

***DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS***

***ASPEN PARK AT MOUNTAIN VIEW MEADOWS
OWNERS ASSOCIATION***

October, 2009

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EXHIBIT “A”

Legal Description

The real property to which this Declaration of Covenants, Conditions and Restrictions for Aspen Park at Mountain View Meadows Owners Association attaches is located in Lewis and Clark County, Montana and is more particularly described as follows:

See the plat for Aspen Park at Mountain View Meadows Subdivision which is attached hereto as Exhibit A and by this reference incorporated herein.

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

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ASPEN PARK AT MOUNTAIN VIEW MEADOWS OWNERS ASSOCIATION

This Declaration is made this _____ day of _____, 2009 by R AND D PARTNERS LLC, a Montana 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"). The purpose of these Covenants, Conditions and Restrictions is to enhance and protect the value, desirability and attractiveness of the Property as a highly desirable subdivision, reflecting quality materials and workmanship. These Covenants, Conditions and Restrictions are intended to ensure harmony in the external design of all new construction with existing structures, and ensure that the location of each structure is optimized with respect to topography and finished grade elevations. Ultimately, the purpose of these Covenants, Conditions and Restrictions is to provide a uniform and attractive neighborhood environment. 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.

SECTION 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 ASPEN PARK AT MOUNTAIN VIEW MEADOWS 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", R AND D PARTNERS, LLC, its successors and assigns.

1. 5. Dwelling. A single or multi-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. 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 Residential 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.

1.7. Junk Area. The use of land for the wrecking, dismantling and/or storage of junk, including, but not limited to, garbage, inoperable Vehicles or equipment and scrap materials of every sort.

1.8. Residential Lot. The term "Residential Lot" or "Residential Lots" shall mean and refer to any 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 surveyor which can be lawfully transferred as a unit, unto itself.

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

1.10. Owner. The term "Owner" shall mean and refer to the record owner, including Residential Lots owned by the Developer, whether one or more persons or entities, of fee simple title to any Residential 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 Residential Lot. If the Developer or any Residential Lot Owner sells a Residential Lot, the Seller will still be considered Owner of the Residential Lot until a deed, notice of purchasers 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 is 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 the Plat.

1.13. 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 Residential Lots and tracts within the Property.

1.14. Road or Roads. The term "Road" or "Roads" shall mean and refer to any public driveway, street, highway, road, alley, or thoroughfare within or adjacent to the Property and shown on any recorded subdivision plat, whether designated thereon as driveway, street, avenue or road.

1.15. 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.

1.16. 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.

1.17. 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.

1.18. Turn Over Date. The "Turn Over 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 90% of the Residential Lots are sold and all access roads, main telephone lines and main power lines are completed and no later than when 100% of the Residential Lots are sold, provided said improvements are completed.

1.19. 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.

SECTION 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 Residential 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 Residential 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 Residential Lot for the benefit of all other Residential 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. The Articles of Incorporation and Bylaws
- ii. This Declaration of Covenants, Conditions and Restrictions
- iv. The Architectural Design Standards

(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 Residential Lot in the Property, by acceptance of a deed to such Residential 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 Residential Lot. Notwithstanding the above, Residential Lots which provide common areas, open space or trail access shall not be included in the Association, shall not pay any Association dues and shall not have any Membership rights. **Residential Lots which are owned by the Developer shall not pay any Association dues.**

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 this Declaration and 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 Residential 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 Residential Lot owned. Membership in the Association and the vote with respect to any Residential Lot shall be appurtenant and may not be separated from the ownership of that Residential Lot. The vote for any Residential 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 Residential Lot exceed the total of one (1) vote per Residential Lot as herein provided and fractional votes 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 Residential 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 date on which 95 percent of the Residential Lots within the Property have been sold to Owners other than Declarant. Thereafter, Declarant shall have the exclusive right to appoint and remove two-thirds of the members of the Board of Directors (rounded upward to the nearest whole director) until such time as Declarant no longer owns any Residential Lot or Tract within ASPEN PARK AT MOUNTAIN VIEW MEADOWS.

