Declarant or the Association necessary to advise of Rules and Regulations; and (g) any sign erected by the Declarant or the Association necessary to caution or warn of danger; and (h) as may be required by law. In addition, Declarant may erect signs to advertise and otherwise sell Lots. Any permitted signs are subject to review by the Architectural Review Committee, except for signs erected by Declarant.

(b) **Commercial Lots.** The signs permitted on Lot 1 of Phase I shall be regulated and approved by the Architectural Review Committee and in accordance with Lewis & Clark County rules and regulations.

(c) **Address Plaques.** The Owner of each Lot shall display and maintain an address plaque in accordance with Lewis & Clark County subdivision requirements.

5.15 **Conservation Area.** The Conservation Area as shown on the Plat has been designated to protect a prime wildlife habitat and allow wildlife and Lot Owners unfenced access between the National Forest and Canyon Ferry Lake. No construction of any kind shall take place on the Conservation Area with the exception of the Roads designated on the Plat. No motorized machine or Vehicle of any kind may be operated in this area by any Persons except on Roads designated on the Plat. Notwithstanding the above, if any Owner of a Lot adjacent to the Conservation Area is unable to obtain an adequate water supply on their Lot after drilling a well bore to a depth of 700 feet, then such Owner may be permitted to locate a well in the Conservation Area as reasonably close as possible to Owner's Lot provided that Owner may not cut any trees or brush in the process of drilling the well, and shall fully restore any disturbed ground to its original condition as closely as possible using native plants and vegetation. Any such drilling must be approved by the Architectural Review Committee including the restoration and reclamation plan. Declarant hereby irrevocably grants the right to the Owner of Lot 13A Phase II to use the existing well located directly east of Lot 13A in the northerly portion of the Conservation Area and have exclusive right to the easement shown on the Plat to install and maintain the necessary pipes and well equipment.

5.16 **Motorized Access to Public Lands.** No person may access public lands adjacent to the Property with a motorized machine or Vehicle of any kind except in designated areas approved by Declarant, if any, and not prohibited by the applicable regulatory officials managing the public lands.

5.17 **Utilities.** Pipes for water, gas, sewer, drainage or other purposes and gas, oil, water or other tanks shall be kept and maintained or below the surface of the ground unless otherwise approved in writing by the Architectural Review Committee prior to installation, except that Satellite reception equipment no larger than 24 inches in diameter are permitted.

5.18 **Restriction on Operation of Vehicles.** No Vehicle shall be operated within or on the Lots or Conservation Area except on approved Roads and driveways unless otherwise specifically permitted by the Rules and Regulations.

5.19 **No Mining and Drilling.** No portion of the Property 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 (except as may be performed by Declarant related to the original construction of improvements on the Property).

5.20 **Animals.** Common domestic pets may be kept on any parcel. No animals, livestock or poultry shall be kept, bred or maintained for commercial purposes. Any animals kept by an Owner must be kept within the boundaries of the Owner's Lot. No pet may be kept which abnormally or unreasonably interferes with the rights, comforts or convenience of other Owners. Lots 6, 8, 27, 28, 30, 31, 35, 36, 44 and 45 of Phase I, Lots 5A, 7A through 18A,

inclusive, Phase II, and Lots 1B through 21B, inclusive, 24B through 30B, inclusive, and 32B through 35B, inclusive, Phase III are approved for horses, not to exceed one (1) horse per 1.5 acres. On Lots approved for horses, corrals, a barn, and related facilities near the Owner's Dwelling are allowed, so long as manure is not allowed to accumulate. All animals shall be cared for in accordance with good animal husbandry practices. Overgrazing of any Lot shall not be permitted. The appropriate grazing level shall be determined by reference to the soil and grass types present on such Lot and in accordance with the standards of the Lewis and Clark County Soil Conservation Service and good agricultural and animal husbandry practices. No wild animal, reptile or bird may be trapped, transported, kept or maintained anywhere within Canyon Ferry Crossing, except for (a) animal control activities of authorized governmental entities and licensed contractors and (b) activities of Owners to trap rodents for the purpose of removal or destruction. If any Owner violates this provision, the Association may take such action as necessary in its judgment to cause the removal and relocation of any animals involved in the violation after reasonable notice to the Owner, and the amount of any expenditures made in so doing shall be a lien on the Owner's Lot and may be enforced by an action at law.

