

---

After recording mail to:

Doug James  
MOULTON BELLINGHAM PC  
P.O. Box 2559  
Billings, MT 59103-2559  
(406) 248-7731  
Doug.James@MoultonBellingham.com

---

**COVENANTS, CONDITIONS AND  
RESTRICTIONS**

**FOR**

**THE NINES**

**SUBDIVISION**

**DECLARATION OF COVENANTS,**  
**CONDITIONS AND RESTRICTONS**

This Declaration of Covenants, Conditions, and Restrictions (this "Declaration") is dated as of JULY 1<sup>st</sup>, 2018, by **P3Coleman, LLC** of P.O. Box 1555, Billings, Montana, 59103, the "**Declarant**".

**RECITALS**

A. Declarant is the owner of certain tracts of land located in Yellowstone County, State of Montana, which are legally described State of Montana: Yellowstone County:

That part of the N1/2 SW ¼ of Section 17, Township 1, South Range 25 East of the Principal Montana Meridian in Yellowstone County, Montana, described as Tracts 2C of Certificate of Survey No. 2467 on file in the office of the Clerk and Recorder of said County under Document #\_\_\_\_\_.

B. Declarant intends to develop the real property described herein as The Nines Subdivision as reflected on the Plat attached hereto as **Exhibit "A"**, hereinafter the "Subdivision".

Now, therefore, in consideration of the covenants and declarations hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged Declarant hereby establishes and declares the following Covenants, Conditions and Restrictions, which shall apply to all of the Subdivision and to all of the real property in the Subdivision and shall bind all of the property owners and tenants and shall run with the land.

The Grantees of any Lot, by acceptance of a conveyance, covenant and agree faithfully to observe and abide by all of said conditions, covenants and restrictions.

**ARTICLE 1**  
**DEFINITIONS**

Unless otherwise expressly provided, the following words and phrases, when used in this Declaration of Restrictions, shall have the following meanings:

1. **Assessment.** A fee payable by an Owner to the Association as determined by the Board of Directors.

2. **Association.** The Nines Subdivision, a Montana non-profit corporation, which shall be the Home Owner's Association for the Subdivision.

3. **Board or Board of Directors.** The Board of Directors of the Association, as it shall be constituted from time to time.

4. **Bylaws.** The Bylaws of the Association as restated or amended from time to time.

5. **Clubhouse.** The Clubhouse shall mean the pool house and pool located on Lot 5 of Block 3.

6. **Common Areas.** The public streets, recreational area and other facilities within The Nines Subdivision which serve more than one Lot; the common areas are more fully described in the Declaration.

7. **Declaration.** Lot Declaration means these covenants, conditions, and restrictions.

8. **DEQ.** The Montana Department of Health and Environmental Quality.

9. **Developer.** P3Coleman, LLC and its successors and assigns; provided, however that no successor or assignee of the Developer shall have any rights or obligations of the Developer hereunder, unless specifically set forth in an instrument of succession or assignment or unless such rights and obligations pass by operation of law.

10. **Design Standards.** Guidelines and standards for Lot and Common Area Improvements as set forth in these Covenants and Restrictions and as amended from time to time.

11. **DRC.** The Design Review Committee for The Nines Subdivision.

12. **The Greens.** The Greens shall mean: (a) Block 4, Lots 3, 4, 7, & 8 ; (b) Block 2, Lots 2, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20; and (c) Block 3, Lots 1, 2, 3, 4, 7, 8, 9, and 10. See **Exhibit "E"**.

13. **The Links.** The Links shall mean: (a)Block 1, Lots 3, 4, 7, 8, 9, 13, 14, 15, 16, 17, 20, 21, 22, 25, 26, and 27; (b) Block 2, Lot 1; (c) Block 4, Lots 9, 10, 11, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35. See **Exhibit "F"**.

14. **Owner.** The record holder or holders of title to a Lot in The Nines Subdivision. If any Lot is sold under a recorded contract for sale to a purchaser, the purchaser, rather than the fee owner, shall be considered the "Owner".

15. **Private Parks.** Private Parks shall mean: (a) Block 2, Lot 27; (b) Block 2, Lot 3; (c) Block 3, Lot 6; and (d) Block 4, Lots 2, 36, 37, 38, 39, and 40, See **Exhibit "C"**.

16. **Person.** Any natural person, corporation, partnership, association, trustee, personal representative of a decedent's estate, or other legal entity.

17. **Landscaping Easement Area.** The Landscaping Easement Area shall mean the twenty-foot wide landscaping easement area shown on the Plat for the Subdivision. The Landscaping Easement Area runs along South 60<sup>th</sup> Street West as well as along the north and south sides of the Subdivision.

18. **Lot.** The term "Lot" means a parcel of land, together with a single family residence, and other improvements to be constructed upon that parcel, as more fully described in the Declaration.

19. **The Range.** The Range shall mean: (a) Block 2, Lot 6; (b) Block 1, Lots 1, 2, 5, 6, 10, 11, 12, 18, 19, 23, & 24; and (c) Block 4, Lots 1, 5, 6, 12, 13, 18, 19. See **Exhibit "G"**.

20. **Subdivision.** The Subdivision shall mean The Nines Subdivision.

## **ARTICLE II** **USE**

1. **Residential Use.** Except as provided below, Lots shall be used only for single family residential purposes. Any use that is inconsistent with single family residential purposes is expressly prohibited. No boarding or lodging house, sanitarium, hospital, hotel, apartment house, residential duplex or multi-plex housing, or similar use shall be permitted. Owners may use a portion of their home as an office so long as their activities do not interfere with the quiet enjoyment of any other Owner or occupant. Lot 5, Block 3 may be used for a pool, pool house, and Private Park. Lots may also be used as Private Parks, as designated herein.

2. **Agricultural Use.** For so long as Developer continues to own any of the above-described real property, Lots owned by Developer may be used for any agricultural purpose except that no hog farm or feedlot may be operated on any Lot. Owners may have family gardens on their Lots but may not grow produce for sale to others.

3. **Permitted Buildings.** No buildings shall be erected as a part of any Lot except one single family residence with an attached or detached garage and/or shop for the use of occupants of such residence, and one additional outbuilding having no more than 300 square feet of floor area.

a. **Buildings Must Be New.** Any building erected after July 1, 2018, shall be of new construction; no old or used buildings shall be moved onto the land which is part of a Lot. All permanent buildings shall be of new construction and shall be constructed with concrete basements or concrete footings and foundation walls or other appropriately designed permanent foundation system. Temporary structures used for construction may be used only during the period of construction and shall be removed immediately following completion of construction. Temporary structures are prohibited, except as allowed for construction purposes.

b. **Metal Buildings.** Pre-engineered metal buildings or pre-fabricated metal buildings, are not permitted on any property within the Subdivision.

4. **Temporary Residence.** No trailer or other vehicle, temporary structure, garage, accessory building or outbuilding shall be used as living quarters or as a residence.

5. **Driving.** Roadways within The Nines Subdivision shall be traveled upon in a safe manner; vehicles must travel within the roadbed, yielding to pedestrian traffic.

6. **Parking.** Owners shall not park vehicles in such a manner as to block sidewalks or driveways nor shall they permit any member of their family, guests or tenants to do so. Junked or non-operational vehicles, boats, and trailers, shall not be parked on common areas at any time or in driveways for a period exceeding 5 consecutive days or 30 total days in any one calendar year. No vehicle, boat, trailer, or motorhome shall be parked on the streets in the Nines Subdivision for a period exceeding 24 hours, or for more than ten (10) total days in any one calendar year. Improperly parked vehicles may be removed at the Owner's expense.

7. **Vehicle Use.** Motor vehicles may only be used on the Lots or on common streets; no motorized vehicles of any type may be used in the park area, along the creek, or on any other common areas, except for maintenance equipment, mowers, tree trimmers, and similar equipment.

8. **Firearms/Fireworks.** The discharge of any type of weapon or firearm within The Nines Subdivision is strictly prohibited. No fireworks shall be discharged or ignited within The Nines Subdivision, including lawful "safe and sane" types of fireworks.

9. **Nuisances.** No nuisances or unlawful activities shall be allowed on or within any Lot or the common areas, nor shall any use or practice be allowed which

interferes with the peaceful possession of other Lots or the common areas by other Owners or occupants.

10. **Fires.** No outside fires shall be allowed, except in gas or charcoal grills or barbecues or fireplaces.

11. **Noise.** Residents, their families and guests shall exercise care about making noise which may disturb other residents. No excessive noise of any kind is permitted between the hours of 11 p.m. and 7:00 a.m. The Board of Directors, after giving one warning, may fine Owners who continue to violate this restriction or allow their tenants or family members to do so.

12. **Preservation of Habitat.** No Owner or other person shall be allowed to remove or disturb any trees, brush, ground cover, rocks, or other natural features on common areas without prior written consent of the Board of Directors.

13. **Maintenance.** Each Lot and the exterior appearance of improvements on each Lot shall be maintained in a clean, neat, and orderly condition at all times.

- a. **General Maintenance.** Each Owner shall maintain the exterior of all buildings which are part of that Lot and landscaping and grounds which are part of their Lot, and the landscaping on the berm in the easement on their Lot, in good repair and shall keep the buildings and other improvements painted or stained, lawns cut, shrubbery trimmed, rubbish and debris removed, and otherwise maintain the same in a neat and aesthetically pleasing condition. All damage to any exterior part of the Lot shall be repaired as promptly as is reasonably possible.
- b. **Landscaping Easement Area.** Each Owner shall be responsible for landscaping and maintaining the 20-foot wide Landscaping Easement Area on each Owner's Lot, as shown on the Plat for the Subdivision. The Landscaping Easement Area runs along South 60<sup>th</sup> Street West as well as along north and south sides of the Subdivision. Each Owner shall develop and maintain the Landscaping Easement Area, on each Owner's Lot, in good repair and shall keep the lawns cut, shrubbery trimmed, rubbish and debris removed, and otherwise maintain the area in a neat and aesthetically pleasing condition consistent with a well maintained occupied residential neighborhood.
- c. **Unsigntliness/Blight.** Any exterior or condition on a Lot which, in the sole discretion of the Board, creates an unsightly or blighting influence, shall be corrected or removed, as the case may be, by the Owner, upon request by the board notwithstanding the fact that such event or condition may not be specifically described and/or prohibited in this Declaration.

- d. **Animals/Pets.** Except as otherwise provided herein, no insects, wild animals, cattle, pigs, poultry, goats, horses or livestock of any kind shall be raised, bred or maintained on any Lot. Domesticated dogs, cats, birds or other household pets which do not unreasonably bother or constitute a nuisance to others may be kept, provided they are not kept, bred or maintained for any commercial purpose. All Pets must be restricted to the pet Owners' Lot except when restrained by a leash in the company of the Owner. The Board will give Owners of pets that create a nuisance or disturbance a single warning. Subsequent occurrences will result in the levying of a fine or Assessment by the Board. Owners shall promptly clean up after their pets and shall be responsible for repair of all damage caused by their pets. If they fail to do so, the Board may pay for having the cleanup or repairs done and assess the cost to the Owner as a common expense payable only by that Owner.
14. **Noxious Weeds.** Each Owner shall control noxious weeds on his or her Lot. The Association shall control noxious weeds on the common areas.
15. **Garbage.** All garbage and trash must be placed in the proper receptacles designated for refuse collection; trash containers must be kept inside the garage or screened from view except on collection days.
16. **Statuary.** No Owner may place lawn statues of any kind which are visible from the street, from other common areas or from any other Lot, on any Lot or the common areas without prior written approval of the DRC.
17. **Clothes Lines.** No outdoor clothes lines shall be permitted on any Lot or on the common areas.
18. **Leasing.** No Lot Owner shall lease a Lot for an initial term of less than thirty (30) days. Any lease or rental agreement shall be in writing and shall subject the tenant to the provisions of these Covenants and Restrictions, the Bylaws, the Declaration, and all rules and regulations adopted by the Association. Lot Owners shall be responsible for any violations of these Covenants and Restrictions, the Bylaws, the Declaration, and rules and regulations by their tenants.
19. **Storm Water Drainage.** Lot Owners must keep the barrow pit and all other ditches, culverts, swales and site retention ponds, if any, located upon or fronting their Lot free and clear of weeds, plants and debris which impede the free flow of storm water. Ditches, swales and site retention ponds, if any, which are part of the approved storm water management plan may not be filled or changed without the prior written permission of the DEQ.
20. **Address Numbers.** Address numbers and signs shall be appropriately sized in order to be read from the street. Huge and unnecessarily large numbers and address markers are expressly prohibited.