Declarant may relinquish in writing the exclusive rights afforded it pursuant to the two preceding sentences at any time. Any director(s) not appointed by Declarant pursuant to the exclusive rights afforded it by this section shall be elected by the affirmative vote of a majority of the Owners present in person or by proxy at a meeting at which a quorum is present called for the purpose of electing such director(s). Cumulative voting shall not be allowed in the election of members of the Board of Directors or for any other purpose. In the event that the Association is the Owner of one or more Residential 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 the 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. Without limiting the generality of the foregoing, the Association may:

- (i) manage, operate, construct, improve and maintain open space, 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 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 on matters affecting the Property;
- (v) make contracts and incur liabilities;
- (vi) regulate the use, maintenance, repair, replacement and modification of open space;
- (vii) cause additional improvements to be made part of open space;
- (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) provide or procure any services necessary for the safety or security of the Property, Owners, guests or visitors;
- (xiv) approve, install, maintain, repair and replace signage. **Note: Aspen Park at Mountain View Meadows Subdivision has the right, as a Planned Unit Development approved by the Helena City Commission, to place at all entrances to the subdivision "entrance signs" up to 50 square feet in area on each side, (which square footage does not include structures supporting the entrance signs).**
- (xv) provide or procure landscaping services within the Property;
- (xvi) plan, arrange and hold recreational activities for the benefit of Owners, residents and their guests;
- (xvii) become a member of another property owners' association or other similar associations;
- (xviii) exercise any other powers expressly or implicitly conferred on it by the Association Documents or any of them;
- (xix) exercise all other powers that may be exercised in Montana by nonprofit corporations; and
- (xx) 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, director, 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.
- (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.

SECTION 3: ASSESSMENT BY THE ASSOCIATION

3.1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Residential Lot owned within the Property, hereby covenants, and each Owner of any Residential 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 Residential 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 Residential 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 Residential Lots still owned by the Developer.** The initial annual assessments for each Residential Lot (whether or not more than one Residential Lot is owned by one Owner) shall be \$2.00 per month collected 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 open space maintained by the Association, including without limitation weed management and 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. 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.

3.3. 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 Residential 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 Residential Lot against which the Association seeks to levy the Default Assessment shall be provided notice and an opportunity to be heard. Owners of Residential 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 any open space 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. No special assessments shall be made prior to January 1, 2010.

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 this document. 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, annual and special assessments must be fixed at a uniform rate for all Residential 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 Residential Lots on the first day of the month following the conveyance of the Residential Lot by Declarant to an Owner, and shall be payable annually. The first assessment shall be adjusted according to the number of months remaining in the then current semi-annual period. The Board of Directors shall fix the amount of the annual assessment against each Residential Lot by December 1 of each year. Written notice of any change in the annual assessment shall be sent to every Owner subject thereto. The Board of Directors shall prepare a proposed annual budget setting forth the expected annual assessments for the upcoming year, which proposed budget shall be presented to the members for approval at the annual meeting of the members of the Association. The due dates of assessments shall be established by the Board of Directors. 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 Residential 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. **The Association may file a lien with the County Recorder to enforce collection of any monies owing to the Association pursuant to these Covenants, Conditions and Restrictions.**

The Association may bring an action at law against the Owner personally obligated to pay the same, or may foreclose the lien against such Owners Residential 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 Owners Residential Lot.

In addition to the foregoing, any member of the Association who is not current in dues or assessments 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 Residential Lot shall not affect the assessment lien, whether such lien arises prior to such sale or transfer, or thereafter becomes due. **Any outstanding assessments shall be paid in full to the Association before title to any Residential Lot is transferred.** However, the sale or transfer of any Residential 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 Residential 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 Residential Lot at the time the assessment accrued.

SECTION 4: Open Space Maintenance

4.1. Maintenance of Open Space. The Association shall maintain and repair all of the open space within the Property that is not maintained by the City of Helena, including without limitation, weed management, annual maintenance, signage and lighting, and snow removal. The Association shall have the sole discretion to determine what 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 the City of Helena or Lewis and Clark County with respect to such maintenance.