ARTICLE 6 PROTECTIVE COVENANTS: ARCHITECTURAL REVIEW

6.1 **Purpose.** The following protective covenants are designed to provide a uniform plan for the development of the Lots and the Property. The intent of the Declarant in establishing these covenants is to create and maintain a residential area with an atmosphere and charm entirely compatible with the natural environment of the existing property, and further to provide every practical and legal means to safeguard and protect the interests of all Owners and the stability of this development. The Architectural Review Committee shall strive to encourage designs that preserve the natural terrain, drainage, vegetation, trees and topsoil to the extent possible.

6.2 **Requirement of Review by Committee.** No construction, improvement, or alteration of or affecting the external appearance of any Dwellings, Accessory Buildings, Guest Houses, fences, walls, or similar improvements, and no landscaping, wire, pipe, utility line, well, driveway or walkway shall be made, erected, altered, placed or permitted to remain upon any Lot until a site plan and elevations showing the design, location, material, color and exterior finish shall have been submitted to and approved in writing by the Architectural Review Committee in accordance with the Design Standards. The Architectural Review Committee shall be entitled to charge a reasonable fee with respect to the review of any plans or elevations as set forth in the Design Standards, which fees shall be \$750.00, effective as of April 1, 2002, for a Dwelling payable at the time the plans or elevations are submitted. This review fee may be changed by resolution of the Board of Directors of the Association at one of its regular or special meetings. It shall not be necessary for the Board of Directors of the Association to amend this Declaration in order to change the amount or payment frequency of the annual assessments.

6.3 **Membership of Committee.** Except as provided herein, the Architectural Review Committee shall consist of one (1) to three (3) persons appointed by the Board of Directors of the Association. After the Turnover Date for all Phases, at least one of the members of the Architectural Review Committee shall have professional qualifications in the area of architecture, design or land planning. Notwithstanding the foregoing, until such time as all of the Lots have been improved with the construction of a Dwelling thereon, Peter K. Kloepfer shall have the sole authority to appoint all persons to the Architectural Review Committee and remove

and replace such members from time to time, and such persons need not be members of the Association. Peter K. Kloepfer may relinquish or assign his right to appoint any or all members at any time.

6.4 **Design Standards.** The Architectural Review Committee shall publish Design Standards which will set forth the procedures and criteria for review of residences, improvements or other structures to be constructed or installed on any Lot in the Property, and for review of landscaping plans. Failure to follow procedures or criteria set forth in the current published Design Standards shall form an adequate basis for rejection of the submitted site plan and elevations; provided, however, that this requirement shall not be construed as preventing Declarant or the Architectural Review Committee, at their option, from waiving or amending the Design Standards at any time or with respect to any application, provided that such waiver is in writing. Failure to follow such procedures or criteria set forth in the Design Standards shall also be deemed a breach of this Declaration by such Owner and shall entitle the Association or the Architectural Review Committee to exercise and pursue the rights and remedies provided herein with respect to such breach.

6.5 **Approval or Disapproval by Committee.** If the Architectural Review Committee fails to approve or disapprove such design, location, construction, materials, color and exterior finish within thirty (30) days after all of the requirements set forth in the Design Standards have been submitted to it such submittal shall be deemed denied. Any approved plans, elevations and proposals shall then permit the Owner to commence construction in accordance with said plans and elevations. Any deviation from said plans and elevations shall be corrected to conform with the plans and elevations as submitted. Any structure to be erected in accordance with approval so given must be commenced within two (2) years of approval, or new approval must be obtained. If the exterior of any structure is begun and is not completed within eighteen (18) months of the commencement of construction, and in the judgment of the Architectural Review Committee is of offensive or unsightly appearance, then the said Architectural Review Committee or the Directors of the Association, at the option of either, may take such action as may be necessary in its judgment to remove the structure or to improve the appearance so as to make the property harmonious with other properties, including completion of the exterior of the structure, installation of screening or covering of the structure or any combination thereof, or similar operations, and the amount of any expenditures made in so doing shall be a lien on the property and may be enforced by an action at law.