21. **Nuisance.** No person shall use any Lot or Common Area within the Subdivision in a way that unreasonably interferes with the quiet enjoyment of another Owner within the Subdivision, or which is noxious, illegal, seriously annoying, or offensive to a person of reasonable and normal sensitivity. There shall be no exterior fires, except in barbecue receptacles designed for that purpose. No activity may be carried on that adversely affects insurance coverage or rates for the Association or other Owners in the Subdivision. No Owner shall permit anything to be done which is in violation of law or any governmental regulation or which will or may decrease the attractiveness, desirability or value of any home or Lot in the Subdivision.

22. **Animals.** No animals except domestic dogs and cats, fish, and birds inside bird cages may be kept within the Subdivision. In no event, shall any Owner authorize or bring or keep within the Subdivision any Pit Bull, Rottweiler, Doberman Pinscher, Mastiff, Presa Canaria or any other breed known as a "fighting breed" or any dog being a mix thereof. Permitted animals shall not be kept, bred, or raised for commercial purposes. All Owners who keep pets within the Subdivision (i) shall keep such pet under reasonable control at all times; (ii) shall keep any dog on a hand-held leash when not on the Owner's Lot; (iii) shall immediately clean up after such pet; (iv) shall be liable to the Association and all persons for any damage to persons or property proximately caused by such pet; and (v) shall indemnify and hold harmless the Association and all Owners against any and all loss, cost or liability, including attorney's fees, arising out of any claim related to such pet.

### **ARTICLE III** **DESIGN REVIEW**

1. **Design Review Committee.** For the purposes of assuring the development of the Project as an area of high standards, so long as Developer owns any of the above-described Lots, it shall have the sole authority to appoint a Design Review Committee (DRC), to consider and review any and all plans for improvements to Lots, for approval or disapproval, based on the Design Standards and the restrictions set forth in these Covenants and Restrictions. After sale of all Lots by Developer, the Board of Directors of the Association shall appoint the members of the DRC. P3Coleman, LLC, in its sole discretion, may elect to turn over its power to appoint the Design Review Committee members to the Board at any time prior to sale of all Lots by Developer.

The DRC shall have the right to make exceptions to the Design Standards as it shall deem necessary and proper, and shall have the authority to augment, amend, or otherwise modify the Design Standards from time to time, without consent of any other Owner and may authorize exceptions to the Design Standards as it sees fit. A majority of the members of the DRC must consent, in writing, to the new or modified standards.



New or modified Design Standards shall not be effective until they are recorded with the Yellowstone County Clerk and Recorder, and a copy given or sent to each Owner.

The DRC shall not have the right to make exceptions to, or modify, any of the provisions of these Covenants and Restrictions, except those contained in the **Design Standards** section.

2. **Required Design Review.** Except as otherwise provided herein, no Lot Owner or occupant shall erect or place any building or structure, including fences, walls, patios and decks, on any common area or Lot, or add or remove landscaping, or make any other additions or alterations to any common area, or to the exterior of a Lot, including landscaping and the exterior of any building, except in accordance with plans and specifications approved by the DRC. If plans and specifications have not been approved in writing by the DRC within forty-five (45) days after submission, they shall be deemed disapproved.

3. **Review Application.** Before beginning the construction of any building or other improvement, any alteration of a building's exterior, or any landscaping changes, the person desiring to erect, construct, or modify the same shall submit to the DRC two sets of plans for the proposed construction or changes. These plans shall contain the following materials as appropriate for the proposed construction or change:

- a. **Site Plan.** A site plan showing: 1) the location of all improvements to be constructed, including buildings, fences, walls, driveways, parking areas, utilities, outbuildings, decks; and 2) existing topography and contour in relation to the proposed Improvement and cut and fill excavation requirements; and 3) other pertinent information relating to the improvements.
- b. **Building Plan.** A building plan which shall consist of: 1) the building dimensions; and 2) elevation drawings or sketches of the exterior of the building(s); and 3) information concerning the exterior of the building(s) which shall include samples of all exterior colors, materials and finishes to be used.
- c. **Landscape Plan.** A general landscape plan and/or drawings of proposed landscape features including planting areas, location of existing trees or proposed removal of such, proposed plant types and drainage plans. The landscape plan can be incorporated into the site plan.
- d. **Other Information.** The Board may, in its discretion, require the Owner to furnish additional specifications, drawings, material samples or such other information as the DRC in its sole discretion reasonably exercised, shall deem necessary or convenient for the purpose of assisting the DRC, in reviewing and processing the application.

4. **Basis of Approval.** In reviewing the application and the materials submitted and in reaching a decision thereon, the DRC shall use its best efforts and judgment to assure that all improvements shall produce and contribute to an orderly and aesthetically complimentary design and appearance, of a quality required to maintain The Nines Subdivision as a first class residential development. Approval by the DRC shall be based, among other things, on: (a) the Design Standards; (b) the conformity of plans to these Covenants and Restrictions; (c) conformity and harmony of external design with neighboring improvements; (d) the effects of location and use of proposed improvements on neighboring Lots and Common Area; (e) relation of improvements and finished ground elevations to existing topography and grades; (f) landscaping of the Lot in relation to that of neighboring Lots; (g) facing of the main elevation with respect to adjacent Lots and Common Area; and (h) the overall aesthetics of The Nines Subdivision.

Because the review does include judgments about aesthetics by the DRC and because the aesthetic consideration cannot be clearly defined in these Covenants and Restrictions, the decisions of the DRC will be subjective in nature. Each Owner, by acceptance of a deed to any Lot subject to this Declaration, agrees to accept the aesthetic decisions of the DRC as final and binding, and waives any right to challenge those decisions through legal action.

5. **Decision.** Unless extended by mutual consent of the Owner and the DRC, the DRC shall render its decision with respect to the application within forty- five (45) days after the receipt of a complete application. If additional information is requested of the Owner to complete the review, a reasonable amount of additional time shall be allowed for the DRC to consider this information prior to rendering a decision. The decision of the DRC can be in the form of an approval, a conditional approval, or denial and shall be in writing, dated and signed by two members of the DRC. A copy of the decision shall be mailed to the Owner at the address shown on the application.

6. **Variances.** The DRC may waive or grant variances to the Design Standards, when, in the sole discretion of the DRC, circumstances such as topography, natural obstructions, aesthetics or environmental considerations, or hardship may so require, or when a proposed improvement is not in strict conformance with the Design Standards, but meets the aesthetic intent of the Design Standards.

7. **Changes to Approved Plans.** Owners must obtain prior written approval of the DRC to any change to approved plans if those changes affect the exterior of a building or the landscaping or other exterior improvements.

8. **Non-Liability.** Neither the DRC nor any member thereof, or the Developer or any member, officer, employee, agent, successor or assign thereof, shall be liable to the Association, any Owner or other Person for any loss, damage or injury arising out of or connected with the performance by the DRC members of their duties and

responsibilities by reason of a mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve an application. The aforementioned parties assume no responsibility for: (a) the structural capacity, safety features, or building code compliance of any improvement; or (b) whether or not the location of a proposed improvement is free from possible geologic or natural hazards, or other possible hazards caused by conditions occurring either on or off the subject property; or (c) the internal operation or functional integrity of any improvement; or (d) any zoning ordinance or building code violations.

Every person who submits an application to the DRC for approval of plans agrees, by submission of such an application, and every Owner agrees, by acquiring title thereto or an interest therein, not to bring any action or suit against the Association, the Board, members of the DRC, or the Developer or its officers, members, employees, agents, successors, or assigns to recover damages as a consequence of the design review process set forth herein.

9. **Enforcement.** The decisions of the DRC and the requirement to obtain approval of the DRC may be enforced by the Board, or by any Owner by bringing an action for specific performance, or for an injunction, prohibitory, or mandatory. Such actions shall be timely if brought within six months after the DRC issues a written notice of the violation, or within six months after it becomes apparent that an Owner has not obtained the required approval or has deviated from the approved plans, whichever occurs later. In any such action, the prevailing party shall be entitled to recover all costs and attorney fees incurred by it from the losing party. In the event that any Owner shall permit any home or other improvement, including any landscaping which is the responsibility of the Owner to maintain, to fall into disrepair so as to create a dangerous, unsafe, unsightly, or unattractive condition, the Association may notify the Owner to take corrective action. If corrective action is not taken by the Owner within a reasonable time, as determined by the Board, the Board may cause such corrective action to be taken and shall assess the expense of correction to the Owner as a common area expense, payable only by that Owner. If an Owner fails or refuses to pay such an assessment, the Association may file and foreclose a lien for the amount of the assessment as provided in the by-laws of the Association.

The Board may adopt and amend from time to time a reasonable schedule of fines for violation of any provisions of these Covenants, Conditions and Restrictions, and charge those fines to Owners in violation of these Covenants, Conditions, and Restrictions. Before any fine may be imposed, the Schedule of Fines must be approved by a majority of the Owners. Fines imposed on an Owner shall be deemed an assessment of a common area expense payable only by that Owner and shall be a lien on Owner's Lot and improvements. Imposition of a fine by the Board shall not be deemed an election of remedies or a waiver of any other remedies available to the Association, or any Owner for violation of the Covenants, Conditions, and Restrictions. The failure of the Association, its Board of Directors, or any Owner to enforce the

provisions of these Covenants, Conditions, and Restrictions shall not be deemed a waiver of the right to do so in the future.

#### **ARTICLE IV** **DESIGN STANDARDS**

**1. Design of Buildings.**

- a. **Design.** The design of all buildings shall be traditional in attitude, the use of traditional forms and design elements (e.g. pitched roofs, columns and arches, trellises, dormers, etc.) is encouraged. There is no requirement for a literal interpretation of a traditional style, but the design of all buildings should address the environment and homes customary to the community. All buildings shall be designed, constructed, and maintained so that the exterior appearance, including design, color, materials, architectural theme, and elevations, is architecturally and aesthetically compatible with adjacent buildings. All buildings shall be designed for full view from all directions and shall be completed on all sides with an acceptable finishing material.
- b. **Exterior Walls.** Exterior walls of all buildings shall be sided with brick, stone, clapboard, wood, or stucco, although the DRC shall have the right to approve or disapprove the appropriateness of the material choice for each particular situation, and may expand the list of allowable materials, as new materials become available. Exposed-seam metal buildings shall be prohibited unless covered with an acceptable finishing material. No aluminum or vinyl siding shall be allowed.
- c. **Roof.** Roofs exposed to view shall be finished with a durable material that is architecturally attractive and compatible in color and design. All Roofs of all buildings shall be pitched and shall be clad in composite shingles or slate or a slate-composite material or metal, provided that another roof employing other materials will be permitted if architecturally harmonious. Chimneys shall be clad in brick or stone. The use of roof dormers is encouraged in lieu of skylights. Any building with sloped roof elements shall provide protection to pedestrians and other properties from the effects of sliding snow.
- d. **Accessory Buildings.** The construction materials for all accessory buildings and other buildings shall be compatible with those used on the residence. Accessory Buildings include garages, and any permanent building. The design of any garage must be of the same design as the home on any Lot. Furthermore, garages shall not be simple rectangular boxes. Garages shall have more than one (1) roof line in order to create an attractive environment.

- e. **Size of Homes And Accessory Buildings.** The following size limitations shall apply:

**The Greens.** The Greens are intended for smaller cluster or patio homes. However, no home in the Greens shall be smaller than 1,400 square feet and the home and all other buildings shall not occupy more than forty percent (40%) of the Lot.