SECTION 5: USES ALLOWED. BUILDING RESTRICTIONS. TIMBER CUTTING AND SET BACK REQUIREMENTS

5.1. Residential Density . All Residential Lots shall be used primarily for construction of a Dwelling for Single Family residential purposes and may contain only one Dwelling. **Absolutely no accessory Buildings, including guest houses, garages, storage buildings or storage sheds, are allowed. Condominiums, duplexes, and multi-family dwellings may be constructed only with the Developer's express written permission, which permission may be denied by the Developer for any reason.**

5.2. Minimum Square Footage and Height of Structures. Unless otherwise approved by the Architectural Review Committee, any Dwelling constructed on a Residential Lot must have at least 1350 square feet of living space, exclusive of patios,

porches, basements or garages, except that if the Dwelling has more than one story above the ground, then the first floor shall have at least 900 sq. ft. of living space. **Any variances from this standard must be approved by the Architectural Review committee, and be approved in writing by the Developer.** Private garages shall not exceed four cars for a single family dwelling.

Note: Aspen Park at Mountain View Meadows Subdivision has the right, as a Planned Unit Development approved by the Helena City Commission , to allow residential structures in R-2 and R-3 zoning that may be up to 35 feet in height (to the mid-point of the gable), as defined by the City of Helena zoning ordinance and related documents.

5.3. Moveable Living Conveniences and Mobile Homes. Except as specifically approved in writing by the Developer, no Dwelling that is constructed offsite and requires transportation to any Residential 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 disassembled for transportation (including, but not limited to, timber-frame homes) are permitted, subject to review and approval by the Developer. No trailer, mobile home, motor home, basement, tent, shack, garage, barn or movable living convenience may be located on a Residential Lot during the construction of a Dwelling or at any other time, except as specifically approved in writing by the Developer.

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

Home Businesses. Small home businesses conducted in the Dwelling are permitted, so long as such business complies with all City of Helena rules and requirements. 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. Such businesses shall not cause an unreasonable amount of traffic to be directed to the business, and at no time shall more than two automobiles from employees or customers be parked on the Residential Lot. No noise, light, odor or other noticeable consequence of the home business may be discernible from adjacent Residential Lots. However, nothing in this paragraph shall be deemed to prevent:

(a) Developer or its duly authorized agent from using any Residential 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.

Note: Aspen Park at the Mountain View Meadows Subdivision, as a Planned Unit Development approved by the Helena City Commission, permits both churches and schools (as defined by the City of Helena zoning ordinance and related documents) in residential areas.

5.5. Minimum Building Standards. All Dwellings and other structures constructed or erected on any Residential 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 Developer and the City of Helena:

(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 Fire Rating, and no wood roofing materials shall be allowed. All wood burning heating devices, if allowed by the City of Helena shall be equipped with spark arresters, which devices shall be inspected at least annually.

(d) 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 the City of Helena.

5.6. Restrictions of Further Subdivision of Residential Lots. **No Residential Lot or Residential Lots may be further Subdivided except by the Declarant.** In the event an Owner of two or more adjoining Residential Lots consolidates such Residential Lots into one Residential Lot, such consolidation shall not change the obligation of the Owner to pay assessments or the right of the Owner to votes for each original lot, and for purposes thereof such Residential Lots, shall be considered as the number of Residential Lots as originally configured by the Declarant.

5.7. Limited Building Zones, Building Envelopes, Fences. No Dwellings may be located in a limited build zone, as set forth by the City of Helena. Fences may not be built in limited building zones without the written consent of the Architectural Review Committee, but may generally be constructed up to Residential Lot lines to prevent the need for double-fencing Residential Lot lines. Fences must be of an approved design, and may not be constructed without the written prior approval of the Architectural Review Committee. Back yards only may be fenced, up to the mid point of a residence. Fences on corner lots must not impair site lines on adjacent roadways. With respect to those Residential Lots for which a Building Envelope has been designated in the Design Standards, all Dwellings shall be constructed, installed and placed entirely within such Building Envelopes unless a variance is granted in writing by the Architectural Review Committee.

