

ARTICLE II:

Property comprising the Neighborhood

The Neighborhood is the property which is subject to this Declaration. This article describes the real property of which the Neighborhood will initially be comprised and provides the method by which property may be added.

2.1 Initial Property. The real property which shall be held, transferred, conveyed and occupied subject to this Declaration consists of that real property described on Exhibit A-2.

2.2 Development Plan.

(a) Master Plan Area. The property which comprises the Master Plan Area is intended for development as a single, unified traditional neighborhood as described in the Zoning Matrix adopted as a part of the Master Plan. Portions of the Master Plan Area which are primarily for higher density or more intense uses (i.e., Hellgate Meadows Village Core), will be submitted to a separate declaration and maintained by a separate association.

(b) Right of Way Dedicated for Additional Street Connections. The Master Plan and the plat of Hellgate Meadows Subdivision include two lots which have been dedicated by Founder as right of way for two additional street connections from O'Leary Street to the southerly boundary of Hellgate Meadows Subdivision. The two lots are described as Lot 40, Phase II of Hellgate Meadows Subdivision and Lot 185 of the preliminary plat of Phase III of Hellgate Meadows Subdivision. The final plat approval of Hellgate Meadows Subdivision by the City of Missoula provides that the rights of way dedicated by Founder over these two lots shall not be required to be developed with full street improvements unless the adjacent property to the south dedicates a continued public right of way to the south within two years of the date of filing of the final plat of Phase III of Hellgate Meadows Subdivision. In the interim and pending such dedication, the Founder agrees that it will dedicate and pave a 20 foot right of way being 10 feet on either side of the center line of Lot 40, Phase II of Hellgate Meadows Subdivision in order to provide access to the alleyways behind Lots 41 and 39, Phase II of Hellgate Meadows Subdivision, in an easterly and westerly direction, respectively. The remainder of Lot 40, Phase II, Hellgate Meadows Subdivision, will be landscaped by Founder. A like arrangement will be effected by Founder with respect to Lot 185 of the preliminary plat of Phase III of Hellgate Meadows Subdivision, depending upon the status of the dedication of the continued public right of way to the south at the time of the filing of the final subdivision plat for Phase III, Hellgate Meadows Subdivision.

2.3 Additional Property.

(a) The Founder shall have the right, but not the obligation, for a period of thirty (30) years from this date, from time to time and at its sole discretion, to add to the Residential Neighborhood contiguous property, property any portion of which is within one-half mile of any portion of the Residential Neighborhood (including any property separated from the Residential Neighborhood by a public street, body of water or other property) or any other property with a reasonable relationship to the Residential Neighborhood. The foregoing property shall either be owned by Founder or shall be added with the express

written consent of the owner and the Founder. The Founder may also add individual Residential Units (such as apartment or condominium units above stores or offices or which are free standing) which are within primarily the commercial Village Core portion of the Master Plan Area, even if the land surrounding the units is not added. If individual Residential Units which are within the primarily commercial Village Core portion of the Master Plan Area are added, the amount of assessments to be paid by such units may be reduced, based upon a reasonable estimate of the unit's usage of the Commons.

(b) Supplemental Declaration. A Supplemental Declaration adding the additional property shall become effective upon being recorded in the county's public records. The Supplemental Declaration may modify or add to the provisions of this Declaration if needed to reflect the different character of the additional property. A Supplemental Declaration may define Zones.

2.4 Zones.

(a) Definition. As provided in section 1.26, "Zones" are smaller, contiguous areas within the Master Plan Area which by virtue of the Zoning Matrix adopted as a part of the Master Plan, define the type(s) of use permitted within each zone, including, but not limited to, building type(s) and character.

(b) Intent. As provided in paragraph 1.26 hereof, Zones are intended to provide a flexible means for providing additional maintenance or capital improvements for a small portion of the Residential Neighborhood which has special needs. Owners of property within a Zone may be assessed for maintenance of property primarily serving that Zone. A Zone may also be established to identify a small portion of the Residential Neighborhood on which certain kinds of use, otherwise prohibited by this Declaration, shall be permitted.

(c) Designation. Zone boundaries may be designated at the time of the addition of the property by Supplemental Declaration, or at any later time by the Board.