**The Links.** The Links are intended for homes on Lots that are larger than the Lots in the Greens. No home in the Links shall be smaller than 1,650 square feet and all other buildings shall not occupy more than forty percent (40%) of the Lot.

**The Range.** The Range is intended for homes on large Lots. No home in the Range shall be smaller than 1,650 square feet and all other buildings shall not occupy more than forty percent (40%) of the Lot.

**Shops and Garages.** Each Lot may have a garage and/or shop that combined shall not be larger than 2,000 square feet.

**Garden Shed.** Each Lot may have a garden shed not to exceed 300 square feet.

For purposes of this subsection, square footage shall equal the interior square footage of each floor or level of a home excluding full or daylight basements, garages, and porches.

- f. **Height.** The maximum height of any building shall be 34 feet, without the prior express written consent of the DRC, which consent may be withheld or conditioned in the sole and exclusive discretion of the DRC. This height will be determined by taking the average of the lowest and the highest grade point at the foundation; this average will establish the base elevation from which the highest part of the building may not exceed 34 feet, without the prior express written consent of the DRC, which consent may be withheld or conditioned in the sole and exclusive discretion of the DRC. Owners are alerted that the maximum height permitted by these Design Standards may exceed the maximum allowed by applicable zoning ordinances.

2. **Landscaping.** Landscaping of the grounds which are part of a Lot shall be completed within twelve (12) months after occupancy of the home which is part of the Lot. This landscaping requirement shall also apply to any portion of the Landscaping Easement Area on a Lot. Lot Owners are encouraged to use appropriate water conservation strategies, including: (a) use of water-tolerant plantings and grass species; (b) use of native trees, shrubs and grasses; and (c) use of automatic timer-controlled irrigation systems. All sprinkler irrigation systems shall be on automatic timers. Each

Owner shall be responsible for landscaping and maintaining the area fronting any street that is contiguous with the Owner's Lot.

3. **Fences.** No fence or hedge or landscaping or similar enclosure (hereafter fences) shall unreasonably restrict or block the view of other Lots. For this purpose, fences shall be maintained at a height not greater than six (6) feet (except for pool enclosures). Fences shall be vinyl or steel/aluminum. No fence shall be constructed on any Lot until after the height, type, design, and location thereof shall have been approved in writing by the DRC. The bottom five (5) feet of any fence may be solid, but the top one (1) foot of the fence must be open with vinyl, iron, or aluminum details. All fences must comply with clear vision standards. Accessory fences, and walls shall be of a character, color, and material to match the adjacent buildings and shall coordinate with the overall architectural scheme of the adjacent buildings and shall be integrated into the landscape of the Lot:

- a. Fences may be used to fence dog runs on a Lot;
- b. The finished side of an approved fence must be erected so as to face the public view;
- c. No swimming pools will be approved without a fence around the pool that can be entered only through the residence or through a locked gate. The fence constituting the enclosure must have a six (6) foot privacy fences around hot tubs, patios, and utility areas may be approved, by the DRC, providing they are reasonable in size and appearance;
- d. If a submission is made to the DRC for any building that is deemed hazardous, the DRC may require fencing of a designated height and type as a condition of approval;
- e. No chain link, wood, or wire fences will be approved;
- f. No fence on or near a property line which exceeds four (4) feet in height will be approved. Taller fences along property lines must be constructed so that they do not block the view from other Lots;
- g. Fences may not cover an entire Lot in the Links and Range. The Greens fences should be considerate to the neighbors surrounding this area to fit the overall scheme of the subdivision. Front yards may not be fenced between the front of the house and the street. Fences may be tan, sand, or natural colored keeping overall scheme of neighbors in mind;
- h. Fences shall not run to the property line on any Lot; and

- i. None of these fencing restrictions shall apply to land owned by Developer which is being used for agricultural purposes and Developer shall not be obligated to obtain review by the DRC of fences on its agricultural land.

4. **Color.**

- a. The exterior colors of buildings must be approved by the DRC; after initial construction, changes to the exterior color of any building must be approved in advance by the DRC. The DRC shall have the right to refuse to approve the color of any paint or stain which, in its sole discretion, is inconsistent with the color scheme, or may detract from the value, of the other Homes located in The Nines Subdivision or which color is not suitable or desirable for aesthetic or other reasons. All structures shall be colored (painted or otherwise) with a natural tone color or colors so as to blend with the natural colors found in the subdivision in rural Montana. The garage and house must be the same color.
- b. Each building must be painted or stained in a consistent fashion, and no building shall be painted or stained in more than one color, except that window and door trim, shutters, eaves, porches, and similar design elements may be another color if approved by the DRC.
- c. The exterior color palette of all buildings should be subdued in intensity, with color tones tending toward the neutral end of the value scale.

5. **Solar Panels.** The use of roof mounted solar panels is permitted, subject to the review and approval of the DRC. Any building utilizing solar panels shall be designed and constructed so that the solar panels fit into the shape and character of the building design. All buildings with solar panels shall be designed, constructed, and maintained so that the exterior appearance is architecturally and aesthetically compatible with adjacent buildings.

6. **Pools and Hot Tubs.** Above ground swimming pools are not permitted. Exterior hot tubs must be screened from adjacent properties and streets. All pumps, filters, and equipment for spas must be located and installed so as not to cause a noise nuisance to neighbors and must be screened from view.

7. **Set-Back Requirements.**

- a. **Front Yard Setback.** All structures on Lots located in the Range and in the Links shall be setback a minimum of twenty- five (25) feet from the front property line.

- b. **Side Yard Setback.** All structures on Lots located in the Range and in the Links shall be setback a minimum of ten (10) feet from the side property line and twenty-five (25) feet from any adjacent side street
- c. **Rear Yard Setback.** All structures, including ancillary structures, located on Lots located in the Range and in the Links shall be setback a minimum of twenty-five (25) feet from the rear yard lot line.
- d. **The Greens Setback Requirements.** The front, side yard, and rear yard setback requirements for Lots located in the Greens shall be those requirements for R-9600 zoning, as specified by the Billings Montana Municipal Code. All structures on Lots in the Greens must meet the minimum setback standards for R-9600 zoning.

## **ARTICLE V**

### **CONSTRUCTION REQUIREMENTS**

1. **Design Standards.** All improvements to any Lot shall comply with the Design Standards as set forth in these Covenants and Restrictions, as they may be amended and adopted from time to time by the Design Review Committee (DRC), unless strict compliance with a standard is waived by the DRC.

2. **Compliance with Approved Plans.** It is the responsibility of the Owner to make sure that any and all contractors, subcontractors, material suppliers and others working on an improvement to the Owner's Lot comply with plans approved by the DRC. Failure to comply with approved plans or beginning construction without prior written approval of the DRC may result in fines being levied against the Owner, and/or a directive from the Board to discontinue construction. Fines will be assessed to the Owner as a common expense payable only by that Owner.

3. **Time limit For Starting Construction.** Construction of a home which is part of a Lot must be commenced within twelve (12) months after receipt of a deed to the Lot from Developer.

4. **Duration of Construction.** Construction shall be diligently performed from its commencement to completion of the exterior of the building(s) and any necessary improvements to the grounds surrounding and affected by construction of the building(s). In any event, the exterior appearance of the building(s) shall be completed within one (1) year after the commencement of construction; the Owner of the Lot shall, within a period of one year after occupancy of a newly constructed dwelling on the Lot, provide grass and/or other appropriate landscape cover over all unimproved or disturbed areas of the Lot.



5. **Grading and Excavation.** No excavation, except that which is necessary for the construction of improvements shall be permitted on any Lot until such time as the actual construction is to begin; except that the Owner may drill and excavate for the purpose of testing the sub-soil conditions prior to construction.

6. **Material Storage and Removal.** No building material of any manner or character shall be placed or stored on the property until the Owner is ready to commence construction of improvements. All materials stored on-site during construction shall be neatly stacked on the Lot where they will be used. Following completion of construction, all excess materials shall be removed from the Lot, screened from view or stored inside the garage or other building.

7. **Contractor Parking.** Contractors, subcontractors, material suppliers and other Persons involved in the construction of Improvements shall park only on the Lot on which they are working. No construction parking shall be allowed on neighboring Lots or on the street.

8. **Construction Hours/Noise.** In an effort to maintain the tranquility of the Project and to minimize inconvenience to neighboring Lots, no exterior construction activity shall commence before 6:00 a.m. or continue after 8:00 p.m., and no excessively loud playing of radios, tape or CD players, or other amplification devices shall be allowed by construction workers so as to disturb neighboring Lot Owners.

9. **Cleanup of Construction Debris.** Owners shall require that all construction workers take reasonable measures to contain construction debris, including coffee cups and food wrappers, mud, dirt, gravel and garbage on that Owner's Lot; the Owner must arrange for cleanup of debris on the site and on surrounding areas at least twice a week during construction. All contractors shall use Best Management Practices for erosion and sediment control. Contractors must comply with all local, state, and federal storm water management requirements for the protection of waterways during construction.

10. **Location of Buildings.** All buildings included in each Lot must be located entirely within the building areas designated on the site plan approved by the DEQ a copy of which is attached hereto.

11. **Utility lines.** All utility lines, cables, and pipes shall be placed underground; no overhead lines shall be permitted. Installation of all underground services shall be coordinated to minimize the amount of excavation required. Each Owner is responsible for installation of underground service across his or her Lot from the adjacent service pedestal or junction box.

12. **No Modular or Log Homes.** No manufactured home, modular home, or log home shall be permitted in The Nines Subdivision.

13. **Septic Systems.** Each home located in the Range and in the Links shall have its own wastewater system in compliance with governmental regulations and any rules that may be adopted by the Association. It shall be the exclusive responsibility of each Owner to properly maintain the wastewater system on each Owner's Lot and to insure compliance with all governmental regulations and Association rules. Each home located in the Greens shall be connected to the Community Sewer System described herein. The Community Sewer System shall be maintained by the Association in compliance with all governmental regulations for the benefit of the Owners in the Greens.

14. **Satellite Dishes and Antennas.** Owners may install a small satellite dish or antenna, not exceeding 1 meter in diameter or diagonal measurement, in an inconspicuous location at the back or side of their home without prior approval of the DRC.

15. **Required Landscaping.** Each Lot Owner must landscape that portion of his or her Lot adjoining any street in conformity with the landscaping guidelines adopted by Developer. Landscaping must be completed no later than 12 months after construction of the exterior of the home which is part of the Lot.

16. **Driveways.** All driveways and walkways constructed to service an individual Lot shall be constructed with an all-weather surface of finished concrete or asphalt base.

17. **Required Culvert Installation.** Owners must install a culvert in the borrow pit at the location their driveway crosses the borrow pit to permit the free flow of storm water in the borrow pit and must keep the culvert free of debris.

18. **Best Practices.** Owners are responsible for making sure that any contractors working on the Owner's Lot use Best Practices to prevent storm water pollution. Contractors shall use Best Practices to prevent mud, sand, rocks and gravel from being tracked into the streets.