Easements for installation and maintenance of utilities are reserved as shown on the recorded plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction or flow of drainage channels in the easements, or which may obstruct or retard the flow of water through the drainage channels in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority is responsible.

5.8. Set Backs. All Dwellings and driveways, (but not including fences, and utilities) must be set back as required by City of Helena ordinances from any boundary line common to another Residential Lot and from any road right-of-way. Only back yards may be fenced, and only to the mid-point of the side of the dwelling unit. Declarant may make specific exceptions in writing to these setbacks if those exceptions do not conflict with City of Helena ordinances.

5.9. Sanitation Requirements. No outside toilets or privies shall be permitted on any Residential 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 the City of Helena sanitary sewer system.

5.10 Completion of Construction. Construction of any building or other structure on a Residential Lot must become completed within twelve (12) months from the date of start of construction, or it will be considered a nuisance, and may be abated by the Association, at the sole cost and expense of the Owner of the Residential Lot on which such building or other structure is situated. The Architectural Review Committee may set longer periods of time construction for good cause shown.

5.11. Storage of Vehicles. No more than two Vehicles may be stored or parked outside on any Residential Lot at any time, other than short-term guest parking. At no time shall inoperable vehicles of any kind be stored or repaired outside of a garage or on any portion of a Residential Lot. No three wheeler, motorcycle, four wheeler, tractor, farm equipment, camper, snowmobile, jet ski, wave runner, boat, bobcat, backhoe, construction equipment, plow, trailer, recreational vehicle, commercial vehicle or equipment of any kind be stored outside of any Dwelling or on a public road adjacent to any Dwelling. This Section 5.12 does not prohibit the storage or parking of construction equipment and machinery within the Property during the construction period.

5.12. Rubbish. No Residential 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. No part of any Residential Lot may be used as a Junk Area or for the accumulation of unsightly items. All storage on the Residential Lot must be indoors. **Garbage cans shall not remain outside of a garage or residence unless it is a scheduled garbage collection day. Rubbish generated during construction must be controlled by the builder and Residential Lot Owner so as to remain on the Residential Lot. Any rubbish that is not contained on the Residential Lot shall be collected and disposed of at the Residential Lot Owners expense. Violations of this provision shall subject the Residential Lot Owner to fines of \$250.00 per violation, unless these charges and fines are specifically waived in writing by the Developer.**

5.13. Signs.

Residential Lots. The provision of this Section 5.14(a) apply to all Residential Lots. The following signs are allowed, provided those signs are permitted by the City of Helena:

- (a) temporary construction signs;
- (b) one (1) sign for the owner to advertise his home or Residential Lot for sale;
- (c) one (1) sign not to exceed two (2) square feet in size advertising a home business and such sign must be attached to the Dwelling or placed inside a window of the Dwelling;
- (d) any sign erected by the Declarant or the Association necessary to give directions;
- (e) any sign erected by the Declarant or the Association necessary to advise of Rules and Regulations;
- (f) any sign erected by the Declarant or the Association necessary to caution or warn of danger;
- (g) political signs, and
- (h) as may be required by law.

In addition, Declarant may erect signs to advertise and otherwise sell Residential Lots or homes constructed by the Declarant.

Any permitted signs are subject to review and approval by the Architectural Review Committee.

Address Plaques or Numbers. The Owner of each Residential Lot shall display and maintain an address plaque or numbers in accordance with City of Helena subdivision requirements and as approved by the Architectural Review Committee.

5.14. Open Space The open space as shown on the Plat has been designated to protect a wildlife habitat. No construction of any kind shall take place on the Open Space. No motorized machine or Vehicle of any kind may be operated in this area by any Persons except as authorized by the City of Helena.