6.6 **Authority of Committee.** The Architectural Review Committee may act by a majority of its members and any authorization or approval made by the Architectural Review Committee must be signed by a majority of the members thereof. A majority vote of the Committee may designate a representative(s) to act in the place of the Committee. The Architectural Review Committee shall have sole and exclusive power to enforce compliance with the Design Standards, and in that regard, shall have the authority to levy and collect fines (including incremental fines for repeat offenders), or sue for damages or injunctive relief. Notwithstanding anything to the contrary contained herein or in any other Association Document, no Owner shall have the right to enforce or seek enforcement of the conditions or restrictions contained in the Design Standards except by bringing such violation to the attention of the Architectural Review Committee.

6.7 **Restoration of Lot.** Upon completion of the construction on any Lot, the Owner shall to the greatest extent possible and in compliance with the Design Standards and approved landscape plan restore the Lot at least to the conditions which existed prior to such construction (taking into account such construction and any landscaping, planting or lawn installed). The Owner must complete said restoration within ninety (90) days following completion of construction on any Lot or as soon thereafter as reasonably possible due to adverse weather conditions or inappropriate growing season. If the restoration is not completed within said time frame, then any expenditures made by the Architectural Review Committee or Association for such restoration shall be a lien on the property and may be enforced by an action at law.

6.8 **Inspection of Projects.** The Architectural Review Committee or its designated representatives may monitor any approved project within the Property to ensure that the construction or work on such project complies with any and all approved plans, construction procedures, applicable Design Standards, Rules and Regulations and applicable law. The Architectural Review Committee or its designated representatives may enter upon any property within the Property at any reasonable time or times to inspect the progress, work status, or completion of any project. The Architectural Review Committee may withdraw its approval of any project and require all activity at such project to be stopped if deviations from the approved plan, construction practices, applicable Design Standards, Rules and Regulations or applicable law are not corrected or reconciled within ten (10) days after written notification to the Owner of the subject property specifying such deviations, or within such lesser period of time as is specified by the Architectural Review Committee in such notice to the Owner. The Architectural Review Committee shall have the authority to levy and collect Default Assessments for such deviations, including, without limitation, incremental monetary fines for the occurrence of repeated violations.

6.9 **Review Board Not Liable.** The Declarant, the Association, the members of its Board of Directors, its officers, the Architectural Review Committee, any of their respective officers, directors, employees, members, agents, successors or assigns (collectively, the "Released Parties") shall not be responsible or liable for any defects in any plans or specifications which are submitted, revised or approved pursuant to this Section 6, nor for any defects in construction pursuant to such plans and specifications, nor for any loss, damage or injury arising out of or in any way connected with the performance of the duties of the Architectural Review Committee. The Released Parties shall not be liable in damages to anyone submitting plans to them for approval, or to any Owner, by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any such plans and submittals. Every person who submits plans to the Architectural Review Committee for approval agrees, by submission of such plans, and every Owner by acquiring title to a Parcel, that he will not bring any action or suit against the Released Parties to recover any such damages. Approval of plans, specifications, or submittals by the Architectural Review Committee shall not constitute an approval, ratification, or endorsement of the quality of architectural or engineering soundness of the improvements reflected thereby and the Released Parties shall not have any liability in connection with approval of plans, specifications or submittals. Approval of plans and specifications pursuant to this Section 6 shall not relieve any Owner of said Owner's responsibility to comply with any and all applicable governmental laws or regulations.

ARTICLE 7 GENERAL RESTRICTIONS THAT APPLY TO ALL PROPERTY SUBJECT TO THESE COVENANTS

7.1 **Maintenance of Property.** Each Owner shall maintain his Lot and improvements in good repair and appearance at all times. Each Lot Owner shall be responsible for control and removal of noxious weeds on their Lot meeting the approved weed management plan for the Property. If a Lot Owner does not remove noxious weeds on their Lot, the Developer prior to the Turnover Date and the Owners Association, or its agents, after the Turnover Date, or the applicable government authority (currently the county weed board) may enter the Lot and take whatever steps necessary to remove noxious weeds at the expense of the Lot Owner.