19. **Irrigation Wells.** Owners of the following Lots shall be responsible for drilling an irrigation well at the time each lot is developed: (a) Lots 1, 2, 5, 6, 10, 11, 12, 18, 19, 23, and 24, Block 1; (b) Lot 6, Block 2; (c) Lot 5, Block 3; and (d) Lots 1, 2, 5, 6, 12, 13, 18, 19, and 40, Block 4. The Clubhouse and Private Park located on Lots 5 & 6, Block 3, shall share one well. The Private Parks located on Lots 2 and 40, Block 4 shall share one well. With the exception of the foregoing, each Lot listed herein shall have its own well for irrigation purposes. The Association may limit irrigation water use to a certain design flow and watering days or times. The Association may require irrigation to be controlled by automated timer systems set to operate in off-peak times so that instantaneous demands are not summed with irrigation peak. Water rights for all individual wells within the Subdivision shall be held in the name of the Association for

the Subdivision. Owners shall comply with all of the requirements of the Water Permit for the Subdivision, including those requirements specified on **Exhibit "B"** hereto. The Association may assess and collect reasonable fees from Owners in connection with its efforts to maintain compliance with the Permit. The Association may shut off or limit the water service of any Owner for excessive use or other misuse. All Owners with water wells shall comply with the following requirements:

- a. **One Well.** Only one well may be drilled on each Lot.
- b. **Well Depth Restriction.** The well drilled must be no deeper than 120 feet below ground surface.
- c. **Well Logs.** Owners shall provide a copy of the well log to the Association within 90 days of the completion of the well.
- d. **Water Use.** Water use must be measured and recorded as described in the Association's Water Permit(s).
- e. **Water Use Measurement.** Owners shall install a DNRC-approved water use measuring device on the well. Water must not be diverted from the well until the measuring device is in place and operating. Owners shall assist the Association in keeping yearly written records of the flow rate and volume of all water diverted by individual wells and the community systems during the entire year. Owners shall allow the Association to inspect, maintain, and replace the measuring device so that it always operates properly and measures flow rate and volume accurately.
- f. **Dates of Use.** Irrigation well water may only be used from April 15 to October 15.
- g. **Groundwater Contamination Prevention.** To prevent ground water contamination, Owners who connect a chemical or fertilizer distribution system to a well, must install and maintain an operational backflow preventor. Owners shall allow the Association to inspect wells for the existence and efficacy of backflow preventor devices.

20. **Community Sewer System.** The following Lots shall utilize the Community Sewer System: (a) Lots 2,4,5, and 7-20, Block 2; (b) Lots 1-4, 5, (club house) and 7-10, Block 3; and (c) Lots 3, 4, 7, and 8, Block 4. The Association shall manage and maintain the Community Sewer System for the benefit of the Owners of the Lots listed herein. The costs associated with maintenance of the Community Sewer System shall be segregated by the Association and shall be billed exclusively to the Owners of the Lots listed herein who are on the Community Sewer System.

## **ARTICLE VI** **PROHIBITED USES**

1. **Prohibited Uses.** The following operations and uses shall not be permitted in any portion of the Nines Subdivision, regardless of where the Lot is located; provided however, that Declarant may waive any of the following restrictions on a case by case basis in Declarant's sole exclusive and absolute discretion. Any waiver granted by Declarant hereunder must be in writing, signed by Declarant, and recorded in the records of Yellowstone County referencing this Declaration. Any waiver by Declarant, shall apply only to the specific Lot or Lots identified in the waiver and shall not constitute a waiver of any restriction for the remainder of the Subdivision.

- a. No noxious or offensive activity shall be carried upon any Lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood; furthermore, no trash or obsolete materials or non-operating or non-licensed vehicles or portions thereof shall be allowed to accumulate on any of the above-described Lots to the extent that such shall, in the opinion of the Board of Directors, constitute a menace or nuisance. Furthermore, no cars used in stock car races shall be allowed on any Lot at any time.
- b. Any dwelling located on a Lot shall not exceed two stories in height.
- c. No structure shall be constructed on any Lot without the prior approval of the DRC.
- d. No structure shall be erected, altered, placed, or permitted upon any Lot, other than one detached single-family dwelling or agricultural outbuildings. In addition, the dwellings must include at least a double attached or basement garage and made include an additional space for the storage of boat and/or camper as long as the space is entirely enclosed. No basement or portion thereof shall be converted or made into an apartment to be used for rental purposes.
- e. No trailer, basement, tent, shack, garage, or other outbuilding erected on any Lot shall at any time be used as a residence, temporarily or permanently, nor shall any structure of a temporary character be used as a residence, and the exterior of the dwelling shall be finished in its entirety before it can be occupied. Any temporary building used as a construction shack must be removed from the Lot within sixty (60) days after the earlier of (i) the completion of construction; or (ii) occupancy of the building.
- f. Any building or residence erected on a Lot shall be of new construction and no building or buildings shall be moved onto a Lot.

- g. No Lot shall be further subdivided without the prior express written consent of the DRC, which consent may be granted, denied, or conditioned in the DRC's sole and exclusive discretion.
- h. Agricultural Uses are prohibited on all Lots in the subdivision so that no swine, poultry, goats, horses, chickens, turkeys, cows, or other livestock or animals shall be kept on the premises; provided, however, domestic pets may be kept by the Owners, which domestic pets shall be defined as meaning not more than three cats and not more than three dogs per residence, which shall be confined to the premises held by the Owner, excepting when the animal is on a leash.
- i. No feedlot shall be allowed on any Lot.
- j. No construction equipment or materials of any nature can be moved onto a Lot until within thirty (30) days of the start of construction. Any building started shall have its exterior completed within one year from the time of starting.
- l. No sale signs, flashers, displays, or other signs or advertising devices shall be allowed on or in front of any residential Lot, except for real estate sale signs, customarily used at the time.
- m. There shall be only one residential unit per Lot. Accordingly, there shall be no separate residential structure or so-called Mother-in-Law apartment.
- n. Horses shall not be allowed in the Common Areas within the Subdivision.

## **ARTICLE VII**

### **COMMON AREA EXPENSES**

- 1. **Common Areas.** The common areas of The Nines Subdivision are identified on **Exhibit "C"** hereto. Generally, without limitation, the common areas include:
  - a. The sidewalk constructed along the South side of the Subdivision;
  - b. All sidewalks within and fronting Private Parks that are maintained by the Association;
  - c. The Private Parks specified herein and/or designated by the Association;
  - d. The swimming pool and surrounding area;
  - e. The Clubhouse; and

- f. Such other areas that the Association may declare to be Common Areas.

2. **The Scope of Common Area Maintenance.** The Association shall be responsible for the maintenance of all common areas within the Nines Subdivision. The maintenance obligation shall include:

- a. Maintaining the sidewalk along the south side of the Subdivision as well as all sidewalks within and fronting Private Parks that are maintained by the Association;
- b. Maintaining the stormwater swales and detention pond within the common areas;
- c. Maintaining the Private Parks identified herein or designated by the Association;
- d. Maintaining the landscaping within the common areas identified on **Exhibit "C"**. Maintaining the landscaping shall include irrigation systems, the grass, trees, shrubs, flowers, and all landscaping features within the common areas;
- e. Maintaining liability insurance for the Association;
- f. Snow removal, ice mitigation, and sanding of the streets within the subdivision;
- g. Paying the taxes on the common areas identified on **Exhibit "C"**;
- h. Paying the utilities for the common areas;
- i. Maintaining the mailboxes within the Subdivision;
- j. The streets, roads, dry hydrant, and the septic systems shall be maintained pursuant to a Maintenance District;
- k. Such other maintenance obligations that the Association may designate as Common Area Expenses; and
- l. Maintaining the swimming pool and related facilities and equipment. Maintenance of the swimming pool shall be broadly defined to include all costs and expenses associated with the swimming pool and related facilities and equipment. These expenses may include: water, chemicals, water treatment, equipment repair and replacement, fencing, electricity, security,

insurance, and all other costs and expenses approved by the Association or any designated Manager.

3. **Budget.** The Board of Directors of the Association shall prepare an annual budget for general common area expenses. A copy of that budget, together with a statement of the amount of each semi-annual assessment, shall be delivered to each Owner. Each semi-annual assessment shall be equal to the total estimated common area expenses for the coming year plus a reasonable reserve allowance for replacement of improvements. Special assessments may be made by the Board of Directors for capital improvements.

4. **Cost Allocation.** Anytime a Lot in the Subdivision is sold, the purchaser shall pay a one-time fee to the Association in the amount of Five Hundred Dollars (\$500.00). Additionally, each Owner shall pay to the Association, in semi-annual payments, in advance, the Owner's pro-rata share of common area costs attributable to each Owner's Lot based upon the amount set forth in the approved budget. The "pro-rata" share attributable to an Owner for a Lot for a calendar year will be based on a fraction, the numerator of which is the square footage of an Owner's Lot and the denominator of which will be the square footage of all of the developable Lots within the subdivision. For the purpose of calculating an Owner's pro-rata share, the common area Lots, the Private Parks, the swimming pool and Clubhouse, will not be included in the denominator. The numerator for each parcel shall be the square footage reflected for each Lot on Exhibit "D", hereto. No Common Area costs shall be assessed against the Common Area Lots, the Private Parks, the swimming pool, and Clubhouse.

5. **Audit Rights.** Each Owner shall have the right to audit the Association's books and records, pertaining to common area expenses for a period of two (2) years. An Owner shall notify the Association of such Owner's intent to audit at least thirty (30) days prior to the designated audit date. Such audit shall disclose any error in the determination of common area costs or any allocation thereof to a particular Lot. The auditing Owner shall provide the Association with a copy of the audit. The cost of any audit shall be assumed by the auditing Owner, unless such Owner shall be entitled to a refund in excess of ten percent (10%) for the amount calculated by the Association as such Owner's share of the common area expenses for the applicable calendar year, in which case the Association shall pay the reasonable costs of the audit. Any audit shall be conducted only by a qualified Certified Public Accountant.

## **ARTICLE VIII**

### **DUTIES AND POWERS OF THE ASSOCIATION**

1. **General Powers of Association.** The Association shall have the power to do any lawful thing required or permitted to be done under the Governing Documents and necessary, appropriate or incidental to the exercise of the express powers or duties of the Association for the peace, health, comfort, safety, and general welfare of the

Owners, subject only to the limitations on those powers set forth in the Governing Documents. The duties and powers of the Association shall include, but are not limited to, those specifically enumerated in this Declaration.

2. **Adoption of Rules.** To the fullest extent permitted by law, the Association may adopt reasonable Rules related to the Subdivision and the implementation of the Governing Documents.

3. **Enforcement.** The Association is authorized to impose fines, suspend voting rights, and impose any other disciplinary action for violations of its Rules and/or the Governing Documents to the fullest extent permitted by law. Before a policy involving the imposition of monetary penalties takes effect, and any time such penalties are revised, the Association shall provide each Owner with a written schedule of penalties. The Association may not impair an Owner's right to use and enjoy his/her Lot as part of any disciplinary action. Each Owner shall have a right of action against another Owner or the Association for failure to comply with the Governing Documents or with a decision of the Association. A failure by the Association to enforce any provision of the Governing Documents on one or more occasions shall not be deemed a waiver or estoppel of the Association's right to enforce a similar or other violation of the Governing Documents.

4. **Legal Actions.** The Association may institute, defend, settle, or intervene in litigation, mediation, arbitration or administrative proceedings in matters pertaining to (i) enforcement of the Governing Documents; (ii) damage to the Common Area; or (iii) damage to other parts of the Subdivision which the Association is obligated to maintain or repair. The Association shall not be required to conduct inspections, maintain inspection records, exhaust any applicable casualty insurance coverage, or provide an opportunity to cure prior to initiating a civil action.

5. **Manager.** The Association may employ, or retain as independent contractor, a manager to perform all or any part of the Association's delegable duties. Any management contract shall be in writing and provide for the right of termination without a termination fee by the Association, with immediate notice if for cause or with sixty (60) days' written notice if without cause. The Association shall not delegate the following powers: (i) to borrow money; (ii) to use Association property as security for a debt; (iii) to levy Assessments; (iv) to begin litigation; (v) to make capital expenditures in excess of budgeted amounts; (vi) to impose discipline for violation of the Association Rules or Governing Documents; or (vii) to hold disciplinary hearings.

6. **Annual Budgeting and Reporting.**

- a. **Operating Budget.** Not less than thirty (30) nor more than ninety (90) days before the beginning of each fiscal year, the Association shall prepare and distribute to each Owner a pro forma operating budget for the next fiscal year.
- b. **Annual Report.** Within one hundred and twenty (120) days after the close of the fiscal year, the Association shall prepare and distribute to each Owner an



annual report for the previous year which includes an operating statement, a year-end balance sheet, and a statement of changes in financial position from the close of the prior year. The annual report shall mention that the statements were prepared without audit from the books and records of the Association.