5.15. Motorized Access to Adjacent Lands. No person may access lands adjacent to the Property with a motorized machine or Vehicle of any kind except over platted roads.

5.16. No Unsightliness. No unsightliness shall be permitted on any Residential Lot. Without limiting the generality of the foregoing:

(a). All unsightly structures, facilities, equipment, objects and conditions shall be enclosed within an approved structures;

(b). Refuse, garbage and trash shall be kept in a covered container at all times and any such container shall be kept within an enclosed structure, except on the specific day that said refuse, garbage or trash is collected;

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

(d). All lawns shall be grass or other approved landscape materials, and shall be kept neat, clean and clipped. All lawns shall be irrigated or sprinkled so as to maintain an attractive appearance, subject to requirements or restrictions by the City of Helena.

5.17. Restriction on Operation of Vehicles. No Vehicle (other than lawnmowers) shall be operated within or on the Residential Lots or Conservation Area except on approved Roads and driveways unless otherwise specifically permitted by the Rules and Regulations.

5.18. 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, unless otherwise approved in writing by Declarant. Private water wells and septic systems are not permitted

5.19. Animals. Common domestic pets, such as cats and dogs, up to two per Dwelling, may be kept on any parcel. Dogs shall not be permitted to roam, and must be restrained by a fence or a leash. Such animals shall not be permitted to become a nuisance, or annoyance to the neighborhood. All animals kept on the Property must be kept in a humane manner, but not chained. Animal manure shall be removed from the premises or otherwise disposed of so as not to become obnoxious, offensive or a nuisance to surrounding residents. No animals, livestock or poultry shall be kept, bred or maintained for any purpose. Any animals kept by an Owner must be kept within the boundaries of the Owner's Residential Lot. No pet may be kept which abnormally or unreasonably interferes with the rights, comforts or convenience of other Owners. No Residential Lots are approved for horses, cows, sheep, goats, pigs, chickens, ducks, geese, lamas, or any other livestock. No wild animal, reptile or bird may be trapped, transported, kept or maintained anywhere within ASPEN PARKAT MOUNTAIN VIEW MEADOWS, except for (a) animal control activities of authorized governmental entities or their 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 Residential Lot and may be enforced by an action at law.** 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.

5.20. WINDOW COVERINGS. Windows may be covered only by drapes, shutters or shades and cannot be painted or covered by foil, cardboard, sheets, bedding material or similar materials. No appliances, such as air conditioners, may be installed in windows or other openings.

5.21. LANDSCAPING. Landscaping plans or projects must be approved in advance by the Architectural Review Committee. No landscaping may impair sight lines for adjacent roadways.

SECTION 6: PROTECTIVE COVENANTS: ARCHITECTURAL REVIEW

6.1. Purpose. The following protective covenants are designed to provide a uniform plan for the development of the Residential 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 a high quality residential development, and further to provide every practical and legal means to safeguard and protect the interests of all Owners and the stability of this Development.

6.2. Requirement of Review by Committee. No construction, improvement, or alteration of or affecting the external appearance of any Dwellings, pools, spas, fences, walls, or similar improvements, and no landscaping, wire, pipe, utility line, well, driveway or walkway or similar improvements shall be made, erected, altered, placed or permitted to remain upon any Residential 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. This review fee may be changed by resolution of the Architectural Review Committee at one of its meetings. Approval of the Architectural Review Committee shall be secured prior to application for a building permit, or construction of any structure or building on a lot within the subdivision.

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. Notwithstanding the foregoing, until such time as all of the Residential Lots have been improved with the construction of a dwelling thereon, R and D Partners, LLC 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. R and D Partners, LLC may relinquish or assign its right to appoint any or all members at any time.