7.2 **No Illegal, Noxious or Offensive Activity.** No illegal, noxious or offensive activity shall be carried on upon any Lot or any portion of the Property, nor shall anything be done or placed on any Lot or any portion of the Property which is or may become a nuisance to others.

7.3 **No Hazardous Activities.** No activities shall be conducted on any Lot or any portion of the Property and no improvements may be constructed on any Lot or any portion of the Property which are or might be unsafe or hazardous to any person or property. No firearms shall be discharged upon any portion of the Property. The storage of any environmentally controlled substance or hazardous material is expressly prohibited except for ordinary household and garden supplies, so long as such permitted materials are kept, stored, used and disposed of in accordance with all applicable federal, state and/or local government rules and regulations.

7.4 **No Annoying Lights, Sounds or Odors.** No light shall be emitted from any Lot or other portion of the Property which is unreasonably bright or causes unreasonable glare; no sound shall be emitted from any Lot or other portion of the Property which is unreasonably loud or annoying including, but without limitation, speakers, horns, whistles, bells, or other sound devices; and no odors shall be emitted from any Lot or other portion of the Property which are noxious or offensive to others.

ARTICLE 8 ENFORCEMENT AND WAIVERS

8.1 **Declaration Attaches to the Land.** This Declaration, and all terms, covenants and restrictions contained herein, shall run with the land and shall be binding upon the present Owners and all subsequent Owners of any Lot.

8.2 **Waivers Affecting the Property.** The Declarant, for itself and for all future Owners, and their respective heirs, successors and assigns, does hereby waive the right to protest the formation of (i) one or more rural special improvement or maintenance districts for Roads within or serving the Property, (ii) one or more solid waste or rural special improvement districts for construction or placement of a local solid waste container site. This Section 8.2 may not be amended without the consent of the Lewis & Clark County Commissioners.

ARTICLE 9 ADDITION AND EXCLUSION OF REAL PROPERTY

9.1 **Right to Include Additional Real Property.** In addition to the Lots currently subject to this Declaration, Declarant also owns approximately 110 acres immediately west of and contiguous to Phase II (the "Westerly Tract") and two parcels immediately east of and contiguous to Phase III known as Tract 1 ("Tract 1") and Tract 2 ("Tract 2") C.O.S. #3018322, Lewis and Clark County, Montana. The Westerly Tract and Tract 1 and Tract 2 are collectively referred to as the "Additional Parcels". If Declarant or its successors and assigns elects to subdivide any or all of the Additional Parcels, then Declarant may, at its sole option, elect to subject the Additional Parcels to this Declaration at any time prior to June 1, 2022. Only Declarant shall have this right to include the Additional Parcels unless Declarant assigns such right by expressly referring to this Section 9.1 and recording such assignment in the Office of the Clerk and Recorder of Lewis and Clark County, Montana. Such right may be assigned together with or separate from a transfer of any of the Additional Parcels. In order to subject the Additional Parcels to this Declaration, Declarant, or its express assignee of this right, shall file a written document in the Office of the Clerk and Recorder of Lewis and Clark County, Montana ("Notice") and give notice to the Association containing the legal description of the specific Additional Parcel being added and a statement that either all terms and conditions of this Declaration shall govern such Additional Parcel or that there are modifications to this Declaration as it applies to such Additional Parcel. Such modifications may include exempting such Additional Parcels from portions of this Declaration and adding alternate or new provisions that will affect the Additional Parcels. Upon the recording of the Notice, (i) the real property described therein shall thereafter be part of the Property and shall be governed by all of the provisions herein, except as modified by the Notice, and (ii) the Declaration shall be deemed amended to add such additional property to the definition and description of the Property herein. Alternatively, the Declarant may amend and restate this document in its entirety to incorporate the provisions set forth in the Notice and rerecord the amended Declaration in the Office of the Clerk and Recorder of Lewis and Clark County, Montana. Whether or not Declarant exercises the Additional Parcel inclusion right set forth above, Declarant further reserves for itself, its successors and assigns, the right to connect the Additional Parcels to the existing Phase II and Phase III infrastructure including the roads, the electrical system and the telephone system and Declarant hereby expressly grants and reserves the right to use the existing platted easements for roads and utilities connecting the Westerly Tract to Phase II along the boundary of Lots 7A-10A and connecting Tract 1 and Tract 2 to Phase III along their common boundary with Lots 3B-5B. If such connections are made, and the Additional Parcels are not subjected to this Declaration, the owners of the applicable Additional Parcels may elect to keep any such roads closed for private use only. Any utility connections shall be made and maintained by the applicable public utility in a manner so as to not adversely affect the function or operation of the utilities in Phase II and Phase III.