- c. **Summary of Reserve Funding Plan.** Along with the operating budget, the Association shall a summary of the Reserve Funding Plan described in Section 7 below. The summary shall include a notice that the full Reserve Funding Plan is available upon request to any Owner.

Such reports, disclosures, and notices may be delivered by electronic means if the recipient has agreed to that method of delivery.

7. **Reserve Study.** At least once every five (5) years the Association may conduct a competent and diligent visual inspection of the accessible areas of major components of the Common Areas and obtain a study of its reserve requirements. The reserve study shall be conducted by a qualified individual or entity, and shall contain the following information:

- a. Identification of the major components of the Common Areas which the Association is obligated to maintain and which have a remaining useful life of less than thirty (30) years;
- b. An estimate of the remaining useful life of such components;
- c. An estimate of the cost of repair or replacement of such components at the end of their useful life;
- d. An estimate of the total annual contribution necessary to defray such cost after subtracting currently available reserve funds; and,
- e. A "Reserve Funding Plan" which indicates how the Association intends to fund the contributions described in subsection (d) above, to meet the Association's obligation for the repair and replacement of all major components with an expected remaining life of thirty (30) years or less, excluding those components which the Association has determined will not be repaired or replaced. The Reserve Funding Plan shall be adopted at an Owner Meeting and shall include a schedule of the dates and amounts of any change in Regular or Special Assessments needed to fund such plan sufficiently. If the Association determines that an Assessment increase will be necessary, such increase shall be approved by separate Association action.

The Association shall annually review the study and implement necessary adjustments to the reserve component of the Assessments.

8. **Reserve Fund Administration.**

- a. **Reserve Fund Account.** The Association shall deposit operating funds and reserve funds in segregated accounts.
- b. **Using Reserve Funds.** The Association shall not expend reserve funds for any purpose other than maintenance, repair or replacement, or litigation or arbitration involving maintenance, repair or replacement, of items which the Association is obligated to maintain, repair or replace. When the decision is made to use reserve funds or to temporarily transfer money from the reserve fund to pay for litigation or arbitration, the Association shall notify the Owners of the decision and the availability of an accounting with the next available mailing, and thereafter prepare an accounting of the litigation or arbitration-related expenses at least quarterly and make the accounting available for inspection by the Owners at the Association office.
- c. **Borrowing Reserve Funds.** Reserve funds may be transferred to the operating account to meet short-term cash flow requirements or other expenses if the Association has provided notice of the intent to consider the transfer in a properly prepared and transmitted meeting notice which included the reasons the transfer is needed, some of the options for repayment, and whether a Special Assessment may be considered. If the Association authorizes the transfer, it shall issue a written finding, recorded in its minutes, explaining the reasons that the transfer is needed, and describing when and how the money will be repaid to the reserve fund. The transferred funds shall be restored to the reserve fund within one (1) year of the date the funds are initially transferred out, except that the Association may, after giving the same notice required for considering a transfer, and making a written finding, supported by documentation, that a temporary delay would be in the best interest of the Association, temporarily delay the restoration. The Association shall exercise prudent fiscal management in maintaining the integrity of the reserve account, and shall, if necessary, levy a Special Assessment to recover the full amount of the transferred funds within the time limits required by this Section.

9. **Access to Association Records.** Within ten (10) days of the Association's receipt of a written request, the Association shall provide an Owner or the Owner's designee with a copy of the following:

- a. The Declaration and Rules;
- b. A copy of the most recent documents distributed under Section 3.9;
- c. A statement of the current Regular and Special Assessments and fees, any change in such Assessments and fees which have been approved but not yet become due and payable, and a Status Certificate regarding the requesting Owner's delinquencies;

- d. A copy or summary of any notice previously sent to the requesting Owner regarding any alleged violation of the Association Rules and/or Governing Documents; and
- e. The Association shall make available to any Owner or Owner's designee for inspection and copying all other Association Records, including without limitation its Owner list, accounting books and records, and minutes of proceedings. The Association may charge a reasonable fee for these documents which shall not exceed the actual cost of copying and mailing the documents.

10. **Duties of President.** A "President" of the Association shall be elected at the initial meeting of the Association and shall serve a term of one (1) year unless terminated for cause. A President may be removed from office for cause, and such President shall be considered "unable to act as President" under this Section.

The President's duties shall be as provided below:

- a. **Maintenance.** The President shall facilitate all maintenance which the responsibility of the Association by is proceeding in the following manner.
  - (1) The President shall first inspect the repair and maintenance problem and confirm that it does exist;
  - (2) If he/she reasonably believes that the repair and maintenance problem can be repaired for less than \$500, contact an appropriate repair person to schedule the repair, arrange for the repair person to obtain access to the location of the problem, inspect the repair person's work upon completion, and pay the repair person out of Association funds. It is expressly provided that neither the President nor any affiliated individual or entity may undertake the work themselves without the prior authorization of the Association Board;
  - (3) If he/she believes the problem will cost more than \$500 to repair, solicit and obtain at least two bids for the work and present these bids to the Association Board; and
  - (4) It is expressly provided that unless the President completes repair him/herself with Owner approval as described above, he/she shall not be responsible for improperly completed repairs.
- b. **Accounting.** The President shall maintain proper and complete books of account of the Association at the President's home or principal place of business which shall be open to inspection by any Owner, authorized representative, or other person entitled to inspect such records under this Declaration at any reasonable time. The President shall be responsible for compliance with all Association accounting requirements as prescribed by

law and by Section 3 of this Declaration.

- c. **Other Duties.** In addition to those duties listed above, the President shall (i) implement all decisions of the Association, and (ii) perform all duties of the Association which do not require a specific decision or authorization by the Association.

11. **Delegation of President's Duties.** The Association may at any time vote to delegate any or all of the above duties to a manager. In the event of delegation to a manager or employee, the President shall retain the duty and authority to supervise the manager or employee.

12. **Types of Assessments.** There are three types of Assessments: Regular Annual Assessments, Special Assessments, and Personal Reimbursement Assessments.

- a. **Regular Annual Assessments.** Regular Annual Assessments shall be levied against all Owners to fund the operating and reserve requirements of the Association as projected in the pro forma operating budget. If at any time during the fiscal year, the Association determines that the amount of the Regular Annual Assessments is inadequate or excessive, it may revise it for the balance of the fiscal year (subject to the voting requirements of the Association).
- b. **Special Assessments.** Special Assessments may be levied against all Owners to defray (i) the cost of construction, repair, or replacement of capital improvements to portions of the Common Area which the Association is obligated to maintain, (ii) extraordinary expenses of the Association that were not anticipated in the pro forma operating budget, or (iii) any other purpose permitted by law.
- c. **Personal Reimbursement Assessments.** A Personal Reimbursement Assessment may be levied against any Owner to enforce the Owner's obligations and responsibilities under the Governing Documents.

13. **Payment of Assessments.** Regular Annual Assessments shall be assessed against each Owner on the first day of the first month and shall be due and payable in equal monthly installments on the first day of each month of the year, unless the Association adopts some other basis for collection. The Association shall notify each Owner in writing of the amount of the Regular Annual Assessments for the upcoming year at the same time it distributes the pro forma operating budget. In addition, the Association shall notify each Owner in writing of any change in the Regular Annual Assessments or of the levy of any Special Assessment not less than thirty (30) nor more than sixty (60) days before the due date of such changed Regular Annual Assessment or Special Assessment. The due date for payment of a Personal Reimbursement Assessment shall be stated in the notice of the assessment and be at least thirty (30) days after notice is given. Assessments are due and payable on their due dates without

deduction or offset for any claim an Owner may have against the Association. Each Assessment, together with authorized charges, is the joint and several personal obligations of all Owners against which it is levied. No Owner may exempt him/herself from liability for payment of Assessments.

**14. Delinquent Assessments.**

- a. **Delinquency Timing and Charges.** An Assessment becomes delinquent if payment is not received by the Association within thirty (30) days after its due date. A late charge of ten percent (10%) or \$10.00, whichever is greater, shall be due on delinquent payments as compensation for additional administrative costs. A late charge may be imposed on each delinquent payment but may not be imposed more than once on any single delinquent payment. The Association may also recover reasonable costs incurred in collecting delinquent Assessments including reasonable attorney's fees. Interest on delinquent payments, late charges, collection costs, and attorney's fees shall accrue at the rate of ten percent (10%) per annum beginning thirty (30) days after the due date and continuing until the date payment is received.
- b. **Assessment Liens.** Subject to the dollar limitations of subparagraph (d) below, and the notice and alternative dispute resolution provisions of subparagraph E., below, a delinquent Regular Assessment or Special Assessment, or any penalty, fine, charge, or other financial obligation levied by the Association against an Owner as a Personal Reimbursement Assessment for a violation of the Governing Documents, or to reimburse the Association for costs associated with the repair of damage for which an Owner, occupant or invitee is responsible, plus any late charges, interest, costs of collection, or related charges, may be made a lien on the delinquent Owner's Lot by recording a notice of delinquent Assessment with the County Recorder. A copy of the recorded notice of delinquent Assessment shall be mailed by certified mail to each Lot Owner against which the lien has been recorded no later than ten (10) calendar days after recordation. A lien against the Lot of such Owner(s) may be enforced by judicial foreclosure, or in any other manner permitted by law.
  - (1) **Owner Rights and Remedies.** At least thirty (30) days prior to recording a lien against a Lot, the Association shall provide to the Owner, by certified mail, a notice ("Owner Notice of Delinquency").
  - (2) The delinquent Owner may dispute the debt by submitting to the non-delinquent Owner a written request for dispute resolution.
  - (3) The decision to record a lien for delinquent Assessments shall be made only by the Association and may not be delegated to an agent.

- (4) An Owner may submit a written request to meet with the other Owner, or his/her representative(s), to discuss a payment plan for the debt. The meeting shall take place within forty-five (45) days of the postmark of the request, if the request is mailed within fifteen (15) days of the date of the postmark of the Owner Notice of Delinquency. Payment plans may incorporate any Assessments that accrue during the payment plan period. Payment plans shall not impede the non-delinquent Owner's ability to record a lien on behalf of the Association against a Lot to secure payment of delinquent Assessments. Additional late fees shall not accrue during the payment plan if the Owner is in compliance with its terms. If the Owner defaults on any payment plan, the Association may resume its efforts to collect the delinquent Assessments from the time prior to entering into the payment plan.

c. **Homestead Waiver.** Each Owner waives the benefit of statutory debtor protection, including homestead and exemption rights, to the full extent permitted by Montana and Federal law with respect to enforcement of Assessment liens. Each Owner expressly waives the Owners Homestead Exemption with respect to an Assessment Liens that may be recorded against the Owner's Lot by the Association.

d. **Payment of Delinquent Assessments.** Payment toward a delinquent Assessment shall be credited first to satisfying the Assessment, and then to late charges, collection costs, attorney's fees, and interest. Upon payment of the sums specified in the notice, the Association shall promptly record a notice acknowledging satisfaction and releasing the lien. The lien shall not be affected by the sale or transfer (other than through foreclosure) of the affected Lot.

15. **Water and Wastewater Systems.** The Association shall be responsible for all aspects of the operation and maintenance of the community water system, including but not limited to, wells, well pumps, controls, disinfection system, power supply, piping, and appurtenances. The Association shall enter into an Operation & Maintenance (O&M) contract for the community Level 2 wastewater treatment systems in accordance with ARM 17.30.718(8) and the service-related obligations listed in DEQ-4, Appendix D, in perpetuity, with an authorized Dealer/Representative. The Association shall also be responsible for maintaining compliance with Montana law and administrative regulations and all reporting requirements related thereto or arising thereunder.

**ARTICLE VIII**  
**MISCELLANEOUS**

1. **Covenants Run with the Land.** The terms of this Declaration and each restriction and easement on each Tract shall be a burden on that Tract, shall be appurtenant to and for the benefit of the other Tracts and each part thereof, and shall run with the land.