6.4. Design Standards. The Architectural Review Committee shall publish Design Standards that will set forth the procedures and criteria for review of residences or improvements to be constructed or installed on any Residential Lot in the Property, and for review of landscaping plans. The purpose of these Design Standards is to achieve and maintain the aesthetic goals of the Subdivision, and to protect the community as a whole against non-conforming designs or construction that are substandard in quality. Failure to follow procedures or criteria set forth in the current published Design Standards shall form an adequate basis for rejection of the submitted 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. **Failure to follow such procedures or criteria set forth in the Design Standards shall 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 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 one (1) year of approval, or new approval must be obtained. If the exterior of any structure is begun and is not completed within six (6) 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: 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 the chair of the Architectural Review Committee. 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), impose liens, 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 Residential Lot. Upon completion of the construction on any Residential Lot, the Owner shall to the greatest extent possible and in compliance with the Design Standards and an approved landscape plan restore the Residential Lot to a finished landscaped Residential Lot, consistent with the approved landscape plan. The Owner must complete said restoration within one hundred twenty (120) days following completion of construction on any Residential 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, during normal business hours and upon reasonable notice, enter upon any property within the Property 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 Residential Lot, 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.

SECTION 7: GENERAL RESTRICTIONS THAT APPLY TO ALL PROPERTY SUBJECT TO THESE COVENANTS

7.1. Maintenance of Property. Each Owner shall maintain his Residential Lot and improvements in good repair and appearance at all times. **Each Residential Lot Owner shall be responsible for control and removal of noxious weeds on their Residential Lot consistent with the approved weed management plan for the Property. If a Residential Lot Owner does not remove noxious weeds on their Residential Lot, the Developer, prior to the Turn Over Date and the Owners Association, or its agents, after the Turn Over Date, or the applicable government authority may enter the Residential Lot and take whatever steps necessary to remove noxious weeds at the expense of the Residential Lot Owner.** Residential Lots shall be irrigated or sprinkled, and all yards must be fully landscaped, and all yard area maintained in a neat, clean and clipped condition.

7.2. No Illegal, Noxious or Offensive Activity. No illegal, noxious or offensive activity shall be carried on upon any Residential Lot or any portion of the Property, nor shall anything be done or placed on any Residential 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 Residential Lot or any portion of the Property and no improvements may be constructed on any Residential Lot or any portion of the Property that 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 Residential Lot or other portion of the Property which is unreasonably bright or causes unreasonable glare; no sound shall be emitted from any Residential 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 Residential Lot or other portion of the Property which are noxious or offensive to others.

SECTION 8: ENFORCEMENT

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 Residential Lot.

SECTION 9: ADDITION AND EXCLUSION OF REAL PROPERTY

9.1. Right to Include Additional Real Property. Declarant may subject additional real property adjacent to the Property to this Declaration by recording in the real property records of Lewis and Clark County, Montana, an instrument signed by Declarant setting forth the following: (a) a statement that the real property to be added is owned by Declarant and is adjacent to the Property or within one mile of any boundary of the Property, (b) a statement that Declarant has determined that such real property should be included as a part of MOUNTAIN VIEW MEADOWS, (c) the legal description of the real property to be added, and (d) a statement that the property to be added shall be subject to and governed by the provisions of this Declaration. Upon the recording of such instrument, (i) the real property described therein shall thereafter be part of the Property and shall be governed by all of the provisions herein, 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.

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 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.

SECTION 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. 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.

SECTION 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 Residential Lot, and to summarily abate at the expense of the Owner any building, structure, thing, or condition that may be in, on or upon said Residential 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. Any remedy set forth in 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. Invalidity 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 Turn-Over Date, Declarant may amend this Declaration at any time. After the Turn-Over Date, 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 Residential 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, R AND D PARTNERS LLC owns any Residential Lot in the Property, then the consent of R and D partners, LLC or its successor shall be required before these Covenants, Conditions and Restrictions may be altered or amended. Notwithstanding the above, the provisions of Sections 4 and 5.5 may not be amended or revoked without the consent of the City of Helena.

11.5. Covenants Binding. Each provision of this Declaration: (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 seventy percent (70%) of the Residential 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 unless the action taken or failure to act is wanton. 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 ASPEN PARK AT MOUNTAIN VIEW MEADOWS 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.

SECTION 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 Residential 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 Residential Lot.