9.2 **Right to Exclude Real Property.** For so long as Declarant owns any portion of the Property, any real property made part of the Property and subject to this Declaration, pursuant to this Declaration or Section 9.1 above, may at any time prior to conveyance of such property to a third party be excluded from the Property and made no longer subject to this Declaration by the recording in the office of the Clerk and Recorder of Lewis and Clark County, Montana, of a written instrument signed by Declarant containing (a) a legal description of the real property to be excluded, (b) a statement that such real property is owned by Declarant, and

(c) a statement that said real property shall no longer be deemed to be a part of the Property or bound by or subject to any part of this Declaration. Alternatively, the Declarant may amend and restate this document in its entirety to effect the provisions of this Section 9.2.

ARTICLE 10 EASEMENTS AND LICENSES

10.1 **Declarant Reservation.** Declarant reserves to itself, its successors and assigns, the right to establish from time to time, by dedication, Plat or otherwise, underground utility and other reasonable easements, permits or licenses over, across, through and under the Property, for any purpose or use reasonably necessary for the use and occupancy of the Property or any other property owned by Declarant, which easements, permits or licenses may include, without limitation, water, sewer, gas, electricity, television cable, drainage, and irrigation.

10.2 **Association's Easements Over Lots.** Declarant hereby grants the Association and the Architectural Review Committee an easement over, across, through and under each Lot to (a) exercise any right held by the Association or the Architectural Review Committee under this Declaration or any other Association Document, and (b) perform any obligation imposed upon the Association or the Architectural Review Committee by this Declaration or any other Association Document. Notwithstanding the foregoing, neither the Association nor the Architectural Review Committee shall enter upon any Lot without reasonable prior notice to the Owner of the Lot, except in cases of emergency.

10.3 **Recorded Easements.** The Property shall be subject to all easements as shown on any recorded Plat and to any other easements of record or of use as of the date of recordation of this Declaration. In addition, the Property is subject to all easements created by this Declaration.

ARTICLE 11 GENERAL PROVISIONS

11.1 **Enforcement.** Violation of any restrictions, conditions, covenants or agreements herein contained shall give to the Association, acting through its Directors, the right to enter upon the Lot, and to summarily abate and remove at the expense of the Owner any building, structure, thing, or condition that may be in, on or upon said Lot contrary to the provisions hereof without being deemed guilty of trespass. The result of every act or omission whereby any restrictions, condition, covenant or agreement is violated in whole, or in part, is hereby declared to be and constitute a nuisance, and every remedy allowed by law against a nuisance, either public or private, shall be applicable against every such result. The Association shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, charges and remedies now or hereafter imposed or available pursuant to this Declaration shall be cumulative and not exclusive. Failure by the Association to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

11.2 **Costs of Enforcement.** If the Association employs an attorney because of a violation by an Owner of one or more of the provisions of this Declaration or the other Association Documents, or if the Association commences an action for the enforcement of this Declaration or the other Association Documents or of the lien for assessments and the

Association is wholly or partially successful in such action, the offending Owner shall be obligated to pay, on demand, all costs, charges and expenses, including reasonable attorneys' fees, incurred by the Association.

11.3 **Severability**. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

11.4 **Amendment**. Prior to the Turnover Date for each Phase, Declarant may amend this Declaration at any time as it may apply to any Phases which have not been turned over. After the Turnover Date for each Phase, any provision herein may be amended or revoked, and additional provisions added, at any time by a written instrument recorded in the office of the Clerk and Recorder of Lewis and Clark County, Montana, duly signed and acknowledged by the Owners of record of not less than sixty percent (60%) of the Lots subject to this Declaration to the extent their consent is specifically required pursuant to the terms of this Declaration. Notwithstanding the foregoing, so long as Declarant, Canyon Ferry Crossing LLC, owns any Lot in the Property, then the consent of Peter K. Kloepper or his successor appointee shall be required before these covenants and restrictions may be altered or amended, but such consent may be considered in the calculation and determination of the said sixty percent (60%) minimum consent requirement. Notwithstanding the above, the provisions of Sections 4, 5.5 and 8.2 may not be amended or revoked without the consent of the Board of County Commissioners of Lewis and Clark County.