2. **No Public Dedication.** Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Subdivision or of any Tract or portion thereof to the general public, or for any public use or purpose whatsoever, it being the intention of the parties that this Declaration shall be strictly limited to and for the purposes herein expressed.

3. **Modification and Termination.** This Declaration may not be amended or modified in any respect whatsoever or terminated, in whole or in part, except by a written Declaration signed by the Owners of at least seventy-five percent (75%) of the Lots within the subdivision. Such amendment, modification or termination shall be effective only when recorded in the official real estate records of Yellowstone County, State of Montana; provided, however, (i) no such amendment shall impose any materially greater obligation on, or materially impair any right of, a Landlord under a Prime Lease or an Owner or its Tract without the consent of such Owner, and (ii) no amendment, modification or termination of this Declaration as provided herein shall adversely affect the rights of any senior Mortgagee unless such Mortgagee consents in writing to the amendment, modification, or termination. Because the submission of a proposed amendment to the Owners is not an item of "consent" or "approval", each Owner may consider any proposed amendment to this Declaration in its sole and absolute discretion without regard to reasonableness or timeliness.

4. **Breach Shall Not Permit Termination.** It is expressly agreed that a breach of this Declaration shall not entitle any Owner to terminate this Declaration, but such limitation shall not affect in any manner any other rights or remedies which such Owner may have hereunder by reason of any breach of this Declaration. Any breach of this Declaration shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value, but this Declaration shall be binding upon and be effective against any Owner whose title is acquired by foreclosure, trustee's sale, or otherwise.

5. **Notices.**

- a. All notices given pursuant to this Declaration shall be in writing and shall be given by facsimile, by personal delivery, by United States mail or United States express mail postage or delivery charge prepaid, return receipt requested, or by an established express delivery service (such as Federal

Express or United Parcel Service), sent to the person and address or facsimile number designated below (but if facsimile notice is used such facsimile notice will only be effective if the written notice and confirmation of transmission is set to the addressee by an established express delivery service), or to the registered agent of person in the State in which the addressee is located. The Owners expressly agree that notices given by attorneys on behalf of their client(s) in the manner provided in this subsection are effective and recognized notice pursuant to this Declaration. All notices shall be sent to all of the following:

**Declarant:** P3Coleman, LLC  
P.O. Box 1555  
Billings, MT 59103

The Person and address to which notices are to be given may be changed at any time by any Owner upon written notice to the other Owners. All notices given pursuant to this Declaration shall be deemed given upon receipt.

- b. For the purpose of this Declaration, the term "receipt" shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document to the address specified pursuant to subparagraph (a) above as shown on the return receipt, (ii) the date of actual receipt of the notice or other document by the person or entity specified pursuant to this Section, (iii) in the case of a facsimile, the date and time of receipt as shown on the confirmation of the facsimile transmission; (iv) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (A) the date of the attempted delivery or refusal to accept delivery, (B) the date of the postmark on the return receipt, or (C) the date of receipt of notice of refusal or notice of non-delivery by the sending party.

6. **Waiver.** The failure of a Person to insist upon strict performance of any of the restrictions or other terms and provisions contained herein shall not be deemed a waiver of any rights or remedies that said Person may have and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the restrictions or other terms and provisions contained herein by the same or any other Person. The Board may, in its sole and absolute discretion, waive any of the terms, conditions, limitations, restrictions, and/or requirements that are imposed by these CCRs. All waivers must be in writing and must be signed by The Board. The Board may condition any waiver upon such terms and conditions as The Board deems appropriate, in its sole and exclusive discretion.

7. **Severability.** If any term or provision of this Declaration or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Declaration or the application of such term or provision to persons or



circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Declaration shall be valid and shall be enforced to the extent permitted by law.

8. **Not a Partnership.** The provisions of this Declaration are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the Owners. Each Owner shall be considered a separate party and no Owner shall have the right to act as agent for another, unless expressly authorized to do so herein or by separate written instrument signed by the Owner to be charged.

9. **Captions and Headings.** The captions and headings in this Declaration are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions, or Declarations contained herein.

10. **Interpretation.** Whenever the context requires construing the provisions of this Declaration, the use of a gender shall include both genders, use of the singular shall include the plural, and the use of the plural shall include the singular. The word "including" shall be construed inclusively, and not in limitation, whether or not the words "without limitation" or "but not limited to" (or words of similar importance) are used with respect thereto. The provisions of this Declaration shall be construed as a whole and not strictly for or against any party. Unless otherwise provided, references to Articles and Sections refer to the Articles and Sections of this Declaration.

11. **Entire Declaration.** This Declaration contains the entire Declaration between the parties hereto and supersedes all prior Declarations, oral or written, with respect to the easements, restrictions and other terms and conditions contained in this Declaration affecting the Tracts. The provisions of this Declaration shall be construed as a whole and not strictly for or against any party. Accordingly, the rule of strict construction shall not be applied.

12. **Joint and Several Obligations.** If any Owner is composed of more than one person, the obligations of those Owners shall be joint and several.

13. **Recordation.** This Declaration shall be recorded in the official real estate records of the County in which the Subdivision is located.

14. **Variances.** Where appropriate, the DRC or the Association may, in its sole, exclusive, and absolute discretion, grant written variances to the provisions of this Declaration (in lieu of an amendment), signed by of the DRC or the Association, as appropriate, where strict adherence to the requirements of this Declaration would, in the judgment of the Association, cause undue hardship. The granting of a waiver or variance to one Owner shall not automatically entitle another Owner to the same waiver or variance, it being understood that each request for a waiver or variance shall be

treated on its own individual merits. The DRC and the Association shall have no duty or obligation to grant any request for a waiver or variance and shall have no liability for exercising its discretion to deny any request.

15. **Limitation on Liability.** Except as specifically provided below, there shall be absolutely no corporate or personal liability of persons, firms, corporations, or entities who constitute the Association, Board, and DRC hereunder, including, but not limited to, officers, directors, shareholders, members, partners, employees, or agents thereof, with respect to any of the terms, covenants, conditions and provisions of this Declaration. In the event of a default by the Board, the Association, or the DRC hereunder, the Owner who seeks recovery from the Declarant may seek equitable relief through a proceeding for a temporary restraining order, preliminary injunction, permanent injunction, or specific performance. However, no Owner shall be entitled to any monetary award for losses suffered, liabilities incurred or costs. **No Owner shall be entitled to incidental, consequential, or punitive damages from the Association, the Board, or the DRC.**

P. **Zoning Requirements.** Owners are alerted that it is their obligation to ascertain and comply with all applicable zoning ordinances or obtain a variance from those ordinances. These Covenants and Restrictions do not relieve Owners of the obligation to also comply with applicable zoning ordinances, and the DRC will not review plans for compliance with those ordinances.

Q. **Severability.** Invalidity of any one of these covenants by judgment or court order shall in no way *affect* any of the other provisions which shall remain in full force and *effect*.

R. **Alterations to these Restrictions.** Any amendment to these restrictions must be in writing and signed by all of the Owners of no less than 75% of the Lots. These restrictions may be revoked in whole or in part and additional provisions may be added by written amendment signed by all Owners of no less than 90% of the Lots. No amendment shall be effective until it is recorded in the office of the Yellowstone County Clerk and Recorder. No addition to or amendment or revocation of these restrictions shall take *effect* prior to sale of all Lots by Developer unless signed by Developer.

S. **Enforcement.** The Association, and each and every one of the Owners of Lots in The Nines Subdivision shall have the right to enforce these Covenants and Restrictions and any and all amendments thereto by civil action, including the right to injunctive relief and for damages, it being presumed that some damage would occasioned, by reason of the failure of any Lot Owner or Owners to comply with these restrictions and the covenants herein contained.

In the event that any Owner shall permit any home or other improvement, including any landscaping, which is the responsibility of such Owner to maintain, to fall into disrepair so as to create a dangerous, unsafe, unsightly or unattractive condition,

the Association may notify the Owner to take corrective action. If corrective action is not taken by the Owner within a reasonable time, as determined by the Board, the Board may cause such corrective action to be taken and shall assess the expense of correction to the Owner as a common expense, payable only by that Owner. If an Owner fails or refuses to pay such an assessment, the Association may file and foreclose a lien for the amount of the assessment, as provided in the Bylaws of the Association.

The Board may adopt, and amend from time to time, a reasonable schedule of fines for violation of any of the provisions of these Covenants and Restrictions, and charge those fines to Lot Owners in violation of these Covenants and Restrictions. Before any fine may be imposed, the schedule of fines must be approved by a majority of the Lot Owners. Fines imposed on a Lot Owner shall be deemed an assessment of a common expense, payable only by that Lot Owner and shall be a lien on the Lot of the assessed owner. Imposition of a fine by the Board shall not be deemed an election of remedies or a waiver of any other remedies available to the Association, or any Lot Owner, for violation of these Covenants and Restrictions.

Failure of the Association, its Board of Directors or any of its members to enforce the provisions of these Covenants and Restrictions shall not be deemed a waiver of the right to do so in the future.

The losing party in any lawsuit or arbitration proceeding brought to enforce these Covenants and Restrictions shall be obligated to pay the reasonable attorney fees incurred by the prevailing party, together with costs incurred in the lawsuit or arbitration proceeding. In the event the services of any attorney are used by the Association or its Board of Directors to enforce these Bylaws without filing a lawsuit or initiating arbitration, the party violating these Covenants and Restrictions shall be obligated to pay the costs and attorney fees incurred by the Association. Costs and attorney fees shall be a lien on the Lot of the violating Owner and may be foreclosed in the same manner as the lien for common expenses.

**T. Rules and Fees.** The Association shall be exclusively responsible for operating and maintaining the swimming pool, Clubhouse and Private Parks. The Association shall establish and enforce appropriate rules for the use of the swimming pool, Clubhouse, and the Private Parks within the Subdivision. The Association may impose fees and assessments upon Owners in order to maintain the swimming pool, Clubhouse, Private Parks, and other common areas within the Subdivision. All fees and assessments imposed by the Association must be reasonable, but also sufficient to meet the financial obligations of the Association and to fulfill its legal and contractual obligations. The Association may, in its exclusive discretion, impose a use fee for individuals other than Owners to use the swimming pool, Clubhouse, and Private Parks. The Association may, in its sole and exclusive discretion, limit or ban individuals from using the swimming pool, Clubhouse, and/or Private Parks for: (a) violations of rules adopted by the Association; (b) any violation of law; or (c) any act of negligence that

creates a risk of harm or potential harm to any property or person in the Subdivision.

U. **The Swimming Pool.** Owners shall comply with all rules for the swimming pool that may be established by the Association. No running, jumping, or horseplay is allowed in the pool area. Owners shall be responsible for supervising their family and guests and ensuring their compliance with all Association Rules. The Association shall have no duty or obligation to provide a lifeguard at the pool or to provide other supervision around the pool and pool area. Owners using the pool have a duty to ensure that their family and guests are properly supervised and exercise appropriate caution in and around the pool. No alcohol shall be allowed in or around the pool. Children under 15 years of age must be accompanied by an adult. Owners using the pool promise and agree to defend, indemnify, and hold the Association and all of its employees and all other Owners harmless of and from: (a) any claim that may be asserted arising from or relating to use of the pool by the Owner's family members and/or guests; and (b) any claim of injury, death or other loss arising from use of the swimming pool. (Indemnity shall include all attorney fees and other litigation expenses).

IN WITNESS WHEREOF, the Declarant has executed these Covenants and Restrictions this \_\_\_\_ day of July, 2018.

P3COLEMAN, LLC

By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF MONTANA                    )  
  : ss.  
County of Yellowstone                )

On this \_\_\_\_\_ day of July, 2018, before me, the undersigned, personally appeared \_\_\_\_\_, known to me to be the \_\_\_\_\_ of the limited liability company executing the within instrument, and acknowledged to me that (he/she) executed the within instrument on behalf of said corporation, having first been authorized to do so.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year in this certificate first above written.