ARTICLE III:

Easements

Each Parcel is benefitted by, and burdened by, certain easements.

3.1 Easements in Favor of the Association. The Founder hereby reserves for itself and its successors and assigns (which shall expressly include providers of public or private utility services) and for the Association and its assigns the following easements, which shall benefit the Neighborhood:

(a) Utility Easements. An Easement(s) as designated on the face of the plat, upon, across, over, through, and under the Residential Neighborhood for ingress, egress, installation, replacement, repair and maintenance of all public and private utility and service systems. These systems include, but are not limited to, water, sewer, irrigation systems, drainage, telephone, electricity, television, security, cable or communication lines and other equipment. By virtue of this easement(s) the Founder and the Association, and its successors or assigns, may install and maintain facilities and equipment, excavate for such purposes and affix and maintain wires, circuits and conduits. The Founder and the Association shall have the right to reasonable entry upon and temporary use of the property immediately adjacent to said easement(s) for necessary activities related to constructing, maintaining, improving, repair or removing elements of the public and/or private utility and service systems. Provided, however, that Founder and the Association shall only make such excavation as is reasonably necessary for the installation, maintenance, improvement, repair or removal of said public and/or private utility and service systems.

(b) Police Powers. A blanket easement throughout the Residential Neighborhood for private patrol services, and for police powers and services supplied by the local, state and federal governments. The reservation of such easement does not imply, in any respect, that any such service shall be provided.

(c) Drainage, Erosion Controls. A blanket easement and right on, over, under and through the ground within the Residential Neighborhood to inspect, maintain and to correct drainage of surface water and other erosion controls. This easement includes the right to cut any trees, bushes or shrubbery, grade soil, or to take any other action reasonably necessary for health or safety or to comply with governmental requirements. The Association shall notify affected Owners (except in an emergency) and shall restore the affected property to its original condition as nearly as practicable.

(d) Encroachment. An easement for any improvements constructed on the Commons which encroach on any Parcel, whether due to any minor deviation from the subdivision plat of the Residential Neighborhood or the settling or shifting of any land or improvements.

(e) Maintenance of Commons. To the extent reasonably necessary, an easement over any Parcel for maintenance of the Commons.

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3.2 Relationship between Lots.

(a) Intent. The design for Hellgate Meadows is intended to maximize land usage and sense of community by providing common boulevards, squares and parks while offering small but private yards for individual use. As provided by Hellgate Meadows Design Code, certain buildings within the Residential Neighborhood may be attached as row houses, or may be detached but placed on or near the property line. No row houses shall be allowed in the Neighborhood Edge Zone as reflected in the Zoning Matrix adopted as a part of the Master Plan. The easements in this Section 3.2 are intended to provide guidelines for reasonable cooperation between neighbors. The Association may make rules for maintenance and use of easement areas and shared improvements which shall be applied uniformly to all Lots similarly configured.

(b) Lot Lines. Lots may not be subdivided or separated into smaller Lots, or any portion of a Lot separately conveyed, except by the Founder or with the specific consent of Hellgate Meadows Architectural Review Board. However, this shall not prohibit corrective deeds or similar corrective instruments. The Founder may redefine Lots prior to sale by dividing or combining Lots or portions of Lots and adjusting the boundary of a Lot. The Founder shall also have the right to modify subdivision plats of the Residential Neighborhood to make adjustments to Lot boundary lines with consent only of those Owners whose Lot boundaries are to be changed. The division or combination of Lots may be subject to zoning or other governmental regulation, which may require, among other things, that the number of Residential Units not be reduced if Lots are combined.

(c) Structural Party Walls. Each Owner grants to the Owner of each adjacent Lot the right and easement to maintain and to utilize any exterior or interior wall of a Building which forms a party wall between them. A wall will be considered a party wall only if it provides structural support for the Buildings, or parts of a Building, on more than one Lot. Maintenance of the surface of the party wall shall be the sole responsibility of the Owner whose Building faces such wall. Each Owner shall be liable and responsible if, in connection with that Owner's use and maintenance of the party wall, the Owner damages the adjacent Owner's Lot or the wall itself. The cost of any other repairs to the party wall shall be shared equally by the adjacent Owners.