11.5 **Covenants Binding**. Each provision of this Declaration and a promise, covenant and undertaking to comply with each such provision (i) shall be deemed incorporated in each deed or other instrument by which any right, title or interest in any of the Property is granted, devised or conveyed; (ii) shall by virtue of acceptance of any right, title or interest in any of the Property by an Owner be deemed accepted, ratified, adopted and declared as a personal covenant of such Owner and shall be binding on such Owner or his or her respective heirs, personal representatives, successors or assigns, to, with and for the benefit of the Declarant and all Owners within the Property; (iii) shall be deemed a covenant, obligation and restriction secured by a lien binding, burdening and encumbering the title to all of such Owner's right, title and interest to any of the Property, which lien shall be deemed a lien in favor of the Declarant, as its interest may appear, and all Owners within the Property; and (iv) shall run with the land.

11.6 **Term**. The provisions of this Declaration shall be binding for a term of thirty (30) years from the date of this Declaration, after which time the Declaration shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the Owners of not less than sixty percent (60%) of the Lots has been recorded, agreeing to revoke or terminate this Declaration.

11.7 **Interpretation of This Declaration**. Except for judicial construction, the Association shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by court of competent jurisdiction, the construction or interpretation of the provisions hereof by the Association shall be final, conclusive and binding as to all persons and property benefited or bound by the covenants and the provisions hereof.

11.8 Failure to Act or Enforce. Neither Declarant nor the Architectural Review Committee, nor 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 if the action taken or failure to act is in good faith and without malice. Failure to enforce any provision of this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration.

11.9 Disclaimer of Representations. Notwithstanding anything to the contrary in this Declaration, Declarant makes no warranties or representations whatsoever that the plan presently envisioned for the complete development of Canyon Ferry Crossing can or will be carried out or that any land 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 land is once used for a particular use, that such use will continue in effect.

ARTICLE 12 MORTGAGE PROTECTION

A breach of any of these Covenants, Conditions and Restrictions contained herein shall not render invalid the lien, encumbrance of any Mortgage, or security interest on any Lot if such mortgage, lien, or security interest is made in good faith and for value. Further any lien for unpaid dues is junior and subject to any valid Mortgage, encumbrance, or security interest in any Lot.

IN WITNESS WHEREOF, CANYON FERRY CROSSING LLC HAS SIGNED THIS SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ON THE DATE SET FORTH IN THE ACKNOWLEDGEMENT.

CANYON FERRY CROSSING LLC,
a Colorado limited liability company

By: _____

Peter K. Kloepfer, Manager

STATE OF COLORADO)

) ss

CITY AND COUNTY OF DENVER)

This instrument was acknowledged before me on the 25th day of April, 2002, by Peter K. Kloepfer, as Manager of Canyon Ferry Crossing LLC.

Notary Public: Martha J. Hale

My Commission Expires: 10/18/2005

[SEAL]

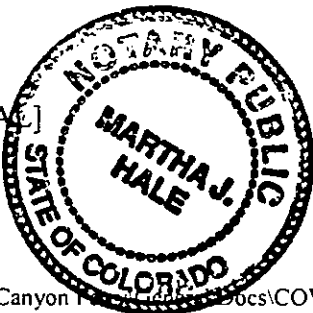


EXHIBIT "A"

Legal Description

The real property to which this Declaration of Covenants, Conditions and Restrictions for Canyon Ferry Crossing Owners Association attaches is located in Lewis and Clark County, Montana and is more particularly described as follows:

1. Lots 1 through 45, inclusive, of Canyon Ferry Crossing (Phase I);
2. Lots 1A through 22A, inclusive, of Canyon Ferry Crossing (Phase II); and
3. Lots 1B through 35B, inclusive, of Canyon Ferry Crossing (Phase III);

a subdivision of Lewis and Clark County, Montana, according to the official recorded plat thereof.