\_\_\_\_\_(signature)  
Printed Name: \_\_\_\_\_  
Notary Public for the State of Montana  
Residing at \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
(mm/dd/yyyy)

## EXHIBITS

- A. The Plat
- B. The Water Permit
- C. Common Areas & Parks
- D. Lot Numbers & Square Footage
- E. The Greens
- F. The Links
- G. The Range



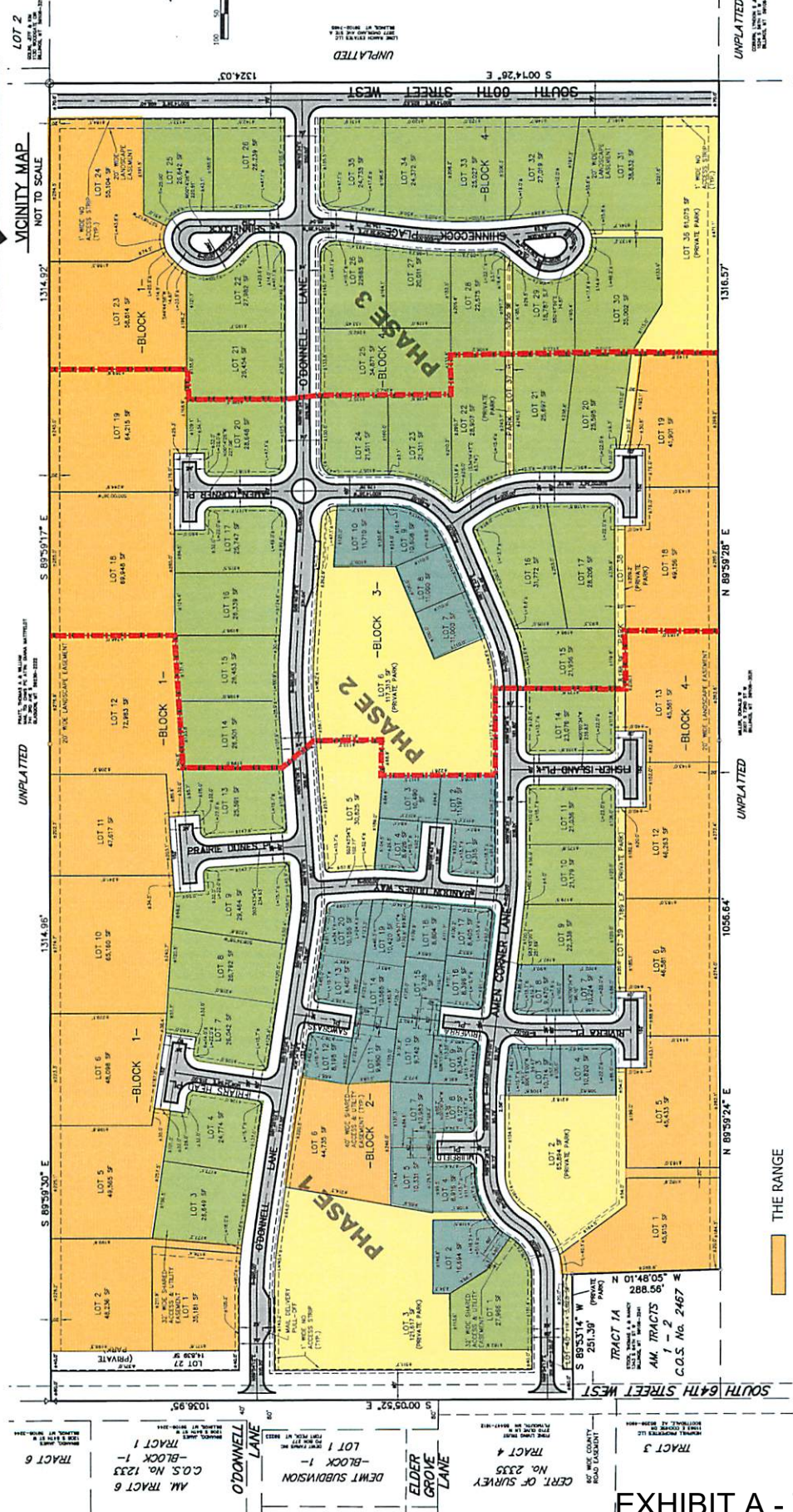
# THE NINES SUBDIVISION

BEING TRACT 2C OF CERTIFICATE OF SURVEY No. 2467 AND NE1/4SE1/4 SITUATED IN THE N1/2SW1/4 OF SECTION 17, T. 1 S., R. 25 E., P.M.M. YELLOWSTONE COUNTY, MONTANA

PREPARED FOR : P3COLEMAN, LLC.

PREPARED BY : SANDERSON STEWART

BILLINGS, MONTANA



- THE RANGE
- THE LINKS
- THE GREENS
- PRIVATE PARK / HOA PROPERTY

EXHIBIT A - The Plat



STATE OF MONTANA  
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION  
1424 9TH AVENUE P.O.BOX 201601 HELENA, MONTANA 59620-1601

## PERMIT TO APPROPRIATE WATER

UPON FINDING THE REQUIREMENTS OF SECTION 85-2-311, MCA, HAVE BEEN MET, THIS PROVISIONAL PERMIT IS GRANTED.

Water Right Number: 43Q 30115108 PROVISIONAL PERMIT  
Version: 1 -- ORIGINAL RIGHT  
Version Status: ACTIVE

Owners: P3 COLEMAN LLC  
PO BOX 1555  
BILLINGS, MT 59103

Priority Date: JANUARY 25, 2018 at 04:10 P.M.  
Enforceable Priority Date: JANUARY 25, 2018 at 04:10 P.M.

Purpose (use): MULTIPLE DOMESTIC  
LAWN AND GARDEN

Maximum Flow Rate: 638.00 GPM  
Maximum Volume: 155.30 AC-FT  
Maximum Acres: 49.32

Source Name: GROUNDWATER  
Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		N2SW	17	1S	25E	YELLOWSTONE

Period of Diversion: JANUARY 1 TO DECEMBER 31  
Diversion Means: WELL

THERE ARE 24 WELLS IN THE LEGAL LAND DESCRIPTION. THREE COMMUNITY SERVICE WELLS ARE IN NWNWSW SECTION 17, T1S, R25E, YELLOWSTONE COUNTY. THERE ARE 21 INDIVIDUAL LAWN AND GARDEN WELLS, 6 WELLS IN SWNWSW, 8 WELLS IN NWNWSW, 2 WELLS IN SENESW, AND 5 WELLS IN NENESW, SECTION 17, T1S, R25E, YELLOWSTONE COUNTY

Purpose (Use): MULTIPLE DOMESTIC  
Households: 88  
Volume: 25.87 AC-FT  
Period of Use: JANUARY 1 to DECEMBER 31

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1			N2SW	17	1S	25E	YELLOWSTONE

Purpose (Use): LAWN AND GARDEN  
Volume: 129.43 AC-FT  
Period of Use: APRIL 15 to OCTOBER 15

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	49.32		N2SW	17	1S	25E	YELLOWSTONE

Total: 49.32

### COMPLETION DEADLINE

THE DEADLINE TO COMPLETE THIS PERMIT AND FILE A PROJECT COMPLETION NOTICE (FORM 617) IS **DECEMBER 31, 2028**. IF YOU CANNOT MEET THE DEADLINE, FILE A FORM 607, APPLICATION FOR EXTENSION OF TIME, BY **DECEMBER 31, 2028**. OTHERWISE, THE PERMIT IS VOID.

### IMPORTANT INFORMATION

### EXHIBIT B - The Water Permit

WELL LOGS: THE APPROPRIATOR SHALL REQUIRE THE LAND OWNER PROVIDE A COPY OF THE WELL LOG TO THE APPROPRIATOR WITHIN 90 DAYS OF COMPLETION OF THE WELL. THE APPROPRIATOR SHALL PROVIDE A COPY OF THE WELL LOG TO THE WATER RESOURCES REGIONAL OFFICE BY



#### IMPORTANT INFORMATION

NOTIFICATION REQUIREMENT: THE APPROPRIATOR SHALL RECORD A DOCUMENT IN THE COURTHOUSE THAT SHALL NOTIFY ALL CURRENT AND FUTURE LAND OWNERS ON LOTS WITH INDIVIDUAL WELLS (LOTS 1, 2, 5, 6, 10, 11, 12, 18, 19, 23, AND 24, BLOCK 1, LOT 6, BLOCK 2, LOT 4, BLOCK 3 AND LOTS 1, 2, 5, 6, 13, 14, 19, AND 20, BLOCK 4 ON THE PRELIMINARY SUBDIVISION PLAT MAP) THAT 1) ONLY ONE WELL MAY BE DRILLED ON EACH LOT; 2) THE WELL MUST BE NO DEEPER THAN 120 FEET BELOW GROUND SURFACE; 3) THAT WATER USE MUST BE MEASURED AND RECORDED AS DESCRIBED IN THIS PERMIT; 4) A COPY OF THE WELL LOG MUST BE SUBMITTED TO THE APPROPRIATOR; AND 5) A WATER RIGHT CANNOT BE OWNED BY A PRIVATE INDIVIDUAL, BUT MUST BE HELD IN THE NAME OF THE HOME OWNERS ASSOCIATION. THE APPROPRIATOR SHALL PROVIDE A COPY OF THE RECORDED DOCUMENT IDENTIFYING THESE RESTRICTIONS, FOR EACH LAND OWNER, TO THE WATER RESOURCES REGIONAL OFFICE BY JANUARY 31 OF EACH YEAR.

#### WATER MEASUREMENT INFORMATION

THE APPROPRIATOR SHALL REQUIRE LAND OWNERS OF LOTS WITH INDIVIDUAL WELLS (LOTS 1, 2, 5, 6, 10, 11, 12, 18, 19, 23, AND 24, BLOCK 1, LOT 6, BLOCK 2, LOT 4, BLOCK 3 AND LOTS 1, 2, 5, 6, 13, 14, 19, AND 20, BLOCK 4 ON THE PRELIMINARY SUBDIVISION PLAT MAP) TO INSTALL A DEPARTMENT APPROVED WATER USE MEASURING DEVICE. WATER MUST NOT BE DIVERTED FROM THE WELL UNTIL THE REQUIRED MEASURING DEVICE IS IN PLACE AND OPERATING. THE APPROPRIATOR SHALL KEEP YEARLY WRITTEN RECORD OF THE FLOW RATE AND VOLUME OF ALL WATER DIVERTED FROM JANUARY 1 THROUGH DECEMBER 31 BY INDIVIDUAL WELLS AND THE COMMUNITY SYSTEM. THE WATER USE RECORDS SHALL BE COMPILED AND SUBMITTED TO THE DEPARTMENT BY JANUARY 31 OF EACH YEAR AND UPON REQUEST AT OTHER TIMES DURING THE YEAR. FAILURE TO SUBMIT REPORTS MAY BE CAUSE FOR REVOCATION OF A PERMIT OR CHANGE. THE RECORDS MUST BE SENT TO THE BILLINGS WATER RESOURCES REGIONAL OFFICE. THE APPROPRIATOR SHALL ENSURE EACH MEASURING DEVICE IS MAINTAINED SO IT ALWAYS OPERATES PROPERLY AND MEASURES FLOW RATE AND VOLUME ACCURATELY.

#### BACKFLOW PREVENTOR

PURSUANT TO SECTION 85-2-505, MCA, TO PREVENT GROUND WATER CONTAMINATION, AN OPERATIONAL BACKFLOW PREVENTOR MUST BE INSTALLED AND MAINTAINED BY THE APPROPRIATOR IF A CHEMICAL OR FERTILIZER DISTRIBUTION SYSTEM IS CONNECTED TO THE WELL.

THIS PROVISIONAL PERMIT IS SUBJECT TO ALL PRIOR EXISTING WATER RIGHTS IN THE SOURCE OF SUPPLY. FURTHER, THIS PERMIT IS SUBJECT TO ANY FINAL DETERMINATION OF EXISTING WATER RIGHTS, AS PROVIDED BY MONTANA LAW.