(d) Exterior Walls along a Lot Line. An exterior wall which supports the Building on only one Lot, or which encloses a courtyard on one Lot, shall not be considered a party wall. The Association may make rules and regulations concerning use and maintenance of such walls, including assigning responsibility between the adjoining owners for painting and repair and granting access over the adjoining Lot as reasonably necessary to maintain the wall. All such maintenance and repair shall be in accordance with Hellgate Meadows Design Code.

(e) Roof Overhang; Footings. For certain building types, such as side yard houses, which are to be built along a property line, Hellgate Meadows Design Code may permit roofs, gutters, soffits and down spouts to overhang this property line, and may allow footings and rain leaders to intrude below the surface of the same property line. To the extent allowed by the Design Code and local governmental regulations the adjacent property shall be subject to an easement for such intrusion. However, roofs, gutters, down spouts and rain leaders may not discharge water onto adjacent property.

(g) Townhouse or Row House Roof. If a townhouse or row house wall or parapet is constructed along or very near the property line, the owner of the townhouse or row house to be constructed on the adjacent property shall have the right to flash into the existing building, in accordance with industry standards and in order to make the new building watertight. This right shall include the right to make minor cuts on the existing building and to secure flashing or other materials to the existing building, so long as the structural integrity and watertightness of the existing building is not impaired. The cost for flashing shall be incurred by the owner of the new building, but the maintenance of this connection shall be a shared expense between adjacent property owners.

ARTICLE IV: Commons

Certain property within the Neighborhood and certain easement rights, called the "Commons," are to be owned and maintained by the Association for the benefit of all Owners.

4.1 Title.

(a) Association-Owned Commons. The Association shall hold title to certain Commons. For those portions of the Commons which consist of easements and other rights, the Association shall be the holder of those rights.

(c) Additional Commons. The Developer may convey to the Association additional Commons which the Association shall accept for development and maintenance.

4.2 Development, Maintenance and Capital Improvements.

(a) Generally. The Association shall be responsible for the development, management, maintenance, control and improvement of the Commons and shall keep the Commons attractive, clean and in good repair.

(b) Capital Improvements. Subject to design review, the Association shall be responsible to develop the Commons. The Association may also make capital improvements to the Commons and may modify the uses of the Commons, subject to design review. For example, the Association may add recreational facilities (which improvements must be approved in accordance with the architectural review provisions of the Master Deed

Restrictions). Expenses for any substantial capital improvements must be approved in accordance with Section 8.6.

4.3 Owners' Easements of Access and Enjoyment.

(a) Commons. The Founder hereby grants and conveys to every Owner a right and easement of appropriate use and enjoyment of the Commons, subject to the Association's right of regulation in accordance with this Declaration and the Founder's right to use the commons as provided in paragraph 4.4 (c), and subject also to any limitations contained in the conveyance of those Commons to the Association. These easements shall be appurtenant to and shall pass with title to every Parcel.

(b) Tenants, Guests. Any Owner may delegate, subject to the provisions of this Declaration, the Bylaws and the Rules and Regulations, his right to enjoyment to the Commons to the members of his family, his tenants or his guests who reside on the Parcel or are accompanied by the Owner. The Association may adopt rules to prohibit or restrict use of any Commons recreational facilities by a non-resident Owner whose Residential Unit has been leased to a tenant, except when the Owner is a bona fide guest of the tenant.

4.4 Use of Commons.

(a) Members' Benefit. The Association shall develop and maintain the Commons for the benefit of its Members.

(b) Non-Members. The Association may permit limited use and access for all or a portion of the Commons which are not dedicated to the public, through the sale of club memberships or other fees. Any such revenue shall benefit the Association. Provided, however, that no restriction shall be adopted which prohibits use or access by the general public to those portions of the Commons which are developed as a park(s).

(c) Open-Air Market and Festivals. The Founder reserves, for itself or its various assigns, the right to use portions of the Commons as an open-air market for the rental of space for pushcarts, kiosks, stands or similar temporary sales structures. Such uses may be for special events or on a recurring or daily basis. Founder also reserves, for itself or its various assigns, the right to use portions of the Commons for festivals or other events intended to enrich and enliven the community. Founder further reserves a right of access through the Commons for all such purposes. Founder may, but is not obligated to, assign such rights to the Association at any time.