FAILURE TO COMPLY WITH ANY OF THESE TERMS AND CONDITIONS MAY RESULT IN THE LOSS OF THIS PROVISIONAL PERMIT.

Witness Signature

DATE ISSUED: MAY 25, 2018

Water Resources Division





BLOCK#	LOT#	AREA-SF	AREA-AC	Parkland Requirement Per Lot			
				11%	7.50%	5%	2.50%
<b>BLOCK 1</b>	1	35,181	0.808	0	35,181	0	0
	2	48,237	1.107	0	0	48,237	0
	3	26,649	0.612	0	26,649	0	0
	4	24,774	0.569	0	24,774	0	0
	5	49,568	1.138	0	0	49,568	0
	6	48,102	1.104	0	0	48,102	0
	7	26,042	0.598	0	26,042	0	0
	8	26,792	0.615	0	26,792	0	0
	9	29,464	0.676	0	29,464	0	0
	10	65,164	1.496	0	0	65,164	0
	11	47,622	1.093	0	0	47,622	0
	12	73,003	1.676	0	0	73,003	0
	13	25,591	0.587	0	25,591	0	0
	14	26,501	0.608	0	26,501	0	0
	15	26,453	0.607	0	26,453	0	0
	16	26,339	0.605	0	26,339	0	0
	17	25,747	0.591	0	25,747	0	0
	18	69,966	1.606	0	0	69,966	0
	19	64,220	1.474	0	0	64,220	0
	20	28,648	0.658	0	28,648	0	0
	21	26,454	0.607	0	26,454	0	0
	22	27,982	0.642	0	27,982	0	0
	23	58,816	1.350	0	0	58,816	0
	24	55,105	1.265	0	0	55,105	0
	25	26,642	0.612	0	26,642	0	0
	26	26,239	0.602	0	26,239	0	0
	*27	14,839	0.341	14,839	0	0	0
<b>BLOCK 2</b>	1	26,732	0.614	0	26,732	0	0
	2	15,654	0.359	15,654	0	0	0
	*3	121,413	2.787	0	0	121,413	0
	4	8,532	0.196	8,532	0	0	0
	5	10,331	0.237	10,331	0	0	0
	6	44,735	1.027	0	0	44,735	0
	7	10,983	0.252	10,983	0	0	0
	8	8,127	0.187	8,127	0	0	0
	9	8,345	0.192	8,345	0	0	0
	10	10,030	0.230	10,030	0	0	0
	11	9,963	0.229	9,963	0	0	0
	12	8,195	0.188	8,195	0	0	0
	13	8,407	0.193	8,407	0	0	0
	14	10,580	0.243	10,580	0	0	0
	15	9,736	0.224	9,736	0	0	0
	16	8,396	0.193	8,396	0	0	0
	17	8,405	0.193	8,405	0	0	0
	18	8,804	0.202	8,804	0	0	0
	19	10,418	0.239	10,418	0	0	0

## JOB #87043.04 - THE NINES SUB. LOT AREAS

6/25/2018

BLOCK#	LOT#	AREA-SF	AREA-AC	Parkland Requirement Per Lot			
				11%	7.50%	5%	2.50%
	20	10,155	0.233	10,155	0	0	0
BLOCK 3	1	9,315	0.214	9,315	0	0	0
	2	11,197	0.257	11,197	0	0	0
	3	10,490	0.241	10,490	0	0	0
	4	8,926	0.205	8,926	0	0	0
	5	30,825	0.708	0	30,825	0	0
	*6	117,331	2.694	0	0	117,331	0
	7	11,000	0.253	11,000	0	0	0
	8	11,000	0.253	11,000	0	0	0
	9	10,608	0.244	10,608	0	0	0
	10	11,710	0.269	11,710	0	0	0
BLOCK 4	1	45,481	1.044	0	0	45,481	0
	*2	72,741	1.670	0	0	72,741	0
	3	10,714	0.246	10,714	0	0	0
	4	10,550	0.242	10,550	0	0	0
	5	41,578	0.954	0	41,578	0	0
	6	46,579	1.069	0	0	46,579	0
	7	9,953	0.228	9,953	0	0	0
	8	9,470	0.217	9,470	0	0	0
	9	22,336	0.513	0	22,336	0	0
	10	21,179	0.486	21,179	0	0	0
	11	20,766	0.477	20,766	0	0	0
	12	46,260	1.062	0	0	46,260	0
	13	45,558	1.046	0	0	45,558	0
	14	22,806	0.524	0	22,806	0	0
	15	21,956	0.504	0	21,956	0	0
	16	31,772	0.729	0	31,772	0	0
	17	27,935	0.641	0	27,935	0	0
	18	49,154	1.128	0	0	49,154	0
	19	41,901	0.962	0	41,901	0	0
	20	25,325	0.581	0	25,325	0	0
	21	25,697	0.590	0	25,697	0	0
	22	28,907	0.664	0	28,907	0	0
	23	22,242	0.511	0	22,242	0	0
	24	21,511	0.494	21,511	0	0	0
	25	35,113	0.806	0	35,113	0	0
	26	22,685	0.521	0	22,685	0	0
	27	20,286	0.466	20,286	0	0	0
	28	22,203	0.510	0	22,203	0	0
	29	19,421	0.446	19,421	0	0	0
	30	34,996	0.803	0	34,996	0	0
	31	38,834	0.892	0	38,834	0	0
	32	27,019	0.620	0	27,019	0	0
	33	25,027	0.575	0	25,027	0	0
	34	24,372	0.560	0	24,372	0	0

**JOB #87043.04 - THE NINES SUB. LOT AREAS**

6/25/2018

BLOCK#	LOT#	AREA-SF	AREA-AC	Parkland Requirement Per Lot			
				11%	7.50%	5%	2.50%
	35	24,735	0.568	0	24,735	0	0
	*36	61,083	1.402	0	0	61,083	0
	*37	6,504	0.149	6,504	0	0	0
	*38	8,186	0.188	8,186	0	0	0
	*39	7,360	0.169	7,360	0	0	0
	*40	3,847	0.088	3,847	0	0	0

<b>LOT AREA</b>	433,893	1,060,494	1,230,138	0
<b>ft<sup>2</sup> (Req.)=</b>	47,728	79,537	61,507	0

<b>TOTAL PARK DED. =</b>	<b>0 SF</b>	<b>0.000 ACRES</b>
<b>PARK REQUIRED =</b>	<b>188,772 SF</b>	<b>4.334 ACRES</b>

\*Private parkland = 413,304 sf 9.488 ac

<b>GROSS</b>	<b>3,411,742 SF</b>	<b>78.323 ACRES</b>
--------------	---------------------	---------------------

<b>STREET</b>	<b>687,217 SF</b>	<b>15.776 ACRES</b>
---------------	-------------------	---------------------

<b>NET</b>	<b>2,724,525 SF</b>	<b>62.546 ACRES</b>
------------	---------------------	---------------------

Residential lots 2,311,221 sf 53.058 ac

<b>TOTAL # OF LOTS</b>	<b>97</b>
------------------------	-----------

Residential lots 88

<b>MIN. LOT SIZE</b>	<b>8,127 SF</b>
----------------------	-----------------

<b>MAX. LOT SIZE</b>	<b>73,003 SF</b>
----------------------	------------------



EXHIBIT - THE GREENS (UNSHADED LOTS)

# THE NINES SUBDIVISION

BEING TRACT 2C OF CERTIFICATE OF SURVEY No. 2467 AND NE1/4SE1/4  
SITUATED IN THE N1/2SW1/4 OF SECTION 17, T. 1 S., R. 25 E., P.M.M.  
YELLOWSTONE COUNTY, MONTANA

PREPARED FOR : P3COLEMAN, LLC.

PREPARED BY : SANDERSON STEWART

BILLINGS, MONTANA

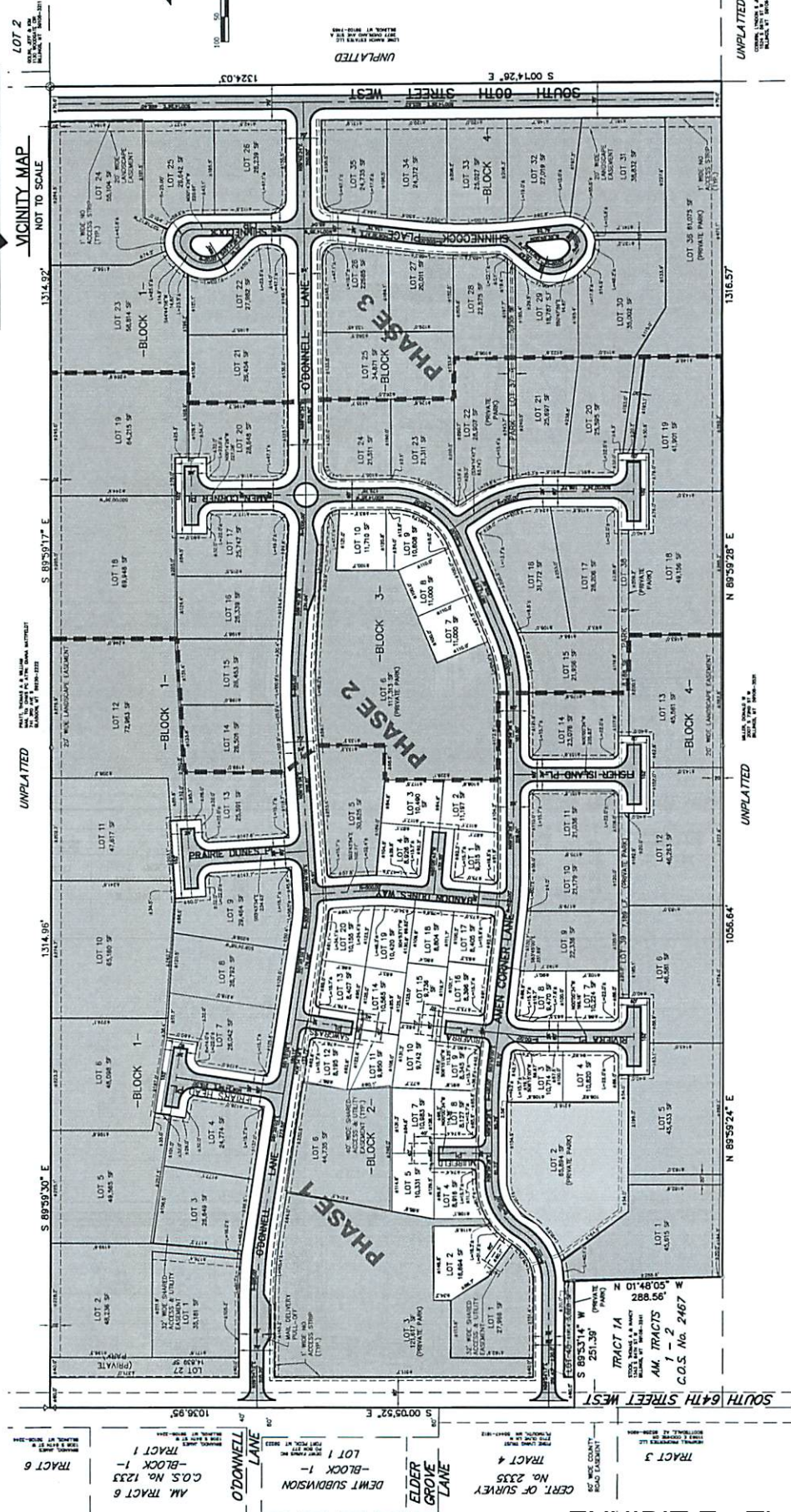


EXHIBIT E - The Greens



EXHIBIT - THE LINKS (UNSHADED LOTS)

YELLOWSTONE COUNTY, MONTANA

PREPARED BY : SANDERSON STEWART 

BILLINGS, MONTANA