(d) No Commercial Use. Except as specifically permitted by this Declaration, there shall be no commercial use of the Commons, nor shall the Commons be subdivided or sold.

4.5 Common Road Regulation. To the extent permitted by the City of Missoula, the Association may make rules and regulations concerning driving and parking within the Residential Neighborhood. To the extent permitted by the City of Missoula, the Association may enforce any violation in accordance with Section 11.8 hereof.

4.6 Surface Water or Stormwater Management System. Subject to the reservation in favor of the Founder set forth in paragraph 3.1 hereof, the Association shall have the right and power to maintain proper drainage within the Residential Neighborhood. In the exercise of this right and power, the Association shall have a blanket easement and right on, over, under and through the ground within the Residential Neighborhood to maintain and to correct drainage of surface water. This easement includes the right to cut any trees, bushes or shrubbery, grade soil, or to take any other action reasonably necessary for health or safety or to comply with governmental requirements. This easement includes the right and power of the Association to assign to or to otherwise authorize public entities or public or private utilities to exercise the rights of the Association enumerated herein.

4.7 Damage or Destruction of Commons by Owner. If any Owner or any of his guests, tenants, licensees, agents, employees or members of his family damages any of the Commons as a result of negligence or misuse, the Owner hereby authorizes the Association to repair the damage. The cost of repair shall be the responsibility of that Owner and shall become an Individual Parcel Assessment payable by the responsible Owner. The Association may, but is not required to, seek compensation for damage from the guest, tenant or other party who caused the damage, in which case the Owner shall be jointly and severally liable.

4.8 Limitation of Liability. The Association shall use reasonable judgment in developing and maintaining the Commons and in exercising its rights and powers with respect to the use of the Commons, but neither the Association nor the Founder makes any representation or assumes any liability for any loss or injury.

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ARTICLE V: Community Planning and Administration of The Design Code

Hellgate Meadows will be built by many different owners, architects and builders. Each of these individuals will contribute to the shaping of the final community.

Hellgate Meadows Architectural Standards communicates the elements which are essential for creating the community. Within these essential elements, there is room for the creative and individual design which vitalizes the community.

5.1 Master Deed Restrictions. The Master Deed Restrictions establish the Hellgate Meadows Design Code as the guide for all construction within Hellgate Meadows, provide for a Village Architect to administer Hellgate Meadows Design Code, and create Hellgate Meadows Architectural Review Board. All construction or modification of any building or other improvements, any tree removal or landscaping or any material alteration of the topography of any Lot or Commons must be approved in advance by Hellgate Meadows Architectural Review Board. The Master Deed Restrictions provide for the Founder to appoint the Village Architect and the other members of the Architectural Review Board, and to enforce Hellgate Meadows Architectural Standards during the development period.

5.2 Binding Effect. The Master Deed Restrictions, which are recorded in the public records, are binding upon all of the property in the Master Plan Area. Unless a notice is recorded specifically to the contrary, the submission of additional property to this Declaration for Hellgate Meadows shall automatically extend the provisions of the Master Deed Restrictions to the additional property.

5.3 Assignment to Association. The Master Deed Restrictions provide for the Founder's enforcement of Hellgate Meadows Design Code during the entire development period. At the end of the development period, the Founder shall assign to the Association its rights to enforce Hellgate Meadows Design Code, as provided in the Master Deed Restrictions, which assignment may include a reservation of the right of the Founder to also enforce Hellgate Meadows Design Code as provided in the Master Deed Restrictions. Upon such assignment or if for any reason the Founder is unable or unwilling to perform its powers under Articles I and II of the Master Deed Restrictions, the provisions of Articles I and II of the Master Deed Restrictions shall become part of this Declaration as if originally included. If provided for in the assignment by the Founder, the Residential Neighborhood Association and the Village Core Association shall jointly have and assume the responsibility of appointing Hellgate Meadows Architect and members of Hellgate Meadows Architectural Review Board and enforcing all violations of Articles I and II of the Master Deed Restrictions with all of its powers under the Master Deed Restrictions and this Declaration.